

IQBAL AND QUR'AN: A LEGAL PERSPECTIVE

Muhammad Altaf Hassan Ahangar

Whatever Iqbal has thought he has thought through the brains of the Qur'an and what-ever he has seen he has seen through the eyes of the Qur'an. Truth and Qur'an were for him, one and the same, and in this one thing he was so absorbed that among the theologians of his century I have never seen any person who may have lived such life of fanafi'I Qur'an (annihilation in the Qur'an) as this M.A., Ph.D. Bar-at-Law.¹

These observations of Maulana Abul Ala Mawdudi reflect the immensurable understanding of the Qur'an with which Allah had endowed Dr. Iqbal. The fact is that Iqbal was trained for the transmission of the Qur'anic message to mankind even from his childhood. It seems the advice of his father, Nur Mohammad that he should so recite the Qur'an as if it had been revealed upon him,² had a profound impact on Iqbal. Iqbal used to analyse the meanings and messages of Qur'an from the depths of his soul. He advised people to recite the Qur'an in a manner that it cultivates Mohammedan relation among them.³ In consonance with his father's advice, he was of the opinion that:

No understanding of the Holy Book is possible until it is actually revealed to the believer just as it was revealed to the Prophet.⁴ "

¹ Annemarie Schimmel, Gabriel Wing, 2nd Edn., Lahore, 1989, p. 222. (Hereinafter referred as Schimmel).

² Ibid., at 35.

³ Ilias Rana, "Qur'an Aur Iqbal" in Bahar Allahabadi (Ed.), Tafsir-i-Iqbal, 13-26 at 13 (Urdu); Schimmel, 222.

In Bal-i Jibril he writes:

When the Book is not revealed to thy heart

Then neither Razi nor the author of Kashshaf opens the knot.⁵

Iqbal admonishes the Muslims, and says:

Thou art the prisoner of Sufi and Mulla thou does not gain life from the
wisdom of the Qur'an--

Thou hast nothing else to do with its verses

But to die easily by Yasin.⁶

Mirza Jalal-ud-Din Barrister writes about Iqbal:

On Qur'anic meanings he always concentrated. While reading Qur'an, he used to think over each and every word. While offering prayers he used to recite Qur'an loudly and think over Qur'anic verses and after getting impressed, he used to weep. There was a special attraction in Iqbal's voice. When he used to read Qur'an loudly, the listener's heart used to melt.⁷

Iqbal used poetry as a device for communicating Qur'anic commandments to mankind and so had a disliking for those people who forgot his missionary aim and treated him purely as a poet.⁸ His doctrines of Khudi, Mard-i-Momin, Faqr, 'Adl, Haq and so on, had origins in Qur'an. He was Ahl-i-Qur'an but disliked this attribution for himself in view of its

⁴ Schimmel, op. cit., 224.

⁵ Ibid. 225; Bal-i-Jibril, 78.

⁶ Armughan-i-Hijaz, 101.

⁷ Supra note 3 at 16.

⁸ Abu Muhammad Muslah, Iqbal Aur Qur'an, 25.

sectarian consequences.⁹ His faith in "Qur'an as the best guide" can be well explained by the fact that while proceeding to attend the Second Round Table Conference, he was questioned by the Hindustan Times correspondent with what special thing he was attending the Conference? Iqbal replied: "I have nothing except Qur'an. I will present the same".¹⁰ Iqbal considers the Qur'an as a constitution not only for Muslims but for the whole of humanity. About the aims and objects of Qur'an, he writes:

So far as my study of Qur'an is concerned, the aim of Islam is not only the ethical guidance of mankind. Its aim is also that gradual but fundamental revolution is brought in the social life of mankind. And instead of national and racial considerations, complete human consciousness and realization is developed.¹¹

Iqbal wanted to write an everlasting and an exemplary book about Qur'an before his departure from this world. In this regard, he was confident that contemporarily he was the only competent person who could write such a book.¹² He even desired to secure government pension for this purpose.¹³ He favoured Qur'an movement in India.¹⁴

Iqbal is emotionally attached to the Qur'an. He says:

Qur'an is a complete book and is itself claimant of its excellence. But what is needed is the practical demonstration

⁹ Muhammad Hussain Arshi Amritsari, "Hayat-i-Iqbal ka Aek osha-i-Pinhan", Iqbal Review, Vol. 15 No. 2, pp. 1-12 (July 1974).

¹⁰ Supra note 8 to 17.

¹¹ Supra note 3 to 21.

¹² Iqbal's letter to Sir Ross Masood dated 13 May, 1935, see Schimmel, op. cit., 223. For details see Ikhlaq Athar (comp.), Iqbal Namay, 104 (1981).

¹³ Iqbal's letter to Sir Ross Masood, 12th May, 1935. /bid,

¹⁴ Supra note 8 to 15.

of this excellence with regard to human politics, meaning thereby that all important principles are present in it and such and such rule can be deduced from such and such verse.¹⁵ It is my belief that any person who analyses contemporary jurisprudence or legal fundamentals from the Qur'anic viewpoint and proves eternity and permanence of Qur'anic principles, he would be mujadid of Islam and a great servant of mankind.¹⁶

Iqbal considers the spirit of Islam completely imbedded in the Qur'an and advises Muslims for not going outside the Qur'an for discovering the aim and object of Allah.¹⁷ In a letter to Dr. Nicholson, he writes:

Qur'an is not only the book of metaphysics but whatever has been said in it about this world and the hereafter, has been said with absolute finality. This is another thing that it is related to metaphysical problems.¹⁸

Iqbal, however, deplores, the victimisation of Qur'an by the Muslims. He says:

Qur'an is the most victimised book in the sense that those who do not get any work in the world, they get busied in its translation and commentation, though it is the most sensitive and reserved obligation.¹⁹

II

¹⁵ Supra note 3 to 14.

