

Federal Shariat Court as a Vehicle of Progressive Trends in Islamic Scholarship in Pakistan

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Introduction:

Pakistan secured independence from the British Colonial government in 1947. From the early days of its independence, there has been a contested debate whether Pakistan should be declared as an Islamic country or not. This debate was very much there when its first Constituent Assembly adopted the Objectives Resolution in March 7th 1949.(1) Pakistan, in its different constitutions, has unequivocally pronounced its allegiance to Islam, e.g., Article 2 of the present Constitution, 1973, declares that Islam shall be the state's religion.(2) Moreover, the state has been constitutionally obliged to take measures to create such an atmosphere where its Muslim citizens would live according to dictates of their religion.(3)

Many institutions were established to carry out the task of Islamization in the country, e.g., Islamic Research Institute, Council of Islamic Ideology.(4) The main job of these institutions was to do research on issues pertaining to Islam and then present that to the legislative assemblies for enactment. The final authority to codify the same lied with the legislative assemblies; hence the role of such institutions was merely advisory in nature.(5) This particular downside of such institutions was one of the main considerations for establishment of the Federal Shariat Court (hereafter referred to as FSC).

The paper intends to explore the role of the FSC to highlight that it has contributed to progressive trends in Islamic scholarship. For the purpose of analysis, I have selected few judgments of the FSC. For the sake of clarity, the paper does not argue that the FSC has never contributed to traditionalist constructions of Islam or led to woman unfriendly implications rather the point at issue is that always aligning it with traditionalism or retrogressivism is a wrong way of approaching the contributions of this institution. There is another spectrum to view the role of the FSC based on another set of facts which this paper will present.

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by increasing level of literacy, exposure and skill training so that they might be able to earn their livelihood and contribute in economic growth of society accordingly.

People living in rural or urban areas of any society are equally entitled to receive basic facilities such as education, health, transport, clean water, electricity and telecommunication. The strategy based on Islamic principles of economics and social justice can tackle the unbalanced development between rural and urban members of society.

Islamic system of *Zakah*, Charity and Alms provide social and economic security to the deserving, orphans, deprived and needy segments of the Muslim society.

some contemporary essential debates, or, at least, lagging far behind developments. The reasons are always the same, I think: a very timid, defensive attitude about issues that *fukah* have poor knowledge of; the lack of general, well structured, fully developed vision among scholars, thinkers, and workers in various fields of expertise; and finally, the tension within the whole community, which is obsessed with maintaining the most visible and restrictive norms. This is most glaring in the matters related to the economy and ecology: an earnest, realistic ethical thought cannot approach either of them in isolation, and one must not fail to note all the necessary conclusions and all the concrete consequences that such a combined approach leads to in either field of activity.(11)

Muslim world in general and their leaders in particular need to conclude with clarity that variety of efforts, campaigns, strategies and all types of economics systems are failed to reduce poverty. United States of America is no doubt driving force of the world but poverty has become serious threat to its international agenda. The World Bank estimated 1.29 billion were living in absolute poverty in 2008.(12) Almost 1.7 billion people in the world are living in poverty (Wikipedia). Time has come that integrated and holistic approach of Islam should be considered as a solution of problems related to Muslim world as well as it is the only pattern which can benefit all the mankind. Islam does not ensure the betterment of only Muslims but in this materialistic world it emphasize all Muslims to be purposeful and productive for non-Muslim world as well.(13)

Muslim world has sufficient materialistic base to make appropriate efforts if Muslim leaders clearly define cost and prioritize all kinds of actions in accordance with the teachings of Islam in Surah *al-Muzammil* it has been focused that seeking the grace of Allah is a term frequently used by Holy Quran for economic activities.(14)

Suggestions:

To address the issue of poverty Muslim world needs to develop productive capacities of people by quality education and skill training.

Local cooperative organizations should be developed to ensure an incentive for self development and community involvement.

Poverty cannot be fought without the availability of physical resources therefore Islam had laid great emphasis on credible government ensuring accountability and transparency. Muslim states have to design such strategies and policies to provide appropriate resources. Syed Hasanuddin writes that it is basic responsibility of an Islamic society to take care of those who have no power of resources to earn. In order to meet such responsibility, an Islamic government has been given the power to collect zakat and fay. The income attained from zakat and fay will only be spent on the poor needy and deserving people.(15)

Any strategy to fight poverty should not visualize borrowing from other countries on interest rather cooperation between Muslim countries on the basis of equity participation in joint ventures should be encouraged.

