

**IN THE FEDERAL SHARIAT COURT**  
**(Original Jurisdiction)**

**PRESENT**

**Mr. JUSTICE RIAZ AHMAD KHAN, CHIEF JUSTICE**  
**MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN**  
**MR. JUSTICE SHEIKH NAJAM UL HASAN**  
**MR. JUSTICE ZAHOOR AHMED SHAHWANI**  
**JUSTICE MRS. ASHRAF JAHAN**

**SHARIAT PETITION NO.04/I OF 2013 L/W**

Abid Ali Bangsh son of Malik Hamid Ali Bangsh,  
R/o Zayra, Tajak Kurram Agency

..... Petitioner

Versus

1. Govt. of Pakistan through Secretary Justice and Law Division, Islamabad.
2. Govt. of KPK through Secretary Tribal Affairs, (Member of Tribunal FCR).
3. Secretary Law KPK, (Member of Tribunal FCR)
4. Commissioner FCR Peshawar Division, Peshawar
5. Political Agent Kurram Agency KPK
6. Assistant Political Agent Kurram Agency KPK
7. Syed Abdul Qasim son of S. Abdullah Jan, R/o Qubad Shah Khel, Zaran upper Kurram.

.... Respondents

**SHARIAT PETITION NO.1/I OF 2013 L/W**

1. Haji Rasool Sahib
2. Haji Pir Gul Shah, sons of Haji Gul Salim Shah passed Syed Daurs Hamzani resident of Thatoor, Miran Shah, North Waziristan Agency.

.... Petitioner

Versus

1. Federation of Pakistan through Secretary Home and Tribal Affairs Pak Secretariat, Islamabad.
2. Government of KPK through Secretary Home and Tribal Affairs Division, KPK, Peshawar.
3. Assistant Political Agent, North Waziristan Agency.
4. Commissioner, Bannu, Division Bannu
5. Qareeb Khan and Ayub Khan  
sons of Muhammad Ayub Khan, passed Syed Daurs Hamzani resident of Thatoor, Miran Shah North Waziristan Agency.

.... Respondents

**SHARIAT PETITION NO.11/I OF 2013**

Taza Khan son of Juma Gul,  
R/o Agra Kot Bajawar Agency

.... Petitioner

Versus

1. Govt. of KPK through Home Secretary, KPK, Peshawar.
2. Chairman, FCR,Tribunal, Federal Administration Area, KPK, Peshawar.
3. Commissioner, FCR, Govt. of KPK, Peshawar.
4. Secretary Law, Government of KPK, Peshawar.
5. Secretary SAFRON, Govt. of Pakistan, Islamabad.
6. Secretary Law, Govt. of Pakistan, Islamabad.
7. Political Agent, Bajawar, Agency, Federally Administered Area, of KPK, Peshawar.
8. Daryab Khan son of Fateh Khan resident of Kamar Sar Loi, Mamoon Bajawar Agency

.... Respondents

Counsel for Petitioners	....	Mr. Mir Adam Khan and Mr. Fazal Shah Mohmand, Advocates
For Federal Government	....	Mr. M. Parvez Tanoli, Standing Counsel
For FATA	....	Mr. Iqbal Ahmed Durrani, Standing Counsel
For Govt. of KPK	....	Mr. Arshad Ahmed, Assistant Advocate General
Dates of Institution	....	18.2.2013, 21.1.2013 and 15.7.2013 respectively
Date of hearing	....	14.11.2016
Date of decision	....	18.11.2016

## **JUDGMENT**

### **ALLAMA DR. FIDA MUHAMMAD KHAN, Judge.-**

These are three connected Shariat Petitions wherein various sections of Frontier Crimes Regulations, 2011(hereinafter referred to as the said Regulations) have been challenged.

\* Shariat Petition No.4/I of 2013 has been filed by Abid Ali Bangash. He has challenged the following sections:-

“Sections 8, 11, 21, 23 to 26, 30, 32, 34, 36, 40 and 52 of the said Regulation”

\* Shariat Petition No.1/I of 2013 has been filed by Haji Rasool Sahib and another. They have challenged section 8 the said Regulation.

\* Shariat Petition No.11/I of 2013 has been filed by Taza Khan and he has challenged the following sections:-

“Sections 8 and 11 of the said Regulation.”

2. Since all the impugned sections relate to the said Regulations, we propose to dispose all these Petitions by this single Judgment.

3. Before discussion, however, we would like to point out that the impugned sections, respectively, pertain to making a civil

reference to the council of elders, a criminal reference to the council of elders, blockade of hostile or unfriendly tribe, fines on communities where murder or culpable homicide is committed or attempted, recovery of fines, forfeiture of remissions of revenue etc. in the case of communities and persons accessory to crime, forfeiture of public emoluments etc. of persons guilty of serious offences or of conniving at crime, adultery and its punishment, power to direct removal of villages, attachment or disposal of building used by the robber etc, power to require persons to remove in certain cases, for keeping the peace and (finally) to powers in exercise of civil appellate jurisdiction.

4. We have heard learned counsel for petitioners, perused the record with their assistance and also heard the learned standing counsel for Federal Government as well as learned counsel for FATA.

5. Learned counsel for the petitioner Abid Ali Bangash

vehemently contended that the impugned sections are against the

Injunctions of Islam. Elaborating his point of view he submitted

that:-

\* all the civil nature cases are decided under section 8 while the criminal cases are decided under Section 11 FCR without recording any evidence either by the court, or by the Council of Elders while the verdict of the Council of Elders/Jirga Member are nominated, without the consent of the parties, by the Political Agent/District Coordination Officer and the verdict of the Council of Elders are usually accepted by the said authority, whose verdict is based at the whim of the said members which is against the principles of Quran and Sunnah. The law of Quran is very much clear in verse No.281 of Surah Al-Baqrah, that two persons shall be cited as witnesses, if one male witness is not available two women are to be cited as witnesses in place of one male witness, on the written deed which is obligatory and essential.

