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The Politics of Teaching Islamic Law(*Shariah*) in the Institutions of Legal Education in Pakistan with Special Reference to the Colonial Legacy

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This research paper examines the teaching of Islamic law (*Shariah*) in the legal education system in Pakistan with special focus on colonial origin and its impact on contemporary legal education and profession. The study relates the importance of British-Indian Common Law as the backbone for legislation of Pakistan but also mentions about the Islamization of certain laws, which means laws must be practiced in line with the Holy Quran and the Sunnah which demonstrates the significance of learning Islamic law in legal education. The paper also outlines the differences between the Madrasas' curriculum and teaching process from that of a University in the teaching of Islamic law. It critiques the current legal education system for ignoring Islamic law and jurisprudence and making the lawyers and judges unable to analyze the modern legal issues in the light of Islamic jurisprudence. The findings indicate that colonial systems have had a significant impact on modern educational approaches, resulting in a lack of critical engagement and grasp of Islamic law. The paper advocates for a decolonized curriculum that encompasses in-depth knowledge of Islamic law, fosters critical thinking, and links legal education to the socio-legal needs of the Islamic Republic of Pakistan.

Keywords: *Shariah*, Subject, Legal Education, Syllabus, Pedagogy, Curriculum, Colonial Era, etc.

I. Introduction:

The term *Shariah* (Islamic law) means the entirety of God's commands present in the Qur'an and the Sunnah.[1] For Muslims, it is the approach [which is the etymological meaning of the word *Shariah*] to perform this worldly activity. It governs all facets of life from matters related to ritual purity to issues associated with global interaction.[2] The *Shariah* is interpreted by capable Muslim scholars. The sum of their interpretations constitutes *fiqh*, which is defined by Imam Abu Hanifa as "knowledge of human rights and duties". Being a consequence of the historical accomplishments of Muslim scholars to comprehend, find out, and construe the *Shariah*, in its human aspect *fiqh* goes through a course of transformation.[3] The Prophet (pbuh) himself served as the first instructor, instructing the converts at the *Dar al-Arqam*, house of the *Ibn abi al-arqam*, the companion of the Prophet Muhammad (pbuh) where the early Muslim community held its meetings, while He was still a resident of Makkah.[4] His teaching and preaching duties in *Masjid-e-Nabwi* were continued after his migration to *Madina*. The construction of *Masjid-e-Nabwi* was the prophet's first endeavor, and it served as the "first Islamic university for companions." In addition, arrangements were made for the education of those who wished to pursue learning, and companions trained there to spread light and knowledge to remote regions of the nation. This location, known as the *Suffa*, which is connected to the mosque, served as the hub of Muslim educational activities.[5]

The historical origin of legal education in Islam can be traced to the start of *halqa* i.e., the study circle that was a basic forum for the dissemination of legal scholarship until the nineteenth century.[6] However, the *halqa* was later replaced by the *madrasa* in the late fourth/tenth century. The basic difference between the *halqa* and *madrasa* was that the former was free to a great extent in terms of the exchange of intellectual discourse

[1] Muhammad Hashim Kamali, Shariah law: An Introduction. Oxford: One World Publications. (2011). 7.

[2] Karcic, Fikret. 'Applying the Shari'ah in Modern Societies: Main Developments and Issues.'Islamic Studies 40 (2001), 207.

[3] Karcic, Fikret. 'Applying the Shari'ah in Modern Societies: Main Developments and Issues.

[4] Shalaby. (1954). A History of Muslim Education. Beirut: Dar al-Kashaf.

[5] Shalaby. A History of Muslim Education.

[6] Hallaq, W. B. Legal education and the politics of law: epistemology, language and legal reasoning. In Sharī'a: Theory, Practice, Transformations .Cambridge University Press. 2009.

and it was least subjected to political interference as compared to the *madrasa*. The *madrasa,* alternatively, was as much, if not more, a pecuniary and a political phenomenon as it was an educational one, and it subjected legal education to progressively more organized control by rulers. *Madrasa* was structured on the foundations of the Islamic notion of *waqf* where a major mosque would be established and devoted to the cause of learning and the teachers and students would be given food, shelter, stipend, books, etc.[7] The *madrasa* was a pious endowment under the law of religious and charitable foundations (*waqf*).[8] The *madrasa* used to produce *shaykh*, *khatib*, *mufti*, jurists, judges, etc.

