



RESEARCH PAPER

**The Politics of Religious Legislation: A Case Study of Pakistan
1979-2000**

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ABSTRACT

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Pakistan was achieved in the name of Islam. Much of its politics has revolved around the status of the Islam and notion of making it a political reality. This study explores the Politics made in the name of Islamic Legislation in Pakistan during the era 1979-2000. This research is based on the analysis of the authentic material in the form of literature from scholars and Government documents. Islam is considered to be unifying force but the legislation made in the name of Islam created controversies and opposition, bitter feelings and hatred in society. To make it more blinkered and intolerant, Islamic legislation should be made only through the Ijtehad performed by radicals.

Introduction

The interplay of the religion and politics in Pakistan shows that the question of implementing Islamic laws in the Muslim Society has deep roots in our intellectual legacy. In Pakistan, religion has played a more important role in the mobilization and legitimization process than in most other countries because Pakistan came into existence lacking the traditional characteristics of a state; a common ethnic, linguistics or territorial identification. Islam has been the rallying cry and one of the major forces for the creation of Pakistan.

Conflict arouses over the status of Islam after independence. To some, Pakistan was created to provide home land for Indian Muslims in order to avoid economic, political and cultural domination by the Hindu majority while other believed that it was created to be an Islamic state governed by Islamic laws.

Supporters of the latter position argued that through the leaders of the Pakistan Movement may have had secular motivations; they appeal of an Islamic state run according to the *Shariah* motivated the Muslim masses to opt for Pakistan. After independence the question was whether Islam would continue to be an effective source of legitimacy for those who were governing the new state. They still employ Islamic symbols and slogans to provide inspirations and give a sense of unity to the citizens of the new state. The more Islam was invoked, however the more it provoked the question as to what Islam was to play in the state.

Due to lack of mutual consensus between the religious and political elites on the role of Islam in the administration of the country, the lengthy debate diminished the power of the Islam as the most important and a strong factor for an effective identity, resulting in strengthening ethnic, sectarian and regional loyalties. The failure on the part of religious and political elites to resolve the religious debates left the society confused.

Politics

On hearing the word politics, what usually springs to mind are images of government, politicians and their policies or more negatively the idea of corruption and dirty tricks? The actual definition seems to have been obscured and almost lost by such representations and cliché that tend not to pinpoint the true essence, which defines this thing, called politics. In order to make an attempt at a definition of politics a systematic approach is required. To begin with, a brief historical overview will be considered, to understand the origins of politics. Following this, different core concepts, which are imperative to a definition of politics, will be discussed, in the hope to discover a true and fair interpretation of the word politics.

The word politics comes from the Greek word "polis", meaning the state or community as a whole. The concept of the "polis" was an ideal state and came from the writings of great political thinkers such as Plato and Aristotle. In his novel "The Republic", Plato describes the ideal state and the means to achieve it. Hence, the word politics originally has connotations in the ways in which to create the ideal society. An ideal society is in practice a rather difficult aim and even an impossible aim to achieve. Politics implies measures which could and should, in the views of their devisor, be implemented in the hope to create a better society, than that which is already present. The very fact that Plato and Aristotle saw imperfections in the societies, in which they lived, prompted them to write their political philosophies. These philosophies provided the first written recognition of politics. In his writings his "The Politics", Aristotle states that "Man is by nature a political animal" (Aristotle, 1996) in another words, it lies deep within the instinct of man. It is almost primal. Due to his nature man should consider and realize his role within the "polis". So according to Aristotle Politics is not a dreamt up concept, but rather an inherent feature of mankind.

To begin with, the basest premise that underpins the notion of politics should be considered in order to arrive at a fair definition. Man is self-preserving by nature. He thinks and acts, whether that is as an individual or as a group who share interests, with foremost regard to his own interests. Self-perpetuation is the number one rule. He therefore possesses his own interests, ideas and preferences, which may differ to those of his contemporaries. In the "Blackwell Encyclopedia of Political Thought", Miller supports this premise: "Politics presupposes a diversity of view, if not about ultimate aims, at least the best ways of achieving them" (Miller 1987).