To combat poverty and misery in Muslim world potentialities of people should be developed by establishing institutions. People should be enabled

brain in the skull of a gorilla or replacing his limbs with human limbs. It does not mean that this tragedy with Islam relates only to a small group of modern educated persons. Even those who love Islam with their heart and soul and have a deep respect and attachment for Islam, may they be modernists or orthodox, all of them are confronted with this malady.(7) Therefore Islam views life as an organic body where political, economic, social and moral walks of life are interrelated and form one entity. Quran invites towards complete system of life rather few rituals. Quran says: "O ye who believe! Enter into Islam whole heartedly, follow not the foolsteps of the evil one". (8)

So Islam considers the issue of poverty and recommends its solution in the total framework of human life. It becomes clear after reading Quran that Islam does not secure the rights and benefits of Muslims but in this world it protects the rights of non- Muslims as well. In this regard such mode of production or any activity related to trade and commerce is prohibited which may cause physical, spiritual or any other harm to mankind. Therefore piety, equality, fraternity, justice, benevolence and co-operation are the basic values in economic system of Islam. Quran says: "Allah commands justice, the doing of good and liberality to kith and Kin and He forbids all shameful deeds, and injustice and rebellion" (9)

The Holy Prophet (PBUH) placed a high value on the economic welfare of the people. He liked to see the Muslims well-off rather than hungry and destitute. There are some traditions which suggest that he Holy Prophet (PBUH) desired to see his followers at a higher echelon on the ladder of development. After establishing the state of *Madina*, one of the first steps, which the Holy Prophet (SAW) took, was the establishment of *mu'wakhhat* (brotherhood) among the *Ansars* (helpers) of *Madina* and *Muhajirs* (immigrants) from Mecca. This brotherhood was in fact, a step towards the economic rehabilitation of the newly arrived immigrants. Unfortunately Muslim economists have failed to present their case in a persuasive manner otherwise Islamic principal have outstanding potential to meet the challenge of poverty. (10)

Actions against poverty usually are of surface level where rulers and politicians never go beyond statements. Instead of propagating Islam as a complete code of life, Islam is being presented only as a part of the whole. Tariq Ramadan observed it is impossible, in present-day circumstances, to undertake reforming human realities, mind-sets, understandings, and societies without having a broad view of what the problems are and becoming intercurrently involved on several levels, with the issues being so interrelated. But when construing contemporary Islamic thought, one cannot but observe that it is a strangely---albeit most significantly---absent from

growth during the two decades of the fifties and the sixties and the continually rising welfare spending by the governments have, however, failed to remove poverty, fulfill needs and reduce inequalities even in the worlds richest countries. (5)

Muslim World and Poverty:

Another significant aspect of this backwardness is that a great part of the whole population of the world consists of Muslim world which is currently estimated 1.6 to 1.7 billion. It is expected that if present rate of increase of Muslim population continues that by 2030 One out of Three person will be Muslim.(6) The question is still there why they are under the spell of poverty despite of having natural resources in abundance. If the reason behind this vicious circle is religion then we observe during the previous century that none of the economic system, institution, and individuals were under the control of religion, however, Islamic world did not loose its strength against western civilization in the way to get economic prosperity, thus Islamic world not only witnesses a clash on social and political level but also faces strain and complexities economically altogether.

Though the religious leadership and Islamic institute work and make the mind of individuals against the usury system but, unfortunately, again it is a fact that, even the Muslim states as an authoritative institute work to bring the income sources of the Muslim world under global interest-based economy. In this regard it is clear that none of the systems is easy to make comprehensible theoretically unless it is practically extended. The same matter is with Islam. Today Islam is being considered just like other religions of the world a ritual based discipline rather than complete code of life. The social, economic and political aspects of Islam are not being conceived on one hand and the other side of the picture reflects that having no economic model based on Islamic teachings throughout Muslim world, issues like poverty are not being addressed in the directions of Islam.

In this prospective it is the dire need of the hour that in order to alleviate poverty one must analyze the economic teachings of the second largest religion (Islam) of the world. However, as the Islam is the complete system of life so it would be unwise to study its economic system as a part of the whole though its partial study have much more things to appreciate but implementing it as a part would be an unworkable phenomenon. Syed Maudoodi writes that Islamic pattern of life gets inspiration and strength from faith and worship and faith and worship flourish in Islamic pattern of life. They are just like the organs of a living body, which become dead and defunct when detached from the living body. Application of Islamic faith and rituals in an un-Islamic pattern of life would mean placing of human