Similar *Madaris* were afterward founded in *Bukhara, Kufa, Baghdad,* and the subcontinent. *Al-Azhar*, Egypt's first proper institute for Islamic education, was established in Cairo. *Saljuk Wazir Nizamul Mulk Tusi* (died 1274) established the first madrasah in Middle Eastern Asia in Baghdad in 459 A.H. which was followed by a chain of the *Madaris* in the region named after *Nizamul Mulk Tusi.*

In the Indian sub-continent from the time of *Muhammad bin Qasim* (695–715) to the Moghul Emperor *Humayun* (1540–1556), educational institutions were established in great numbers. These institutions were completely free in their internal affairs and administration.[9] Following that, during the reign of Mogul Emperor Akbar (1556-1605), education began to drift away from its religious foundation due to his policies, and *Madaris* began to be established outside mosques, and Persian became the medium of teaching at the secondary and higher levels of education. Mogul Emperor *Aurangzeb* (1658-1707) took enormous steps to disseminate education throughout the subcontinent, and even small towns and villages produced experts in all fields.[10]

The various pedagogical methods that were very common for teaching *Shariah* and Islamic sciences were the methods of *Hifz* (memorization), *Mudzakarah* (discussion), *Munazharah* (debate), *Imla'* (dictation Method), and Scientific Abridged. The *madrasa*

[7] Hallaq, W. B. Legal education and the politics of law: epistemology, language and legal reasoning. In Sharī'a: Theory, Practice, Transformations.

[8] Huff, T. Rise of Early Modern Science: Islam, China and the West .Cambridge, (2003), 140.

[9] Hussain, M. S."The Role of Present Day Madarsa in the Historical Perspective". The Islamic Culture "As-Saqafat-Ul Islamia", 34, (2015), 7-20.

[10] Hussain, M. S."The Role of Present Day Madarsa in the Historical Perspective".

continued to function as an educational institution even during the colonial period.[11] Memorization has been an important tool used in learning activities evidenced at the time of classical Islam It had been an important technique as the Arabs had been known for their strong memory. Various traditions which were narrated from previous Arabs were mastered through this technique, including the two sacred manuscripts of the Islamic Qur'an and Sunnah, and other religious sciences.[12]

The term *Mudzakarah* refers to the discussion on a particular theme where opinions are extended by the participants. It is also referred to as *Bahts-ul-Masa'il* which is a scientific meeting. *Munazharah* is referred to as a technique of Islamic education employed in the classical era, whereby discussion was carried on. It is a debate where opinions are extended on the basis of arguments.[13] It is similar to modern-day mooting in law schools. The abridged scientific method is employed for learning trips. It may include a journey that is aimed at scientific purposes (learning, teaching, discussion, searching for books, and so on), or merely the usual journey undertaken by those who are seen in scholarly activities.

II. The Status of Islamic Law (*Shariah)* During the Colonial Era in the Sub-Continent

During the era of Muslim rule in India, the *Shariah* laws remained to be the law of the land for centuries. Various disputes were adjudicated in accordance with the rules of the Qur'ān and the Sunnah.[14] The *Shariah* laws were in the field in India during the on-set of colonial rule till the point when Lord Warren Hastings was selected as the first Governor General of India in 1774. Warren Hastings was the most famous of the British governors-general of India, who dominated Indian affairs from 1772 to 1785 and was impeached (though acquitted) on his return to England. The implementation of *Shariah* was one of the main reasons for resistance against the colonization of Muslim territories. This has been stated by Christlow in the following words:

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[11] Muhammad Khalid Masud. "Teaching of Islamic Law and Sharī'ah: A Critical Evaluation of the Present and Prospects for the Future." Islamic Studies 44, no. 2 (2005): 165–89.

[12] Makdisi, G. The Rise of College. Edinburg: Edinburg University Press, (1990), 99.

[13] Makdisi, G. The Rise of College. 99.

[14] Ahmed, M. B. (1941). The administration of justice in medieval India, a study in outline of the judicial system under the sultans and the badshahs of Delhi based mainly upon cases decided by medieval courts in India between 1206-1750 A.D.

"The Europeans had to face massive opposition while colonizing the Muslim world for known reasons. The Islamic law being an important part of the socio-legal and political fabric, the danger was imminent that it could be used as part of an resistance movement against a colonial system."[15]

Generally, the *qāḍī* worked as a judge who was assisted by a *muftī* tasked with an advisory role. Lord Hasting step by step abrogated the Islamic Legal System of India. Initially, secular courts were installed,[16] then, the English doctrine of precedent was given usage, and at last, doctrine of 'Equity, Justice and Good Conscience' was made applicable.[17]

