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BA-LLB/3-20/M022
Legal System of Pakistan
Assignment

Date: 4th September, 2021

Topic

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Pakistan is an Islamic republic. Islam is the state religion, and the Constitution requires that laws be consistent with Islam. The country has an area of 310,527 square miles and a population of 170 million. Official figures on religious demography, based on the most recent census taken in 1998, showed that approximately 97 percent of the population was Muslim. The majority of Muslims in the country are Sunni, with a Shi'a minority ranging between 10 to 20 percent.

The Penal Code incorporates a number of Islamic law (Shari'a) provisions. The judicial system encompasses several different court systems with overlapping and sometimes competing jurisdictions that reflect differences in civil, criminal, and Islamic jurisprudence. The Federal Shari'a Court and the Shari'a bench of the Supreme Court serve as appellate courts for certain convictions in criminal court under the Hudood Ordinances; judges and attorneys in these courts must be Muslim. The federal Shari'a court may overturn any legislation judged to be inconsistent with the tenets of Islam. In March 2005, however, the Supreme Court Chief Justice ruled that the Federal Shari'a Court had no jurisdiction to review a decision by a provincial high court even if the Federal Shari'a Court should have had initial appellate jurisdiction.

The legal system is derived from English common law and is based on the much-amended 1973 constitution and Islamic law (sharia). The Supreme Court, provincial high courts, and other courts have jurisdiction over criminal and civil issues. The president appoints the Supreme Court's chief justice and formally approves other Supreme Court justices as well as provincial high court judges on the advice of the chief justice. The Supreme Court has original, appellate, and advisory jurisdiction, and high courts have original and appellate jurisdiction. The Federal Shariat Court determines whether laws are consistent with Islamic injunctions. Special courts and tribunals hear particular types of cases, such as drugs, commerce, and terrorism. Pakistan's penal code has limited jurisdiction in tribal areas, where law is largely derived from tribal customs.

The 1973 constitution guarantees freedom of speech, press, and religion as well as the right to bail, counsel, habeas corpus, representation, appeal, and numerous other protections. However, the government has constitutional authority to limit civil liberties in accordance with Islamic doctrine, national security, and other circumstances. Pakistani courts can impose the death penalty, and some crimes are punishable by stoning, lashing, or amputation, although these punishments rarely occur outside of tribal areas. The judiciary has limited independence from the executive branch, and the

legislative and executive branches often attempt to remove themselves from judicial oversight. The judiciary also suffers from low public credibility, large case backlogs, corruption, and a lack of resources.

Pakistan's Rule of Law development has suffered from decades of military rule with only short lived and intermittent experience with democratic governance. Since much of the law derives from the British colonial system, it is seen by many as lacking legitimacy. There is also tension between the inherited common law system and the Islamic law based on the Quran, especially in outlying provinces and regions. Questions about legitimacy are compounded by the low level of efficiency, the prevalence of delays, the inferior quality of legal training, corruption, and the perception that the court system is a tool for the delay of justice, manipulated by rich and/or powerful interests in the society.

In spite of 13 different reform commissions devoted to improving the justice system and the assistance of the Asian Development Bank since 2002, while some progress had been made, for the most part the judicial system did not function well, further undermining any faith in the Rule of Law. The inability of this weak and overburdened system to effectively address a rising level of crime and violence has fueled support for alternatives to the justice system ranging from strict versions of Islamic law to individuals taking the law into their own hands. The weak justice system and lack of public confidence thus contribute to the cycle of rising violence and extremism.

Islam was the basis for the creation and the unification of a separate state, but it was not expected to serve as the model of government. Mohammad Ali Jinnah made his commitment to secularism in Pakistan clear in his inaugural address when he said, "You will find that in the course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State." This vision of a Muslim majority state in which religious minorities would share equally in its development was questioned shortly after independence. The debate continued into the 1990s amid questions of the rights of Ahmadiyyas (a small but influential sect considered by orthodox Muslims to be outside the pale of Islam), issuance of identity cards denoting religious affiliation, and government intervention in the personal practice of Islam.

From the outset, politics and religion have been intertwined both conceptually and practically in Islam. Because the Prophet established a government in Medina, precedents of governance and taxation exist. Through the history of Islam, from the Umayyad (661-750) and Abbasid empires (750-1258) to the Mughals (1526- 1858) and the Ottomans (1300-1923), religion and statehood have been treated as one. Indeed, one of the beliefs of Islam is that the purpose of the state is to provide an environment where Muslims can properly practice their religion. If a leader fails in this, the people have a right to depose him.

In 1977 the government of Zulfikar Ali Bhutto outlawed alcohol and changed the "day off" from Sunday to Friday, but no substantive Islamic reform program was implemented prior to General Zia's Islamization program. Starting in February 1979, new penal measures based on Islamic principles of justice went into effect. These carried considerably greater implications for women than for men. A welfare and taxation system based on zakat and a profit-and-loss banking system were also established in accordance with Islamic prohibitions against usury.

