

**Human Rights and Religion: Islamic Opposition to Hudood Ordinance
in Pakistan
The Case of Islahi and Ghamidi¹**

Abdul Rauf²

Abstract

Hudood ordinance of General Zia regime remain controversial among various segments of Pakistani society since its promulgation in 1979-80. Opposition to the Hudood Ordinance³ could not succeed as the traditionalists/fundamentalists did not allow anyone to discuss these laws let alone to repeal it. During Musharraf regime a debate was generated in media which finally ended up with bringing changes in the Hudood Ordinance and passing of Women Protection Bill (2006) by the Parliament. In Pakistan's chequered democratic history, for the first time Islamic injunctions were subjected to debate by the public representatives. In the eve of debate, a relatively unknown Islamic school attracted many educated people to a particular interpretation of religion. This school is known as Islahi-Ghamidi school in the existing religious intellectual discourse. Javid Ahmad Ghamidi's view on Hudood ordinance was quite similar with the modern/NGO prompted views of repealing these laws but on different basis. The whole episode of campaign for and against the Hudood laws is connected with the existing religious intellectual discourse. How Ghamidi rebuffed the religious supporters of the Hudood Ordinance is targeted in the following pages. A descriptive approach along with content analysis is adopted to look to Ghamidi's thought along with a comparison to other religious trends in Pakistan. The legislative process along with the extra-parliamentary manoeuvring of the traditionalists/fundamentalist is also focussed when the women protection bill was moved in the parliament.

Keywords: Hudood, Hudood Ordinance, Javid Ghamidi, Ijtihad, Women Protection Act 2006, General Musharraf.

Introduction

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² Professor, Department of Political Science, University of Peshawar, Peshawar, KP

³ It is plural from *hadd* which means limit or restriction. In the popular view it refers to those punishment prescribed in the holy Quran and hadith. Hudood Ordinance (s) refers to the ordinances promulgated by General Zia ul Haq in 1979 and 80 as part of his Islamization policy.

Hudood laws of Zia ul Haq met severe criticism and are still an issue for debate in Pakistan. These laws affected the socio-politico-legal fabric of our society to a great extent. Women being the weakest segment of society suffer more. The expediencies of politicians did not allow them to revoke the laws enacted by General Zia ul Haq in the guise of Hudood laws. General Musharraf in the garb of 'Enlightened Moderation'⁴ started revisiting certain policies including the Hudood laws. A series of discussions and dialogues were carried out in the print and electronic media (largely by the private TV networks) which resulted in approaching of new and different ideas and thoughts not only on the specific issue of Islamic punishments but in the realm of religion also. Javid Ahmad Ghamidi (b. 1954), a religious scholar and his associates emerged as the important exponents in opposing the Hudood Ordinance and confronted the traditionalists and fundamentalists groups alike. He was derogated by the ulama and the fanatics threatened him to death⁵ because the end results of his findings were thought to be coincided with the modernists whom the religious elements do not think to qualify for any religious interpretation. However looking closely to the religious intellectual discourse, Ghamidi never pleased the case of women and minorities on the notions usually adopted by the modern educated opponents of Hudood Ordinance. His ideas sprung from the holy Quran and its unique interpretation which is notable for those having interest in the religion and politics and issues related to human rights and women. Ghamidi's interpretation of scriptural texts is based on the *Nazm* (coherence in Quran) principle on the basis of which his teacher Amin Ahsan Islahi (1903-1997) completed a nine volume exegesis *Taddabur-i-Quran* in 1980.⁶

Ghamidi's contribution to the recent religious intellectual discourse is important in a way that it influences the modern educated class of Pakistani society. Secondly the proposition of Islahi-Ghamidi, if accepted will have far reaching impacts on the socio-economic and political life not only of the womenfolk but also establish a new basis of Muslims' relations with the non-Muslims.

⁴General Musharraf announced the policy of 'Enlightened Moderation' in the the OIC Summit Conference in Malaysia in 2002. He stress on the adoption of a moderate view in practicing Islam quite opposite to the religious fundamentalist groups whose interpretation of religion has little room for their opponents.