Politics consider this view of man, in that on meeting others whose interests oppose his own, conflict is bound to occur. What could be the cause of this conflict in interest? The world has its limits; all material wealth within it is exhaustible. Who therefore, gets how large a share, of those resources, which are present on the earth in limited supply? If man were permitted to act on and pursue his own selfish interests, snatching that, which he desires, a society would quickly become under rule of violence. Politics is a way of combating the degradation of society into a violent and unstructured mess by reducing it to be governed by the primitive instincts of man in order to resolve conflict. Leftwich states in his essay entitled "Politics: people, resources and power" from his book "What is Politics?" "...politics compromises all the activities of co-operation and conflict, within and between societies, whereby the human species goes about organizing the use, production and distribution of human, natural and other resources in the production and reproduction of its biological and social life"(Leftwich, 1984).

Politics therefore may be defined a means to resolving this conflict through various means. If however one was to take this premise of the existence of opposing opinions as false, conflict between individuals should never occur and politics would not be required to resolve problems. To justify politics however, this premise must be true and through simply considering, the society in which we live it is evident, that conflict exists. In his definition of politics in the "Blackwell Encyclopedia of Political Thought" Miller advocates this view, stating that if "people (were to) agree spontaneously on a course of action...they (would) have no need to engage in politics" (Miller 1987).

Politics is the means to creating a more organized and peaceful society, by providing methods to resolve conflict that naturally occurs between men, by means of civil discussion and rational compromise. It thus stems the need for violence in tense situations and ultimately looks to avoid the degradation of a community into utter chaos. Authority is the underlying feature of politics and ensures its enforceability. Power underpins its very existence; it is a prerequisite for politics exist. Without authority, politics simply is not feasible. The most visible and widely accepted example of politics is the workings of the governmental institutions. However, although at first glance one may not be aware of it, politics in its various forms is present wherever and whenever humans form a community. Referring back to the views of Aristotle, politics is an intrinsic feature of mankind.

Legislation

Sociable as he is by instinct and necessity, man has, since his birth, lived in the company of his fellow beings, forming, according to the state of his social development, small or large societies. A society is a group of human beings living in one place and working together, originally to satisfy their elementary, in a more advanced state their higher and more refined needs. From family to tribe and from tribe to a large ethnic group, living and working on common land and obeying a common authority, is the story of the social, economic and political evolution of man. If men have to live in society, they must have rules by which to regulate their conduct towards one another and someone among them to demand and enforce obedience to those rules. In this historical fact, we have the origin of the law and nucleus of what in political science and constitutional law is called the state.

Law was born with the birth of man. With the creation of Adam came the command: "Thou shalt not" and for the disobedience of that command the penalty therefore. So long as men live together, they must in order to keep intact the society of which they are the member, observe some rules by which their relations with one another are determined. The origin of these rules, so long as they are generally acted upon, is immaterial. They may have existed since time immemorial as the custom of the community or they may have been given by a remote ancestor, a priest, a king or by a god. Their origin may rest in revelation or they may have been adopted by the people directly or indirectly in an assembly of their nominees as long as the rules create or recognize rights and obligations of the members of the community. The society as a whole and their breaches are taken cognizance of and corrected or visited with penalties which the members tacitly accept, they constitute the law of community.

Islam and Politics

Islam, which literally means the submission of man to God (Allah) is the one of the great religions of the world. The messages that became the essence of Islam were revealed to Muhammad (PBUH) beginning in 610 A.D. to become a Muslim takes but; simple affirmation of faith, repeating the *shahada*: there is no god but The God and Muhammad is the messenger of God. The creed of Islam is simple, and though there is a voluminous, sophisticated literature on various aspects of Islam, belief in the basic *shahada* is the main characteristics of the mass of Muslims.

Muhammad (PBUH) brought his message to the Arabs of Makkah, the "idolaters" whose confused animistic and totemistic religious practices were repugnant to him. He also hoped that Christian and Jews would be attracted to his messages; after all he believed that it was their God, as well as his, from whom the message came.

