

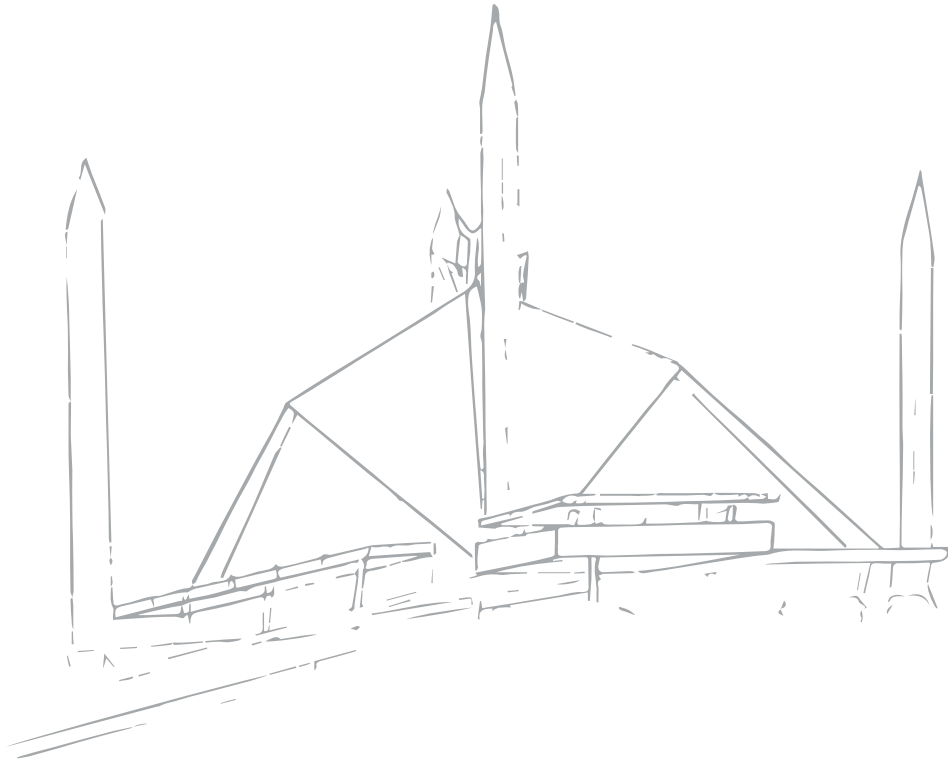


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Role of Parliament in Islamization of Laws in Pakistan

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Abstract

The adoption of Objectives Resolution was the beginning of the role of parliament in Islamization of laws. It was a milestone which identified key the principles that were to be notified in the future constitution of the country. The later constitutions also paved the way for Islamization. The constitution of 1973 was a major step toward Islamization of laws; however, the process significantly accelerated after 1979. The development in the laws of country did not stop here besides the Parliament comprising of President, Senate and National Assembly passed different Acts and Ordinances to make the laws of country more inclined towards Islam. The laws were not passed very easily and during this process, parliament had to face difficulties such as criticism from ulema or public protests. Sometimes the laws lacked whole hearted support of the members of legislature and the law was passed just for political reasons. Sometimes the issue was solved by campaign on media while sometimes the issue was discussed for many years in order to bring change. The paper aims to review and analyze the difficulties in the process of Islamization of laws in Pakistan and the role of parliament to carry out this process more swiftly. A detailed account of the Islamic principles mentioned in three constitutions, amendments and bills passed by the parliament will be given. I will analyze Hudood ordinance and the amendments in these laws. The paper concludes by describing the limitations in the process of Islamization and by suggesting ways to overcome these restrictions. It can be inferred that for practical application of Islamic laws in the country, it is required that the legislature, judiciary and executive collaborate with each other. The present study will be an attempt to scrutinize the role of parliament in process of Islamization of laws and identify the hurdles in the way of Islamization along with suggestions for practical application of the laws.