¹⁶ Letter to Sufi Ghulam Mustaffa Tabassum dated 2 September 1925. For details .B. A. Dar, "Fikhr-i-Iqbal our Mas'la-i-Ijtihad" Iqbal, Vol. II No. 2, pp. 29-48 at 41.

¹⁷ Supra note 9 at 11.

¹⁸ Supra note 3 at 15.

¹⁹ Supra note 3 at 16. See also "Jawab-i-Shikwah", Kulliyat-i-Iqbal, I.A.P., Lahore, 1990, p.

For the Muslims the Qur'an is not only an awakener and a message of dynamism, it is also their basic source of law. In view of its revelatory character, it is believed that all its contents have eternal validity and these provide complete guidance in all spheres of human life. Regarding its legal content, Iqbal writes:

The primary source of the law in Islam is the Qur'an.'

The Qur'an, however, is not a legal code.²⁰

It is evident that Iqbal acknowledges Qur'an as the primary source of law but he does not give us the reasons as to why it is not a legal code. Gillani specifies the reasons as to why Qur'an does not contain law in a codified form. He says:

The reason is that it is not merely a Book of Law. It governs the whole of human life in a very whole-some manner. It convinces man to submit to God's sovereignty and persuades him to liberate himself from the other bonds... It lays down law at the proper places and points out, as well, that the legislative powers have been delegated to the Prophet (peace be upon him)²¹ ... If the Qur'an itself described all the principles and details of Islamic society and culture, Islam would have not been practicable, at least, for a common man. It would have been the concern of the scholars alone and that too, with practical limitations. But the Qur'an is a book, which, in the words of Iqbal, emphasised some of the detailed rules as foundation stone of the institutions and delegated rest of this function to the Holy Prophet (peace be upon him) to complete and practically demonstrate that.²²

²⁰ M. Iqbal, *The Reconstruction of Religious Thought in Islam*, J. A. P., Lahore, 1989, p. 131.

²¹ R.H. Gillani, *The Reconstruction of Legal Thought in Islam*, Delhi, 1982...p. 54-55.

²² Id. at 56.

Although the reasons for the Qur'an not being a code have been properly highlighted by Gillani, we fail to agree with him that Iqbal anywhere in his works says that Allah delegated rest of the legislative function to the Holy Prophet alone; he rather vests the delegation of power in the whole Ummah inclusive of the Prophet.²³

Besides, Iqbal seems to be of the view that, ordinarily, there was no need of incorporation of legal verses in the Qur'an but the earlier Christianity versus Judaism conflict prompted Allah to put legal verses in it. In other words it can be argued that the domain of law should have been inherently independent of religious discipline of Islam and it is the compulsive nature of the past which brought legal provisions in it. We have reached at this conclusion on the basis of his following observations:

No doubt the Qur'an does lay down a few general principles and rules of a legal nature, especially relating to the family_____ the ultimate basis of social life? But why are those rules made part of a revelation the ultimate aim of which is man's higher life? The answer to this question is furnished by the history of Christianity which appeared as a powerful reaction against the spirit of legality manifested in Judaism. By setting up an ideal of other worldliness it no doubt did succeed in spiritualizing life but its individualism could see no spiritual value in the complexity of human social relations. 'Primitive Christianity' says Naumann in his *Briefe über Religion*, 'attached no value to the preservation of the State, law, organization, production. It simply does not reflect on the conditions of human society.' And Naumann concludes: 'Hence we either dare to aim at being without a State, and thus throwing ourselves deliberately into the arms

²³ This contention has been arrived at by us on the basis of the views expressed by Iqbal in the lecture "The Principle of Movement in the Structure of Islam", See *Reconstruction*, op.cit., p. 116-124.

of anarchy, or we decide to possess alongside of our religious creed, a political creed as well.²⁴

Thus, behind the incorporation of legal verses in the Qur'an the personalization and individualization of religion by Christianity to such an extent that it became divorced from State, law and other temporal institutions. So the Qur'an brought along with religion all the temporal institutions. Iqbal recognises this fact when he says:

Thus the Qur'an considers it necessary to unite religion and State, ethics and politics in a single revelation much in the same way as Plato does in his Republic.²⁵

Iqbal is somewhat indifferent to the highlighting of legal content of the Qur'an but precisely says in this regard:

It is most copious on marriage and divorce, most precise in rules of inheritance and if compared to Christianity (Bible), possesses far greater vitality and responsibility instead of being arbitrary and despotic. It has true democratic characteristics in form and substance.²⁶

III

Muslim in general believe that the legal verses of Qur'an are eternal and unchangeable. However, the views of Iqbal are not uniform in this regard. His one view is that the legal injunctions laid down in the Qur'an — heritage, polygamy, etc. — are not to be changed and that these rules are of eternal validity.²⁷ He writes:

²⁴ Reconsturction, p.132 (Emphasis mine).

²⁵ Ibid.

