

**RESEARCH PAPER****Revolutionary Reforms and Societal Opposition: A Case Study of Pakistan's Commission on Marriage and Family Laws (1955-1961)****¹Dr. Naila Maqsood*, ²Dr. Sumaira Nawaz and ³Jalil Ahmed**

1. Assistant Professor, University of Engineering & Technology, Taxila, Punjab, Pakistan
2. Assistant Professor, University of Engineering & Technology, Taxila, Punjab, , Pakistan
3. Assistant Professor, MUET, SZAB Campus, Khairpur, Sindh, Pakistan

Corresponding Author

naila.maqsood@uettaxila.edu.pk

ABSTRACT

This research paper evaluates how modernists and traditionalists, within the framework of Pakistani society, have interpreted 'the Commission on Marriage and Family Laws' differently. Modernists emphasize social justice and gender equality and see the Commission's proposals as a progressive step toward harmonizing Islamic law with modern principles. On the other hand, traditionalists argue that established Islamic norms should be preserved and voice concerns about the possible degradation of cultural and religious values. This study analyzes the ideological clashes inherent in the divergence between modernists and traditionalists, while simultaneously scrutinizing the historical, cultural, and societal factors that shape their perspectives. The study offers valuable insights on the ongoing discussion around legislative reforms and religious interpretations by illuminating the complex interactions between tradition and modernity within Islamic world.

Keywords: Marriage, Family Laws, Islamic Laws, Society**Introduction**

A turning point in Pakistan's legal and social development occurred in 1955 when the government of the country formed the Commission on Marriage and Family Laws. (Haider, 2000) This research examines the Commission's proceedings and how modernists and traditionalists interpreted its recommendations, which had a big impact on Pakistan's marriage and family laws.

Literature Review**Commission's Modernist Interpretations: Aligning Islamic Laws with Progressive Values**

From a modernist perspective, the Commission's recommendations are highlighted as crucial milestones in bringing Islamic teachings into line with progressive social goals. (Ansari, et al, 2022) In order to ensure that religious convictions and social progress coexist peacefully, they support practical reforms that seek to improve gender equality and incorporate contemporary principles into the legal system. (Maqsood, et al, 2018) The main ideas summarizing the specifics of the modernist interpretation are listed below.

Empowering Women: The Commission's Mission to Reform Islamic Laws for Gender Equity

Aligned with the core tenets of Islam, the Commission was founded with the primary goal of restoring women to their proper place in society. The Commission was specifically entrusted with reviewing the current laws that were in place regarding marriage, child support, divorce and other relevant issues that need modification.

According to the Commission's Report, the Quran's teachings mainly dealt with basic ideas and problems, answering queries that came up throughout its revelation and contextualizing Islamic law. The directives included in the Quran were brief and open to application. Islamic law is based on the Prophet Muhammad's Sunnah, which clarified and modified these precepts to account for changing conditions. The Prophet made place for *ijtihad*, or interpretative wisdom, since he understood the intricacy of human relationships in a variety of settings. This interpretive approach operated within the broad framework of the Quran and the Sunnah, reflecting the flexibility inherent in Islamic law to accommodate changing societal needs. (Rashid,1959)

Ijtihad in Islam: Adapting Divine Principles to Evolving Realities

In the lack of explicit instructions from the main source of Islam, the Prophet urged his followers to rely on reason and conscience. Islamic law may be independently interpreted through the practice of *ijtihad*, which demonstrated how flexible Islamic principles are when applied to new circumstances. (al Alwani,1991)

Ijtihad was not limited to the time of the Prophet; it was a notion that developed along with the Muslim state and culture. By using *ijtihad* in their decision-making, notable individuals—including the caliphs—showed insight and devotion to the principles of Islam. Iqbal, the distinguished philosopher and Islamic revivalist, emphasized the dynamic principle of *ijtihad*, which became a quality that set Islam apart. (Tauseef, 2011). It exemplified the religion's adaptability and responsiveness to changing societal needs, ensuring the continued relevance of Islamic jurisprudence in diverse contexts. *Ijtihad*, thus, stands as a testament to Islam's intellectual flexibility and its ability to harmonize timeless principles with the evolving complexities of human existence. (Gazette of Pakistan Extraordinary, 1956)

