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Islamic Injunctions Presented for Challenging Repugnancy of Laws at Federal Shariat Court of Pakistan: An Exploratory Study of Judgments

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Abstract

Purpose: The Constitution of Islamic Republic of Pakistan, 1973 explicitly affirms the sovereignty of Allah Almighty over the entire universe. The authority must be exercised by the people of Pakistan as sacred trust within the limits prescribed by Allah. The Federal Shariat Court of Pakistan (FSC) is established to examine and decide whether any law or provision of law is against the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of Holy Prophet (peace be upon him). In this respect the court either on its own initiative or on the petition of a citizen of Pakistan, Federal Government or a Provincial Government examines and decides the conformity of any law with the injunction of Islam. The current study examined the shariat petitions judgments shared on repository of FSC for exploring what types and provisions of laws have been challenged and who challenged. It also explored Islamic injunctions presented by the petitioners for considering these laws repugnant to Islam and highlighted what laws have been declared as repugnant or non-repugnant by the court.

Methodology: The current exploratory study conducted content analysis of reported judgments shared on FSC repository. The court has shared 863 full text reported judgments on its website. A search interface is provided for users to find their intended judgments. All reported judgments have indicated the type of petitions such as shariat petition, criminal revision and criminal appeal etc. Only shariat petitions with original jurisdiction were examined to achieve objectives and judgments in appellate and revisional jurisdictions were excluded. The final sample consist of 62 judgments.

Findings: The results show that majority (89%) of the petitions were filed by ordinary citizens. Only 06% petitions were filed by associations, organizations or foundations through their representatives and only two sou moto notices (03%) were issued. Federal and Provincial governments, legislators and retired judges did not file any petition. Majority of petitions (82%) challenged the laws or ordinances and remaining 18% petitions challenged rules/regulations, policies, notifications, customs, bylaws and a book. More than half (55%) of the challenged laws were in conformity with Islam. Nearly one fourth (24%) of the petitions were declared repugnant to Islamic injunctions and 19% were dismissed due to non-maintainability on different grounds. Different reasons were presented by the FSC judgment for dismissal of petitions. These reasons include procedural nature

of law, Muslim laws, bylaw, cases already decided, petition challenging a book, finance law, issue already decided and lack of interest by the petitioner. The Islamic injunctions or principle adopted by petitioners to challenge laws have been explored for all the petitions shared and available on FSC repository.

Conclusion: The current study has provided complete list of laws and provisions of laws which have been challenged in the FSC. It has also provided an account for laws or provisions of laws which have been dismissed, declared repugnant or non-repugnant to Islam by the court. A comprehensive account of Islamic principles or injunctions presented by petitioners is narrated against each law. The interest of citizens, organizations and governments in seeking guidance of the court in regard to existing laws is highlighted.

Keywords: Islamic Injunction, Repugnancy, Federal Shariat Court, Pakistan Exploratory study, Judgments

Introduction

The Constitution of Islamic Republic of Pakistan, 1973 explicitly affirms the sovereignty of Allah Almighty over the entire universe. The authority must be exercised by the people of Pakistan as sacred trust within the limits prescribed by Allah. The major purpose for creation of Pakistan was to enforce Islamic injunction for enabling people to live their lives according to the teachings of Islam. According to Surah an-Nisa, verse 59 *“O you who believe, obey God and the Prophet and those in authority among you; and if you are at variance over something, refer it to God and the Messenger, if you believe in God and the Last Day. This is good for you and the best of settlement”*. Therefore, no law can be passed in Pakistan against the injunctions of Islam. “In all the three Constitutions of Pakistan of 1956, 1962 and 1973, it was pledged that measures will be taken to enable the people to order their lives according to the teachings of Islam and in consonance with the injunctions of the Holy Quran and the Sunnah (Siddique, 2017). According to article 227 of the constitution of Islamic Republic of Pakistan, 1973, laws considered ‘repugnant’ to the injunctions of Islam would not be enacted in Pakistan

and all laws should be brought into conformity with the injunction of Islam. The article 227 does not affect the personal laws of Non-Muslim citizens or their status as citizens. The constitution also protects Islamic sanctity or sacredness to laws which are in conformity with the Islamic injunctions (Cheema, 2019).

The constituent assembly of Pakistan defined the basic directive principles of the new state and passed the Objective Resolution. This resolution was made part of first constitution of Pakistan in 1956 (Kennedy, 1992). The first Constitution was promulgated in 1956, and included a provision known as the repugnancy clause, affirming that no law repugnant to injunctions of Islam would be enacted (Yilmaz, 2011). According to article 198 of the first constitution of 1956, no law shall be enacted which is repugnant to the Injunctions of Islam as laid down in the Holy Quran and Sunnah hereinafter referred to as Injunctions of Islam (Ispahani, 2021). The promulgation of new constitution in 1962 incorporated the Islamic provision of the first constitution with some modifications (Ahmed, 1963). Objective Resolution was made a part of preamble of all three constitutions and was incorporated as article 2A in third constitution in 1985 (Mukhtar, 2016).

