

IQBAL AND HADITH: A LEGAL PERSPECTIVE

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Iqbal had extreme reverence and respect for the personality and divine mission of the Prophet Mohammed (s.a.w.). It is this reverence which, to a greater extent, brought out of him a poet and philosopher of international repute. He is so much emotionally and spiritually associated with the great Prophet (s.a.w) that like the generality of Muslims he believes him alive. In a letter, he writes:

To have the vision of the Prophet (s.a.w) would be a great blessing during these days. It is my belief that the Prophet (s.a.w) is alive and the present day people can be benefitted by his company in the same manner as the Companions used to be. But giving vent to such beliefs in contemporary times does offend most and for this I keep silence.¹³⁵

It has been seen that on hearing the name of the Prophet (s.a.w) Iqbal used to get emotional and often his eyes sunk into tears.¹³⁶ It was the beloved hobby of Iqbal to study the biography of the Prophet (s.a.w). Admitting this fact, he writes to Maulana Sulaiman Nadvi:

Theoretically I enjoy your company, because I study the Prophet's biography during the nights. Maulana Shibli has done a great service to Muslims, for which he will get the reward in the Prophet's Court.¹³⁷

¹³⁵ Iqbal's letter to Khan Niaaz-ud-din Khan dated 14 January 1922; See Syed Akhtar-as-Salam, *Mutalaat Aur Makateeb Allama Iqbal*, 287 (Urdu)

¹³⁶ Abu Muhammad Muslah, *Quran-Aur-Iqbal*, 18(Urdu):

¹³⁷ Bahar Allahabadi (Ed.), *Tafsir-i-Iqbal*, 68 (Urdu).

Iqbal's attachment with the Prophet (s.a.w) was so immense that he desired death in Hijaz.¹³⁸ In his poetic verses, he pleads with Allah that at the time of his resurrection-day he should not be presented before the Prophet (s.a.w).¹³⁹ It was his insatiable wish to visit the Prophet's grave. In a letter to Pir Ghulam Miran Shah, he writes:

Would that happen that I also accompany you (on Hai) and benefit from the blessings of your company. But unfortunately some days of separation seem yet in store. I am not so worth that I can be remembered at the prophet's grave. However I feel encouraged by this statement of the Prophet (s.a.w) that "the sinner is with me". I hope you will not forget me on reaching the Prophet's Court.¹⁴⁰

While writing to Maulana Sulaiman Nadvi, he says: "I will surely see your article on Sunnat and would benefit from it in my writings."¹⁴¹

Like all Muslims, Iqbal considers the belief in the Prophethood of Muhammad (s.a.w) a must for a Muslim. He is of the view that Islam as a religion came from Allah but Islam as a society or state is indebted to the personality of the Prophet (s.a.w)¹⁴² In *Jawab-i-Shikwa* this fact is clearly depicted;

¹³⁸ Khurshid Ahmad, "Iqbal Ka Tasavur-i-Shariat", *Iqbal Review*, Vol. I. No.2 pp. 59-80 at 72 (July, 1960).

¹³⁹ *Ibid.*

¹⁴⁰ *Supra* not 2 at 89.

¹⁴¹ Tahir Tawnsawi, *Iqbal Aur Syed Sulaiman Nadvi*, 88-89 (Urdu).

¹⁴² B.A, Dar, "Fikhr-i-Iqbal aur Mas'la-i-Ijtihad", *Iqbal*, Vol. II No. 2, pp. 29-48at 38 (Oct, 1953)

If you are loyal to Muhammad (s.a.w), then we are yours.
What this world is! the guarded Tablet and the Pen recording
it belong to you.¹⁴³

Iqbal considers the following of the path shown by the Prophet (s.a.w) as 'Islam' and deviation from it as 'Kufr'.¹⁴⁴ The life of Muslim community depends upon the adherence to the path shown by the Prophet (s.a.w).¹⁴⁵ The limits prescribed by the Prophet(s.a.w) though apparently hard, are mandatory and we should, instead of complaining, strive hard for the conformation to these limits¹⁴⁶ The present decadence and degeneration of Muslims is the result of deviation by Muslims from the Prophet's conduct.¹⁴⁷ The Prophet's guidance can prove a strong instrument for the organisation of Muslim community in India¹⁴⁸ Iqbal considers the propagation of Islam and the diversification of information regarding it achievements as the greatest service to the great Prophet (s.a.w).¹⁴⁹ The love for the Prophet (s.a.w) is a sine qua non for the Muslims.¹⁵⁰ One can reach to great heights if there is a faith in the Prophet (s.a.w). In the Prophet's guidance, there is a message for life.¹⁵¹ The Prophet's personality stands for truth and his sayings .differentiate between truth and falsehood.¹⁵² All progress and success is possible in this

¹⁴³ Kulliyat-i-Iqbal, (Urdu), Educational Book House, Aligarh), 1988 p. 208.

¹⁴⁴ Supra not 4 at pp. 73-74.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid. p. 74

¹⁴⁷ Ibid

¹⁴⁸ Ibid. p. 76

¹⁴⁹ Iqbal's letter to Pir Ghulam Miran Shah dated 29 March, 1938; see Supra note 2 at 89.

¹⁵⁰ Supra not 4 at pp. 70-71.

