# Shariat Bill:
# MEANING AND IMPLICATIONS A REJOINDER

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Dialogue is the very breath of democracy. It is only through discussion and dissent that opinions get crystalized in a civilised society. This is the process through which people can choose what is the best, keeping in view the other alternatives available. As the debate on the Shariat Bill is entering into a crucial phase, the *Dawn* has rendered a service by bringing into sharp focus the doubts, concerns and apprehensions that are agitating the minds of certain people in relation to the Shariat Bill. The present writer has strong reservations about some of the emotive observations made in the editorial, yet he thinks that the issues raised therein deserve serious consideration and frank discussion.

## Objections to the Shariat Bill

An analysis of the editorial reveals the following substantive issues :

1. Adoption of the Shariat Bill may significantly curtail the authority of the elected Parliament to legislate on socio-political issues, and as such downgrade its status as a sovereign law-making body.

2. The position of the judiciary would also be adversely affected as it would come under the 'overriding authority of the Shariat Court'.

3. As the Shariat Court is nominated by the Head of the State, as also the Islamic Ideology Council, a shift will take place in the balance of power in favour of the executive head of the state, to the detriment of the legislature and the federating units.

4. National unity is threatened by the bill as it is producing polarisation and divisiveness, particularly exposing the nation to risks of division on religious and sectarian lines. This threat becomes all the more serious as the Bill is based on the views of only one school of thought – 'a big flaw'.

5. As Constitution would no longer remain the supreme law of the country it is feared that the entire political system, the constitution, the legislature, the administration and allied systems and institutions may be thrown into utter chaos.

6. The scheme of things envisaged in the Shariat Bill would amount to a clear negation of the vision of the state as given by the Quaid-e-Azam and Allama Iqbal, who regarded the freely elected representatives of the people as the only rightful law-makers.

This is a fair summary of the case against the Shariat Bill and it would be worthwhile to examine each of the above points on merit.

**The Making of the Shariat Bill**

Before we respond to the above points we deem it essential to set the record straight about the contents of the Shariat Bill. We are constrained to submit that the learned editorial writer of the *Dawn* as well as the learned former

Chief Justice of the Supreme Court, who has been approvingly quoted in the editorial, have not carefully examined the Shariat Bill *in its historical sequence,* ignoring the latest version and basing some of their observations on earlier versions which are no longer relevant. The Shariat Bill was moved on 13th July, 1985 in the Senate by two Senators, Qazi Abdul Latif and Maulana Samiul Haq, both belonging to the Jamiat Ulama-i-Islam (JUI – Darkhwasti Group), the latter being its Secretary General. It was referred to the Standing Committee on Law and Parliamentary Affairs of the Senate which, despite brooding over the bill for over three months, could not give any report to the Senate, although the Rules of Business of the Senate lay down that ordinarily the report of the Standing Committee on a bill referred to it should be submitted within one month. The Senate in its meeting on 26th October 1985 refused to give further time to the Standing Committee and appointed, according to rules, a Select Committee to give its report within fifteen days. The Select Committee did submit its unanimous report alongwith a note of dissent from the then Minister for Religious Affairs who was not a member of the Senate. This Select Committee had members belonging to all shades of political opinion represented in the Senate. Alongwith the two sponsors of the Bill it had twelve other members, three representing the opposition including one from the Jamaat-e-Islami and the remaining nine belonging to the official group. Excepting the then Minister for Religious Affairs Mr. Maqbool Ahmad Khan, *all members unanimously produced the revised version of the Bill which is under consideration of the Senate* and *not* the original version on which some of the objections mentioned in the editorial are based e.g. the alleged objection that if a law is challenged in the Federal Shariat Court, the law shall remain suspended until the Shariat Court has given its verdict. Similarly the objection that "even a subordinate court can declare the

constitution or any part of it as being repugnant to Shariat and as such void and of no legal effect" is totally misconceived. Nowhere in the Shariat Bill, first version, or the revised version, as approved by the Select Committee, has this power been assigned to the subordinate courts. In fact it has been specifically provided that if the issue relates to the repugnancy of a law with the Quran and Sunnah it would be referred to the Federal Shariat Court which alone would have the power to adjudicate on this issue. This is a principle which has already been provided in the Constitution by Chapter 3.A, Article 203-B to 203-D and 203-GG and is not an innovation suggested by the Shariat Bill.

