IQBAL AND THE RECONSTRUCTION OF ISLAMIC LAW

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Dr. Muhammad Iqbal, on one occasion, said:

"Today, Islam's greatest need is the reconstruction of the Islamic law and its re-codification in such a way that it may provide the Islamic answer to the hundreds of thousands of new questions that have been posed by the modern economic, political, social, national and international developments."[2]

In a letter to Maulana Sayyid Sulayman Nadvi, he wrote:

"It is my firm conviction that he who critically reviews modern jurisprudence from the Qur'anic viewpoint, reconstructs it, and establishes the truth and eternality of Qur'anic laws, would be the real leader and pioneer of Islamic renaissance and the greatest benefactor of humanity at large. This is the time for action; for in my humble opinion, Islam today is on trial and never in the long range of Islamic history was it faced with such a challenge as the one that besets it today."[3]

Iqbal, it seems, was extremely preoccupied with the idea of the reconstruction of Islamic law. He was looking with sober anxiety at the currents and cross-currents of thought in the Muslim world.

He was worried at the spectacle of the growing alien influences in the world of Islam and wanted to awaken the intelligentsia to the dangers of indiscriminate assimilation.

Law is the sheet-anchor of a culture. It deals with life in all its multifarious aspects. Every science is its domain, every field is its jurisdiction. It guides and controls human life in every walk of activity. As such its importance is paramount. Iqbal realised this cardinal importance of law and

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[2] Hayat-e-Anwar, p. 160, quoted A.R. Khan, Iqbal aur Mister, Gosha-i-Adab, Lahore, (1956) p. 67.

[3] Iqbal Namah, Ed. Shaikh Ataullah, Ashraf Publications, Lahore, Vol. I., p. 50.

looked with grief at the gradual disintegration of the law and custom that had held together the Muslim society.

Although the contact of Islam and the Modern Western Civilization began in the seventeenth century yet it entered a crucial stage only in the nineteenth and the twentieth centuries. In these later periods the political supremacy of the Muslims was on the wane. The Muslim world was succumbing, at a heavy pace, to the encroachments of Western imperialism. Under the sheltering care of imperialism, Western education and Western technology were creeping into the world of Islam. New ideas began to fill the air, new techniques began to hold the sway. These forces disturbed the old order to its roots. The Muslim world was thrown into convulsion.

Two diametrically opposite reactions emerged in this age of crisis. One was that of undiluted conservatism and the other that of uncontrolled modernism. The conservatives sought refuge in the asylum of 'no change'. They became rigid in their outlook and approach. Every change, they thought, would be a change for the worst. So, they concluded, that the only way to save the Islamic law and culture, in this hour of chaos and confusion, was to stick to the past stubbornly and guard the old order jealously.

The modernists, on the other hand, were swept away with the current of the time. They thought that the royal road to glory lay in the imitation of the West. The Muslim revival, in their view, could be achieved only through adopting Western technique, Western law, Western education and Western modes of thought and behaviour. They saw no contradiction between Islam and the modern West and pleaded for the adoption of Western civilization so that Muslims could also emerge as a progressive nation.

These two reactions manifested themselves in every walk of life, but they were most poignant in the field of law, for law is the epitome of the whole life. The conservatives stood for rigid adherence to fiqh, the modernists wanted to change the entire law in the light of the new thought and practice and to adopt western codes of law in one way or the other.

It was at this moment of our history that Iqbal appeared on theintellectual firmament of the Muslim world. He studied the situation very dispassionately and disapproved both these reactions which betrayed lack of depth and realism. He tried to point out the golden mean.

Careful reflection reveals that neither rigid conservatism nor unbridled modernism can deliver the goods. The conservatist approach is unrealistic. Life is a process of continuous change. History is moving ahead. Society is being moulded into newer folds. New situations are arising, new relationships are being reared and new problems are cropping up. It is imperative to take note of this change and see how the tenets of Islam can be applied to these new conditions. It would be futile to try to put a brake to change, for that would stop all movement and clog the wheels of progress. It would be still more futile to ignore the change and try to stick to things that might have become inapplicable to the new situations. in any case this approach is foredoomed to failure. It cannot but result in driving religion out of the social field and affecting an estrangement between law and life. It would arrest the evolution of the Islamic law. And fossilisation of law means fossilisation of the entire civilization. This attitude cannot work.

The modernist approach, on the other hand, is still more shallow, unrealistic and unsuited to our conditions.

This approach of the so-called liberals is in fact not a reform movement. It is tantamount to the rejection of Islam. Its ultimate result would be the discarding of Islam. For, the liberties they are taking with Islam cannot come under the category of ijtihad, they amount to a departure from the law of Islam. These people try to maintain the Islamic terminology, but give it an entirely new meaning—a meaning that cannot fit into the scheme of Islam. Even a leading Western critic of Islam, Professor Joseph Schacht, had to admit that what these 'progressives' are driving at is not Islam, it is the very anti-thesis of it. He writes in a recent essay:

"The method used by the modernist legislators savors of unrestrained eclecticism: the 'independent reasoning' that they claim goes far beyond any that was practiced in the formative period of Muhammadan law; any opinion held at some time in

the past is likely to be taken out of its context and used as an argument. On the one hand the modernist legislators are inclined to deny the religious character of the central chapters of the sacred law; on the other, they are apt to use arbitrary and forced interpretations of Koran and traditions whenever it suits their purpose. Materially, they are bold innovators who want to be modern at all costs; formally, they try to avoid the semblance of interfering

with the essential contents of the sacred law. Their ideals and their arguments come from the West, but they do not wish to reject the sacred law openly as Turkey has done."[4]

This is the position of the modernists. But they have failed to realise that Islamic law is basically different from the modern Western law. Both have arisen out of different situations. Their sources are vitally different and there is no parallel between their history and institutions. An imitation of the West in this respect cannot but breed chaos and confusion.