¹⁵¹ Ibid. p. 69

¹⁵² Ibid. p. 68

world if we follow the guidelines set by the Prophet (s.a.w).¹⁵³ In an article, Iqbal says:

Its (Islam's) founder stands out clear before us; he is truly a personage . p of history and lends himself freely even to the most searching criticism. Ingenious legend has weaved no screens round his figure; he is born in the broad-day light of history; we can thoroughly understand the inner spring of his actions; we can subject his mind to a keen psychological analysis.¹⁵⁴

Iqbal considers the Prophet (s.a.w) as living Quran and consequently advises Mu 'min to follow the good ideals of the Prophet (s.a.w).¹⁵⁵ He is of the view that the object of the prophethood is not only to creat relationship between Allah and his creatures but its purpose is also to prepare Constitution for individual and social life of mankind.¹⁵⁶

II

We have seen the extent upto which the Prophet's personality influenced the thoughts of Iqbal.. But the related question which sprouts from the preceding discussion is the extent upto which Iqbal recognises Hadith - the sum total of the sayings, doings and tacit approvals of the great Prophet (s.a.w) as a guide for all times. It is an open truth that Iqbal based much of his poetry on Hadith. He took immense advantage from Hadith pertaining to geographical unlimitations, time, finality of Prophethood, Prophet's accession and forgiveness.¹⁵⁷ Sometimes he even reinforced his

¹⁵³ Ibid. p. 69

¹⁵⁴ M. Iqbal, "Islam as a Moral and Political Ideal" in Latif Ahmed Sherwani (compiled & Ed.), *Speeches, Writings and Statements of Iqbal*, 3rd ed, Lahore, 1977, p. 87.

¹⁵⁵ Ilyas Rana, "Quran Aur Iqbal" in *Supra* note 2 at 17.

¹⁵⁶ Ibid, p. 76

¹⁵⁷ For details, see *Supra* note 3 at 77-88

poetry with weak Hadith.¹⁵⁸ However, there is an incident wherefrom we can safely conclude that Iqbal recognises the Hadith as a material of relevance. In *Jawahir-i-Iqbal* it is mentioned that:

Once a person astonishingly made mention of a Hadith in which it is said that the Prophet (s.a.w) was with his three Companions on Mount Uhud. Meanwhile Mount Uhud started shaking and the Prophet (s.a.w.) directed the Mount Uhud to stop' saying you don't have anyone else on you except a Prophet (s.a.w), a Sidiq and two martyrs. The Mount stopped.

On hearing this Hadith, Iqbal said to that person:

What sort of astonishment is there? I do not interpret it metamorphically but consider it a material reality and for me there is no need of interpreting or explaining it. Had you known the reality then you could have learnt that big masses of matter did tremble practically and not metamorphically underneath the Prophet's feet.¹⁵⁹

With such views about the greatness of the Prophet (s.a.w) and the Hadith, one could expect Iqbal as the firm believer in the authenticity of the Hadith literature and the Hadith being guide for Muslims in all ages and' at all times. However, on the basis of material before us, we are of the opinion that Iqbal does not, on the whole, accept the Hadith as a guide for all times and considers also its role as a limited one. He is highly apprehensive about the authenticity and transmission of the Hadith and this apprehension makes him somewhat indifferent towards the Hadith. Once in a discussion with one Ahl-i-Hadith, he said:

I (Iqbal) rely only on the Quran in matters of faith and regarding the Hadith I and you know, how it has reached us.

¹⁵⁸ Wahid Akhtar, "Iqbal Aur Islami Fikr Ki Tashkeel-i-Nav", in Rahid Nazaki and Assad-Ullah Wani (compiled), *Mahfil-i-Iqbal*, 20 (Srinagar, 1978).

¹⁵⁹ Ghulam Ahmad Parvez, "Pakistan Main Qanoon Sazi Kay Asool ", *Iqbal*, Vol VIII No. 2, pp. 81-104 at 88 (April, 1960).

On hearing this conversation, one person got emotionally charged and pointed to Iqbal:

If we are careless about the Hadith in such a manner then Mussalmani will come to an end. None of our practice and worship is complete without the Hadith. The Quran does not even elaborate prayer and other daily routine matters and it is for this reason that the Ahl-i-Quran group have prescribed strange types of prayer for us which have no relation with the masses of Ahl-i-Islam. The timings, requirements and Rakats etc. of such prayers are different from the one operating in the whole Islamic world. Would you not treat such persons under these circumstances as unbelievers?

In reply, Iqbal politely said:-

Don't say "unbelievers". Give them any other name. This is extremism. You people fight for the Rakats and the requirements of the prayers but I don't at all see the existence of "prayers" i.e., Muslims do not offer prayers.¹⁶⁰

Likewise, in a letter to Mawlana Syed Sulaiman Nadvi, he writes:

"About the authenticity of the Hadith, whatever apprehension I have in my heart, it does not mean that the Hadith are useless completely."¹⁶¹

It means Iqbal had earlier written such views about the Hadith that Nadvi had come to the conclusion that Iqbal absolutely rejects the Hadith. Even in the above letter it is clear that Iqbal does not recognise the Hadith in its entirety on account of susceptibility about its authenticity.

The above views about the authenticity of the Hadith seem to have' been a guiding factor for Iqbal for ignoring the Hadith. to a certain extent In

¹⁶⁰ Muhammad Hussain Arshi Amritsari, "Hayat-i-Iqbal Ka Aek Goshai-Pinhan", Iqbal Review, Vol. 15, No. 2, pp 1-12 at 11-12 (July 1974).

¹⁶¹ Iqbal Nama, Vol. 1, 152.

order to have his unconventional views on the Hadith accepted, Iqbal extensively quotes the views of the Orientalists. In *The Reconstruction*, he writes:

These [traditions of the Holy Prophet (s.a.w)] have been the subject of great discussion both in ancient and modern times. Among their modern critics Professor Goldzieher has subjected them to a searching examination in the light of modern canons of historical criticism, and arrives at the conclusion that they are, on the whole, untrustworthy.¹⁶²

Besides, without referring to N.P. Aghnides by name, Iqbal elaborates his views about the Hadith in following words:

Another European writer, after examining the Muslim methods of determining the genuineness of a tradition and pointing out the theoretical possibilities of error, arrives at the following conclusion:

It' must be said in conclusion that the preceding considerations represented only theoretical possibilities and that the question how far these possibilities have been actualities is largely a matter of how far the actual circumstances offered inducements for making use of the possibilities. Doubtless the latter, relatively speaking, were few, and affected only a small proportion of the entire Sunnah. It may, therefore, be said that for the most part the collections of Sunnah considered by the Muslims as canonical are genuine records of the rise and early growth of Islam.¹⁶³

Instead of refuting these views of orientalists and coming up with viewpoint whereby the traditional thinking regarding the Hadith would have been recognised and endorsed, Iqbal himself gives prominence to above sort

¹⁶² M. Iqbal, *The Reconstruction of Religions Thought in Islam*, I.A.P., Lahore, 1989, p. 135.

