



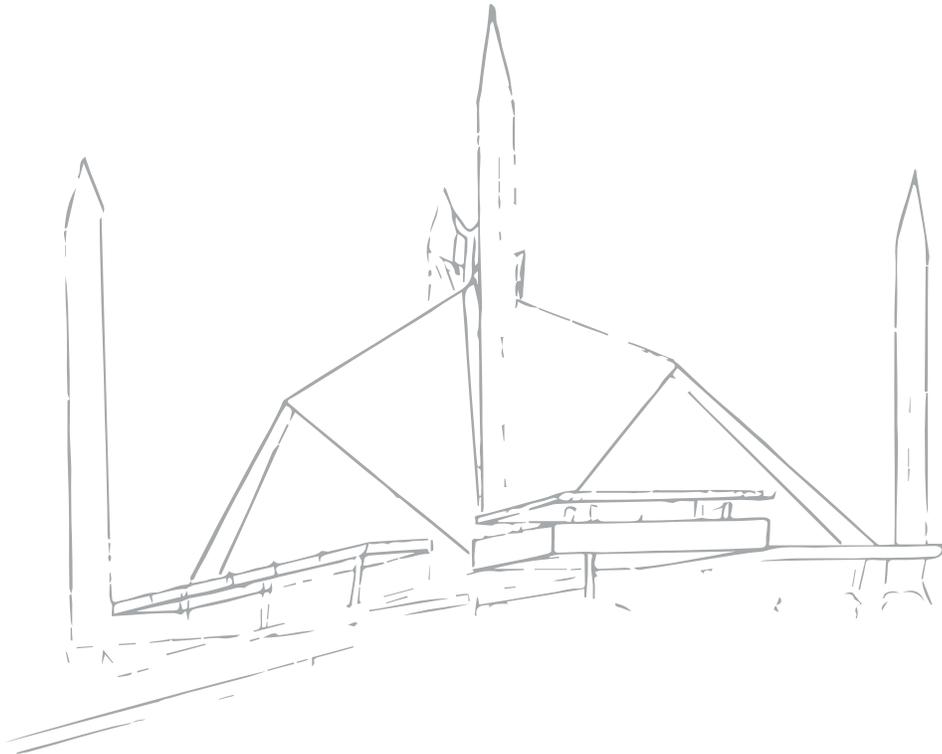
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## Islamization of Laws: The Role of media; from an impediment to facilitator

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### Abstract

*Islam is one the fastest growing religion today but at the same time most criticized from different aspects of its basic tenets and code. To develop a system based on Islamic principles or governed by Shariah, many efforts are made by different Muslim countries including Pakistan. How far the success they achieved is a question of fact. In case of Pakistan the reformation of society on the tenets of Islam has consumed successive generations of Pakistani Muslims ever since the onset of Pakistan movement that till this day continues. Islamization of laws in isolation cannot target the society at large or cannot be a comprehensive approach unless other factors are also made part of this process in which society needs to be educated enough not only in legal education but also basic Islamic education. To get the intended results for (social reform) reform of education whereby compulsory Islamic and basic legal education must be part of the policy along with the focus on the ways and means or methodology is a very crucial aspect in this process.*

### 1. Concept of Islamisation

The term Islamization has been defined by Sayed Abu al Mududi in his seminal work "Talimat" as "critical analysis of the western humanities and sciences to recast them in accordance with the teaching of Islam". Syed Maududi was writing in reference to knowledge, however, his idea can be equally applicable to any facet of life where adherence to Islam is a motivation. Syed Muhammad al Naquib al Attas in his book Islam and Secularism explained Islamisation as "liberation from clutches of westernization and secularization."<sup>1</sup>

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<sup>1</sup> Islamization of knowledge .chapter 1. p6 available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/55470/7/07\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/55470/7/07_chapter%201.pdf) Last accessed on 28-12-18

A very comprehensive explanation of the term is given by Professor Omer Hassan Kasule as *“It is a process of recasting the corpus of human knowledge to conform to the basic tenets of aqidat al tauhid. The process does not call for re invention of the wheel of knowledge but calls for reform, correction, and re orientation. It is evolutionary and not revolutionary. It is corrective and reformative.”*<sup>2</sup>

Hassan Dzilo argues that Islamisation cannot be treated as singular action but is a collection of diverse actions and approaches that are required for a variety of ideas to take root ranging a wide variety of subjects of Islamic epistemology, ethics, and methodology, cultural or traditional aspects depending on the relevant situation or framework.<sup>3</sup> While A.C.S Peacock goes further to state that *“Islamisation is a phenomena involving conversion of cultural and social aspect to the tenets and ideology Islam”*.<sup>4</sup>

The Islamisation when used in reference to legal regimes would therefore require similar transition to the Islamic ideology. In societies such as ours where a colonial history has largely colored the legal system a western hue, therefore Islamisation of Pakistan’s legal system would essentially entail shearing it off the common law practices and reintroducing Islamic Legal principles. Laws play a critical role in propelling the society and culture towards this conversion. However, bringing about a change in existing laws with an aim to make them compatible with tenets of Islam cannot be taken independently or in isolation.

