

CONSTITUTIONAL REFORMATION: CAN PAKISTAN BE ISLAMISED?

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ABSTRACT

This article seeks to address a question that has plagued academics, politicians, religious clerics, and the citizens of Pakistan: how 'Islamic' is Pakistan's Constitution? It is divided into six parts. Part I lays down the working definitions of key terms such as the Constitution and Islamic law and elucidates the perceived divergence between the two concepts. Part II explores whether it is theoretically conceivable and practically feasible to Islamise the constitution of a nation-state. Scholarly opinion in favour of the Islamisation of constitutions will be discussed in this section. Part III focuses on the theoretical and practical challenges associated with Islamising constitutions. Furthermore, scholarly views opposed to the Islamisation of constitutions will be explored in this section. Part IV of the article attempts to reconstruct the linkages between positive law, the Constitution, and Islamic law in light of the problems highlighted by esteemed scholars such as Wael Hallaq and Abdullahi An' Naim in Part III. Part V traces the attempts made at Islamising Pakistan's Constitution by various actors. In this part, legislation and case law will be considered. Part VI of the article scrutinises the effectiveness of attempts to Islamise Pakistan's constitution. Part VII concludes by stating the necessary preconditions for the successful Islamisation of Pakistan's constitution.

KEYWORDS: Constitution, Islamic Law, Legislation, Islamisation, Constitutional History.

1. INTRODUCTION

When the Pakistani state was negotiating with the Tehreek-i-Taliban Pakistan (TTP) in 2014, talks failed because the group stated that they would not negotiate with politicians governed by a constitution that the group considered un-Islamic.¹ The former Prime Minister Imran Khan consistently evoked the principles of *Riyasat-e-Madinah* upon which the Pakistani state must be structured.² The Tehreek-e-Labbaik Pakistan (TLP), a religious party fuelled by the desire to Islamise the country and its laws, received over 2.1 million votes in the 2018 general elections, becoming the sixth-largest party in terms of votes received across the country.³ These examples

¹ Rafia Zakaria, 'Islam and The Constitution' (DAWN.COM, 2014) <<https://www.dawn.com/news/1148376>> accessed 25 May 2022

² Imran Khan, 'Spirit Of Riyasat-I-Madina: Transforming Pakistan | The Express Tribune' (The Express Tribune, 2022) <<https://tribune.com.pk/story/2339025/spirit-of-riyasat-i-madina-transforming-pakistan>> accessed 25 May 2022

³ 'Tehreek Labbaik Pakistan Received 21,91,679 Votes In Elections 2018' (*Dispatch News Desk*, 2018) <<https://dnd.com.pk/tehrrek-labbai-pakistan-received-2191679-votes-in-elections-2018/147268>> accessed 25 May 2022

demonstrate that there are a number of organisations across Pakistan's political spectrum which believe that there is a greater need to incorporate Islam into the Constitution. Pakistan's Constitution is one which has been Islamised in the past by several actors, often with much criticism for those who engage in this task. This article seeks to answer the question of whether constitutions can and should be Islamised, and, following on from that, if they are what issues does this bring to the fore. It will use Pakistan's example as a case study in assessing how effective the Islamisation of Pakistan's Constitution has been and outline possible ways through which this task can be undertaken successfully.

2. Part I: Setting the Framework: Constitution and Islamic Law

Charles Borgeaud defines a constitution in the following words:⁴

A Constitution is the fundamental law according to which the government of a state is organized and agreeably to which the relations of individuals or moral persons to the community are determined. It may be a written instrument, a precise text or series of texts enacted at a given time by a sovereign power or it may be the more or less definite result of a series of legislative enactments, ordinances, judicial decisions, precedents, and customs, of diverse origin and of unequal value and importance.

As per this definition, the Constitution is the supreme law that controls the operations of a State. However, it is crucial to highlight that the process of developing and evolving the constitution involves individuals, the community, and the State.