It may also be mentioned that the Islamic Ideology Council examined the Shariat Bill in June 1986 and suggested a number of substantive amendments to further improve the bill. A Committee of Ulema and lawyers was formed by the Muttaheda Shariat Mahaz to examine all these amendments and further revise the draft bill. This Committee had within it religious and legal experts belonging to all major schools of thought including the Deobandi school, the Brelvi school and the Ahle Hadith. On 30th August 1986, the Committee formulated its amendments unanimously and on 26th October 1986 these amendments were unanimously endorsed by a Convention held in Jamia Naeemiah, Lahore, which was attended by over ten thousand Ulema and legal experts. The amendments were presented by Maulana Samiul Haq and seconded by Qazi Abdul Latif the sponsors of the Shariat Bill in the Senate. All of these amendments were formally moved in the Senate to be incorporated in the Bill as submitted by the Select Committee. In all fairness it is submitted that any objection to the Bill should be based on the final version of the Bill as it is now under consideration before the Senate and not on any of its earlier versions.

**Shariat Bill: Its Real Meaning and Significance**

The Shariat Bill, in its final form, consists of seventeen clauses and a preamble. Clause 1 deals with short title and scope of the Bill, providing for its immediate introduction throughout Pakistan and excludes the personal laws of non-Muslims from its scope. Clause 2 deals with definitions and provides a revised definition of Shariah meaning "the Quran and Sunnah of the Prophet (peace be upon him)". There is no mention to any particular fiqh. The explanation to this clause makes it clear that in interpreting the injunctions of the Quran and Sunnah recourse shall be had to the following sources: (a) Sunnah of the Khulafa Rashideen; (b) Practice (Ta'amul) of the venerated Ahle Bait and the companions of the Prophet; (c) Ijma of the Ummah; (d) Opinions and expositions of recognised jurists (fuqaha-i-Islam). This shows the broad-minded and flexible approach adopted by the Muttaheda Shariat Mahaz, taking note of the sensitivities involved in the interpretation of the Shariat. Views expressed by *all* schools of thought would be kept in view by the legislature as well as the judiciary in interpreting the law derived from the Quran and Sunnah. This is the practice of the Islamic Ideology Council which has worked successfully for the last two decades. It deserves to be noted that specific reference to the practice of the venerated Ahle Bait and recourse to opinions of the Fuqaha, as against acceptance of a particular fiqh are significant. In view of this definition, every school of thought would have a fair chance of being heard and considered; the final decision would either by through consensus or majority view, as is the practice in all democratic societies.

Clause 3 establishes the supremacy of the Shariah on all laws, customs or usage and clause 4 and 5 lay down the mechanism through which this supremacy is to be established.

*Codification of laws shall continue through the legislative processes* and the judiciary shall ensure the enforcement of these laws. But, as the guardian of the Constitution, the Superior Courts shall also see that the Shariah remains a chief source of guidance. If the consistency of a law with the Quran and Sunnah is challenged, the said law would be referred to the Federal Shariat Court for decision. No other court, higher or subordinate, is envisaged to sit in judgement over Islamicity of a law. That is why the jurisdiction of Federal Shariat Court is required to be widened, which is proposed in clause 5 of the Bill. Clause 6 provides for judicial review in case of executive orders. Clause 7 lays down equality of all government officials before the law, including the head of the state. The remaining provisions are recommendatory and consequential so that the judiciary could be prepared to play its role effectively (clauses 10 and 11), Government officials respect the norms of the Quran and Sunnah (clause 13), information media assists in this process (clause 14), economic injustices and exploitation are checked (clause 15) and fundamental rights as given by the Shariah are enforced (clause 16).

**Why the Shariat Bill?**

The need for the Shariat Bill has arisen for three main reasons. First, there was a need to spell out, in clear terms, the principles of interpretation of the Quran and Sunnah, to enable the legislature as well as the judiciary to scrupulously follow the guidance provided by Islam. There is nothing new about it. These principles are accepted canons of interpretation and their inclusion would not only minimise the dangers of uninformed deviations but would also bring into operation the built-in-flexibility of the Islamic system to face the challenges of the contemporary world.