### 1.1. Historical perspective

Islamization of laws in Pakistan is not a recent phenomenon. The concerns on the issue can be traced back to creation of Pakistan and even before independence<sup>5</sup>. Since the very inception of

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<sup>2</sup> Omer Hassan Kasule Concept of Islamization, *mafhuumislamiyyatalmaarifat*. Available at <http://omarkasule.tripod.com/id40.html>

<sup>3</sup> HasanDazilo, Concept of “Islamization of knowledge” and its philosophical implication. *Islam and Christian -Muslim relation*. Taylor and Francis online. 22 Jun 2012, Volume 23 .2012 , 247-256 . available at <https://www.tandfonline.com/doi/abs/10.1080/09596410.2012.676779>

<sup>4</sup> A.C.S Peacock. *Islamization.A comparative perspective from history*. Abstract. Edinburg university press.

<sup>5</sup> The controversy between modernists and fundamentalist regarding English educational systems considered a danger to Islam and Muslim life and development of madrasa system , establishment of Deoband in 1867 can be amongst the relevant issues. In the history of Pakistan the

Pakistan (a Muslim homeland) the proper role of religion in the political system remained controversial.<sup>6</sup> The prolonged debate between<sup>7</sup>Islamic activists, committed to growth and promotion of Islamic law and practices in various sphere of national life on one side and the Islamic modernists who opted or preferred for the restrictive role of religion in state affairs on the other and in some cases advocated advancements based on secular lines of the west.<sup>8</sup>

The question as to Islamic or modern national state and the idea of Islamic ideology remained open to all sorts of different interpretations often resulting in disagreements. Despite these disagreements the common point remained that Islam must play a major and basic role in the life of Pakistan whatever approach maybe followed<sup>9</sup> as the idea of its origin and rationale of its pre partition India, must give significance and purpose to Muslim people.<sup>10</sup> Keeping the constitutional history in view, from the very first constitution that took nine years to be formulated was consumed by the debate on the Islamic provisions was one of the major contributor in the delay<sup>11</sup>. Objective resolution was passed by the first constituent assembly in 1949 which was incorporated in the first constitution of 1956, as basic directive principles for a new state containing

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role of sir Sayyid Ahmad Khan, AbulKalamAzad ,AllamaIqbal, MaulanaMaududi and many others can be part of the same context.

<sup>6</sup> Erwin I.J. Rosenthal. Islam in the Modern National state. Islamic Republic of Pakistan. Section 1, Constitutional issues 181-286 Cambridge University Press 1965. Online available 2014.

<sup>7</sup> Some other controversial terms like “fundamentalists or secularist”, “modernists and traditionalists” extremists and like are used by writers in different phases, contexts/works.

<sup>8</sup> Charles H. Kennedy . Repugnancy to Islam: Who Decides? Islam and Legal Reform in Pakistan. The International and Comparative Law Quarterly, Vol. 41, No. 4 (Oct., 1992), pp. 769-787. Cambridge University Press on behalf of the British Institute of International and Comparative Law .

Stable URL: <http://www.jstor.org/stable/761030>.

<sup>9</sup> An Islamic or Muslim state , a state strictly based on traditional Islamic system or modern state based on contemporary laws, adapted from western codes or a state partially western and partially Islamic.

<sup>10</sup> Rosenthal. Islam in the Modern National state. Islamic Republic of Pakistan. 203-4

<sup>11</sup> Kennedy . Repugnancy to Islam: Who Decides? Islam and Legal Reform in Pakistan. 769

*The Government of Pakistan will be a state ... Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed; Wherein the Muslims of Pakistan shall be enabled individually and collectively to order their lives in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah....*

Since then these basic provisions remain nearly unchanged in the later constitutional history of Pakistan. However, implementation remained a problem. Recommendations of Basic Principles Committee then established<sup>12</sup> for the purpose were not fully incorporated in the first constitution rather a very vague and weak<sup>13</sup> version of recommendations was included in the first constitution of 1956<sup>14</sup> that brought noticeable change. A short lived constitution was abrogated in 1958 resulted from a military coup and martial law by General Ayub Khan changed the scene.<sup>15</sup> Another episode of status of Islam in the state continues as prior to adoption of The 2<sup>nd</sup> constitution of 1962 favored the modernist version of Islam.<sup>16</sup> The outcome of the third constitution in 1973 was largely similar with modernists' version of Islam taking the driving seat disappointing the earlier efforts of the Islamic activists. However, the debate continued on the sidelines and conservative elements kept up their efforts which became refined and wide-ranging by early 1980s.<sup>17</sup> Political scenario changed dramatically that led to the ousting of Prime Minister Zulfikar Ali Bhutto in 1977 on the basis that his administration had forsaken Islam, by the coalition of opposition followed by a military coup

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<sup>12</sup>GOP, Report of the Basic Principles Committee (1952), Ch.3, nos.3-8., GOP, Report of the Basic Principles Committee as Adopted on the 21st September 1954 (1954).

<sup>13</sup> The Constitution of the Islamic Republic of Pakistan (1956), Arts.25, 28, 29 and 198.