Islam: A Beacon of Adaptation and Progress in a Dynamic Global environment

Islam is uniquely able to steer the currents of development and advancement in novel and constructive directions. Islam gracefully incorporates and adapts new ideas, in contrast to those ideologies that may oppose change. Its fundamental principles of fairness, equity, pursuit of universal knowledge, acceptance of diverse life experiences, and emphasis on interconnectedness remain unwavering amidst the changing tides of time. In the midst of life's turbulent challenges, Islam stands firm, offering a worldview that promotes comprehensive and harmonious development. It provides a stable foundation, urging followers to embrace change and development while upholding core values, making it a religion that not only survives in modern contexts but also contributes to the progress and understanding of the world. (Rashid, 1959)

Islamic Governance: Beyond Priest-Dominated Theocracies

Islam indeed stands apart from the concept of a priest-dominated theocracy. The Commission's perspective recognizes the historical conflicts in Western nations where the separation between state and Church led to the acceptance of secularism. In Islam, religion is a spiritual lens through which life is approached, enriching all aspects of existence. Unlike some religious traditions, Islam never established a separate priestly class, emphasizing direct connection with God without intermediaries.

In Islamic philosophy, there is no hierarchical structure akin to ordained priests, and the faith does not recognize individuals above the law. Islam rejects the notion of Caesar, highlighting the impossibility of satisfying both divine and worldly demands simultaneously due to inherent conflicts. While some individuals might possess extensive knowledge of Islamic law, this expertise doesn't elevate them to a distinct class; they do not possess extra rights or privileges. This egalitarian approach underscores Islam's emphasis on direct

spiritual connection and the absence of intermediaries, making it fundamentally different from priest-dominated theocracies. (Rashid, 1959)

Material and Methods

The present research utilizes a historical case study approach to examine 'Pakistan's Commission on Marriage and Family Laws' and the subsequent resistance from the society. Extensive archive research is conducted as part of primary data collection, with an emphasis on commission report, and Maulana 's note of dissent.

Revolutionary Reforms and Immediate Challenges: The Commission's Strategic Focus on Family Law in Pakistan

The Commission's assertion regarding Pakistan's formation as a revolutionary act underscores the need for fundamental reforms in legal, judicial, and educational systems. However, Pakistan faced immediate challenges related to survival and self-preservation due to hostile neighbours and economic instability, diverting resources away from essential reforms. These circumstances necessitated a focus on basic survival, leaving limited resources for the reconstruction of educational systems and legal and judicial reforms.

The Commission recognized the urgency of addressing these issues and emphasized the requirement for a team of scholars and legal experts well-versed in Muslim law and jurisprudence. Considering the intricacy of legislative revisions, the Commission wisely decided to start by prioritizing family law challenges. In response to the pressing need for change, this emphasis allowed laws that directly affected the lives of Pakistani citizens to be passed quickly.

As a result, Pakistan's legal and social structures have undergone more substantial changes as a result of the Commission's dedication to family law reforms. (Rashid, 1959)

Polygamy and the Qur'anic Perspective: A Rational Examination

The contentious issue of polygamy in Muslim societies has sparked fervent debates, prompting the Commission to delve into the Qur'anic view on this matter. Contrary to common assumptions, the Commission asserts that the Qur'an neither unconditionally endorses nor encourages polygamy. Rather, it permits this practice under strict conditions, primarily for grave social emergencies.

The Commission underscores the profound risks that polygamy poses to social justice and the harmony of the family unit, considered the cornerstone of culture and civilization. It notes with sorrow that, in most cases, polygamy lacks rational justification and is often prompted by base desires, disregarding the principles of even elementary justice.