Secondly, they do not realise that the conditions in the Muslim world today are diamatrically opposed to those that prevailed in Europe during the periods of Renaissance and Reformation. The history, the traditions, and the cultural background of Islam and the modern West are totally different. In such a situation how can Western institutions work in this part of the world.

Thirdly, law is nothing but a representation of the norms and values of a community. If the people have not discarded these values, how can a law, based on some other set of values, work among them. The famous jurist Lord Wright rightly says:

"Law is not an end in itself. It is a part in the system of Government of the nation in which it functions and it has to justify itself by its ability to subserve the ends of government, that is, to help to promote the ordered existence of the nation and the good life of the people".[5]

Another leading English Judge, Sir Patrick Devlin, in a recent Address to the British Academy, says:

"Law exists for the protection of society. It does not discharge its function by protecting the individual from injury, annoyance, corruption, and exploitation; the law must protect also the institutions and the community of ideas, political and moral, without which people cannot live together. Society cannot ignore the morality of the individual more than it can his loyalty; it flourishes on both and without either it dies.. . .The morals which under lie

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[4] Joseph Schacht, in his article " The Law," Unity and Variety in Muslim Civilization, Ed. G. E. Von Grunebaum (University of Chicago Press) 1955 p. 83.

[5] Lord Wright, Interpretation of Modern Legal Philosophies, p. 794.

the law must be derived from the sense of right and wrong which resides in the community as a whole."[6]

This being the situation, if the Muslim community were to adopt a system of laws derived from the norms of a culture which is not their own, the grafting is bound to create a serious problem. At least the following three complexities are certain to arise:

(i) Such a law will have to be imposed despotically and dictatorially, for it cannot be introduced in a society like that of the Muslims, in a democratic manner. This is admitted by Dr. Northrop when he says: "I believe this is one of the reasons why such law usually has to be put in first by a dictator. It cannot come in as a mass movement because the masses are in the old tradition."[7]

(ii) Even if it is imposed from above, it will engender a social schism and conflict and a growing disrespect, disregard and ultimately violation of law. The reason being that on account of its irrelevance, nay, antagonism with the spirit of Muslim culture it is bound to be hated and despised by the community.

(iii) It will lead to disintegration of the society and will result in cultural confusion.

Lastly, these people ignore that the West itself has lost much and gained little through the secularisation of law, so much so that Iqbal said: "Believe me, Europe today is the greatest hindrance in the way of man's ethical advancement." Western thinkers also seem to be realising this mistake more and more and some of their leading authorities are now suggesting that their own system of law is wanting.

To have an idea of what the state of mind of some of the leading authorities in modern law and jurisprudence is, we refer to the following authorities. Professor G. W. Paton says:

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[6] Sir Patrick Devlin, The Enforcement of Morals, Maccabaean Lecture in Jurisprudence of the British Academy (1959) p. 23.)

[7] Dr. Filmer S.C. Northrop, Colloquium on Islamic Culture, Princton University Press (1953) p. 109.

"Philosophy has not yet evolved an acceptable scale of values; its answer to the fundamental problems of jurisprudence is still confused."[8]

Morris Cohen, in his book Reason and Nature, says:

"No ideal so far suggested is both formally necessary and materially adequate to determine definitely which of our actually conflicting interests should justly prevail."

W. Friedmann comes to the following conclusion:

"What is the purpose of life? is the fundamental question to be answered by legal theory. In many endeavours to give an answer the principal movements in legal thought veer between certain fundamental values of life. Western civilization at any rate has hitherto been unable to agree even theoretically on the ultimate values and purposes of life. So persistently has the pandulum swung backward and forward between certain antinomic values that we cannot but register a tension which perpetually produced new efforts and a search for harmony."[9]

The same author also asserts that:

"The tale of natural law is a tale of the search of mankind for absolute justice and of its failure.... The problem is as acute and as unsolved as ever. With changing social and political conditions the notions on natural law have changed. The only thing that has remained constant is the appeal to something higher than positive law.... It is easy to deride natural law as it is easy to deride the futility of mankind's social and political life in general, in its unceasing but hitherto vain search for a way out of the injustice and imperfection, for which so far Western civilization at any rate has found no other solution but to move between one extreme and another."[10]

The feeling is also now dawning that some religious basis is essential for law and the legal system which humanity needs must be grounded in religion.[11] This being the state of modern legal thought, how can a law which

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[8] G. W. Paton, A Textbook of Jurisprudence, Oxford University Press (1946), p.

[9] W. Friedmann, Legal Theory, London (2nd ed. 1953) p. 465.

[10] W. Friedmann, Ibid., p. 17-18.

[11] See W. Friedmann, !bid, p. 450. Also: Sir Patrick Develin, opt. cit. p. 6-7 and 10-25,

is failing in its own lands come to the rescue of the world of Islam. According to Iqbal:

زندہ کر سکتی ہے ایران و عرب کو کیونکر

وہ فرنگی مدنیت کہ جو ہے خود لب گوز

How can it infuse new life into Iran and Arabia when the Western polity is itself moribund?