<sup>14</sup>Rosenthal. Islam in the Modern National state. Islamic Republic of Pakistan.209-35

<sup>15</sup>Kennedy . Repugnancy to Islam: Who Decides? Islam and Legal Reform in Pakistan.770

<sup>16</sup> ibid

<sup>17</sup> They advocated for the introduction of hudood laws in criminal laws, revision of criminal laws regarding bodily hurt. They also demanded for changes in procedural laws on admissibility of evidence and oath taking , and restructuring of Muslim Personal laws inter alia procedure of divorce ,inheritance, maintenance and dower,. Furthermore the rules of child custody and laws on preemption. The elimination of Riba was one of major area of economic aspect of state system including banking and trade especially international trade.

led General Zia-ul-Haq to power in July imposing martial law again in the state.<sup>18</sup> With Zia in power, the regime demonstrated far more flexibility to the demands of Islamic activists because of his personal partiality. However Zia treaded carefully and choose a path of gradual policy changes that aimed at "Islamisation" of Pakistan's polity.<sup>19</sup> Amongst the core reforms was, the Federal Shariat Court<sup>20</sup> (1980-85) Zia's policy of slow graduation to Islam led to its complicated jurisdiction. It was granted jurisdiction in cases.

*"i) Appellate and revisional jurisdiction over convictions or acquittals from district courts in cases of newly promulgated Islamic criminal laws (hudood);<sup>21</sup>*

*(2) Exclusive jurisdiction to hear "Shariat petitions" brought by citizens of Pakistan or the federal or provincial governments challenging "any law or provision of law" as repugnant to the Holy Quran and Sunnah;*

*(3) Exclusive jurisdiction to examine "any law or provision of law" for repugnancy to the Holy Quran and Sunnah."<sup>22</sup>*

The appeals from the judgments were made subject to appeal to the Shariat Appellate Bench of Supreme Court<sup>23</sup> and more importantly the element of slow and steady Islamisation was taken subject to art 203 B which restricted the jurisdiction of FSC , provided

*"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 ten 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."*

These exclusions from FSC's jurisdiction and interpretation by superior courts made it toothless for many important areas which needed much instant legal reform like judicial review of

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<sup>18</sup>Kennedy . Repugnancy to Islam: Who Decides? Islam and Legal Reform in Pakistan.771

<sup>19</sup>Ibid.772

<sup>20</sup>1985 Constitution, Arts.203-A to 203-J.

<sup>21</sup> Art. 203dd

<sup>22</sup> 1985 Constitution, Art.203-D(1).

<sup>23</sup> Art. 203F

cases on Muslim family Law Ordinance 1961,<sup>24</sup> exclusion of Fiscal laws excluded from the court's jurisdiction all the cases or issue related to financial interest or Riba.<sup>25</sup> This slow and steady approach of Zia was coupled with the higher judiciary's reluctance to take an active role in interpretation of laws vis-a-vis Islam thwarted desires of rapid conversion of the system. However, after restoration of democracy and constitution, the future of Islamisation found new impetus when Article 2 A was introduced in the 1973 constitution with provision that "*Muslims shall be enabled to order their lives in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah*". Giving a room to the courts to assume a significant role to play in the process of islamization.<sup>26</sup> Since 1985 Superior judiciary through a series of cases have started evaluating laws for their repugnancy to Islam. Some argue that the Judiciary has become "*largely through default the primary locus of legislative authority in the State*."<sup>27</sup>

## 2. What does Media mean?

Media is a Late Latin term which has developed over the years to signify numerous forms of communication and speech. It includes every broadcasting and narrow casting like newspapers, magazines ,TV radio, telephone, fax ,billboards and internet, face book whatsapp, fax, instagram, twitter ,YouTube and many more, all means of mass communication. It also includes data storage, and data material (depending on recording methods ) diskettes

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<sup>24</sup>Federation of Pakistan v. Mst. Farishta PLD 1981 Sc 120.n Al-Haj Sheikh v. Mahmood Haroon, Minister of Religious Affairs P.L.D. 1981 SC 334; , Saeedullah Kazmi v. GOP P.L.D. 1981 SC 627.

<sup>25</sup> See e.g. Essa E.H. Jafar v. Federation of Pakistan P.L.D. 1982 FSC 212; Md. Sadiq Khan v. FOP P.L.D. 1983 FSC 43; Ibrahim Bhai v. Government of Pakistan Shariat Petition ("SP") 6/K/83; and Sarfaraz Hussain v. Federation of Pakistan SP 1/K/82. These decisions were reversed by the FSC in Oct. 1991 by Mahmood-ur-Rehman Faisal v. Secretary, Ministry of Law SP 30/1/90. The latter case ruled that riba in all of its manifestations was "repugnant to Islam" and ordered revisions in 20 relevant federal laws. The FSC claimed jurisdiction to decide the case on merits as Art.203-B's exclusion of consideration of financial matters for "ten years" had expired on 1 July 1990.

<sup>26</sup>The constitution of Pakistan Art. 2A

<sup>27</sup>Kennedy . Repugnancy to Islam: Who Decides? Islam and Legal Reform in Pakistan.787.