¹⁶³ *Ibid.*, pp. 135-136.

of views while dealing with the Hadith as a source of law. He contends in his poetry that 'weak', 'irregular' and 'uninterrupted' traditions do exist. In Ramuz, he taunts at a preacher:

The preacher is story-teller and tale-collector. His meaning is low, and his words are high. He talks of Khatib and Daylami and is interested in traditions "weak" and "irregular" and "uninterrupted".¹⁶⁴

Besides, Iqbal does not seem impressed by the contention that after the Quran, the Hadith is a mandatory guide for Muslim Ummah for all times. He considers it valid only to the generation in which the Prophet (s.a.w) was born and does not favour its enforceability in the case of future generations. For these views he approvingly quotes the following observations of Shah Wali-Allah:¹⁶⁵

The Prophet who aims at all embracing principles, however, can neither reveal different principles for different peoples, nor leaves them to work out their own rules of conduct. His method is to train one particular people, and to use them as a nucleus for the building of a universal Shariat. In doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of specific habits of the people immediately before him. The Shariat 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 strongly enforced in the case of future generations.¹⁶⁶

¹⁶⁴ Rumuz-i-bekhudī, Lahore. 1918, p. 142.

¹⁶⁵ Reconstruction, op. cit. pp. 136-137.

¹⁶⁶ Sir Sayyid Ahmad Khan was also impressed by the above views of Shah Wali Allah. It is likely that Iqbal might have been impressed by Sir Sayyid Ahmad Khan's stand in this regard. For details, see B.A. Dar "Sir Sayyid Ahmad Khan as a Religio - philosophical

The fact is that views of Shah Wali-Allah about the Hadith are extraordinary.^{32A} In his book *Hujjat Allah Balighah* in a chapter "Kinds of Prophet's Knowledge," Shah Wali-Allah quotes a Hadith in which the Prophet (s.a.w) is reported to have said:

I am a human being. When I say anything to you about religion, then adopt it and whatever I say on the basis of my opinion, then I happen to be human being.¹⁶⁷

Commenting on this Hadith, Shah Wali-Allah writes:

These matters (i.e. based on opinion) were not related to the Prophetic propagation. There are the matters which were partially the result of expediency during the Prophet's life time and were not compulsory and binding for the whole Ummah. These Ahkams include those commands and decisions of the Prophet relating . to family plans, economic discipline and material politics. The jurists have not come out with the complete figure regarding these matters.¹⁶⁸

Besides, Shah Wali-Allah has raised many questions about the receipt and authenticity of the Hadith and treats them as basis of fiqhi disagreements amongst jurists.¹⁶⁹

Shah Wali-Allah's views as reproduced by Iqbal in *The Reconstruction* were, inter alia subjected to judicial comment in Muhammad Riaz.¹⁷⁰ The Federal Shariat Court of Pakistan in this case observed:

Thinker" in M.M. Sharif (Ed.), *A History of Muslim Philosophy, 1598-1614 at 1609-10* (Gemany, 1963). (hereinafter referred as M.M. Shari").

^{32A} This opinion is based upon an erroneous reading of Shah Wali Ullah's text provided by Shibli Numani. For details see M. S. Umar, *Iqbaliyat*, Jan. 1996,(Editor's Note).

¹⁶⁷ *Supra* note 24 at 98.

¹⁶⁸ *Ibid*.

¹⁶⁹ For details ° see, Zafar Ishaq Ansari, "Shah Wali-Allah and Fiqhi Disagreements", *Iqbal*, Vol. XV. No. 3, 44-52 (January, 1967).

Islam thus recognised that not all customs and usages of the Arabs were repugnant to Shariah; and maintained most of them as good as law. Our Statute laws whether inherited from the British Government or enacted after independence are based upon the principle of common good and justice, equity and good conscience which is the same as the principles of public good (Masaleh Mursala) of Imam Malik and principle of Istihsan of Imam Abu Hanifa. A fortiori, these laws must be more in harmony with the Shariah. In some respects the Statute law may not fulfil the standard of the law of the Quran and may also be repugnant to it but such instances are few.¹⁷¹

Iqbal strengthens his views about the Hadith by referring to contribution of Imam Abu Hanifa. In Reconstruction, he is of the view:

It was perhaps in view of this (i.e., the Hadith cannot be strictly enforced in case of future generations) that Abu Hanifa, who had a keen insight into the universal character of Islam, made practically no use of these traditions. The fact that he introduced the principle of 'Isthsan', juristic preference which necessitates a careful study of actual conditions in legal thinking, throws further light on the motives which determined his attitude towards this source of Mohammedan Law.¹⁷²

In view of different social and agricultural conditions prevailing in the countries conquered by Islam, the school of Abu Hanifa seems to have found, on the whole, little or no

¹⁷⁰ Muhammad Riaz v. Federal Govt. PLD 1980 F.S.C.1. (Federal Shariat Court).

¹⁷¹ Ibid.

¹⁷² Reconstruction, op. cit. 137.

guidance from the precedents
recorded in the literature of traditions.¹⁷³

From these quotations it is evident that according to Iqbal, Imam Abu Hanifa avoided the use of the Hadith as a source of law on the basis that Hadith 'has no potential of meeting and studying actual conditions in the legal thinking and could not provide an answer to the challenge posed by different social and agricultural conditions of conquered countries.

