The Evolution of the Role of the Objectives Resolution in the Constitutional Paradigm of Pakistan – from the framers' intent to a tool for judicial overreach

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Abstract

Representative democracy and religion have shared an uneasy relationship in Pakistan's constitutional democracy. One of the significant ways in which this relationship has manifested itself revolves around the role of the Objectives Resolution. This paper traces the developments about the role of Objectives Resolution in the Constitutional order of Pakistan. As a starting point, in the first part of the paper, I look at the intent of the framers of the Objectives Resolution by relying on the debates that took place prior to its passing. In the second part, I trace the evolution through judicial decisions, which have altered the role of the Objectives Resolution, especially its status in relation to substantive provisions of the Constitution. In the final part, I look at the recent decision in the *Zulfiqar Ahmed Bhutta case* and attempt to see how it impacts the constitutional status of the Objectives Resolution.

Introduction

One of the most noticeable tensions in the constitutional fabric of Pakistan has been regarding the involvement of religion and politics. Over the course of Pakistan's constitutional history, various arrangements have come about in an attempt to strike the balance between the two seemingly opposite forces; sometimes by way of a constitutional and ordinary legislation, and other times by way of the judicial process. The first time that this question was expressly dealt with was between presenting and passing of the Objectives Resolution ('Resolution') that is from March 7-12, 1949. It was Pakistan's first major constitutional landmark. Seventy years on, this Resolution continues to be one of the most significant constitutional documents; more significant at times than the Constitution of the Islamic Republic of Pakistan 1973 ('Constitution') itself. Since its adoption, Pakistan has experimented with an array of constitutional arrangements. None, however, has discarded the Resolution and every constitution has embraced it as its preamble with minor alterations. In terms of the constitutional relevance, the Resolution peaked in 1985 when it was made a substantive part of the Constitution by the insertion of Article 2A.

In the recent *Elections Act case*,[1] the Supreme Court relied on the Objectives Resolution along with other Islamic provisions[2] in the Constitution to construct a *"*general scheme"[3] of the Constitution and found that sections 203 and 232 of the Elections Act 2017 were subject to that *"*general scheme, theme and jurisprudential architecture of the Constitution".[4] This appears to be a continuation of the uneasy relationship that the principles enshrined in the Objectives Resolution related to religious morality have had with principles of representative democracy. The judiciary in the said case relied, in large part, on the religion-based morality of the

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[1] *Zulfiqar Ahmed Bhutta and 15 others v Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs and others* PLD 2018 SC 370.

[2] The Constitution of the Islamic Republic of Pakistan 1973, art. 2, 31, 41(2), 50, 62(1)(d)(e)(f), 203C, and 227.

[3] (n 1) 396.

[4] Ibid, para 54.

Objectives Resolution to override the express intention of the legislative branch – the representative organ of the State.

This paper is a study of the development of the Objectives Resolution as a key constitutional document concerning the role of religio-moral principles in Pakistan's 'democratic' constitutional paradigm. Within the context of this tension between religious morality and representative politics, the first part of this paper will rely on the debates in the Constituent Assembly to suggest the framers' intent behind the Objectives Resolution. An attempt will be made to understand the original purpose of the Resolution, the State it envisaged, and most importantly, its proposed status *vis-à-vis* a future constitution. In the second part, the evolution of the role of the Objectives Resolution as shaped and manoeuvred by judicial decisions is traced and then analysed with reference to the framers' intent. The last part looks at the decision in the *Elections Act* case in greater detail in an attempt to determine the position of the Objectives Resolution as a result of that decision and examine how the decision fits into the trends established in the second part.

The Framers' Intent

Between March 7-12, 1949, the Constituent Assembly of Pakistan debated over the Objectives Resolution moved by the Prime Minister, Mr. Liaquat Ali Khan. While on the one side, it was fiercely opposed by members whose main concern was that it will turn the newly formed State into a theocratic, or at least a religiously exclusive State, the movers argued that the Objectives Resolution will only be a means to ensure that the very purposes of this new State are met, without trampling on the rights of minorities.

Liaquat Ali Khan

Mr. Liaquat Ali Khan – the mover of the Resolution – introduced it as *"*embodying the main principles on which the Constitution of Pakistan is to be based."[5] While it is obvious that Mr. Liaquat Ali Khan embraced, rather appreciated the overwhelmingly Islamic character of the Resolution, he placed equal emphasis on warning against construing this Resolution as a means to justify theocratic government. He explained that the question of theocracy – the government of those ordained by God – did not even arise in Islam because no system of organised clergy existed. Also, the very idea of a popular and elected representative democracy, which the Resolution proposed, counteracted any possible inferences in favour of a theocratic government, according to the then Prime Minister.