Islamic law is a contentious term. It has repeatedly been misinterpreted as being the *shari'ah*. There are several differences between *shari'ah* and Islamic law.

The term *shari'ah* has been broadly translated as "the path leading to water", or the source of life. *shari'ah* includes the preeminent sources of guidance for Muslims. The Qur'an, the Hadith or *sunnah* of the Prophet Muhammad (PBUH), the *fatwas* and rulings of Islamic scholars are all considered to be part of the *shari'ah*.⁵ The term Islamic law has been understood and interpreted differently by scholars studying the concept. Wael Hallaq believes that Islamic law has four essential attributes:

⁴ Charles Borgeaud, 'The Origin And Development Of Written Constitutions' (1892) 7 PSQ <<https://www.jstor.org/stable/2139444?seq=1>> accessed 25 May 2022

⁵ Almas Khan, 'The Interaction between Shariah and International Law in Arbitration' (2006) 6 Chicago JIL 791, 793-794

(1) the evolution of a complete judiciary, (2) the full elaboration of a positive legal doctrine, (3) the full emergence of a science of legal methodology and interpretation, and (4) the full emergence of doctrinal legal schools.⁶ Some scholars believe that Islamic law is what people do, so references to Islamic law should focus on the practices of people invoking Islamic law rather than attempting to understand the term in an abstract manner.⁷

While there are critical differences between a Constitution and Islamic law, such as the existence of divine revelation and collections of material of an ordained Prophet, the similarities are also noteworthy. Both the Constitution and Islamic law espouse fundamental principles and values that govern a State. Both processes involve the interaction between the State, community (of interpreters), and individuals.

The following section will analyse the viewpoint of scholars that believe that there is a need for constitutional reformation and reconstruction to synchronize Islamic law and the Constitution. Iqbal and Justice Cornelius discuss the necessity of connecting Islamic law and the constitution. While Iqbal was discussing it in the context of the subcontinent, Justice Cornelius discusses the importance of connecting the constitution to Islamic law in Pakistan because he realized that Islam was necessary for connecting the Pakistani nation to its original and proper roots.⁸

3. Part II: Constructing a world for an Islamic State and constitutional coexistence

The belief that Islamic ideas are compatible with the constitution of a modern nation-state underpins attempts to incorporate Islamic doctrines into the constitution. According to Justice Cornelius, the constitution is the highest form of positive legislation since it is designed to represent the nation's beliefs and ideals.⁹ Since the constitution is the most fundamental legal document governing a state, proponents of Islamising states think that Islamic law should be incorporated into the constitution.¹⁰

⁶ Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (CUP 2005), 3

⁷ Baudouin Dupret, 'What is Islamic Law? A Praxiological Answer and an Egyptian Case Study', (2007) 24(2) *Theory, Culture and Society* 79, 81

⁸ A.R Cornelius, 'Restoration of Judicial Responsibility to People' (1965) 15 *The All-Pakistan L D* 1, 12

⁹ A.R Cornelius Iqbal Day Lecture Cornelius, A. R. 'Ideological Foundation for Democracy in Pakistan.' Iqbal Day Session Lahore 1964 4

¹⁰ Clark B. Lombardi, 'Designing Islamic Constitutions: Past Trends and Options for a Democratic Future' (2013) 11 *International JCL* 615

Preeminent Muslim philosopher and poet, Allama Iqbal noted that the 'pressure of new-world forces and political experience of European nations are impressing on the mind of modern Islam the value and possibilities of the idea of *ijma*'.¹¹ Iqbal believed that a Muslim legislative assembly composed of members from different parts of society was best suited to perform the function of *ijma* in lieu of the growth of opposing sects in modern society.¹² On the role of *ulema*, Iqbal remarked that they should be an integral part of the Muslim legislative assembly, guiding free discussion on questions relating to law.¹³ According to Iqbal, the ultimate aim of Islam is spiritual democracy.¹⁴

