

## PEACE BUILDING THROUGH INTERFAITH DIALOGUE AND INTERACTION IN PAKISTAN: A LEGAL PERSPECTIVE

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### Abstract:

The legal system of Pakistan is contradicting in itself. It is not adaptable enough in pluralistic approach, not well reasoned as per monistic view, not secular enough when examined by secularists and not on the standards of religion when analysed by religious segments. Here an important question begins. What does the Pakistani legal system achieve in the end? Why this legal framework has such a large number of inborn inconsistencies and confusions? What's more, the Pakistani legal system in order to satisfy its various components, why has it neglected to gratify even a single segment? Above are the main point article centres around and attempts to answer with proposed policy recommendations. The following paper assesses the need for interfaith dialogue and potential strategies in light of policies already being used by various regional institutions. However, it must be borne in mind that Pakistan has the freedom to choose any means of dealing with the problem of religious intolerance in whatever manner suits our pluralist society best.

**Keywords:** Interfaith Dialogue, tolerance, peace, freedom, siyasah, pluralism.

### Introduction – The need for interfaith Dialogue and Free Speech

Interfaith tolerance in the countries like Pakistan is much linked with the affairs of state. Name of our country as Islamic Republic of Pakistan clearly portrays that the state has a religion. Here a point must be noted that there are few states of the globe which possess a state religion. This fact brings the challenge of establishing interfaith harmony as a duty of the state. For this purpose state is required to bring clarity in the acts of its pillars e.g. The Parliament, Judiciary and The Executive. Legal system of Pakistan was inherited from the British colonial systems, which has evolved but not in a proper way. Most of time country was ruled by dictators and therefore the will of people was not being translated by the legislature into the law. Most of the Islamization was done in the regime of General Zia Ul Haq and was mainly aimed to strengthen the rule of Zia rather than making laws more clear.

Behaviour of the courts while looking into case related to conflicting laws was not constant, some of the times decisions took guidance from doctrine

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of necessity. On very few occasion a fruitful legal oversight was done by the courts while dealing with the affairs of religion related laws.

In view of the current situation the state must call up all of the stakeholders and look into the conduct of its organs to come up with some fundamental changes in the social contract to remove ambiguities in justice system of the country. For this purpose legal system of countries like Oman, Malaysia, and UAE should be taken into account. As, mentioned States have managed to rule people of different faiths without notable discrimination.

South Asia is known for its diversity and most ancient civilization. The recent scenario of continuous conflicts has brought forth a distressing rate of massive violence and religious intolerance. This has also heightened the terrorist activities in the region. Even if it is believed that the terrorism is not founded on religious grounds, such fact should not be denied that the common man's sentiments are affected, particularly when faith is used for reaching hidden objectives.

It is also eminent to note that the interreligious dialogues cannot be defined exactly, in the coexistence of Muslims, Hindus, Buddhists, Christians and over 800 ethnic communities. The President of the Vatican's Pontifical Council for Interreligious Dialogue, the Archbishop Michael L. Fitzgerald, has defined the term in the context of religious pluralism as "*all positive and constructive interreligious relations with individuals and communities of other faiths which are directed at mutual understanding and enrichment in obedience to truth and respect for freedom*".<sup>1</sup>

Pakistan has become vulnerable to the attack of groups like Al-Qaeda, Tehrik e Taliban Pakistan (TTP), Jamat ul-Ahraar and ISIS. Such groups are proactive in achieving their agenda by manipulating interfaith and inter communal strife. Their "*modus operandi*" is the divide-and-rule tactic. Therefore, constant reinforcement of interfaith dialogues is necessary strategy. The interfaith or interreligious dialogue aims to

- Increase mutual understanding and good relations.
- Identify causes of tension in religious segments, e.g. economic, social or political rather than religious.
- Build confidence and understanding to overcome or prevent tensions.
- Break down the stereotypes which lead to suspicion, distrust and bigotry.