The message, if we strictly count only what the Muslims term the revelation, was the Quran (Montgomery, 1970). It was probably not wholly

recorded until after Muhammad (PUBH)'s death; its language, the sacred language, was Arabic. The Muslims have always believed in the completeness of Quran; it is not to be supplemented by recurrent messages. The Quran contains the principal of eternal truth from which modern science or any other kind of knowledge (however much it may change in detail) must be derived. Among the Quran' truths is a prescription for regulating the political and social affairs of man. Islam makes no distinctions between the state and the realm of believers; in theory at least, there is nothing to render unto Caesar. There is nowhere in Islamic history, as there is in that of Christendom, any recourse to a doctrine of "Two Sword" or any proliferation of a political theory of the rights of a secular ruler against those of God (Asad, 1961)

Conservatism forced the Arabs of Muhammad (PUBH)'s time to resist his blandishments; it was only after he and his followers has demonstrated a certain *barakah* (heavenly blessing) in war and caravan raiding that great numbers of followers rallied to his cause. But however fervently his adherent embraced the message of the Quran, they needed more direct and personal counsel for the regulation of their daily lives. Much of this is to be found in the *Hadith*, or the traditions of the Prophet (PBUH)'s life. What would Muhammad (PBUH) have said, or done, in such and such a situation? Although every Muslim concedes that Muhammad (PBUH) was only a man, nevertheless they believe that his life was exemplary. Indeed it furnishes a guideline for all good Muslims to follow.

Politics of Religious Legislation in Pakistan

The consolidation of a distinct Muslim identity had started even before the idea of Pakistan germinated in the minds of intellectuals. The quest for such an identity can be identified with the *mujahedin* movement which has started under the leadership of Syed Ahmad Brelvi (1786-1831) who wanted to purify the Muslims, mostly converts from Hinduism, from the influence of Hindu culture and religion. The *madrassas* in *Deoband* and the Muhammadan Educational Conference provided awareness to the Muslims as distinct socio-cultural and religious group and led to the pan-Indian Muslim conscious movement.

Islam, however, became politically useful after the 1857 Sepoy Mutiny. For the first time, the mutiny unified Indians against British Imperialism. Freedom from religious encroachment became a new ideology and the Muslims of subcontinent were convinced that their religion would continue to be in danger in the British Regime. The elites, as a writer points out, managed to foster a degree of general Muslim identification with issues like lack of education, discrimination in employment, inadequate representation in politics etc. Thus, while use of Islam may have been subjectively opportunistic, it was nevertheless effective given the context. Initially, Syed Ahmad Khan and other Muslim Leaguers, comprising mostly western educated elites were not anti British in their approach and orientation. They believed that by cooperating with the British, the Muslims would gain in political terms. Thus no anti British effort was encouraged.

Immense study of Pakistan Movement has adhered to a view of “two-nation” theory as the broadest indicator of the Muslim nationalism in India. This approach largely observes the spiritual attachment of Indo-Muslim culture to be the motive force behind mobilization of Muslim masses. Robinson argues that one of the basic attachments is the sense of community among Muslims, which is fostered by key rituals separating it from non-Muslims and giving it a sense of identity, which in turn is realized through mobilization in pursuit of political power (Waseem, 1989). The primordial ties of religion act upon individual in such a way that they not only acquire a new identity but also share it with other members of the community. In this view, the internal composition of Islamic Ideology manifests the “Secret” of its tremendous mobilizing force.

By the beginning of 1940 Muslim politics had decidedly taken a significant turn. The departure from the pre-1937 policy was remarkable. The Muslims no longer wanted an Indian federation. No longer was it a question of merely voting in favor of or against a certain (or even any) federal scheme. Federation would not do at all. The greater the Hindus laid emphasis on a strong center the greater grew the Muslim revolution to any centre. The more the Congress emphasized the principle of majority rule, the more Muslim talked of Muslim self-determination.