1. Introduction

Pakistan became an autonomous state under the headship of Quaid-e-Azam Muhammad Ali Jinnah on 14th August 1947. The creation of Pakistan was based on many political, societal, fiscal

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and cultural motives but the basic notion behind creation of Pakistan was the separate identity of Muslims, i.e. Islam being the main purpose behind the movement.¹The famous slogan raised during independence movement was "*Pakistan kaMatlabkia: La' ilaha 'illallah*". This affirms that Islam was a very important key element in the creation of Pakistan so it was engraved in the minds of people that the future country would be an Islamic state where they will be able to lead their lives according to Islam. In order to fulfill this desire of the people, it was necessary to make laws according to Holy Qur'an and *Sunnah*. The law making powers mainly vested with the Parliament. This research paper aims to analyze the role of parliament in order to Islamize the laws of country along with a detailed analysis of Hudood laws which have always been subject to criticism by different segments of Pakistani society. The paper is comprised of three parts, first part deals with the participation of parliament in law making especially the role in Islamizing these laws while the second part analyzes Hudood laws and their amendments. Last part of the paper comprises of ways to accelerate the process of Islamization of laws in the country.

2. History of Islamization of Law by Parliament

This part of the paper deals with law making process in Pakistan since its inception and the role played by the parliament to Islamize these laws and to bring them in conformity with the teachings of Holy Qur'an and *Sunnah* and to make the country an Islamic country in the real sense. It begins with the independence and the steps taken by first constituent Assembly to pass the Objectives Resolution. The Islamic provisions of constitutions of 1956, 1962 and 1973 are discussed along with all other laws and ordinances passed by Parliament.

2.1 Independence of Pakistan

Indian Independence Act, 1947 declared the creation of two independent dominions namely, India and Pakistan from 15th of

¹Dr. Fakhr-ul-Islam and Muhammad Iqbal. "Islamizing the Constitution of Pakistan: The Role of MaulanaMaududi," *Al-Idah*27 (Dec 2013): 58.

August 1947.² Since the transfer of power took place on 14th August, 1947 so it was declared in the later years as Independence Day of Pakistan by the Government.³ According to the Act, the dominion legislatures were comprised of the members of existing Constituent Assemblies, established as a result of 1946 elections,⁴ exercising all powers of legislature including law-making. The Act also declared that dominions shall be governed by Government of India Act, 1935 till the making of a new constitution.⁵ First session of the Constituent Assembly was held on 10th August in Karachi and on 11th August, Quaid-e-Azam Muhammad Ali Jinnah was elected as President of the country.⁶ After the transfer of power on 14th August, Quaid-e-Azam took oath as first Governor General of Pakistan on 15th of August.⁷

2.2. Objectives Resolution: An Important Milestone

The most important task before the Constituent Assembly was the framing of a new constitution. All the members worked hard and participated in debates during the period till 1949 when Objectives Resolution was passed by the Assembly. The presentation of Objectives Resolution by Prime Minister Nawabzada Liaqat Ali Khan on 7th March, 1949 opened a heated session of debates following criticism and strong opposition by the Hindu members on Islamic provisions.⁸ Different amendments were proposed by non-Muslim members but were rejected by the

² Indian Independence Act, 1947, http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf Accessed January 4, 2019.

³ Dr. Riaz Ahmed, "Pakistan's First Constituent Assembly's Efforts for the Making of Constitution 1947-1954", *Pakistan Journal of History & Culture*, 23, no.1 (2002): 1.

⁴ Mahboob Hussain, "Institution of Parliament in Pakistan: Evolution and Building Process (1947-1970)", *Journal of Political Studies*, 18, no.2 (2011): 78.

⁵ Parliamentary History, NATIONAL ASSEMBLY OF PAKISTAN, <http://www.na.gov.pk/en/content.php?id=75> Accessed January 5, 2019.

⁶ Ibid.

⁷ Ibid.

⁸ Riaz Ahmad, Pakistan's first constituent, 2. Also see Constituent Assembly of Pakistan, Debates, Official Report. Vol. V, 5th Session (March 7-12, 1949), http://www.na.gov.pk/uploads/documents/1434604126_750.pdf Accessed January 5, 2019.

House.⁹ The Objectives resolution was passed on 12th March, 1949 which clarified the future Islamic status of the country.¹⁰

The adoption of Objectives Resolution by the first Constituent Assembly of Pakistan was the beginning of the role of parliament in Islamization of laws of the country. It was a milestone in the process of Islamization of laws which identified key principles that were to be notified in the future constitution of the country. The Objectives Resolution acknowledged that God Almighty is the only sovereign and the authority given to state through its people is a sacred trust which is to be exercised within limits prescribed by God.¹¹ The constituent Assembly shall frame constitution according to which the observance of principles of democracy, freedom, equality, tolerance and social justice shall be according to Islam¹² and favorable conditions shall be provided so that Muslims shall be able to live their lives according to teachings of Islam.¹³

The adoption of Objectives Resolution was the first step towards Islamization as it was made the preamble of the future constitutions of Pakistan and later made part of constitution of 1973 by eighth amendment. It elucidated that laws shall be made according to Islamic principles of democracy and justice and not on European model.¹⁴ The passing of Objectives Resolution was triumph of religious segments in the country which were in conflict with the modernists since inception of Pakistan.