²⁶ Gillami, op. at.. p. 55.

²⁷ Schimmel go. cit'... p. 233.

According to my creed, and perhaps according to the creed of every Muslim, it is the cause of prosperity (falah) to remain inside the limits of the Shari' ah, and is unhappiness to transgress them.²⁸

These rules are not only totalitarian, the true form of the family, of the State, of the economics, and worship being discoverable through the__ they are everlasting and eternally valid: Prayer and fasting and offspring and pilgrimage_____

All these are 'everlasting,but thou are not lasting.'²⁹

The fact is that the question of eternity and noneternity of Qur'anic legal rules was attending his mind for a long time. In a letter to Syed Sulaiman Nadvi,³⁰ he enquires as to whether:

Inheritance verses relating to shares are inherently eternal or only the rules which relate to inheritance regulations are unchangeable and there can be change in shares according to circumstances. I have not been in a position to comprehend the commandments relating to wills.

What answer came to this query from the Syed is still unknown but in response .to the Turkish Poet Zia Gokalp's criticism of Islam allowing half share to females as against males and advocating equality for women in divorce, separation and inheritance,³¹ Iqbal makes the following extensive observation:³²

²⁸ Iqbal Nama, Vol. II, 240. Cf. Schimmel, op. Lit, p. 233

²⁹ Schimmel, op. cit., p. 233.

³⁰ Letter to Nadvi dated 18th March, 1926; For details, See Tahir Tawnsawi. Iqbal .Aur Syed Sulaiman Nadvi, 77.

³¹ Reconstruction, p. 134-5.

³² Ibid.

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 Qur'anic rule of inheritance. Marriage, according to Mohammedan Law, is a civil contract. The wife at the time of marriage is at liberty to get the husband's power of divorce delegated to her on stated conditions, and thus secure equality of divorce with her husband. The reform suggested by the poet relating to the rule of inheritance is based on misunderstanding. From the inequality of their legal shares it must not be supposed that the rule assumes the superiority of males over females. Such an assumption would be contrary to the spirit of Islam. The Qur'an says:

And for women are rights over men,

similar to those for men over women (2:228)

The share of the daughter is determined not by any inferiority inherent in her, but in view of her economic opportunities, and the place she occupies in the social structure of which she is a part and parcel. Further, according to the poet's own theory of society, the rule of inheritance must be regarded not as an isolated factor in the distribution of wealth, but as one factor among others working together for the same end, while the daughter, according to Mohammedan Law, is held to be full owner of the property given to her both by the father and the husband at the time of her marriage, while further, she absolutely owns her dower money which may be prompt or deferred according to her own choice, and in lieu of which she can hold possession of the whole of her husband's property till payment, the responsibility of maintaining her throughout her life is wholly thrown on the husband. If you judge the working of the rule of inheritance from this point of view, you will find there is no material difference between the economic position of sons and daughters and it is really by this apparent inequality of their legal shares that the principles underlying the Qur'anic Law of

inheritance this supremely original branch of Momammedan Law, as Von Kremer describes it_ have not yet received from Muslim lawyers the attention they deserve.

(Schimmel, otherwise highly appreciative of Iqbal, remains unconvinced by Iqbal's justification for half share to females under Islamic Law of inheritance).³³

Contrary to the above mentioned thesis of eternity and justifications for the Qur'anic legal rules, Iqbal has advocated deferring of implementation of the Qura'nic laws under certain specified circumstances. While referring to the book A'lam al-Muqi'in by Ibn Qayyim, he writes to Maulana Mas'ud Alam Nadvi.³⁴

From this book one learns that under some special circumstances there can be change in punishable commandments of Qur'an. For example the Prophet (S.A.W.) himself made amendments relating to cutting off of hands of a thief during war.³⁵ Likewise, relating to infancy period which is two years according to the clear Nass there is found some mention regarding increase or decrease of the period.³⁶

Commenting on this letter, Schimmel³⁷ writes. "He thought therefore that this [Qur'anic punishment] would not be essential. in a modern legislation on Qur'anic basis. He was of the opinion that a Prophet is sent for training one peculiar people",

And to use them as a nucleus for the building up of a universal Shari' a. In doing so he accentuates the principles

³³ Schimmel, op. cit., p. 236.

³⁴ Letter dated 12 February, 1936.

³⁵ Iqbal Nama, Vol. I, 404.

³⁶ Ibid.

³⁷ Schimmel, op cit., p. 238.

underlying the social life of all mankind and applies them to concrete cases in the light of the specific habit of the people immediately before him. The Shari' at values (ahkam) resulting from this application (e.g., rules relating to penalties for crimes) are in a sense specific to that people, and since their observance is not an end in itself, they cannot be strictly enforced in the case of future generations....³⁸

It is submitted that Schimmel's contention that Iqbal compromised with Qur'anic punishments for crimes and advocated for its unessentialness in a modern legislation is a pure distortion of Iqbal's views.³⁹ Whatever Iqbal said about punishments in Islam in the above lines has reference to his views about the punitive rules coming from Hadith and not from the Qur'an. He discusses the issue under the heading "Hadith" and not "Qur'an". (However, it is a fact that the language used by Iqbal is not clear enough and can be utilized vis-a-vis the Qur'an. But true scholarship demands the faithful reporting of the matter).