In the constitution of 1973, two constitutional bodies have been established to check conformity of laws with the principles of Islam. These bodies or institutions help legislative bodies to enact new laws or to bring existing laws in conformity with injunctions of Islam. With the passage of time Islamic law has undergone changes and it has taken the form of statutory law enacted by legislature instead of Mujtahid's law. To check the conformity of statutory laws with Islamic principles, the role of interpretation now rests with Federal Shariat Court (FSC), Supreme Court of Pakistan (Rizvi et al., 2022) and Council of Islamic Ideology (CII). Ahmad and Yilmaz (2021) explained the difference in mandate of two constitutional bodies

(FSC and CII) for interpreting Islamic laws. They analyzed legislation, case laws, their membership, declarations and statements for ascertaining role of these bodies. The CII has recommendatory and advisory jurisdiction but FSC can adjudicate upon the Islamic status of any law and if appeal is not filed against the decision then it would hold the force of law and the legislature is bound to amend the same accordingly (Khan, 2018). The judgments of the FSC are enforceable according to Article 209 D (2) of the Constitution of 1973, a law declared to be repugnant to Islam becomes invalid on the day specified by the court itself (Bearman & Peters, 2016).

The first constitutional body which brings laws in conformity with Islam is the CII. According to article 228 of constitution of 1973, “the Islamic Council shall consist of such members, being not less than eight and not more than twenty as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah or understanding of the economic, political, legal or administrative problems of Pakistan”. The President or Governor or two-fifth of the total membership of a house or Provincial Assembly shall refer to Islamic Council for advice about any proposed law is or not repugnant to the injunctions of Islam. In response to any question, the council shall advise a House, a Provincial Assembly, the President or Governor about the law. The council may also make recommendations on its own to Parliament or Provincial Assemblies about the ways and means to encourage Muslims of Pakistan to live their life according to principles of Islam. “The council began reviewing the existing laws in 1974 and has been submitting its annual reports since 1977. It has completed its review of all the existing laws from 1726 to the present day and has published more than 90 reports so far. It submitted its

final report in 1996. Having examined thousands of laws, the council has found less than 5 per cent of them repugnant to Islam and has recommended relevant amendments” (Masud, 2015).

The FSC, the second constitutional body, was established during the rule of General Zia-ul-Haq in 1979 as Shariat Benches in provincial High Courts, and then as a full-fledged autonomous court independent of High Courts in 1980 (Cheema, 2020). FSC is a vehicle for progressive trend of Islamic scholarship in Pakistan (Cheema, 2013b). According to article 203C of the Constitution of 1973, FSC is established to examine and decide whether any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of Holy Prophet (peace be upon him). FSC consists of not more than eight Muslim Judges including the Chief Justice. FSC of Pakistan has been granted extensive powers to determine validity of any law or custom having the force of law on the yardstick of 'injunctions of Islam (Cheema, 2013a). According to article 203D, the court either on its own initiative or on the petition of a citizen of Pakistan, Federal Government or a Provincial Government examines and decides the conformity of any law with the injunctions of Islam. On filing of a petition, FSC shall issue notices to the relevant federal or provincial governments for giving adequate opportunity to place their view point before the court. The FSC would send its recommendation whether any law is repugnant to the injunctions of Islam to the President of Pakistan and in case of the provincial list, the Governor of that province for taking necessary steps to amend the law and bring it into conformity in accordance to Islam (Rabbi & Badshah, 2018).

FSC has the power to interpret repugnancy of laws with Islam. It has the powers to strike down any law repugnant to Islam. But there are certain limitations on the

jurisdiction of FSC. Hafeez (2018) discussed and ascertained the constitutional limitations placed and their ambiguous nature. The difference in interpretations of the constitutionally excluded laws from the Court's jurisdiction, the extent of their scope and their impact on the jurisdictional sphere of the Federal Shariat Court is conversed. The equivocal and unexplained terminology of such restricted laws have strong effects on the diversity of decisions of the Courts in this regard; leading to occasional extensions and restraints of the jurisdictional sphere of Federal Shariat Court. Besides, the main function of the Court i.e. the interpretation of Islamic laws, is highly impeded not only through these constitutional exclusions but also through unjustifiable methods of overruling and pendency. A noteworthy question arises here whether true Islamization is possible with such a narrow jurisdictional scope of the only institution vested with this role and in spite of exclusion of such commonly and widely experienced areas of law. The court has no mandate about the constitution, Muslim Personal Law and any law about the procedure of court or tribunal (Motiaurrahman, 2021).

Federal Shariat Court examines laws to ascertain their conformity with Islam through its judgments. The advancement of technology has widened the dissemination of earlier decisions or judgments. For providing access to these judgments, FSC has created a repository that contains all the judgments since its creation (<https://www.federalshariatcourt.gov.pk/en/judgments/>). Legal practitioners or any other person can get access to these judgments in full text freely. The current study has analyzed the judgments available on the website of FSC to ascertain the Islamic injunctions presented by petitioners to challenge the laws in light of Islam. It has also analyzed the role of ordinary citizens, governments and the court itself for bringing laws in conformity of Islam. The study of Islamic

constitutionalism through this study has the potential to contribute towards ensuring an accountable government based on the notion of rule of law that protects individual rights and personal freedoms by putting limits on the state authority (Abbasi, 2022).