Secondly, while all the constitutions of Pakistan (1956 1962, 1973) had clearly laid down that 'no law shall be enacted which is repugnant to the injunctions of Islam' and that 'all existing laws shall be brought in conformity with the injunctions of Islam', nowhere was it provided that the Quran and Sunnah shall be the supreme law of the country and the chief source for legislation and policy-making. This was a major lacuna. The negative aspect was well taken care of but the positive dimension was never clearly spelled out except in the Objectives Resolution and the Directive Principles of State Policy, which were not justiciable. The Ninth Constitutional Amendment Bill, passed by the Senate, and now under consideration in the National Assembly makes first movement in that direction. The Shariat Bill further extends this process and tries to lay psoitive foundations for the enforcement of the Shariah.

Lastly, despite all the talk about Islamisation of laws and society, there does not exist a built-in mechanism for the enforcement of the Shariah. That is why all earlier constitutional provisions remained more or less decorative. In 1980 Federal Shariat Court was established to provide such a mechanism but it had very limited jurisdiction and a weak and ineffective infrastructure. Codification of Islamic laws and revision of existing laws has all along remained a pious hope. Even the work done by the Islamic Ideology Council (about a dozen fresh drafts of laws and revision of some two hundred existing laws), the Federal Shariat Court (suo moto or otherwise review of over fifty existing laws), and the Federal Law Commission remained burried in the pending files of the Ministries of Justice and Religious Affairs. Islamic laws would not provide relief to the people in their every day life. It was, therefore, needed that some mechanism should be devised to inaugurate the process of *implementation* of the Islamic laws. And the most viable mechanism that could

be thought of in the present circumstances is to involve the judiciary in this process. This would provide the common man with a mechanism to seek relief and may also galvanise the process of codification of Islamic laws which has somewhat stagnated over the years. Alongwith codification of Islamic laws, it is hoped it will also expedite the revision of existing laws from Islamic perspective. Judiciary is a responsible organ of the state. The experience of the Federal Shariat Court over the last eight years, despite its conceptual and structural weaknesses, is hope-inspiring. It has given some historical judgements and it does not suffer from mounting stocks of pending cases. Widening and deepening of this experience bears great promise for the future. And that is what the Shariat Bill proposes to do.

**Devaluation of the Parliament**

Would this mean suppression of the Parliament, demotion of its status and transfer of law-making authority from the legislature to the Shariat Court? The objection seems to be based on a host of misconceptions.

The basic difference between an Islamic polity and a secular state lies in the fact that Islam affirms the sovereignty of Allah and the supremacy of the Quran and the Sunnah. Not only the Parliament, *all organs of an Islamic society* and *all members of an Islamic community* are committed to this *grundnorm.* There freedom exists within the framework of this higher law. This is the foundation on which Pakistan is based. Allama Iqbal, while challenging the secular approach to life, affirms that "the Muslim, on the other hand, is in possession of these ultimate ideas on the basis of a revelation, which speaking from the inmost depths of life, internalises its own apparent externality." He very succinctly

points out its real significance in the famous Presidential Address of 1930 at Allahabad, in which the idea of Pakistan was broached by the Allama :

> "Its immediate outcome is the fundamentals of a polity with implicit legal concepts whose civic significance cannot be belittled merely because their origin is revelational. The religious ideal of Islam therefore, is organically related to the social order which it created. The rejection of one will eventually involve the rejection of the other." *(Foundations of Pakistan,* vol. II, ed. by Sharifuddin Pirzada, p. 157)

That is why the Quaid-i-Azam put it in very clear terms in a speech in November 1945 that :

> "The Muslims demand Pakistan, *where they could rule according to their own code of life* and according to their own cultural growth, traditions and *Islamic laws* . . . . Our religion, our culture and our Islamic ideals are our driving force to achieve our independence." *(Some Recent Speeches and Writings of Mr. Jinnah,* Lahore).

The Objectives Resolution captures the spirit of this unique Islamic approach when it says "sovereignty over the entire Universe belongs to Allah Almighty alone and the authority which He has delegated to the state of Pakistan, through its people for being exercised *within the limits prescribed by Him* is a sacred trust" and that "wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah."