\* section 21, 26 are also violative and against the law of Quran (Surah Al-Najam: Ayat 38-39) 38-وَإِن لَّيْسَ لِلْإِنْسَانِ إِلَّا مَا سَعَىٰ 39-: 38-وَإِن لَّيْسَ لِلْإِنْسَانِ إِلَّا مَا سَعَىٰ 39-: one should not be burdened with

the liabilities of the other, but the provision of even the amended FCR is against the principle of Islam and fundamental rights of people living in FATA. It involves without any proof, the whole family of the accused including women, children aged men etc. just because of the interse relations.

- \* section 30 of the amended FCR, 2011 is also violative of Injunctions of Islam as contained in Surah Noor Verse No.2 as it prescribes punishment for adultery is only 5 years whereas the Holy Quran ordains hundred strips for both male and female.
- \* the provisions of FCR enforcing custom or usages is basically against Islam.
- \* the provisions of FCR are creating a class of persons of an unusual type which is also against the principle of Islam.
- \* although in the new amended FRC, 2011 a provision for raising objection by any of the party regarding the members of council of elders is provided but still the discretion is left open for the PA/DCO which is against equity and justice.
- \* there is no provision for recording of evidence of the witnesses nor any provision for producing the witnesses by the parties are given, not any opportunity to cross examine the witnesses nor the law of

inheritance, preemption, limitation or any other Shariat laws are applicable.

- \* the said law is arbitrary giving uncontrolled power to the PA/DCO applying to FATA which is merely a law of convenience or expediency and not applied to whole of Pakistan, lacking in universality or one-ness for all without any kind of discrimination and therefore the same is against the principle of justice as propounded by Islam, hence a bad law (Black law) and liable to be struck down.

6. Referring to a personal case already decided by a Tribunal of FCR, he prayed that the impugned sections of FCR of the said Regulations be declared violative of the Injunctions of Islam. He also submitted that respondents No. 1 to 6 be directed to implement the law according to Shariah within two months and the orders and judgments of Tribunal FCR Peshawar dated 19.10.2007 passed in Revision and the order dated 17.01.2009 passed in Review may be set aside and declared as against the Holy Qur'an and Sunnah of the Holy Prophet ﷺ.

7. Learned counsel for the petitioner in Shariat Petition

No. 1/I of 2013 had returned the notice with intimation that he is no

more counsel in this petition. The petitioner was directed to engage

another counsel but he did not turn up inspite of several notices.

However, in support of his petition, he has submitted the following

contentions in writing:-

- \* the law governing the Criminal as well as the civil disputes in the North Waziristan Agency is Frontier Crimes Regulation.
- \* the civil disputes are dealt with under the regulation through a civil reference (Jirga) to the council of elders under section 8 of the said regulation.
- \* a suit for pre-emption was brought by the petitioners which was referred to the council of elders who without having recourse to the injunctions of Islam i.e. without considering the question of "Talabs" which is a pre-requisite for bringing a claim for pre-emption as well as qualifying the three categories of a prospective pre-emptor as required, passed decree in favour of respondents No.4 & 5 by enforcing the right of pre-emption against the petitioners.



- \* as laid down by this august court as well as the Hon'ble Supreme Court of Pakistan in case of "Said Kamal" and several other subsequent judgments; while case of considering the repugnancy of pre-emption law in the light of the injunctions of Islam to exercise the right of pre-emption by a Muslim against another Muslim, the pre-emptor has to fulfill the pre-requisite of (i). Talab-e-Muwathibat (ii) Talab-e-Ishhad and then Talab-e-Khusumat i.e. by filling a suit. It has been further held that without Talab-e-Muwathibat and Talab-e-Ishhad the right of pre-emption cannot be exercised by Talab-e-Khusumat i.e. the filling of the suit.
- \* the categories of persons in whom the right of pre-emption vests has also been settled which is firstly the Shafi-Sharik secondly Shafi Khalit and third one is Shafi Jar.
- \* as submitted above, unless and until the two pre-requisites of the right of pre-emption are not considered and decided, the right of pre-emption cannot be claimed nor enforced through any legal proceedings no matter whatever may be the procedural law i.e. either under the pre-emption Act or any other procedure under applicable law and for that matter the Frontier Crimes Regulation is also a procedural law.

- \* Section 8 of the Frontier Crimes Regulation must provide these pre-requisite of the right of the pre-emption by a Muslim even if he is residing in the tribal territory because the boundaries of Islam were never confined to any Geographical limit as it is a universal religion and is to be followed as well as to be enforced by the Muslim against the Muslim anywhere on earth, only in accordance with the injunctions of Islam such being the case the North Waziristan Agency is not at all out of the ambit of Islam.
- \* as laid down by this august court in its Judgment reported in PLD 1989 FSC and further approved by the judgment of Supreme Court of Pakistan in SCMR 1993 page 1523, the jurisdiction of this august court does extend to the tribal areas as its jurisdiction has never been ousted by the Constitution. Moreover, the Constitutional Provision giving birth to this august Court the chapter has over-riding effect on other Constitutional provisions hence this august court can rightly adjudicate upon the matter in question.
- \* since the right of pre-emption has not been enforced in accordance with the injunctions of Islam as submitted above hence, the proceedings so taken by respondents No.2 and further confirmed by respondent No.3 are

also repugnant to the Injunctions of Islam and be declared as such.

\* an earlier petition was filed in this august court as in 1994, it was admitted to full hearing by this august full court and was pending adjudication since then, when vide the order dated 11.12.2012 this august court in view of promulgation of new Frontier Crimes Regulation, 2011, this Hon'ble Court was of the opinion that the petition has become infructuous however, the petitioner was given option, if he still agreed of the Frontier Crimes Regulation, 2011, may bring the amended petition in this Hon'ble Court, hence this amended petition.