During the seven years of the struggle for independence, from the Lahore Resolution in 1940 to the emergence of Pakistan as an independent state in 1947, the leaders of the Muslims league mobilized the masses in the name of religion “Islam is in danger” was the slogan that was from the platform and pulpit. The meanings of Pakistan were explained in the spirit of Quranic precepts. The religious leader often addressed the political rallies, at which masses were hearkened to give support to the idea of Pakistan, because that would give them land, where millions of Muslim would be given an opportunity to mould their lives strictly according to the principals laid down in the *Shariah*.

The emergence of Muhammad Ali Jinnah (1876-1948) as a leader with political skills necessary to mobilize the Muslims filled the need of the time. Under Jinnah’s leadership the Muslim League has become a powerful nationalist organization. It was to rally the various sectors of the Muslim population at both mass and elite levels. Jinnah provided the Muslims with a goal when he decided that “only strong issue on which the Muslim League could mobilize was religion. Islam’s driving force could be used to attract Muslims to the Muslim League which hitherto had remained divided among themselves. (Iqbal, 1985) Jinnah made it clear that Muslims were not a minority as it is commonly known and understood. Muslims and Hindus were two separate and distinct nations and the Muslim nation was “a nation according to any definition of a nation and they must have their homeland, their territory and their state” (Munir, 1980).

The most important component of Jinnah’s appeal was that of Islam as a political and social force. “Islam, he pointed out, “is not a set of ritual, traditions and spiritual doctrine. Islam is also a code for every Muslim which regulates his

life and his conduct... "Islam regulates, he explained everything from the ceremonies of religion to those of daily life; from the salvation of the soul to the health of the body; from the rights of all to those of each individual, from morality to crime, from punishment here to that in the life to come... It is a complete code regulating the whole Muslims society, every department of life, collectively and individually". (Munir, 1980) Jinnah had wanted to restrict the usage of Islamic slogans only for the purpose of the greater unity. For him, it was obvious that Islamic symbolism was tactically very significant. There was no other way except Islam for separatist movement bent upon getting a separate country to homogenize a wide range of interest within the Muslim community. Jinnah was consciously and carefully advancing the Islamic concept in his mass mobilization campaign as a "higher aspect" of Pakistan demand.

Upon independence, the Government of India Act of 1935 (with amendment of sovereignty of Pakistan) was adopted by Pakistan. The first Constituent Assembly was required to frame a constitution to replace the 1935 Act. The division of power between the center and the provinces and the Islamic provisions of the constitution were controversial issues

The *maulanas* and the *ulama* of the various sects, including the religious leaders who had waged the war against the struggle for Pakistan, now came to independent Pakistan. In Pakistan they initially joined together demanding that Pakistan be made an Islamic state with an Islamic constitution according to their dictates. They wanted to be the sole arbiters of the Quran and interpreters of the Islamic laws.

Once Pakistan was achieved the critical political question which surface as part of the constitution-making (legislation) process was to determine the character of the state in terms of Islam, since Pakistan was expressly created for the Muslims of the Indian sub-continent. (Perwez, 1988) The problem went to the heart of the debate of the "two nation theory" and was, and remains ideological in its formulation and intent. Ironically, the debate and discussion on a future constitution for the state of Pakistan revealed the depth of divisiveness existing among Muslims in relation to what was meant by an Islamic state and how it was going to be constructed.

The recognition of Pakistan as an Islamic Republic on 23rd March, 1956, was not the proclamation of reality but of an aim yet to be achieved. Those who were entrusted with the implementation of the constitution showed little respect to the achievement of the aim. Major General Iskander Mirza was appointed as President, had no regard for Islamic Ideology or principle. He preferred to keep religion out of politics as once he said himself, "We cannot run wild on Islam." (Chaudhury, 1969) Hence we notice a tendency to evade the Islamic provisions after the implementation of the constitution and the appointment of the commission was delayed as long as possible and hardly any effort had been made towards implementation of the Islamic provisions or in establishing the

organization for Islamic research and instruction within two years of the life of the constitution.

There was a novel Islamic provision in the new constitution, which provided for an Advisory Council of Islamic Ideology to be appointed by the President. It was to consist of not less than five or not more than twelve members who hold office for three years. The council was to make recommendations to the government, both central and provincial; as to steps and means which would enable and encourage the Muslims of Pakistan to order their lives in accordance with the principles & concepts of Islam. It was to advise the President, a Provincial Governor, the National Assembly or the Provincial Assembly or any question referred to it for advice whether a proposed law is or not repugnant to the Quran and the *Sunnah*. The advice of the Council was not binding on the legislature or the President. In this respect the Legislature Assembly was the final arbitrator.

