

## Scenario 19

### **Rise of Pan-Islamism in Pakistan:**

During the Pakistan movement, the role of religious leaders, normally called as '*Ulema*', remained dormant. Some historians are of the view that they had opposed the ideology of Pakistan on certain occasions. Maulana Hussain Ahmed Madni of *Jamiat Ulema E Hind* had openly criticized Mr Jinnah and remained in opposition till the Independence Day (14<sup>th</sup> August 1947). Thus the emergence of Pakistan on the world map left these religious leaders wounded and crying. While leaving their followers in the lurch in post-independence India, the self-styled preachers of the 'Law of Islam' fled to 'Islamize' Pakistan.

Soon after independence, when the administration of the new state was coping with huge problems arising out of partition of the subcontinent, the *Ulema* began moving religious passions of the people to get the "Islamic Constitution" passed by the Constituent Assembly. The cry of 'Islam in danger' remained a powerful weapon in all times. Every contemporary politician was aware of the risk that any adventurous policy would be greeted with the words like 'Islam betrayed' and it happened so many times in the history of Pakistan.

Incidentally, it was Zulfikar Ali Bhutto who fell as first prey in the hands of *Ulema*. He went too far in pleasing them during 1977 uproar against so called 'manoeuvred' national elections. It is a hard fact that to reach a compromise he had to be a torch bearer of the *Islamization* process in the country. This was the time when he declared *Ahmadis* as non-Muslims in a constitutional mend.

To Islamize the society, he declared Friday as holiday instead of Sunday, and introduced the subjects of *Islamiyat* as compulsory subject for the students at all levels. He invited the Imam of *Ka'ba* to Pakistan to lead the prayers at certain places. Drinking of wine or alcoholic drink and selling of liquor by Muslims was declared banned in Pakistan in early 1977 by the then PM Z A Bhutto and punishments of imprisonment and fines were provided in that law.

However, these initiatives could not save him from the ultimate disaster and he became the victim of fate when almost all the religious parties joined hands in launching a campaign of slogans like 'Hang Bhutto' and ultimately he was hanged.

When Z A Bhutto was waiting his death appeal in the Supreme Court of Pakistan, Gen Ziaul Haq on 2<sup>nd</sup> December 1978 delivered a nationwide address on the first day of Islamic Hijra calendar vowing to enforce *Nizam-e-Mustafa* (Islamic System) for Pakistan accusing most politicians of exploiting the name of Islam. Afterwards, the history witnessed that he himself was the champion of such exploiters.

Very few people know that when Gen Ziaul Haq promulgated his martial law on 5<sup>th</sup> July 1977, soon after he called the top *Ulema* especially *Maulana Tufail of Jama'at e Islami* (JI) and told them that he wanted to bring Islamic way of governance. ***'I'm here for three months or so; bring the outline of Islamic system under which we should rule Pakistan.'*** Gen Ziaul Haq had urged rather pressed the scholars but any of them did not have ready home work nor had they concrete suggestions in that regard.

That was a mix lot of politicians who had raised roaring voices against Z A Bhutto just a month back and resorted to create a law & order situation in the whole country, by offering group arrests in all cities on daily basis, as per instruction of their joint command of Pakistan National Alliance (PNA).

Their aimed politics started against Bhutto when they demanded ban on *Ahmedia* sect. Forgetting Qaid e Azam's manifesto that all the religions and sects, irrespective of their way of worship, origin or language, Pakistan belongs to all as equal citizens; Bhutto accepted PNA's demand and got them declared 'non Muslims' under a Parliamentary act.

Then the PNA leaders demanded ban on manufacturing, import, selling and consuming alcohol. Declaring manufacturing of spirits and many organic chemicals in distilleries of sugar industry illegal for export though caused a great recurring loss to the Pakistan's economy but PM Bhutto accepted their demands and termed alcohol a banned trade.

What happened at last? The PNA pushed the *Ulemas* ahead to make calls for Islamic way of governance; but later developments told that the PNA was using them to oust Mr Bhutto not anything less.