,tapes , disks , microfiche ,CDs and DVDs.<sup>28</sup> Almost all other ways and means used for education, information, entertainment, Business advertising or anything one can think of , can be spread through. It include all kinds of broad or narrow casting ranging from television radio, internet<sup>29</sup> Internet-based media can be simply electronic versions of the print media. The so called new media has made the very crucial social changes all over the globe and media related sites such as Twitter and Face book, for example, have played a significant role by social networking as sources of news and information in even third world countries. The most significant example is the recent disturbance in the Arab world.<sup>30</sup>

### 3. Role and functions of Media

Just as there is no monolithic 'media' unit, so is the case with the role that it plays. Indeed, the role of a particular part of the media is very much determined by a series of factors relating to the nature of the media itself, in particular the substance of the media (news or current affairs versus light entertainment) and the means used (print, broadcasting or internet based). Thus the media plays a number of different roles in society, including being informative, educational or entertaining.<sup>31</sup> Media in its different shapes engage a very high portion of our daily time special leisure time, on average 25hours a week only on TV only besides other social media activities like whatsapp, instagram, newspaper magazine and cinemas. Even in children similar kinds of activities are recorded whereby friends and family and schools were considered as most important socializing influence. The function generally media play whether it be a social cultural political or religious or economical aspect is very significant. Mass and social media now is one of the basic sources of information for individual and society at the same time. Media also play a

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<sup>28</sup> "Media Definition", <http://www.businessdictionary.com/definition/media.html>. Last Accessed 5-07- 2016.

<sup>29</sup> V.Vijayalakshmi, K.Priyanka, &V.Swetha, Impact of media on society: a sociological perspective. *Bodhi International Journal of Research in Humanities, Arts and Science* Vol.4 Special Issue 1 January 2018 ISSN: 2456-5571, 69-72

<sup>30</sup> The role of Media and Press freedoms in society. *Media law handbook for southern Africa*, 1(2012) 11-12, Available at <http://www.kas.de/wf/doc/4212-1442-2-30.pdf>. Last Accessed 5th August,2016

<sup>31</sup> Ibid

significant role in political and democratic processes of a country .By educating masses it can help in democratic functions of state by informing public policies and their outcomes, making people aware. Whether media paying a constructive role or destructive, it has a huge effects on human life which needs a special attention.<sup>32</sup>

### 3.1. Effects/Impact of Social/ Mass Media

Human behavior and thinking leading to habits and attitude gets affected by multiple things and media in this age is one of the tools for such an action causing a complex social change. Media has two sides positive and at the same side negative on the social lives thereby changing social behaviors or approaches from pre-birth to after death. Sociological change can be affected by exposure to media leading to alteration of social behaviors and beliefs as different theories on mass communication media highlight and there are a number of theories that provide great insight to these changing powers of the media such as the Agenda setting theory, the cultivation theory, social learning theory, play theory or uses and gratification theory.<sup>33</sup>

Mass Media in Pakistan has shown great proliferation in the last one and half decade.<sup>34</sup> The TV news is the most effective tool of information today especially in Pakistan. The literacy rate is very low in Pakistan and print and electronic media help people to understand the situation often by criticizing the governments activities of violating the rules or the Constitution or of being unaccountable to public for the their polices causing poverty , unemployment, law and order situation and role of opposition.<sup>35</sup>

From economics side attached to media has also contributed towards its development, advertisement / commercials brought

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<sup>32</sup> V.Vijayalakshmi,et'al., Impacts Of Media On Society: A Sociological Perspective. 69-72

<sup>33</sup>Ibid

<sup>34</sup> M. Rehan Abbas Chaudhry, Role of Media, <http://cssexam2013.blogspot.com/2013/01/essay-role-of-media.html>. Last Accessed on 25th November 2015.

<sup>35</sup> Amir Jahangir, Maria Gulraize Khan and Qurut-ul-AinHussain, "Situational Analysis Of Right to Information in the communication & Information Sector in Pakistan",10. Available at [http://unesco.org.pk/ci/documents/situationanalysis/Situational\\_Analysis\\_of\\_RTI\\_in\\_Pakistan.pdf](http://unesco.org.pk/ci/documents/situationanalysis/Situational_Analysis_of_RTI_in_Pakistan.pdf). Last Accessed 2nd December 2015

big money to media market. Furthermore the abundance of media provided employment opportunities. Also the infrastructure, modern state of art studios, equipments, and communication facilities<sup>36</sup> have revolutionize the public alerts. Strengthening Democracy is an outcome of media as for instance the live coverage of parliament proceeding or activities of politicians. Besides the positive above one can also highlight negative impacts of the media which is a major concern for our purpose. The most important of them is moral vacuum and westernization in our family systems. The Indian and western cultures invaded our media and seeping into our society. Our dramas and commercials are depicting purely alien values and causing a huge loss to our religious and national identity. They glamorized everything they depict causing a moral vacuum. Our young or so called modern generation is going away from the reality of our social and religious values. Unethical material, scenes or photographs are shown spreading obscenity and vulgarity leading to national misidentification. Unnecessary open discussion on every/anything is causing great loss to our young generation Family life is at stake as we are giving more time to TV and less to our kids and other socialization, moving towards the isolation which can be disastrous for any society. Projecting in its most rated programs like morning shows, family planning, love story dramas, hi-fi living style are very negatively exaggerated and unrealistically approached which is not based on ground realities. The ability or the power it can use to educate nation has been greatly ignored. People of Pakistan are, not educated enough yet to understand the negative manipulation or twisting facts of media. A famous quote that "lies spoken 100 times become greater than a truth" is summary of our media's approach.<sup>37</sup>

