

Methodology of Islamization in Pakistan, 1978-88

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General Muhammad Zia-ul-Haq (1977-88) vociferously announced his intentions of complete Islamization of the State and society in Pakistan. From the first day of his rule, he tried to create an impression that the movement for Pakistan was launched and developed solely for the purpose of the establishment of *Hukūmat-i-Ilāhiyyah* (Divine State).¹ General Zia-ul-Haq posed himself as a 'soldier of Islam' and pledged himself to reform what he called 'a degenerated society'.² His speeches and statements were taken at their face value in the country and abroad. The ulema lent their whole-hearted support to him.

Recent studies in the Speech Act Theory confirm that a person who makes a speech does three acts: (i) he performs locutionary act as he produces a recognizable utterance; (ii) he performs illocutionary act as he promises, greets, warns or declares something in his speech; (iii) he also performs perlocutionary act when he intends to achieve certain desired results. By promising he may convince his audience for his support or by warning he may try to frighten his opponents.³

It is interesting to note that the speeches and statements of General Zia-ul-Haq carried each of the three classes. He promised to take steps for the revival of Islam. He greeted the ulema and in turn asked for their support.⁴ He frightened his adversaries and tried to achieve the desired results regardless of the contents of his speeches and statements. Thus he created a state of tension and hopelessness among the modernists in the country as well as among anti-religious forces abroad. The modernists were frightened by the steps he took to enforce certain Islamic symbols

and the Hudood [*Hudūd*] Ordinance. To them he was leading the country to theocracy.⁵

The ulema had a long standing desire to get the supremacy of *Shari'ah* established in Pakistan as a criterion for testing past and future legislation.⁶ They wanted the Repugnancy Clause to be made enforceable in court of law like other clauses of the Constitution. They argued, 'We fail to understand why the very same method which has been adopted to check and interpret Constitution, should not be adopted in regard to the provision of the Repugnancy Clause',⁷ and suggested that at least five ulema should be appointed to sit together with one judge from the Supreme Court to decide whether or not a law was in conformity with the Qur'an and *Sunnah*.⁸

General Zia publicly pledged himself to make *Shari'ah* the supreme law of Pakistan. Yet before he could issue an authoritative order, he decided to consult administrative bodies and the Ministry of Justice regarding the consequences of such a step. Although the ulema had depicted a rosy picture of prosperity and social justice, their adversaries warned the General of larger implications. He was informed that presently the Constitution was the supreme law in Pakistan, and that Islamization was permitted only to the extent that it was not inconsistent with any of its provisions. If *Shari'ah* was to be declared as the supreme law in Pakistan, the Constitution would be liable to become subordinate to *Shari'ah*. Any constitutional provision, therefore, could be brought before the court on repugnancy grounds – such as the Article 248 of the Constitution which protects the President, the Governors and the Chief Ministers of Pakistan from being answerable before courts of law. That is against the injunctions of the Qur'an and *Sunnah*. Similarly, the laws specified in the Sixth Schedule of the Constitution (e.g., Article 268 (23) which included Land Reforms Regulations 1972, could be contested). Though they were repugnant to the injunctions of the Qur'an and *Sunnah*, yet according to the Constitution, could not be altered, repealed or amended without the previous sanction of the President.⁹ The enforcement of *Shari'ah* as the supreme law in Pakistan would certainly deprive the President of such an authority and privilege to protect any un-Islamic law. Similarly, the laws enumerated in the First Schedule and falling within the scope of Sections 3(6) and 4 of Article 268, such as, the Muslim Family Laws promulgated in 1961, which enjoyed the constitutional immunity, would remain enforced according to the Constitution until altered, repealed or amended by the appropriate

legislature. This immunity would also be affected. In fact, the entire fiscal system in Pakistan rested on principles which could be argued as un-Islamic by the ulema of one school of thought or another. Similarly, the questions relating to women's status, non-Muslims' status, the judicial system, modern educational institutions, international relations and agreements, and purchase of arms from non-Muslim states, etc., could also be brought before the courts. If all these were allowed to be discussed in the courts it might create confusion that the judges might not be able to face and settle.¹⁰

General Zia-ul-Haq carefully considered the opinions both of the ulema and the bureaucracy – mostly representing the modernists – and finally decided to adopt what was most suitable for his political interests; he chose to legitimize his *coup d'etat* by enforcing such an ostentatious *Shari'ah*, which would simultaneously pacify the ulema and the worried modernists.¹¹