Literature review

The review of literature revealed that different authors have discussed the role of FSC for examining the repugnancy of laws to Islam. Cheema (2013a) throw light on the role and powers of FSC and posits that the court's exercise of jurisdiction in terms of defining injunctions of Islam is somewhat ambivalent and amounting to interference in the tasks assigned to other constitutional courts. The constitution did not define the phrase "injunctions of Islam" and abdicated its case to FSC. Yalmaz (2011) found that FSC played a key role for protection of human rights in Pakistan. Pakistani case laws show that FSC made use of the Islamic concepts such as equality, justice and public welfare to get rid of the oppressive laws made by the legislative bodies. Arif (2017) analyzed the role of FSC and described its powers and procedural challenges for Islamization of laws. FSC has contributed significantly for Islamization of laws in Pakistan but challenges are there in terms of application of laws. This study questioned the pendency of the cases in Shariat Appellate Bench. This paper concluded that FSC has played a key role for Islamization of laws and constitutional development but implementation of laws and Court decisions is a big challenge. Council of Islamic Ideology has also played a key role for Islamization of laws in Pakistan. Mehfooz and Aziz (2020) examined the legal efforts of Council of Islamic Ideology and its outcomes for family law such as marriage, divorce, legal separation, child custody and support, alimony (spousal support), adoption etc.

Different approaches have been used by authors to analyze the judgments of the court. Some studies selected a group of judgments and analyzed the strengths, weaknesses of judgments. Two studies, published by same author, analyzed the judgments by classifying into categories. Cheema (2020) analyzed the political and legal ramifications of non-repugnancy decisions of the FSC of Pakistan. According to this study, repugnancy decisions have got much attention in media but the importance of non-repugnancy decisions is not less significant for statehood and constitutional polity of Pakistan. Non-repugnancy decisions ensure the legislative competence and autonomy of the state in conducting its legislative and administrative activities. This study also explored Islamic principles which were adopted by the court as basis for non-repugnancy decisions. The first principle is that if something is not explicitly prohibited in the Quran and Sunnah of the Prophet Muhammad (PBUH), it cannot be declared repugnant to Islamic injunctions. Secondly, in case of different or conflicting interpretations of an Islamic precept, the FSC always favoured the construction strengthening statehood and the constitutional polity. Thirdly, if precise guidance in the primary sources of Islamic law is not provided, the Muslim Ummah is authorized to legislate in those matters through its representatives. Fourthly, the state can pass any law which is advantageous for the public at large. Cheema (2013b) catalogued progressive and reformist decisions of the FSC. Only two categories of decisions which relates to family and women and administration of justice were selected. The decisions considered as progressive about family and women include appointment of women as judge and vice chancellor, 18 years as age of puberty, and equal citizenship right for women etc. With respect to cases related to administration of justice, the decisions of FSC about court fee, period of limitation and publishing of judgments

with permission of the court were labeled as progressive and reformative by this study. Facts of each case and strengths of FSC decisions were described by the study. Different authors have analyzed one judgment of FSC. Some appreciated the role played by the court while others criticized its role. Abbasi (2022) criticized the decision of the FSC about the restitution of conjugal rights. FSC has refused to declare the restitution of conjugal rights as invalid in its judgment reported in 2016. He remarked that remedy of the restitution of conjugal rights is being abused by husbands “as a countermeasure in response to suits of maintenance, custody of children, recovery of dower and dowry, and dissolution of marriage”. He considered this right as devoid of any Islamic basis as it violates the right to liberty, privacy, and equality as guaranteed under the Constitution of the Islamic Republic of Pakistan 1973. He proposed that this law should be declared illegal and unconstitutional.

Mahmood and Chishti (2019) described the history of the blasphemy law and its interpretation. They also documented the role of FSC for examining the conformity of this law with Islamic principles. This law was challenged in FSC because it violated the principle of Islam. This law provided punishment of only imprisonment for the guilty of blasphemy against the Holy Prophet (PBUH), whereas Islamic law stipulated death penalty for this crime. They appreciated the recommendations of FSC about this law and stated that it is desirable “to make it mandatory to seek permission of the Government to initiating prosecution under this section. This permission shall act as a safeguard against false prosecution”. Ghazali (2018) conducted a scoping view of the role of FSC and Shariat appellate bench of Supreme Court of Pakistan in case of Riba. This study criticized the delay in deciding the issue of Riba. This study stated that four judicial proceedings have

been conducted in the case; two before the FSC and two before the Shariat Appellate Bench of the Supreme Court but still the fourth judicial proceeding is presently pending before the FSC. According to this study, this delay is caused by a “rule contained in a subordinate legislation, empowering a Chief Justice to regulate the process of fixation of cases with absolute discretion”. Khan (2018) provided a short overview of judgment of FSC about land reforms and the judgments of the constitutional courts in case concerning land reforms. FSC and Shariat Appellate Bench declared provisions of the Khyber Pakhtunkhwa Tenancy Act, 1950; and the then N.W.F.P Tenancy Rules, 1981 repugnant to Islam. This study made an analysis of the judgment of FSC in this case and appreciated the judgments “as landmark achievement in the Islamization of land and tenancy laws in Pakistan. Moreover, the ratio laid down by the Bench in both the judgments was based on the Islamic concept of ownership”. Ijaz (2015) assessed the case decided by the FSC about the controversy surrounding the requirement of a husband’s consent for the dissolution of marriage initiated by a wife. The FSC extended the right of wives of khula without the consent of their husbands in the light of Qur’an and Sunnah.