Iqbal makes several crucial observations that need to be discussed further. The first crucial idea propounded by Iqbal is that the legislative assembly, considered to be an integral part of a secular state, is the modern realization of the concept of *ijma* that has been integral in Islamic law since the advent of Islam. One reason that Iqbal proffers for the compatibility of the secular (state) and Islamic principles is that unlike Christianity, Islam was a civil and political entity since the beginning.¹⁵ In Islam, the distinction between the spiritual and the temporal is not as sharp as the division between the sacred and the profane in Christianity. The second pivotal insight provided by Iqbal is the importance of diversity in the Muslim legislative assembly so that opposing views are adequately represented. The third important contribution that Iqbal makes to the discussion is that he saw the *ulema* as part of the legislative assembly. Lastly, the fact that Iqbal sees Islam as a spiritual democracy shows that his vision of Islam is compatible and complementary with democracy.

Justice Alvin Robert Cornelius was a prominent jurist, legal philosopher, and former Chief Justice of the Supreme Court of Pakistan. He claimed that the constitution and the democratic system in Pakistan should not be secular.¹⁶ Efforts should be made to ensure that the constitution works towards organizing the lives of Muslims in accordance with the fundamental beliefs of Islam. This shift would create the incentive structure required for them to obey the Constitution.¹⁷ His ideas were premised on the principle that 'law should in some sense grow out of the society;

¹¹ Muhammad Iqbal, *Reconstruction of Religious Thought in Islam* (SUP 2013), 138

¹² *ibid*

¹³ *ibid* 139-140

¹⁴ *ibid* 142

¹⁵ *ibid*

¹⁶ Clark B. Lombardi, 'Can Islamizing a Legal System Ever Help Promote Liberal Democracy? A View from Pakistan' (2010) 7 U St Thomas L J 649, 661

¹⁷ Cornelius (n 12) 9

it should be a projection of the common personality'.¹⁸ Justice Cornelius also uses the work of Simone Weil to further his point about the need for constitutional legality to be derived from the eternal source of all legality rather than from the immediate historical experience of colonialism, because colonialism caused a break in historical continuity.¹⁹ The point that is being made here is that a constitution derived from the historical experience of colonialism would have significantly less legitimacy than a constitution derived from the external source of all legality, which in the context of Pakistan is Islamic law.

Justice Cornelius cements the ideas espoused by Iqbal earlier. He realized that Islamic principles were best suited for the purposes of inspiring Pakistanis to respect the rule of law and the constitution. He recognized that a political system devoid of the principles and values that shaped and governed the behaviour of the polity was unlikely to garner support from the public.

4. Part III: A State and Constitution based on Islamic law: a theoretical and practical impossibility

Wael Hallaq and Abdullahi an' Naim staunchly oppose the creation of a state and constitution based on Islamic law.

According to Abdullahi, an Islamic State is theoretically impossible to imagine. He argues that the components which make up a modern state are antithetical to the fundamental nature of the *shari'ah*. The State is a political entity that primarily relies upon coercion to enforce its will on its citizens. Fear of sanctions and repercussions drives obedience and compliance with laws promulgated by the State. Given that this is the character of the State, it is inconceivable that the Constitution can be based on normative Islamic principles that replace the State's coercive power with the moral authority of God.²⁰

Furthermore, the character of the *shari'ah* is diametrically opposed to the nature of the state. The *shari'ah* is a normative system that encompasses diverse ideas and beliefs. According to Abdullahi, the *shari'ah* allows individuals to formulate their own opinions and act accordingly. Positive law cannot be used to enforce the *shari'ah* because it undermines the flexibility and richness of the *shari'ah*, thereby contradicting the essence of Islam and the *shari'ah*.²¹ Another reason for the

¹⁸ *ibid* 12

¹⁹ *ibid*

²⁰ Abdullahi An-Naim, 'Shari'a and Positive Legislation: Is an Islamic State Possible or Viable?' (Hague 2000) 29-30