Iqbal realised the futility and hollowness of both these approaches and exposed the dangers of conservatism and modernism in an illuminating way. He pleaded for a balanced approach, for he believed that:

"Only we must not forget that life is not change, pure and simple. It has within it elements of conservation also. While enjoying his creative activity, and always focusing his energies on the discovery of new vistas of life, man has a feeling of uneasiness in the presence of his own unfoldment. In his forward movement he cannot help looking back to his past, and faces his own inward expansion with a certain movement of fear. The spirit of man, in its forward movement is restrained by forces which seem to be working in the opposite direction. This is only another way of saying that life moves with the weight of its own past on its back, and that in any view of social change the value and function of the forces of conservatism cannot be lost sight of. It is with this organic insight into the essential teachings of the Quran that Modern Rationalism ought to approach our existing institutions. No people can afford to reject their past entirely; for it is their past that has made their personal identity. And in a society like Islam the problem of a revision of old institutions becomes still more delicate, and the responsibility of the reformer assumes a far more serious aspect. Islam is non-territorial in its character, and its aim is to furnish a model for the final combination of humanity by drawing its adherents from a variety of mutually repellent races, and then transforming this atomic aggregate into a people possessing a self-consciousness of their own. This was not an easy task to accomplish. Yet Islam, by means of its well-conceived institutions, has succeeded to a very great extent in creating something like a collective will and conscience in this

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and Sir Alfred Denning, The Changing Law, last chapter.

heterogeneous mass. In the evolution of such a society even the immutability of socially harmless rules relating to eating and drinking, purity or impurity, has a life-value of its own, in as much as it tends to give such society a specific inwardness, and further secures that external and internal uniformity which counteracts the forces of heterogeneity always latent in a society of a composite character. The critic of these institutions must therefore try to secure, before he undertakes to handle them, a clear insight into the ultimate significance of the social experiment embodied in Islam. He must look at their structure, not from the standpoint of social advantage or disadvantage to this or that country, but from the point of view of the larger purpose which is being gradually worked out in the life of mankind as a whole."[12]

This rather lengthy quotation from Iqbal clearly reveals his approach to the task of reconstruction. He was eager to see the Muslims march ahead—but he was not a lover of "movement" as such, but a movement in the right direction, through the right process and in pursuit of right objectives. Thus Iqbal was neither a liberal in the current sense of the word, nor a conservative in the often-expressed meaning of it. His approach was balanced and he wanted to steer ahead, avoiding the Scylla and Charybdis of modernism and conservatism. He had no brief for either.

This being Iqbal's approach, now let us see how he proposed to accomplish the task of the reconstruction of Islamic law and what is the nature of his contribution to the legal thought of con-temporary Islam.

Iqbal's Contribution

In the Indo-Pakistan sub-continent there had been, for some-time past, a clamour for ijtihad but no one succeeded in articulating the need for ijtihad and in pointing out the process of growth and evolution in Islamic law. Iqbal's greatest contribution is that he clearly brought out in view the need for ijtihad and gave a new stirriag to the Muslim thought in the Indo-Pakistan subcontinent.

Iqbal's analysis, it seems, was that Muslims are willy-nilly drifting away from Islam because they are faced with a paradox. They see a new world around them and want to move ahead. But they have no definite Islamic

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[12] Dr. Muhammad Iqbal, Reconstruction of Religious Thought in Islam, Lahore (1954), pp. 166-67.

guidance before them. They are labouring under the misconception that Islamic law is a closed system, devoid of any potentialities of evolution and growth and unable to provide solutions to the questions of the day. This misconception has been strengthened because of the unrealistic rigidity of certain 'ulama and the introduction of Western education which has perverted values of the educated classes and has given currency to those base-less objections to Islam and its law which have been put forward by certain Western critics of Islam. Because of this, Muslims themselves began to believe in these objections and criticisms and thus were helplessly drifting away from Islam, under the strain of something similar to an inferiority complex. Iqbal embarked upon a project to show:

"Whether the history and structure of the law in Islam indicate the possibility of any fresh interpretation of its principles. In other words, the question I want to raise is—Is the law of Islam capable of evolution?"

Iqbal focused the attention of the intelligentsia on this question and himself admirably discussed the different aspects of the problem.

Permanence and Change in Islamic Law

1 . He, first of all, removed the misconception that life is change pure and simple. He pointed towards the fact of an unbroken continuity in history. He asserted that life is composed of elements of permanence and change. If there are no eternal values and principles, nothing but chaotic relativism would be the result. And if every minute detail is made unchangeable, the structure would crack under the pressure of changing situations. He says:

"The ultimate spiritual basis of all life, as conceived by Islam, is eternal and reveals itself in variety and change. A society based on such a conception of Reality must reconcile, in its life, the categories of permanence and change. It must possess eternal principle to regulate its collective life, for the eternal gives us a foothold in the world of perpetual change. But eternal principles when they are understood to exclude all possibilities of change which, according to the Quran, is one of the greatest 'signs' of God, tend to immobilize what is essentially mobile in its nature. The failure of Europe in political and social sciences illustrates the former principle, the immobility of

Islam during the last 500 years illustrates the latter."[13]

2. Islam propounds the basic values of life, the legal norms, and sets the limits which are not to be transgressed. After setting the four corners of life, it gives man freedom to move ahead and apply those norms and principles in every age and epoch. The basic principles are eternal. They are not the product of any human mind that is subject to the limitations of space and time. They are truths based on revelation and hold good for all time to come. But they do not go to regulate every little detail of life—which are to be decided in every age by an application of these principles. And as there is an unending continuity in life and culture, "each generation, guided but unhampered by the work of its predecessors, should be permitted to solve its own problems."[14]

Sources of Islamic Law

2. Iqbal undertook a critical study of the sources of Islamic law and showed that they contain within them the potentialities of evolution and of meeting newer situations. He maintained the orthodox classification of the sources of fiqh, viz., Qur'an, Sunnah, Ijma' and Qiyas and threw light upon the potentialities they hold for the future.