In September 1977, Zia-ul-Haq revived the Council of Islamic Ideology. According to the provisional order No. 16 of 1980, he amended the Constitution, and in May 1981, he reconstituted the Council with 'capable, devoted and staunch religious scholars' as its members. In order to increase the efficiency of working of the Council, according to amended Constitution, five full time members were added to the existing membership raising the number of members from 15 to 20. A research cell with substantial funds was also created and made a part of the Council. The Council was required under the Constitution:

- a) To make recommendations to Parliament and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects, in accordance with the principles and concepts of Islam as enunciated in the Holy Qur'an and *Sunnah*;
- b) to advise the House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a passed law is or is not repugnant to the injunctions of Islam;
- c) to make recommendations as to the measures for bringing existing laws into conformity with the injunctions of Islam and the stages by which such measures should be brought into effect; and

- d) to compile in a suitable form, for the guidance of Parliament and the Provincial Assemblies, such injunctions of Islam as can be given legislative effect.¹²

The Council, in turn, chalked out a comprehensive plan for the revival of the Islamic order in Pakistan.¹³ Working day and night, by the end of 1983 it finally submitted its recommendations to the President.¹⁴ Scholars of various schools of thought also forwarded their own direct recommendations. On 30 May, 1984, the Council held its final meeting which was also attended by General Zia-ul-Haq. In response to the Chairman of the Council, Dr Tanzil-ur-Rahman, and other members' question about the recommendations the Council had already submitted to the President, Zia-ul-Haq replied:

A perusal of the Council's recommendations indicates that they are meant for angels who do not quarrel; who are free from mutual jealousies and rancour, and do not have any factional differences. Pakistani society, on the other hand, is divided in four religious sects. Traditional Muslims want to live in Pakistan in mutual fraternity and brotherhood, despite the existence of many sectarian differences. The Council should attend to such a situation.¹⁵

He also observed:

No doubt the Council has worked hard but most of its recommendations are weak from practical point of view ... Maybe the Council thinks that all its recommendations are practicable but that it is only the Government which is hesitating from implementing them. I want to tell you that it is not the case. You may take it as our policy or weakness of faith, we do not deem feasible [the] implementation of all the recommendations presented by the Council.¹⁶

Zia-ul-Haq refused to accept the recommendations of the ulema for implementation only because he felt that if implemented, they were bound to promote sectarianism and would disturb the existing modern socio-economic system of Pakistan. He, however, did decide to enforce such Islamic symbols as the *Zakat*, and interest-free banking, contrary to the recommendations of the Council.¹⁷

The Council, in turn, criticized the President's attitude towards Islam:

It is unfortunate that the Action Plan for Islamization suggested by the Council has been completely disregarded. Instead resort has been taken, which instead of taking us nearer to the goal of Islamization, is proving to be counter-productive ... Refusal to implement what is right in the light of the Qur'an and *Sunnah* merely because of fear of adverse public opinion will take us away from the path of God. Such an act will not only be harmful for Islam but also will be harmful to the efforts being made for Islamization all over the Muslim World.¹⁸

The Council wanted the Government to impose its recommendations on the country by force without consideration of future consequenc-

es. No doubt the Muslims endorsed the 'back-to-the Qur'an' cry raised by the ulema, but this did not mean that they wanted to subvert the process of modernization in Pakistan. The Muslims generally believe that modernization does not necessarily eradicate Islam. Modernization and Islam can go hand in hand on the road to progress. The ulema, however, think otherwise. They want to revive their particular sect and its interpretations of Islam as *Shari'ah*. Zia-ul-Haq categorically refused to accept that revival.¹⁹