From the above narrative it appears that Iqbal was somewhat not ready to accept the Qur'anic punishments for crimes applicable in all circumstances as well as the Qur'anic rule pertaining to the two-year infancy period of a child. But the Court in Pakistan—an Islamic State has gone ahead while even refusing to recognise the Qur'anic rule pertaining to the family law. In Ghulam Bhik,⁴⁰ one of the questions canvassed before the High Court was whether for the enforcement of a divorce on the ground of La'an

³⁸ Reconstruction, op. cit., p. 136.

³⁹ This passage from the Reconstruction, to say the least, is quite problematic. The fact has escaped the notice of the author that here Iqbal has based his opinion on a quotation from Shah Wali Ullah taken over from Shibli's al-Kalam on Shibli's authority (see notes of the editor of the Reconstruction on p. 196-198) where as Shibli had mixed, omitted and edited the text of al-Hujjat Allah al-Baligab to read his own ideas in Shah Wali Ullah thus giving rise to a confusion to this has. For a comparison of texts presented by Shibli and the original text of Shah Wali Ullah see Shibli, 'Thn al-Kalam, wa al-Kalam, Nafis Academy, Karachi, 1987, p. 237-8 and Shah Wali Ullah, Hujjat Allah al-Baligab, Dar al Kutub al Hadithah, n.d. vol. I. p. 247-8. (Editor's note)

⁴⁰ Ghulam Rink V. Hussain & gum, PLD 1957 Lahore 998.

(imprecation), it was necessary for a court to follow the elaborate procedure prescribed by Qur'an. Answering negatively, Justice Kayani observed:

He would have no hesitation in holding that a procedure whose adaptation has been recognised through the ages and which had become obsolete by our present law of evidence, should be allowed to remain obsolete because it did not possess any particular merit.⁴¹

The Judge, however, takes a defensive stand when he remarks:

So far as the Qur'an goes, I have no intention of interpreting its provisions, which are accepted generally as immutable, though in some details interpreted differently.⁴²

Iqbal is of the view that the Qur'an teaches activism which is the part of a true religion.⁴³ Activity for him means the shedding of a passive behavioural pattern and discarding of erroneous ideas about mobility and change. It simultaneously urges for the reconstruction of Muslim thought and life.⁴⁴ In the Reconstruction, he writes:

The teaching of the Qur'an which believes in the possibility of improvement in the behaviour of man and his control over natural forces, is neither optimism nor pessimism. It is meliorism which recognises a growing universe and is animated by the hope of man's eventual victory over evil.⁴⁵

⁴¹ Emphasis mine.

⁴² For further details, see Malik Muhammad Jafar, "Future of Islamic Law in Pakistan--Judicial Process", Iqbal, Vol. XVI No. 3, pp. 2-26 at 16-18 (Jan., 1968).

⁴³ Lini S. May. Iqbal--His Life and Times, Lahore, 1947, p. 225.

⁴⁴ Id. p. 297.

⁴⁵ Reconstruction, op. cit., p. 65.

Iqbal thus stands for activity in all spheres of life—be it social, economic commercial, etc. With regard to the legal domain, Iqbal informs us:

Turning now to the groundwork of legal principles in the Qur'an, it is perfectly clear that far from leaving no scope for human thought and legislative activity, the intensive breadth of these principles virtually acts as an awakener of human thought.⁴⁶

As to what sort of legislative activity is permissible in the Qur'an and are there any limitations on such activity were the other problems which confronted Iqbal. In this regard he is of the view that we should not be handicapped by the legislative activities of the past jurists. He writes:

Our early doctors of law taking their clue mainly from this groundwork evolved a number of legal systems; and the student of Mohammedan history knows very well that nearly half of the triumphs of Islam as a social and political power were due to the legal acuteness of these doctors... But with all their comprehensiveness these systems are after all individual interpretations, and as such cannot claim any finality.⁴⁷

The reasons as to why we should resort to legislative activity have been explained by Iqbal in the following words:

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 directions, I see no reason why this attitude recognising the finality of scholars should be maintained any longer. Did the founders of our schools claim finality for their reasonings and interpretations? Never... The teaching of the Qur'an that life is a process of progressive creation necessitates that each generation, guided but unhampered by the work of its

⁴⁶ Id. p. 133 (Emphasis supplied).

⁴⁷ Ibid. p. 133 (Emphasis supplied).

predecessors, should be permitted to solve its own problems.⁴⁸

As to the problem of ensuring legislative activity contemporarily in the Muslim world, Iqbal recommends "dangerous but necessary" arrangement operating in Iran for Sunni countries whereby the king (in post-revolution period, Iran replaced him by a spiritual leader Ayotullah Khameini and, later on, by 'Ali Khaminai) is a mere custodian of the realm which belongs to the absent Imam and a committee of ulema supervises the legislative activity-of the mejlis.⁴⁹ He thinks that by resorting to this device we can stir into activity the dormant spirit of life in our legal system and give it an evolutionary outlook.⁵⁰ Moreover he contends that a Muslim legislative assembly assisted by -ulema would help in guiding free discussion on questions relating to law.⁵¹ Iqbal is further of the view that:

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.⁵²

There are numerous verses in the Holy Qur'an whereby a Muslim has been told that this Book is an exposition of all things,⁵³ and nothing has been neglected in it.⁵⁴ Simultaneously the Holy Qur'an directs Muslims to grasp the

⁴⁸ Ibid.

⁴⁹ Ibid. p. 139.