Gaps in literature and research questions

The review literature shows that none of the study made a classification of petitioners who played their role for Islamization of laws through FSC. There is also a gap in earlier literature about what types of laws have been challenged in the court. Author could not find any study which narrated the Islamic injunctions about the entire decisions of the court presented by petitioners for filing petitions. To fill the gaps in literature, the current study explored the judgments of FSC shared on

repository. The following research questions have been designed for the current study:

1. What kinds of individuals, organizations and governments have taken interest to file shariat petitions in FSC?
2. What types of laws of provisions of laws, customs and notifications etc. have been challenged in the court?
3. How many petitions were dismissed, declared repugnant or non-repugnant to the injunctions of Islam by the FSC?
4. What are the reasons for dismissal of petitions by FSC?
5. What Islamic injunctions are presented by the petitioners for challenging repugnancy of laws to Islam?

Methodology

Research design of the study used both the quantitative and qualitative empirical data to achieve research objectives. Content analysis of reported judgments of Federal Shariat Court of Pakistan was conducted for the current study. Judgments will usually contain information about the facts of the case, and the relevant legal principles applied by the court for deciding the case. The analysis of judgment texts will allow for understanding how legal decisions are made (Adams, Adams-Prassl, A., & Adams-Prassl, J., 2022). Quantitative data about petitioners was extracted from the first page of the judgments. The Islamic injunctions presented by the petitioner in favour of the petition were explored. Initial paragraphs of Judgments were analyzed to get evidence about the case presented by the petitioner and described by the judgment. The final paragraphs of the judgments were perused to check the final decision of the court.

The court has shared 863 full text of reported judgments on its website or repository. A search interface is provided for users to find their intended judgments. All reported judgments can be viewed and downloaded free of cost. The column with case number have reported the type of petitions such as shariat petition, criminal revision and criminal appeal etc. Multiple criteria were used to select sample of judgments for examination. Only shariat petitions were selected to examine the laws and provisions of laws which have been challenged. Only those judgments were included in the sample which examined and decided about the provisions of a single law. Those petitions were excluded in which multiple laws were decided by the court in a single petition. It was excluded because presentation of data was difficult. The appellate and revisional jurisdictions of the court are for hearing appeals and to supervise the judicial proceedings of the subordinate courts in Hudood cases. Judgments in appellate and revisional jurisdictions were also excluded. The petitions of only original jurisdiction are selected for the current study. The final sample consists of 62 judgments.

With respect to data analysis, both the quantitative and qualitative data was presented. Descriptive statistics was used to describe the frequency and percentage of judgments for different categories. Frequencies and percentage of petitions were calculated to understand the social background of challengers, interest of governments and procedures adopted by the court. To determine grounds for challenging a law, the thrust or gist of the arguments as mentioned by the judgment was included in the analysis. The current research did not include any critique on the arguments of the petitioner or the decision of the court. It only described the grounds adopted by the petitioner as described by the judgment of the court.

Results

Classification of petitioners

Four options have been provided by the constitution for challenging the law before the court. Ordinary citizen can file petitions. Federal and provincial governments can also seek advice of the court about the conformity of law with injunctions of Islam. Court can take sou moto notice. But the results of the current study show that majority (89%) of the petitions were filed by ordinary citizens. Different categories of citizens with percentages who filed petitions are given in the table 1. Legislators and retired judges did not file any petitions in this regard. Only 6% petitions were filed by associations, organizations or foundations through their representatives. These associations include Insaf Welfare trust, Society of Transplant Physicians and Surgeons Pakistan, The Pakistan Cotton Ginners Association and Najaat Welfare Foundation. Two sou moto notices (06%) were issued by the court to examine the laws. Textile industry has filed one petition to challenge law affecting their working. It is very strange that Federal and provincial governments or legislatures did not take interest to seek advice for examining conformity of laws with Islam.

Table 1: Classification of petitioners

S.N	Classification of petitioners	Frequency	Percentage
1	Citizens (ordinary citizen-43, Advocates-07, Civil servants-03, Retired army officers-02, Mufti-01, Muntazim-e-Ala of Deeni Mudrassa-01)	55	88.70
2	Associations or Organizations	04	06.45
3	Sou Moto Notice	02	03.22
4	Industries	01	01.61
	Total	62	100

Categorizations of laws challenged in the court

Majority of petitions (82%) challenged the laws or ordinances promulgated in Pakistan. Nearly 18% petitions challenged delegated legislation such as rules/regulations, policies or orders. Customs, bylaws and a book is also challenged. Prison rules, Pakistan army regulations and federal services medical attendance rules were challenged by petitioners. Three policies were challenged through shariat petitions including teaching of Arabic language should be compulsory, policies of Pakistan Ordnance board and appointment of women as judges or magistrates. Custom of Swara/Vani was challenged. Bylaws of Karachi Cotton Association and paragraphs of a book “Principles of Muhammadan Law” authored by Danish Fardunji Mullah were challenged.

Table 2: Categorizations of challenged laws

S.N	Categorizations of challenged laws	Frequency	Percentage
1	Laws and Ordinances	51	82.25
2	Rules and regulations	04	06.45
3	Policies	03	04.83
4	Statutory Regulatory Order (SRO)	01	01.61
5	Customs	01	01.61
6	Bylaws	01	01.61
7	Book	01	01.61
	Total	62	100

Decisions of the Court

The findings of the current study showed that in more than half (55%) of the petitions, the challenged laws were in conformity with Islam and the court declared the petitions as non-repugnant. Nearly one fifth (19%) of the petitions were dismissed on the basis of non-maintainability on different grounds. Different reasons described by the FSC for dismissal of petitions includes procedural nature

of law, Muslim laws, bylaw, already decided, petition challenged a book, finance law, issue is already decided and lack of interest by the petitioner. In slightly less than one fourth (24%) of the petitions, the challenged laws were declared repugnant to Islam. In a petition about declaration of Arabic language compulsory, court proposed governments to take actions in this regard.