It is also clear from Mr. Khan's speech that he did not envisage a State that is neutral on the question of religion. Stressing the public-life aspect of Islam, Mr. Khan explained that in order to build the state that Pakistan was meant to be, which would, in turn, build up an Islamic society for which the Muslims of the subcontinent struggled, it was necessary that the State not merely remain neutral, but actively and positively took steps toward enabling the Muslims to live in accordance with their religion. This is in sharp contrast to the obligation of the State, as

[5] The Constituent Assembly of Pakistan Debates (Official Report of the Fifth Session of the Constituent Assembly of Pakistan Debates) Volume V – 1949, 1.

envisaged by Mr. Khan, with regards to minorities. According to the Prime Minister, the minorities in Pakistan would never be hindered from practising, professing, and developing their distinct cultures and religions. The obligation envisaged vis-à-vis the minorities is, thus, negative in nature.

In response to Mr. Sris Chandra Chattopadhaya's concerns about thin attendance and the lack of due notice to Members of the Constituent Assembly at such a crucial time, Prime Minister Khan indicated that only non-Muslim members of the Constituent Assembly could possibly have concerns about the Resolution and because they were all present, with the exception of one, Mr. Chattopandhaya's concerns were not valid.[6] This distinction in the mind of the mover of the resolution between the majority and the minority – the Muslims and the non-Muslims – paves the way to the conclusion that in the mind of the mover, the two communities were distinct, not only as envisaged by the Resolution, but also by a Constitution adopted subsequently.

The Prime Minister's vociferous advocacy in favour of the Resolution did not, however, convince all members. A lively debate ensued concerning mainly the envisaged relationship between the new State and religion.

Mr. Bhupendra Kumar Datta

Mr. Bhupendra Kumar Datta, a member from East Bengal, opposed what he saw as the mixing of religion with politics. Distinguishing faith and reason, Mr. Datta argued that mixing one with the other would spoil both. He was particularly concerned that if faith was mixed with politics, the space for dissent, disagreement, and debate would continue to shrink within the political sphere. He explained that if religion and politics were mixed, it would result in the State and its policies being driven by faith, at the expense of reason. Mr. Datta also expressed concerns regarding the possibility of the text of this Resolution being used as a means to justify political adventurism. The Resolution, he explained, was meant to guide all future constitutional activity and the language of the first paragraph of the Resolution could lead to an exclusionary construction in the future. Like his colleague Mr. Chattopadhaya,[7] Mr. Datta also raised concerns that the introduction of such a resolution after the death of Mr. Jinnah, was symptomatic of a rising tide against which, the reassurances offered by the movers of the Resolution would stand no chance.[8]

Dr. Ishtiaq Hussain Qureshi

Dr. Ishtiaq Hussain Qureshi, an academic from East Bengal, defended the Resolution against the concerns raised. The purpose of his speech seemed to dispel all fears that the minorities might have regarding the Islamic principles within the Resolution. He stated that there could be no possible guarantee against misinterpretation of any limitations set down by any law. He also reassured that the legal and political limitations set upon government under the Resolution

[6] Ibid, 10.
[7] Ibid, 9.
[8] Ibid, 13-17.

should act as a safeguard for minorities. According to Dr. Qureshi, the only real safeguard for minorities would be for them to win the "affection and respect"[9] of the majority and so he appealed to the non-Muslim minorities to trust the latter. In his speech, Dr. Qureshi interestingly provided a negative definition of "secular" where everything that is not theocratic, according to him would be secular. Echoing the argument of the Prime Minister, Dr. Qureshi argued that because there is no room for an organised clergy in Islam, the democracy proposed by this resolution is, by that definition, secular.[10]

Maulana Shabbir Ahmad Osmani

Maulana Shabbir Ahmad Osmani, a religious scholar from East Bengal, also expressed his support for the Resolution stating that in order to determine what kind of State Pakistan was going to be, it was important to determine the relationship it would have with the Lord of the universe. Unlike Dr. Qureshi, Mr. Osmani did not agree that the protection of the minorities was dependent upon the affection and respect of the majority. To the contrary, he argued that this duty was imposed upon Muslims by God. He relied heavily on Mr. Jinnah's words to justify his support for the Resolution.[11]

General Observations

From the speeches made by various members of the Constituent Assembly, in support and opposition of the Objectives Resolution, certain trends emerge. The most noticeable of these trends is that the debate that ensued upon the introduction of the Resolution revolved around the issues concerning the relationship between State and religion, with a special focus on the status of non-Muslim religious minorities in the State envisaged by the Resolution. While the Resolution itself contained provisions regarding democracy, federalism, independence of judiciary *inter alia*, none of these provisions attracted much attention. It is clear from this that the only real point of contention in the Resolution was within the first paragraph, that is, what precisely would be the status of religious principles in the Constitutional framework to be established under this Resolution.