The Qur'an is the basic source of law and, being the Divine Revelation as it is, gives the eternal principles for human guidance. These principles are the corner-stone of Islamic law, the very foundation of it. This Holy Book, on the one hand, sets the basic eternal principles of life, and on the other, endows man with a new revolutionary outlook and awakens in him a unique insight into life, so that he may reform and refashion the entire field of life in accordance with the spirit of Islam.

The Sunnah of the Holy Prophet is the second great source of Islam. Iqbal regarded the sunnah of the Prophet as the real binding force of the Muslim society. He regarded the authentic traditions as an indisputable authority in law and believed that "the traditionists, by insisting on the value of the concrete case as against the tendency to abstract thinking in law have

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[13] Iqbal, Reconstruction of Religious Thought in Islam, pp. 147-148.

[14] Iqbal, lbid, p. 168.

done the greatest service to the law of Islam.[15]

'*Ijma*', the third source of Islamic law, says Iqbal, is the 'most important legal notion of Islam.' It consists in the consensus of the Mujtahids on a point of law and such a consensus becomes a permanent source of law. This is a process through which new values are established and preserved in Islam. This is the most important avenue of growth and evolution—the vista of progress and development.

Qiyas is the last source of Islamic law and consists in the use of analogical reasoning in legislation. This is the process through which the Islamic principles are applied to local problems or to the changing conditions, Through Qiyas, which is another name for ijtihad, the growth of Islamic law takes place and the principles are applied to the concrete cases.

Iqbal explained and elucidated these sources of Islamic law and showed that they are so constituted that growth and evolution are guaranteed for all time to come. Ijma' and Qiyas are two important instruments of growth and are fully capable of meeting the requirements of genuine change. Iqbal's chief merit lies in the fact that instead of following in the footsteps of the modernists, he thoroughly studied the structure of Islam, imbued himself with its real spirit, and forcefully proved, by a thoughtful discussion over the legal system of Islam, that it was a masterly system which catered to the needs of permanance and change both. Neither was it a closed system, nor subject to atomic relativism. Thus, it was capable of meeting the needs of our age and has the potentialities of transforming a modern society into the Islamic mould.

Is the door of ljtihad closed?

3. Next comes, automatically, the question of the closing of the door of Ijtihad. For, even when the structure of Islam is elastic, if practically the door of future progress and movement has been closed down then the situation won't be any different. Iqbal has dwelt upon this topic at different places. His analysis seems to be as follows:

(i) He rejects the idea that rigidity came into the world of Islam under the influence of the Turks. He regards this view as shallow.

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[15] Iqbal, Ibid, p. 173.

(ii) His own opinion was that the door of Ijtihad was closed for three reasons, viz., firstly, to serve as a check against the disintegrating and confusing influences of the Mu'tazila; secondly, to meet the sufi challenge to the Muslim society which came in the form of the obscurity of the social vision and the deprivation of the society of its best minds; and, finally, the destruction of Baghdad which shook the entire Muslim world and threw it into chaos and confusion. As such the only road to safety was found in strict adherence to the opinion of the authorities of the past. This was an important device to save the Muslim world from further disintegration. And at that critical moment of our history the community did achieve this end by closing the doors of Ijtihad. Iqbal thinks that it was advisable to do so in that age for in times of disintegration Taqlid is better than Ijtihad. In the Rumuz-i-Bekhudhi he says:

مضمحل گردد چو تقویم حیات

ملت از تقلید می گیرد ثبات

راه آبا رو که ایں جمعیت است

معنی تقلید ضبط ملت است

When the structure of life begins to decay,

The Nation takes stability through Taqlid.

Go through the way of thy forefathers, for therein

lies strength.

The purpose of Taqlid is the maintenance of the Nation.

And again:

اجتہاد اندر زماں انحطاط

قوم را برہم ہمی پیچید بساط

ز اجتہاد عالمان کم نظر

اقتداء بر رفتگاں محفوظ تر

In the time of Decadance Ijtihad completes the

people's disintegration.

It is safer to follow those who have gone forth

Than the Ijtihad of the so-called claimants to

knowledge who are short-sighted.

(iii) Although Iqbal recognised the utility and the function of Taqlid, he thought that the situation has now changed. New problems have arisen which call for new solutions and as such the door of Ijtihad must not remain closed. As the door was kept open by God, no one had the right to permanently keep it closed. If some of the former doctors of law have upheld this view, Muslims of today are not bound by that "voluntary surrender of intellectual independence."

He therefore, asserted:

"I have tried to explain the causes, which in my opinion, determined this attitude of the Ulema; but since things have changed and the world of Islam is today confronted and affected by new forces set free by the extraordinary development of human thought in all its directions, I see no reason why this attitude should be maintained any longer."[16]

Iqbal is perfectly right in making this observation. The fact is that the situation today is materially different in many respects and due note must be taken of that.

(a) Although the true Islamic Caliphate came to an end by the middle of the first century Hijra, during the Ummayad and the early Abbaside periods, the law of the land was fully Islamic and Islam's teachings were not being tampered with. With the fall of the Abbasides the Muslim state disintegrated and the paramount need of Islamic law, which arises in an Islamic polity, was

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[16] Iqbal, Ibid, P. 168.

greatly diminished. This disintegration of the Islamic state sapped the springs of creativity and drifted Muslims into the Iap of orthodoxy. Now, Muslims are attaining political independence. Free states are emerging. There is a strong movement in the Muslim world to make these states Islamic and to adopt Islamic law. As such the old attitude must change.

(b) The historical situation is also different. In the past the intellectual and political challenges came like a blizzard and confused the entire scene. Now the situation is such that although Europe has achieved great material progress, its spiritual bankruptcy has become crystal-clear. The Muslim world, on the other hand, is in the grip of a new awakening. This new awakening can be guided only by a new insight into the message of Islam and a realisation of its prospects for the future. Mere parrot-like repetition of that which was taught in the past can be of little avail in this hour of renaissance. Therefore, the gate of Ijtihad should be reopened and Ijtihad should be exercised to meet the new situations.