Iqbal is not at all impressed by the contentions of some jurists that Imam Abu Hanifa did not make use of the Hadith in view of non-availability of its regular collections in his times. Treating Imam Abu Hanifa's stand regarding non-use of the Hadith somewhat deliberate and intentional, Iqbal writes:

It is said that Abu Hanifa made no use of traditions because there were no regular collections in his day. In the first place, it is not true to say that there were no collections in his day, as the collections of Abdul Malik and Zuhri were made not less than thirty years before the death of Abu Hanifa. But even if we suppose that these collections never reached him or that did not contain traditions of legal import, Abu Hanifa, like Malik and Ahmad Ibn-i-Hanbal after him, could have easily made his own collections if he had deemed such a thing necessary.¹⁷⁴

Iqbal's views about Imam Abu Hanifa are not without basis. Khatib Baghadadi in his history^{40A}, with reference to Yusuf Ibn Isbat, writes:

¹⁷³ Ibid, p. 140. (Emphasis Laid)

¹⁷⁴ Ibid., p. 137 (Ibn Hazm, however, informs us that all Abu Hanifa's pupils are agreed that Abu Hanifa's practice was that even a weak tradition was to be preferred to (one's opinion formed by) analogical reasoning (Qiyas) or private judgement (ray). See Abul Ala Maudoodi, "Abu Hanifa and Abu Yusuf", in M.M. Sharif (Ed.), op. cit., 674-703 at 681.

^{40A} There seems to be confusion in these discussions of Abu Hanifa's views on the validity of Hadith as a source of law. It has arisen, primarily, by an indiscriminate use of the

Abu Hanifa used to say that if the Prophet (s.a.w)

would have found me and I could have found him (i.e. both would have lived at the same time!), then He [the Prophet (s.a.w)] would have adopted many of his (Abu Hanifa's) thoughts. Religion is not anything else except the good and fine opinion.¹⁷⁵

Sir Sayyid Ahmad Khan also seems to share the same views about Imam Abu Hanifa's approach to the Hadith as Iqbal did. He is reported to have said:

He [i.e. Imam Abu Hanifa] was not willing to accept Tradition as a valid source of religious knowledge. The reason being that when the collections of the Hadith were compiled in the second/eighth century, politics and social conditions of the time helped in the fabrication of innumerable traditions ascribing them to the Holy Prophet ... he would, however, accept only those traditions which are compatible with the letter and spirit of the Quran. He approvingly quotes the statement of Ibn Taimiyyah that "The truly traditional is truly rational." In case by a critical analysis a tradition is proved to be true, Sayyid Ahmad would be willing to accept it as a valid basis for religion.¹⁷⁶ He freely questioned the credentials of the reputed commentators and

word "Hadith" to cover the whole range of reports of the Proahet's, acts, deeds, statements as well as for his established wont which is known by an unintenepted practice of the whole muslim community from the times of the Prophet(i.e. sunnah mutawatirah). The usage of Abu Hanifah and Malik has a strictly technical sense. In their discourse and arguments the word is used to denote akhbar Ahad i.e. reports transmitted through a single narrator or with an interrepted chain of transmission. For an elucidation of the point see khurshid Ahmad, "Istidrak", in Charag-i-Rah, Vol. 12, No. 7, 1985, p. 87. (Editor's Note)

¹⁷⁵ Supra note 24 at 97.

¹⁷⁶ Supra note 31 at 1610.

on this basis he thought that the Hadith did not 'furnish an adequate basis for the understanding of Islam.'¹⁷⁷

Iqbal's philosophy owes a lot to Imam-al-Ghazali. Ghazali himself is not unquestionably sympathetic to the Hadith. He contends: "The validity of some parts of the Hadith depends upon historical authenticity."¹⁷⁸

Likewise, Ibn Hazm considers that Hadith true which is related in a sure way and by reliable men in a connected chain which reaches the Prophet Muhammad (s.a.w).¹⁷⁹ He thinks that the Prophet (s.a.w) is certainly trustworthy and quotes in this connection from the Quran:

Nor does he speak out of desire, it is naught but revelation that is revealed.

Iqbal had also some queries about the Hadith. In a letter to -Syed Sulaiman Nadvi, he writes:

You write the Prophet (s.a.w) had two positions: Nabuvat and Imamat. In Nabuvat are included Quranic commandments and his deductions ... What is the definition of Wahi Ghair Matloo from psychological viewpoint. Do we come to know about the differentiation between Wahi Matloo and Wahi Ghair Matloo during the Prophet's life-time or these terms were coined after him. The Prophet (s.a.w) consulted companions regarding Azan. Does this consultation come under Nabuwat or Imamat?¹⁸⁰

What reply Iqbal gets from Nadvi to these queries is not known to this author, but in Reconstruction, he philosophically deals with the question of the Prophetic revelation. He says: "The world-life intuitively sees its own

¹⁷⁷ Abdul Hamid, "Sir Sayyid Ahmad Khan as a Politician Historian and Reformist" in M.M.Sharif (Ed.) op. cit., 1580-1597 at 1591.

¹⁷⁸ Leonard Binder, "Al-Ghazali" in M.M.Sharif (Ed.), op. cit., 774-789 at 775.

¹⁷⁹ Iqbal's letter to Syed Sulaiman Nadvi, See Supra note 2 at 82.

¹⁸⁰ Ibid.

needs and at critical moments defines its own direction. This is what, in the language of religion, we call prophetic revelation."¹⁸¹

Commenting on this, Schimmel¹⁸² writes: "That would be almost the same conclusion which Soderblom has reached in his simple and unsophisticated sentence: The Prophet is an effect of God's activity."¹⁸³

The Holy Quran reads:"Whatever the, Prophet gives, accept it, and whatever he forbids you abstain from it."¹⁸⁴ and 'O Ye who believe, Obey God and obey the Prophet."¹⁸⁵

The impact of these verses on Muslim Ummah has led by the Muslims to recongnize the Hadith in conjunction and not in isolation of the Quran Ibn Hazm is of the view that, "Only the Prophet Mohammed (s.a.w) must be taken as a model in all matters of belief and behaviour."¹⁸⁶ Shaikh Ahmad. Sirhindi is of the opinion that submission to the Prophet's traditions (Sunnah) is the real bliss while opposition to it is the cause of ad disasters. Hence he treats restoration of Sunnah as the best of worship and ensures the restorer reward in the heaven.¹⁸⁷ Likewise Muhammad bin Abd• al-Wahab took the Quran and the Sunnah as the sole guide for human action.¹⁸⁸ What is, however, important is that there are people who consider the Hadith like the Quran a revealed material.