It is also clear that there was consensus in the Assembly that the Resolution contained principles to guide any future Constitution-making in Pakistan. Not only did the Prime Minister Liaquat Ali Khan introduce it to have that effect, but members who opposed the Resolution and moved amendments to it relied on this fact to highlight the need to craft the text of it with extreme caution, precision, and clarity. It is noticeable, however, that there was no indication whatsoever from any of the speeches made in the Constituent Assembly from which it could be concluded that the Resolution was meant to have any constitutionally enforceable, let alone a supra-constitutional status.

That the Resolution envisaged a State that was not neutral to the question of religion was also understood throughout the house. None of the members in support of the Resolution

[9] Ibid, 40.
[10] Ibid, 38-43.
[11] Ibid, 43-48.

attempted to argue that the State would not discriminate on the basis of religion. That much was clear. Instead, they argued that adequate safeguards would be provided to ensure that none of the minorities are hindered from practising and professing their distinct cultures and religions.

Judicial Interpretation

Since the Objectives Resolution has served as the preamble to every Constitution adopted by Pakistan and a substantive part of the Constitution since 1985, it has been subject to interpretation by the Courts. The Constitutional courts of Pakistan have at different times assigned different roles and statuses to the Objectives Resolution.

In *Asma Jilani v The Government of Punjab,*[12] the then Chief Justice Hamood-ur-Rehman in overturning the precedent laid down in the *Dosso case*[13] held that if there is a *grundnorm* in Pakistan, it is in the doctrine enshrined in the Objectives Resolution that sovereignty solely belongs to God and that the "authority exercisable by people within the limits prescribed by Him is a sacred trust."[14] He stated that the Objectives Resolution from which he recognises this principle has not been abrogated since it was passed giving it added validity. It is important to note that the entire Resolution was not held to be the *grundnorm.* Only the principle addressing the role of religion in the democratic Constitution as enshrined in its first paragraph was accorded that status.

Encouraged by this observation by the Chief Justice, Justice Afzal Zullah – a judge of the Lahore High Court at the time – observed in *Zia-ur-Rehman v The State*[15] that the Objectives Resolution was the manifestation of the ideology which was the very foundation of Pakistan and to which all generations, including the founding fathers, of Pakistan had assented. Therefore, he concluded there was no bar in holding that it was a supra-constitutional provision. Subsequently, the position was clarified by the Chief Justice Hamood-ur-Rehman himself when the same case reached the Supreme Court.[16] The Chief Justice, in no uncertain terms, stated that the Objectives Resolution did not enjoy a supra-constitutional status. He went on to explain that the Resolution was a preamble and therefore, while it could be used to clarify an ambiguity within the language of the Constitution, it could in no way override an express provision of it. He also explained that the decision in *Asma Jilani case*[17] only upheld the principle of God's exclusive sovereignty and the exercise of God's authority delegated to the State through its people and pointed out that this principle was found in the Resolution. It did not hold that the Resolution was the *grundnorm*. Leaving no room for doubt, the Chief Justice added that the preamble, or any resolution adopted by any assembly could not be in control of the substantive provisions of the Constitution. He held that after the Constitution was adopted, the Objectives Resolution was "no more than what it describes itself to be, namely, that it is an enunciation or declaration of the goals sought to be attained by the people."[18] The Chief Justice went on to hold that nothing outside the

[12] *Asma Jilani v The Government of Punjab* PLD 1972 SC 139.
[13] *The State v Dosso* PLD 1958 SC 533.
[14] (n 12).
[15] *Zia-ur-Rehman v The State* PLD 1972 Lahore 382.
[16] *The State v Zia-ur-Rehman* PLD 1973 SC 49.
[17] (n 6).
[18] (n 16).

Constitution, no "laws of God or of nature or of morality or some other solemn declaration"[19] could be held by the judiciary to be superior to a validly adopted and accepted Constitution. Such a proposition, he observed, was inconceivable even to the movers of the Resolution.