⁵⁰ Ibid. 138

⁵¹ Ibid. 140.

⁵² Ibid.

⁵³ e. g; Qur'an, 16:89

⁵⁴ e. g; Qur'an, 6:38

meanings of its verses as that is the sign of the wise⁵⁵ and visionary.⁵⁶ Consequently the jurists interpreted these verses differently. Al-Maturidi is not ready to take the Qur'an always in the literal sense fearing gross anthropomorphism.⁵⁷ Sir Syed Ahmad Khan is of the view that the brilliant allegorical method of the Qur'an makes it plain that every age has to understand the book in the light of its own requirements.⁵⁸ He supports his view by the famous saying of Caliph Umar (R.A.) that "God's Book is sufficient for us".⁵⁹ Iqbal endorses Sir Syed's view when he writes:

The question which confronts him [Turk] today and which is likely to confront other Muslim countries in the near future is whether the law of Islam is capable of evolution_ a question which will require great intellectual effort, and is sure to be answered in the affirmative; provided the world of Islam approaches it in the spirit of Umar the first critical and independent mind in Islam who, at the last moments of the Prophet had the moral courage to utter these remarkable words: "The Book of God is sufficient for us."⁶⁰

Iqbal now informs us about the device which Muslims should employ for an evolution of the Islamic law. He writes:

The claim of the present generation of Muslim liberals to re-interpret the foundational legal principles deduced from

⁵⁵ e. g; Qur'an, 29:43

⁵⁶ e. g; Qur'an, 59:2

⁵⁷ A History of Muslim Philosophy, Karachi, 1988, Vol. I, 259-274 at 265.

⁵⁸ Abdul Hamid, "Sir Sayyid Ahmad Khan as Politician, Historian and Reformist" in M.M. Sharif (Ed.). op. cit., Vol. 11, 1580-1597 at 1591.

⁵⁹ B. A. Dar, "Renaissance' in Indo-Pakistan: Sir Sayyid Ahmad Khan as a Religio-Philosophical Thinker" in M. M. Sharif (Ed.) op. cit., 1598-1614 at 1612.

⁶⁰ Reconstruction, op. cit., p. 129.

Qur'an⁶¹ in the light of their own experience and the altered conditions of modern life, is, in my opinion, perfectly justified.⁶²

So Iqbal is an ardent supporter of 'Reinterpretation' of Ijtihad. But the question which arises is what type of reinterpretation he envisions regarding the Qur'an? The above lines suggest that he favours re-interpretation of foundational legal principles in the light of one's own experience and altered conditions of modern life but the works of the predecessors should guide and not hamper the solution of the problems.⁶³ In this regard, Iqbal comments upon the rule regarding apostacy contained in Hedayah and highlights its effect in the Punjab. He writes:

In the Punjab, as everybody knows, there have been cases in which Muslim women wishing to get rid of undesirable husbands have been driven to apostacy. Nothing could be more distant from the aims of a missionary religion. The Law of Islam, says the great Spanish Jurist Imam Shatibi in his *Al-Muwafiqat* aims at protecting five things Din, Nafs, Aql, Mal and Nasl. Applying this test I venture to ask: Does the working of the rule relating to apostacy, as laid down in the Hedayah tend to protect the interests of the Faith in this country? In view of the intense conservatism of the Muslims of India, Indian Judges cannot but stick to what are called standard works. The result is that while the people are moving, the law remains stationary.⁶⁴

By "foundational legal principles" we can conclude that all legal verses in the Qur'an, according to Iqbal, are not foundational or fundamental. But

⁶¹ The words in brackets have been supplied as Iqbal makes this observation under the heading "Qur'an".

⁶² Reconstruction, op. cit., p. 134.

⁶³ Ibid.

⁶⁴ Ibid. p. 134 (Emphasis mine).

who is going to locate foundational legal principles and how? Does he treat only clear legal verses of Qur'an as foundational or includes in it all legal verses, though not explicitly clear? As regards the former, there is a least chance of re-interpretation as text does not envisage any other interpretation. For instance, if the Qur'an allows a widow or any other sharer a share in the property, there is no room for re-interpretation. Iqbal's thesis here seems to suffer from a paradox. On the one hand he justifies half share to daughters in the Qur'an⁶⁵ and, on the other, he is convinced that under certain special circumstances Qur'anic rules regarding crimes,⁶⁶ qases,⁶⁷ infancy period⁶⁸, status of children which are born after the legal period of gestation of the husband's death⁶⁹ and awl⁷⁰, can be changed or at least their implementation deferred.⁷¹ He thus treats some clear nass in the Qur'an as foundational and some as contingent.

Although Iqbal pleads for reinterpretation of foundational legal principles, we are of the opinion that he has personally recognised only one foundational legal principle, i.e. Tawhid. He says:

The essence of 'Tawhid' as a working idea, is equality, solidarity and freedom. The State, from the Islamic standpoint, is an endeavour to transform these ideal principles into space-time forces, an aspiration to realize them in a definite human organization...⁷² Islam as a polity, is only a

⁶⁵ Ibid.

⁶⁶ Iqbal Nama, op. cit., Vol. I, p. 404e.

⁶⁷ Schimmel, 237, quoting Ramuz, 124, talio with application of Sura 2/175 and 4/61.

⁶⁸ Supra note 76 at 132.