Pakistani media is also blamed for not developing or projecting our national image rather humiliating it, our national language losing its originality and becoming similar Indian language. Even at times we are promoting Indian language and stars in our ads and specially the cartoon corrupting our children mind with Indian cultures and values which is against the preservation of our national or regional languages. Our media policies lack such an ability to promote national image which should be strongly countered rather it is blamed for negative overwhelming negative exaggeration. The breaking news and

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<sup>36</sup> Video conference, fax, electronic data transfer chat mobiles etc.

<sup>37</sup> Amir Jahangir, etal' "Situational Analysis of Right to Information in the communication & Information Sector in Pakistan".

headlines, the race among all the channels sensationalize the issue / accidents/incidents (at times unauthentic or without confirmation and inaccuracy) which not only create confusion by too much of information but demoralize and induce discouragement among our nation.<sup>38</sup>

The term ethics has come lately to mean learning to make rational choices between good and bad, what is morally permissible action and what is not. Further it means distinguishing among choices, all may be morally justifiable, but some more than others. The key word is Rationality. The codes of ethics may vary from society to society or country to country but all the codes have some common articles and clauses to great extent.<sup>39</sup> If laws and ethics are for everyone, then, media is no exception. Ethics are moral rules or guidelines or about how professional communicators should act in circumstances where their action may have negative effects over others and laws do not dictate behavior. A press freedom or independence of media signifies an open society based on the democratic traditions but like all freedoms it should not be used as license to kill rather subject to some limitations pro to the integrity of the state national unity, upholds the national laws of the land and positively contribute towards social welfare subject to moral and religious values.<sup>40</sup> A lot of work needs to be done in media regulation and policies and their strict implementations. It is the strongest and fastest way to create the social political, economic or cultural changes in any society. The significance of media not only as source of information but also a platform of interconnectivity of our human and national affairs cannot be ignored especially in this age of globalization. It can be used as force to bring agreement on vital issues prevalent in our country like security, education (particularly legal and religious) and health. *“Media is a double edged sword. It has its benefit and vices.”*<sup>41</sup>

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<sup>38</sup>Ibid.

<sup>39</sup> Muhammad RiazRaza et al, “Code of Ethics and Laws for Media in Pakistan”. *Asian Journal o social science & Humanities*,2(1) (Feburaray 2013) :306-10. Available at [http://www.ajssh.leena-luna.co.jp/AJSSHPDFs/Vol.2\(1\)/AJSSH2013\(2.1-33\).pdf](http://www.ajssh.leena-luna.co.jp/AJSSHPDFs/Vol.2(1)/AJSSH2013(2.1-33).pdf). Last Accessed 4<sup>th</sup> August,2016.

<sup>40</sup> Ibid.

<sup>41</sup> Abbas Chaudhary, *Role of Media*.

### 3.2. Media and Religion

Religious affiliation affects every step of human life as it is based on beliefs. Islam is one of the fastest growing religions in the world. Due to digital advancement like all other things engulfed religions around the world are also one part that impacted Muslim social life involving religious practices, preaching, issuing fatwa's virtual communities not only in the Muslim majority states but diasporas through platforms like Facebook, Twitter, and YouTube.<sup>42</sup> This led to debate on the impact of social media among the scholars, particularly in the Arab world, on the ground that social media can change the people's religiosity and piety practices. It is argued by some that the impact will be more intense in the conservative or traditional environment as compared to liberal environments. For a few voices<sup>43</sup> condemn the use of digital media on the ground that media propagates lies, trading accusations and can devastate relationships in the offline world of many Muslim families and even consider it incompatible with the Shariah especially Twitter. On the other hand many preachers and scholars admit the affectivity and efficiency of media.<sup>44</sup>

These digital platforms introduced a new pattern to the practice of religious practices including the issuance, dissemination and practice upon the beliefs, emerged as new

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<sup>42</sup>In the Arab world, Facebook is the leading social networking Web site, with 45,194,452 users. Twitter follows with 2,099,706 users. The Arab region is second to the United States when it comes to the number of YouTube daily views. With 90 million video views per day, Saudi Arabia has the world's highest number of YouTube views per Internet user

<sup>43</sup>Abdul Aziz Al Shaikh, Grand Mufti in Saudi Arabia, advances a critical stance toward social media platforms such as Facebook and Twitter