2.3. Constitution of 1956

After the passing of Objectives Resolution, the parliament took nine years to frame the constitution of Pakistan. The first step in this regard was the formation of BPC¹⁵ comprising of President

⁹Kausar Parveen, "The Role of Opposition in Constitution Making: Debate on the Objectives Resolution" *Pakistan Visio*, 11, no. 1, 147.

¹⁰ Constituent Assembly of Pakistan, Debates, 102.

¹¹Ibid. 2-3.

¹² Ibid. 3-4.

¹³Ibid. 4.

¹⁴Dr. Hafiz Muhammad Siddique, "Islamization of Laws in Islamic Republic of Pakistan: An Analysis", *AFKAR (Research Journal of Islamic Studies)* 1, no.1, (Jan-June 2017): 14.

¹⁵ Basic Principles committee

and other 24 members of whom some were members of Constituent Assembly.¹⁶ Different sub-committees including a board of learned Muslim scholars were also established to direct the committee on any issue on which guidance was asked. The work was very slow and the committee presented its report after one and a half year but was postponed by the Assembly.¹⁷ It recommended objectives resolution to be made part of the future constitution and also to make the policies of state following the principles mentioned in the objectives resolution.¹⁸ That was the only Islamic recommendation by the committee. Accompanied by the reaction of other segments of society, ulema also criticized the report and declared it void of any proper recommendation for Islamizing the laws. The report was again presented in 1952 mentioning that the President should be Muslim and laws to be made according to Islam. This report was rejected based on many objections. In the meantime, the cabinet of Khawaja Nazimuddin was dismissed and new Prime Minister presented report which was approved after objections and amendments. Approval of the report accelerated the constitution making process but when the draft of the new constitution was ready to be presented, the constituent Assembly was dismissed in 1954 which proved a great set back in the law making process and also doomed the agreed upon formula for safeguarding the Islamic laws of the country.¹⁹ After elections in 1955, new constituent Assembly continued the task of constitution making and in 1956, new constitution of Pakistan was promulgated.²⁰

According to the constitution, Pakistan was declared “Islamic Republic”.²¹ Objectives resolution was included as preamble of the constitution which declared that sovereignty belongs to Allah

¹⁶ National Assembly Debates, 101.http://www.na.gov.pk/uploads/documents/1434604343_885.pdf Accessed January 2, 2019.

¹⁷ Constituent Assembly Debates, 3.

¹⁸ Ibid. 13.

¹⁹ Parliamentary History, NATIONAL ASSEMBLY OF PAKISTAN, <http://www.na.gov.pk/en/content.php?id=75> Accessed December 31, 2018. Also see Leonard Binder, *Religion and Politics in Pakistan*, (Berkeley and Los Angeles: University of California Press, 1963), 218.

²⁰ Parliamentary History.

²¹ Ibid.

Almighty. President was to be a Muslim according to Article 32 of the constitution but no provisions were made to declare Islam the state religion. The constitution provided that No law was to be passed against Holy Qur'an and *Sunnah* of the Holy Prophet and steps shall be taken to enable the Muslims to lead their lives according to Islam.²² Article 197 of the constitution required the President to form an organization of Islamic Research and Instructions.²³

The constitution of 1956 and its Islamic provisions were a good step towards Islamization though not perfect but could have proved to be successful if the constitution would not have been annulled. The constitution was never actually implemented and the selfishness and insincerity of parliamentarians towards law making paved way for the failure of constitution so as a result Martial law was imposed in the country and constitution was abrogated in 1958 by Sikandar Mirza.²⁴

2.4. The Constitution of 1962

After three weeks, Sikandar Mirza was deposed by Ayub Khan and declared himself President of the country. He appointed commission for the purpose of making new constitution for the country which presented its report in 1961. After lots of amendments, the final draft was approved and constitution of 1962 was promulgated in the country.²⁵ In the meantime, MFLO²⁶, 1961 was issued by the President which proved an important step

²² Mumtaz Ahmed, "The Muslim Family Laws Ordinance of Pakistan", *International Journal on World Peace*, 10, no. 3, (September, 1993): 38-39.