²¹ *ibid* 30

incompatibility of *shari'ah* and positive law is that Muslims commonly understand the *shari'ah* to mean the expression of Divine Will, while positive legislation reflects the State's political will.²² Enforcement of *shari'ah* through positive legislation is an attack on the divinity of the *shari'ah* and opens it up to the challenge that the will of God can be altered and changed by man. Therefore, an Islamic State is a conceptual impossibility because enforcement of *shari'ah* through positive legislation distorts the qualitative purpose that the *shari'ah* is supposed to serve in the life of Muslims.²³ The principles of *shari'ah* are incompatible with principles of domestic constitutionalism and foundational principles of international law, which is why it is impossible to enforce Islamic principles through positive legislation by the State.²⁴ In light of Abdullahi's observations, Islamising a constitution vitiates the essence of the *shari'ah* and attempts to Islamise constitutions are based on a faulty understanding of the foundational premises underpinning the State and Islamic law.

Wael Hallaq builds on the arguments of Abdullahi by distinguishing Islam from the modern State. He purports that the modern State has five central features: (i) specificity of the constitution as a historical experience, (ii) sovereignty, (iii) legislative monopoly and monopoly over violence, (iv) bureaucratic machinery, (v) cultural hegemonic engagement in the social order.²⁵ Hallaq distinguishes the *shari'ah* from the modern State by stating that the (iii) and (v) features of the State are incompatible with the *shari'ah*. Legislative monopoly and positive legislation are contrary to the essence of the *shari'ah* because the development of the *shari'ah* has been founded on diversity of opinion. The emphasis on the divergence of opinion and promotion of discourse has led to the formation of different schools of legal thought in Islam. Islam's different schools of legal thought arrived at different conclusions while scrutinising the same sources. Enshrining Islamic principles through the constitution or positive legislation would inevitably lead to privileging one school of thought to the detriment of others. Preference for one school of thought over others leads to a legitimacy crisis as adherents to a school of thought not enacted through positive law would be unwilling to abide by laws made in contravention to their beliefs.²⁶

5. Part IV: Reconstructing the Relationship Between the State, Constitution, and Islamic Law

²² *ibid* 32

²³ *ibid*

²⁴ *ibid* 37

²⁵ Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (CUP 2014) 1-36, 155-70

²⁶ *ibid* 163

Hallaq and Abdullahi's analysis led to the conclusion that there is an irreconcilable divide between the State and *shari'ah*. This section will attempt to repair the divide and create preconditions for reconciliation between these concepts.

Fadel presents a counter-narrative that helps to heal the divisions between the State and *shari'ah* proffered by Hallaq and Abdullahi. He posits that Hallaq's conclusion that *shari'ah* and the State are incompatible is flawed because Hallaq failed to discuss a normative account of Islamic politics.²⁷ Furthermore, Fadel states that a modern State based upon the dictates of Islam is viable. This compromise can be achieved by making 'clear distinctions between the normative domain of a political judgment of a State of modern citizens and that of an Islamic legal judgment'.²⁸ In this way, Islam and the State can coexist by delegating responsibilities to the legislative body and to the judiciary of a state.

Moreover, Fadel believes that Abdullahi and Hallaq's analysis is based on an incomplete understanding of Islamic law. Islamic law is not exclusively based on substantive morality or a normative system. Muslim jurists devised *al-ahkam al-wad'iyya* or 'positive rules' for effective governance. According to Fadel, there are a few approaches through which the State can incorporate Islam through positive law. The first thing is to understand the difference between the domain of State legislation and individual normative practice. The State can embrace Islamic law while remaining true to the normative tradition with this distinction in mind. A country's Constitution is a document that can enshrine this distinction. The second point to mention is that Islamic law can be codified and enforced through the governmental infrastructure, as seen by customary law and codes such as the *Majallah*.²⁹