The Qur'an's conditional permission for polygamy comes with heavy responsibilities and a warning that the common man would find it exceedingly difficult, if not impossible, to meet the rigorous criteria of equal justice. Therefore, the Commission firmly believes that polygamy cannot be left to the whims of individuals. Instead, it advocates for comprehensive regulations, akin to preventing an epidemic, to protect human well-being. The research paper elaborates on these critical perspectives, shedding light on the importance of a rational and preventive approach to the issue of polygamy in Muslim societies. (Rashid, 1959)

Reforming Polygamy: Seeking Justice Through a Matrimonial Court

The Commission recognizes that in exceptional cases, taking a second wife may be justifiable. To ensure a fair and rational approach, the Commission recommends the establishment of a system where anyone desiring a second marriage must first seek

permission from a Matrimonial Court. This court would assess the husband's request, allowing the second marriage only if it finds rational justification and deems the husband capable of ensuring justice to both wives and their children.

The Commission argues that asking the first wife and her children to seek legal recourse in the event of injustice is unjust and impractical, given the social and economic constraints faced by women. It emphasizes the proactive role of the legal and judicial system in minimizing injustice, making the Matrimonial Court's permission for second marriages a fundamental reform proposal. (Rashid, 1959)

The Maulana's Dissent: Challenging Modernist Interpretations

Maulana Ihtisham-ul-Haq's dissent note stands as a significant critique of the modernist approach presented in the Commission's report. His detailed analysis and objections encompassed a wide array of aspects, ranging from fundamental principles to specific recommendations. Through his dissent, Haq challenged the very foundation of the modernists' ideas, providing a robust counterpoint to the prevailing discourse within the Commission. His critique, rooted in deep understanding and conviction, added a crucial perspective to the debates, shaping the ongoing dialogue about the intersection of traditional Islamic values and modern societal norms in Pakistan. A breakdown of the traditionalist interpretation is provided in a point-by-point manner..

Maulana's Critique of Western Influences in Commission Recommendations

Haq vehemently argued that the Commission, ostensibly acting within Islamic principles, was surreptitiously introducing Western ideologies into Pakistani culture. His critique highlighted the subtle infiltration of foreign concepts masked as Islamic reforms, challenging the authenticity of the proposed changes. Haq's contention underscored the delicate balance between preserving Pakistan's indigenous values and embracing modernity. His discerning analysis brought to light the complex interplay between tradition and external influences, sparking essential debates about cultural identity and religious integrity in the context of evolving societal norms.

Maulana's Critique on Commission's Composition

Maulana expressed profound dismay at the composition of the Commission, finding it deeply unsettling that individuals lacking a comprehensive understanding of Islamic teachings were entrusted with aligning marriage laws with Islamic shari'ah. He criticized the selection process, highlighting how members, including women, were chosen based on various skills, leading to a disregard for Islamic principles during their sessions. This criticism emphasized the Commission's deviation from the Holy Qur'an and the Sunnah, undermining the sanctity of Muslim jurisprudence by misrepresenting their actions as ijma (Consensus) in the final Report. (Smith, 1971)

Maulana's Critique on the Commission's Approach

Maulana vehemently criticized the Commission members for hastily claiming the Quran and Sunnah as their basis without genuinely codifying new laws or adhering to established jurisprudential principles. He contended that relying on personal whims to establish rules was not true fiqh or ijihad, but a severe distortion of the religion. He further argued that certain proposals aimed to distort the Quran and Sunnah, reflecting some members' Western bias and disdain for Islam, an alarming deviation from authentic Islamic teachings..... (Smith, 1971)

Maulana's Response to Ijtihad Justification

Maulana vehemently contested the Commission's justification for their arbitrary Ijtihad, particularly their interpretation of the Holy Qur'an and the Sunnah. He argued that the Commission's understanding, as stated in their report, oversimplified the complexity of these texts. Maulana emphasized that while the Qur'an and Sunnah offered guidance, they did not prescribe rigid solutions for all human relations throughout history. He critiqued the Commission's approach, highlighting the need for a more nuanced and contextual interpretation of Islamic teachings (Smith, 1971)