²³ Dr. Tanzilur Rahman, "Islamic Provisions of the Constitution of the Islamic Republic of Pakistan, 1973 What More is Required?", *The Qur'anic Horizons*, 2, no. 3, (July-September, 1997): 7.

²⁴ Yasmeen Yousif Pardesi, "An Analysis of the Constitutional Crisis in Pakistan (1958-1969)", *The Dialogue*, 7, no. 4, 378.

²⁵ Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2001), 255. Also see Altafullah, "Constitutionalism in Pakistan: A Study of Convergence and Divergence of the Proposals of the Constitution Commission with the Provisions of 1962 Constitution", *Pakistan Journal of History and Culture*, 29, no.2, (2008): 87.

²⁶ Muslim family law ordinance brought drastic changes in the family laws of the country.

in the islamization and codification of Muslim family laws in the country. MFLO will be discussed after the Islamic provisions of 1962 constitution.

Objectives Resolution was included as preamble to the constitution.²⁷The constitution of 1962 did not declare the country as Islamic state. According to Article-10, the President was required to be Muslim. Part-X of the constitution mentioned that Islamic Research Institute and Islamic Advisory Council are to be established to help in the Islamization of laws. Article-8 provided that no law shall be made against Islam. The word Islam was used instead of mentioning Qur'an and *Sunnah*. The Islamic provisions were mentioned in the constitution in a weaker form.²⁸ Constitution of 1962 vested most of the powers with President so the parliament played a weaker role during Ayub Khan's regime and the only Islamic change brought to the constitution was the restoration of the name of the country to Islamic Republic.²⁹

2.5. Muslim Family Law Ordinance, 1961

Muslim Family Law Ordinance was an important step in the islamization of family laws. It is regarded as first statutory reform in family laws after 1947.³⁰The ordinance provided laws related to succession, registration of marriage, polygamy, divorce and maintenance. One of the most important provisions was that the husband was required to get consent of first wife before having a second wife. Triple *talaq* was also declared illegal by the ordinance. Maintenance and matters related to inheritance were also reformed to give rights to women. The law was greatly criticized by the religious segments of society although the framers of ordinance had relied heavily on the interpretations of Holy Qur'an and *Sunnah* done by jurists.³¹ Many attempts were

²⁷Pardesi, *An Analysis of the Constitutional Crisis*, 384.

²⁸ M. Rafique Afzal, *Political Parties in Pakistan, 1958-1969*, (Islamabad: National Institute of Historical and Cultural Research, 1998), 53. Also see Altafullah, *Constitutionalism in Pakistan*, 93.

²⁹Pardesi, *An analysis of Constitutional Crisis*, 387.

³⁰ Lucy Carroll, "The Muslim Family Law Ordinance 1961: Provisions and Procedures- A Reference Paper for Current Research", *Contributions to Indian Sociology*, 13, no. 1, (January 1979): 117.

³¹ Ahmed, *The Muslim Family Laws*, 39.

made to repeal the law but not proved fruitful as it had the protection of constitution.³²

Muslim Family Law Ordinance was a very good example of reforms in the Personal laws of Muslims. It paved way for the parliament to make further changes in the laws of country to facilitate the lives of people in accordance with the teachings of Holy Qur'an and *Sunnah*.

2.6. Constitution of 1973

In 1969, the constitution of 1962 was abrogated and Martial Law was imposed in the country which again interrupted the law making process in the country. After the formation of new government in 1972, the parliament again started the important task of framing a new constitution and at last new constitution was enforced in the country in 1973. This constitution is a very important document in the way of Islamization of laws in the country as it is more Islamic in character than the previous constitutions of 1956 and 1962.³³

The constitution contained Objectives Resolution as its preamble which was later made an operative part of the constitution and inserted by article 2-A in 1985. Islam was declared as state religion and country to be named as 'Islamic Republic of Pakistan'.³⁴ Definition of 'Muslim' is also mentioned and any person who does not believe Prophet Muhammad to be last prophet was declared as non-Muslim. The constitution also mentioned availability of opportunities to enable Muslims to lead their lives according to Holy Qur'an and *Sunnah*.³⁵ Steps shall be taken for prohibition of alcoholic liquor and elimination of *riba*. President is required to be a Muslim according to Article 41(2) of the constitution. Article 62 provides that members of parliament should have knowledge of Islamic teachings and refrains from

³² Ibid, 44.