8. Mr. Fazal Shah Mohmand learned counsel for the petitioner in Shariat Petition No. 11/I of 2013, submitted that since he has challenged section 8 and 11 of the said Regulations, and in this respect learned counsel in Shariat Petition No. 4/I of 2013 has already argued in detail, he adopts his arguments and supports his contentions.

9. Learned standing counsel for the Federation submitted that the impugned sections are substantive part of Article 247 of the

Constitution of Islamic Republic of Pakistan and, as such, beyond the scope of jurisdiction conferred on this Court by the Constitution. Elaborating further he submitted that the petitioners have challenged only the procedure and the process of adjudication which is specified in the said Regulations. According to him that procedure is in fact identical to the one being followed in the entire country by and large and, though only the nomenclature has been changed like DCO, PA, APA, Council of elders, they all are performing their duties as Judge, under different designations. He added that proper opportunity of defence is being provided to everyone and all objections in respect of the same are duly heard and addressed. He further submitted that this procedure ensures speedy trial which is an urgent requirement to forestall the bloodshed in the area. Moreover, he added the main purpose of the said Regulations is to crush insurgency and conspiracy and maintain law and order situation. Justifying various provisions he referred to the forfeiture ..... etc and contended that the same were absolutely

Islamic in nature. He also submitted that interest and rights of ladies and children residing over there were properly protected and have been duly safeguarded. The amended section 11, in his opinion, was in fact providing magisterial powers to the concerned authorities.

10. Mr. Iqbal Ahmad Durrani submitted that Article 247 of the Constitution provides a procedure and, as such, Federal Shariat Court has no jurisdiction. He submitted that Presidential Order No.5 of 1984 passed in this connection holds the field and it clearly ousts the jurisdiction of Federal Shariat Court in unambiguous words. He contended that consultation with the elders is absolutely according to Islamic Injunctions and the right of appeal as well as that of review has been provided to ensure complete justice. He placed reliance on PLD 1992 FSC 376 and vehemently contended that expeditious disposal with proper safeguards of the rights of the inhabitants is fully guaranteed. The learned counsel submitted that various further amendments in the

FCR (impugned Regulations) are in process and those are likely to meet all objections raised in these petitions and will further improve the system of administration of justice in FATA, as required. The learned counsel opposed the petitions and prayed that the same may be dismissed.

11. The Federation has submitted the following written comments:-

“The petitioner has challenged various provisions of the Frontier Crimes (Amendment) Regulation, 2011 as contradictory to the Injunctions of Islam. It is submitted that the subject matter relating to FATA is administered by the States & Frontier Region Division, accordingly the Federation of Pakistan is to be represented by the said Division in the instant petition. In view thereof the petition in the present form is not competent for non-joinder/mis-joinder of necessary parties. The petition violates Article 247(7) of the Constitution and is liable to be dismissed. However, the provisions of law which is required to be enforced in the Federal Administered Tribal Areas (FATA), the President of Pakistan can make Regulation under Article 247 of the Constitution of Islamic Republic of

Pakistan. Further the provisions of the Frontier Crimes Regulation, 1901 and the impugned provisions of the amending Regulation, 2011 are based on the long standing customs, traditions and usages of residents of the Federal Administered Tribal Areas acted upon since immemorial time and prime facie nothing therein is contradictory to any Injunctions of Quran & Sunnah.

In the light of the aforesaid submission, it is humbly prayed that the petition may please be dismissed with costs.”

12. Respondents No.4, 5 and 6 have submitted the

following para-wise written comments:-

- i. No comments.
- ii. Correct.
- iii. No comments.
- iv. No comments.
- v. The contents of Para-5 are mis-conceived. It is correct that civil nature cases are decided under Section 8 of the FCR 1901 amended 2001 and the dispute is sent to a Jirga nominated with the prior consent of both the parties. After the Jirga Members submit their verdict the case is decided by the trial Court in accordance with the Jirga award. FCR 1901, amended in 2011, does

not provide any specific procedure for the Jirga proceedings and the Jirga Members are asked to probe into the matter thoroughly under law and Rewaj to conduct enquiry and after hearing both the parties submit their verdict. The Jirga system is neither un-Islamic nor against the injunction of Islam and Sunnah Jirga proceedings are in a simple way can be safely called Mushawerat between elders to solve the problems -----The History shall confirm that at the time of “Sulh-a-Hudabiya” proper Mushawerat was made and after Mushawerat “Sulh-a- Hudabiya” was completed. The rest of the Paragraph has no nexus with the theory of Section 8 of the FCR.

- vi. The contents of Para-6 are mis-conceived. In the tribal areas where there is no law enforcement system like other Districts, the Rewaj of the area prevails and every dispute is decided on the basis of Rewaj of the area which is almost acceptable to a huge majority of Tribal residing in Federally Administered Tribal Area. Section 21- of the FCR is rather back-bone of the tribal system. This section provides such steps which



would create law and order and justice to the common people. The theory of Plarina has been introduced in the FCR 1901 amended 2011 and only family members/blood members of an accused person are held responsible. The only reason which supports the contents of section 21 of the FCR 1901 is that there is still joint family system prevailing in the tribal area. All the family members are equally entitled to the benefits and losses. In such a system section 21 is very much effective and in accordance with the injunction of Islam. Section 21 has created important impact upon the joint family system prevailing in the tribal areas because every member of the joint family is well aware of the fact that all the family members are equally responsible for profit and losses of each and every family.

vii. It is correct that punishment for adultery provided by Holy Quran is hundred strips are to be given to both Male & Female, but the prevailing law in tribal area i.e. FCR provides punishment for five years.