The purpose of Interfaith Dialogue is not to erase the differences amongst different faiths. It is also not about coming to a common belief or a way of

converting the other. It is such a dialogue in which each party remains true to their own faith. The interfaith dialogue in its true sense has no space for arguing, attacking or disproving others belief. It is aimed to increase mutual understanding and trust.<sup>2</sup>

In the words of David Smock in his book *Interfaith Dialogue and Peace building*: “there are a range of ways that people can approach interfaith dialogue, but it’s essential that the goals be set out and the methodology be agreed upon before you embark on it.”<sup>3</sup> Before going into to real world implementation scenario, outcome of the interfaith dialogue must be there in a clear and crystal form.<sup>4</sup> A brainstorming by various religious school thoughts without a clear direction will not only become useless but may also lead towards a further worsening situation amongst the participants.

### **Efforts Made in Rest of the World**

Several efforts were witnessed in the past for the promotion of peace through interfaith dialogues. The UN has adopted several resolutions, such as: “Promotion of Interreligious and Intercultural Dialogue, Understanding and Cooperation for Peace, GA 66/226, adopted 23 December 2011 (preceded by the GA 65/138, adopted 16 December 2010, GA 64/81, adopted 7 December 2009 and GA 60/10, adopted 3 November 2005)”.<sup>5</sup> “Promotion of Interreligious Dialogue, GA 59/23, adopted 11 November 2004<sup>6</sup> and Promotion of Religious and Cultural Understanding, Harmony, and Cooperation, GA 58/128, adopted 19 December 2003”<sup>7</sup>.

The world along with its religious and political leaders has shown their concern over the increase of extremism.<sup>8</sup> Therefore, the UNSESCO has also developed an interreligious dialogue program.<sup>9</sup> Efforts in Asia on interfaith dialogue are not a novelty either. Many efforts have been made in the past, including ASEM (The Asia-Europe Meeting (ASEM) has created an Interfaith Dialogue mechanism in 2005) and ASEAN (Association of South East Asian Nations (ASEAN) also annually holds the Regional Interfaith Dialogue to strengthen tolerance and pluralism in the region.<sup>10</sup>)

### **Pluralism and Islam in Pakistan: A Contradiction?**

Pakistan is a state, which as per its Constitution declares more than one sovereign. According to the preamble (also a substantive part of the Constitution by virtue of Art. 2A of the Constitution) of the Constitution of Pakistan 1973, the sovereignty belongs to Allah Almighty. With reference to the landmark Hakim Khan vs. State case, the constitution is to read as an organic whole likewise one Islamic part of the constitution

cannot override the rest. According to the Constitution of Pakistan 1973, the sovereignty in its legal sense refers to the Parliament, which exercises the authority for all practical reasons.<sup>11</sup>

The state of Pakistan has a lot of such legal contradictions; therefore these contradictions come face to face on many occasions and lead towards disastrous absurdities.<sup>12</sup>

### **Islamic Law And Governments' Powers: (How Far Can We Take Siyasa Shariat?)**

Pakistan is an Islamic republic; therefore the laws of the country are made keeping in view the Islamic perspective. If Quran and Sunnah are quite on a certain matter, then the government plays the role of legislation. It is mandatory that these laws should not be against the spirit of Islamic jurisprudence. It is obvious, that the legislative role of government is very limited in its nature.

The Siyasa Shariat is a doctrine of Islamic law which empowers the ruler to determine the manner in which Shari'ah will be administered. The ruler, therefore, may enact rules and make policies for the good governance.<sup>13</sup> The Siyasa Shariat is not a parallel system of the Islamic law. Therefore, the discretion of the ruler is not unlimited and may not go against the substantive principles of Shariat. The Siyasa Shariat has secondary authority and is subservient to the Quranic and Sunnah law.<sup>14</sup>

### **Case Law Analysis**

Muhammad Niaz Khan v Azad Government of the State of AJ & K:<sup>15</sup> "The court stated that as the Quranic and Sunnah commands and prohibitions are not being codified in Azad Jammu & Kashmir therefore, the matters in the courts cannot be decided on such commands."