<sup>44</sup>Islam and Social Media. Encyclopedia of social media and politics volume 1. DOI: 10.4135/9781452244723.n299} In book: Encyclopedia of social media and politics, Publisher: SAGE Publication, Editors: In K. Harvey (Ed, Encyclopedia of social media and politics. (Vol, pp. 737-741). January 2014 Thousand Oaks, CA: SAGE Publication, pp.737-741

platform, mosques or madrasas and also evolved phenomena of what some say Facebook fatwas or F fatwas that further leads to commentary and feedback from many sectors including religious authorities, intellectuals secularized or ordinary Muslims or young believers and converts. Social media has now become an important source of information including religious for many in the Muslim world and new media culture emerging causing a great impact on global Muslim consciousness. Not only preachers or scholars but normal ordinary Muslims, when they start twitting or sharing on any such forum, *Quranic* verse or *hadiths* specially during *Ramdhan* which has become a part of Ramadan religious rituals and habits. The occasion of Hajj tweet feeds is now an important practice offering a sense of virtual spirituality for their families. Social media has become an important tool for spread of word of Allah but also safeguarding from the criticism or attack by the opponents, as we have seen in cases of Denmark cartoon controversy, or US burning the Quran copies or controversial anti-Islam movie clip of "Innocence of Muslim", created Facebook pages and other forum to defend and triggered the Muslim mobilization globally and countries like Pakistan, Jordan Egypt demanded to delete the film from You tube platform. Social media has created a Islamic popular diplomacy, on the other side many websites are created to promote the violent version of Islam in form of terrorism , Al Qaida , Hamas , Hezbollah and like emergence of e jihad or digital activism , hacking and cyber-attacks are some recent examples .Use of Media for Islamic militant movement or for political purpose either nationally or internationally is a common feature in the modern era, an efficient tool for distributing political messages and mobilizing political activities by supporters. Although current rise of Islam is magnificent and role of media is crucial for gain or regain position in the complex social world. Islamisation through digitization or Islamisation of digital world is blessing from one side and challenge from other. Interpretation of Quran was domain of *ulema* but this concept is under attack and consequently became a contested domain for unqualified masses.<sup>45</sup>

#### **4. Media and Legislation.**

The significant role of media in the social context is something which can be denied but the part it plays in law making process or its influence , is not very much apparent. Media is not a direct

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<sup>45</sup> Ibid.

actor in law making or in legislation process but the media attention can influence the behavior of legislators and the contents of laws indirectly specially in wake of technological advancements. It is generally agreed fact that the contact between journalist and parliament members and government authorities, as complex interactions and the relations of political and media actors is a reciprocal one. The media coverage on the policy issue generally falls in the political agenda setting phase. As shown by various studies that media can set and influence the policy agenda by diverting attention of policy maker to policy problem and its tentative solution. This interactive behavior has ultimately a legislative outcome, as policy makers and parliamentarian closely follow what media reports on the topic. The consensus is that media attention indeed trickles into legislative process indirectly.<sup>46</sup> Incident-driven exposure served as a basis for questions and was purposefully used by parliamentarian in legislative debates to authenticate and demonstrate their stances. Consistent and forceful media coverage of an issue can contribute towards introduction of a new law or amendments in an existing one.<sup>47</sup> The media, when used appropriately and proficiently, can be an influential ally and contributor to an improved outcome.<sup>48</sup> It can run efficient campaign by different professionals or sect of societies for their relevant cause as we have seen in election campaign by the parties, family planning, dam funding and traffic rules. Apart from legislation domestic issues effecting society directly and actions by the governmental departments at local level can be highlighted through media. Naqeeb and Zainab murder cases, use of fake medication by the hospitals and recent cases in health sector, strikes by the doctors and many other issues acquired government attention to take appropriate legal steps in the relevant areas. There evidently are a great number of prospects to use the media to persuade legislation and legislative initiatives.<sup>49</sup>

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<sup>46</sup>Lotte Melenhorst. *The Media's Role in Lawmaking: A Case Study Analysis*. *The International Journal of Press/Politics* 2015, Vol. 20(3) 297–316. Reprints and permissions: [sagepub.com/journalsPermissions.nav](http://sagepub.com/journalsPermissions.nav). DOI: 10.1177/1940161215581924.

<sup>47</sup> *ibid*

<sup>48</sup> Shelov SP<sup>1</sup> *The Use of Media impact on legislation*. *Abstarct*. 1995 Aug;24(8):419-20, 4225. Available at <https://www.ncbi.nlm.nih.gov/pubmed/7478773>

<sup>49</sup> *Ibid*

#### 4.1. An overview of media legislations in Pakistan

The development in area of media in Pakistan in last decade has made significant social and political changes. Pakistan Electronic Media Regulatory Authority (PEMRA) is significantly contributing as catalyst of socio political change in the society.<sup>50</sup>The list of the directly or indirectly operational media and information laws in Pakistan is given below.<sup>51</sup>Most of these are enacted after 2002 as a result of liberalization of media and satellite channels boom in Pakistan.

Our focus will be on PEMRA regulations and some major penal laws providing for anti-Islamic activities by the media in different contexts.