Table 3: Decisions of the court

S.N	Nature of decision	Frequency	Percentage
1	Law is non-repugnant	34	54.83
2	Law are repugnant of partially repugnant-4)	15	24.19
3	Dismissed petitions	12	19.35
4	Proposed actions	01	01.61
	Total	62	100

Petitions dismissed

The table 4 describes all the 12 laws for which petitions were dismissed by the court. The reason for dismissal of each petition is given in the first column of the table. Second column shows the Islamic principles or injunctions (as described in the judgment) used for challenging each law by the petitioner. Seven laws (out of 12) were dismissed because of lack of jurisdiction of the court. Four dismissed petitions relate to Muslim personal law, two petitions were dismissed because of the procedural nature of challenged law or rules and one due to lack of jurisdiction in fiscal matters. Petitions against a book and bylaws were dismissed because both the book and bylaws are not laws. Three other cases were dismissed because one case was already decided. Arguments of petitioner in other case were not based on Islam. Lack of interest by petitioner in one case resulted in its dismissal.

Table 4: Petitions dismissed (N=12)

S/ N	Laws (Reason for dismissal of petitions)	Islamic Injunctions presented for challenging laws (Number of Writ Petition)
1	Order XXI, Rules 32 and 33 of the Code of Civil Procedure (Muslim personal law excluded from jurisdiction)	According to Rule 33, the court directs the wife to pay certain amount to the husband on non-compliance of the restitution decree. This rule coerces wife to yield to her husband's desire for forcing her to his house. (No.6/I 2013)
2	section 8 of the Muslim Family Laws Ordinance 1961 (Muslim personal law excluded from jurisdiction)	This section authorizes a wife to exercise right of divorce to her husband, as has been provided there under in Column No.18 of the Nikahnama. (No.5/I 2011)
3	Section 8 of Muslim Family Law Ordinance 1961 (Muslim personal law excluded from jurisdiction)	Dissolution of marriage by Khula has been causing a lot of trouble to the husbands. (No.9/I 2004)
4	Number of provisions of the Zakat and Ushr Ordinance, 1980 (Muslim personal law excluded from jurisdiction)	Nisab of Zakat, deduction of Zakat on 1st of Ramazan on total amount without considering debt and time of one year, exemption to one fiqh from Zakat etc are against Islam. (No.24/I 1990)
5	Section 58(d) of the Transfer of Property Act (Fiscal laws excluded from Jurisdiction)	Appropriation of the additional rents and profits in lieu of interest amounts to permitting Riba. (No.5/P 1981)
6	Article 142 of the Limitation Act, 1908 (Article is procedural in nature)	Any real owner of landed property may or may not get possession of the same from the illegal possession of other persons, for being time-barred. (No.8/I 2021)
7	Order VII Rule 2 and Order XX Rules 12 and 13 of the Code of Civil Procedure, 1908 (Rule is procedural)	How a suit for money is framed and what are the essentials of a money suit. It involves Riba and it is against Islam. (No.3/I 2021)
8	by-laws Nos. 45, 83, 134, 142, 143, 144 and 147, along with other by-laws, of the Karachi Cotton Association (Bylaws are not laws)	The bylaws related to hedge marketing alias Satta Business. Petitioner has apprehensions that these bylaws may cause gharar, irtikaz and harm etc. (No.7/I 2005)

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9	Paragraphs 59, 80, 82, 85, 114, 278 and 348 of the Book with title "Principles of Muhammadan Law" authored by Danish Fardunji Mullah (Text book is not a statute)	The petitioner claimed that there is no enacted law of inheritance except Principles of Muhammadan Law which is being referred for all inheritance matters. It is necessary to have enactment on the subject which states any punishment for depriving anyone from legal inheritance. (No.2/I 2014)
10	NAB Ordinance 1999 (Lack of interest by petitioner)	The rejection of plea bargain application is excessive use of the power which is against the Injunction of Islam and principles of natural justice. (No.6/I 2006)
11	Sections 7 and 25 of the Guardians and Wards Act, 1890 (Already decided)	Depriving the natural guardian i.e. the father having the right of custody of minor on the pretext and premise of welfare of minor in a vacuum is against Islam. Father enjoys an absolute right to appoint a nurse for breast feeding of his minor. (No.8-9/I 2020)
12	North-West Frontier Province Urban Immovable Property Tax (Amendment) Ordinance, 2001 (Arguments not based on Islam)	Property tax was for the first time levied even on the houses which were 10 the personal use of their owners or their families, with the concession that a rebate of 50 % would be allowed in case of such self-occupied houses. (No.11/I 2002)

Laws or provisions of laws declared repugnant to Islam

The table 5 shows the Islamic injunctions presented by petitioners for challenging provisions of different laws. The provisions of eleven laws given in the left column of the table are declared repugnant but 4 laws are declared partially repugnant. Section 35 of civil procedure code was declared repugnant to Islam because it awarded cost with interest which is not permitted in Islam. Section 294-A and 295-B were declared repugnant because lottery which is not permissible in Islam was

allowed through these sections. Four provisions of different laws were declared repugnant because of discrimination with women. Three provisions did not give equal benefits or protection to women and in fourth one, women was given as Vani/Swara to settle disputes. Court fee act was challenged on the ground that Islamic state cannot charge fee because it is duty of state to set up free of charge judicial system. Five laws were challenged on the grounds of ouster of court to provide relief, failure of law to provide right or forum of appeal and appeal heard by judges or persons who decided the case. Requisitioning of properties by Government for individual was declared repugnant. Prison rules were declared repugnant because of unfair classification and treatment of prisoners. Prescription of punishment for non-registration of Nikah, embargo on polygamy, and period of Iddat were challenged and declared repugnant.

