

Islamization in Pakistan: A Historical Analysis

Aatir Rizvi**

ABSTRACT:

In Pakistan Islamization process has been continuous one since independence. The issue of Islamization has generated debate, both within and outside the country and one can find both positive and negative literature on this. This article will jog down the efforts of Islamization in Pakistan over the period of time, by highlighting important laws formulated in this regard and will also provide an analysis of how this process of Islamization has impacted the society. Islamization as a state policy has resulted into formulation of laws and amendments in the constitutions, yet its impacts on the society due to political policies are everlasting, as governments over the period of time, turned blind eye towards sectarianism partly due to geopolitical and geostrategic situation since 1970s onwards, as the governmental regulations and international funding paved the way for many things which resulted into rigidity and conservativeness. This article will also provide an analysis of Islamization process and propose a way forward in this regard.

Key words: Islamization; Pakistan; Laws; Constitution

Introduction:

There has been a debate on the issue of Islamization especially since 1979, when Hudood Ordinances were introduced, as Islamization of laws plays an important role being an essential element of overall Islamization in the state¹. Pakistan came into existence on Islamic ideology and Government of India Act 1935 was made interim constitution of the State till its own constitution was implemented. In order to establish an Islamic state, classical literature² on administration of Islamic state and its system has discussed three important aspects:-

- Some relate to basics having roots in Quran and Sunnah, which are necessary to be implemented within Islamic state.
- Some regarding those which are result of rational thinking and interpretations by jurists or Mujtahids.
- Some do not come within the ambit of above two and include all those orders, decisions, interpretations and dicta which were given time to time by the rulers or other administrative bodies at the apex level of the Islamic state.

The process of Islamization becomes troublesome for the State at times, due to lack of interest from the masses as well as, political considerations. The governments have used this word [*Islamization*] as a slogan for strengthening their rules in the past. At times there have been some serious efforts in this regard, yet the pace has been very slow. However, the Parliament has successfully enacted many laws over the period of decades, of which a brief list is provided in this article and judiciary (esp. Federal Shariat Court and Shariat Appellate Bench of Supreme Court of Pakistan) has also played its positive role when it came to interpret different laws in par with Sharia rules.

Islamization- Defined

It is a process to keep things under Islamic rule and implementation of Sharia laws in their original form (Chawala, 2015). Islamization is a process of a society's shift towards Islam (Kennedy, 1996). Hence, we can say that when a state Islamize the laws as prevalent in that state, we term that process as the Islamization and the process is not only

* Aatir Rizvi, LLM (Cambridge, UK) aatir.rizvi@gmail.com

¹ Mufti Mohd. Taqi Usmani, Translated by Khalid Rehman, “*Islamization of Laws in Pakistan: The Case of Hudood Ordinances*”.

² See, Allama Mavardi, *Al-Ahkam-ul-Sultania*.

legal one, but also involves steps which are political, social, economical and religious in which different stake holders play their role. Since, its inception Pakistan has seen many steps and numerous efforts towards Islamization. It has been witnessed that these efforts could not bear the results as desired, due to half hearted efforts and lack of will on the part of political parties and divergent views of religious segments. Whereas, few are of the view that the process of Islamization is ongoing and there has been some serious efforts in different eras in this regard which has impacted positively on the Islamization process in Pakistan.

Islamization in Pakistan:

For the ease purposes and better understanding, this article divides the Islamization efforts into different periods i.e. (a) 1947-1960; (b) 1960-1970; (c) 1970-1980; (d) 1980-1990; (e) 1990-2000; (f) 2000-2010 and last but not the least (g) 2010-till date. Following is the glimpse of the major steps taken towards the Islamization in Pakistan.

(a) 1947-1960:

Right after independence, *Objectives Resolution 1949*³ was adopted, which was the first step towards Islamization. Some of its chief points included⁴:-

- (a) Allah is the sole sovereign, who has delegated this sovereignty to the State through people who have to exercise this sovereignty as a sacred trust, within the limits fixed by Him in this regard.
- (b) It is the duty of the State to enable Muslims to lead their lives, individually as well as collectively, within the bounds and teachings of Quran and Sunnah.
- (c) The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.