Maulana's Critique on the Commission's Understanding of Islam

Maulana sharply criticized the Commission members, questioning their authority to write about fundamental aspects of Islam considering their apparent lack of understanding about God, the Prophethood, and the universality of religion. He emphasized the divine nature of the Qur'an and Sunnah, stating that restricting their scope to the prophet's lifetime contradicted their status as God's revealed Word. Maulana argued that limiting these sacred texts to historical contexts diminished their significance, suggesting a lack of foresight on the part of those who imposed such limitations. (Gazette of Pakistan Extraordinary, 1956)

Maulana's Defense of Ulema's Expertise

Maulana vehemently defended the ulema against the commission's attempts to discredit them, asserting that their expertise was based on knowledge, not ethnicity or race. He criticized the spread of misinformation that attempted to undermine the ulema's authority, comparing their role in interpreting religious texts to lawyers interpreting legal codes. According to Maulana, being an alim was not determined by one's race or tribe but by a lifelong dedication to religious studies. He emphasized that just as anyone studying law could practice as a lawyer, those studying religion had the right to interpret the Qur'an and Sunnah. (Smith, 1971)

Maulana's Perspective on Polygamy

Maulana challenged the societal perception of polygamy, attributing the criticism of this practice to a misguided desire to imitate the West. He argued that polygamy, permitted in Islamic law, was not a vice but a legitimate option for societal structures. Maulana criticized those who condemned polygamy while engaging in exploitative practices abroad. He emphasized the cultural similarities between societies in their lack of contentment with monogamous relationships, but highlighted the responsible approach of Islamic marriage compared to the West's exploitation of women.

Maulana's Critique on Social Hypocrisy

Maulana astutely pointed out the societal hypocrisy surrounding polygamy. He emphasized that the real shame lay not in polygamous marriages but in engaging in adultery while having a legally wedded wife, a practice tolerated in many European nations. Maulana condemned the society's hesitation to critique these obvious discrepancies, attributing it to an inferiority complex and moral blindness. He challenged the imitation of foreign cultures that allowed extramarital relations, highlighting the double standards where adultery was conveniently ignored while polygamy was vehemently opposed. Maulana urged leaders advocating for women's rights to address the pervasive issue of adultery and the destruction it caused in countless homes, emphasizing the need for a more comprehensive approach to societal challenges. (Smith, 1971)

Conclusion

In conclusion, the contrasting interpretations of the Commission on Marriage and Family Laws by modernists and traditionalists exemplify the intricate dynamics surrounding the intersection of religious principles and societal advancement. The modernists advocated for adaptability and reform, perceiving the Commission's recommendations as a vital stride toward aligning Islamic laws with contemporary social values. Their emphasis on gender equality, social justice, and the infusion of progressive ideals into the legal framework highlighted the necessity of such changes for a harmonious, modern society.

Conversely, the traditionalists, firmly rooted in the preservation of religious authenticity, expressed apprehensions about compromising the sanctity of Islamic teachings. They questioned the validity of several of the Commission's recommended reforms and expressed concern about the erosion of religious and cultural values. For them, the moral fabric of society depended heavily on preserving the conventional understanding of Islamic law.

These two points of view are at odds with one another, reflecting a larger ideological conflict in Islamic countries where there is a continuous and nuanced discussion about how to strike a balance between tradition and progressivism. Traditionalists place a higher priority on upholding long-standing religious principles, whereas modernists push for practical changes to conform to changing social norms.

The Commission's work ultimately functions as a microcosm of the larger conversation in Muslim-majority nations, where balancing tradition and modernization is an ongoing problem. Managing the intricacies of religious interpretation in a changing society calls for careful discussion, mutual understanding, and teamwork to bridge this gap.

This study also emphasizes the necessity of academic research and discussion in communities where religious values and legal systems collide. Tolerance, respect for one another, and cohabitation all depend on an understanding of the complex levels of interpretation.

Recommendations

This study lays the groundwork for future research and well-informed policy choices by supplying insightful information on the ongoing debate between tradition and modernity as Pakistan's legal system develops.

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