The higher judiciary of Pakistan has by and large upheld this position. In the famous *Asma Jilani case* the learned Chief Justice of the Supreme Court observed: "In any event, if a grundnorm is necessary, Pakistan need not have to look to the Western legal theorists to discover it. Pakistan's own grundnorm is enshrined in its own doctrine that the legal sovereignty over the entire Universe belongs to Almighty Allah alone and the authority exercisable by the people within the limits prescribed by Him is a sacred trust. *This is an immutable and unalterable norm which was clearly accepted in the Objectives Resolution* passed by the Constitutional Assembly of Pakistan on the 7th March 1949. This has not been abrogated by anone so far nor has this been departed or deviated from by any regime, military or civil. *Indeed it cannot be, for it is one of the fundamental principles enshrined in the Holy Quran* . . . . . it is under this system that the Government becomes a Government of laws and not of man, for no one is above the law". The principle was reaffirmed by the Supreme Court in its judgement in *Nusrat Bhutto Vs. State* (1977) :

> "These considerations assume special importance in an Ideological State like Pakistan, which was brought into being as a result of the demand of the Muslims of the Indo-Pakistan sub-continent for the establishment of a homeland in which they could order their lives in accordance with the teachings of the Holy Quran and Sunnah . . . . In other words, the birth of Pakistan is grounded both in ideology and legality. Accordingly, a theory about law which seeks to exclude these considerations cannot be made the binding rule of decision in the courts of this country."

These are the limits within which all organs of the state have to operate, whether it be the legislature or the execu-

being repugnant to the Quran and Sunnah. But, in principle, this power too is not an innovation of the Shariat Bill. It is already enjoyed by the Federal Shariat Court for the last eight years and this has not been construed to be an encroachment on the powers of the legislature. In a democratic society neither the legislature, nor the judiciary is sovereign; both inter-act upon each other to fulfil the ideals of the society and the will of the people. The absolute sovereignty of a Parliament is nothing more than a fiction. Even the British Parliament has its limitations. The constitution of the United States of America is based on the principle of division of power and a system of checks and balances. The supreme court of the United States acts as the guardian of the Constitution. It is through judicial review of legislation that the supremacy of the constitution is maintained. "It is maintained", writes Mr. A.K. Brohi, in his work on *Fundamental Law of Pakistan,* "by the Courts in the sense that they interpret and apply the supreme law of the land and in the event of a law made by the Congress coming in conflict with the Constitution, it is the former that is declared by them to be null and void, that is as being of no legal effect whatever" *(Fundamental Law of Pakistan,* p. 26). This does not make the courts 'super-legislators'. Nor has the U.S. Government been turned into a 'government by the Judges'. Instead, this acts as a check on the legislature and helps in fulfilling the goals of the society. During the last two hundred years the judiciary has invalidated the provisions of some 80 laws and, through this process, has not only protected the constitution but has also discouraged the Congress from deviating from the higher law on which the polity is based. Burnes and Peltason, commenting on this role, observe in *Government by the People,* that "generally speaking Americans have never been willing to put full trust in the majority. An independent judiciary with the power of

judicial review has been the major institutional sign of this feear of unchecked legislature and popular majorities."

Other countries have devised different institutions to serve similar objectives. In the French Constitution of the Fifth Republic (promulgated in October 1958) the institution of "the Constitutional Council" has been provided to perform the function, inter-alia, of the guardian of the Constitution. Article 61 provides that "organic laws, before their promulgation and regulations of the parliamentary assemblies, before they come into application, must be submitted to the Constitutional Council, which shall rule on their constitutionality". To the same end, laws may be submitted to the Constitutional Council, before their promulgation, by the President of the Republic, the Premier, the President of the National Assembly, the President of the Senate, etc. Article 62 lays down that "A provision declared unconstitutional may not be promulgated or implemented. The decisions of the Constitutional Council may not be appealed to any jurisdiction whatsoever. They must be recognised by the public powers and by all administrative and judicial authorities."

This is an accepted practice even in secular democracies. There is no justification in suggesting that this would amount to a demotion of the elected representatives of the people or of the parliament as such. Amongst the Muslim countries Egypt has provided for a "Supreme Constitutional Court" having specific jurisdiction over "judicial review of the constitutionality of laws and regulations" with the power to render "binding interpretation of laws or decree laws." The Iranian constitution of 1906 contained provisions for a 'Council of Jurists' to vouchsafe consistency of legislation with the true Ja'fariya doctrine (Articles 1 and 2). In the present Constitution of the Islamic Republic of Iran the in-