Table 5: Laws or provisions of laws declared repugnant to Islam (N=15)

S/ N	Laws challenged	Islamic injunctions presented for challenging laws (Number of Writ Petition)
1	section 35 of Civil Procedure Code, 1908	Awarding of cost with interest at a rate not exceeding 6%per annum is against Islam as interest is not permitted. (No.104/L 1991)
2	Section 294-A and 294-B of the Pakistan Penal Code	Lottery has been made illegal and impermissible so far as the general public is concerned, yet the same is made permissible and lawful if it is to be run by a Government. (No.5/K 1984)
3	Sub Article 4 of Article 151 of Qanun-e-Shahadat Order 1984	This provision purports to give protection to a man accused of rape to impeach the character of a woman while depriving similar right to a woman. This tantamount, to giving free license to an accused to commit Qazf without producing four male witnesses in clear violation of Holy Quran. (No.7/I 1998)

4	Swara / Vani as custom in Kurram Agency (erstwhile FATA)	Females given as consideration for settling a civil dispute or criminal liability is against Islam. (No.1/I 2017)
5	Sub para i, ii, (xiv) of O.M.No.F.2(3)/03 dated 31.7.2004 issued by Ministry of Housing and Works, Islamabad	Denial of equal benefits for husband and wife civil servants is against Islam (Repugnant Partially). (No.8/I 2004)
6	Pakistan Citizenship Act, 1951	A married Pakistani woman was denied the right to get Pakistan's citizenship for her foreign husband while a married Pakistani man was entitled under section 10 of the said Act to obtain Pakistan citizenship for his foreign wife. (No.1/K 2006)
7	Section 4 of the Court Fees Act, 1870	A court cannot charge fee as it is obligatory for an Islamic State to set up an easy, speedy and effective and free of charge judicial system. Judgment allows government to recover stationery charges from the litigants. (No.28/I 1990)
8	Sections 8, 10, 14 and 21 The Evacuee Trust Properties (Management and Disposal) Act, 1975 (Act No.XIII of 1975).	The case is conferment of unbridled and arbitrary powers on an individual and complete and total ouster of Courts from providing any relief to any aggrieved party who may be hit by and suffer at the hands of this individual. (No.5/I 1990)
9	Sections 8, 11, 21, 23 to 26, 30, 32, 34, 36, 40 and 52 of Frontier Crimes Regulations, 2011	Uncontrolled powers to PA/DCO by creating a class of persons of an unusual type, enforcing custom or usage, and no provision for recording evidence. It prescribes punishment for adultery as only 5 years. The liabilities are fixed for whole family of the accused (Repugnant Partially). (No.4.11.1/I 2023)
10	Sections 1, 13-A and 133-8 of The Army Act 1952	The sentence of HADD, before being put to execution, is required, to be confirmed by the Court of Appeals. The appeal shall be heard by the Court of Appeals against its own confirmed decision. It allowed the Judge to be a judge in his

		case/cause/. Supply of judgment, depositions and other record of the case must be ensured. (No.4/I 1993)
11	Sections 23 and 41 of University of Engineering and Technology Lahore Act, 1974	Vice Chancellor, having himself imposed punishment upon the delinquent employee of the university, could not be legally permitted to attend the meeting of the Syndicate at the time of adjudication of his appeal. (No.32/I 1992)
12	Sections 18(3), 22-A and 54 of the Land Acquisition Act, 1894	Failure to provide for right of reference, filing cross objections and appeal to the Federal Government or its department or department of the Provincial Government concerned who has not accepted the award is against Islam. (No.6/I 1988)
13	Section 3(1), Section 7 and Section 11, 12 of the West Pakistan Requisitioning of Immovable Property (Temporary Powers) Act, 1956	Requisitioning of property by the State to provide residential accommodation to its functionaries causes immense anguish to the citizens and is thus against the injunctions of Islam (Repugnant Partially). (No.1/I 1986)
14	Pakistan Prison Rules 1978	Women Prisoners and Children, Lady Superintendents and Women Warders, The Classification and Separation of Prisoners, Superior Class Prisoners, transfer of prisoners, prison office, prisoners in cells is against Islam (Repugnant Partially). (No.61/I 1992)
15	Sections 4, 5, 6 and 7 of the Muslim Family Laws Ordinance, 1961	The persons who have a direct link or indirect link with the propositus have been brought at par in law of inheritance. It is against Islam. Prescribing of punishment for non-registration of Nikah is against Islam. Holy Quran has permitted the Muslims to have more than one wife with a ceiling of 4; any embargo placed there on is against Islam. The period of Iddat prescribed by Holy Quran is different in different situations while section 7 has made it uniform. (No.29/I 1993)