³³ Dr. Fazal Rabbi and Dr. Habib Nawaz, "Islamization in the Islamic Republic Pakistan: A Historical Analysis", *Al-Azhar*, 3, no. 2, (July-December 2017), 80.

³⁴ Rahman, Islamic Provisions, 1-2.

³⁵ Ibid, 5.

major sins.³⁶Part-IX (Article 227-230) of the constitution contained Islamic provisions which stated that all current laws shall be brought in agreement with Holy Qur'an and *Sunnah* and any law which is against Qur'an and *Sunnah* shall be endorsed. This part also stated the rules related to constitution, composition and powers of Council of Islamic Ideology.³⁷Preservation of Islamic ideology was made part of oath of office bearers of the federal and provincial governments.

The passing of a constitution having a positive inclination towards Islamization was a great achievement by the parliament in the era of Zulfikar Ali Bhutto. Despite this, the parliament also passed law and amended the constitution to declare 'Ahmadiyah sect' as non-Muslim minority.³⁸In reality, during Bhutto's regime the parliament did not pay much attention to the recommendations of Council of Islamic Ideology and made any law considering these recommendations so the religious segments were not satisfied as they demanded more steps to be taken to Islamize the laws. In order to satisfy the religious segments, the government announced Friday to be an off day, banned dinking and selling of wine by Muslims, nightclubs and horse racing.³⁹ But these were unsatisfactory measures so the agitation led by PNA⁴⁰ got momentum and Bhutto's government was overthrown by General Zia ulHaq who declared Martial Law in the country in 1977 and praised the PNA movement for 'spirit of Islam'.⁴¹

2.7. Islamization in Zia's Regime (1977-1988)

After one year of the coup de'etat, General Zia declared himself the President and in 1984, he confirmed himself as president by referendum thus empowering him to make laws. From 1977 to 1985, laws were made in the country by presidential ordinances.

³⁶ Ibid, 6-7.

³⁷ Ibid, 8-10.

³⁸Riaz Hassan, Islamization: An Analysis of Religious, Political and Social Change in Pakistan, *Middle Eastern Studies*, 21:3, 263-284, 1985, 263.

³⁹Rabbi, Islamization in the Islamic Republic, 52.

⁴⁰ Pakistan National Alliance comprised of many political parties having great strength of religious parties.

⁴¹Muhammad Iqbal Chawla et al., "Islamization in Pakistan: An overview", *JRSP*, 52, no. 1, (January-June, 2015): 276-77.

General Zia made eighth amendment in the constitution to validate all the laws previously passed by him.⁴²

The process of Islamization of laws accelerated during Zia's regime. In 1979, the government reconstituted the Council of Islamic Ideology to make drafts for Islamic laws in the country. These drafts were not of binding nature but subject to President's discretion. General Zia passed many Islamic laws in the form of presidential orders. These orders passed during Martial law were validated in 1985 by 8th Amendment in the constitution which cannot be challenged in any court of law.⁴³ Most important of these laws were the amendments made in the criminal laws on the basis of Qur'an and *Sunnah*. A detailed account of the steps taken by General Zia to Islamize the laws is stated below:

Shariah Benches—Benches of Shariah courts were established in the country by a presidential order on 10th February, 1979. These benches were given powers to declare any law unconstitutional if it was against Islam. Appeals against the decisions of lower and high courts can be brought before Shariah benches.⁴⁴

Federal Shariat Court—The Sharia benches were disbanded and Federal Shariat Court was established in the country in 1980 by presidential order. Its jurisdiction extended to the whole of country. By this order any citizen, provincial government or federal government was allowed to file a petition, application or request to the High Courts to declare any law or act of Government as null and void which was not in conformity with the Islamic laws.⁴⁵

Islamization of Economic System—Islam does not allow *riba* or interest so there was a need to bring change in the banking laws of the country. On 1st January, new law was introduced in the

⁴²Martin Lau, "Twenty-Five Years of Hudood Ordinances – A Review", *WASH. & LEE L. REV.* 64, no.1291 (2007): 1292.

⁴³ Ibid.

⁴⁴Jamal Shah, "Zia-Ul-Haque and the Proliferation of Religion in Pakistan", *International Journal of Business and Social Science*, 3 no. 21, (November 2012): 314.

