

IN THE FEDERAL SHARIAT COURT

(Original Jurisdiction)

PRESENT

Mr. Justice Dr. Tanzil-ur-Rahman CHIEF JUSTICE
Mr. Justice Ibadat Yar Khan
Mr. Justice Dr. Fida Muhammad Khan

SHARIAT PETITION No.24/I of 1990.L.W.

Dr. Mahmood-ur-Rahman .vs. Secretary, Ministry of
Faisal, Chairman, Justice, Law &
Tehrik-e-Inqalab Parliamentary Affairs,
Islam, Faisal Clinic, Islamabad etc.
374/12/A, Tench Bhata,
Rawalpindi.

SHARIAT PETITION No.34/I of 1990.L.W.

Zia-ud-Din Ahmad Sh. .vs. Government of Pakistan
Honorary Social Worker,
P.O.Box No.613,
Lahore

SHARIAT PETITION No.38/I of 1990.L.W.

Shaikh Muhammad Hanif, .vs. Government of Pakistan
Resident of Aziz Street,
Bhimber Road, Gujrat.

SHARIAT PETITION No.40/I of 1990 L.W.

Afzal Javaid, Muslim Road, .Vs. Government of Pakistan
Jinnah Colony, Samanabad,
Lahore.

SHARIAT PETITION No.44/I of 1990.L.W.

Allah Ditta, Mohalla Eidgah .Vs. Government of Pakistan
Junobi, Near Imam Bara,
Jaffaria, Bhakkar.

SHARIAT PETITION No.45/I of 1990

Raja Muhammad Afsar Khan .Vs. Federation of Pakistan
of Dandot, House No.287,
Sector E-7, Islamabad.

Dates of institution -- 25-6-1990, 8-7-1990
10-7-1990, 16-7-1990
23-7-1990 & 26-7-1990

Date of hearing -- 13-1-1991.

Date of decision -- 13-1-1991.

Petitioners present

JUDGMENT:

TANZIL-UR-RAHMAN, CHIEF JUSTICE.-- These are six Shariat Petitions bearing Nos. 24/I, 34/I, 38/I, 40/I, 44/I and 45/I of 1990, wherein a number of provisions of the Zakat and Ushr Ordinance, 1980, (hereinafter referred to as "the Ordinance") have been challenged as repugnant to the Injunctions of Islam on, inter-alia, the following grounds:-

- (i) The nisab of Zakat of Rs. 3,000/- is repugnant to the Injunctions of Islam because the cost of 7½ tola of gold is Rs. 25,000/-;
- (ii) Zakat is deducted from the balance amount on 1st day of Ramzan and not on deposits kept for more than one year;
- (iii) In some cases Zakat is deducted twice a year;
- (iv) Zakat is deducted on 1st Ramzan even though the person may be in debt;
- (v) Zakat is not deducted from the current account;
- (vi) Zakat should be deducted from the value of commercial items and from all kinds of accounts in the Bank;
- (vii) Exemption given to the followers of a recognized fiqh is against the tenets of Islam and be withdrawn;
- (viii) Zakat Ordinance 1980 is ^X ~~an~~ un-constitutional, a product of Martial Law. It should be nullified. The deduction of Zakat is to be made by the Sahib-e-Misab himself.

2. Zakat and Ushr Ordinance, 1980 was promulgated and enforced on 20th June, 1980. Sub-section (2) of section 1 of the said Ordinance provides that it extends to the whole of Pakistan, but as regards payment and recovery of Zakat and Ushr applies only to Muslim citizens of Pakistan and a company, or other association of persons, or body of individuals, whether incorporated or not, majority of the

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shares of which is owned, or the beneficial ownership of which is held, by such citizens.

3. Before embarking on the examination of the points raised in the petitions the question arises whether the said Ordinance is a Muslim Personal Law and stands excluded from the jurisdiction of this Court under Article 203B(c) of the Constitution?

4. Personal Law has been defined in several dictionaries and books, for example--

"The law which follows the person, as distinguished from the law of the place where the person may be. (Ballentine's Law Dictionary 3rd Edition, 1969 page 941)."