- viii. Incorrect. Customs and Rewaj are also a part of Islamic society provided they were not against the injunction of Islam.
- ix. Incorrect.
- x. Any of the party of dispute is entitled to raise objection against any members of council of elders which is in accordance with injunction of Islam.
- xi. Article 247 of the Constitution of Islamic Republic of Pakistan Sub Section 4 provides that the President of Pakistan shall implement any law through regulation in FATA and as such all laws implemented through regulation under Article 247 to the Constitution are taken into process whenever any violation of such laws is reported.
- xii. As already submitted Article 247 of the Constitution provides the answer to all such objections.
- xiii. The contents of Para 13 relates to record.
- xiv. The contents of Para 14 relates to record.
- xv. The contents of Para 15 relates to record.
- xvi. No Comments.

In the light of the submission made above, it is most respectfully prayed that the Shariat Petition in

hand lacks strong reasoning and is baseless. The same may very kindly be dismissed. It is pertinent to mention here that all Sharia law has not yet been implemented in FATA under Article 247 of the Constitution.”

13. We have given our anxious consideration to the points raised in the petitions, in the light of contentions mentioned herein above.

14. Before discussing these grounds, however, we deem it appropriate to initially take up the legal objection raised by the learned counsel for respondents about jurisdiction of this Court and examine whether this Court could entertain and decide these petitions. To resolve the legal point regarding competency of this Court to entertain these petitions, the P.O. No.5 of 1984, relied upon by the learned counsel, assume significant importance. The said Presidential Order reads as follows:-

“PRESIDENT’S ORDER 5 OF 1984

FEDERALLY ADMINISTERED TRIBAL AREAS  
(EXCLUSION OF JURISDICTION OF FEDERAL  
SHARIAT COURT) ORDER, 1984

[Gazette of Pakistan, Extraordinary, Part 1, 8<sup>th</sup> October, 1984].

No. F. 17(2)/84-Pub.- the following Order made by the President is hereby published for general information:-

In pursuance of the Proclamation of the fifth day of July, 1977 and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order:-

1. *Short title and commencement.*---(1) This Order may

be called the Federally Administered Tribal Areas (Exclusion of Jurisdiction of Federal Shariat Court), 1984.

(2) It shall come into force at once and shall be deemed to have taken effect on the twenty-fifth day of June, 1980.

2. *Jurisdiction of Federal Shariat Court not to extend to*

*the Federally Administered Tribal Areas.*—(1) The jurisdiction of the Federal Shariat Court shall not extend, and shall be deemed never to have extended, to the Federally Administered Tribal Areas.

(2) Notwithstanding the judgment of any Court, including the Federal Shariat Court, all laws in force in the Federally Administered Tribal Areas shall be deemed to be and always to have been, valid and shall not be called in question before any Court on any ground whatsoever”.

In this connection it is necessary to refer to the following several

Articles of the Constitution of Islamic Republic of Pakistan, 1973

(as amended) which deals with the jurisdiction conferred upon this

Court. For easy reference these are reproduced hereunder:-

“203A. The provisions of this Chapter shall have effect notwithstanding anything contained in the Constitution.

203B. In this Chapter, unless there is anything repugnant in the subject or context.

.....  
.....

(c) “Law” includes any custom or usage having the force of law but does not include the Constitution, Muslims personal law, any law relating to the procedure of any court or tribunal or, until the expiration of [ten] years from the commencement of this Chapter, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure; and

\* \* \* \* \*

203D. (1) The Court may, [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.

[(1a) where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List \*\* \* or to the Provincial Government in the case of a law with respect to a matter not enumerated [in the Federal Legislative List], a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.]

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:-

(a) the reasons for its holding that opinion; and

(b) the extent to which such law or provision is so repugnant”.

Actually the main functions for which this Court has been established by adding Chapter 3A in the Constitution, have been highlighted in these Articles/clauses. It is clear from a bare reading of the above that any citizen of Pakistan can approach this Court by

filing a Shariat Petition and seek relief prescribed under this Chapter. In juxta position, we have to consider the implications of Presidential Order No.5 of 1984 referred to above. As provided in clause (2) of Article 2 of the said P.O. 5, it may be mentioned that it was promulgated by the President of Pakistan whereby jurisdiction of Federal Shariat Court was curtailed and not extended to the Federally Administered Tribal Areas. Keeping in view various circumstances and international phenomena at that time, particularly in the neighboring country, the said Order was apparently issued just to render ineffective some decisions, relating to the FCR, which were passed by the Courts mentioned in that clause. However, on thorough consideration, we have consistently come to the conclusion that the relevant clause of the said Order, whereby an ouster of jurisdiction has apparently been created in even criminal /revisional jurisdiction of Superior Court, could not be effective in all situations. Argument of the learned counsel that this clause still holds the field incessantly and jurisdiction of the

Courts is permanently barred is, however, not based on proper appreciation. We are of the view that since President Order No.5 has neither been specifically incorporated in the body of the Constitution nor been provided even a cover by Article 270A, it cannot curtail the powers conferred on this Court by the unambiguous Constitutional provisions under Chapter 3-A which nowhere prescribes any territorial limits whereby its jurisdiction could be considered to have been ousted from the areas falling in the FATA. It must be appreciated that Presidential Order No.5 of 1984 cannot rank at par with the substantive provisions of the Constitution and, therefore, cannot take away the jurisdiction of this Court, conferred by the Constitution itself, because by no stretch of imagination sub-Constitutional provisions can ever over-ride the Constitution and thus cannot exclude FATA from its jurisdiction. This question has already been decided vide our Judgment reported as PLD 1989 part 1 page 50, and was upheld by the Honourable



Supreme Court of Pakistan in a Judgment reported as SCMR 1993.

Thus this controversy has been finally settled once for all.

15. Regarding Article 247 onward of the Constitution it suffices to mention that it lays down the procedure for administration and making regulations etc. being implemented in FATA and has nothing to do with the vires of the law itself. Any law once amended will be extended to FATA in accordance with the said Article which itself will remain intact. So the exercise of jurisdiction of this Court under Article 203-D would not have any effect on the procedure etc. laid down in Article 247 onward.