Objectives Resolution has played a vital role since its promulgation, in the constitutional as well as, Islamization history of Pakistan. It has been narrated as a preamble of all three constitutions and in 1985 it was made as a substantive part of 1973 Constitution by Zia through 8th Amendment. This historic resolution only provided basic principles required for running the affairs of Pakistan and for its proper implementation two serious efforts were made:-

- (a) The establishment of *Board of Islamic Education*⁵ and
- (b) The *22 points formula*⁶ proposed by Ulema⁷.

Now a lengthy debate arose as to what should be the final authority to declare a law un-Islamic. There were many options including:-

- (a) To constitute an Ulema Board in each province;
- (b) To bestow this authority to Parliament; or
- (c) To entrust this authority to Supreme Court.

In 1954, this power was assigned to the Apex Court and in Article 4 of the proposed constitution; it clearly stated that Apex Court could declare any law un-Islamic. However, before adoption of proposed constitution the Assembly was dissolved and all efforts in this regard went in vain.

³ It was adopted on March 9, 1949.

⁴ For complete text one can see Art 2-A of Pakistan Constitution 1973.

⁵ Allama Syed Salman Nadvi headed it and other members included, Mufti M Shafi, Dr. Hameed Ullah, Prof. Abdul Khaliq, Mufti Jaffar Hussain and Molana M Zafar Ahmed Ansari.

⁶ Scholars like Molana Modoodi and Allama Salman Nadvi were amongst the signatories of this formula.

⁷ The most important point of this formula was; “*It must be clearly stated in the proposed constitution of Pakistan, that no law shall be enacted against Quran and Sunnah and in case it is made, the same shall be challenged and repealed through a special mechanism and all such laws and rules, which are already in force, will be altered or amended in order to bring them in conformity with the injunctions of Quran and Sunnah*”.

In 1956, a proposal to form, *Islamic Law Commission*, came and it was to be established within one year, which never happened and even a single step towards Islamization was hardly taken under 1956 Constitution. Islamic Research Institute was formed in 1958. 1956 Constitution comprised of different Islamic provisions, such as State's name was declared as Islamic Republic of Pakistan, Objectives Resolution was made its preamble and all laws were to be in conformity with injunctions of Islam alongwith President to be Muslim, principles of the State policy also talked of providing conditions so that people could lead their lives according to the spirit of Islam (Dr. Rabbi, F & Dr. Nawaz, H. 2017).

(b) 1960-1970

In 1961, *Muslim Family Laws Ordinance* was promulgated and enforced. Ulema objected on some of its provisions including procedure for talaq⁸, registration of marriage and procedure in case of second marriage⁹, share of grandchildren in grandfather's property¹⁰ etc. Contemporary and orthodox Ulema debated on its merits and demerits; however, this law is still applicable¹¹.

In 1962 Constitution the word, '*Islamic*' was omitted from name of the State. This was severely criticized by both the Ulema and general public, so by first amendment, the word, '*Islamic*' was inserted. Also one consultative Council of Islamic Ideology¹² was established for making recommendations. However, till 1974 none of its reports or recommendations was acted upon or published. In 1962 through an ordinance prostitution was prohibited. West Pakistan Muslim Personal Law Shariat Application Act 1962 and West Pakistan Family Court Act 1964 were also promulgated.

(c) 1970-1980

1970s saw increasing role of Islamization in Pakistan. With the fall of Dhaka, there was a severe blow to the ideology of Pakistan and a vacuum was created, which was filled with Islamization, which brought many changes into legal system of the State. Hence, during Bhutto era, 1973 Constitution with more Islamic character, declaring Islam as state religion and for president and prime minister being Muslim made compulsory, teachings of Quran and Islamic studies were made mandatory for all Muslims (Article 3 (a) & (b)). Special provisions were made for learning of Arabic language. Further during Bhutto era definition of Muslim was added into the Constitution through amendment, Friday was off day, ban on alcohol consumption was imposed and gambling establishments were closed, to name a few (Dr. Rabbi, F & Dr. Nawaz, H., 2017). In 1973, new constitution¹³ was adopted, which created a new institution by the name of Council of Islamic Ideology¹⁴, which gave many recommendations out of which most were never acted upon or even published, however, following recommendations were adopted in 1977:-

- (a) Prohibition of intoxication;
- (b) Prohibition of night clubs;
- (c) Prohibition of horse racing; and
- (d) National holiday on Friday.