In December 1978, Zia-ul-Haq promulgated a Superior Court Shariat Benches Order, whereby he constituted five Shariat Benches in Pakistan. Each High Court at Lahore, Peshawar, Karachi and Quetta was to have a Shariat Bench and Supreme Court at Rawalpindi-Islamabad was to have an Appellate Shariat Bench. Their foundation was meant to strike down the un-Islamic laws in Pakistan. However, they were not allowed to discuss (a) the Constitution, (b) the Muslim Family Law, (c) the Laws relating to the procedure of any court or tribunal, (d) until the expiration of three years from the commencement of the Constitutional (Amendment) Order 1979, any fiscal law relating to the collection of taxes or Banking or Insurance practice and procedure, even if they, wholly or partially, were repugnant to the injunctions of Islam. The Order was promulgated on 2nd December, 1978, on the occasion of the birthday of the Prophet.²⁰ Zia-ul-Haq simultaneously declared that he had 'established the supremacy of *Shari'ah* over the law of land ... and every citizen can now move the judiciary to declare a law either wholly or partially un-Islamic'.²¹ This statement of his created the erroneous impression that after the establishment of the Shariat Benches, all laws in the country could be challenged before these Benches and could thus be changed according to the injunctions of Islam. Even after the promulgation of the Order, the Constitution remained the supreme law of the land. The Benches did not have the jurisdiction to amend, alter or repeal any law even if it were repugnant to the Qur'an and *Sunnah*. *Shari'ah* was still a law subordinate to the Constitution. The Benches remained encumbered by the limitations and other qualifying conditions meticulously calculated to control their scope, application and jurisdiction. By his creation of the Benches, Zia-ul-Haq offered something with one hand and took it back with the other. The establishment of the Benches was, practically speaking, an exercise in futility.²² They possessed no jurisdiction for Islamization.²³

Why did Zia-ul-Haq make such ineffective statements is a question very difficult to answer correctly. Probably, he thought that Islam was the *raison d'être* of the state of Pakistan and that no leadership could afford to surrender Islam or barter it away and the Islamic interpretations usually formulated and presented by the ulema had made most of it unenforceable in a modern society. The Qur'an and *Sunnah* contained general legal principles. The jurists of the medieval period of Islam had interpreted these legal principles and produced different legal opinions on various matters. They did not codify their opinions, fearing that people might follow them blindly and neglect the Qur'an and *Sunnah*.²⁴ The jurists of the later period, however, established various schools on the basis of the opinions and principles held by these earlier jurists and eventually made it compulsory for Muslims to follow one jurist or the other, as part of their faith. The opinions of the early jurists were thus established as permanent schools of law and were made as immutable as *Shari'ah* for all times to come.²⁵

In this way Muslims and the leadership in Pakistan were put at the crossroads as to which particular school to follow. Many times the opinions of the various schools were in sharp conflict not only with each other but also with the Constitution. Zia-ul-Haq was well aware of the contradictions of the ulema and was not ready to risk a socio-religious anarchy in Pakistan. He did not give any mandatory judicial powers to the warring ulema nor to the Benches. He, however, did not disclose his intentions to the public; he even successfully managed to hide them from a large majority of the ulema. Some knowledgeable ulema criticized him and publicly declared that 'he will never implement Islam'.²⁶ Zia-ul-Haq quickly responded to the charge by promulgating five ordinances on 10 February, 1979. He replaced the existing laws relating to the offences of theft, robbery, dacoity, adultery, false accusation of adultery and wine-drinking, by the Islamic provisions of *Hudood*.²⁷ The Council of Islamic Ideology recommended a law on *Qisas* and *Diyyat* and an Islamic law of Evidence, which the Government did not agree to enforce in the country.²⁸ On 27 May, 1980, Zia abolished the Shariat Benches, and replaced them with a Federal Shariat Court at Islamabad. The Court was constituted by virtue of Section 203-C of the Constitution (Second Amendment) Order, 1981, as a first Appellate Court against the judgements of the Sessions Judges in the above *Hudood* cases. Article 203-D of the Constitution mentioned the functions and powers of the Federal Shariat Court as follows:

- 1) The Court may, on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam laid down in the Holy Qur'an and the *Sunnah* of the Holy Prophet hereinafter referred to as the injunctions of Islam.
- 2) If the Court decides that any law or provision of law is repugnant to the injunction of Islam, it shall set out [in] its decision:
 - a) The reasons for its holding that opinion; and
 - b) The extent to which such law or provision is so repugnant; and specify the day on which the decision shall take effect.
- 3) If any law or provision of law is held by the Court to be repugnant to the injunction of Islam:
 - a) The President in the case of a law with respect to a matter not enumerated in either of those lists, shall take steps to amend the law or provision into conformity with the injunctions of Islam; and
 - b) Such law or provision shall to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.