⁵Consequently he left Pakistan and shifted to Malaysia along with his family in 2009 (<http://www.theguardian.com/world/2011/jan/20/islam-ghamidi-pakistan-blasphemy-laws>) visited November 15, 2015)

⁶Islahi adopted the *nazm* (coherence) principle from another Indian religious scholar Hamiddudin Farahi (1863-1930) under whose tutelage (1925-30) Islahi studied Quran and related sciences.

The study will help to understand the contemporary religious intellectual discourse in Pakistan in a way to push forward the country with a new trend of juxtaposing Islam and modernity that should be neither apologetic to the West nor captive in the hands of traditionalist/fundamentalist forces in Pakistan.

Islamization and Hudood Ordinance (1979-80)

The religio-Political forces always stressed on the implementation of Islam soon after the establishment of Pakistan.⁷ They consider Islam a complete system of life and thus should be implemented. By the Islamic system they mean *Sharia*⁸. For them *Sharia* is the *sine qua non* for declaring a state as an Islamic state. General Zia ul Haq after overthrowing the elected government in 1977 was facing the crisis of legitimacy. In order to get legitimize his rule he embark on religious slogans and Islamizing Pakistan. The most important step taken by General Zia ul Haq was the promulgation of Hudood Ordinance. In addition to the Pakistan Penal Code, he added Islamic punishment for theft, fornication, *Qazaf* (wrongful accusation of adultery), use of alcohol and prohibited drugs. According to the law a married person if found guilty of adultery after fulfilling the evidence prescribed by the Muslim jurists, is liable to stoning to death. However if the crime is not established with four Muslim pious witnesses the accused will be punished for the crime under *T'azir*.⁹

The Hudood Ordinance of 1979-80 met with mixed reaction. Most of the religious elements hailed these laws while the 'liberal'/'secularist'¹⁰ elements opposed these laws. Some religious scholars for example Mawlana Amin Ahsan Islahi, Mawlana Umar Ahmad Usmani¹¹ and Javid Ahmad Ghamidi also opposed these laws. Islahi consider only hundred strips punishment for both married and un-married in the cases of adultery.¹² Islahi's thought was once incorporated in

⁷ In late 1940s and early 1950s there was a debate on the constitution and the religious elements constantly demanded an Islamic constitution. In the subsequent years the struggle continued even the movement against the Z.A. Bhutto regime in 1977 is popularly known as *Thareek-i-Nizam-i-Mustafa*.

⁸ Literal meaning is path. In religious terms it means Islamic law which is derived from the religious precepts of Islam particularly the Quran and the Sunnah.

⁹ The punishment of a criminal if not possible under *hadd* he or she can be punished under *t'azir* which is a man-made law.

¹⁰ These terms are problematic but here it means all those elements which the religious people declared secular and liberal. It includes all those who are not in alliance with the religious thinking of the ulama.

¹¹ Mawlana Umar Ahmad Usmani, *Rajam-Hadd Ya T'azir* (Karachi: n.p.) 1981.

¹² See for details Amin Ahsan Islahi, *Taddabur-i-Quran* vol. V. 4th ed. (Lahore: Faran Foundation, 1992), pp. 364-74.

one decision of the Federal Shariat Court for adultery of a married couple.¹³ However the court verdict faced severe criticism and public protest headed by the traditionalists/fundamentalists. The then government bowed before the traditional ulama. The court was reconstituted and ulama were included who then reversed the earlier verdict.

The post-Zia governments of Benazir (1988 to 1990 and again from 1993 to 1996) and Nawaz Sharif (1990 to 1993 and again from 1997-1999) could not bring any change in the laws because of the political expediencies. PPP, the largest mass political party with a liberal and democratic posture, expressed solidarity with the opponents of the Hudood Ordinance. However they could not revoke these laws because of fear of strong reaction from the traditionalist and fundamentalist that could damage their religious credentials and thus inflict a heavy loss in the electoral battles. A commission constituted by the Senate of Pakistan in 1994 and headed by Justice Nasir Aslam Zahid recommended repeal of the Hudood Ordinance in 1997 but no action was taken by the government for obvious reasons.

