CHAPTER FOUR

ASSEMBLY DEBATES ON THE LAW OF MURDER AND HOMICIDE, 1981–97

Introduction

There has always been a divide in Pakistan between traditional *ulema*¹ and contemporary learned Muslims, representing two different currents of thought in Pakistani society. Both think within the framework of Islam, take inspiration from the Quran and Sunnah and conclude that their religion is compatible with the contemporary needs of society. The difference lies in their respective approaches to the application of Islam and its laws in the modern day context.

Traditional *ulema* believe that Islamic laws, as defined and structured by the early scholars of Islam, are accurately complete and thus present a finalised version of Shariah which can be applied in their existing form to the modern world. They assert that there is no need to modify the ‘brilliant’ deductions of the early scholars. Contemporary learned scholars, on the other hand, stress that it is only the principles of Islam that are universal, immutable and timeless, not the laws deduced by the early jurists. They assert, therefore, that the laws of Islam should always be reconsidered, reformulated and restructured—on the basis of those invariable principles and values—in response to contemporary societal demands.

Most Governments have tended to exploit this difference in opinion in order to remain in power. For instance, Zia-ul-Haq and Nawaz Sharif exploited the *ulema*, and Benazir Bhutto in turn exploited modern contemporary thinkers. These governments even switched between the two groups as and when it suited them. Given that both democratic and military governments in Pakistan have always solemnly affirmed their

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¹ ‘Ulema’, as explained earlier, refers to the legal scholars of Islam. In the context of Pakistan, however, I use this term to mean those people who spent time in Islamic seminaries and then became involved in the politics of the country, irrespective of whether they obtained a thorough qualification in Islamic law or not.
commitment to Islam and promised to enforce Islamic laws without actually defining their chosen version (i.e., traditional or modern) it is particularly interesting and relevant to conduct an analysis of this gap between the two groups.

It can safely be said that no government can abrogate laws issued by earlier governments if they had been issued in the name of Islam. In spite of the supposedly clear commitment to Islam, however, the policy to enforce the Islamic law of culpable homicide and murder differed significantly from one Government to another. For instance, Zia did not actually enforce this law even though he was in government for eleven years and had an evangelical fervour for Islam. It was Jatoi’s interim Government, which was only in power for three months in 1990, which enforced the law through an Ordinance. Benazir Bhutto’s Government did not abrogate the law when it came into power for the second time in 1993, although it had not enforced it during its first term (1988–90). It was only in 1997, in the second tenure of the Nawaz Sharif Government, that the legislation was finally rushed through Parliament and the law was enacted.

As demonstrated below, the Members of the Assemblies who were in favour of the introduction of qisas and diyat law were driven more by their zeal for Islam than by reason, rationality, or viability of the law. Their approach was not practical and analytical since they neither discussed the concept and theories of crime and punishment in Islam nor showed any concern for the peculiar social milieu of Pakistani society. It is shown that even though the Members were debating on a crucial piece of legislation and dealing with matters of life and death, they did not bother to analyse homicide statistics or social scientific theories related to the crime of homicide; rather, they seemed more concerned to give speeches that would make them be seen by the people and rulers of Pakistan as defenders of Islam.

Analysis of the debates suggests that there were counter-groups to these Members, consisting of those who were concerned about the viability of the law, its impact on society, and its adjustment within the system of criminal justice of Pakistan in general and the PPC in particular. Moreover, these groups were mindful of the principles of Islam and Islamic law and suggested alternatives within the framework of Islamic laws.