The definition of the word 'law', however, placed restrictions on the scope of its jurisdiction:

- c) 'Law' includes any custom or usage having the force of law but does not include the Constitution, Muslim personal law, any law relating to the procedure of any Court or Tribunal, or, until the expiration of three years from the commencement of this Chapter, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure.²⁹

Although Zia-ul-Haq wanted the revival of the Islamic social order, he did not want the judiciary to discuss the prevailing socio-economic and legal system in the country – whether it was or was not repugnant to the injunctions of Islam. The judiciary was allowed to examine only the repugnance of a law or provision thereof to the Holy Qur'an and *Sunnah*.³⁰ Though most of the statute laws coming under the jurisdiction of the Federal Shariat Court were the legacy of the British, many of them were enacted after independence as well. With a few exceptions these existing laws were based on the principles of justice, equity and the welfare of people, and, thus, were not repugnant to the injunctions of Islam enunciated in the Qur'an and *Sunnah*. Because sometimes sectarian interpretations did appear contradictory to these laws, this was probably the reason that the Court laid down in the words of Mr. Justice Aftab Hussain, the following principle for the testing of the existing laws on the injunctions of the Qur'an and *Sunnah*:

If the intention of the Constitution had been to apply a sectarian doctrine to matters of public law (as distinguished from personal law) all the difficulty would have been obviated by replacing the present public law by *Fatawa Alamgiri*. But clearly this is not the object of the Constitution to which it appears abhorrent to demolish the existing legal structure in order to raise a new structure of public law. The Constitutional intent is only to repair the structure by eliminating from it what is repugnant to the divine law comprised in the Holy Qur'an and the *Sunnah* of the Prophet (p.b.u.h.) and amending the law to make it conform with the said divine law.³¹

This arrangement of Islamization suited the modernists. It was, however, contradictory to the demands of the ulema, who, since independence, had been fighting for the enforcement of *Fiqh-i-Hanafī* as the public law of Pakistan (being the school of the majority of people in Pakistan). They were aware of the helplessness of the Council and the Federal Shariat Court to do something substantial for the revival of the Islamic order in the country. They were not satisfied by the steps Zia-ul-Haq had taken through his Presidential Orders to enforce the Islamic symbols in the country. Many groups, including the Council of Islamic Ideology, the Federal Shariat Court and the ulema, joined to criticize Zia's introduction of interest-free Banking and the *Zakat* system.³² The modernists also denounced Zia's steps and expressed their concern over the misuse of the Islamic symbols for political purposes:

The present regime has introduced *Zakat* and *Ushr* laws and also Islamic Banking, but these reforms have been introduced as discreet pieces of legislation and no clear explanation has been put forward as to how they will create in Pakistan a new society based on social justice, economic development and national independence.³³

By announcing the *Hudood Ordinance*, Zia-ul-Haq won the hearts of the ulema, but alarmed the modernists as well as the West (which to this day cling to the stereotyped misconceptions about Islam). Academicians and investigators from the West rushed to Pakistan to count amputations, stonings-to-death and the *Jizya* collections from the non-Muslims. To their surprise, however, they found Zia-ul-Haq to be 'a linch pin of the West in the region with his spoof Islamization and hollow rhetoric'.³⁴

Charles H. Kennedy was one of those scholars who visited Pakistan to conduct research pertaining to the implementation of the *Hudood Ordinances*. In particular, he addressed such questions as how many and what kind of cases had been tried, to what extent were the decisions of the Courts of appeal influenced by the socio-economic characteristics of the actors in the process, and what were the effects of

gender and region on the implementation of these ordinances.³⁵ He discovered that:

Despite widespread misgivings and conjecture both in Pakistan and the West that the execution of hard penalties (amputations, stoning to death) would become commonplace in Pakistan, as of today (September 1987) there has been no hadd penalty meted out in the state ... and no hadd penalties are likely to be meted out until at least 1990, if then.³⁶

And concluded:

The fact that over 50 per cent of the cases appealed to the FSC are overturned warrants the conclusion that many cases filed are brought to the Courts for the purpose of exerting social control.... Finally, the implementation of the Hudood ordinances has been disproportionately skewed towards Pakistani's lower socio-economic strata. Virtually no middle or upper class Pakistanis have been charged with the commission of Hudood crimes.³⁷

In November 1985, Zia-ul-Haq held non-party based elections, formed a civilian government, and assigned to it the responsibility of the future Islamization in Pakistan. The ulema, however, contrary to the modernists, believed that democracy and Islam could not co-exist in harmony in Pakistan. According to the existing Constitution, legislation was the function of the Parliament and the Provincial Assemblies; whereas in Islam legislation was God's function.³⁸ The ulema believed that the repugnancy clause of the Constitution and the methodology of Islamization were more secular than Islamic.³⁹

The modernists believed that Zia was manipulating Islam for his political ends. The ulema also had more or less the same impression. When Zia announced the holding of a referendum on the question whether Islam shall be the ideology for Pakistan, and used its results to extend his political authority for another five years, it created an atmosphere of frustration and hopelessness among the ulema as well as among the modernists.