In the case of *Hussain Naqi v District Magistrate, Lahore*[20] also, it was categorically held that even if the Objectives Resolution was in fact the *grundnorm* as argued by counsel, it was the preamble to the Interim Constitution of 1972 and as such, it could not be enforceable in the courts of law.

Article 2A

Article 2A was inserted into the Constitution by way of the Eighth Amendment to the Constitution.[21] The text of Article 2A is as follows:

> "The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made a substantive part of the Constitution and shall have effect accordingly."

It is interesting to note that the version of the Objectives Resolution initially annexed to the Constitution by that Amendment did not include the word "freely" in the sixth paragraph of the Resolution. This omission lends proof to the concerns raised by members of the Constituent Assembly in 1949 regarding the Resolution being used as a means to quell minority rights in the future. The word "freely" was reinserted into the Annex by the Eighteenth Amendment in 2010.[22]

The insertion of Article 2A reignited the debate that had been settled in the *Zia-ur-Rehman case*.[23] This time, the argument that the Objectives Resolution has a supra-constitutional status had on its side the express language of the Constitution. In the *Hakim Khan case*[24], the question came up for adjudication before the Supreme Court. It was argued before the Court that since the decision regarding the Objectives Resolution in the *Zia-ur-Rehman case*[25] that it was not in control of the Constitution because it was not a substantive part of it, the insertion of Article 2A would, by that logic, have the inevitable effect of placing the Constitution under the control of the Objectives Resolution. This position, however, did not prevail. Instead, the Courts held that Article 2A puts the provisions and principles of the Objectives Resolution at an equal footing with other parts of the Constitution, meaning that an inconsistency of any part of the Constitution with the Objectives Resolution would be harmonised and would not lead to the repugnant part being struck down.

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[19] Ibid.
[20] *Hussain Naqi and another v The District Magistrate, Lahore and 4 others* PLD 1973 Lahore 164.
[21] Revival of Constitution of 1973 Order 1985 (President's Order No. 14 of 1985), Art. 2 and Sch. item 2 (with effect from March 2 1985).
[22] Constitution (Eighteenth Amendment) Act 2010, s. 99.
[23] (n 16).
[24] *Hakim Khan and three others v Government of Pakistan, through Secretary Interior and others* PLD 1992 SC 595.
[25] (n 16).

The status of the Objectives Resolution was again discussed in the *Zaheeruddin case*.[26] In that case, the question was whether the word "law" used in Article 20 of the Constitution is limited only to enacted law or includes also those Islamic principles which have not been enacted. The Court held that Article 2A recognized the sovereignty of God as a substantive part of the Constitution and by extension "the Constitution has adopted the injunctions of Islam as contained in Qur'an and Sunnah of the holy Prophet as the real and effective law."[27] Therefore, it was held that by virtue of Article 2A limitations on Article 20 could be those imposed by Islamic principles, not just by enacted law.

In the *Kaneez Fatima* case,[28] which was heard in the same year that *Zaheeruddin* was decided, the Supreme Court considered whether by virtue of Article 2A, it had the authority to strike down laws due to inconsistency with Islamic injunctions. The five-member bench, however, unanimously answered the question in the negative. The Court reasoned that it had no authority under Article 2A like it did under Article 8 of the Constitution which empowered it to strike down laws on the touchstone of inconsistency with Fundamental Rights. Thus, even after the insertion of Article 2A into the Constitution, the Court found that the status of the Objectives Resolution was neither supra-constitutional, nor the same as the Fundamental Rights enshrined in Chapter 1 of Part II of the Constitution.

This same position was also taken by the Supreme Court in the *Muhammad Nawaz Sharif case*[29] where it was held that Article 2A did not have the effect of adding Fundamental Rights into Chapter 1 of Part II of the Constitution, and, therefore, no laws could be struck down by any Court other than the Federal Shariat Court for inconsistency with the injunctions of Islam. Subsequently, this view was also taken in *Wukala Mahaz*,[30] *Province of Punjab v National Industrial Cooperative Credit Corporation*,[31] and *Khurshid Anwar Bhinder case*.[32]

There is no cavil to the proposition that the Objectives Resolution has never been denied constitutional significance by the judiciary. The Supreme Court has recognised principles laid in its first paragraph as the *grundnorm* of Pakistan.[33] At different times, arguments have been presented before the constitutional Courts of Pakistan in favour of elevating the Resolution to a supra-constitutional status. Barring rare exceptions,[34] however, such arguments have repeatedly failed to impress judges. The insertion of Article 2A and by extension of the Objectives Resolution (with some modifications) into the 'substance' of the Constitution too has been read down by the Courts.[35]