1. Baluchistan Freedom of Information Act 2005
2. Code of Criminal Procedure 1898.<sup>52</sup>
3. Contempt of Court Ordinance of 2003
4. Copyright Ordinance 1962 as amended
5. Defamation Ordinance of 2002
6. Freedom of Information Ordinance of 2002
7. Intellectual Property Organization of Pakistan Ordinance 2005
8. Motion Picture Ordinance of 1979, motion Picture (amendment) Ordinance
9. Broadcasting Cooperation Act 1973
10. Pakistan Electronic Media Regulatory Authority (PEMRA) of 2002 and Pakistan Electronic Media regulatory Authority (amendment) Act 2006/7.
11. Pakistan Telecommunication (RE-Organization) Act 1996
12. Printing Presses and Publications Ordinance 1988.
13. Press, Newspapers, News Agencies and Books Registration Ordinance 2003 and PNNABRO (Amendment) 2007

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<sup>50</sup><http://pakobserver.net/detailnews.asp?id=110074>

<sup>51</sup> Imran Ahsan Khan Nyazee, "Media Laws in Pakistan", (Islamabad: Federal Law House ALSI Law outlines, 2009) , 56-59.

<sup>52</sup> Section.99A power to declare certain publication to forfeited and issue search warrants for the same. Section.99B Application to High court to set aside order for forfeit .

14. Press Council Ordinance 2002
15. Press and Publications Ordinance (PPO) 1988
16. Sindh Access to Information Ordinance of 2006.

#### 4.2. Rules and Regulations

1. Censorship of Films Rules 1980;
2. Code of Conduct for Media Broadcasters/Cable TV operators;
3. Copyright Rules 1967;
4. Freedom of Information Rules, 2004;
5. PEMRA Cable Television (Operations) Regulations of 2002;
6. Pakistan Electronic Media Regulatory Authority Rules (PEMRA), 2009/2;
7. Pakistan Electronic Media Regulatory Authority (Media Ownership and Control) Regulation of 2002.
8. Pakistan Electronic Media Regulatory Authority ( Council of Complaints Organization and Functions) Regulations of 2002; and
9. PEMRA (TV/Radio Broadcast Operations) Regulations of 2002.

The Pakistan Electronic Media Authority (PEMRA) , an independent body established by the Government in 2002 with the aim to monitor the end the state monopoly, licensing of the private Television and Radio stations and oversight the programs and advertisement produced.<sup>53</sup> It is regulated by PEMRA Ordinance 2002, PEMRA amendment Act 2007. PEMRA Rules 2009 and PEMRA Regulations. Violation of the Ordinance, Rules and Regulation can lead to shut down / suspension of channels or cable operator<sup>54</sup> . The independence of PEMRA is in question in many ways as the Federal Government is authorized to issue policy directive to PEMRA.<sup>55</sup> The special law dealing with regulations of the airwaves of the country, PEMRA Ordinance 2002, provides for the establishment of 12 member panel, and the chairman <sup>56</sup> , of the Authority *“responsible for regulating the*

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<sup>53</sup>Code of Conduct and PEMRA Rules 2009.

<sup>54</sup> PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY ORDINANCE 2002 PEMRA (AMENDMENT) ACT, 2007 (ACT NO.II OF 2007) S,27. The Code of Conduct (Schedule A) defines the parameters for programming contents.

<sup>55</sup>PEMRA Ordinance 2002, S 4.

<sup>56</sup>PEMRA Ordinance,2002,S, 6.

*establishment and operation of all broadcast media and distribution services in Pakistan.*"<sup>57</sup>It aims to "improve standards of information, education and entertainment" and "ensure accountability, transparency and good governance by optimizing the free flow of information."<sup>58</sup>The authority is further mandated <sup>59</sup>to "regulate distribution of foreign and local TV and radio channels in Pakistan."

The PEMRA Ordinance composed of 40 sections provided details and dealing with multiple issue of procedures and process and qualification for the grants of licenses for broadcasts and distributions. It explains terms and conditions and restrictions on broadcast and distributions service license.<sup>60</sup> Furthermore the Ordinance provides for the establishment of "Council of Complaints" and the procedure for complaints against the licensee.<sup>61</sup>Although dealing with all major aspects of the relevant field however, beyond the preamble, no provision for the citizen's Right to Information exists. The Ordinance ignored what it was aiming at, to ensure accountability, good governance and transparency.<sup>62</sup> With the exception of PNNBR Ordinance specifically dealing with registration of press newspaper books and new agencies, and PEMRA Ordinance for the regulation of private electronic/broadcast media including TV, cable and radio, most of these laws are applicable to all kind of media.<sup>63</sup> In addition to the laws listed above, some others are listed below, used to deter the freedom of information or against the journalists or editors and publications or relevant Penal provisions in cases of anti-Islamic activities.<sup>64</sup>

1. The Officials Secret Act of 1926, (a colonial law used to detain and prosecute editors and journalists);
2. The Security of Pakistan Act of 1952 (used to close down press, impose prior censorship, and stop publication.);

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<sup>57</sup>PEMRA Ordinance,2002,S 4(1)

<sup>58</sup> Preamble of the Ordinance, PEMRA Ordinance,2002.