Iqbal and Ijtihad

4. This brings us to the problem of Ijtihad. Iqbal does not believe in uncontrolled and unbridled exercise of opinion. Ijtihad is a legal concept of Islam and it is wrong to think that every independent judgement can fall under it. Here some confusion has been created by those who have torn Iqbal's definition of Ijtihad from the general scheme of his ideas and have given it some new fangled meanings. Therefore a little detailed discussion is called for.

Iqbal has defined Ijtihad as follows:

"The word literally means to exert. In the terminology of Islamic law it means to exert with a view to form an independent judgement on a legal question."[17]

Now it is strange that some people conclude from this that, according to Iqbal, any and every independent judgement can be Ijtihad. Nothing can be farther from truth. Although this definition is not as exact and as comprehensive as a definition should be, it would be unjust and incorrect to think that Iqbal regarded every independent judgement as Ijtihad. For, if that

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[17] Iqbal, Ibid, p. 148.

is so, every legislature of the world is performing Ijtihad, for, what are they doing except forming independent judgements on legal questions? Iqbal believed in independent judgement, but not so independent as to be independent of the Qur'an and Sunnah ! Iqbal was one of the staunchest critics of this unbridled freedom and we would like to refer to the following points in support of our plea:

(a) Iqbal opposed that freedom of thought which cuts man asunder from Divine Guidance. He valued human reason but knew that it should be used within proper limits; otherwise instead of being a great asset and blessing it might turn into an evil and an instrument of destruction. He says:

آزادی افکار سے ہے ان کی تباہی

رکھتے نہیں جو فکر و تدبر کا سلیقہ

ہو فکر اگر خام تو آزادی افکار

انسان کو حیوان بنانے کا طریقہ

In freedom of thought lies their destruction,

Who do not possess discipline of thought.

If the mind is immature, then freedom of thought

Is an instrument for making a beast of a man.

At another place he expresses his evaluation of the unbridled thought of the Modern age as follows:

پختہ افکار کہاں ڈھونڈنے جائے کوئی

اس زمانے کی ہوا رکھتی ہے ہر چیز کو خام

مدرسہ عقل کو آزاد تو کرتا ہے مگر

چھوڑ جاتا ہے خیالات کو بے ربط و نظام

مردہ لا دینئی افکار سے افرنگ میں عشق

عقل بے ربطئ افکار سے مشرق میں غلام

Where to search for mature thought?

The spirit of the age keeps things unripe and uncouth.

Education liberates the intellect no doubt,

But it leaves ideas disconnected and un-disciplined.

In the West 'ishq is moribund because of irreligious thought,

In the East intellect is in chains because of thought indiscipline.

And when a certain section of Muslims, in exercise of this independent judgement, began to twist Islam, Iqbal sarcastically said:

ہے کس کو یہ جرات کہ مسلمان کو ٹوکے

حریت افکار کی نعمت ہے خدا دادا!

چاہے تو کرے کعبہ کو اتشکدہ پارس

چاہے تو کرے اس میں فرنگی صنم آباد

قرآن کو بازیچۂ تاویل بنا کر

چاہے ت و خود ایک تازہ شریعت کرے ایجاد

Who has the courage to check the Muslim?

For freedom of thought is a blessing from heaven!

If he so wishes, he can turn Ka'ba into the

fire-worshipper's synagogue.

Or implant into it idols from the West,

And, making a plaything of the Qu'ran,

Innovate a new Shari'ah of his own.

Thus we find that Iqbal was never in favour of that independence of thought which refused to recognise the limits set by God and His Prophet

(b) While explaining his views on Ijtihad Iqbal refers to the famous Hadis-i-Ma'az which clearly reveals his concept of Ijtihad. In this Hadith Ma'az bin Jabal said that if he did not find any direct guidance from the Qur'an and Sunnah, then he would exert to his utmost to form an opinion as to what would be the law of Islam in that case. This clearly shows that:

(i) If any explicit guidance is available on an issue in the Qur'an or the Sunnah, there is no question of Ijtihad;

(ii) If no explicit guidance is available, then the faqih will exert himself to the utmost to find out the implicit guidance; and

(iii) If nothing explicit or implicit is available in the Qur'an and Sunnah, then he will decide the issue in the light of the spirit and the general teachings of Islam, i, e., The Qur'an and Sunnah.

That is why the word Ijtihad (exerting to the utmost) is used and not merely ra'y (opinion). Iqbal clarifies the point at another place as well. While discussing the sources of Islamic law, he uses the word Qiyas as synonymous with Ijtihad and on the authority of Imam Shafi'i says:

> "Qiyas, as Shafi'i rightly says, is only another name for Ijtihad which, within the limits of the revealed texts, is absolutely free, and its importance as a principle can be seen from the fact that according to most of the doctors, as Qazi Shawkani tells us, it was permitted even in the lifetime of the Holy Prophet."[18]

(c) Iqbal did not believe in that kind of free exercise of opinion which totally disregards the traditions of the millat. He was very particular on this point and raised it again and again. In Rumuz-iBekhudi he captions a chapter

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[18] Iqbal, Ibid, p. 178.

as follows:

در بیان این که کمال حیاتم لیه این است که ملت مثل فرد احساس خودی پیدا کند و تولید و تکمیل این احساس از ضبط روایات ملیه ممکن گردد

"That the perfection of Communal life is attained when the Community, like the individual, develops the sense of Selfhood; and that the propagation and the perfection of this sense is made possible through the perpetuation of National traditions."