¹⁸¹ Reconstruction, op. cit. p. 117.

¹⁸² Annermarie Schimmel, Gabriel's Wing, 2nd Edn. Lahore, 1989, p. 251.

¹⁸³ Soderblom, The Living God, Giffered Lectures, London, 1933, p. 224.

¹⁸⁴ Al-Quran, 49:7

¹⁸⁵ Al-Quran, 4:59

¹⁸⁶ Supra note 44 at 284

¹⁸⁷ Muhammad Farman, "Shaikh Ahmad Sirhindi" in M.M. Sharif (Ed.), op. cit., 873-883 at 882

¹⁸⁸ Ibid. p. 878

For example, the Jamait Islami¹⁸⁹ is of the view:

The Prophet (s.a.w) has been given the knowledge of the Hadith like the Quran ... Angel Gabriel revealed both the Quran and the Hadith. He used to teach the Hadith to the Prophet in the same manner as the Quran. For this reason, no differentiation in revelation is accepted. The Quran and the Sunnah are both simultaneous sources.

However, Justice Kayani in Ghulam Bhik¹⁹⁰ refused to accept the revelatory character of the Hadith. The Judge observed: "It is not necessary for me to say here that the argument for Sunnat being based on revelation is not well-founded."¹⁹¹

As against the view taken by Justice Kayani, we must derive satisfaction from the following views about the Hadith expressed by a non-Muslim writer, Kashi Prasad Saxena back as far as in 1934:

Traditions are implied revelations through Muhammad, in matters of law and religion. But as laws are needed for the benefit of the community, the Divine Legislator has delegated the power to get the laws framed by the Prophet. He consulted God whenever any necessity arose. The laws so laid down, are presumed to be what God intended and are thus covered by the definition of law as a communication from God. The precepts and every word and saying of the Prophet are believed to be in accordance with commandments of God. These traditions also were recorded as laws of God and the sacred source of law, having been placed next in importance to the Quran. The laws which the tradition so lays down, have most of the attributes of legislative enactments, though in theory they expound laws. The Prophet alone was invested with the supreme legislative power at the time

¹⁸⁹ Supra note 24.

¹⁹⁰ Ghulam Bhik v. Hussain Begum, PLD 1957 Lah. 998.

¹⁹¹ Justice Kayani's observation regarding the Hadith has been criticised by Maulana Maudoodi but defended to some extent by Malik Muhammad Jaffar. For details, see Malik Muhammad Jaffar, "Future of Islamic Law in Pakistan - Judicial Process", Iqbal, Vol. XVI, No. 3, pp. 3-26 at 17 (January, 1968).

when Islam was promulgated in Arabia. The Prophet sometimes gave his own rulings, in his own words, termed Hadith but his actions were quite in consonance with the wishes and desires of Divine Legislator; so, in this sense, he may be termed as the Legislature of the next legislative power of the Muslim State.¹⁹²

III

The extent upto which Iqbal treats the Hadith as a source of law can be envisioned from the following lines:

The second great source of Muhammedan Law is the traditions of the Holy Prophet ...¹⁹³ It is, however, impossible to deny the fact that the traditionist by insisting on the value of the concrete case, as against the tendency to abstract thinking in law, have done the greatest service to the law of Islam. And a further intelligent study of the literature of traditions, if used as indicative of the spirit in which the Prophet himself interpreted his Revelation, may still be of great help in understanding the life value of the legal principles enunciated in the Quran. A complete grasp of their life-value alone can equip us in our endeavour to reinterpret the foundational principles.¹⁹⁴

These lines suggest that like other Muslims Iqbal considers the Hadith as the second main source of Islamic Law. ' However, he is not so enthusiastic in highlighting the salient peculiarities of the Hadith as a source of law as ordinarily a Muslim jurist is or is expected to be. Instead he has all praises for the traditionists rather than for traditions. He considers insistence by the traditionists on the value of concrete case against abstract thinking as the greatest service to the law of Islam. Iqbal does not seem satisfied with the

¹⁹² Kashi Prasad Saxena, *Muslim Law as Administered in India and Pakistan*, 3 (Delhi, 4th ed., 1963)

¹⁹³ *Reconstruction*, op. cit. p. 135.

¹⁹⁴ *Ibid.* at 137.

study of the Hadith so far made and so pleads for "further intelligent study of the literature of traditions." According to Iqbal this 'intelligent study' must be indicative of the spirit in which the Prophet (s.a.w) himself interpreted his Revelation and then and there a great help can be rendered in understanding the life-value of the legal principles enunciated in the Quran. And once we completely grasp the life-value of Quranic legal principles, then we can succeed in our endeavour of reinterpreting the foundational principles. What can be summed up from the above lines is:

- (1) that there has not been so far complete intelligent study of the literature of traditions;
- (2) that whatever study has taken place, it has not been fully indicative of the spirit in which the Prophet (s.a.w) himself interpreted his revelation;
- (3) that we can understand the life-value of the Quranic legal principles only when we-study literature of traditions in the spirit in which the Prophet (s.a.w) himself interpreted his Revelation; and
- (4) that only then we can equip ourselves with the required intellect needed for the re-interpretation of foundational principles.