Asalat v State:<sup>16</sup> "The case explains the definition of word "law" and clarifies that the word "law" in the Constitution of Pakistan 1973, gives the meaning of positive law. It does not include the Shariat texts, except as made applicable by positive law."<sup>17</sup>

Mst. Ferishta case:<sup>18</sup> "the provisions of law dealing with Muslims only are part of Muslim personal law, even if they don't codify the pure Muslim law".

### **Federation of Pakistan V Hazoor Bukhsh:<sup>19</sup>**

The Federal Shariat Court in its judgment in Hazoor Bukhsh case in 1981 decided to strike down the punishment of Rajam for Zina. Later the court decided differently in the review petition of the same case.<sup>20</sup>

The 1983 Judgment of FSC where it reviewed its own decision of 1981 and decided as follows: The laws with strict application for the Muslim as

a subject shall amount to be Muslim Personal Law. Even though, Muslim Personal law doesn't fall under the definition of "law". As the significance of Hadd and Rajam is only for persons practicing the religion of Islam, therefore, such laws shall be considered as Muslim Personal Law. However no such discretion extends to the Court to declare such law void.

It is important to note that the Supreme Court of Pakistan in 1994 has given the permission to the FSC that the Court can intervene in the matters related to Muslim personal laws.<sup>21</sup> It is being perceived by the Chief Justice Aftab Hussain that all the provisions of statute which are specifically related to the Muslims became the part of Muslim personal law. For example the punishment of stoning as applicable on Muslims only can be referred as Muslim personal law.

He also stated that the government has discretion to make laws in areas where Islamic law is quiet. He further explained that the word "had" is not only used as singular in Quran but is used in plural sense for 14 times. It is used in the Quran regarding Almighty's ordinance, not always referred to punishments. Whereas, the Prophet (SAW) used the word "Had" in the meaning of punishment and laws of previous people on several occasions. Therefore, "Hudood" in general sense carry the meaning of punishment even other than those imposed by Allah and his Prophet (s.a.w). To summarize the government has discretion to legislate as per Islamic law where Allah Almighty and the Prophet (s.a.w) allowed but meaning through that "Hudood" fixed by Allah cannot be changed. The state can commence any legislation in other laws as required.

Judge Zahoorul Haq made an observation that the courts are being created through the Constitution of Pakistan, 1973 therefore, can define the law as the Constitution defines. The Article 203-B(c) of the Constitution of Pakistan, 1973 states that the definition of Law does not include the Muslim personal law.

### **Siyasah Shariah and Pakistani Legal System**

The confusion is very vast and is not easy to be elaborated in few lines; still few examples are here to further enlighten the readers. Law made by parliament can be struck down the federal shariat court by testing the law in the benchmarks of Islam. Whereas constitution says only parliament can rectify the law not the courts. Till date no parliament has succeeded to establish its will over courts, whenever an issue regarding legislation and its conflict with Islamic laws has arouse e.g. the promulgation of Qisas and Diyat Ordinance 1990.<sup>22</sup>

“In *Hakim Khan v The State*, the Supreme Court acknowledged the existence of a conflict between Article 2-A and Article 45 of the Constitution, but instead of resolving the conflict it referred the issue to the Parliament. The conflict continues to exist to this day.”<sup>23</sup>

The *Siyasah Shariah* refers the ultimate solutions to such encounters. The major example is law regarding the famous matter of section 295-C of PPC regarding blasphemy, this law treats non-Muslims and Muslims equally. Whereas majority of Pakistanis follow HanafiFiqh and in Hanafi Fiqh, blasphemy is taken as an offence under *siyasah*, which can only be prosecuted by the state if it deems necessary to the state.