stitutions of *Shurai Nigehban* (Article 91) and of the *Vilayet-e-Faqih* (Chapter 8, Articles 107-110) play a similar role in a much more effective manner. Nothing on that pattern is being suggested by the Shariat Bill. It only authorises the Federal Shariat Court to examine the Islamicity of laws. The Federal Shariat Court is an established judicial institution, presently consisting of eight judges most of whom are taken from the higher judiciary. A maximum of three Ulema can be appointed as judges of the Federal Shariat Court. Judgements of this court are by the majority view and appealable before a Shariat Bench of the Supreme Court, on which a maximum of two Ulema can sit. The constitution of the Federal Shariat Court can be further improved by removing certain anomalies which make for possibilities of executive interference with its working. These weaknesses are not inherent in the concept of judicial review. The Shariat Bill envisages a strong Federal Shariat Court independent of the control or manipulation of the executive.

**Shariat Court Vs. Judiciary**

The apprehension that the position of the Judiciary would also be adversely affected as it would come under the "overriding authority of the Shariat Court' is also totally unfounded. The Federal Shariat Court is an integral part of the judicial structure of the country. Judges move from the high courts to the Federal Shariat Court and vice versa. In the Supreme Court the permanent judges of the Supreme Court sit on the Shariah Bench. There is no possibility of one overriding the other.

Judiciary will function as it is functioning today, with the major difference that a systematic effort shall be made to improve the Islamic knowledge of the judicial authorities. Whenever the question of repugnancy or otherwise of a law,

arises, such a law would be referred to the Federal Shariat Court, as an expert forum within the judiciary to decide the isse. Its decision is appealable in the Supreme Court, whose judgement would be final. This is the procedure on which judiciary all over the world operates. There is no reason to apprehend any conflict or rivalry between these organs of the judiciary. It is, however, hoped that with the passage of time and as a result of the change in the system of judicial education and training, there would be greater induction of judges in the future who are more knowledgable about Islam and in that scenario over a period of time the function of the Federal Shariat Court may be taken over by the four High Courts of the country. At that stage perhaps the need for a separate Federal Shariat Court may cease to exist. That may be the ideal.

We have already suggested that some of the weaknesses in the present structure of the Federal Shariat Court deserve to be rectified as early as possible. The powers of the President relating to the nomination of the judges of the Federal Shariat Court, their transfer or assigning to them other responsibilities, etc. are unjustifiable, Islamically or otherwise. They violate the accepted principles of independence of the judiciary. These weaknesses must be rectified and should not be used as an argument against the system. Federal Shariat Court is as much a symbol of the unity and integrity of the Federation as the Supreme Court of the country. It must be as much protected from the control or interference of the executive as the rest of the judiciary.

**Religious and Sectarian Divisiveness**

It has been suggested that the Shariat Bill is threatening national unity and is generating religious divisiveness and sectarian animosities. Nothing can be farther from the

truth. For the time being we do not want to raise the question of political, economic and other factors dividing the people and how far such divisions have been used to veto legislation or policy formation on issues under contention. As has been suggested earlier, the definition of Shriah as the Quran and Sunnah and the principles of interpretation given in explanation represent *a serious effort to unite the Muslims.* First such effort was made in 1951 when the twenty two basic principles of Islamic State were formulated by Ulema representing all schools of thought. Clause 2 of the Shariat Bill is founded on the same principle. Muslims have to squarely face the fact that there have been genuine differences between the Muslim jurists on a number of issues. But these differences have also been a source of strength, because they have spelled out the spectrum of alternatives available to the Muslim society, and in a way, define the area of flexibility within the system. The openness shown in the Shariat Bill is remarkable. It is not wedded to any particular school of fiqh, despite the fact that in matters of public law the will of the majority has to be respected. Reference to the Ta'amul of Ahle Bait and the opinion of their a'imma (authorities) should go to assure the Shi'a brothers that their viewpoint would be carefully considered. Scrupulous avoidance of mention to a particular fiqh and openness to the views and opinions of *all* Fuqaha should assure the Ahle Hadith that no narrow fiqhi approach is to be pursued. Reference to these principles of interpretation makes it clear that there would not be any room for the unbridled liberalism that has been promoted by the Western orientalists and some of their local counterparts, which twists and destroys the whole divine scheme for socio-political reform. The Muslims of Pakistan want to face the challenge of modernity without disrupting the equilibrium on which the Islamic system rests. Happy balance between demands of continuity and change is the target. That is what Allama Iqbal stood for.