The hierarchy of civil and criminal courts was established through the Hastings Plan of 1772 whereby indigenous legal traditions were applied 'in all actions concerning inheritance, marriage, caste, and other religious usages or institutions. Indigenous standards included 'the laws of the Quran with regard to Muslims' and 'the laws of the *Brahmanic' Shasters'* with regard to Hindus. By the early nineteenth century, the court system had been extended, with a new legal profession being developed, and an increasing body of statute and court practice had spread the colonial state's influence.[18]

The famous polymath of early Orientalism, Sir William Jones, urged that Hastings produce 'a full Digest of Hindu and Muslim laws under the model of Justinian's inestimable Pandects.' The emphasis on rule-based legality was modeled after the Roman legal system.[19]

The most drastic overthrow of Anglo-Muhammadan law, however, occurred by statute. In the early 1860s, colonial regulations completely replaced Islamic criminal law and procedure; and in 1872, "Islamic canons of evidence" were replaced by British-based norms. Except for family law and some property transactions, new colonial rules had supplanted Anglo-Muhammadan law by 1875. The codes reflected the state's long-standing dissatisfaction with Islamic law but they also provided the state with a more exact and dependable legal infrastructure to preserve and manage its police

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[15] Christelow, Allan. Muslim Law Courts and the French Colonial State in Algeria. Princeton University Press, 1985, 6-7.

[16] Fyzee, A. A. Outlines of Muhammadan Law, Oxford University Press, (1955), 54.

[17] David Pearl., A Textbook on Muslim Personal Law. Croom Helm, (1987), 26-27.

[18] Anderson, M. Islamic Law and the Colonial Encounter in British India. Michael Anderson. (1996). Issue 7 of WLUML occasional paper: Women Living Under Muslim Laws.

[19] Anderson, M. Islamic Law and the Colonial Encounter in British In-dia. Michael Anderson.

power. Yet, the enforcement of different systems of "personal law" was never completely eliminated as an administrative technique. If personal laws were significant in the early raj as a means of retaining governmental control, they took on new meaning in the rising "communal politics of the twentieth century." Anglo-Muhammadan law was seen as a "politically sensitive and technically complex subject" for legal studies during the colonial period. But, there was an irony in this, because what the Company courts interpreted as Islamic law was often more foreign than familiar to purportedly 'Muslim' populations. The subject matter of Anglo-Muhammadan academia of the tenth century was skewed, frequently "reflecting British preoccupations more accurately than indigenous ones." Moreover, colonial administrators may never have had such a dramatic impact on Islamic legal structures as they did when attempting to preserve them.[20] Pre-colonial legal scholarship was heavily used by colonial scholars. Shariah had been administered throughout South Asia for centuries, first by various Sultanates, then by the powerful Mughal Empire, and lastly by the successor kingdoms that developed during the eighteenth century.[21]

Shariah administration, particularly under the Mughals, was a crucial aspect of the symbolization of imperial legitimacy; its administration was regarded as a sacred obligation. In these conditions, legal research flourished; the imperial court supported the 'ulama, or legal experts, and Aurangzeb commissioned the renowned *fatawa Alamgiri*, a collection of legal judgements in the *fiqh* tradition. On the administrative front, the *shariah* was complemented by a comprehensive set of imperial laws and a cadre of officially sanctioned qadis drawn mostly from the 'ulama.[22]

Legal studies were popular as a symbol of social standing. Legal professionals appear to have concentrated their research on *al-Hidaya*, a twelfth-century treatise of Central Asian origin that principally relied on Imam Abu-Yusuf and Imam Al-Shaybani, two pupils of Imam Abu-Hanifa.[23] Given the perceived importance of legal text and the widespread distrust of indigenous law officers, legal administrators were keen to have Islamic texts translated into English so that indigenous laws might be immediately

[20] Anderson, M. Islamic Law and the Colonial Encounter in British In-dia. Michael Anderson. (1996).

[21] Fyzee, A. A. Outlines of Muhammadan Law, 54.

[22] Yusuf, K. The judiciary in India under the Sultans of Delhi and the Mughal Emperors. Indo-lranica (1965), 18 (4): 1-12.

[23] Metcalfe, B. Islamic Revival in British India: Deoband. Princeton: Princeton University Press, (1982), 20.

applied by British judges. Three *maulavis* translated *al-Hidaya*, a prominent compilation of Hanafi opinion, from Arabic to Persian at Hastings' request, and then into English by Charles Hamilton in 1791. But, *al-Hidaya* received no inherit treatment.[24] Thematic compilations of resources were progressively used as the textual basis of Anglo-Muhammadan law. W. H. MacNaghten collated a number of fatwas issued by court *qadis* and published them in 1825 under the title "Principles and Precedents of Mohammadan Law," alongside his own wide generalisations. He presented himself as an expert of Islamic law. As a result, regions of ambiguous interpretation were glossed over, and a uniform rule was offered in place of genuine doctrine discrepancies.