The infamous blasphemy law dealt with in PPC can be made a lot less heinous under the Hanafi law which treats blasphemy by non-Muslims as a *siyasah* offence (to be punishable by, and at discretion of, the State).<sup>24</sup>

Another instance of this is the law of rape in Pakistan; if HanafiFiqh is enforced here then the offence related to “sexual violence” can be tried under PPC by taking it in *Siyasah*. By this rape law will be excluded from the purview of *Zina*. This change will only not allow modifying the definition of sexual offence but also update the existing law to cover other sexual offences. Existing rape law doesn’t cover offences like oral sex, use of foreign elements and carnal intercourse, which makes it a weak law for persecution. Sexual offences against men are also not covered in Pakistani rape law, which may be covered under the new law. Further forensic, circumstantial and other scientific evidence can be made admissible in court of law. Subsequently the court will have a wide array of punishments depending upon the nature of offense; this may also include the capital punishment under *Tazir*.<sup>25</sup>

Conclusively, it is suggested that a clear divide can be established between *Hudood*, *Tazir* and *Siyasah Shariah*, because these terms are mostly used in identical manner which causes a further confusion.

The article 203 B(C) of the constitution sets limits on the jurisdiction of the Federal Shariat Court, it is explained as FSC will not have jurisdiction to examine the constitution, Muslim personal law, procedural laws and even a further 10 year limit on fiscal subjects e.g. tax, laves. The establishment of this court and its jurisdiction all was done under the martial law regime of General Zia Ul Haq with a presidential order. This is self-explanatory why this court was allowed to work with in a specific parameter, the regime wanted to give eyewash to the general public that Islamization is being done the country but fact of the matter was that it was all the dictator’s own choice of legislation.

Pakistan is the country which is severally affected by the terrorist activities based on religious extremism but, has not yet adopted a clear formula to deal this extremism. No proper legislation exists to develop and promote; interfaith and interreligious dialogues for the creation of peace and harmony. Several countries have adopted measures to deal the religious pluralism. For instance the USA has recently launched few projects regarding interfaith harmony and religious pluralism i.e. Faith Shared and Harvard Pluralism Project<sup>26</sup>, but Pakistan so far has to derive its own customized structure of operations.

The academia can play a very important role to support the interfaith harmony campaign through the students, who are true representative of the youth. The students can perform their role to support the ideology of religious pluralism through their positive speech. The students are potential group which can compel the people to adopt the tradition of understanding and respect for others faith. Some of the things Pakistan could do are as follows:

1. Indulge like-minded and influential clerics of different faiths with the aim to come up with a long term tolerance and peace building solution.
2. Means for constant religious pluralism and tolerance be traced/identified and mass outreach programs may be devised to spread the message of positivity all over.
3. Leaders of various faiths may be called in to address issues related to society and community.
4. Youth should be educated in a way that hatred against any faith shouldn't be the inclination, they must be taught about the roots of all faiths. Comparative religion must be taught as a course to young students so that they should respect all faiths.
5. Political leaders should lead from front and should also give a sense of tolerance and respect to their followers. Media must also be taken on board to work in line with this policy to bring broader sense of tolerance.<sup>27</sup>
6. Madaris reforms should be done on war footings, State should be the mentor of all types of curriculums in religious schools all around. No hate speech should be left unattended by LEAs and a strict action may be taken against all hate mongers. For instance the country like Philippines could be taken into account of example as there the unified education system is introduced and Madaris education is integrated into mainstream education.<sup>28</sup>

### Policy Recommendations

The way Pakistan has adopted in this matter is the pick and choose rule. There is not a single legislation and policy related to the matter of interfaith and interreligious harmony. So, it is not an appropriate solution to the problem. The state should adopt clear stance and start legislation to protect the rights of each citizen, irrespective of their faith.

The writ of the state should be established by all means. Prosecution and punishment should be the powers of the state only. No individual or group should be allowed to enforce their own interpretation of religion. The curriculum should be devised in such a way that all the religions, faiths and ethnicities are respected not derogated.

If we follow the example of developed world than the way is to make a state which does not have a religion but the citizens have their own faiths and each is respected by the State in equal manner. For instance the example of modern Turkey, U.A.E and Malaysia can be looked into for furtherance. Therefore, all religions should be allowed to made and apply their own personal laws in their respective spheres.

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