

Pakistan: Why Shariat courts in Swat?

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The government is contemplating to establish shariat (Qazi) courts in the Provincially Administered Tribal Area (PATA), which consists of districts of former Malakand Division, including Swat, Upper and Lower Dir, Buner, Malakand Protected Area, Shangla, Chitral and Kala Dhaka of Mansehra District. Under the programme, the nomenclature of the lower judicial structure will be changed and members of lower judiciary from judicial magistrate to district and sessions judges will be given the name of Qazi. Before being appointed to these positions, these judges will be given a three- month crash course on Islamic Sharia. In reaching to their decision, Qazis will be assisted by a committee of local clerics. The jurisdiction of the Peshawar High Court and the Supreme Court will be withdrawn from these areas and appeals against decisions of the Qazi Courts could only be made with the Federal Shariat Court (FSC).

It is also being reported that the government is negotiating release of Maulana Sufi Muhammad with Tehrik Nifaz-e-Shariat-e-Muhammadi (TNSM) leaders. Maulana Sufi Muhammad is father-in-law of Maulana Fazlullah, who is leader of the present movement in Swat. The TNSM leadership, however, has been expressing its disassociation with Maulana Fazlullah.

The decision is being seen as an attempt on the part of the government to appease the Taliban and their supporters in Swat. It is to be seen whether this decision will help cool down the Taliban movement in the region or give it further impetus. The Taliban influence in most of the Pashto-speaking settled districts of the NWFP has been expanding and appeasement like imposition of such law will definitely encourage them.

Besides the Malakand Division, southern part of the province, including Kohat, Hango, Tank, Bannu, Lakki Marwat and D I Khan have been badly affected. The Taliban have been attempting to

impose their social and religious code in most of these areas. There is no reason that after getting the Sharia courts in Malakand, where cleric committees represented by them will make all decisions, they will not try to get the same for the southern districts. If the government today accept their demands in the Malakand Division, other districts of Peshawar, Mardan, Charsadda, Swabi and Nowshera will fall in their lap.

Governments, media, religio-political parties and other influential groups have been presenting the imposition of Islamic law as a panacea for all social, political and economic ills. Inherent connotation of the argument is that the present legal, political and economic structure in the country is un-Islamic, which has to be replaced by an Islamic structure. The argument has been the most potent ammunition of religious parties which helped them to expand their base. The perception has helped them reach the position they are enjoying today where they are dictating their terms with the power of gun.

It is not time to appease militants and extremists but defend Pakistan as it was envisaged by Allama Iqbal and Quaid-e-Azam Muhammad Ali Jinnah. Pakistan is a Muslim country where over 97 percent population follow the Islamic faith. Their enthusiasm for the religion has been exemplary. The religion is part of our social norms, ethos, traditions, language and culture. Most sections have seldom any conflict with Islamic teachings. The Holy Quran and Sunnah are supreme law of the land and courts are free to decide whether a particular law is repugnant to Islamic teachings or not.

The framers of Constitution also explicitly prescribed that no law will be enacted in the country against the teachings of the Holy Quran and Sunnah and existing laws will be scrutinised whether they confirm to the injunction of Islam or not. For this purpose, the Council of Islamic Ideology (CII) has been established. The Council has been functioning for the last 31 years. If anyone has any objection over any law, then he or she must go to the CII and let it decide. The parliament as embodiment of the sovereignty of the people has right to amend existing laws in

accordance with the recommendations of the Council.

The Qazi courts will deprive the Peshawar High Court as well as the Supreme Court of their jurisdiction over the PATA region. The FATA area is already out of the jurisdiction of any court and protection of basic human rights are not available to the people of these areas. The ouster of jurisdiction of High Court as well as the Supreme Court will also deprive the people of PATA of their human rights. At the same time, the proposed law will create another parallel court system in the country.

To keep the country united, efforts should be made to establish universal legal system. To the contrary, apologists and embodiments of appeasement are devising strategies and policies which result in shrinking reach of existing institutions and putting large section of society at the mercy of extremists.

The establishment of FSC was part of the sycophant, hypocritical dishonest policies of General Ziaul Haq under which he used the name of Islam to expand his whimsical powers and crush any resistance. The establishment of the court enabled him to dump the 'erring' judges of High Courts without their consent which otherwise he could not normally do. The independence of judges of the FSC is not ensured as is the case with judges of High Courts and Supreme Court. They are appointed for a three-year term by the president, who can also give them extension, change their terms of appointment or assign them any other duty. Such powers are not available to the executive vis-a-vis judges of any High Court or Supreme Court.

Under Article 203-C (5) of the Constitution if a judge of a High Court deems to have retired from his office if does not accept appointment as judge of the FSC. The clause allows a route to the federal government to get rid of independent minded judges of High Courts.

Under the relevant articles of the Constitution, which were forced into the document by General Ziaul Haq, the FSC has two functions to decide whether a particular piece of legislation confirms to injunction of the Holy Quran and

Sunnah or not. As already stated, the framers of the Constitution had given this responsibility to the CII and there is no need to have another institution to do the same. Besides all courts can make decision in this regard as the Holy Quran and Sunnah is supreme law of the land.

Other function entrusted to the FSC is to hear appeals against decisions of lower courts with regard to cases pertaining to the Hadood Ordinance. As already said this function is better performed by high courts. It is time that the FSC is abolished altogether and a uniform court system is restored. Any attempt to expand the jurisdiction of the FSC and at the expense of higher judiciary, is a retrogressive act to appease militants. It will further encourage them to strike further deep in the country.

P.S.

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