Colonial administration gave rise to a number of textbooks in the years that followed, each of which handled their subject with varied degrees of sophistication while keeping to MacNaghten's basic concept. The textbook's organization makes the most of the minimal knowledge available. It minimized doctrine fluctuations and portrayed *Shariah* as something it was never: an unchanging collection of laws exempt from judicial review and interpretation. As a non-Muslim colonial authority managed Muslim law, personal law became a forum for organized political action. This was not "entirely new in South Asia;" for centuries, Islamic idioms have been employed to translate economic dissatisfaction into "focused political action".[25]

Establishment of British Courts:

Preceding the War of Independence in 1857, the occupied region and territories in India were controlled by the East India Company under special charters granted by the British Parliament.[26] The British system of judicial proceedings was introduced from the very beginning in 1600. The Company had been granted the authority "to establish its own courts and make laws not only for the Company's servants, but also for Indians residing in Company-occupied areas." At the end of the eighteenth century, Calcutta, Bombay, and Madras Presidency (now known as the States) all had their own courts established by the Company government of India. English law was mostly what they

[24] Anderson, M. Islamic Law and the Colonial Encounter in British India.Michael Anderson. (1996). Issue 7 of WLUML occasional paper: Women Living Under Muslim Laws.

[25] Anderson, M. Islamic Law and the Colonial Encounter in British In-dia. Michael Anderson. (1996).

[26] Aggarwal, Arjun P. "Legal Education In India." Journal of Legal Education12, no. 2 (1959): 231–48.

adhered to. The three presidency towns' establishments of recorders courts and supreme courts served as the catalyst for the emergence of professional attorneys. Each presidency's respective high court was combined into one in 1861, when separate courts were abolished.[27] It was the time when Indians mostly used to get legal education from England. It was in 1855 that law courses were commenced such as the Hindu College in Calcutta, Elphinstone College in Bombay and Madras. Another thing was that during this period legal education was accessible only to males.[28] The outcome was the product in shape of lawyers who mostly used to practice law before district courts. Privy Council was the highest appellate forum which was situated in London. In the Privy Council and the High Courts, Indian legal practitioners were treated as inferiors as compared to the English Barristers.[29]

Establishment of Universities in India:

The English system of education in India began in 1792, when "the directors of the East India Company" considered sending schoolmasters to India. Lord William Bentinck published a resolution in 1835 urging the promotion of European narrative and science among Indians. Ultimately, by the end of 1856, the British Government of India approved legislation to set up three universities.[30] The first was formed in Calcutta in 1857, and those in Bombay and Madras followed soon after. After this, universities were established in some other parts of India. All of these universities were and continue to be organised along the lines of the traditional pattern of English education.

Qualifications for Entering the Legal Profession:

The previous categories of professional lawyers, each of which had their own academic requirements, are another issue that has a significant impact on India's system of "legal education." In India, the word "legal practitioner" referred to a large variety of clearly defined and separate classes of individuals who engaged in various legal activities, including advocates, *vakils*, attorneys, pleaders, *mukhtars*, and revenue agents. 6 For each of these types of practitioners, different levels of legal education were necessary. Some of the classes had no mandatory training requirements of any type; others had

[27] Aggarwal, Arjun P. "Legal Education in India."

[28] Bhavnani, J. K. "Legal Education in India." Journal of the Indian Law Institute4, no. 2 (1962): 167–90.

[29] Aggarwal, Arjun P. "Legal Education in India."

[30] Aggarwal, Arjun P. "Legal Education in India."

apprenticeship requirements; still others had formal training requirements at accredited law schools.[31]

Moreover, a variety of authorities existed to evaluate applicants for the legal profession. A psychological element affecting qualifications for entering the legal profession should also be emphasised. Barristers at law from England have received special consideration in the courts. This has had a significant impact on their practice in an indirect way. The general public has a tendency to think that a lawyer with a barrister's degree is more knowledgeable and capable and merits greater costs. As a result, parents who could afford it have chosen to send their kids to English law schools rather than Indian ones for their legal education. The fact that the "majority of students" in Indian law schools come from lower-income homes has often been observed. This sheds light on why most of the law schools started as evening schools and continued solely as such for nearly a century.[32]

III. Law School Education:

In 1855, the Government Law College in Bombay established modern legal education in India. The institution began with the hiring of one jurisprudence professor, who lectured four hours each week in the evening. The inaugural lecture drew 100 listeners, although the class of pupils was actually forty-six, with just thirty-six appearing for examination in 1856.