16. We have thoroughly examined the petitions on merits, one by one, but except Section 30 ibid, we have found nothing in the impugned Sections that may be called repugnant to the Injunctions of Islam. The learned counsel have failed to refer to any Verse of the Holy Quran or any Sunnah of the Holy Prophet ﷺ, in support of their contentions.

17. At this stage, we would like to mention that most of the provisions of the said Regulations have deep relevancy with the customs, usages, conventions and traditions prevailing in that area.

It is needless to say that prior to Islam, custom and usage was of course one of the major sources of law in many countries and especially in Roman law and it is still considered as one of the secondary source of Islamic law as well. The famous Muslim Jurist

Dr. Subhi Mahmassani writes:-

“The term custom generally means that which a people or a section thereof have become accustomed to doing. It played and continues to play an important part in the history of the growth of nations and in their social life and the expression of their civilization.....

Customs are of different types. Some of them relate to transactions and rights; others are concerned with morals and behavior; a third type relates to customs and social conduct; and a fourth does not have any significance except in relation to amusement or entertainment.

Customs, like other social phenomena, differ with different territories and times. ....

To the Arabs before Islam, traditions and customs were the basis of their entire social life, including religion, morality, trade and transactions. Their system was never codified as far as is known.

With the rise of Islam, texts based upon the Koran and the traditions became the basis of legislation while custom diminished in importance. At any rate, it was not rated as one of the *shariah* sources by the doctors of the sources of law. It infiltrated into the *shariah* by several ways, the most important of which were:

First—A number of texts, particularly of traditions, were based upon usages. We have already given the example of wheat and barley being considered among the items which would be determined by measures of capacity. It is natural when rules are based upon customs, to consult those elders in the interpretation and understanding of the rules, such as in question of blood-money.

Second—That part of the Sunnah based upon the tacit approval of the Prophet was silent on, and acquiesced in, a number of commendable customs based upon the Prophet's Sunnah.

Third--- We have noted earlier how in the opinion of Imam Malik the customary conduct of the citizens of Medina was regarded as a sufficient consensus of opinion to be a source of law in the absence of an explicit text. The conduct

of the citizens of Medina was in most cases based upon customs and usages, old and contemporary, which had predominated in that commercial city.

Fourth--- When customs came into being under the exigencies of necessity, or when the Arabs in their conquests were introduced to customs hitherto unknown to them which were not in conflict with any Shariah texts, such customs made inroads into the Shariah by means of the consensus of jurists or other sources of law such as preference (*istihsan*) or public interest. We have already explained these sources and the principle of the changeability of legal rules, the controversy whether or not texts may be changed, and the importance of customs and usages in all such matters”.  
(FALSAFAT AL-TASHR AL-ISLAM page 130-132).

18. We may also refer here to *Majallah al ahkamul Adlia* also which has dealt with this issue in detail and has given many important legal maxims highlighting the importance of custom and usage. Section 36 onward of the said book particularly deal with this aspect. It provides that:-

“Custom is authoritative; that is to say custom, whether public or private, may be invoked as a ground to a legal precept” (Article 36).”

The acceptance of custom as authoritative in Shariah matters is justified by the consensus of jurists based upon Islamic judicial precedents. A well-known saying was: “What Muslims find plausible is plausible in the sight of God”. Al-Bukhari reports that al-Qadi Shurayh in the era of the Caliph ‘Umar told the weavers “follow what is customary amongst you”.

Moreover, the books of law contain a number of other maxims concerning the resort to custom for authority. These maxims have been taken over by the Majallah. They are precise, well-defined and eloquent, and include:

- i—“Public usage is conclusive and action must be taken in accordance therewith” (Article 37).
- ii—“A matter recognized by custom is regarded as if stipulated by agreement” (Article 43).
- iii—“A matter recognized as customary amongst merchants is regarded as if agreed upon between them” (Article 44).
- iv—“A matter established by custom is like a matter established by a legal text” (Article 45).

### **Conditions of a binding custom**

A custom to be regarded as legally binding must satisfy a number of conditions:

First – It should be, as the definition prescribes,

“acceptable to people of sound nature”. In other words, it must be reasonable, and compatible with good sense and public sentiment.

Second – A custom must be of frequent and common

recurrence. Thus Article 41 of the Majallah reads: “Effect is only given to custom where it is of regular occurrence or when universally prevailing”. Article 42 explains matters further thus: “Effect is given to what is of common occurrence, not to what happens infrequently”. For example, if in a contract of sale, the price was not quoted in any particular currency, nonetheless it would be taken to mean the currency in general use in the territory in question and not any rare currency.

Third - Effect is given to customs prevalent at the time of the transactions or previous thereto but not to the latter customs. If an town which used various currencies, the price would be understood to relate to the currency prevailing at the time of the conclusion of the agreement and not to any new currency that may have been introduced thereafter.

Fourth— No effect is given to a custom in the face of a contractual provision to the contrary, because a custom is only an equivalent of an implied condition. It is not valid if contrary to an explicit condition.

Fifth – Al-Majami provides that “a custom is valid only if it is not in conflict with a text”. Therefore, the predominant view of jurists is that a custom should be given no effect if it is contrary to a *shariah* text, because a text overrides custom. The Imam Abu Yusuf has adopted a different view in cases where the text itself is based upon a general custom. His view, as we have noted earlier, has been accepted by the *Majallah*.

In any case the customs which we have in mind and which are regarded as an extraneous source of law are those which conform to the established legal sources. The customs which conflict with these sources, or are in opposition to the spirit of the *shariah*, are un-equivocally rejected by the *shariah*. Examples of illegal or un-commendable customs are the Bedouin practice of disinheriting female heirs, the indiscriminate use of declarations of divorce (repudiation), and evasion of the law by fictions ( in the schools which are opposed to such fictions).”