Hudood Ordinance and Ghamidi's Opposition

General Pervez Musharraf after coming into power in 1999 tried to portray himself different from his predecessor, General Zia ul Haq. He allowed a debate on the so called 'settled' Hudood Ordinance which the religious groups termed as a settled issue in Pakistan. In 2002 a committee of the National Commission for the Status of Women (NCSW) was constituted headed by Justice (retired) Majida Rizwi. In the final report, 12 members of the committee supported repeal of the Hudood ordinance while 2 members supported amendments in the law. The concerned departments i.e. law commission, ministry of women development, president and Prime Minister Secretariat did not respond positively to the NCSW report because of possible strong reaction of the religious groups.¹⁴ In the middle of 2004 once again Musharraf called for review of Hudood Ordinance.¹⁵

Opposition to these laws was based on two grounds; that all religious laws should be abolished because there should not be any role for religion in modern polity, while the other opposing view declared these 'Islamic' laws are against the Islamic teachings and thus be repealed. The first group despite of their long and

¹³ PLD 1981, SC122 cited by Dr. Muhammad Amin, *Islamization of Laws in Pakistan* (Lahore: Sang-i-Meel Publications, 1989), p. 74.

¹⁴ *Dawn*, Karachi, January 1, 2004

¹⁵ *The News*, Rawalpindi, May, 16, 2004.

tedious struggle failed to mobilize the people against the laws as they were well encountered by the religious groups particularly by the ulama. The ulama posed themselves as defenders of millennium-old Islamic traditions and maligned their opponents as upholder of the 'Western' ideas and culture. Credit goes to some private electronic channels, who initiated discussion on various issues including the Hudood Ordinance. The most important was a debate titled 'Zara Suchian' (just think) by a private channel "Geo". It was followed by talk shows, interviews and debates among various scholars and stakeholders on other TV channels like 'Aaj' 'Ary-One World', 'Atv' and government owned Ptv. The first group failed to counter the traditionalists, primarily because of a viewpoint not comprehensible to the common people. Ghamidi and his associates came with religious arguments to oppose the prevalent Hudood ordinance e.g. questioning the inequality on the basis of religion and gender in the case of acceptability of evidence, discrimination between adultery and rape, the status of the verdict of earlier jurists and *ijma* (consensus)¹⁶, and principles of consultation.

The first group found a new courage to set their resistance with a new vigour to the Hudood Ordinance because the ulama became defensive before the religious opposition of Ghamidi and his associates. Ghamidi's ideas discredit the traditionalist clerics and they for the first time failed to mobilize masses against legislation in the parliament. MMA¹⁷ (a conglomerate of six religio-political parties) threatened with resignation from the legislative bodies if the parliament passed a bill against the Hudood Ordinance¹⁸ but they did not act upon their words. Rather they took part in the proceedings of the Senate at the time of discussing the issue.¹⁹ These debates and discussions not only discredit religious groups in the eyes of common Pakistanis but also proved their intellectual weaknesses while arguing on religious terms. Debates on the Hudood Ordinance during Musharraf period are important to understand new trends of modernity while on the other it bring into surface the emergence of a new school i.e. Islahi-Ghamidi school of thought in the on-going religious intellectual discourse in Pakistan.

Islahi-Ghamidi school of thought was not popularly known in Pakistan but in the academic circles in India, Islahi is not unknown. According to this school the actual source of religion is the text of the Quran and the religious practices of

¹⁶ It refers to consensus of the jurists and scholars on religious issues. The traditionalist ulama considered it binding upon the Muslims.

¹⁷ MMA was the main opposition party in the parliament and it also enjoyed a government in KP and were in coalition government in Baluchistan.