It is obvious that Iqbal has been highly choosy in his words and whatever he says about the role of the Hadith in The Reconstruction does not pertain to its past or present contribution. Rather he is optimistic about its prospective positive role provided the present day Muslims work on the above suggested lines. However, many Muslim writers have tried to defend Iqbal's views regarding the Hadith by attributing such contentions to Iqbal which he personally never contended. For example, Professor Khurshid Ahmed writes:

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 traditionist ...¹⁹⁵ to the law of Islam."¹⁹⁶

¹⁹⁵ Khurshid Ahmad, "Iqbal and the Reconstruction of Islamic Law", Iqbal Review,

The learned Professor fails to quote the authority where Iqbal regards the authentic traditions as an indisputable authority in law." The extract, 'the traditionist ... to the law of Islam' reproduced from 'The Reconstruction' fails to serve the purpose. As already discussed, in these lines Iqbal praises the traditionists rather than the traditions and nowhere binding force of the Hadith as a source of law and consideration of authentic traditions as an indisputable authority in law is visible in these lines.

Likewise, at another place, the learned author writes:

According to some people, Iqbal does not recognize the Hadith as a source of law and religious proof (Hujjat), he gives this place only to the Quran. But this notion is wrong and no basis is found for it in Iqbal's philosophy. Contrarily Iqbal has again and again emphasised on history and traditions of Islam and considered them essential for the upbringing and growth of Muslim community. For Iqbal, the Hadith has same place in religion as has till today remained with the great men of Millat.¹⁹⁷

We, again, fail to understand as to how Iqbal recognises the Hadith as a source of law and how his views about the Hadith are in consonance with the great men of Islam. From the fact that Iqbal emphasised the role of Islamic history and traditions, we are unable to relate it with the relevance of the Hadith. By "Riwayat", it is meant the customary and cultural heritage of any community which even vary from place to place and country to country. Linking of Islamic "Riwayat" with the Hadith, we contend, is a fait accompli and in no case proves that Iqbal recognised the Hadith as source of law.

In order to show that Iqbal recognises the Hadith as a source of law, the learned professor refers to Mu'adh Hadith as quoted by Iqbal in 'The Reconstruction'¹⁹⁸ and concludes:

Vol. 1 No. 1, pp. 63-90 at 73.

¹⁹⁶ Reconstruction, op. cit. p. 137

¹⁹⁷ Supra note 3 at 60.

¹⁹⁸ Reconstruction, op. cit. 118

By referring to this Hadith, Allama not merely points out that he himself deduces from the Hadith and also presents it by way of explanation but clarifies this point that what is his stand regarding it (Hadith). He considers it as the permanent source of law and this is the status which Shariat has given to it (Hadith).¹⁹⁹

Our view is that Iqbal referred to Mu'adh Hadith for strengthening his view regarding legislative liberalism in Islam through the doctrine of 'Ijtihad'. It is indeed a paradoxical situation but on this basis we cannot conclude that Iqbal recognises the Hadith as a source of law. Rather this Hadith is quoted to justify utmost freedom to Muslim legislatures in the enactment of laws.

Professor Khurshid Ahmad, besides, refers to about eleven Quranic verses, and four Hadith whereby he high-lights the role of the Prophet²⁰⁰ with the object of showing that how much the Hadith is important as a source of law. Further the author tries to impress upon the readers regarding the Hadith by referring to the Mu'tazilites doubting the relevance of the Hadith; Muslim reaction against this view, the discarding of Mu'tazilah view by Muslims in its infancy and criticism of the Hadith by contemporary Orientalists.²⁰¹ All these points are religiously and historically most relevant and have impressed Muslim minds for centuries with regard to the relevance and importance of the Hadith as a source of law in Islam. But the question is how these details can be related with Iqbal, Iqbal, in our view, stands least impressed by these realities and instead he did choose to remain indifferent to the Hadith as a source of law. The contention of the learned Professor that "Iqbal gave least importance to the thinking of Orientalists regarding the Hadith",²⁰² it is submitted, is the most unfounded contention. A look in 'The Reconstruction' reveals that Iqbal rather starts his discussion with the views of Goldziehar and N.P. Aghnides, whereby it has been said that the Hadith

¹⁹⁹ Supra note 3 at 75.

²⁰⁰ Ibid. pp. 62-66

²⁰¹ Ibid. p. 61

²⁰² Ibid.

are, on the whole, untrustworthy²⁰³ but genuine records of the rise and early growth of Islam.²⁰⁴

The fact is that Iqbal does not favour usage of Hadith as a source of law; rather his indifference to it as a legal source is writ large. In order to give weightage to such a view about the Hadith he comes out with the theory of legal and non-legal traditions and attaches too many conditions to legal traditions.^{70A} In *The Reconstruction*, he writes:

For our present purposes, however, we must distinguish

traditions of a purely legal import from those which are of a non-legal character. With regard to the former, there arises a very important question as to how far they embody the pre-Islamic usages of Arabia which were in some cases left intact, and in others modified by the Prophet. It is difficult to make this discovery, for our early writers do not always refer to pre-Islamic usages. Nor is it possible to discover that the usages, left by the express or tacit approval of the Prophet, were intended to be universal in their application.²⁰⁵

These lines contain a volume of information about Iqbal's views about the Hadith as a source of law. Ordinarily, for a Muslim all traditions, whether of legal or non-legal import are equally binding and universal. Any sort of differentiation on account of content and basis is immaterial and irrelevant. But, consistent with his theory of indifference towards the Hadith, as a source of law Iqbal emphasises upon the distinction of the traditions of legal

²⁰³ *Reconstruction*, op. cit. p. 135

²⁰⁴ *Ibid.* p. 136

^{70A} This theory is nothing new in Islamic legal history. Different schools of thought are, however, divided over the question of principles differentiating the two categories and the extent of their law-giving value. (Editor's Note)

²⁰⁵ *Ibid.*, B.A. Dar says that "Like Shah Wali-Allah, Iqbal divides the Hadith into two kinds i.e. explanatory and non-explanatory. Explanatory are those from which some legal rule can be deduced and non-explanatory Hadith are common Hadith." See *Supra* note 8 at 43.