This exercise had earlier been carried out in 1963, when the Governor West Pakistan (now the whole Pakistan) Nawab Amir Mohammad Khan had once asked his Advocate General Khalid Ishaque, a veteran lawyer from JI, to bring the Islamic System Code so that it could be implemented in West Pakistan at least. Khalid Ishaque went to Karachi next day, called all the Islamic scholars and asked them to give him a manuscript at the minimum. For full one year they could not bring an Islamic Code of governance, due to their own sectarian differences perhaps, so the *Ulemas* kept on differing and fighting each other with no progress.

In 1964, Khalid Ishaque gathered the prominent known Islamic lawyers at Lahore, most of them having tilt towards & affiliations with JI, and asked them to bring an Islamic Code for government telling them that the *Ulemas* had not come up with any suggestion. Astonishingly, they discussed many things mutually but ultimately a loud announcement was made in media on behalf of JI that:

*'At the moment we do not feel that Islamic Code is necessary. When JI would get power to rule the country then the consolidated Islamic code would also be framed for the people.'*

The matter ended with Khalid Ishaque's resignation as the Advocate General of West Pakistan.

Gen Ziaul Haq depended much on Council of Islamic Ideology (CII) for his plans regarding implementation of the Islamic laws but the Council had an inbuilt defect in it. The members of CII were to be selected from all sects of Islam so when ever they gathered to discuss an issue, every representative had forwarded their own peculiar viewpoint according to his own school of thought or *fiqah*. The result was that none of the law could be truly consented.

Gen Ziaul Haq, in ending 1977 announced that no law would go against the Qura'an & Sunnah as a broad and workable guideline and authorised the superior Courts to take care of the Islamic injunctions while taking decisions. To implement that policy in practice, certain amendments in the then existing laws were needed. Heavy homework was done in that regard but ultimately had to be shelved because some stalwarts, very close companions of Gen Ziaul Haq like Ghulam Ishaque Khan, J Afzal Cheema Chairman CII and A K Brohi advocate, had created enormous hindrances and blockades.

Gen Ziaul Haq had taken start by announcing the establishment of *Shariat* Courts remarking that:

*'Every citizen will have the right to present any law enforced by the government before the Sharia Bench and obtain its verdict whether the law is wholly or partly Islamic or un-Islamic.'*

But at the same time he had signed an overriding clause:

*'.....(Any) law 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, any fiscal law, or any law relating to the collection of taxes and fees, state levies or insurance practice and procedure [in vogue in Pakistan].'*

It meant that all important laws which affect each and every individual directly remained outside the purview of the *Sharia* Benches. The whole game was to befool the people.

A referendum was held by Gen Ziaul Haq in 1984, with a reported 98.5% voting in his favour because it contained a very simple question for the people to answer: **'You like Islamic System of government in Pakistan. Answer yes or no.'**

If the answer is yes: ----- Gen Ziaul Haq will be the President of Pakistan for next five years.

Referring to Haroon Rashid's column in the daily **'Jang International' of 27<sup>th</sup> August 2011:**

*"Religious fundamentalism and extreme secularism both have spoiled Pakistan and Qaid e Azam had not approved any of them. Most people of Indo Pakistan are suffering with inferiority complexes thus they love sectarianism based on decades old orthodox ideas and interpretations. Our Qaid e Azam had declared Pakistan as modern Islamic state; neither mullaism is required here nor the secularism.*

*Simple Islam based on Qura'an and Sunnah; not on rituals based on old Arab territorial history. Some 'maulvis' had labelled him [Qaid e Azam M A Jinnah] as 'Kafir e Azam' in those days but the Qaid was a better Muslim in fact; truthful and straight."*

At present Malaysia, Indonesia, Dubai, United Arab Emirates, Morocco, Turkey, Iran etc are Islamic but booming.

To cut short, Gen Ziaul Haq fully utilized the process of *Islamization* to achieve his political ends and sought legitimacy by dramatizing implementation of Islam as an ideology of Pakistan. Gen Ziaul Haq, with the help of state institutions, weakened the progressive forces and in February 1979 he introduced the *Hudood, Qisas & Diyat* in the legal system of the country. The Federal Shariat Court was established through an amendment (Article 203 D) in the constitution with the powers to examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam.