¹⁸ September 6, 2006, *The News*, Islamabad

(<http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=2892&Cat=13&dt=9/6/2006>)

¹⁹ *Dawn*, Karachi, November, 24, 2006.

the holy prophet called Sunnah. Rest of the sources presently in practice among the Muslims (e.g. *Fiqh*) is fallible and subject to justification from the Quran and Sunnah. The school can be symbolised as ‘Textual Contextualists’ as it give importance to context and the text. This context is not historical²⁰ rather it is the text of the Holy Scriptures which is supreme and thus views of the ulama should be judged in the light of the context of the text. The holy Quran is sent by God for the guidance of human being and its words and language is unquestionable at all levels. It is clear in its essence and one part/verse/passage of the Quran can be comprehended through another part/verse/passage of the same Quran. For understanding it is inevitable to know the hidden coherence in the Quran. All verses and chapters have connection with each other and thus cannot be treated as separate and disjointedly. Ghamidi, a student of Islahi, further sophisticated the concept of coherence and applied this concept to certain social and political issues. The results of this application are quite different and sometime coincide with the views of the modernists represented by Dr. Fazlur Rahman (late) in Pakistan.

Debate on Hudood Ordinance during Musharraf regime seems to be dominated more or less on religious grounds. The traditionalists, the claimant of religion, opposed any move to change the Hudood Ordinance. Ghamidi on the other hand not only opposed these laws but demanded repeal of these laws by the then parliament. Ghamidi being well versed in the traditional religious disciplines, Islamic activism and religious terminologies was in a better position to encounter the religious leaders/mawlawis/ activists instead of the modernists and NGOs. The language and terminology of the NGOs/modernists/‘secularists’ used in the discourse of penal laws or any other subject is alien to the traditionalists and sometime even to the common people. The result is a huge gap between different segments of society. How Ghamidi build his argument against the then Hudood Ordinance is elaborated in the following passages. His views are explained wherever it was found necessary.

1. The Hudood Ordinance is discriminatory as it did not treat all human beings equal. Traditionalists uphold the view of earlier jurists that a witness in the cases of Hudood must be a man and Muslim. Ghamidi declared it blame on Islam because this discrimination is neither stated in the holy Quran nor in the *Sunnah*.²¹ He went to the extent that if the earlier jurists did not accept women and non-Muslims as witness we should accept them now as it is not against Quran and Sunnah.²² He is not agreed with traditionalists’ view of *Tazkiyat al*

²⁰ As that of Dr. Fazal Rehman see for details, *Islam and Modernity-Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1982)

²¹ <https://www.youtube.com/watch?v=fNX2nzKpHPU>, visited November 15, 2015.

²² <https://www.youtube.com/watch?v=QIM9q3RFnhc> visited November 15, 2015.

Shohud.²³ On this specific issue an *ijma* is reported by the traditionalists. Ghamidi do not accept this *ijma* as binding upon the Muslims. Man is liable to err and it can be rectified by the subsequent generations. Ghamidi threatened the very structure of traditional concept of Islam. In the Hudood Ordinance evidence of two women is equal to one man. This view is based on the traditionalist way of explaining certain religious texts including the holy Quran. According to Ghamidi on the issue of testimony in courts, Quran and Hadith (*Sahih*) are silent. It is up to the court, to decide the cases on any available evidence. The verse²⁴ reported in support of half evidence of a woman is not about court and procedure of proving a case in the court. It is about the outside court cases where Quran instructed to bring two men and if it is not available then two women. If such cases are brought in court even the judge will examine and take decision on any method of verification. If a deal is done without documents, the court has to take decision on the available evidences including circumstantial evidences. However, Ghamidi did not substantiate the view that if court has to decide on the circumstantial evidence then why the testimony of woman is taken half in the holy Quran?

2. This Ordinance does not differentiate between *zina bil raza* (fornication) and *zina bil jabr* (rape) in Hudood (God-made laws) but both are differentiated in *T'azir* (man-made laws). If the difference is accepted in *T'azir* then why it is not accepted in the Hudood?²⁵ According to Ghamidi, a person when committing *zina bil jabr* (rape) is committing two crimes; *zina* (fornication) and *jabr* (use of force). In such case the criminal should be awarded two punishments; one for *zina* and the other for *harabah*.²⁶ If somebody is creating *fasad* (Perversity) and nuisance in society then they can be brought to court to award punishment under *harabah* as enunciated in sura *Al Maidah*.²⁷
3. The ordinance differentiates punishment of the crimes on the basis of testimony. If crime is proved to a certain level than the criminal will be punished under the Hudood clauses and if not then under the *t'azir* clauses. According to Ghamidi a crime is either establish or not. Division between Hudood and *t'azir* punishment is against the ethics of law. Ghamidi questions

²³ It means credible testimony of male adult Muslim witness who is not only truthful witness but also abstained from major sins.