and non-legal character. Then, regarding the traditions of legal character, Iqbal stresses that it is to be seen upto which extent these traditions embody pre-Islamic usages of Arabia left intact or modified by the Prophet (s.a.w). In a mood of self-defeat Iqbal then says that it is difficult to discover this pre-Islamic extent in traditions in view of non. reference by early writers to this fact. Likewise, contends Iqbal, it is not possible to discover the application universality of the traditions based on the express or tacit approval of pre-Islamic usages. Rather, Iqbal is doubtful about the application universality of the traditions of legal import. Once the universality of a past institution is doubted, it means that it was relevant only to the time in which it was born and cannot guide the future s generation. Such has been the view of Iqbal when he quotes approvingly the views of Shah Wali-Allah with regard to the role of the Prophet (s.a.w).²⁰⁶ However, on Shah Wall-Allah, B.A. Dar writes:

From the opinion of Shah Wali-Allah, only this conclusion can be arrived at that in the formation of future Fiqh, the Hadith should be given secondary importance and for its replacement and alteration, the standard should be same as Imam Abu Hanifa kept before him.²⁰⁷

We fail to agree with Dar that in any manner from the views of Shah Wali-Allah and Imam Abu Hanifa (as quoted by Dr. Iqbal) we can conclude that the Hadith should be given secondary importance in framing the fiqh; rather both consider it an ignorable material.²⁰⁸ Hence we treat the attribution by Dar as unfounded.

The categorisation of the Hadith into legal and non-legal and non-binding character of the former is further justified by Iqbal by referring to the attitude of Imam Abu Hanifa regarding the Hadith. Iqbal writes:

²⁰⁶ Supra note 32.

²⁰⁷ Supra note 9 at 44.

²⁰⁸ We are goaded again to add a note of dissent here. A direct reading of Shah Wali Ullah and Abu Hanifah yeilds no support to the view expressed by Mr. Ahangar which, in turn, is based on Iqbal. We have investigated the causes that made this misunderstanding creep in the discussion. See our article refered in note 32-A (Editor's Note).

The attitude [i.e., non use of the Hadith of Imam Abu Hanifa towards the traditions of a purely legal import is to my mind perfectly sound; and if modern liberalism considers it safer not to make any indiscriminate use of them as a source of law, it will be only following one of the greatest exponents of Muhammedan Law in Sunni Islam.²⁰⁹

Our view that Iqbal stands for an outright non-consideration of the Hadith in legal matters is strengthened by the fact that Iqbal is critical, otherwise appreciative, of the Wahabi movement for the reason that in matters of law it mainly relies on the traditions of the Prophet (s.a.w). About this movement he writes:

The essential thing to note is the spirit of freedom manifested in it: though inwardly this movement, too, is conservative in its own fashion. While it rises, in revolt against the finality of schools, and vigorously asserts the right of private judgment, its vision on the past is wholly uncritical, and in matters of law it mainly falls back on the traditions of the Prophet.²¹⁰

Besides the above views, Iqbal did not view favourably the Hadith as a source of law for the reasons of the presence of contradictory traditions and non-existence of written law of Islam apart from the Quran from the earliest times upto the rise of the Abbasides.²¹¹

IV

The question which is paramount at present is how far the contemporary Muslim world accepts Iqbal's views about the Hadith. We feel the judicial response to this question in Pakistan - a country which originated

²⁰⁹ Reconstruction, op. cit. p. 137(Emphasis Laid).

²¹⁰ Ibid. p. 121.

²¹¹ Ibid., p. 165. Mazheruddin Siddiqi, however, contends that the greatest single factor which stopped Ijtihad activity was the practice of the literal application of Hadith and the ascertainment of Sunnah by means of Hadith. It implies, it is submitted, that this factor may also have influenced Iqbal in not recognising the Hadith as a source of law. For details, see Mazheruddin Siddiqi, Concept of Muslim Culture in Iqbal, pp. 86-125 (Islamabad, 1983).

mostly due to Iqbal's poetic persuasions and philosophical ideas, can provide us some refreshing answer.

In Ghulam Bhik²¹² Justice Kayani dealt with the general question of the place of the Hadith in comparison with the other sources of Muslim Law. His Lordship expressed the following opinion:

...The real difficulty comes to be faced with the Hadith, which reports the Sunnat or practice of the Prophet. Apart from the fact that the authenticity of a Hadith in respect of a particular matter is seldom free from dispute, even the established practice of the Prophet in certain matters was departed from by some of Khulfa-e-Rashidin, particularly Umar ... The correct attitude towards the interpretation of Muslim Law as illustrated by the Sunnat, if I may venture to give an opinion, would be to regard it as changeable in detail to suit the requirements of time and place. I am not giving an opinion but indicating actual practice.²¹³

Ghulam Bhik was followed by Bilqis Fatima.²¹⁴ In this case Justice Kaikaus observed:

We are really dealing with the interpretation of the Holy Quran and on a question of interpretation. We are not bound by the opinion of Jurists Similar considerations apply to the interpretation of the traditions of the Prophet.

Malik Muhammad Jafer sees a ray of hope in Ghulam Bhik and Bilqis Fatima. Commenting on these judgements, he writes: "The judicial trends do provide some hope for the development of Muslim law on right lines."²¹⁵

The other case in which the question of the Hadith as a source of law was dealt with is Rashida Begum.²¹⁶ This was a case under the Guardians and

²¹² Supra note 59.

²¹³ Ibid. [For critical assessment of this judgment, see supra note 56].

²¹⁴ Bilqis Fatima v. Najm-ul-Ikram, PLD 1959 Lah. 566.

²¹⁵ Supra note 56 at 21.