One further step was declaration of *Qadyanis* as non-Muslims¹⁵ in 1974. In 1977, state saw another martial law and General Zia reestablished the institution of Council of Islamic Ideology and in February 1979, Judiciary got the

⁸ See, Section 7 MFLO 1961.

⁹ See, Section 5 *ibid*.

¹⁰ See, Section 4 *ibid*.

¹¹ See, for details Allah Rakha Case, PLD 2000 FSC 1. Also see, Muslim Family Law (*Amendment*) Act 2021 for amendment/addition in Section 4 regarding *Ahl-e-Tashish*.

¹² Justice Abu Saim M Akram was its first head.

¹³ Article 227 makes it incumbent that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and the Sunnah of the Holy Prophet (PBUH). Moreover, Art 31 [Principles of Policy] is about Islamic way of life.

¹⁴ See Article 228-231 [Islamic Council]. Mr. Justice Hamood Ur Rehman was its first Chairman.

¹⁵ See 2nd Amendment Act 1974. 3(3) states, "A person who does not believe in the absolute and unqualified finality of the Prophet-hood of Muhammad (PBUH), the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (PBUH), or recognizes such a claimant as a Prophet or

authority to declare any law repugnant to Islamic injunctions. New ‘*Shariat Benches*’ were established in each High Court and one ‘*Shariat Appellate Bench*’ was introduced in Supreme Court. Supreme Court could declare any law repugnant to Islam, except five¹⁶ including; the Constitution, personal laws, procedural laws, martial law regulations and economic or monetary regulations. Zia government accelerated the process and introduced many Islamic legal reforms into the system. He based his government on Nizam-e- Mustafa. Through amendment in the Constitution in 1979, people were given right to appeal to concerned authorities including courts to declare any law illegal and un-Islamic, which in their view was repugnant to the injunctions of Islam. Later on after few years, Federal Shariat Court (Article 2013-A/J) and Shariat Appellate Bench of Supreme Court were given powers in this regard. Powers of Council of Islamic Ideology were enhanced and frequent meetings were held which gave recommendations, resulting into Hudood Ordinances alongwith sanctity of *Ramzan-ul-Mubarik*, as well as, law for maintenance of poor relatives came. Also, special provisions were made to teach Islamic law in different educational institutions especially law colleges. Zakat and Ushar Ordinance was also introduced in 1980 (Dr. Rabbi, F & Dr. Nawaz, H., 2017). Further during this decade Punishment of Whipping Ordinance as well as, Dowry and Bridal Gifts (Restriction) Act 1976 were also introduced. The 1973 Constitution has following Islamic provisions:-

- (1) Sovereignty belongs to Allah
- (2) Name of the State
- (3) Islam as state religion
- (4) Observance of Islamic principles to lead lives.
- (5) Muslim has been defined
- (6) Prime Minister and President to be Muslims
- (7) Islamic way of life
- (8) Provisions for Islamic teaching and protection of Islamic values
- (9) Protection of minorities as enshrined in Islam
- (10) Correct and exact printing and publication of holy Quran
- (11) Existing laws to be brought into conformity with Islam
- (12) Interest free banking, concept of welfare state and Council of Islamic Ideology
- (13) Strengthening bond with Muslim world
- (14) Oath to protect and promote Islamic ideology

In 1979, five *Hudood Ordinances*¹⁷ [including The Offences against Property (enforcement of Hudood) Ordinance 1979, The Offence of Zina (enforcement of Hudood) Ordinance 1979, The Offence of Qazf (enforcement of Hudood) Ordinance 1979, The Prohibition (enforcement of Hudood) Order 1979 and Execution of Punishment of Whipping Ordinance 1979] were promulgated and these were constitutionally protected through 8th Amendment in 1985. The punishments of whipping and rajam were badly criticized by international human rights organizations and human rights activists. In July of the same year, interest on loans was declared illegal; however, rule of monthly share on investment was introduced on the basis of partnership.