Laws declared non-repugnant to Islam

The table 6 describes all the laws that were challenged and declared non-repugnant by the court. The Islamic principles or injunctions presented for challenging these laws are given in the right column. These explanations presented by petitioners are not accepted by the court and laws declared as non-repugnant. Different provisions of The Code of Criminal Procedure, Qanoon-e-Shahadat and Pakistan Penal Code were challenged for granting concession for bail to women, no remedy for innocent accused, denial of access to police diaries and zimmies, punishment for common intention, Placement of 295-C in Tazzir, compoundability in honour killing and attestation of document by one man or two women. Enforcement of Hudood Ordinance 1979 was challenged on the basis of proof for Zina and punishment for drinking and theft. A notification under Prevention of Smuggling Act was challenged because it imposed ban on sale of imported car under special scheme. Nadra Ordinance was challenged for changing status of woman as daughter, wife or widow but no such change is required for man. The details of all other laws and injunctions on the basis of which these laws were challenged are given in the table 6.

Table 6: Laws declared non-repugnant to Islam (N=34)

S/N	Laws challenged	Islamic principles or injunctions presented for challenging laws
1	Section ,172(2) of the Code of Criminal Procedure	The accused should be allowed to have a right of access to the Police Diary and Zimmies, before submission of the challan in the court concerned but court observed that it is just procedural in nature and has no material or evidentiary value to cause prejudice to the case of an accused. (No.3/I 12004)

2	Sections 169 and 249-A of the Criminal Procedure Code, 1898	Provisions do not provide any remedy to an innocent accused for the harm caused to him who is released because of baseless allegations. Court did not accept this contention and observed that other remedies are available. (No.22/L 1991)
3	Amendment in section 497 of the Code of Criminal Procedure	The concession of granting bail exclusively to accused women is against Islam. (No.1/K 1992)
4	Section 34 of the Pakistan Penal Code	When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone but in Islam there is no punishment for intention. (No.4/K 1992)
5	Section 295-C of Pakistan Penal Code	Section 295-C should be declared a Hadd law and its placement as Ta'azir in PPC is against Islam. (No.7/I 2013)
6	Section 306(b)(c), 307(1)(b)(c), 309(1) and 310(1) of Qisas and Diyat Sections 313 and 338 Of PPC, Section 345(1) & (2A) Cr.P.C.	Honour killing is "Fasad Fil Arz. There should be no compoundability in granting waiver to or compounding the offence of Qisas with an accused who takes law in his hands and commits a heinous offence of murder without adopting recourse to the judicial process. (No.2/I 2011)
7	Article 17 (2) of Article 163 of Qanun-e-Shahadat Order 1984	In matters pertaining to financial or future obligation, if reduced to writing, the instrument shall be attested by two men, or one man and two women. It is not needed. (No.4/I 2010)
8	Section 8 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979	The proof required for Zina liable to Hadd is irrational, and illogical. The word shahid does not mean an eye witness at all but any prudent person, whose testimony about the unseen facts removes a doubt regarding two conflicting claims or statements. (No.9/I 2004)
9	Articles 8 and 25 of the Prohibition (Enforcement of Hadd) Order 1979	Islam has declared some specific offences as "Hadd" which are heinous but the offence of drinking is not a heinous crime. Drinking was

		not absolute "Haram" (prohibited), "Definition of Hadd" reveals that it is "the punishment prescribed by Holy Qur'an and Sunnah" but neither Qur'an nor Sunnah has prescribed any punishment for it. (No.2/I 2006)
10	section 9(1)(2)(3) and section 10 of The Offences Against Property (Enforcement of Hudood) Ordinance 1979	Punishment of theft in Islam is only amputation of hand and exemption of Hadd Punishment by this law for amputation of hand is repugnant to Islam. (No.11/I 2020)
11	Prevention of Smuggling Act (Act XII of 1977) Notification No. S.R.O. 474(I)/77	This law permits import inter-alia of car only for use of the family or for making gifts is repugnant to the Shariah to the extent that it imposes restrictions on the sale of that car during the period specified therein. (No.2/K 1982)
12	Sections 8 and 21 of NADRA Ordinance 2000	A man is never required to make a fresh CNIC in various changed marital positions but a woman after her marriage, divorce, second marriage etc. has to go through an ordeal for changing her CNIC in every eventuality. (No.2/L 2008)
13	sub rule (c) to Rule 269-A of the Pakistan Army Regulations	Rule relates to "Dismissal, Removal, Premature or Voluntary Retirement/Resignation of Officers for misconduct etc. Procedure is against the principles of 'Adl. (No.4/L 2001)
14	sub-Section (3) of Section 18 of "The Financial Institutions (Recovery of Finances) Ordinance No.XLVI of 2001	No legislation can exempt any category of documents from the operation of Islamic provisions based upon Holy Quran. But, court rejected this stance because past and closed transactions rightly protected. (No.7/I 1998)
15	Policy of Pakistan Ordnance Board	Policy formulated by Pakistan Ordnance Board, which authorizes allotment of only one residential plot to either of the working spouse is against Islam. (No.7/I 2015)
16	OATHS ACT, 1873	A witness or Shahid is a respectable 'invitee' or 'guest' of the court and deserves a befitting treatment. Under no circumstances, he should