[26] *Zaheeruddin v State* 1993 SCMR 1718.
[27] Ibid.
[28] *Mst. Kaneez Fatima v Wali Muhammad* PLD 1993 SC 901.
[29] *Mian Muhammad Nawaz Sharif and others v President of Pakistan* PLD 1993 SC 473.
[30] *Wukala Mahaz Barai Tahafaz Dastoor and another v Federation of Pakistan and others* PLD 1998 SC 1263.
[31] 2000 SCMR 567.
[32] *Justice Khurshid Anwar Bhinder and others v Federation of Pakistan and another* PLD 2010 SC 483.
[33] (n 12).
[34] (n 15,16).
[35] (n 24, 28).

It can, therefore, be said that barring some exceptions, the trend in the judiciary had long been against elevation of the Objectives Resolution to a status higher than that envisaged by the Constituent Assembly that passed it. Although the insertion of Article 2A by the Eighth Amendment gave new impetus to those in favour of a greater role for the Resolution, the Courts, in fidelity to the framers' intent, always refused to strike down the Parliament's constitutional[36] and legislative[37] provisions on the touchstone of the Resolution.

The Election Act case

The constitutional status of the Objectives Resolution became relevant again recently in the decision of the *Elections Act case*.[38] By way of background, the petitioners challenged sections 203 and 232 of the newly enacted Elections Act 2017 which was enacted to codify all existing laws relating to elections into one Act. The petitioners challenged the omission of the proviso to section 5 of the repealed Political Parties Order 2002, which provided that no person disqualified to be a member of Parliament could serve as an office-bearer of a political party. The Court held that the provisions of the impugned sections 203 and 232 of the Election Act 2017 were to be read subject to Articles 62, 63, and 63A of the Constitution. The Court effectively reinserted the proviso to section 5 of the repealed Political Parties Order 2002 into the Election Act 2017. Consequently, Respondent No. 4 in that case (i.e., former Prime Minister Muhammad Nawaz Sharif) stood removed from the office of President of Respondent No. 3 (i.e., Pakistan Muslim League (N)).

The Court made references to the Objectives Resolution extensively in its short order,[39] as well as the detailed judgment. The unanimous judgment, authored by the Chief Justice Mian Saqib Nisar, develops what it calls the "general scheme"[40] of the Constitution. The starting point of this analysis is that Pakistan is a State created "in the name of Islam"[41] with its guiding principles enunciated in the Objectives Resolution of 1949 which serves not only as the preamble to the Constitution, but since the insertion of Article 2A also an enforceable and substantive part of it. Therefore, the Court reasons that, in accordance with the Muslim faith, our democracy cannot be "in conflict with Islamic Principles."[42] In addition to the emphatic reliance on the Objectives Resolution, the Court also relies on Articles 2, 41(2), 31, 50, 62, 63, 203, and 227 to hold that the "underlying theme and focus of the Constitution is to ensure that only those individuals enter the electoral process who fulfil the prerequisites and requirements spelt out in the Constitution itself to be worthy delegates of Almighty Allah in order to exercise His powers in trust for Him and for the welfare of the people of Pakistan by joining the political process."[43]

Further developing this line of reasoning, the Court emphasises the importance of the party head under the Election Act 2017. To allow a person to control the fates of Members of

[36] (n 24).
[37] (n 29).
[38] (n 1).
[39] (n 1) para 60.
[40] (n 3).
[41] (n 1) 385.
[42] (n 1) 386.
[43] (n 1) 391.

Parliament if he himself is not qualified to be a Member of Parliament would, therefore, be an absurdity.[44]

With regards to the argument that Article 17 of the Constitution includes the right to be a head of a political party, the Court responds that "morality is a part and parcel of the Islamic ideology of Pakistan and is included in the expression "integrity of Pakistan. This is in line with the theme and underlying spirit of the Objectives Resolution, various Articles of the Constitution discussed above and the pronouncements of this Court…."[45] To hold this, the Court relied on the precedent set in *Benazir Bhutto v Federation of Pakistan*[46] from which it quotes that "Article 17(2) of the Constitution contains the declaration of the right and the restriction in its exercise as authorised by the Constitution. Thus, it is not an absolute or uncontrolled liberty and is accordingly limited in order to be effectively possessed." However, the Court completely disregarded the words immediately after the excerpt it quoted which are that "the restrictive clause is exhaustive and must be strictly construed…."