The concept of political sovereignty which developed through modern theories in the West since the sixteenth century, does not exist in Islam. The Qur'an, however, often speaks of the supreme and absolute rulership of God in the heavens and in the earth.⁴⁰ A consensus exists among the modernists and the ulema that sovereignty of the universe belongs to God. It has been delegated to the people of Pakistan and could be exercised through the people's elected representatives to establish social institutions to run the state and enable people to order their lives according to the injunctions of the Qur'an and *Sunnah*.⁴¹

The ulema thought that the socio-economic, legal and educational institutions established by the modernists had failed to overcome Pakistan's inherent problems of poverty, illiteracy and unemployment and had instead, bred widespread corruption, lawlessness, oppression, and discontentment in the country. According to them, while the failures of these institutions had landed the people in an endless quagmire of hopelessness, depression, disease, fear, and frustration, their representatives/rulers were worshipping the western 'gods' of materialism and affluence. The ulema blamed the modernists of being ever ready to sacrifice all Islamic principles at the altar of these 'gods'. To strike at what they perceived to be the root cause of these problems, they proposed to amend the Constitution to establish *Shari'ah* as the supreme law in Pakistan in order to deprive the rulers of un-Islamic privileges, and protections provided by the Constitution.

The *Shari'at* Bill introduced in the Senate by Qazi Abdul Latif and Maulana Sami'-ul-Haq, was thus the first serious attempt to introduce a provision in the Constitution declaring in clear terms the supremacy of *Shari'ah* in Pakistan. Although the ulema welcomed this move, many others who were involved in the process of legislation in the country criticized the bill, dubbing it as 'an impracticable and dangerous move to destroy the existing institutions in the country'.⁴²

It is unfortunate that the *Shari'ah* laws are neither codified nor clear. The ulema have failed to systematically codify them in Pakistan. The jurists of the early centuries of Islam interpreted the fundamental sources, i.e., the Qur'an and *Sunnah*, and produced different legal opinions on certain matters. They were reluctant to codify their opinions, fearing that the *Ummah* might rely on their opinions and neglect independent understanding of the Qur'an and *Sunnah*, although eventually the later generations exactly did what the jurists were afraid of. They innovated the concept of *Taqlid* – blind imitation – of a certain *Fiqh* and established various schools of law and declared these schools to be an indispensable part of *Shari'ah*, for all time to come. This in turn confronted the Muslim community with the dilemma of choosing from a number of conflicting schools of jurisprudence.

The 1973 Constitution, had refused to accommodate the sectarianism generally advocated by the ulema, who found the present non-party based Assembly, established in the name of Islam, a most suitable organ to accomplish their desires. The ulema proposed to recognize (a) the customs of the Companions of the Prophet; (b) the deliberations and

opinions of the jurists; and (c) the consensus of the Muslim *Ummah*, as integral part of *Shari'ah* as the Qur'an and *Sunnah*. Some of the members who were practically involved in the process of Islamic legislation observed that the granting of the status of *Shari'ah* to some unidentified codes, besides the Qur'an and *Sunnah*, would create problems and 'will have serious implications for the future development of Pakistan in general and of its public law and economy in particular, because there is nothing like the Qur'an in terms of certitude'.⁴³ Islamic literature, other than the Qur'an, is full of personal and sometimes contradictory opinions of the Companions of the Prophet, *muhaddithīn*, *mufasssīrīn* and *fuqahā'* and it was difficult to reconcile them with one another.⁴⁴ For practical purposes, the *Khulafā'* after the fall of the *Khilafat-i-Rāshidah* had stopped striving for it. This objective could now be achieved only if the ulema agreed to sit down together and codify an enforceable code with consensus. Otherwise the judiciary, legislature and the ulema would be left constantly confronted with the question of choice between the opinions of one school or the other. Merely declaring the *Shari'ah* as the supreme law of the country was not enough to achieve the desired objective of establishing an Islamic social order in the country.