In September 1860, the Government Law College, Bombay, became associated with the Bombay University. Law schools were established in Calcutta and Madras about the same time and on similar principles. The schools were also part-time. Courses were held in the evening, and the majority of students who attended worked during the day. The staff (faculty) hired for law school was primarily made up of part-time practicing attorneys. This was due in part to the part-time nature of the law schools as well as the fact that famous practicing attorneys were regarded as having the best ability to impart legal education. The goal of law school is to prepare students to practice law and to become qualified attorneys who can apply legal theories to specific situations. Only practicing professors who are familiar with how legal principles are handled and applied in courts to actual facts are qualified to provide such guidance. In terms of the students, the college should be a full-time legal endeavour, but not in terms of the other staff

[31] Aggarwal, Arjun P. "Legal Education in India."

[32] Aggarwal, Arjun P. "Legal Education in India."

members. The number of schools offering legal education grew throughout time. There were seventeen law schools with 1,673 students in 1886–1887. Three thousand twenty students attended thirty-four law schools in the academic year 1896–187 "Notably, the majority of these institutions fell under the purview of the three presidencies of Bombay, Calcutta, and Madras, with the Calcutta presidency having the largest student population. In all of northern India in 1900, there were only two law schools: one in Allahabad and one in Lahore, which is now in Pakistan".[33]

Curriculum:

As noted earlier, legal education in India began with the teaching of jurisprudence, and it appears that the teaching of jurisprudence alone continued for a decade. The Government Law College, Bombay, when it was affiliated with the Bombay University, however, started a three-year degree course in law. The following was the curriculum in 1862 :

First Year: 1. General and Comparative Jurisprudence (including the elements of Roman and English private substantive law, and of the Hindu and Mahomedan law of contracts, family, and succession).

Second Year: 1. Contracts and mercantile law; 2. Torts and criminal law.

Third Year: 1. Principles of equity (including the doctrines of property law) 2. Judicial evidence and procedure, civil and criminal.

In the year 1891, the following changes in the curriculum were made:

First Year: 1. Roman civil law; 2. Elements of general jurisprudence; 3. International law; 4. Ancient law.

Second and Third Year: 1. "Succession and family rights with special reference to Hindu and Mahomedan law"; 2. Contracts and the transfer of leases of immovable property; 3. Equity, with special reference to trusts and other securities for money and the Specific Relief Act; 4. Torts and crimes; 5. "Evidence, civil procedure (including limitation), and criminal procedure."[34]

In accordance with the recommendations of the Indian University Commission in 1902, as noted above, the law schools reduced the law courses from three to two years and

[33] Aggarwal, Arjun P. "Legal Education in India."

[34] Aggarwal, Arjun P. "Legal Education in India."

reorganized their curricula. In 1908-09, when the new regulations came into force, the curriculum was as follows:

First Year: 1. Roman law; 2. Jurisprudence; 3. Contracts and torts; 4. Crimes and Criminal Procedure Code.

Second Year: 1. "Succession and family rights, with special reference to Hindu and Mahomedan law"; 2. Property, easements, and land tenures; 3. Equity, with special reference to trusts and specific relief; 4. Evidence, civil procedure, and limitation.

Since 1908, there were four courses for each of the two-yearly LL.B. degree examinations. In 1926, however, the number was raised from four to five. In the first year, a course was added in constitutional law and government of India Act, while in the second year, courses in company law and the law of insolvency were added as additional subjects. It may be noted that Indian law schools have placed quite an important emphasis on the teaching of Roman law. The Indian University Commission of 1902 recommended that Roman law should not be a necessary subject because most of the Indian law students were ignorant of Latin. But it appears that despite its rejection by the Commission, Indian jurists, and legal educators have emphasized it.[35]

Till 1947, the progress of legal education remained under-developed.[36]

The role of Islamic law was narrowed down and even in teaching a single course that covers the "area of personal law" was included in the curriculum under the subject name Mohammadan law. By establishing law schools inside of universities and making "a law degree" a requirement for "entering the legal profession," the colonial era "secularised" the legal academy. The study of "Islamic law and jurisprudence" was viewed as one of many different courses, and little emphasis was placed on improving students' research and methodological skills in this area. This also resulted in the *madrassa*, the traditional institution of Islamic legal education, being undermined.[37]

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[35] Aggarwal, Arjun P. "Legal Education in India."

[36] Bhavnani, J. K. "Legal Education in India." Journal of the Indian Law Institute4, no. 2 (1962): 167–90.

[37] Ali, Shaheen Sardar. "Teaching and Learning Islamic Law in a Globalized World: Some Re-flections and Perspectives." Journal of Legal Education 61, no. 2 (2011): 206–30.