⁴⁵Lubna Kanwal, "Zia, Islam and Politics of Legitimacy", *AL-ADWA*, 43, no. 30, 43.

banking system of the country called 'profit and loss sharing system'. According to this new system, loss and profit of the bank was to be shared by the accountholder and the bank was not bound to pay fixed interest to the accountholder. Interest free counters were opened at all 7,000 branches of nationalized commercial banks. By the mid of 1985 all Pakistani banks were switched to this system but the parallel interest bearing schemes were allowed to continue.⁴⁶

Zakat and Ushr Ordinance—On 20th June 1980, Zakat and Ushr Ordinance was promulgated which was applicable only to Islamic organizations, institutions and associations. According to the ordinance, *zakat* was to be deducted from bank accounts of Muslims every year at a rate of 2.5% annually above amount of Rs. 3000. Ushr was imposed at the rate of 10% annually on crops. Complete procedure was prescribed in the ordinance for the collection of both *zakat* and *ushr*⁴⁷ this ordinance was criticized by Shia sect which was later exempted by the law.⁴⁸

Hudood Ordinance—On 10th February 1979, Hudood Ordinance (comprised of six laws) was introduced which included Islamic punishments or 'had'. These included fixed punishments prescribed by Holy Qur'an or *Sunnah* for theft, adultery, *qazf* and use of liquor. These laws especially the laws related to *zina* were criticized by different segments of society as most of the time they were used to exploit women as men were set free due to insufficient witness or national or international pressure.⁴⁹ The Hudood Ordinance will be discussed in detail in the second part of the paper.

Blasphemy Law, 1986—Pakistan Penal Code (PPC) and Criminal Procedure Code (CrPC) were amended by ordinances in 1980, 1982 and 1986 to make dishonoring of Holy Prophet or other sacred personalities and sacred places or books a punishable offence. Most important of these amendments is death punishment and fine to the one who dishonors Holy Prophet.

⁴⁶Shah, Zia-ul-Haq, 317.

⁴⁷<https://zakat.punjab.gov.pk/system/files/zakatushr1980.pdf>, Accessed January 5, 2019.

⁴⁸Shah, Zia-ul-Haq, 317.

⁴⁹Ibid, 315.

Some of these amendments are not agreed upon by all and have been subject to severe criticism but parliament has been unable to bring changes in these laws.⁵⁰

Qanun-e-Shahadat Order—Law of Evidence, 1872 was replaced Qanun-e-Shahadat Order, 1984. It restated the laws of evidence but some changes were made like minimum gestation period was mentioned as six months and maximum at two years. Most criticized amendment was the law that declared the testimony of two women equal to one man that was later restricted to financial transactions.⁵¹

Other Islamic Laws—International Islamic University was established in Islamabad by a presidential ordinance to promote Shariah education. Islamic study was made compulsory at school and college level while prayer break was compulsory. For this purpose Salat Committees were formed to impress upon people to observe prayer. Ramzan Ordinance was promulgated which prohibited eating and drinking at public places during fasting timings and made it punishable with fine. Strict Islamic laws were made for print and electronic media.⁵²

Elections were held in the country in 1985 but it had limited powers and the government was dismissed by Zia based on the contention that it failed to play an effective role in islamization of the laws in the country. On 17th August, 1988 General Zia died in a plane crash and new government was formed in the country after general elections.

2.8. Process of Islamization After 1988

In 1988, Benazir Bhutto was elected as prime minister but her tenure did not last long and the government was dismissed in 1990. Then Nawaz Sharif formed government which also did not complete its tenure and was dismissed in 1993 and new government of Benazir was formed till its dismissal in 1996 after which Nawaz Sharif again became the prime minister till a coup d'état in 1999 by Pervez Musharraf. The period during 1988-1999

⁵⁰Ibid.

⁵¹Ibid.