The author of this article believes that Hallaq and Abdullahi's attacks on the compatibility of Islam and the State are based on an incorrect understanding of both concepts. Both scholars have reified the State as a static, monolithic entity that exercises its authority through brute force. They have completely eliminated the role played by individuals and the community in state formation. Their inability to see the State as a flexible entity that comprises individuals who may have subjective notions precludes them from creating room for the accommodation of Islamic law in the modern State. Moreover, both authors have confused *shari'ah* and Islamic law to create a wedge between the State and Islamic law. While the literal contents of the Qur'an and *sunnah* might

²⁷ Mohammed Fadel, 'A Tragedy of Politics or an Apolitical Tragedy?' (2011) 131 *Journal AOS* 110

²⁸ *ibid* 118

²⁹ *ibid* 119

be unchangeable, Islamic law focuses on the interpretation of these sources in conjunction with on-ground realities. This interpretive role allows legislators and the judiciary to incorporate Islam into the constitution without undermining the sanctity of the *shari'ah*.

The author of this article would like to posit that enshrining Islamic principles in the constitution of a state is the most prudent way to maintain a balance between ensuring citizens comply with the law and avoiding overreach by legislators and judges.

6. Part V: Case Study: Islamization of the Pakistani Constitution

In post-partition Pakistan, it was a foregone conclusion that the Constitution would be based on Islamic principles since that was one of the central issues that led to the partition of the subcontinent. The process of formulating a constitution was initiated in 1949 with the Objectives Resolution which signified the importance of Islam and identified that the role of the Constituent Assembly was to frame a constitution that allows Pakistanis to live their lives according to the principles of Islam.³⁰ The Basic Principles Committee (BPC) was set up in the aftermath of the Objectives Resolution to ensure that the future Constitution of Pakistan was made in accordance with the Objectives Resolution.³¹ The Basic Principles Committee was split up into several subcommittees. One such subcommittee was a board of experts consisting of reputed scholars well versed in *Talimat-I-Islamia*.³² The power of the board was limited to an advisory nature, and that too only on matters that were referred to it.³³ The next crucial decision adopted by the Constituent Assembly was a proposal that accorded the Supreme Court exclusive authority to issue declarations about the compatibility and repugnancy of laws vis-à-vis Islam.³⁴

The first Constitution of Pakistan contained a series of Islamic provisions. The State's official name was the Islamic Republic of Pakistan, and the Objectives Resolution was added as a non-binding preamble to the constitution. The final authority to declare the repugnancy of laws vis-à-vis Islam was transferred from the Supreme Court to the National Assembly through Articles 197 and 198 of the Constitution.³⁵ The President was tasked with setting up an organization

³⁰ Mathew J. Nelson, 'Islamic Law in an Islamic Republic: What Role for Parliament?' (CUP 2015) 9

³¹ Leonard Binder, *Religion and Politics in Pakistan* (UCP 1961) 155

³² *ibid* 156

³³ *ibid*

³⁴ Nelson (n 34) 12

³⁵ The Constitution of the Islamic Republic of Pakistan 1956 art 197-98

devoted to Islamic research and an 'advisory' board that would make recommendations regarding the Islamisation of the law.³⁶

Field Marshal Ayub Khan furthered the Islamisation of Pakistan's legal system through the promulgation of the Muslim Family Laws Ordinance (MFLO),³⁷ which institutionalised Islamic practices and accorded the State the authority to regulate them. Ayub Khan promulgated Pakistan's second Constitution in 1962.³⁸ The Constitution afforded protection to the newly promulgated MFLO by enshrining that it was ineligible for judicial review. However, the Constitution of 1962 scaled back on some of the Islamic provisions added in the Constitution of 1956. The word Islamic was removed from the country's name but was later introduced through the First Amendment to the 1962 Constitution.³⁹ The phrasing of the Objectives Resolution clauses was amended to allow the state and individuals more freedom to enact the provisions of the Qur'an and Sunnah privately. One commonality between the two constitutions was that the National Assembly would still decide the matter of repugnancy. This is not to undermine the role of the Council of Islamic Ideology (CII) or its other predecessor advisory committees that were accorded an advisory role in judging the matter of repugnancy of laws to Islamic principles.