(d) 1980-1990

In 1980, *Federal Shariat Court*¹⁸ was established due to the conflicting decisions of Shariat Benches of different High Courts. Initially it was presided over by five judges, later on presence of three Ulema was made mandatory due

religious reformer, is not a Muslim for the purposes of the Constitution or law”. Also see, Judgment of FSC in Shariat Petitions number 17/I of 1984 [Mujib Ur Rehman & three others versus Federal Government of Pakistan through Attorney General of Pakistan] and 2/L of 1984 [Capt. © Abdul Wajid and another versus Attorney General of Islamic Republic of Pakistan].

¹⁶ Here first four exceptions were of permanent nature, while the fifth one was temporary to be lasted for three years.

¹⁷ The Hudood Ordinances were drafted under the supervision of Dr. Duwalbi, who was at the relevant time the advisor of King of Saudi Arabia. He was deputed to Pakistan on the request of General Zia-ul-Haq, who wanted to introduce Islamization for his own political ends [see “*Violence Against Women-Overcoming the traditional resistance to change and amending the Hudood Ordinances in Pakistan*”, by Justice Majida Rizvi].

¹⁸ See Chapter 3-A [article 203] of 1973 Constitution. There is free legal representation rule applicable in FSC and no court fee is payable. The Court has original and suo moto jurisdiction, revisional, appellate and review jurisdiction in cases involving Islamic principles. The court is empowered to decide whether any law is in conformity with injunctions of Islam or not?

to its controversial decision regarding 'rajm'¹⁹ punishment. Sharia courts as well as, appointment of Qazis including women qazis' controversy got resolved. Parliament was named as *Majlis-e-Shura*. Institution of Ombudsman was also established, law of Chadar and Chaar Devari was introduced. Madaraba Companies and Modaraba (Floating and Central) Ordinance 1980 was also enacted along with the Modaraba Rules 1981.

Zakat-o-Ushr Ordinance introduced a compulsory deduction of Zakat from 1981 and for this purpose *Zakat Committees* were established under the control of one *Central Zakat Council*, headed by sitting justice of Supreme Court.

In 1982, the number of judges in Supreme Court's Shariat Appellate Bench was enhanced by inducting Ulema as adhoc judges. Few conventions were held in order to create public opinion and create awareness among masses, like:-

- (a) Ulema Convention 1980;
- (b) Conferences in 1982 and 1984.

Ansari Commission (1983) gave almost 50 recommendations, out of which few were adopted, as Objectives Resolution was made substantive part of the Constitution²⁰. Further 9th Amendment bill²¹ could not be presented before *Majlis-e-Shura* due to dissolution of parliament. Zia also proposed 11 point Islamic Charter in 1984, which incorporated basic Islamic principles as far as political order in Pakistan, was concerned. Zia also promulgated *Qanoon-e-Shahadat Order* 1984 in order to implement Islamic aspects regarding qualification and number of witnesses, alongwith other Islamic principles into the administration of justice; which replaced old Law of Evidence dating from 1872²². 1985 and 1986 saw, few further steps towards Islamization as; commercial banking was made interest free (1985) and 1986 saw an amendment in the shape of Section 295-C in Pakistan Penal Code and for procedural aspects Criminal Procedure Code 1898 was also amended during 80s. Zia also introduced Shariat Ordinance in 1988, which remained in force till 1989. During this era compulsory Islamiyat courses at different levels were introduced, further separate women universities were established. *Nazam-e-Salat* and *Aazan* was also introduced. Ministry of Religious Affairs and Minorities Affairs was also established which later on played a vital role in the process of Islamization. In 1980s through amendments in criminal code, blasphemy, life imprisonment and capital punishments were provided for desecration of Prophet (PBUH) and Holy Quran.