⁵² Ibid. 315-17.

can be termed as an era of weak governments who did a little contribution to islamization process of the laws.⁵³

Qisas and Diyat Ordinance—In September 1990, Qisas and Diyat Ordinance was promulgated by President Ghulam Ishaq Khan which amended the punishments of bodily hurt and murder mentioned in PPC and CrPC. These punishments were declared as repugnant to Qur'an and *Sunnah* by Shariat bench of Supreme Court on 5th July 1989 and asked the government to change these laws till March 1990 on which the government filed a review petition. In the meantime, the government was dismissed and changes were made by a presidential order in 1990. By the order, law of *qisas* (equal punishment) and *diyat* (payment of money in case of compensation) was promulgated according to Holy Qur'an and *Sunnah*.⁵⁴

Shariah Act, 1991—On 5th June 1991, an Act was passed for the enforcement of Shari'ah called Shariah Act, 1991 which states that the Supreme law of Pakistan are Holy Qur'an and *Sunnah* (Shari'ah) and all laws shall be made in the light of Shari'ah. The state shall make effective arrangements for teachings of Islam and Muslim citizens will be bound to follow Shari'ah. Education, economy and mass media shall be Islamized by making laws. rights of women provided by the constitution will not be effected by this Act. This Act was made by the parliament to Islamize different laws of the country.⁵⁵

Criminal Law Amendment Act, 1997—On 10th April 1997, amendments were made in Offence of Zina (Enforcemnet of Hudood) Ordinance, 1979 by an Act of parliament. Section 53 of PPC was substituted by a list of ten punishments starting in order from Qisas and ending at punishment. It also stated certain changes to be made in the text of the previous law and further

⁵³Jamal Shah, "Zia-Ul-Haque and the Proliferation of Religion in Pakistan", *International Journal of Business and Social Science*, 3 no. 21, (November 2012): 314.

⁵³LubnaKanwal, "Zia, Islam and Politics of Legitimacy", *AL-ADWA*, 43, no. 30, 43.

⁵⁴*Ibid.*

⁵⁵Acts of Parliament,
http://www.na.gov.pk/uploads/documents/1335242059_665.pdf
 Accessed January 5, 2019.

stated definitions of Islamic terminologies and stated in detail the meanings and punishments for each and every type of crime according to Islamic law.⁵⁶ On 21st April, 1997 another amendment was made in the Zina Ordinance which stated that when zina-bil-jabr liable to tazir is committed by more than one with common intention, all of them shall be punishable with death.⁵⁷

2.9. Islamization during Military Era (1999-2008)

Nawaz Sharif's government was dismissed by Army Chief General Pervez Musharraf in October, 1999 but Emergency was proclaimed instead of Martial law.⁵⁸ Elections were held in the country in 2002 and new government was formed.⁵⁹ The most important achievement during this era was **the *Protection of Women (Criminal Law Amendment) Act, 2006*** passed by the Assembly which tried to amend the Zina Ordinance. The Act amended two out of five hudood laws which will be discussed in the second part of the paper.

2.10. Islamization After 2008

After 2008, there is political stability in the country and the governments have completed their tenure despite the change of prime minister, Assemblies were not dissolved based on 'charter of democracy' followed by the two most popular parties of the country. They cooperated with each other so the democratic process is running smoothly since 2008.⁶⁰

During the said period, ***Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016*** was passed by the Assembly. The Act

⁵⁶ Acts of Parliament, http://www.na.gov.pk/uploads/documents/1324604341_299.pdf Accessed January 3, 2019.

⁵⁷ Acts of Parliament, http://www.na.gov.pk/uploads/documents/1324604707_864.pdf Accessed January 3, 2019.

⁵⁸ Zahid Mahmoud, "Political Turmoil and Military Era of General Musharraf (1988-2007)", *JPUHS*, 28, no.2, (July - December, 2015): 247.

⁵⁹ Ibid. 249.

⁶⁰ Muhammad Iqbal Chawla, "Era of Reconciliation in Pakistan, 2006-2017: A Critical Appraisal", *Journal of the Research Society of Pakistan*, 54, no. 2 (July - December 2017): 239-40.

contains amendments in Pakistan penal code, criminal procedure code and Qanun-e-Shahadat in relation to rape offence.⁶¹

The role of parliament in the Islamization of laws has been at variations since creation of Pakistan. The process of Islamization was at its peak during regime of General Zia but at some places laws were not made with full devotion so lacunas remained in the laws and positive result was not obtained by the laws. The selfishness of political leaders, imposition of Martial laws and non-cooperation of different organs of the state were most important factors due to which we are still unable to give status of a truly Islamic state to the country after seventy years of independence.