Most notably, modern legal education was stricter and more professional than traditional *madrasah* education.[38] So, a legal academic in the majority of Muslim countries is limited to lecturing from books. It is a well-documented and intricate story of how colonizers who were occupying Muslim areas gradually replaced local laws, including Islamic law, with European ones. For instance, Ebrahim Moosa describes interactions between colonial and Islamic law. Parallel to this, John Strawson, a legal historian, offers sharp commentary on how well-known Western Islamic law experts helped undermine Islamic law as part of invaders' "civilizing" agenda.[39]

As a result, modern lawyers in Muslim-majority countries who practice Islamic law rarely study Islamic law in the manner that it was "formerly taught" in pre-modern madrasas. Instead, the focus was on a "secularized' legal curriculum".[40] Islamic law nowadays is part of a complicated, bureaucratic state structure where the primary sources of the "legal systems that are based on European models of civil law" and government are only partially derived from Islamic law, if at all.[41] However, this does not mean that Shariah has no role in the administration of people. If Shariah directs a dynamic participation in the administration of the community, then it cannot be separated simply from the contemporary framework.[42]

IV. The Significance of Islamic Law (Shariah) in the Legal System of Pakistan

At the advent of the colonial system, the British had little understanding of the Islamic legal system. At the time of fading away of the British from the subcontinent in 1947, a complicated structure of administrative roots as well as a functional understanding of Islamic legal guideline was there. The same was adopted by the states originating from the Indian subcontinent. The colonial courts tasked with enforcing what became known

[38] Muhammad Khalid Masud. "Teaching of Islamic Law and Sharīʿah: A Critical Evaluation of the Present and Prospects for the Future." Islamic Studies 44, no. 2 (2005): 165–89.

[39] Ali, Shaheen Sardar. "Teaching and Learning Islamic Law in a Globalized World: Some Re-flections and Perspectives." Journal of Legal Education 61, no. 2 (2011): 206–30.

[40] Anver Emon,' Sharia and the Modern State', in Anver M.Emon, Mark Ellis, and Ben-jamin Glahn (eds), Islamic Law and International Human Rights Law (Oxford,2012; online edn,Oxford Academic, 24 Jan.2013.

[41] Abu-Odeh, L. The Politics of (Mis)recognition: Islamic Law Pedagogy in American Academia. The American Journal of Comparative Law, (2004), 789-824.

[42] Anver Emon,' Sharia and the Modern State', 2012.

as "Anglo-Muhammadan law" could rely on legal scholarship that included translations of Arabic and Persian texts, a few commentaries, and the precedent of hundreds of cases.[43]

The Indian Independence Act, 1947 under which Pakistan gained independence, provided in section l8 (3) that:

> *"Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall as far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf."*[44]

The colonial laws were adopted with necessary changes through Adaptation Orders in 1947 and 1949. Subsequently, existing laws were given continuity through constitutional provisions; such as, Article 224 (1) of 1956 Constitution, Article 225 (1) of the 1962 Constitution, Article 280 (1) of the 1972- Interim Constitution and Article 268 of the present 1973 Constitution. This continuance of existing laws subsisted even during martial law.[45]

The colonial era British Indian law, which is based on Common law, is a major component of Pakistani law. This fact is also true for the codified commercial and mercantile laws e.g. the Contract Act 1872, the Sale of Goods Act 1930 and procedural laws. Those, not codified, were either governed by the personal (i.e. religious) law of the parties or were governed by the English Common Law rooted in British India under the recipe of "Equity, justice, and good conscience". The constitution of 1973, which was enforced on August 14, 1973, was introduced by a committee duly appointed by the national assembly of Pakistan. In this constitution, the Islamic way of life is safeguarded. Through this legislation, it is envisaged that Pakistan shall be an Islamic Republic, Islam being the state religion, Sovereignty over the entire Universe belongs

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[43] Anderson, M. Islamic Law and the Colonial Encounter in British India.Michael Anderson. (1996). Issue 7 of WLUML occasional paper: Women Living Under Muslim Laws.

[44] Section l8 (3), The Indian Independence Act, 1947.