19. In the above mentioned background, it is obvious that seeking guidance, assistance and judgment of council of elders in resolving certain issues which are found in criminal or civil cases is a frequently usage of custom. Jirga and Panchait play a vital role in deciding matters and maintaining peace in the society and resolving hostilities between members of the society, as expeditiously as possible. We may mention that the procedure adopted in the FATA ensures speedy trial to forestall blood-shed in the area. The main purpose of these regulations is to crush insurgency, connivance and conspiracy well in time, in order to maintain law and order situation. This is a particularly urgent requirement of the area and is

not only not repugnant to the Injunctions of Islam but also in consonance with the requirement of administration of justice which has to be dispensed with care, caution and speed. The Muslim jurists have, therefore, formulated many important legal maxims highlighting the importance of custom and usage.

The formation of council of elders for consultation to decide of certain issues/matters in the area is very much in line with the Quranic Injunctions.

وشاورهم فى الامر –

Consult with them upon the conduct of affairs.

(Surah Al-Imran, Ayat-159)

وامرهم شورى بينهم –

And who conduct their affairs by mutual consultation.

(Surah Al-Shura, Ayat 38)

20. So far as the collective responsibility in the area where a crime is committed by any member of the tribe is concerned, the entire community or the members thereof in general are made collectively liable, with the result that they may face blockage, fine and forfeiture of properties if they fail to do the needful as required.



The basic principle of Islamic justice system is that “Nobody can be made liable for the wrong committed by others.” The same is mentioned in the Holy Quran in these words: **لها ما كسبت و عليها** (Each one gets every good that one earns, And suffers every ill that one earns. Surah Al-Baqra-Ayat 286) **ولا تزر وازرة وزر** (That no bearer of burdens can bear the burden of another. (Surah Al-Najam- Ayat-38). This is no undoubtedly a general rule in normal circumstances. However, in exceptional circumstances we find a similar procedure in the shape of **قسامة**, where the concept of joint liability has been introduced in Islamic criminal justice system as a special provision in cases of blind murder where the entire community is held collective liable to pay Diyat. Moreover, the government, keeping in view the gravity of offences, their frequency and other attending circumstances, is fully authorized to make legislation as Taazir, as warranted by the situations.

21. In this view of the matter, we have found that all the impugned sections except section 30, are not violative of the Injunctions of Islam and to that extent we dismiss the petitions.

22. Regarding Section 30, however, we have found that it is violative of the Injunctions of Islam. The said section reads as under:-

“**Adultery.**—(1) A married woman who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband, is guilty of the offence of adultery, and shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) Cognizance shall not be taken of an offence under this section unless a complaint has been made by the husband of the woman, or, in his absence, by a person who had care of the woman on his behalf at the time when the offence was committed.”

23. Obviously this Section is repugnant to the Injunctions of Islam as contained in the Quranic verse and authentic Ahadith of the Holy Prophet ﷺ, as follow:-

وَلَا تَقْرُبُوا الزَّوْجِيْنَ اِنَّهٗ كَانَ فَاْحِشَةً وَّسَاءَ سَبِيْلًا

(Do not even go close to fornication. It is indeed a shameful act, and an evil way to follow.(Al-Isra:32)

وَالَّذِي يَأْتِيَنَّ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ هَدَّوْا  
فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّيَهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا

Those of your women who commit the shameful act, have four witnesses (against them) from among you. So, if they testify, then confine those women to their homes until death overcomes them, or Allah prescribes a way for them(Al-Nisa:15)

الرَّانِيَةِ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ  
كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ

The fornicating woman and the fornicating man, flog each one of them with one hundred stripes. No pity for them should prevail upon you in the matter of Allah's religion, if you really believe in Allah and the Last Day; and a group of believers must witness their punishment.(Al-Noor):2)

حَدَّثَنَا آدَمُ حَدَّثَنَا شُعْبَةُ حَدَّثَنَا مُحَمَّدُ بْنُ زَيْدٍ قَالَ سَمِعْتُ أَبَا هُرَيْرَةَ قَالَ قَالَ النَّبِيُّ صَلَّى اللَّهُ  
عَلَيْهِ وَسَلَّمَ الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ

The illegitimate child will go to his/her mother while the man who committed Zina will deserve stoning.

حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ حَدَّثَنَا أَبُو ضَمْرَةَ حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ  
عَمْرِ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ الْيَهُودَ جَاءُوا إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِرَجُلٍ مِنْهُمْ وَامْرَأَةٍ  
رَبِيًّا فَأَمَرَ بِهِمَا فَرَجِمَ قَرِيبًا مِنْ مَوْضِعِ الْجَنَائِزِ عِنْدَ التَّسْجِدِ -

Reported from Ibn Umar to have been said that:a jew came to the Holy Prophet along with man and woman

who had committed zina. The Holy Prophet ordered to kill them by stoning. The stoning was carried out at a place adjacent to Mosque where funeral prayers are performed.

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ حَدَّثَنَا لَيْثٌ عَنْ ابْنِ هِشَابٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ مَسْعُودٍ عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ رَضِيَ اللَّهُ عَنْهُمَا أَنَّهُمَا قَالَا إِنَّ رَجُلًا مِنَ الْأَعْرَابِ أَتَى رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُولَ اللَّهِ أُنشِدُكَ اللَّهَ إِلَّا قَضَيْتَ لِي بِكِتَابِ اللَّهِ فَقَالَ الْخَضَمُ الْأَخْرَجُ وَهُوَ أَفْقَهُ مِنْهُ نَعَمْ فَأَقْبَضَ بَيْنَنَا بِكِتَابِ اللَّهِ وَأَذَّنَ لِي فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قُلْ قَالَ إِنَّ ابْنَ كَثَانَ عَسِيفًا عَلَى هَذَا فَرَزَنِي بِأَمْرٍ أُوِي وَأُي أُخْبِرْتُ أَنَّ عَلَى ابْنِي الرَّجْمَ فَأَقْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ وَوَلِيدَةٍ فَسَأَلْتُ أَهْلَ الْعِلْمِ فَأَخْبَرُونِي أَنَّ عَلَى ابْنِي جَلْدٌ وَمِائَةٌ وَتَغْرِيْبٌ عَامِرٌ وَأَنَّ عَلَى امْرَأَةٍ هَذَا الرَّجْمُ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالَّذِي نَفْسِي بِيَدِهِ لَا أَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ الْوَلِيدَةَ وَالْغَمَّ رُدُّ وَعَلَى ابْنِكَ جَلْدٌ وَمِائَةٌ وَتَغْرِيْبٌ عَامِرٌ اغْدُ يَا أُتَيْسُ إِلَى امْرَأَةٍ هَذَا فَإِنْ اعْتَرَفَتْ فَارْجِعْهَا قَالَ فَقَدَا عَلَيْهَا فَاعْتَرَفَتْ فَأَمَرَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَرَجَعَتْ

صحيح بخارى: جلد اول: حديث نمبر 2542

Narrated Abu Huraira and Zaid bin Khalid: While we were with the Prophet, a man stood up and said (to the Prophet), “I beseech you by Allah, that you should judge us according to Allah’s Law.” Then the man’s opponent who was wiser than him, got up saying, (to Allah’s Apostle), “Judge us according to Allah’s Law and kindly allow me (to speak).” The Prophet said, “Speak,” He said, “My son was a labourer working for this man and he committed an illegal sexual intercourse with his wife, and I gave one hundred sheep and a slave as a ransom for my son’s son. Then I asked a learned man about this case and he informed me that my son should receive one hundred lashes and

be exiled for one year, and the man's wife should be stoned to death." The prophet said, "By Him in whose Hand my soul is, I will judge you according to the Laws of Allah. Your one-hundred sheep and the slave is to be returned to you, and your son has to receive one-hundred lashes and be exiled for one year. O Unais! Go to the wife of this man, and if she confesses, then stone her to death." Unais went to her and she confessed. He then stoned her to death.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْجَعْفِيُّ حَدَّثَنَا وَهْبُ بْنُ جَرِيرٍ حَدَّثَنَا أَبِي قَالَ سَمِعْتُ يَعْزَلِيَّ بْنَ حَكِيمٍ  
عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ لَنَا أَتَى مَا عِزُّ بْنُ مَالِكٍ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ  
وَسَلَّمَ قَالَ لَهُ لَعَلَّكَ قَبِلْتَ أَوْ غَمَزْتَ أَوْ ظَهَرْتَ قَالَ لَا يَا رَسُولَ اللَّهِ قَالَ أَنْزَلْتَهَا لَا يَنْبَغِي  
قَالَ فَعِنْدَ ذَلِكَ أَمَرَ بِرَجْمِهِ

صحيح بخارى: جلد سوم: حديث نمبر 1726

Narrated by Abdullah bin Muhammad Ja,fi from Ibn Abbas to have been said that M'aiz bin Malik appeared before the Holy Prophet and made confession about his committing Zina..The Holy Prophet said that you may have touched or kissed her.He said no.Then the Holy Prophet asked in clear words that whether you have committed illegal sexual intercourse with her? He said yes.After this confession, the Holy Prophet ordered to kill him by stoning.

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُنَبِّهِ ح وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ مُنَبِّهِ  
وَتَقَارَبَا فِي لَفْظِ الْحَدِيثِ حَدَّثَنَا أَبِي حَدَّثَنَا بِشِيرُ بْنُ الْمُهَاجِرِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ بَرِيْدَةَ عَنْ

أَبِيهِ أَنَّ مَاعِزَ بْنَ مَالِكٍ الْأَسْلَمِيَّ أَتَى رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي  
 قَدْ ظَلَمْتُ نَفْسِي وَرَزَيْتُ وَإِنِّي أُرِيدُ أَنْ تُطَهِّرَنِي فَرَدَّهُ فَلَمَّا كَانَ مِنَ الْعَدَاةِ أَتَاهُ فَقَالَ يَا رَسُولَ  
 اللَّهِ إِنِّي قَدْ رَزَيْتُ فَرَدَّهُ الْعَائِشَةُ فَأَرْسَلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى قَوْمِهِ فَقَالَ  
 أَنْتُمْ لِمَنْ يَعْظِمُونَ بِعَقْلِهِ بَأْسًا تُنْكِرُونَ مِنْهُ هَيْئًا فَقَالُوا مَا نَعْلَمُهُ إِلَّا وَفِي الْعَقْلِ مِنْ صَالِحِينَ فِيمَا نُرِي  
 فَأَتَاهُ الْعَائِشَةُ فَأَرْسَلَتْ إِلَيْهِمْ أَيْضًا فَسَأَلَ عَنْهُ فَأَخْبَرُوهُ أَنَّهُ لَا بَأْسَ بِهِ وَلَا يَعْظِمُهُ فَلَمَّا كَانَ  
 الرَّابِعَةَ حَفَرَهُ لَهُ حُفْرَةً ثُمَّ أَمَرَ بِهِ فَرَجِمَ قَالَ فَبَاتَتْ الْعَامِدِيَّةُ فَقَالَتْ يَا رَسُولَ اللَّهِ إِنِّي قَدْ رَزَيْتُ  
 فَطَهِّرْنِي وَإِنَّهُ رَدَّهَا فَلَمَّا كَانَ مِنَ الْعَدَاةِ قَالَتْ يَا رَسُولَ اللَّهِ لِمَ تَرُدُّنِي لَعَلَّكَ أَنْ تَرُدُّنِي كَمَا  
 رَدَدْتَ مَاعِزًا فَإِنَّهُ لَمْ يَجِبْ لِي قَالَ إِمَّا لَا فَأَذْهَبِي حَتَّى تَلِدِي فَلَمَّا وَلَدَتْ أَتَتْهُ بِالصَّبِيِّ فِي  
 حِرْقَةٍ قَالَتْ هَذَا قَدْ وَلَدْتُهُ قَالَ أَذْهَبِي فَأَرْضِعِيهِ حَتَّى تَفْطِئِيهِ فَلَمَّا فَطِئَتْهُ أَتَتْهُ بِالصَّبِيِّ فِي  
 يَدِيهِ كِسْرَةً خُبِرَ فَقَالَتْ هَذَا يَا نَبِيَّ اللَّهِ قَدْ فَطِئْتُهُ وَقَدْ أَكَلْتُ الطَّعَامَ فَدَفَعَ الصَّبِيَّ إِلَى رَجُلٍ  
 مِنَ الْمُسْلِمِينَ ثُمَّ أَمَرَ بِهَا فَخَوَّرَ لَهَا إِلَى صَدْرِهَا وَأَمَرَ النَّاسَ فَرَجَمُوهَا فَيُقْبَلُ خَالِدُ بْنُ الْوَلِيدِ  
 بِحِجْرِ فَرَمَى رَأْسَهَا فَتَنْصَحَ الدَّمُ عَلَى وَجْهِ خَالِدٍ فَسَبَّهَا فَسَبَّحَ نَبِيُّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ  
 سَبَّهُ إِيَّاهَا فَقَالَ مَهْلًا يَا خَالِدُ فَوَالَّذِي نَفْسِي بِيَدِهِ لَعَدْتُ تَابَتْ تَوْبَةً لَوْ تَابَهَا صَاحِبُ مَكِّي  
 لَعَفِرَ لَهُ ثُمَّ أَمَرَ بِهَا فَصَلَّى عَلَيْهَا وَدُفِنَتْ