(e) 1990-2000

Shariat Act 1991 was enforced, which declared Sharia as supreme law of the State, as well as, the State was urged to take measures for Islamization of education. During Nawaz era, in 1992 an attempt for the introduction of obligatory designation of religious afflictions in different forms; an attempt was made to introduce 15th Amendment declaring Quran and Sunnah as the supreme law of the country (not passed). In 1993 a bill was introduced which provided for severe penalties for those guilty of defiling the names of Prophet Muhammad's family and Companions. The bill was rejected by the National Assembly in July 1994²³. In March 1997, *Qisas and Diyat Ordinance* was permanently adopted as *Qisas and Diyat Act 1997*. It must be kept in mind that a lengthy legal battle remained since 1964 till 2002 at different forums for interest free economic system throughout the State, which was decided by Shariat Appellate Bench of Supreme Court, giving time till 30th June 2002 to the government for taking appropriate steps in this regard.

(f) 2000-2010

¹⁹ Huzoor Bux case. See, PLD 1981FSC 145 [rajm is not in accordance with the Islamic Injunctions] and PLD 1983 FSC 255 [rajm is according to Islamic injunctions].

²⁰ Via Presidential Order number 14 of 1985.

²¹ The Ninth Amendment Bill declared that "the injunctions of Islam as laid down in the Holy Quran and Sunnah shall be the supreme law and source of guidance for legislation to be administered through laws enacted by the parliament and provincial assemblies and for policy making by the government".

²² See for details,

http://pakistanchristian.tv/opinions/Gradual_Islamization_of_Pakistan_and_its_impact_on_Christian_Citizens%20by%20Dan%20Wooding%20and%20Sheraz%20Khurram%20Khan.cfm last visited on 31-03-2012 at 23:00 PST.

²³ *ibid*.

In 2006, *Protection of Women (Criminal Laws Amendment) Act 2006*²⁴ came which further amended two²⁵ Hudood Ordinances of 1979. Also, Zardari era (2009) saw order of justice, establishing Sharia courts in number of areas of NWFP. Islamic banking was introduced in this decade and State Bank of Pakistan issued detailed guidelines for the establishment of Islamic commercial banks. There came amendments in Banking Companies Ordinance as well as other financial regulations to accommodate Islamic banking.

(g) 2010- till date

Islamic insurance started to spread and government introduced environment which was conducive in this regard. *The Takaful Rules 2012* were promulgated. Apex judiciary also played its role in this regard by interpreting and protecting different laws pertaining to Islamization and delivering judgments pertaining to different Islamic issues and doctrines, which further strengthened the laws and constitutional principles pertaining to Islamization. Eradication of Riba Act 2019 has also been passed to omit riba from fiscal laws. Recently section 4-A has been added into the MFLO 1961 regarding the share of issueless widow of a Shia deceased. There have been proposals regarding few amendments/addition in section 7 MFLO 1961 as well as, *Nikah Nama* too.

Analysis of Islamization:

Pakistan got independence in 1947 and since then there have been efforts for Islamization every now and then, whether that be introduction of Islamic provisions in different constitutions or promulgation of different laws in this regard. There have been orthodox Ulema, whose interpretation of the word Islamization is the reintroduction of all the past practices as well as, institutions, without any substantive change or without any modern interpretations of Quran, Sunnah or fiqh. Meaning thereby, applying the classical Sharia in its original form and anything modern would not amount to Islamization in their eyes (Chawala, M et al., 2015). There has been a tussle among different segments of the society ever since especially religious parties of old school and reformers demanding newer interpretations and implementing newer versions. This has caused confusion among masses and their understanding of Islamization. The government policy regarding Islamization has been effected by the political concerns of the stakeholders at helm of the affairs and further by the geopolitical and geostrategic situation and Pakistan's involvement (directly or indirectly) in Afghan Jihad and Iranian Revolution in late 1970s and 1980s as well as, after 9/11 war on terror. As, there was a state policy regarding Islamization and the foreign funding was abundant in this regard like Saudi Arabia and Iran funding to different segments of the society, of which spillover effects were in the form of sectarianism and rigid interpretations of Islamic principles. The situation on the borders and within the state was conducive to the above mentioned problems and government's blind eye in this regard contributed a lot to the adversity of the situation. This resulted into hindrance in the pace of Islamization and created issues for the policy makers and general masses. Further, governance issues, socioeconomic conditions of people as well as, poor condition of state run educational institutions are also few factors which have contributed towards worsening the situation. It is important to note that legislature has faced many issues while going for Islamization of laws, however after insertion of Article 2-A in the 1973 Constitution, it was judiciary which played its role proactively by taking cognizance of different laws including but not limited to family matters, criminal laws, banking laws alongwith other fiscal and procedural laws, in order to apply Sharia norms and also to lead to legislation, omitting laws conflicting with Islamic rules (Dr. Munir, Bakht et al, 2020).