To the modernists Islam was their identity, but they never intended to create a state in which the *Shari'ah* could be applied as the public law. The ulema, on the contrary, looked upon Islam as their ideology and strove to create a *Hukumat-i-Ilahiyyah* where *Shari'ah* would be the supreme law. Struggle between these two groups dominated the political scene of Pakistan for a long time and took many forms. During the debates over the Objectives Resolution of 1949, the 1953 riots against Qadianis, the framing of the 1956 Constitution and the 1961 Muslim Family Laws Ordinance, for example, the modernists managed to fight off the demands of the ulema. Eventually both the groups reached a tacit compromise and signed the 1973 Constitution. According to the ulema, the present non-party based National Assembly, founded in the name of Islam, offered an ideal opportunity to get rid of the major difficulties in the way of the enforcement of *Shari'ah* as the supreme law of the country. The *Shari'at* Bill proposed by the ulema, would have destroyed all existing institutions. The ulema knowingly or unknowingly, had reconciled to it in the hope of restoring the age of the *Khulafā'-i-Rāshidīn*, meanwhile settling for some form of autocracy. Through this Bill, they were asking for a constitutional mandate for interpretation.

legislation and enforcement of the *Shari'ah*. The modernists feared that if the *Shari'ah* Bill was carried by the Parliament, a theocracy of the worst type would come into being. The Bill, however, because of a variety of reasons, could not become an Act of Parliament. Various groups in the Parliament prepared and circulated various drafts of *Shari'ah* Bills. A major faction of the ruling groups in the National Assembly introduced their own *Shari'ah* Bill in the shape of the Ninth Amendment of the Constitution. The proposed Bill remained a topic of hot discussion among the modernists and the ulema for quite some time. Since it did not propose to establish *Shari'ah* as the supreme law in the country, the ulema did not agree to support it. The Bill was ultimately thrown into cold storage by the very people who had introduced it. The ulema formed a Muttahida Shari'at Mahaz and managed to bring out the masses in the street in favour of their private *Shari'at* Bill. The Mahaz circulated millions of pamphlets and other propaganda literature and built up a strong pressure in favour of the Bill. Responding to these circumstances, Zia-ul-Haq dissolved the National Assembly on 29 May, 1988 and promulgated an ordinance called the 1988 *Shari'at* Ordinance.

Before this *Shari'at* Ordinance was promulgated on 15 June, 1988, the ulema were especially invited to help the President to enforce *Shari'ah* through an Ordinance. The ulema advised the President to declare *Shari'ah* as the 'supreme law' of the country, so that un-Islamic laws, institutions and powers of the authorities could automatically be struck down by the judiciary. The President, however, chose to declare *Shari'ah* to be the supreme source of law in Pakistan, thus after the promulgation of the Ordinance, the Supreme law of the land in Pakistan remained the Constitution of Pakistan. In other words, the *Shari'ah* jurisdiction was not conferred on the Constitution which was already immune from the examination of the Federal Shari'at Court vide Article 203-B, read with Article 203-D; and the laws falling within the purview of Article 268 (2) of the Constitution could not be altered, repealed or amended without the previous sanction of the President. In addition, the laws enumerated in the First Schedule, falling within the scope of Article 3 (b) and 4 read with Article 268, also continued to be immune from judicial examination. In other words, all existing laws, institutions and powers of the Executive protected by the Constitution remained immune from any judicial examination even if they were against the injunctions of Islam. The Ordinance brought no change in the status of *Shari'ah* which was not inconsistent with the provisions of the Constitution. The

ulema, therefore, rejected the Ordinance, and declared it to be an ineffective piece of legislation. The Ordinance was in fact an exercise in futility; it did not confer jurisdiction on the judiciary to strike down, change or even adapt any existing law except with the prior approval of the President of Pakistan or of the Legislature. The *Shari'ah* still remained a subordinate law under the 1973 Constitution of Pakistan.

The modernists also rejected the Ordinance on the ground that the President had no power to amend the Constitution by promulgating an Ordinance. The Constitution could only be amended, under Article 239, by a process which included the vote of not less than two-thirds of the total membership of the National Assembly. The terms of the Constitution were clear and unanimously accepted by the representatives. It was a document concluded with *Ijmā'* (consensus) which according to Muslim jurists, enjoyed a status equal to the verdict of the Qur'an.⁴⁵

Personally a pious man, Zia wanted to enforce Islam in Pakistan as much as possible, provided it did not cost him his sovereignty in the country.⁴⁶ In order not to antagonize the ulema irreconcilably, he constituted a committee of ulema, which was charged with the responsibility of formulating recommendations for the improvement of the existing *Shari'ah* Bill in the light of their own criticism. But before he could hear the recommendations of this committee, his life was cut short by the tragic plane crash on 17 August, 1988.

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