PART II

WOMEN AND THE LEGAL SYSTEM OF PAKISTAN
CHAPTER 4

The Role of Islam in Drafting the Constitution

The purpose of part II is two-pronged: first, to examine the factors that motivated the process of Islamisation of the legal system in Pakistan and second, to probe the Islamic foundation of the so-called statutory Islamic laws of Pakistan related to women and how the superior courts interpret and implement them. The 1973 constitution (article 227) enjoins that all existing laws should conform to Islamic law and no law shall be made against Islam. Islamic law comprises a vast array of uncodified legal rules contained in juristic treatises. In this context, special attention is given to the role of the judiciary and the Federal Shariat Court of Pakistan as an arbiter of defining the status as to which legal rules are truly Islamic. The impact of the Islamisation process on the rights of women is also analysed. This chapter is focused on the role of Islam in the creation of Pakistan, its status in the successive constitutions and the factors/motives behind the process of Islamisation of the legal system, particularly Zia-ul-Haq’s regime (1976-88).

4.1 ISLAM AND THE BIRTH OF PAKISTAN

Pakistan emerged as an independent Muslim state on the world map on 14 August 1947. Islam played a vital role in its creation. The founder of Pakistan, Muhammad Ali Jinnah, said in 1943 that the aim of Pakistan is to provide a base where:

We will be able to train and bring up Muslim intellectuals, educationalists, economists, scientists, doctors, engineers, technicians etc. who will work to bring about Islamic renaissance...[and a state] based on the principles which characterised Caliph [O]mar’s regime (Iqbal, 1986:33).^1

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^1 The speeches of Jinnah and Muhammad Iqbal are taken from Afzal Iqbal and Ghazali’s works.