He says:

قوم روشن از سواد سر گذشت

خود شناس آمد ز یاد سر گذشت

سر گذشت او گر از یادش رود

باز اندر نیستی گم می شودع

نسخه نبود ترا اے ہوشمند

ربط ایام آمده شیرازه بند

ربط ایام است مارا پیرہن

سوزنش حفظ روایات کہن

چست تاریخ اے ز خود بیگانه

داستانے، قصۂ افسانه؟

این ترا از خویشتن آگه کند

آشنائے کار و مرد ره کند

روح را سرمایۂ تاب است این

جسم ملت را چو اعصاب است این

The record of the past illuminates
The conscience of a people.
The memory Of past achievements makes it self-aware;
But if that memory fades, and is forgot,
The folk again is lost in nothingness.
Know, then 'tis the connecting thread of days
That sticks up thy life's loose manuscript;
This self-same thread sews us a shirt to wear,
Its needle the remembrance of old yarns.
What is history, 0 Thou unaware of the self !
A fable? or a legend, a tale?
Nay, 'tis the thing that maketh thee aware
Of thy true self, alert unto the task,
A seasoned traveller; it is the source
Of the soul's ardour, 'tis like the nerves to
The body of the whole community.
And that:

اے پریشان محفل دیرینه اش

مرد شمع زندگی در سینه اش

نقش بر دل معنئی توحید کن

چارۂ کار خود از تقلید کن

O thou! whose old concourse is dispersed,

Within whose breast the lamp of life is out,

Engrave on thy heart the truth of Tawheed

Solve thy problem by resorting to Taqlid.

And that:

مضمحل گردد چو تقویم حیات

ملت از تقلید می گیرد ثبات

راه آبا رو که این جمعیت است

معنی تقلید ضبط ملت است

When the structure of life begins to decay

The Nation attains stability through Taqlid.

Go thou the way of thy forefathers for therein lies strength;

The purpose of Taqlid is maintenance of the Nation.

This was the approach of Iqbal to the past. He has discussed it in detail in his Lectures where he has expressed the view that:

> "Life moves with the weight of its own past on its back, and that in any view of social change the value and function of the forces of conservatism cannot be lost sight of. No people can afford to reject their past entirely; for it is their past that has made their personal identity. And in a society like Islam, the problem of revision of old

institutions becomes still more delicate, and the responsibility of the reformer assumes a far more serious aspects."

How could Iqbal plead for that uncontrolled independence which certain modernists try to put into his mouth?

(d) Iqbal thinks that every Tom, Dick or Harry cannot exercise Ijtihad in Islam. It must be exercised by those who have knowledge and whose character can be fully relied upon. In Rumuz-i-Bekhudi, while discussing the question of Ijtihad and Taqlid, he throws light on this problem and says:

ز اجتہاد عالمان کم نظر

اقتداء بر رفتگاں محفوظ تر

عقل آبایت ہوس فرسودہ نیست

کار پاکان از غرض آلودہ نیست

فکر شان ریسد ہمے باریک تر

ورع شاں از مصطفی نزدیک تر

"It is safer to follow those who have gone forth,

Than the Ijtihad of the claimants of knowledge who are short-sighted.

Caprice corrupted not the wisdom of thy forefathers,

Nor was the labour of the pious soiled by personal motives.

Finer far was the thread of thought their meditation wove,

Closer to the Prophet's way was their piety."

In the Reconstruction he says:

"It is the duty of the leaders of the world of Islam today to understand the real meaning of what has happened in Europe, and then to move forward with self-control and a clear insight into the ultimate

aims of Islam as a social policy."[19]

In his quest for safety and protection against modernism he was even prepared to go to the extent of saying as follows:

"I very much appreciate the orthodox Hindus' demand for protection against religious reformers in the new constitution. Indeed, the demand ought to have been first made by the Muslims."[20]

Thus, according to Iqbal, those who are to exercise Ijtihad must be endowed with certain qualifications which may be summed up as follows:

(a) Knowledge of Islam, deep understanding of the ultimate aims of its ideology, institutions and politics.

(b) Understanding of the modern problems that beset the Muslim world;

(c) Closeness to the Prophet's way and an understanding of his methods and approach; and

(d) Reliable moral character so that his decisions may be looked upon with respect.

Now this has been the position of Iqbal and he again and again warned that:

> "Our religious and political reformers in their zeal for liberalism may overstep the proper limits of reform in the absence of a check on their youthful fervour."

What that check should be? — Iqbal was not very definite, but the suggestions he gave now and then show that he wanted to move ahead with deep caution and to organise an academy where he could put together the 'ulama and the modern educated people. He felt that it was not always possible that all the aforementioned qualities may unite in any one individual. Then, what should be the way out? Iqbal, it seems, wanted to organise a council consisting of 'ulama and modern educated persons who may, through their corporate efforts, make some original contribution to the

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[19] Iqbal, Ibid, p. 163.

[20] Speeches and Statements of Iqbal ed. by: ' Shamloo', Al-Manar Acadamy, Lahore (1948) p. 98.

reconstruction and the re-codification of the law of Islam.

The problem was so prominent in his mind that in his famous Presidential Address of 1932 he said:

> "I suggest the formation of an assembly of Ulema which must include Muslim lawyers who have received education in modern jurisprudence. The idea is to protect, expand, and, if necessary, to reinterprete the law of Islam in the light of modern conditions, while keeping close to the spirit embodied in its fundamental principles. This body must receive constitutional recognition so that no bill affecting the personal law of Muslims may be put on the legislative anvil before it has passed through the crucible of this Assembly."[21]

Iqbal was working on this idea and he thought that the deficiency could be met through consultative Itjihad. (shooraee Ijtihad).