The Constitution of 1973, promulgated by Zulfikar Ali Bhutto, largely preserved the preceding Constitutions' provisions on the Islamization of laws. The parliament's supremacy to make decisions regarding the repugnancy of laws vis-à-vis Islam was reinforced by the Supreme Court in *State v Zia ur Rahman*.⁴⁰ The judges opined that their powers were restricted to making declarations about laws that contravened Islam. The Supreme Court ruled that the power to initiate legislation in accordance with Islamic principles was held solely by the Parliament.⁴¹

However, in the Constitution of 1973, additional provisions relating to Islam were inserted. The Objectives Resolution was retained as a non-binding preamble, and Article 2 of the Constitution identified Islam as the state religion of Pakistan.⁴² A constitutional amendment was passed in 1974 declaring that the Ahmadiyya community were non-Muslim. This amendment was

³⁶ Richard Wheeler, *The Politics of Pakistan: A Constitutional Quest* (CUP 1970) 99; Binder (n 35) 371-374

³⁷ The Muslim Family Laws Ordinance 1961

³⁸ The Constitution of the Islamic Republic of Pakistan 1962

³⁹ Constitution (First Amendment) Act, 1963 (I of 1964)

⁴⁰ PLD 1973 SC 49

⁴¹ *ibid*

⁴² The Constitution of the Islamic Republic of Pakistan Art 2A

rooted in the politics at the same as well as the State's determination that it had the prerogative to define and give value to religious identity in Pakistan.

General Zia-ul-Haq spearheaded the next phase of Islamisation in Pakistan's constitutional history. In 1979, he passed a Constitutional Amendment that empowered provincial High Courts to decide whether a piece of legislation was repugnant to Islam. Following this, a Shar'iat Appellate Bench (SAB) was set up in the Supreme Court, where appeals pertaining to matters of Islamization would be entertained. Then, reversing his previous decision, Zia disbanded provincial *shari'at* courts and created the Federal Shari'at Court (FSC). Under Article 203B of the Constitution, the FSC was not empowered to review the constitution or any Muslim personal law.⁴³ Initially, the courts were reluctant to exercise power bestowed upon them by the dictator. However, when they did exercise their power, it was usually in favour Zia's policies. In *Dr Amanat Ali v Federation of Pakistan*,⁴⁴ the FSC ruled that it could not review issues that did not have a community-wide consensus, an approach that was in line with what earlier judges had said regarding their power in matters of repugnancy. Dismayed by the unwillingness of the FSC and SAB to serve his ends, Zia introduced another Constitutional Amendment.⁴⁵ Under the revised Article 2A⁴⁶ of the Constitution, the Objectives Resolution was made a substantive constitutional provision. However, the courts were still reluctant to support Zia in his bid to undermine the separation of powers. A critical case in this regard is the *Kaneez Fatima* case,⁴⁷ in which the judges ruled that Article 2A could not be treated as a supra constitutional provision superseding the power of the parliament.⁴⁸

Before Zia's regime, judicial oversight of Islamic laws was minimal. The Parliament, advised by the Council of Islamic Ideology was primarily tasked with the responsibility of ensuring the conformity of laws with Islamic principles.⁴⁹ However, during the 1980s, after the creation of the FSC, the courts emerged as an 'institutional mechanism to Islamise the legal system independently'.⁵⁰

⁴³ *ibid* Art 203B

⁴⁴ PLD 1983 FSC 15

⁴⁵ Charles Kennedy, 'Repugnancy to Islam—Who Decides? Islam and Legal Reform in Pakistan,' *International CLQ* 41 (1992), 769-87

⁴⁶ Constitution (n 46)