صحيح مسلم: جلد دوم: حديث نمبر 1938

‘Abdullah b. Buraida reported on the authority of his father that Ma’iz b. Malik al-Aslami came to Allah’s Messenger (may peace be upon him) and said: Allah’s Messenger, I have wronged myself; I have committed adultery and I earnestly desire that you should purify me. He turned him away. On the following day, he (Ma’iz) again came to him and said: Allah’s Messenger, I have committed adultery, Allah’s Messenger (p.b.u.h.) turned him away for the second time, and sent him to his people saying: Do you know if there is anything wrong with his mind.

They denied of any such thing in him and said: We do not know him but as a wise good man among us, so far as we can judge. He (Ma'iz) came for the third time, and he (the Holy Prophet) sent him as he had done before. He asked about him and they informed him that there was nothing wrong with him or with his mind. When it was the fourth time, a ditch was dug for him and he (the Holy Prophet) pronounced judgment about him and he was stoned. He (the narrator) said: There came to him (the Holy Prophet) a woman from Ghamid and said: Allah's Messenger, I have committed adultery, so purify me. He (the Holy Prophet) turned her away. On the following day she said: Allah's Messenger, who do you turn me away? Perhaps you turn me away as your turned away Ma'iz. By Allah, I have become pregnant. He said: well, if you insist upon it, then go away until you give birth to (the child). When she was delivered she came with the child (wrapped) in a rag and said: Here is the child whom I have given birth to. He said: Go away and suckle him until you wean him. When she was weaned him, she came to him (the Holy Prophet) with the child who was holding a piece of bread in his hand. She said: Allah's Apostle, here is he as I have weaned him and he eats food. He (the Holy Prophet) entrusted the child to one of the Muslims and then pronounced punishment. And she was put in a ditch up to her chest and he commanded people and they stoned her Khalid b Walid came forward with a stone which he flung at her head, and there spurted blood on the face of Khalid and so he abused her. Allah's Apostle (may peace be upon him) heard his (Khalid's) cure that thereupon he (the Holy Prophet) said: Khalid, be gentle. By Him in

Whose Hand is my life, she has made such a repentance that even if a wrongful tax collector were to repent, he would have been forgiven. Then giving command regarding her, he prayed over her and she was buried.

حَدَّثَنَا بَكْرُ بْنُ خَلْفِ بْنِ أَبِي بَشِيرٍ حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيْبُ سَنَةٍ وَالتَّيْبُ بِالتَّيْبِ جَلْدُ مِائَةٍ وَالرَّجْمُ.

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Reported by Abadah bin Sabit the Messenger of Allah as saying”Receive teaching from me, receive teaching from me that Allah almighty has ordained a way for those (women) who are un-married commit adultery with un-married men, they should receive one hundred lashes and banishment for one year and in case of married male commits adultery with married female,the shall receive punishment of stoning to death.

24. In view of the above, we dismiss the petitions in respect of the Sections impugned therein. However, we allow Shariat Petition No. 4/I of 2013 to the extent of Section 30 of the said Regulations which, for the reasons stated in Para No.22 ibid, is against the Injunctions of Islam and, therefore, direct the Federal Government, Provincial Government of KPK as well as FATA and all other concerned authorities to take necessary steps to amend the



impugned section 30 so as to bring the same in conformity with the Injunctions of Islam. The necessary action shall be taken for this purpose by 31<sup>st</sup> May 2017, where-after the said section will become void and shall be of no effect to the extent stated above.

25. They prayers of the petitioners for relief in personem, however, cannot be granted as that is beyond the scope of jurisdiction conferred upon this Court by the Constitution under the provisions of Article 203D. The petitions to that extent are dismissed. They may seek relief at the appropriate forum, if advised to do so.

**MR. JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN**

**MR.JUSTICE RIAZ AHMAD KHAN**  
**Chief Justice**

**MR. JUSTICE SHEIKH NAJAM UL HASAN**

**MR. JUSTICE ZAHOOR AHMED SHAHWANI**

**JUSTICE MRS. ASHRAF JAHAN**

Announced in open Court  
on \_\_\_\_\_ at Islamabad  
*Umar Draz/\**