The above discussion clearly shows that Iqbal's above quoted definition of Ijtihad does not represent his own ideas in entirety and is not a comprehensive definition. The fact is that it does not fully and completely reflect Iqbal's concept of Ijtihad. A comprehensive definition of Ijtihad may be given to elucidate the concept. Allama Aamadi in his renowned work Al-Ahkam fiusul al-Ahkam." says:

> "In the terminology of the jurists Ijtihad is restricted for that utmost effort which is exerted to form an opinion about any legal matter as to whether it is in consonance with the Shari'ah."

Imam Shatibi, another Muslim jurist, says in Al-Muwafiqat:

> "Ijtihad is that utmost effort which is made to discover the divine commandment (Ahkam-i-Shari'at) and to apply the same over newer situations."

Subhi Mahmasani writes:

> "Literally Ijtihad means to exert to the utmost, but in the terminology of Islamic law it is used for that effort which is made to discover the law from dala'il-i-Shara'iya, i.e., to deduce commandments from the fundamental sources of Deen."

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[21] Speeches and Statements of Iqbal, p. 60.

These definitions come from leading Muslim jurists and scholars. But even Western scholars have defined Ijtihad in the same way. The Dictionary of Technical Terms defines it as under:

> "Ijtihad means the exerting of one's self to the utmost degree to attain an object and is used technically for so exerting oneself to form an opinion (Zann) in a case (kadiya) or as to a rule (hukm) of law."[22]

Hughes' Dictionary of Islam defines it as follows:

> "Ijtihad is the logical deduction on a legal or theological question by a Mujtahid or learned and enlightened doctor."[23]

Thus we come to the conclusion that although Iqbal's definition of Ijtihad is not comprehensive, the over-all approach that he adopted was dynamic and constructive.

Iqbal and Turkey

But before we take up the other point we must make it clear why Iqbal welcomed the liberalism of Turkey?

Our analysis is that Iqbal was eager to see the Muslim world set along the road to emancipation. He welcomed the Turkish experiment for it reflected the stirrings of a new awakening. And as the detailed information about Turkey was lacking, he thought that Kamal Ataturk was continuing the revivalist tradition of Jamaluddin Afghani and Said Halim Pasha which was not a fact. Turkey did not resort to:ljtihad; it, unfortunately, tried to discard Islam.

Iqbal was not looking upon Turkey with full confidence. He was quite sceptical but hoped that a change for the better might occur soon. But this did not happen. And he himself was quite disillusioned.

In the Reconstruction he said:

> "We heartily welcome the liberal movement in Modern Islam. But it must also be admitted that the appearance of liberal ideas in Islam

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[22] Dictionary of Technical Terms, p. 198. Quoted in Shorter Encyclopedia of Islam, Laiden (1953) p. 158.

[23] Thomas Patrick Hughes, A Dictionary of Islam, London, (1935), p. 197.

constitutes also the most critical moment in the history of Islam. Liberalism has a tendency to act as a form of disintegration."

About Zia Gokalp, the Turkish philosopher-poet, he says:

"With regard to the Turkish poet's demand, I am afraid, he does not seem to know much about the family law of Islam. Nor does he seem to understand the economic significance of the Quranic rule of inheritance."[24]

In his Rejoinder to Pandit Nehru he says:

"The adoption of the Swiss code with its rule of inherit

Thomas Patrick Hughes, A Dictionary of Islam, London, (1935), p. 197.

Iqbal, Reconstruction of Religious Thought in Islam, p. 169.

ance is certainly a serious error which has arisen out of the youthful zeal for reform."[25]

Similarly about Turkey's law to recite the Qur'an in Turkish he said:

"Personally I regard it as a serious error of judgement."[26]

In his later poetical work his dissillusionment with Turkey becomes quite manifest. Looking at Turkey's westernisation with grave concern he says:

سمجھ رہے ہیں وہ یورپ کو ہم جوار اپنا

ستارے جن کے نشیمن سے ہیں زیادہ قریب

They deem Europe as their equal and associate

From whose abode stars are much nearer!

In Javed Mama he says:

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[24] Iqbal, Reconstruction of Religious Thought in Islam, p. 169.

[25] Speeches and Statements of Iqbal, p. 136.

[26] lbid, p. 135.

مصطفیٰ را از تجدد می سرود

گفت نقش کہنہ را بیاد زدود

نو نگردد کعبہ را رخت حیات

گرز افرنگ آیدس لات و منات

ترک را آہنگ نوردرچنگ نیست

تازہ اش جز کہنہافرنگ نیست

And in Zarb-a-Kalim he openly declares that:

مری نوا سے گریبان لالہ چاک ہوا

نسیم صبح چمن کی تلاس میں ہے ابھی

نہ مصطفیٰ نہ رضا شاہ میں نمود اس کی

کہ روح شرق بدن کی تلاش میں ابھی ہے

My voice is piercing the heart of the flower,

The gentle breeze is still searching for a garden,

Neither in Mustafa (Kamal), nor in Reza Shah has it manifested,

The spirit of the East is still in search of its abode.

This was Iqbal's reaction to the Turkish experiment and on the authority of it we are justified in concluding that it would be wrong to say that Iqbal approved of the secularist trends of the Turkish reforms or of their approach of unbridled liberalism which amounted to nothing short of discarding Islam.

Ijma' and its potentialities

5. Iqbal's most potent contribution to the legal thought of Islam is his elucidation of the principle of Ijma'. Ijma 'in the terminology of Islamic law, means the consensus of opinion of the Mujtahids and of the Ummah on a matter of law. An Ijtihad is an individual judgement and it becomes law only after Ijma'.