There were hopes that the appointment of the council of Islamic Ideology, will open the doors of *Ijtihad*, and country will become a truly Islamic state. But due to its poor performance during the Ayub regime, it could not fulfill its functions properly. (Khalid Bin Sayeed, 1980) It must be noted that during the Ayub regime there were introduced the Muslim Family Laws through an ordinance on March 2, 1961, (Iqbal, 1986) which were completely against the spirit of Islam. But these un-Islamic laws were not converted into true Islamic spirit even after the promulgation of the 1962 constitution in which it was clearly stated that no law shall be made which would be repugnant to the Quran and the *Sunnah*.

We see that even after passing the two constitutions of Pakistan which were Islamic in their spirits, no solid efforts were made to Islamize the country. Islam remained in speeches and in writings but in practical field Islam was not considered as the religion of Pakistan. Due to political unrest, on 25th March 1969, military, again took over the power and Martial Law was proclaimed in the country. The bad part of this political unrest was that the 1962 constitution was also "abrogated by the man who fathered it" (Khalid Bin Sayeed, 1980)

Pakistan Peoples' Party under the leadership of Zulfikar Ali Bhutto came into power in general elections held in December 1970 by defeating Islamic Oriented and Conservative parties on the plank of anti Indianism (nationalism) and economic issues rather on any religious issue. (Iqbal, 1986). Bhutto declared that the question of Islam in the political context of Pakistan is irrelevant because both the exploiters and exploited are Muslims. Bhutto slowly dithered from socialism due to domestic compulsions and persuaded Islamic idioms. Moreover, relating Islamic fervor to the background was not appreciated by his opponents like the Muslim League or the *Jamat-i-Islami*, thus he used the term "Islamic Socialism" to gain political legitimacy. Further a great demand of the *Ulema* and majority of the Pakistanis was accepted and *Ahmadis* were declared non-Muslims by amending the constitution and have been given special representation in the Provincial Assemblies. Another new clause was inserted in the constitution which

deals with the definition of a Muslim. It states that "A person who does not believe in the absolute and unqualified finality of the Prophet Hood of Mohammad (Peace be upon him) the last of the Prophets, or claims to be a Prophet in any sense of the world, or any description whatsoever after Mohammad (peace be upon him) or recognizes such a claimant as a Prophet or a religious reformer, is not a Muslim for the purpose of the constitution or law" (Iqbal, 1986).

It is unfortunate for Pakistan that no government in the beginning gave any attention to it and the result was that neither any constitution was completely Islamic in character nor the laws of the land could be brought into conformity with Islam (Riaz Ahmad, 1984).

On 10 February 1979, after two years of his rule, Zia expressed the view that: "It is Allah's beneficence that the present government has been able to fulfill these aspirations [introduction of Islamic system in Pakistan] of the people. In the short period of one and a half years so much work has been done that I am today formally announcing the introduction of the Islamic system in the country" (GOP, 1979).

The Islamic legislation program of Zia's government consisted of legal reforms – the introduction of an Islamic penal code, economic reform, and a new educational policy supposed to be in conformity with Islamic tenets. In the field of legislation the Martial laws Government introduced the Islamic laws.

Zia adopted a mixed Traditionalist and neo-Traditionalist approach whereas the successive governments applied a Modernist interpretation for the position and role. Islam should have in the Pakistani society. The efforts on the part of the religious and political elites miserably failed to resolve the religious differences. As an ideology, Islam played the role of a powerful factor for uniting Indian Muslims, but the inability of the religious leaders to agree among themselves as to the future role of Islam should have in both private and public spheres, introduced in Pakistani politics proved to be a destabilizing element. This failure to reach a religious consensus is not a Pakistani phenomenon, but also in countries like Egypt, Syria, Iran and Malaysia where Modernists and Traditionalist/neo-Traditionalists are opposed to each other over the issue.