⁶⁹ Schimmel, 237 quoting M.I. 154, Iqbal does not refer to this problem in the Reconstruction.

⁷⁰ Ibid., quoting M. I. 29 (dt., 1935).

⁷¹ Lettter to Maulana Masood ' Alam Nadvi dated 12 February, 1936.

practical means of making this principle 'Tawhid a living factor in the intellectual and emotional life of mankind.⁷³

Besides, we have the feeling that by 'equality, solidarity, and freedom', he did not mean their meanings from the Qur'anic context but from Western notions. Had he kept the Qur'anic explanations in mind, then he would not have insisted upon Muslims to be guided by developments in Turkey. He observes:

If the renaissance of Islam is a fact, and I believe it is fact, we too one day, like the Turks, will have to re-evaluate our intellectual inheritance...⁷⁴ The truth is that among the Muslim nations of today, Turkey alone has shaken off its dogmatic slumber and attained to self-consciousness. She alone has claimed her right of intellectual freedom; she alone has passed from the ideal to the real_a transition which entails keen intellectual and moral struggle. To her the growing complexities of a mobile and broadening life are sure to bring new situations suggesting new points of view and necessitating fresh interpretations of principles which are only of an academic interest to a people who have never experienced the joy of spiritual expansion.⁷⁵

Turkey, for which Iqbal has all praise, had a national Constitution enforced in 1924 which, inter alia, provided for the adoption of a non-religious legal and judicial system.⁷⁶ The Civil Code, 1926 strictly prohibited polygamy and provided penalty for a violator,⁷⁷ recognized legitimacy of children born in a

⁷² Reconstruction, op. cit., p. 122.

⁷³ Ibid. p. 117.

⁷⁴ Ibid. p. 121.

⁷⁵ Ibid. p. 128.

⁷⁶ Tahir Mahmood, Personal Law in Islamic Countries, Delhi, 1987, 214-218

⁷⁷ Art. 93,

void and voidable marriage,⁷⁸ equal rights for men and women in matters of succession⁷⁹ and abolished all forms of extra-judicial divorce.⁸⁰ Apparently some of these provisions violate clear Qur'anic texts but he considers it as "original" contribution to the general thought of Islam.⁸¹ Turkish developments make us ponder as to what constitute "foundational legal principles" and of what we are going to have a reinterpretation. Turkish legislation in most cases was divorced from the Qur'anic nass and based on the Italian Criminal Code of 1889 and the Swiss Civil Code, 1912. It represented the absolute abandonment of personal law as a religion-based entity and its merger into a modern civil code. But Iqbal informs us that we should have ijihad or reinterpretation on the lines of legislation in Turkey where:

religious and political thought has been reinforced and broadened by modern philosophical ideas and is grounded on modern sociological concepts.⁸²

It is an undisputed fact that Iqbal's concept of "reinterpretation" in general and of the Qur'an in particular has been quite liberal. It is this approach which made Coulsom to say:

There are two diametrically opposed attitudes in which the essence of the modernist-traditionalist tension lies: these can be summed up in two sentences.

The injunctions of the Qur'an, objectively interpreted, are eternally valid criterions of conduct and:

⁷⁸ Art 125.

⁷⁹ Art. 439-617.

⁸⁰ Art. 129-138.

⁸¹ Reconstruction, op. cit., p. 129.

⁸² Reconstruction, op. cit., p. 121.

Islam commands time and is not commanded by it.⁸³ Schimmel is of the opinion that Iqbal also suffers from this conflict. She observes:

The conflict between these two ideas is not only to be witnessed in separate ideological groups of theologians but also in the reformer in the person of Iqbal himself.⁸⁴

This being the position, let us now see as to how far courts of law have recognised the principle that the Qur'anic verses and rules derived from other Shariah sources, namely Hadith, Ijma' and qiyas can be reinterpreted independent of their interpretation by earlier jurists. The question arose in 1964 before the Lahore High Court in Khurshid Jan. The case was heard by three judges, namely, Ya' qub ' Ali; Wahiduddin Ahmad, and Anwarul Haq. Only the last two judges gave their opinion on the raised question. Denying such a power to modern courts, Wahiduddin Ahmad, observed:

In my judgement this is a path not free from danger and must be avoided. It was for this reason that the Privy Council as early as 1897 disapproved of this tendency and discouraged the courts of law to put their own construction on the Qur'an in opposition to the express ruling of Muhammadan commentators of great antiquity and high authority... I am, therefore, not inclined to depart from the view taken by the Privy Council. Subject to this in cases arising under Muhammadan Law a clear injunction of the Qur'an and Sunnah is binding and no departure is permissible from them. Thus if it is possible to ascertain clear authority from these two primary sources in support of any proposition advanced as a rule it must be followed. But if no clear authority is available resort can be had to other sources referred to.⁸⁵

⁸³ N. J. Coulson, "Reform of Family Law in Pakistan", *Studi Islamica*, Vol. VII (1957)p. 153.

⁸⁴ Schimmel, op. cit., 232. The Itallized words have been supplied. The original word is 'and' . If allowed to remain, it makes an ambiguous writing.