3. Hudood Ordinance, 1979

General Zia's regime was the era when the process of islamization accelerated in the country. One the most important step towards islamization of laws in the country was enforcement of Hudood Ordinance. The Ordinance was levied by the President on 10th February, 1979 to bring criminal laws of Pakistan in accordance with Islamic teachings. Different parts of Pakistan Penal Code were amended and new offences were added by the ordinance. Hudood Ordinance comprised of four types of orders which included offences related to property, adultery, *qazf* and use of liquor.⁶²The punishments prescribed under these four mentioned orders were amputation of hands for theft, stoning to death for adultery and lashes and strips for different crimes. The ordinance provided liability to two types of punishments: *hadd* and *tazir*. First the punishment of *Hadd* is mentioned and in cases where *haddis* not applicable punishment of *tazir* is stated.⁶³ The Hudood Ordinance included:

⁶¹ Acts of Parliament, http://www.na.gov.pk/uploads/documents/1481353702_249.pdf Accessed January 5, 2019.

⁶²Asifa Quraishi, "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from Women-Sensitive Perspective", *Michigan Journal of International Law*, 18, 287- 288.

⁶³Asma Jahangir and Hina Jilani, *The Hudood Ordinances: A Divine Sanction?* (Sang-e-Meel Publications, Lahore, Pakistan, 2003):23-24.

- Offences against Property(Enforcement of Hudood) Ordinance
- Prohibition Ordinance
- Offence of Qazf Ordinance
- Offence of Zina Ordinance

All these hudood laws were criticized but Zina Ordinance was subject to special severe criticism. Most important criticism was that the Zina Ordinance made no distinction between adultery and rape so the rape victims were treated as offenders and were punished due to lacunas in the procedure of the law.⁶⁴ It inflicted great injustice to Pakistani women and was also criticized at international level. It was due to the pressure on international level that punishment of stoning was not practically applied.⁶⁵ Many women suffered due to the law. Even ex-husbands accused their wives of having committed adultery in case of second marriage as she had no proof of divorce.

Amendments in Hudood Laws

In 1996, the Whipping order was changed by Abolition of Whipping Act, 1996 and was allowed to be applied only when *hadd* punishment is to be imposed. Hudood laws were greatly criticized by different women organizations but no government took steps to change the law. The government of Pervez Musharraf took steps to change the law and the Assembly passed Protection of Women (Criminal Law Amendment) Act in 2006. The Act has omitted zina-bil-jabr from the ordinance and new offences of rape and punishment for rape have been added under PPC. Many offences of Zina Ordinance were returned to the ambit of Pakistan Penal Code. Adultery is the only offence which is now dealt by Zina Ordinance.

⁶⁴Shahzadi Zamurrud Awan, Impact of Zia-ul-Haq's Gender Policies on Pakistani Society, *Pakistan Journal of History and Culture*, 37, no.1, (2016): 24.

⁶⁵Shah, Zia-ul-Haq, 315.

4. Conclusion and Recommendations

- Pakistan is a state based on two nation theory thus providing a separate identity to Muslims so it is the need of hour to work together to safeguard this identity and to make such laws in the country that would help in safeguarding the Islamic identity.
- The non-seriousness and selfishness on the part of politicians in Pakistan delayed the process of constitution making and also the islamization of laws in the country. If the politicians would have been sincere it would not have been difficult to make a truly Islamic constitution for the country shortly after its inception.
- Since independence, there are two groups in the country, modernists and Islamists who are totally opposed to each other in their attitude towards Islam so in order to accelerate the Islamization process in country both groups are required to sit and find a better solution for Islamizing the laws.
- There were many incidents in the constitutional history of Pakistan when the organs of state did not cooperate with each other. It is required that all the three organs of state: legislature, executive and judiciary join hands with each other to make Pakistan an Islamic country with such laws that enable its citizens to live their lives in a truly Islamic atmosphere.
- If we take a look at *Allah Rakha case*⁶⁶ we can infer that there is lack of knowledge on the part of judges so judges should be well equipped with Islamic knowledge before passing any judgment related to Islamic law. Knowledge of Islam is also a necessity for the members of legislature also so that they can make better laws according to correct interpretations of Holy Qur'an and *Sunnah*.
- In conclusion, it should be said that the steps taken by the parliament were done half-heartedly so there is a need to make the country an ideal Islamic welfare state according to the sayings of Quaid-e-Azam Muhammad Ali Jinnah. He wanted Pakistan to be a welfare state based on Islamic

⁶⁶PLD 1981 FSC 145.

rules so the legislature should be comprised of sincere and devoted people who can work whole heartedly to Islamize the laws of country in such a way that it can be called as a country whose laws are based on Islamic laws in such a way to make it a modern Islamic state.