"Law applicable to persons not subject to the law of the territory in which they reside as opposed to territorial law. (Aiyer's Manual of Law Terms and Phrases, 7th Edition, 1974 page 520)."

"Law applicable to persons not subject to the law of the territory in which they reside as opposed to territorial law. (Law Terms and Phrases page 686 by Sardar Muhammad Iqbal Khan Mokal)."

"قانون شخصي - قانون احوال الشخصية يجرى على الأشخاص"

غير الخاضعين لقانون البلاد التي هم فيها"

"The Personal Law relating to status (of persons) applies to persons other than those who are not subject to the law of the land where they reside. (Faruq's Dictionary, English-Arabic page 523)."

5. As to the definition of Muslim Personal Law, the Hon'ble Supreme Court Shariat Appellate Bench in Federation of Pakistan vs. Mst. Farishta (PLD 1981 Supreme Court 120) observed that Muslim Personal Law in Article 203(b) of 1973 Constitution

"means such codified or legislated law which is being applied to Muslim Citizens of Pakistan as or with the denomination muslim to muslim which governs their person as such and as distinct from General Law of the Land which applies to every body."

6. The question whether the Zakat and Ushr Ordinance is a Muslim Personal Law or not came up for examination before this Court in Shariat Petition No.4/I of 1981 (Mian Khalid Abdur Raof vs. President of Pakistan and another). A Full Bench of five learned Judges of this Court relying on the above judgment of the Hon'ble Supreme Court Shariat Appellate Bench held as under:-

"Since the Zakat and Ushr Ordinance 1980 applies exclusively to Muslim Citizens of Pakistan as well as bodies corporate or incorporate having such citizens, it must fall with the definition of Muslim Personal Law under Article 203(b) and should be treated to be immune from challenge before this Court."

7. An appeal against the above judgment of the Federal Shariat Court was filed before the Shariat Appellate Bench of the Hon'ble Supreme Court but the learned Bench did not feel inclined to go into the question whether the Zakat and Ushr Ordinance is a Muslim Personal Law or not. Reference may be made to Mian Khalid Abdul Raof vs. Federation of Pakistan (PLD 1987 S.C 228 at page 241 paragraph 18).

8. We may also refer to another judgment of this Court in the case of Federation of Pakistan vs. Hazoor Bukhsh and two others (PLD 1983 FSC 255). Aftab Hussain, C.J., (as he then was), referring to PLD 1981 S.C 120, wrote in his judgment on the point before us that-

"There is no doubt that if a particular provision of a statute is applicable to Muslims only, it will be treated to be a provision of Muslim Personal Law. The sentence of stoning being limited only to Muslim, it would be taken to be a provision of Muslim Personal Law which is excluded from the purview of examination by this Court. The Shariat Petition should have been dismissed on this point. But it escaped the notice of the Court as the case cited above was not reported by then. (p.282 para 37).

9. The Federal Shariat Court has been empowered to examine any law or provision thereof on the touch-stone


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of the Holy Qur'an and Sunnah of the Holy Prophet under Article 203D of the Constitution of Pakistan, 1973 but in sub-clause (c) of Article 203E while defining "law" a number of laws have been kept outside the pale of its jurisdiction. The said definition reads that.-


"Law" includes any custom or usage having the force of law but does not include the Constitution, Muslim 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
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10. On the expiry of the period of ten years the fiscal laws have now come within the jurisdiction of this Court, but Muslim Personal Law still remain outside the pale of authority of this Court and so the Zakat and Ushr Ordinance of 1980, which falls within the definition of Muslim Personal Law, is outside the jurisdiction of this Court.

11. For the aforesaid reasons, the above Shariat Petitions are dismissed in limine.


(Dr. Tanzil-ur-Rahman)
Chief Justice

 (Ibadat Yar Khan) Judge
 (Fida Muhammad Khan) Judge

Approved
for reporting


Islamabad,
dated the 13th Jan., 1991.
ABDUL RAHMAN /*****