The learned judge supported his viewpoint with the rulings in Muhammad Yasin,⁸⁶ Anis Begurn,⁸⁷ Aziz Banu,⁸⁸ Abdul Fatch. Ahmad Ishak,⁸⁹ Baqr d Khan⁹⁰ and Fazlur Rehman⁹¹ and concluded:

The question still remains whether the court of law should embark on and traverse on this hazardous field (i.e., reinterpretation of the Qur'an). In my judgement nothing has happened since the above decisions were pronounced to justify any departure from the principle of interpretation recognised in them. I would, therefore, hold that it is not open to the courts of law to differ from the views of Imams and jurists of Muslim law if it is in accordance with the consensus or preponderance of authorities of the doctors of later time.⁹²

However, these observations of Wahiduddin, J. were not agreed upon by Anwarul Haq, J., who held:

My answer, therefore,.... is that the courts must be given the right to interpret for themselves the Qur'an and the Sunnah; and that they may also differ from the views of "the earlier juris-consults of Muslim law on grounds of Istihsan (i.e. equity) or Istislah (i.e. public good) in matters not governed

⁸⁵ Extracts of the case have been reproduced in Keith Hodkinson, *Muslim Family Law*, London, 1984. p. 27-66.

⁸⁶ Muhammad Yasin V. Rahmat Ilahi, A.I.R. 1947, All. 201.

⁸⁷ Anis Begum V. Muhammad Istafa Wali Khan, (1933) 55. All. 473.

⁸⁸ Aziz Banu V. Muhammad Ibrahim Hussain, A.I.R. 1925 All. 790.

⁸⁹ Abdul Fateh Ahmad Ishak V . Russomoye Dhur Chowdhury, 22, Cal. 619-212.

⁹⁰ Baqar ALi Khan V. ANjuman Are Begum, 25 All. 236.

⁹¹ Fazur Rehman V. Mst. Aisha, A.I.R. 1929 Pat. 81.

⁹² *Supra* note 83. (Emphasis laid).

by a Qur'anic or Traditional Text or Ijam' or a binding Qiyas. At the same tune, it must be reiterated that the views of the earlier jurists and Imams are entitled to the utmost respect and cannot be lightly disturbed but the right to differ from them must not be denied to the present day courts functioning in Pakistan, as such a denial will not only be a negation of the true spirit of Islam but also of the constitutional and legal obligation resting on all courts to interpret the law they are called upon to administer and apply in cases coming before them.⁹³

The learned Judge derived support for the above observation from several cases particularly Balqis Fatima⁹⁴ and Rashida Begum.⁹⁵ In the former case a Muslim wife claimed from the Lahore High Court the issuance of a divorce decree as a right, merely on the ground of there having occurred, no matter for whose fault, a situation in which a harmonious married state is no longer possible between the spouses. Agreeing with the wife's contentions, the Court recognised the Judge's power to dissolve the wife's marriage by way of Khula' in spite of the unwillingness of the husband, provided the other pertinent requirements for the relief were satisfied. Kaiskaus J., who delivered the judgement of the Full Bench, observed:

The... reply is that we are really dealing with the interpretation of the Holy Qur'an and on a question of interpretation we are not bound by the opinions of jurists. If we be clear as to what the meaning of a verse in the Qur'an is it will be our duty to give effect to that interpretation irrespective of what has been stated by the jurists. Ati' ullaaha wa ati' ur Rasul, is the duty cast on the Muslims and it will not be obedience to God or to the Prophet if in a case where our mind is clear as to the

⁹³ Supra note 97 at 65.

⁹⁴ Mat. Balqis Fatima V. Majm-ul-Ikram Qureshi, PLD, 1959, Lah.

⁹⁵ Mst. Balqis Fatima V. Shahab Din PLD 1960 Lah. 1142.

order of the Almighty or the Prophet we fail to decide in accordance with it...⁹⁶

In the latter case, Muhammad Shafi J., spoke in the same tune:

If the interpretation of the Holy Qur'an by the commentators who lived thirteen or twelve hundred years ago is considered as the last word on the subject, then the whole Islamic society will be shut up in an iron cage and not allowed to develop alongwith the time. It will then cease to be a universal religion and will remain a religion confined to the time and place when and where it was revealed... I would also like to make it clear at this' stage that this difference of interpretation does not, and cannot mean a departure from a clear injunction of law as contained in the Qur'an or Sunnah or even Ijma' on any ground of equity, good conscience or public policy.⁹⁷

The above quoted judgements reveal that Iqbal was right in inviting Muslims to a reinterpretation of the Qur'an. Even the first Caliph of Islam did discard known interpretations of the Qur'an on many occasions. In Himariya case, Caliph 'Umar distributed the property firstly according to the Qur'anic verses but, when appraised by the one of the litigants that the Qur'anic rule works hardship, he reviewed his judgement although in doing so he had to violate the Qur'an.⁹⁸ Viewed form this angle, the following observation of Professor Mushir-ul-Haq deserves a dispassionate consideration:

It is said that there cannot be any Ijtihad (reinterpretation) in Mansusat . (definite and unequivocal Shari'ah rule)? Is Nass the substance of the verse or its interpretation? For example, let us take the question of inheritance. Since the Qur'an has fixed the shares of different heirs with separate details, so it is said that whatever may be the demands of the times, there

⁹⁶ Supra note 85 at 61.