<sup>59</sup> PEMRA Ordinance,2002,S ,(2).

<sup>60</sup> PEMRA Ordinance,2002,S, 20,25

<sup>61</sup> PEMRA Ordinance,2002,S, 26

<sup>62</sup>Right of Information and Media Laws in Pakistan CPDI. 11

<sup>63</sup>Muhammad AftabAlam CPDI,8.

<sup>64</sup>Rehman , "Press Laws and Freedom of Expression", *Sapana, South Asian Studies*, 12( Mediand Peace in South Asia, 2006. Lahore free media Foundation): 266-277

3. Maintenance of Public Order Ordinance 1960 (prohibits publication, prior censorship, and close press down, force disclosure of sources);
4. Pakistan Penal Code 1860 (listed below, sections that may directly or indirectly relevant)<sup>65</sup>
  - Section 123-(A) of Pakistan Penal Code (PPC) allows prosecution of anything prejudicial to safety or ideology of Pakistan
  - Section 124-(A) of PPC applies to sedition.
  - Section 153-(A) promoting enmity between different groups, etc.
  - Section.153(B). penalizes incitement of students disturbing public order and can be used against the press or political activities.
  - Section 292 of PPC prohibits sale, publication or exhibition of obscene books.
  - Section 293. Sale etc. of obscene objects to young person.
  - Section 294. Obscene acts and songs.
  - Section 295 (A) deliberate and malicious acts intended to outrage religious feeling of any class by insulting its religious belief and or religion.
  - Section 295(B) Defiling ,etc. of Holy Quran.
  - Section 295(C) Use of derogatory remarks, etc in respect of Holy Prophet (SAW).
  - Section.296. Disturbing religious assembly.
  - 298. Uttering words etc, with deliberate intent to wound the religious feelings.
  - 298(A) Use of derogatory remarks in respect of holy personages.
  - 298(B)(i) misuse of epithets , description and titles , etc reserved for certain holy personage or places ( applies to Lahori and Qadianis group)
  - 298(C) Person of Qadiani group calling himself a Muslim or preaching or propagating his faith. (Qadianai and Lahore group)
  - Section 469 Forgery for the purpose of harming reputation.
  - 499 Defamation
  - 500. Punishment for the Defamation.
  - 501. Printing or engraving matter known to be defamatory
  - 502. Sale of printed or engraved substance containing defamatory matter.

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<sup>65</sup>Imran Ahsan Khan Nyazee. Media Law in Pakistan, 58.

- 503. Criminal intimidation (including defamation of reputation).
  - 506. Punishment for criminal intimidation.
  - 507. Criminal intimidation by an anonymous communication.
5. Section 295-C of PPC known as the infamous blasphemy law has been applied to journalists;
  6. Section 99 A of the Criminal Procedure Code gives executive powers to prescribe publications.

Most recently the Cyber Crime Act can also be relevant for our purpose. Even abundance of laws could not serve properly to achieve the purpose. The mandate given to the PEMRA needs a fresh review from religious perspective.

## 6. Conclusions

Islam is one the fastest growing religion today but at the same time most criticized from different aspects of its basic tenets and code. To develop a system based on Islamic principles or governed by Shariah, many efforts are made by different Muslim countries including Pakistan. How far the success they achieved is a question of fact. In case of Pakistan the reformation of society on the tenets of Islam has consumed successive generations of Pakistani Muslims ever since the onset of Pakistan movement that till this day continues. Islamization of laws in isolation cannot target the society at large or cannot be a comprehensive approach unless other factors are also made part of this process in which society needs to be educated enough not only in legal education but also basic Islamic education. To get the intended results for (social reform) reform of education whereby compulsory Islamic and basic legal education must be part of the policy along with the focus on the ways and means or methodology is a very crucial aspect in this process.

Media in the present time can be a determining factor for this purpose but subject to the policy the higher authorities may adopt. Positive use of media in all shapes in political and social process can be very useful tool. The present situation prevalent in media is more inclined to a culture that is antagonistic to Islamic values that in some cases is a direct promotion of the western thoughts and culture. Religious education in the garb of TV shows that aim at generating ratings is forwarding a

confused and often contrary to Islam thoughts thus spreading confusion in the minds of the masses. A comprehensive policy for Media is necessary to get a speedy result. Omar Ksule while talking about reform of disciplines outlines a methodology to achieve Islamisation in the broadest sense. And the principle enunciated by him in this context can equally be applicable on reforming the Laws and legal system in Pakistan. The first principle in his thoughts is the de-europisation of paradigms on which a discipline is based. In case of law this paradigm is based on Common law and therefore it is extremely important that instead of Common law and latin legal Maxims the basis is to be reformed by granting the foundational status Shariat and Islamic jurisprudence. The second principle relates to reconstruction of the disciplines to conform to Quran's universal guidelines. In case of Media this universal guideline is *Amr bil Ma'roof wata nhaanil Munkir*. These two basis paradigm shifts in Law and Media can truly alter the direction of Islamisation of the society in General and of the laws through media in particular.<sup>66</sup>

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<sup>66</sup> <http://omarkasule.tripod.com/id40.html>