²⁴ For example 2:282 of the holy Quran

²⁵ <https://www.youtube.com/watch?v=QIM9q3RFnhc> visited November 15, 2015.

²⁶ *Haraabah* means war against Allah and his prophet. It refers to the use of arms or shows of force for the purpose of taking away the property and or cause wrongful restraint or put him in fear of death or hurt such persons are said to commit *haraabah*.

²⁷ <https://www.youtube.com/watch?v=fNX2nzKpHPU> visited November 15, 2015.

this as if crime is not proved then why a criminal should be trailed under *t'azir*? and if proved then why not under the Hudood laws?²⁸

4. The ordinance does not take into account the nature of the crime and the situation of suspect. The ordinance is very strict in awarding specific punishments by the judge. According to Ghamidi concession in punishment is expressed when Quran describes punishment of fornication. Punishment of a free person is 100 lashes while a slave girl for the same crime cannot be punished equally²⁹ rather it is half of the punishment i.e. 50 lashes. Ghamidi generalised the principle and declared sharia punishment as the last punishment and not the only punishment. A judge can award less than the prescribed punishment.
5. The ordinance does not allow certain punishments which can be brought under the notion *Haraabah*. According to Ghamidi there should be punishment for terrorism and hijacking, mass murder, plunder, dacoity or robbery,³⁰ *zina bil jabr*, and all those crimes which caused nuisance in the society. On the other hand the ordinance includes certain punishments which are not pronounced in the holy Quran. According to Ghamidi the distinction made in the punishment of married and unmarried is not mentioned in the Quran. In Quran there is only one punishment for fornication and that is 100 lashes.³¹
6. The ordinance is introduced by a military dictator and thus lacking any public debate before becoming a law. Ghamidi was rebuked with the claim that it was an outcome of consultation including some ulama from outside Pakistan.³² However Ghamidi criticised the procedure and pleaded that any such bill should be debated inside and outside parliament before becoming a law. Religious scholars should freely express themselves and these views must be taken as different interpretation of Islam. However the final decision should be taken by the parliament. Ghamidi's view overwhelmingly supports the democratic principle while the traditional ulama are reluctant to extent the democratic principles to the sphere of religion.

The traditionalists/fundamentalists initially were not ready to accept any flaw in the Hudood ordinance and termed the Hudood Ordinance as *Hudood ul Allah*

²⁸ Ibid.

²⁹ Verse No. 25: Al Nisa.

³⁰ Javid Ahmad Ghamidi, *The Penal Sharia of Islam* (Lahore: Al-Mawrid, 2006), p.8

³¹ <https://www.youtube.com/watch?v=fNX2nzKpHPU> visited November 15, 2015.

³² Ma'roof Dawalbi (former Prime Minister of Syria) from Muatmar Alim Islami, on the request of Zia ul Haq was detailed by the Saudi King to come and made these laws. The draft was translated into English and Urdu by the information ministry. (Syed Afzal Haider, *Islami Nazriati Council-Irtaqai Safar Awr Karkardigi* cited by Khalid Ahmed, Second Opinion, *Daily Times*, Lahore, August 8, 2006; Interview of Syed Afzal Haider, former member of the Council of Islamic Ideology (1990-2003) *Dawn*, Karachi, October, 17, 2006.

i.e. punishments prescribed by God in Quran.³³ However when objections encircled them, they announced their readiness to modify the laws but only by the 'established' religious scholars³⁴. These Ulama countered the opposition of the ordinance with a twofold strategy; blaming and ridiculing those who opposed the ordinance and secondly declared any flaw in the Hudood ordinance a defect in the procedure and process of its implementation.