⁹⁷ Ibid. (Emphasis Laid)

⁹⁸ N.J. Coulson, Conflicts and Tensions in Islamic Jurisprudence, (1969) p. 15-16.

cannot be any change in the fixed proportion of these shares. The social, economic and political conditions are all immaterial. As the shares of inheritance are Munsus so the male in all cases has to get double share than a female. But it is worth consideration that since a man cannot fully comprehend the divine knowledge, so how can we say with confidence that whatever we have understood about inheritance provisions, that is its final meaning. Is not there any possibility that if situations and circumstances change and jurists point towards a different interpretation not against the spirit of Islam, cannot the previous interpretation be reconsidered?⁹⁹

Likewise, Kamal A. Faruqi, has put the view that:

The Qur'an must be approached for the fullest possible understanding, both in the context of early Islamic Arabic of the heroic and classical periods and also in the context of Arabic as a living and developing language.¹⁰⁰

Gillani contends that the term "Kalalah" used in the Qur'an does not carry the meaning which has been given to it in the past, i.e. uterine relations. Rather it means the relatives other than parents and children, like uncle, aunt, brother, sister, etc.¹⁰¹ This new meaning, if given effect, would entitle those relations to inherit who were so far excluded and exclude or simultaneously allow those who are exclusively inheriting the property at present. However, this tendency, if recognised, is likely to refute the contention that:

⁹⁹ Mushirs-ul-Haq, "Ilm-i-Kalam Aur Shari'at Ki Navi Ta'beer" in Zia-ul-Hassan Farooqi and Mushir-u-Haq (Ed.), *Fikr-i-Islam Ki Tashkeel-i-Jadeed*, 262-270 (Delhi, 1978). (Translated from Urdu by the author). Professor Haq makes similar observations regarding the authority of males over females and equivalence of a male's evidence to two females.

¹⁰⁰ Kamal A. Faruqi, *Islamic Jurisprudence*, Delhi, 1988 p. 108.

¹⁰¹ *Supra* note 21 at 176.

Nearness to the Prophet, in time and space, implies a greater accuracy in understanding the Qur'an and that, therefore, we of this generation, being farthest in time, are not best able to understand the Qur'an.¹⁰²

THE PROSPECTS

The above discussion reflecting Iqbal's views about dynamic and awakening features of the Qur'an ; legal content of the Qur'an; consonancy of legal activities of a Muslim with the Qur'anic spirit, interpretational permissibility enjoined by the Qur'an and overall Judicial and intellectual endorsement of the above tendencies, is yet-to ensure a bright future. The promulgation of offence of Zina, (enforcement of Hudud Ordinance VII of 1979; offence of "Qadhf", (enforcement of Hadd) Ordinance XXIX of 1979 and Zakat and ' Ushar- (Organization) Ordinance XXIX of 1979 in Pakistan during Zia regime and the introduction of Shari'at Bill on 10th April, 1991 in the National Assembly of Pakistan, by the then Prime Minister Mian Nawaz Sharif and its recent passing by the said Assembly with an overwhelming majority and sending it to Senate for passage in that House show that overall the Muslim community is still of the view that all the legal verses in the Qur'an are of eternal value and future legislation has to take place in the light of all these verse. Proclamation in Iran of Bakhshnanzah in 1982 directing the courts in the country not to apply any un-Islamic legislative enactment of the pre-Revolution era and extensive amendment of the Penal Code of 1912 and the Civil Code of 1928-1935 in order to reinforce Islamic legal principles, especially Qur'anic rules and restoration of uncodified Islamic personal law both for the Shi'ite majority and the Sunni minority,¹⁰³ are some of the pointers of the pristine revival of classical interpretation of the Qur'anic text. In India, it still holds good that in administering Muslim law no court should attempt to put its own construction on any Qur'anic text,¹⁰⁴ or examine the conformity of any traditionally settled legal principle with the relevant text of the Qur'an¹⁰⁵ or in any way circumvent or deviate from the

¹⁰² Supra note 85 at 54.

¹⁰³ Supra note 77..

¹⁰⁴ Aga Mahamed Jafar V. Koolsum beebie (1897) 24 I.A. 196. ¹⁰⁵ Ibid.

law as settled by the jurists of the past even if it does not sound "modern", "just" or "logical".¹⁰⁶ Like-wise lawyers of modern age are not allowed to introduce new rules of law by claiming that they logically follow from the texts of the Qur'an.¹⁰⁷ It seems that it would take, if not centuries, at least decades, to realize Iqbal's dream Of Muslim nations, like the Turks, re-evaluating their intellectual inheritance¹⁰⁸ and shaking off their dogmatic slumber.¹⁰⁹ So far Iqbal's suggestion to identify foundational legal principles from the Qur'an has least impressed the legislators and jurists of the Muslim countries.¹¹⁰

¹⁰⁵ Ibid.

¹⁰⁶ Veerankutty V. Kutti Umma, A.I.R. 1956 Mad 1004. Mohd. Ismail V. Abdul Rashid (1956) ILRI Alj. 143.

¹⁰⁷ Baqar Ali V. Anjuman Ara (1903) 301.A. 94. ICS. Reconstruction, op. cit., p. 121.

¹⁰⁸ Reconstruction, op. cit., p. 121.

¹⁰⁹ Ibid. p. 128.

¹¹⁰ This appears to be an understatement. Though the author has given a fairly clear idea of Iqbal's view of the issue of legislation, he sees not to have taken account of the activity, in all like lihood generated and triggered by Iqbal's comments in the early part of this century, which has covered much ground in this direction and provided fresh insights on the questions of ijtiihad and its practical modes of implementation in the modern world. (Editor's note).