⁴⁷ PLD 1993 SC 901

⁴⁸ Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Leiden: Brill 2006) 65-68

⁴⁹ *ibid* 66

⁵⁰ *ibid* 48

7. Part VI: Evaluating the Effectiveness of Islamisation in Pakistan

In Pakistan, authoritarian rulers primarily initiated and furthered the drive towards Islamisation. Zia 'used Islam strategically to legitimize his military authoritarian rule'.⁵¹ Moreover, dictators and nationalist politicians are constantly under scrutiny from traditional Islamists.⁵² This pressure results in dictators making Islamic policies to retain the approval of religious leaders and further their stay in power. The reason dictators in Pakistan have been forced to appease Islamic leaders is that they hold tremendous sway over the public. This can be attributed to the public's desire to live life according to Islamic principles. Another factor that explains why dictators primarily pass Islamisation policies is that it is structurally easier for them to pass policies of their own accord via ordinances. Dictators do not face the pressure of having to build consensus in parliament or the threat of being thrown out of power through re-election. Therefore, they can enact provisions swiftly and decisively.

An evaluation of Islamisation in Pakistan lends credence to the fears expressed by Hallaq that allowing the State to enforce its brand of Islam comes at the behest of marginalising specific valid interpretations of Islam. The obvious response to this would be that the CII and its predecessors had representation from all major sects present in Pakistan. Another response would be that the privileging of a specific interpretation of Islam in Pakistan is in line with the values of much of the polity.

Islamisation in Pakistan suggests that a ruler's desire to elongate their reign seems to be one of the driving motivations behind the introduction of *shari'ah*. This is evidenced by Ayub and Zia's use of Islamization as a means of enhancing their control and legitimacy with the citizenry.

Given that Pakistan's Islamisation has failed to produce acceptable results, what can be done to secure a balance in which Islamic ideals are upheld, but abuse by the governing class is avoided?

The first step is to assess the popularity/affinity that people have with Islam. The State of Pakistan has often undermined the desire for people to be governed in accordance with Islamic laws, which has resulted in protests and discontent. One strategy that the State could adopt is to

⁵¹ Muhammad Ziaul Haque Sheikh, Zahid Shahab Ahmed, 'Military, Authoritarianism and Islam: A Comparative Analysis of Bangladesh and Pakistan,' *Politics and Religion* 13 (2020), 334

⁵² Binder (n 35), Binder focuses on the 'traditionalist' ulema (Group 1), the 'modernist' politicians (with occasionally references to 'secularist' soldiers and bureaucrats) (Group 2), and the 'fundamentalist' Jama'at-e-Islami (Group 3)

relegate Islamic matters to the domain of civil society. This poses the risk of strengthening Islamic civil organisations that might hold opinions that contradict those of the state. Considering the deep-rooted popularity of Islam in Pakistan, organisations such as the TLP and JUI (F) have effectively rallied people for their cause and became a fierce and robust opposition to the writ of the State. The rise of the Muslim Brotherhood in Egypt followed a similar trajectory. The other approach that the State can adopt is to enforce Islam through state apparatuses. This has its own set of challenges. First, the State must make the unenviable choice of deciding which organ of the state should be given the authority to implement Islamic laws. Vesting this power exclusively in the legislature means creating the room for elected representatives to use Islamic provisions to enhance their popularity rather than cater to the needs of the public. Putting the executive in charge of the Islamisation process creates the possibility that some interpretations may be preferred at the cost of others. This becomes problematic given that the executive is unelected and might mix up their personal beliefs in matters of public dealing. Handing this authority to the judiciary in the form of judicial review might result in judicial law-making and other undesirable consequences. Considering these matters, it is imperative that in countries like Pakistan, where the public overwhelmingly supports the introduction of Islamic law, values of the *shari'ah* must be outlined in the Constitution, and the respective powers of each organ of the State must be precisely delineated to prevent abuse.