Zia's Islamization program was pursued within a rather complicated ideological framework. His stance was in contrast of the popular culture, in which most people are "personally" very religious but not "publicly" religious. An unexpected outcome was that by relying on a policy grounded in Islam, the state fomented factionalism: by legislating what is Islamic and what is not, Islam itself could no longer provide unity because it was then being defined to exclude previously included groups. Disputes between Sunnis and Shia, ethnic disturbances in Karachi between Pakhtuns and muhajirs, increased animosity toward Ahmadiyyas, and the revival of Punjab-Sindh tensions--can all be traced to the loss of Islam as a common vocabulary of public morality. More profoundly, in a move that reached into every home, the state had attempted to dictate a specific ideal image of women in Islamic society, an ideal that was largely antithetical to that existing in popular sentiment and in everyday life.

The process of Islamization that has taken place in Pakistan, especially in the Zia years, raised considerable concern about criminal law. In February 1979, President Zia promulgated a new legal code for Pakistan based on Islamic law and established the Federal Shariat Court to hear appeals arising from the new code. The Federal Shariat Court also has extensive other powers (see Role of Islam , ch. 4). It lies within the discretion of the court of first instance to decide whether to try a case

under civil or sharia law. If the latter, then the appeals process goes to the Federal Shariat Court, rather than to the high courts.

Sharia law was not intended to replace the criminal code but to bring specific parts of it into accordance with the Quran and the sharia. Its most notable provisions are contained in the hudood (sing., hadd) ordinances promulgated in 1979. The first ordinance deals with offenses against property, the second with zina (adultery) and zina-bil-jabr (rape), the third with qazf (false accusation of zina), and the fourth with prohibition of alcoholic beverages. Under the ordinances, there are two levels of cases: hudood cases, which have particularly strict Islamic evidentiary requirements and call for specific "Islamic" punishments; and tazir cases, where the evidence requirements are less strict and the punishments less draconian.

A later decision by the Federal Shariat Court has made defiling the name of the Prophet Muhammad punishable by a mandatory death penalty. This decision has raised concerns in Pakistan's small Christian community and especially among the badly persecuted Ahmadiyya religious minority. Orthodox Pakistani Muslims consider Ahmadiyyas heretical, and the group has been prohibited from asserting any claim to being Muslim -- even the use of everyday Islamic greetings.

As a hadd crime, rape is punishable by hanging; adultery and fornication, as well as qazf, by stoning to death. Crimes against property of substantial value call for amputation of hands or feet. Public drunkenness and, in the case of Muslims, any consumption of alcohol, is punishable by flogging.

For the most part, Islamic punishments have not been carried out, the sole exception being flogging, which has been imposed primarily for tazir crimes, as well as for narcotics-related crimes. In addition, alleged political crimes also resulted in flogging during the last period of martial law (1977- 85). Hudood sentences of amputation have been passed but either have been reversed on appeal or have not been carried out. Occasional stonings for adultery have always taken place in tribal and other rural areas, but no sentence of stoning under the 1979 hudood laws has been carried out.

The Federal Shariat Court has been involved mainly with noncriminal matters, aside from the review of hudood convictions, which in most cases the Federal Shariat Court has reversed. In other matters, such as provision of equal treatment under the law and requirement for a standard of

evidence, its application of Islamic principles has even served as a liberalizing factor, including in the military justice system. Overall, as of early 1994 Islamic legal intrusions have had only a limited effect on criminal law, although the potential for growth is there, especially under the more activist leadership that the Federal Shariat Court has shown since 1990.

Among the more notable peculiarities of the new enactments is the issue of rape (zina-bil-jabr). On the one hand, the crime is rarely proven because four adult Muslim males of good reputation must appear as witness to the act. If the charge fails, then the woman who has brought it can be punished for false accusation (qazf) or, more commonly, for adultery (zina) herself because through her charge she has admitted an illicit sexual act. In 1991 two-thirds (some 2,000) of the women imprisoned in Pakistan were being held on such charges. This treatment, of course, has a very chilling effect on women who are raped.

Laws passed in the 1980s give the victim of a murder or other violence, or the victim's heirs, the right to inflict an equivalent harm. At the same time, however, there is a legal alternative in payment of blood money, which enables wealthy Pakistanis to avoid punishment by paying money. Under the law, only half of the amount must be paid if the victim is female.

In 1984 parts of the Indian Evidence Act of 1872 were changed with much fanfare to meet Islamic criteria, but there was little substantial change. Demands by Islamic enthusiasts that the testimony of two women be considered the equivalent of that of one man were met only symbolically. The hudood ordinances, however, do contain evidential provisions that discriminate sharply against women.

In May 1991, the National Assembly passed the Shariat Bill, intended to bring the entire justice system into accord with Islamic norms. These norms had not yet been established, and, as of early 1994, no serious attempt had been made to draft and pass the laws and constitutional amendments that would be required. Many observers believed that the act was meant as an empty sop to Islamist extremists, but it seemed likely that there would be constant pressure to implement the act more fully.