It is ironic, if we look at Pakistani history since inception that imposition of selective religion's ideology, ignoring the ideology of majority has resulted into religious discrimination. It should be remembered that Pakistani society is unique in its character, when it comes to Islam, as it is a mixture of indigenous people, Arabs, Turkish and Persian roots, making it distinct from other societies, as here Islam has developed over the centuries and has taken unique shape after the amalgamation with Sufism and Mysticism coupled with local customs esp. of sub-continent. During Zia era as well as, through Ulema led Islamization, the institutions like madarassas produced those having only single, narrow and strict interpretation of Islam with rigid and extremist attitudes, which resulted into violence,

²⁴ Through this Act further amendments in Pakistan Penal Code 1860, Criminal Procedure Code 1898 and other laws including Dissolution of Muslim Marriages Act 1939, The Offence of Zina (Enforcement of Hudood) Ordinance 1979 and The Offence of Qazf (Enforcement of Hudood) Ordinance 1979 are made. Its main object is to provide relief and protection to women against misuse and abuse of law.

²⁵ Regarding Zina and Qazf.

extremism and sectarian divide (Chawala, M et al., 2015). Further, political parties also alongwith military rulers have been using Islamization slogan as a political tool, which has resulted into many issues including but not limited to sectarianism, extremism, intolerance and terrorism. So, need of the time is to revive the softer image of Islam through peace, tolerance, compassion as well as, dynamic and progressive interpretations while formulating laws. It is also necessary to start a dialogue at the State level in order to get recommendations from every stakeholder of the society, like educationalists, Ulema, political parties, media personnel as well as, different institutions and think tanks working in this behalf, to implement those recommendations and suggestions later on in the shape of laws and regulations. We further need to relook at the past efforts, reconsider the mistakes done and reevaluate the pace of Islamization in order to further proceed in the right direction. A national consensus has to be developed by taking onboard all the stakeholders in this regard.

Conclusion:

Rulers like Zia used the slogan of Islamization through public support to strengthen their tenure. The slogan has been used for political purposes, majority of times, rather than sincerity of purpose. However, due to lack of will from general public as well as, political parties, scarcity of Sharia experts, pressure from within the State as well as international forces, and difference of opinion among Ulema especially politically influenced Ulema, the pace of Islamization remained slow, painstaking and troublesome task. The task is onerous, delicate and complex. The need is to avoid taking extreme positions and instead, appreciate the efforts of Islamization in the context of indigenous culture, the current situation and the challenges of modern times. The whole picture shows that concreted attempts were made to make this country a pure Islamic state, however, legal analysis reveals that there remained some lacunae which needed to be addressed for the proper implementation of different laws²⁶. Only with spirit can we move ahead removing the flaws in the existing laws and integrating them with other sectors²⁷. However, it must be kept in mind that Muslim states around the globe have adopted different political and administrative models, keeping in mind their own geopolitical and geo-economic requirements, which is the indication of the fact that there is no single modern and specific model of Islamic state²⁸, so it is necessary for the people at helm of the affairs in Pakistan to keep in mind the societal needs and requirements alongwith adopting the progressive, pragmatic and modern interpretations of classical principles, as this is the only way to create a balance and equilibrium between classical Islamic injunctions and modern requirements of the State. Need of the time is to learn from the past, look forward and act collectively in the right direction through sincerity of purpose and genuine efforts towards Islamization in Pakistan, as it is the only way to achieve desired results.

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²⁶ See <http://www.yespakistan.com/economy/islamisation%20of%20economy.pdf> for details, last visited on 23-03-12 at 23:30 PST.

²⁷ Mufti Muhammad Taqi Usmani, Translated by Khalid Rehman, “*Islamization of Laws in Pakistan: The Case of Hudood Ordinances*”.

²⁸ See <http://eprints.hec.gov.pk/1057/> last visited on 31-03-12 at 23:45 PST.

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