leadership. Further, these all should be supported by community involvement, members of civil society and non-governmental organizations. The challenge of human deprivations could be tackled by collective and collaborative efforts but unfortunately results at all levels and almost in each part of the world are very disappointing. Poverty and misery free society is a colorful slogan by United Nations, Governments, NGO's, World Bank and commissions but net result is only exploitation. Large numbers of deprived and poor people are doing back breaking jobs but they fail to meet basic needs. Children are compelled to offer their services in the labor market and they are ready to work on any price and condition of work. This increasing trend of child labor contributes towards the unemployment of adults as well. So far as the child labor is concerned, few people in the Muslim societies actively work against it (only as a fashion), but neither the Islamists nor the liberal groups could derive any practical strategy. Religious scholars mostly focus on rituals in seminars and conferences but normally ignore the social, political, and economic justice ensured in the teachings of Islam. Even they are unaware of the issue and they lack the capability to conduct any solid analysis about their failure in disseminating the real picture of the problem in modern context.

Evil of Child Labour:

Rich people do not pay all wages to a laborer who does his work with too much hard work in a long duration, and, similarly state institutes and the reformer of social justice never raise their voices for poor and deprived classes. Therefore, families with less income unable to send their children to school as well as unable to go for any recreational activities and, on the other side, though we observe that western organizations propagates that child labor is highly condemnable but they do not provide any substitute for earning their livelihood. Thus all their activities go in vain.

Again this is a fact that children of these families are compelled to go for labor and hard work due to the cruelties of capitalistic system.

Although the condition of the people of South Asia in this regard is too much poor but Muslims of the same part are rather poorer. Though, secular states, capitalistic system, democracy, civil society and NGOs got the opportunity to show their performance but their efforts could not enjoy any positive result.

Mr. Umar Chapra is of the view "the inequities generated by laissez-faire capitalism gave rise to the welfare state, which provided a ray of hope on the capitalist horizon. The welfare state was not, however, based on a world-view different from that of capitalism. All it did was to combine the price mechanism with a greater role of the state in the economy to ensure higher economic growth and greater stability and equity. The unprecedented

estimated by World Bank is that one living on less than 1 US \$ per day.(3) Another bitter aspect mentioned in the same report is that almost three billion people are living on less than 2 US \$ which is moderate poverty rate according to the World Bank.

Present State of Poverty on the Globe

The policy makers, experts and scholars are urged to investigate the nature and extent of poverty. Enormity and seriousness of the issue shows that governments alone are not able to overcome and solve the problems caused by poverty. States had been creating the necessary enabling inurnments and making pro-poor policies but social justice and role of rich people of the society were equally important.

The World Bank periodically prepares poverty assessments of countries in which it has an active program, in close collaboration with national institutions, other development agencies, and civil society, including poor people's organizations. Assessments report the extent and causes of poverty and propose strategies to reduce it. Countries have varying definitions of poverty, and comparisons can be difficult. National poverty lines tend to have higher purchasing power in rich countries, where standards used are more generous than in poor countries. Poverty measures based on an international poverty line attempt to hold the real value of the poverty line constant across countries, including when making comparisons over time. (4)

Due to the logical aftermath of the capitalistic system, a peculiar group of people achieved stupendous development but, on the contrary, an increase in the rate of poverty is much bigger than the prosperity of that peculiar group. Almost 80% of the people belong to rural area, particularly those who belong to Asia and Africa.

Role of Religious intelligentsia:

Mostly, religious people address the issue of population sentimentally, they condemn all kinds of population planning schemes and there is no doubt in the fact that population of the Muslim countries could be a major strength provided that human resource management properly got attention but the poor literacy rate of the Muslim countries and a shortage of educational institutes not only increase poverty rate but also produce illiteracy and unorganized way of life, which is also contrary to Islamic teachings. Usually these two issues, illiteracy and disorganization in social structure, receive a little attention from religious *ulema*, hence a comprehensive analysis of social phenomenon remains unattended. On the other hand variety of steps are needed to address this issue because level of poverty is a nightmare for the policy makers. Many steps have been taken but these need to be accompanied by purposeful actions by the political

Poverty Reduction and Muslim World

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As a social science economics studies unlimited desires and basic needs of individuals and society. Throughout human history institutions and companies made variety of choices on allocating limited and insufficient resources to satisfy the wants of individual. It has been observed that economics is one of the strongest spheres of human life. Self-interest is very powerful motive behind any economic activity. Individuals and firms both have their targets to maximize the output of production therefore competitive markets are the ultimate result. This competition leads towards difference of social classes in society based on income group. As a social science distribution, including poverty and allocation are exclusively discussed. Numerous studies focused on the issue of poverty particularly after industrial revolution in seventeenth century. Adam smith (1723-1790) particularly discussed the causes of poverty and exclusively presented his suggestions on this important issue.