Chief Justice Sh Aftab Hussain of the Federal Shariat Court, in an interview published in the **daily 'Jang' of 25<sup>th</sup> July 1992**, commented over the scenario then prevailing in Pakistan:

*'Qaid e Azam made Pakistan by eliminating sectarianism in Indian Muslims but Gen Ziaul Haq revived the same evils again when he came in power. Before Gen Ziaul Haq's rule there was complete harmony amongst Shias, Sunnis and other sects in Pakistan at all levels. Gen Ziaul Haq first divided the nation into Shias & Sunnis and then encouraged 'Brelvi and Deobandi sects' to expand their influences even through government institutions. He developed Mullaism in the country all around.*

*In Constitutions of 1956 & 1973 it was decided that no law would be framed in the country against Qura'an & Sunnah and that was all an Islamic state needed. In Gen Zia's era negative legislation started cropping up. On Zakat issue, the Jafferia sect went apart which was opposed by making 'Sipah e Sohaba'. Melad was previously held in every home but when it was brought to mosques it officially created another sect [Ahle Hadith].*

*In nut shell Gen Ziaul Haq believed in ad-hocism. He did every thing and only up to that extent which suited to keep his military rule and government intact.'*

The Council of Islamic Ideology, another constitutional body then framed, had restricted itself to a negative role; to identify what is 'repugnant' to Islam without spelling out alternative which should be 'in conformity' with Islam. *The Islamization process was used as a lethal political weapon. Wrong interpretation of Islam had resulted in the rise of fundamentalism, obscurantism and retrogression.'* **A S Ghazali** noted it with concern in his book released on internet.

Later, the interpretation of the *Shariah* Act of 1991 was challenged in the Federal Shariat Court (FSC). Sections 3(2) and 19 of the Act, which safeguarded the existing political system and the country's financial obligations (including interest payments) were declared un-Islamic by the FSC because of the *riba* (interest) involved. In its ruling of January 1992, [*the FSC ruling was actually passed in November 1991, but the 50-page document giving court's opinion was circulated to bankers and government officials in January 1992*] the Court held that rules and regulations relating to interest were repugnant to the *Qura'an* and *Sunnah* and should be brought in accordance with Islam.

This ruling was embarrassing for Nawaz Sharif, the originator's own government, while on one hand they wanted to satisfy the traditionalists; on the other hand the ruling was not in accordance with the government's international obligations. A private appeal was thus lodged with the Supreme Court against the FSC decision but with no cogent outcome.

This issue of interest-free economy continued hounding PML in their 1<sup>st</sup> term as their government had tried to avoid this sensitive issue through different means but could not fully succeed except some flip-flap changes in nomenclature like replacing 'interest' with 'profit-loss account' etc whereas the working of financial institutions and banks practically remained the same. During the second term, which began in February 1997, Nawaz Sharif's majority government was still facing continuous pressure to introduce an Islamic system in the country from powerful religious groups like the *Jamaat-e-Islami*. To satisfy them and for his own agonistic desire to become *Ameer ul Momineen*, he moved the Supreme Court in July 1997 for ruling and guidance on 'interest free' banking.

This appeal filed by the PML Government of Nawaz Sharif had again raised several fundamental questions about introduction of an interest free economy mentioning Pakistan's obligation towards other countries and international financial institutions which had given loans worth billions of dollars to the country on interest. The appeal had also argued that the change in system would question the validity of the banking system in the country and sought a time frame of at least two years to suggest and implement the needful in this regard.

Ultimately, **on 19<sup>th</sup> April 1998** the Pakistan government had to withdraw that appeal from the country's apex court against FSC's decision which had declared '*riba*' (interest) un-Islamic and directed the authorities to immediately introduce an interest-free economy.

In an arena of parallel judicial systems then prevailing in Pakistan the superior courts could not help women class which became the special victim of militarized laws and its effects. The *Zina* Ordinances, which went particularly discriminatory against women, continued to be the law despite all the demands from women's organization. In 1992, there was an interesting case in the Supreme Court where the court had declared Section 7 of the said ordinance to be against Islam.