The Traditionalists/Fundamentalists in the debate also tried to deal Hudood Ordinance as a political issue. They brought the 'conspiracy theory' into an academic and intellectual controversy. Some of them expressed that Hudood Ordinance is not the real issue of Pakistan³⁵ and that the move to change/repeal the ordinance is instigated by the western countries, which they consider as 'the enemies of Islam'. The anti-Hudood ordinance elements were blamed as agents of the western powers and thus promoting their agenda of maligning Islam.³⁶ The cases of gross violation of Islamic teachings when brought before the supporters of Hudood ordinance, they blamed the police system in Pakistan. They ruled out any role for the police in the Hudood ordinance. They demanded changes in the procedural law³⁷ and appointment of the ulama as judges. The ulama failed to understand and comprehend the changes which took place in the legal sciences in the last five hundred years. Earlier judges took decisions while using enormous discretionary powers. After the codification of laws and in the presence of statute books their power is restricted. Ghamidi do not agree with the traditionalists/fundamentalists and continue criticising the Hudood ordinance on every forum. He constantly pleaded the standpoint of ulama is only one understating of religion and that is not error free. People should also look other interpretation of Islam and the final decision should be taken by the legislature.

Though many religious scholars opposed Hudood ordinance but Ghamidi emerged as the main opponent of the ordinance who was not in favour of changes in Hudood ordinance but demanded repeal of the ordinance.³⁸ Addition in Pakistan Penal Code is enough instead of promulgating a separate law with the name of Hudood.

³³ *The News*, December 12, 2003; *Dawn*, September, 6, 2003; *Jawab Deh*, Iftikhar Ahmad, Geo T.V June 2006.

Ahmed, Second Opinion, *Daily Times*, Lahore, August 8, 2006; Interview of Syed Afzal Haider, former member of the Council of Islamic Ideology (1990-2003) *Dawn*, Karachi, October, 17, 2006.

³⁴ Qualified from a religious madrassah.

³⁵ Dr. Mohammad Amin, *Mahnama Naqib-i-Nabowat*, November 2006 cited by Iqbal, pp. 43-44.

³⁶ Iqbal, pp. 8, 37-41.

³⁷ Mawlana Abdul Malik and Mufti Munib ur Rahman in Geo T.V. programme *Jawab Deh*, June 2006.

³⁸ *Jawab Deh*. <https://www.youtube.com/watch?v=UFwqPu2SI6Q> visited November 15, 2015.

According to Ghamidi aims and objectives of Islamic punishment is to act upon the orders of God. Quran does not describe crimes as threat to peace and tranquillity in society and thus punishment are initiated. Instead Quran consider these punishments as *Haqqa Allah* (God's right). Human life, property and honour are protected by God. Nobody can confiscate this sanctity without the permission of God. When a criminal transgress in the life, property and honour of human being, he/she transgress the sanctity of Hudood (limit) of God and thus liable to be punished. Implementation of punishment is described as the right of God and act upon it is declared as the responsibility of men.³⁹ Human being cannot change it on any pretext. Looking closely to the religious intellectual discourse, Ghamidi's standpoint made it very difficult for the ulama to mobilize the people against the opponents of the ordinance as they did previously in Pakistan.

In the middle of 2006, the government moved a bill in the national assembly to amend the Hudood Ordinance 1979-80. A select committee headed by Nasrullah Drashik of Pakistan Muslim League (PML-Q) was formed representing all political parties in the parliament. The traditionalists/fundamentalists opposed the move and agitated against the government. Members of Pakistan Muslim League (PML-N) and MMA boycotted the proceedings. Choudry Shujat Hussain leader of the PML (Q) met with certain ulama and MMA leadership and both parties agreed to consult the ulama on the issue in Islamabad. The involvement of ulama in the process of changing Hudood ordinance was thought to be an expression of dissatisfaction upon the Council of Islamic ideology (CII)-a constitutional body to look after all legislation in the light of Quran and Sunnah. Ghamidi took the move of the ruling party seriously and tendered his resignation from the Council of Islamic Ideology to the president, General Pervez Musharraf.⁴⁰ Pakistan Peoples Party Parliamentarian (PPPP) and Muttahida Qaumi Movement (MQM) took active part in the proceedings of the select committee and opposed any concession to the traditionalists/ fundamentalists on the issue. In fact MQM and Sheri Rahman of the PPPP already introduced a bill in the assembly for amending the Hudood ordinance. After many meetings and deliberations in the National Assembly, the Women Protection Bill was finally passed despite MMA's opposition. The Bill was sent to the Senate where MMA not only took part in the discussion but also suggested changes which were rejected by the house. Women Protection Act became a law on November 15,

³⁹ Muhammad Amaar Khan Nasir, *Hudood-o-T'azirat- Chand Aham Mobahith* (Lahore: Al Mawrid Institute of Islamic Sciences, 2008), p. 27.