Experts have observed a significant development in various sources of income on the global level. Present world is collectively richer than that of the earlier decades of previous century. This collective economical development is not only concerned with the West but also it includes Eastern countries vividly, even the discovery of oil in the Arab world made her prosperous and this important change also happened in the previous century. As a result most of people in different societies were not benefited equally but these developments divided people between haves and have not. This difference of income groups introduced new social classes and made social life more complex than previous. Varieties of problems and issues at different levels have their roots in this change. Therefore, who can deny this fact that the other side of this prosperity is very alarming and painful as it generates economic disparity in different regions and countries of the world. Poverty anywhere is threat everywhere.

What the Poverty is?

Poverty is the state of one who lacks a certain amount of possessions or money. Absolute poverty or destitution refers to being unable to afford basic human needs which commonly includes clean and fresh water, nutrition, health care, education, clothing and shelter.(1) In this regard poverty has become burning issue of each part of the globe. The poorest 40 % of the world's population counts for 5 % of global income. The richest 20% accounts for the three quarters of the world income.(2) Poverty level

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References

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- ¹ (Halal Certificate and Halal Label Order, 2005 (S 39/05). Brunei Darussalam)
 - ² <http://www.thefreedictionary.com/audit>
 - ³ الأنبياء: ٤٧
 - ⁴ الإسراء: ٣٤
 - ⁵ معارف القرآن "مفتي محمد شفيع".
 - ⁶ Bcg Halal 3(Guideline For Certification Halal Compliance Auditor.Brunei Darussalam)
 - ⁷ PS 3733 (Halal Food Management system) Standard of PSQCA, Pakistan.
 - ⁸ Bcg Halal 3(Guideline For Certification Halal Compliance Auditor.BruneiDarussalam)
 - ⁹ PS 3733 (Halal Food Management system) Standard of PSQCA, Pakistan.
 - ¹⁰ PS 3733 (Halal Food Management system) Standard of PSQCA, Pakistan.
 - ¹¹ International Standard on Auditing.
 - ¹² International standard on Auditing.

recertification), if the results of corrective actions need to be verified on site e.g. as a result of a major nonconformity being raised or multiple minor nonconformities being raised, the Team Leader will initiate an additional follow-up visit

2. Short notice audits can also be arranged to address complaints when the complaint cannot be addressed remotely or the degree of importance of the complaint requires to do it before the next planned audit. Short notice audits may also be conducted after a suspension of a client.

The process for these audits is the same as any normal audit and the scope will focus on complaint investigation or determine whether the suspension can be lift up or not.

3. If a follow-up audit is to be conducted the Certification Body office shall arrange the date with the client and in conjunction with the Team Leader will also determine which auditor is most qualified to conduct the on-site follow-up audit.

The scope of the recertification audit is to evaluate the following:

- Effectiveness of the whole HALAL standards considering internal and external changes and the management system continual relevance and applicability to the scope of certification
- Demonstrate commitment to maintain the effectiveness and improvement of the HALAL standards in order to enhance overall performance
- Whether the operation of the certified management system contributes to the achievement of the organization's policy and objectives

3. The recertification audit shall consider the performance of the Halal management system over the period of certification, and include the review of previous surveillance audit reports and the audit plan shall be set up accordingly.

4. When appropriate, Stage 1 can be offered at recertification, where there have been significant changes to the management system or the organization of the client. This can be offered to large clients to perform a review of previous cycle performance.

5 Halal certification owners(certified organization) should submit a recertification or renewal application six(6) months prior to the expiry date of current halal certificate.

6. Halal certificate owners who failed to renew their certification will not be allowed to use the halal mark at the premises or on the manufactured products.

Remote Audit:

If remote auditing techniques (interactive web-based collaboration, web meetings, teleconferences and/or electronic verification of the organization's processes) are utilized to interface with the organization, these activities should be identified in the audit plan and may be considered as partially contributing to the total "on-site auditor time".

When remote auditing activities represent more than 30% of the planned on-site auditor time, the Certification body shall justify the audit plan and obtain specific approval from the accreditation body prior to its implementation.

NOTE: On-site auditor time refers to the on-site auditor time allocated for individual sites. Electronic audits of remote sites are considered to be remote audits, even if the electronic audit is physically carried out on the organization's premises. Regardless of the remote auditing techniques used, the organization shall be physically visited at least annually.

Follow-up and short notice Visits:

1. At any stage of the certification cycle (Stage 2, surveillance and