From this, it can clearly be concluded that the Supreme Court in the *Benazir Bhutto case*[47] severely limited the restrictions that could be imposed on the right enshrined in Article 17 of the Constitution. In the *Elections Act case*,[48] however, in clear contravention to the judgment in the *Benazir Bhutto case*,[49] but relying on that very precedent, the Supreme Court held that restrictions on the Right in Article 17 of the Constitution could be imposed even if they violated a conception of morality based on Islam, which the Court itself developed out of its own reading of the Objectives Resolution and the various Islamic Provisions in the Constitution.

In the *Elections Act case*,[50] the Court went against its own precedent and vastly expanded the scope of limitations that can be imposed upon a Fundamental Right. Moreover, the Court did not merely allow for such limitations to be placed by the legislature, but actively placed such a limitation, against the express intention of the legislature which had repealed these limitations (i.e., the proviso to section 5 of the Political Parties Order 2002) on the exercise of the right granted under Article 17.

What is a cause for even greater concern is that the Supreme Court did so relying not on an express constitutional or even legislative provision, but on a conception of morality, that it constructed from the Objectives Resolution, and an aggregate of several Articles of the Constitution that it used to construct the "general scheme"[51] of the Constitution. This conception of morality is created by the Court itself and nothing bars the Court from redefining the contours of this morality, thus further expanding the scope of limitations on Fundamental Rights.

Conclusion

[44] (n 1) 397.
[45] (n 1) 399.
[46] *Benazir Bhutto v Federation of Pakistan* PLD 1988 SC 416.
[47] Ibid.
[48] (n 1).
[49] (n 46).
[50] (n 1).
[51] (n 3).

In the broader Constitutional history of the Objectives Resolution, the *Elections Act case*[52] is a milestone. In this case, the Supreme Court has effectively given itself power to define the contours of constitutionally granted Fundamental Rights based on a conception of morality that stems from Islamic Principles which the Court developed mainly from the principles enshrined in the Objectives Resolution and that too in contravention of the express intention of the legislature.

This is a clear divergence from two of the Supreme Court's own precedents. The first of these is the *Kaneez Fatima case*.[53] The Court then held that even after the insertion of Article 2A to the Constitution, the jurisdiction to strike down laws that are in contravention to the injunctions of Islam does not vest in the Supreme Court, but in the Federal Shariat Court under Article 227 of the Constitution. Against this, the Supreme Court in fact performed a clearly legislative act by bringing back to life a provision discarded by the legislature in the *Elections Act case*.[54] The second is the *Benazir Bhutto case*[55] in which the Supreme Court stated that limitations on the right granted in Article 17(2) are limited only to those mentioned in the Constitution itself and also that the restrictive clause must be construed strictly. Against this, the Supreme Court in the *Elections Act case*[56] placed a limitation on the right granted in Article 17 based on a "general scheme" of the Constitution constructed from the Objectives Resolution and several Articles of the Constitution (none of them being from the Chapter on Fundamental Rights), rooted in a religious morality.

As demonstrated above, there is no evidence to suggest that this is consistent with the framers' intent. At no point in the proceedings of the Constituent Assembly during the debates surrounding the Resolution was it suggested, or even conceived by either the movers of the Resolution or those in opposition to it, that the Resolution could be used as a basis for the judiciary to modify the restrictions placed on constitutionally granted fundamental rights. While the Resolution was described as a set of guiding principles for a future Constitution, it was never conceived to be a part of it, let alone override it. The judiciary too, through several decisions, has cautioned against relying on the Resolution for striking down legislation, both ordinary and constitutional. The decision in the *Elections Act case* opens doors for Courts to effectively redefine the scope of Fundamental Rights based on the Objectives Resolution along with other Islamic Provisions of the Constitution. As the jurisprudence around the idea of a "general scheme" of the Constitution based on the Objectives Resolution and other Islamic provisions within the Constitution develops, it will be interesting to see if it encourages other judges to take this further and take a more active legislative role as happened in the *Zia-ur-Rehman case*.[57]

It is clear, however, that the decision in the *Elections Act case*[58] is yet another attempt by the Supreme Court to consolidate its own power at the expense of the legislature, relying at least

[52] (n 1).
[53] (n 28).
[54] (n 1).
[55] (n 46).
[56] (n 1).
[57] (n 15).
[58] (n 1).

in substantial part of the same Objectives Resolution that has been used time and again by the constitutional courts of Pakistan to gain legislative ground.