Every student of law is aware of the chasm that has always existed between the ideals of justice and the social realities of life. The fact is that the history of law is a history of shifting emphasis between the ideal and the real. Natural law failed to cater to the changing needs and was twisted like anything and for any purpose. The sociological approach disregarded the question of natural norms and as such inaugurated an era of relativism. Iqbal thought that fundamental malice rests with:

(i) a lack of eternal values embodying the realies of life,

(ii) the misjudgement of human reason, which, devoid of Divine Guidance, works in an unrealistic and erroneous way, and

(iii) the absence of any process through which the ideal is brought into perpetual contact with the real.

Islamic law fulfils all these fundamental needs of a legal order. The Qur'an and Sunnah give the eternal values and norms while lima' is the process through which new norms are created and preserved. The Qur'an and Sunnah, being the embodiment of Divine Guidance, are based on the unchanging realities of life and enunciate the basic principles of social existence. They provide the framework into which the principle of Ijma' operates. Through it social realities of every age are given recognition and as it commands absolute obedience, it is a unique process to weld the ideal with the real. Iqbal brought to light this fundamental and hitherto unappreciated importance of the principle of Ijma'.

He further showed that Ijma' is a democratic process and reveals that Islam is basically different from prietscraft. Ijma' of a later generation can also change or alter the Ijma' of an earlier generation, of course on the basis of legal arguments.

(Dala'il-i-Shar'iya).

After the period of the Khilafat-i-Rashida the democratic machinery of

lima' could not be re-established and reliance was placed on individual Ijtihad alone. This was a great tragedy. But now the institution can be revived and Iqbal thinks that a modern legislative assembly can become an agency for its performance. But he is conscious of certain practical difficulties, viz.,

(a) The presence of non-Muslims in the modern legislatures; and

(b) Lack of religious understanding and of the knowledge of Islamic law among the present legislators.

He, therefore, suggests that there should be Muslim legislative Assemblies and:

> "The Ulema should form a vital part of a Muslim legislative Assembly helping and guiding free discussion on questions of law. The only effective remedy for the possibilities of erroneous interpretations is to reform the present system of legal education in Mohammedan countries, to extend its sphere and to combine it with an intelligent study of modern jurisprudence."[27]

Thus he not only brought to light the real importance and role of Ijma' but also suggested the ways and means through which this principle could be translated into reality in the modern world. This, I think, has been one of his basic contributions to the contemporary Muslim thought.

Iqbal's Legal Philosophy

6. And lastly I may venture to say that in the legal thought of Iqbal we can see the rudiments of a legal philosophy, which, had he lived to formulate and finalise it, would have revolutionised the modern thought, for it was based on the Qur'an and Sunnah and would have been an exposition of the Islamic philosophy of law.

Law's fundamental concern is the establishment of justice. Although it operates on the current social realities it derives its life and concept from a people's outlook of the cosmos, of man's position in it and of their ideas of social justice. The position of the individual and the nature of his relationship with the society and the world at large determine the norms of law. Iqbal's basic philosophy seems to be that life is a unity and the ultimate ground of

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[27] Iqbal, Reconstruction of Religious Thought in Islam, p. 176.

life is a rationally directed will which he conceives as ego. He believes that there is a higher law which is based on the realities of existence and has been revealed by the Creator for the guidance of man and society. This higher law, in legal terminology, is the grundnorm to which the behaviour of the individual and the rules of the society must conform. And the contemporary confusion of thought and chaos of behaviour is because of the absence of such a grundnorrn. He says:

> "Modern Europe has, no doubt, built idealistic systems on these lines, but experience shows that truth revealed through pure reason is incapable of bringing that fire of living conviction which personal revelation alone can bring. This is the reason why pure thought has so little influenced man, while religion has always elevated individuals, and transformed whole societies. The idealism of Europe never became a living factor in her life, and the result is a perverted ego seeking itself through mutually intolerant democracies, whose sole function is to exploit the poor in the interest of the rich. Believe me Europe today is the greatest hinderance in the way of man's ethical advancement. The Muslim, on the other hand, is in possession of these ultimate ideas on the basis of a revelation, which speaking from the inmost depths of life, internalises its own apparent externality."

This idea of a higher law based on Revelation is the most fundamental element of Iqbal's legal philosophy. This higher law is eternal and provides the possibilities of growth and evolution. The juristic implications of this idea are revolutionary.[28] It means:

**That law has its real sanction in this ultimate and higher law which is objective and realistic. Thus we can avoid the cumbursome incongruities of the natural law controversy.

**That the society and state are only political and legal organisations affected for the purpose of the implementation of the higher law and, if they begin to defeat this purpose, they abolish their sanction for obedience.

**That an International law, regulating and guiding the different legal

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[28] See also, Hamidullah Siddiqui,'Igbal's Legal Philosophy' Progressive Islam Amsterdum. A pioneer work in this direction.

orders prevailing in different Nation-States, is possible. The difficulties which have been created by the Austinian theory of law are eliminated and the International law of nations, emanating from one grundnorm becomes possible.[29]

**And that the totalitarian consequences of the Hegelian doctrine of law can be avoided, for, in the case of this law, state is not being obeyed because it is the sovereign but because it is the legal agency for the establishment of the higher law. As such the state will be obeyed only as long as it follows the higher law. This is what is expressed in Hadith as 'there is no obedience to the creature if it involves disobedience to the Creator'.

These are some of the aspects of the juristic thought of Iqbal.

Thus we find that Iqbal tried to discover the real meaning and message of Islamic law, to reconstruct the contemporary legal thought, point out the vistas of growth and evolution and to construct a legal philosophy which could act as the philosophic formulation of Islamic Law. This has been a gigantic service to the modern renaissance of Islam.

[29] See the writer's article "Law and Philosophy of Law" in Chiragh-e-Rah, Islamic Law Number, Vol. I, June 1958, pp 34-51.