It deserves to be noted that some of the religious scholars have criticised the Shariat Bill for NOT mentioning the fiqh Hanafi. This is proof enough to show that the approach of the Shariat Bill is not conditioned by anyone school. Its approach has appeal for all schools of thought. Every effort shall be made to seek consensus or near-consensus on new issues. But if that is not reached the view of the majority would have to be accepted and dialogue and discussion to continue. This is the only way to achieve operational unity, without sacrificing efficiency. Search for consensus and tolerance of differences is the most effective way to face the challenges of the age. Would it not be a tragedy that Muslims continue to follow law made by *Taghoot* (those who have rebelled against God and His guidance) because they cannot agree to follow one or the other interpretation of law revealed by Allah and His prophet? After all every school is trying to derive inspiration from the same sources. Most of the differences between the schools do not relate to matter of *Kufr* or *Zalalah* but about what is preferable.

Some religious parties have opposed the Shariat Bill, but primarily on political grounds. They claim that they do not recognize the present Parliament and the political system which has produced it and as such the question of seeking the establishment of the Shariah under this system does not arise. This is a lame excuse. We all are living under the system. In matters relating to law, economy, education and what not they go by the system. Some of the critics do not even hesitate to derive some of the benefits the system yields. They are availing from the services of the state. They would be prepared to hold fresh elections under the aegis of the present system and its rulers. But they are unhappy if supremacy of the Shariah is sought through the system. Perhaps it is too much to expect from them to see the contradiction

this position involves.

As far as the major Islamic schools of the country are concerned, the Shariat Bill has already enabled them to come closer to each other. What began as a Bill moved by a few persons, has become the rellying point for people belonging to all shades of religious and political opinion. The Deobandi, the Brelvi, the Ahle Hadith and other Ulema and the Muslim masses under their leadership are engaged in a mass movement in support of the Bill. When the Senate publicised the Shariat Bill fol public opinion over 1.6 million people supported it enthusiastically. Only a few thousand, not more than .01 percent, expressed limited reservations about the Bill. Is there an example of greater public support for any Bill in the history of Pakistan?

**Towards Institutional Chaos**

It has also been suggested that the Shariat Bill may lead to constitutional collapse and institutional chaos. These apprehensions are totally unfounded. The judiciary of the country is as responsible an institution as any other. The role of judiciary is establishing healthy traditions and in protecting the institutions of the society is far superior to that of many other organs, which arrogate to themselves the role of guardians of stability. In fact it is they who have been responsible for producing political chaos and frequent up-turns of the political system and spells of military interventions in politics. The Federal Shariat Court is in existence for the last eight years and has played its role carefully and cautiously. There is no reason to believe that it will become reckless with the passage of the Shariat Bill. These apprehensions are phantoms of imagination, with no track with reality. They amount to distrust over the judiciary, for which there is no justification. The record of the judiciary shows that it

has by and large successfully tried to save the country from chaos and not allowed it to drift in that direction, even at the cost of making certain concessions. One can have genuine reservations about certain aspects of the judgement of Justice Munir in the Tamizuddin Khan case, and the present writer shares those reservations, but then it was the Federal Court which tried to put the country back to the constitutional path, resulting in the advent of the Constitution of 1956. They way the Supreme Court tried to grapple with the problems created by imposition of Martial Law in the Dossa case, the Asma Jilani case, and the Nusrat Bhutto case are instances in view. Even the resignation of the Chief Justice of the Supreme Court and of a number of judges of the Supreme and the High Courts on the imposition of the Provisional Constitution Order placed on record the role of judiciary in bringing the country towards rule of law. In the face of this record greater role of the judiciary is bound to minimise the country from political deviations it has otherwise been subjected to and strengthen the principle of checks and balances.

It also deserves to be noted that some of the institutions and traditions of the colonial period deserve to be changed. They have survived so long because Shariah was not allowed to play any significant role in re-fashioning the society. If supremacy of the Shariah is really established it will initiate a process of real healthy change in the society. It is the vested interests who should be afraid of this process, not the common man who is longing for this change. It is only through the implementation of the Shariah that a truely just and clean society can be established. The sooner we move in that direction, the better. The Shariat Bill ensures a gradual and law-governed process for this much coveted change.