Wards Act. The dispute was with respect to the guardianship of the persons and property of two minor girls, whose mother had, after the death of the father of the minors, married a person not related to the girls. The trial judge had appointed a real paternal uncle of the girls as their guardian and the mother brought an appeal against this order. The matter really was simple one not involving any intricate questions of fact or law. But the learned judge, Justice Mohammad Shafi felt himself called upon to adjudicate upon, inter alia, the following questions, most of which would appear to have a very remote, if any, connection with the case: (1) The supreme sovereign authority vesting in Almighty God, (2) The capacity of all Muslims to interpret the Holy Quran and to follow its teachings (3) Rules-which should guide us in interpreting the Quran. (4) Credibility of the Hadith sources, (5) value of the Hadith in the legal system of Islam, and many other allied topics. The learned Judge makes an outright attack on the very institution of the Hadith. He discusses the supposed weakness of the historical material in relation to the traditions and in order to reinforce his argument, he cites a number of the Hadith to show that their contents are sufficient intrinsic evidence that these particular traditions could not be a correct record of the sayings of the conduct of the Holy Prophet (s.a.w), These traditions generally relate to what are called the private affairs of the Prophet (s.a.w) especially some aspects of his marital relations. About the views of learned judge about the Hadith as a source of law,²¹⁷ Malik Muhammad Jafer writes:

On Hadith the views of the learned judge are clear and unambiguous. He does not consider the Hadith material as a reliable record of the precepts or conduct of the Holy Prophet and he does not admit the Traditions as being a valid source of Muslim Law.²¹⁸

In Khushid Jan, Yaqub Ali, J. seconded by other two judges observed:

In the beginning there was a controversy as (to) the authority of Sunnah, for, some believed that later in point of time it

²¹⁶ Rashida Begum v. Shahab Din PLD 1960 Lahore 1142.

²¹⁷ Supra note 56 at 22-23.

²¹⁸ Ibid., p. 23.

repealed the text of Quran. The accepted position, however, is that it is the most authentic source of Islamic law next to Quran . Jurists like Imam Abu Hanifa an-Numan Ibn Thabit formulated legal theories of speculative character comparable to legal fiction in the modern laws. While he relied on eighteen Ahadith only, Imam Malik (died A.H. 179) relied mainly on Ahadith and he gathered them not for their sake but to use "them in law. Even in the authentic': compilations of the Ahadith there are certain contradictions. How are the courts to reconcile them? The answer is two fold: either the so called contradiction lies in different rules of decision being laid down for different facts or that one or more .of them are not authentic. There are numerous rules for determining the authenticity of a tradition. They neither ensure certainty nor carry conviction of genuineness. Some of the Faqih's have not accepted them as having the authority of law.²¹⁹

Thus, Khurshid jan recognises the Hadith as the most authentic source of Islamic Law next to the Quran, though in the process it highlights certain problems. The recent cases B.Z. Kaikaus²²⁰ and Muhammad Riaz²²¹ also recognise the Hadith as a valid source of law after the Quran.

In brief, the strength of judicial pronouncements in Pakistan is, on the whole, in favour of the recognition of the Hadith as a second valid source ; of law and is in no mood of compromising on this stand.

V

Now, if Dr. Iqbal's views and visions about the role of the Hadith as a source of law are taken to their logical end, then what can be safely said is that many legal institutions wholly or partially based on the Hadith are liable to be

²¹⁹ Khurshid jan v. Fazal Dad, PLD. 1964(W.P). Lah. 558.

²²⁰ B.Z. Kaikaus v. President of Pakistan, PLD 1980 S.C. 160.

²²¹ Muhammd Riaz v. Federal Government, PLD 1980 F.S.C. 1.

discarded. The legal doctrines pertaining to wills, wakf and pre-emption, to name a few, have mostly their origins embedded and superstructure founded on the Hadith. Likewise, the Hadith many a time made additions and supplementations to the legal provisions in the Quran;²²² made explicit what the Quranic injunction had implicit;²²³ qualified absolute declarations of the Quran;²²⁴ and made certain exceptions to certain general rules in the Quran.²²⁵ All these institutions are to be overhauled, reformed and replaced if Dr. Iqbal's indifference to the Hadith as a source of law is cared for. However, the fact stands that the relevance of the Hadith as a source of law instead of diminution is already on the increase and future warrants its enhanced use in the legal system of the Muslim countries. The 1/3 rd provision of bequest which has been used as a device for benefitting orphaned grandchildren by most Muslim countries is wholly based on the Hadith. Likewise if one gauges through personal laws operating in Muslim countries²²⁶ contemporarily, in legal matters there is either complete conformity with the recognised Hadith or a least departure from it. In nutshell, Dr. Iqbal's philosophy of according no or minimum role to the Hadith²²⁷ as a source of law has so far failed to impress generality of the

²²² Al-Quran forbids marriage with the two sisters simultaneously; al-Sunna disallows also marriage with aunt and niece simultaneously.

²²³ Al-Quran permits Nikah while al-Sunna guides us about the essentials for entering into Nikah.

²²⁴ Al-Quran mandates the cutting of hands of male and female thieves but al-Sunna ensures that culprit should not be of unsound mind or a child.

²²⁵ Al-Quran allows bequest in favour of any person but al-Sunna provides that a legal heir cannot be a beneficiary under bequest; For details, see Supra note 1 at 96-99.

²²⁶ Tahir Mahmood, Personal Law in Islamic Countries, (Delhi, 1987).

²²⁷ In view of the material available in Iqbal's letters, statements and other works (poetic-prose), on the same topic it is hard to accept the finding that Iqbal had a "philosophy of according no or minimum role to the Hadith". The matter needs further elaboration and more detailed and comprehensive research. (Editor's Note).

Muslim mind and in immediate future no worthwhile departure from the present position is expected.²²⁸

²²⁸ The position which Iqbal accords to the Hadith as a source of law can be further understood by comprehending his views about the legal importance of the Quran. For details, see Muhammad Altaf Hussain Ahangar, "Iqbal and Qur'an: A Legal Perspective", *Iqbal Review*, Vol. 35, No. 3, pp. 1-22 (Oct. 1994).