		be taxed or burdened with any incriminating treatment. (No.13/I 1995)
17	Sections 3(1), 5(1), 7(1) and 11(b) and (c) read with Section 2(d) & (g) of the Transplantation of Human Organs Tissues Ordinance, 2007	Donation of organ or tissue, composition of evaluation committee, effects, punishment of commercial dealings are against Islam. (No.1/I 2008)
18	Sections 7 and 25 of the Guardians and Wards Act, 1890	It deprived the natural guardian i.e. the father having the right of custody of minor on the pretext and premise of welfare of minor in a vacuum. According to teachings of Islam, father enjoys an absolute right to appoint a nurse for breast feeding. (No.8/I 2020)
19	sections 7, 17 and 27 of Guardian and Wards Act 1890	The practice, which has the force of law, whereby father is accepted as a natural guardian of a minor and mother is presumed to own the right of custody alone of a minor child up to a particular age fixed according to sex of the minor be amended. (No.3/L 2008)
20	appointment of women as judges or magistrates	Women should not be appointed as judges because during the period of the Holy Prophet and his rightful companions the duties of Qazi were never entrusted to females. Furthermore, they do not observe Pardah and evidence of women is half than man. (No.4/K 2000)
21	Section 3 of the Majority Act IX of 1875	To provide maintenance to son till the age of 18 years despite the fact that son might have much earlier attained puberty is a source of botheration for the father. (No.6/I 2004)
22	Section 10(3) of the West Pakistan Family Courts Act/Family act Punjab, 1964	Process of reconciliation during the court proceedings is the discretion of judge. It should be made mandatory. (No.10/I 2021)
23	Section 3 (1), (2), (3) and Section 4 of the Family Courts Act, 1964	A woman cannot act as a Qazi/Judge or Munsif and is, therefore, not competent to decide matters between the litigants in respect of family cases and vice-versa. (No.1/I 2010)

24	sub-section' (4), to section 10 of the Family Court Act, 1964	The exercise of jurisdiction by a competent Qazi to decree the case of Khula agitated before him by a wife after reconciliation fails is against Islam. (No.3/L 2005)
25	Section 10 of Family Courts Act, 1964	Issues about Khulah. (No.10/I 2021)
26	Sections 4, 5 and 6 of the Child Marriage Restraint Act, 1929	Fixing age for marriage is against Islam. (No.10/I 2020)
27	Pakistan Arms Ordinance No.XX of 1965 and Arms Rules 1924	Every citizen is entitled to protect his life and property and naturally he has to keep any kind of weapon for that purpose. Levying of annual fees is against Islam. (No.1/I 2003)
28	section 7 of the Anti Terrorism Act, 1997	Section 7 does not recognize right of waiver or afu to be exercised by walies or the deceased and compounding the offence as a whole. (No.1/I 2006)
29	Bonded Labour System (Abolition) Act, 1992	Definitions of the 'bonded debt', 'Bonded labour' bonded labourer' and 'bonded labour system' are against Islam. (No.8/L 1993)
30	Explanation (4) below clause (d) of Rule 2 of the Federal Services Medical Attendance Rules, 1990	A government servant who has more than one wife, the wife nominated by him is entitled to medical attendance and treatment and not the other wife or wives. It is against Islam. (No.52/I 1990)
31	section 15 of the Payment of Wages Act (IV) of 1936 and The Payment of Wages {Federal Railways) Rules, 1938	The wages of a worker is a right which the legislature cannot deny and mere lapse of time will not extinguish it. Petitioner prayed that fixing of time is repugnant to Islam. (No.12/I 1988)
32	Sub section 3 and (6) of section 18 of the Agricultural Pesticides Ordinance, 1971 as amended in 1997	If containers sealed by registered companies found sub-standard or adulterated by the pesticide laboratory then retailer is not liable. (No.1/K 2000)
33	Section 5 and 20-AThe Pakistan Rangers (Amendment) Ordinance,	Section 5 did not provide an opportunity of hearing to the aggrieved party. 20-A deals with

	1985 (Ordinance No.XIII of 1985)	compensation to party for damaged house. (No.120 1987)
34	Pakistan Army Regulation (Rule) 133 Clause „q“, „r“ and „u“ and the parallel Rules of the Pakistan Navy and the Pakistan Air Force	Army officer, holding temporary rank, is taken into custody or is suspended from duty on a charge for an offence of which he is afterwards convicted have to vacate his appointment and lose rank as well. It is against Islam. (No.4/I 2008)

Conclusion

The results of the current study highlighted the role played by the FSC to check the conformity of laws with Islamic injunctions. A complete list of laws, provisions of laws, rules and regulations, policies etc which have been challenged in the Federal Shariat Court for the last forty-three years is provided by the current study. With respect to the role played by citizens and governments, it is found that Federal and Provincial Governments have not taken interest for seeking advice of the court for checking the conformity of existing laws with the injunctions of Islam. Ordinary citizens on their own will or affected by the laws have challenged majority of laws in FSC. Delegated legislation such as policies, rules and regulations have also been challenged in the court.

The current research has developed an account for laws or provisions of laws which have been declared repugnant to Islam by the court. The findings show a complete account of the Islamic principles presented by petitioners in the court. Future research may be conducted to check what decisions of FSC have been challenged in the Shariat Appellate Bench of Supreme Court of Pakistan. In how many cases Supreme Court of Pakistan has reversed the decision of FSC. It is also desired to examine the role of legislature for amending the laws according to the decisions of

the FSC or shariat appellant bench. The current study did not discuss the merits and demerits of the judgments and future research might be conducted in this regard. The results may be helpful for legal community and legislative bodies to approve laws by considering the principles or injunctions of Islam explored in the current study.

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