[45] Lau, Martin. "Introduction to the Pakistani Legal System, with special reference to the Law of Contract", Yearbook of Islamic and Middle Eastern Law Online1, 1 (1994): xxi-28

to Almighty Allah and the authority "bestowed by him on men is a sacred trust which the people of Pakistan will exercise with the limits prescribed by Quran and Sunnah." Through s. 3(1) of the Enforcement of Shari'a Act 1991, Injunctions of Islam, as contained in the Holy Quran and Sunnah, is the supreme law. The Objectives Resolution, the position of which is evident from Hakim Khan v. Government of Pakistan, provides that "sovereignty over the entire universe belongs to God Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust".[46]

V. The Pedagogy and Curriculum for Teaching of *Shariah* (Islamic Law) in the Institutions of Legal Education in Pakistan

There are approximately about fifteen public sector Law Schools/faculties which are currently providing legal education in Pakistan. In total, there are approximately 137 law institutes and the numbers is increasing. Only 32 law universities, which are imparting legal education in the country, conform to the Bar Council Education Rules of 2015.[47] Eleven of these are entitled to affiliate law colleges falling under their territorial jurisdictions. In this paper, the term law institute includes law colleges and universities as both colleges as well as universities are imparting law education in Pakistan. The problems faced by law institutes are evident such as many are lacking even proper infrastructure.

These law institutes used to run different law programmes: (i) three years LLB degree program which has been discontinued since 2018 on the direction of Honorable Supreme Court of Pakistan.[48] There were no proper criteria for admission to this program except having 14 years of education.

(ii) A five years LLB program which is still intact and it is regulated by PBC. At least an intermediate qualification is required for admission to this program.[49]

In this program, a study layout plan designed by National Law University Project is followed. The said study plan is approved by HEC and PBC. On the basis of feedback and suggestion, the curriculum has been reviewed by HEC.[50]

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[46] Lau, Martin. "Introduction to the Pakistani Legal System, with spe-cial reference to the Law of Con-tract".

[47] Pakistan Bar Council Legal Education Rules, 2015.

[48] Pakistan Bar Council Vs the Federal Government and Others, 2018

[49] Pakistan Bar Council Legal Education Rules, 2015.

The LLB Curriculum comprises 166 credit hours in total which is taught over the span of 5 years. The number of courses per semester is 5 to 8 whereas course load per semester is 15 to 18 credit hours. Foundation courses such as Introduction to Sociology, Principles of Political Science, Introduction to Logic and Reasoning, and Introduction to Psychology are taught during the first two years of study; whereas, approved law courses are usually taught during the last three years.[51]

The current curriculum of the Higher Education Commission, Pakistan is limited only to the study of Islamic Jurisprudence and Muslim Personal Laws. There are only four compulsory courses in the existing curriculum i.e. (LLB 433-Islamic Jurisprudence-I, LLB 444-Islamic Jurisprudence-II, LLB 453-Islamic Personal Law-I, and LLB 463-Islamic Personal Law-II).[52]

Only 12 credit hours (4 x 3=12) are assigned to the study of Islamic law out of a total of 172 credit hours during the period of 5 years of LLB despite the fact that Islam is the state religion in Pakistan and all the laws must conform to the injunctions of the Qur'an and the Sunnah. Moreover, Islamic law is not limited to the study of personal law and jurisprudence rather it covers a wide range of areas such as public law of Islam, Islamic International law, Islamic commercial Law, Islamic Criminal Law, Islamic Law of Torts, Islamic law of Contracts, Islamic Law of banking and finance, Islamic Procedural Law, Islamic Constitutional Law, Islamic law of business Organizations, Islamic Law of *Waqf*, etc. which are missing in the current curriculum of the law schools in Pakistan.

In order to understand the situation of pedagogy of Islamic law in Pakistan it is pertinent to quote Professor Sardar Shaheen Ali, who writes:

> *"Teaching Islamic law in a Muslim jurisdiction requires a different approach and methodology than one is able to adopt in non-Muslim jurisdictions. My teaching career in Pakistan, a predominantly Muslim country, conditioned me to adopt a descriptive approach when teaching Islamic law and to refrain from critiquing existing scholarship and textbooks. That is how I recollect being taught in the mid-1970s as a law student at the University of Peshawar, and that was my expectation as a student. Critical*

[50] Higher Education Commission of Pakistan, Report on Curriculum of Law for 5 Years LLB Program, (2010-11).

[51] Higher Education Commission of Pakistan, Report on Curriculum of Law for 5 Years LLB Program, (2010-11).

[52] Higher Education Commission of Pakistan, Report on Curriculum of Law for 5 Years LLB Program, (2010-11).