During Zia's period Islamic legislation was used to consolidate his hold on power, legitimize his rule and exclude any threat to his government. Zia declared himself a practicing Muslim to portray him as a pious Muslim eligible to rule an Islamic state.

For almost a decade Benazir Bhutto has been the most dynamic, somewhat controversial, yet popular political leader. During the decade 1986-1996 she has been at the centre stage of politics in Pakistan whether in or out of power.

Thus, the PPP government could not abandon Zia's religious legacy with Ishaque Khan, formerly a key adviser to Zia, as the president of Pakistan, and the Senate hostile to move to reverse Zia's religious legislation. Thus in 1989, a modified version of the 1985 *Shariat* Bill was passed but it lapsed when the assemblies were dissolved in 1990. Due to her political vulnerability, Benazir even put the anti women *Hudood* law onto the backburner rather than attempting to repeal them. (Iabal, 2006)

In 1990, Nawaz Sharif, a protégé of Zia and a favorite with establishment, raked up the *Shariat* Bill issue to gain legitimacy since the fairness of the 1990 elections was questioned. Moreover, the *Jamat-i-Islami* was a coalition partner of Sharif's *Islami Jamhuri Ittehad*. His government passed the *Shariat* Bill which was vague in content. However, certain provisions were in consonance with the democratic principles. By enforcing the *Shariat* Act in 1991, the ruling elites of Pakistan put the principle of democratic election outside the jurisdiction of clerics and also saved interest related laws which had become extremely controversial.

In the 1993 elections, the Pakistani Islamic Front, Islamic Jamhuri Mahaz and *Mutahida Deeni Mahaz* shared a vote of 6.7 per cent in the nationwide figure. This electoral arithmetic made both the PPP and PML (N) cater to Politico-religious ambition of these religious parties.

Conclusion

After going through the interplay of religion and politics in Pakistan we come to the conclusion that the question of implementing Islam in the Muslim society has deep roots in our intellectual legacy. Ever since the loss of political power and confrontation with alternate socio-political systems, Muslim intellectuals have tried either to revive Islam in the light of the traditional model or to see it in the light of modern political thought. Irrespective of these conflicting situations it seems that the basic issue has always been to read Islam in the light of contemporary history. Commenting on this situation Wilfred Cantwell Smith has rightly observed that "the fundamental malaise of modern Islam essence that something has gone wrong with Islamic history. The fundamental problem of modern Muslims is how to rehabilitate that history." (Smith, 1946) The various attempts in this direction have to be understood in this perspective. However, in the case of Pakistan it is essentially at the level of political use of Islam that the historical experience becomes more intelligible. It is the only political dimension of Islam that has been exploited by the leadership both in politics and religion. There could be many reasons for this demonstration for love of Islam but essentially it was in the wake of those crises; political as well as social that we have to understand this partial use of religion in politics. Pakistan has gone through many difficult periods of search for identity, political stability, economic, social unrest and leadership. During these moments of upheaval the only anchor to which Pakistani leadership could hang on to was Islam. Allama Muhammad Iqbal was right in suggesting that "in times of crisis in their history, it was not Muslims that

saved Islam; on the contrary, it was Islam that saved them." But unfortunately while Islam was called upon for reassurance and strength, no attempt was made to provide the corresponding strength and revitalization to the principles of Islam as a radical and revolutionary message of transforming the socio-political aspects of society. The whole exercise has been carried out without understanding that Islam was essentially a social philosophy which brought changes in social institutions which could subsequently be developed into political thought. Since the motive of Pakistani leadership has been to seek legitimacy and widen their constituencies, Islam was reduced only to political slogans and to prolong dictatorships and unhealthy politics. In other words, Islam was never given an upper hand as a guide to reform the society but was allowed a subservient role in propagating the political mandate of the rulers.

In the end, it is suggested that what we are witnessing today is the evaluation of the religious legislation and traditions being shaped by politics rather than intellects. To make it more blinkered and tolerant, religious legislation should be evolved only through the *Ijtihad* performed by radicals.

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