⁴⁰ However his resignation as a member of the Council of Islamic Ideology was not accepted by the president and he was asked to continue as a member of the Council of Islamic Ideology.

2006 after approval of the president who made a speech to the nation and praised the modern and liberal forces particularly the PPP for their cooperation. The Women Protection Act was criticised by the traditionalists/ fundamentalists everywhere, including dailies, weeklies. One of the ulama, Mohammad Hanif Jalandhary declared, 'Exclusion of rape from the Hudood and its inclusion in the T'azir, change in the sentence of *rajm*, fixation of minimum adult age for girls at 16 years and overriding of interpretations of the Quran and Sunnah have made the Bill un-Islamic.'⁴¹

Conclusion and Suggestions

After twenty-seven years of its passage the Hudood ordinance was finally amended by the parliament in 2006. The traditionalists/ fundamentalists raised hue and cry and threatened public resistance but could not do anything except to boycott proceedings of the National Assembly when the Women Protection Bill was moved. The debate conducted by the Islahi-Ghamidi school or the 'Textual Contextualists' in print and electronic media left little room for the traditionalists/fundamentalists intellectual basis to defend the case of Hudood Ordinance.

Though the Women Protection Bill does not incorporate all the demands of the opponents but it greatly relieved the women folk from the unwarranted harassment by the police in Hudood cases. A distinction between *zina bil jabr* (rape) and *zina bil Raza* (adultery) was made while punishments for both have been differentiated. Ghamidi objected provisions of the new act but appreciated the above provisions and hailed the act as for the first time *ijtihad* had been conducted by the elected members in the parliament. *Ijtihad* by the parliament was first suggested by Allama Iqbal in 1930s in British India but it could not be materialized primarily due to opposition of the traditional ulama. The modern educated Muslims failed to encounter the ulama on religious notions.

The steps taken for accepting a religious interpretation by the elected members need to be strengthened by all the stake holders. This principle will ease many intellectual, administrative problems/controversies in the country and this will conversely contribute positive to the political and economic stability of Pakistan. It will also affect the trends in radicalization and extremism in forcing individual and group decisions upon the people and policy makers. Great care should be taken by the intellectuals, strategists, policy makers and politician not to succumb to any pressure by the religious demagogues. They should give attention and provide space to serious religious scholarship to emancipate the people from

⁴¹ *Daily Times*, Lahore, November 20, 2006

the hold of religious clergy. It can be done through establishing religious institutions along with their exposure to the modern sciences both natural and social. Any failure in appreciating the *ijtihad* conducted by parliament or the political expediency of politicians will greatly damage the process of fresh religious intellectual into the primordial thinking in Pakistan. Unfortunately, it happened and the subsequent government went a step back on the issue of Blasphemy Law and withdrew a bill asking for revision of the existing law. In contrast to a unilineal model of modernity in the west, the case of Ghamidi should be treated as a case of alternative modernity in the developing countries.

The discussion initiated in the electronic media on religion and religious issues should be continued with great care. Any mistake in this regard can further push the religious elements already marginalized as active member of the mainstream society. Space and security should also be provided to those who don't agree with the traditionalists/ fundamentalists on their interpretation of religion.

The Council of Islamic Ideology should be strengthened in terms of functional specialisation while the present structure does allow political interferences in the council. The forum should be open to the social scientists also and merely inclusion of the ulama and legal experts are not serving the purpose.

The socio economic, political issues confronting Pakistan and having relevance to religion should be dealt by the social scientists. This is possible only if attention is given to educate people in religion. It does not mean a long course in religious disciplines. It means training people in how to take decisions when an issue is related to religion. Ghamidi's frame of thinking may be helpful in this regard.

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