### ***Military Courts of 1997-99:***

In 2<sup>nd</sup> term of PML's governance in 1997-99, PML was in a coalition government in Sindh with the MQM but when PML developed differences with the MQM and the MQM began looking to form a government with the help of the opposition Pakistan People's Party (PPP), the PM dismissed the government. The law and order had already broken down in Sindh province; the Prime Minister Nawaz Sharif on 30<sup>th</sup> October 1998 dismissed the elected provincial government and had placed the province under Governor Rule. Under the Pakistan Armed Forces (Acting in Aid of the Civil Powers) Ordinance 1998, promulgated on 20<sup>th</sup> November 1998, Article 245 of the Constitution of Pakistan was invoked and the army called in to assist the police in Karachi.

Earlier on 10<sup>th</sup> November 1998, the federal government had also suspended the powers of Speaker and Deputy Speaker of the Sindh assembly after they tried to get convene the session to discuss a no-confidence motion against the then suspended Sindh Chief Minister, Liaqat Jatoi of PML.

Karachi had faced its worst social and political crisis in 15 years those days, the history witnessed. Sindhi and Mahajir communities had lived peacefully together until 1983, when Gen Ziaul Haq and MQM's Altaf Hussain joined hands against the movement for democracy. The banned political parties at that time formed the Movement for Restoring Democracy (MRD). [*In 1998 alone, more than 600 people had lost their lives in ethnic clashes, terrorist attacks and fights between MQM activists and police.*]

In the back drop of that serious law and order situation, Nawaz Sharif's government formed special military courts, supposedly for speedy trials to deal with the terrorist activities in Karachi. The courts made judgments in one or two weeks and the government had already carried out two executions from its decisions. On 4<sup>th</sup> January 1999, the PM escaped an attempt on his life. [***Referring to The Guardian UK of 17<sup>th</sup> May 2002, Riaz Basra of LeJ was suspected of involvement in a plot to assassinate Nawaz Sharif, the then prime minister. A bridge near Mr Sharif's home was blown up minutes before his motorcade was due to cross.***] After the attack, the government decided to establish military courts in all four provinces of Pakistan.

The Military courts did not allow defendants to present a full defence in the restricted time available for the trial and seriously limited the right to appeal. These courts were subsequently abolished to prevent further miscarriages of justice. Two of the people sentenced to death by the military courts were executed till that moment. The executions were carried out despite the fact that petitions challenging the constitutionality of the military courts were pending in the Sindh High Court and in the Supreme Court of Pakistan.

Challenging the constitutionality of the summary military courts, lawyers in Pakistan pointed out that in 1977 a full bench of the Lahore High Court held that military courts could not be set up under Article 245 of the Constitution to try ordinary civilians. Other judgments of the higher judiciary in Pakistan had laid down that criminal trials should only be conducted by properly trained judicial officers, independent of the executive and under the judicial supervision of the higher judiciary.

The setting up of summary military tribunals was considered against the spirit of the Constitution of Pakistan which in Article 4 states that: '*To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every person*'. In Article 9: '*No person shall be deprived of life and liberty, save in accordance with law*'. Trial by special tribunals also contravenes 5<sup>th</sup> Principle of the United Nations Basic Principles on the Independence of the Judiciary [as endorsed in 1985]. It states: '*Everyone has the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.*'

One Mohammad Saleem was sentenced to death on 19th December 1998 along with three adult men on charges of murdering three police officers. Their trial had lasted 12 days. He was acquitted for want of evidence and ordered to be released while the death sentence of the three other men was commuted to life imprisonment.

UN Convention on the Rights of the Child clearly forbids the death penalty for anyone who is under 18 at the time of committing the offence. 13 years old Saleem and at least 10 other people were reportedly sentenced to death on charges of murder, rape and kidnapping after summary trials by military courts in early December 1998. A report of amnesty International dated 7th January 1999 described about Saleem's acquittal, 20 days after he was sentenced to death by a military court.