> *engagement, analysis, and discussion were simply beyond the pale unless one wanted to stir up trouble or acquire the label of infidel. Textbooks on Islamic law authored by highly reputable scholars (including D. F. Mulla and Abdur Rahim) contain critical analysis on various aspects of Islamic law. Yet academics, including myself, navigated around points of contention between various schools of thought in order to avoid the need for independent thinking and critique. Of the three questions for analysis, the what, why, and how, lecturers would stop at what (descriptive/informative level of understanding concepts), and not venture further to interrogate why and how a certain principle of law was derived. This approach encouraged rote learning to the exclusion of questioning, debating, and arriving at an autonomous position. Criticism was considered an effort to undermine Islam itself and was a risky undertaking fraught with danger of the gravest kind, including being accused of blasphemy. A more compelling reason for not engaging rigorously with source materials in Muslim jurisdictions is an underlying tension between the scholarly and interpretative authority of the traditional Muslim scholar and a legal academic in a law school. Legal academics in western style universities are rarely accepted as interpretative authorities of the Islamic legal tradition due to their real or perceived lack of knowledge of Arabic and classical Islamic jurisprudence (usul-ul-fiqh). The general public perception of faculty in public sector law schools in Muslim jurisdictions is that they are lawyers not faqih (jurist); neither are they mufti (a person qualified to give fatwa or opinion).”*[53]

Given this manner of educating students about Islamic law, it should come as no surprise that lectures are the most widely used method. The lecture format encourages the dogmatic teaching of Islamic law and does not assist in connecting it to real-world social and legal settings.[54]

The Islamic law lecture technique and curriculum in Pakistani legal education institutions do not encourage a critical assessment of the subject. Conservative Muslims view any discussion of the topic as a challenge to “religious law, which is unacceptable.” The result is that course does not encourage students to adopt an analytical mindset, and the lectures were given lack both critique and analysis.[55]

Furthermore, despite the fact that Pakistan is home to people of various schools of thought, there is no reference to comparative aspects of “Islamic law and

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[53] Ali, Shaheen Sardar. “Teaching and Learning Islamic Law in a Globalized World: Some Re-flections and Perspectives.” Journal of Legal Education61, no. 2 (2011): 206–30.

[54] Muhammad Khalid Masud. “Teaching of Islamic Law and Sharī‘ah: A Critical Evaluation of the Present and Prospects for the Future.” Islamic Studies44, no. 2 (2005): 165–89.

[55] Ali, Shaheen Sardar. “Teaching and Learning Islamic Law in a Globalized World: Some Re-flections and Perspectives.” Journal of Legal Education61, no. 2 (2011): 206–30.

jurisprudence" in the curriculum of Islamic law. Despite the fact that faculty and students lack the ability to critically evaluate the subject's contents, some law schools have developed their own curriculum of Islamic law that includes material from the works of orientalists. Critical analyses of the teaching strategies have typically come to the conclusion that Islamic legal education given in the institutions of legal education in Pakistan has failed to produce judges and attorneys who can administer Islamic law. Islamic legal education must address the current issues facing legal education and take part in the continuing discussions about the nature and future of law.[56] Moreover, with regard to the teaching capacity of the faculty of Islamic law "only 5% of the teaching faculty, teaching subjects related to Islamic law and jurisprudence are qualified and having the expertise in Islamic Law".[57]

VI. Conclusion and Recommendations

The teaching of Islamic law (Shariah) in Pakistan's legal education system is still heavily impacted by its colonial heritage, resulting in a curriculum that is both restricted and unable to tackle modern legal difficulties. Despite efforts to incorporate Shariah into the legal system following independence, law schools' teaching techniques and course offerings frequently lack depth, critical engagement, and relevance to real-world applications. The current emphasis on Islamic Jurisprudence and Personal Law ignores the broader scope of Islamic legal ideas, such as commercial, constitutional, and international law. Moreover, the teaching approaches used do not foster critical thinking or analytical skills in students, limiting their capacity to apply Islamic law effectively in current circumstances. The lack of trained professors and resources exacerbates the situation, resulting in a generation of legal practitioners who may not possess the essential knowledge or abilities to manage the complexity of Islamic law. To address these problems, the Higher Education Commission (HEC), Pakistan Bar Council (PBC), and legal educators must work together to modify the curriculum and teaching methods. This reform should strive to provide a thorough understanding of Islamic law, based on both classic learning and current legal advancements. Pakistan may nurture a new generation of competent attorneys and

[56] Muhammad Khalid Masud. "Teaching of Islamic Law and Sharīʿah: A Critical Evaluation of the Present and Prospects for the Future." Islamic Studies44, no. 2 (2005): 165–89.

[57] Rahman, S. U. Methodologies of teaching Islamic law (sharī'ah) in law colleges of Pakistan. Islamabad Law Review, (2020), 112.

judges capable of contributing effectively to the administration of justice in accordance with *Shariah* by encouraging critical thinking and different perspectives in the curriculum. Finally, a decolonized and modernized approach to Islamic legal education can assist align Pakistan's legal system with its fundamental Islamic principles while also meeting the requirements of a fast changing community.