**Iqbal and the Sharit Bill**

Reference has also been made to the vision of the Quaid and of Allama Iqbal. We have already shown that both of them wanted to establish a truely Islamic state in Pakistan, fortified by the Islamic laws, enabling the Muslims to establish a society based on the precepts of the Quran and Sunnah. It is unfortunate that during the last forty years we have moved away from the vision of the Allama and the Quaid. The Shariat Bill represents an effort to bring Pakistan closer to its original Islamic vision. Islam believes that power is a trust to be used by the elected representatives of the people, within the limits prescribed by the Quran and Sunnah. Shariat Bill aims at translating this into reality. Parliament would be the law-making body. It would be advised by the Islamic Ideology Council and the Federal Shariat Court. As representative of the people, the Parliament is accountable before the people. And if people are committed to Islam, legislature and judiciary both should help each other in fulfilling this role. This is what Iqbal had visualised. He wanted the elected assemblies to play a more active role in legislating Islamic laws but he was also worried about the ideological competence of many a legislator. Iqbal definitely realised that *Shurai Ijtihad* is the need of the hour but it is incorrect to suggest that Iqbal thought that assemblies elected on the pattern of secular democracies can perform this function. In the *Reconstruction of Religious Thought in Islam,* he said:

> "We heartily welcome the liberal movement in Modern Islam. But it must also be admitted that the appearance of liberal ideas in Islam constitutes also the most critical moment in the history of Islam. *Liberalism has a tendency to act as a form of disintegration."* (p. 169).

Discussing the need for a balance between continuity and change, Iqbal says in the Reconstruction :

> "Only we must not forget that life is not change, pure and simple. It has within it elements of conservation also. . . life moves with the weight of its own past on its back, and that in any view of social change the value and function of the forces of conservatism cannot be lost sight of. It is withthis organic insight into the essential teachings of the Quran that Modern Rationalism ought to approach our existing institutions. No people can afford to reject their past entirely for it is their past that has made their personal identity. And in a society like Islam the problem of a revision of old institutions becomes still more delicate, and the responsibility of the reformer assumes a far more serious aspect. . . In the evolution of such a society even the immutability of socially harmless rules relating to eating and drinking, purity and impurity, has a life - value of its own, in as much as it tends to give such society a specific inwardness, and further secures that internal and external uniformity which counteracts the forces of hetrogenuity always latent in a society of a composite character. The critic of these institutions must therefore try to secure before he undertakes to handle them, a clear insight with the ultimate significance of the social experiment embodied in Islam." (p. 166-167).

While emphasising the role of legislative assemblies Iqbal clearly asserts that :

> "The *Ulema* should form a vital part of a Muslim legislative Assembly helping and guiding free dis-

> cussion on questions of law. The only effective remedy for the possibilities of erroneous interpretations is to reform the present system of legal education in Mohammadan countries, to extend its sphere and to combine it with an intelligent study of modern jurisprudence." *(Reconstruction,* p. 176)

Later in his Presidential Address of 1932, he said:

> "I suggest the formation of an Assembly of Ulema which must include Muslim Lawyers who have received education in modern jurisprudence. The idea is to protect, expand, and, if necessary, reinterpret the law of Islam in the light of modern conditions, while keeping close to the spirit embodied in its fundamental principles. This body must receive constitutional recognition so that no bill affecting the personal law of Muslims may be put on the legislative envil before it has passed through the crucible of this Assembly" *(Speeches and Statements of Iqbal,* p. 60)

This is what Iqbal thought in 1932, in British India. Is it too difficult to see that the scheme envisaged in the Pakistan Constitution coupled with the changes suggested in the Shariat Bill bring things closer to the real vision of Iqbal, provided we are interested in the whole of Iqbal, and are not out to use parts of his thought out of context to support some pre-conceived positions?

**People : The Final Court of Appeal**

In a democratic society the people constitute the final court of appeal. There is no doubt that they want the supremacy of the Shariah to be actually established and constitu-

tionally guaranteed. Mobilisation of the public opinion must not be dubbed as 'forcing the Parliament to act under duress'. If articulation of public opinion constitutes pressure and blackmail then democracy has no future in the country. Use of violence to advance ones views is the anti-thesis of democracy, not mobilisation of public opinion and its articulation through peaceful constitutional means. It was the force of public opinion that led to the establishment of Pakistan. The Quaid pilotted the movement on constitutional lines. This is the verybreath and soul of democracy. If people have a right to hold mass rallies to demand fresh elections and this is not blackmail or duress, why mobilisation of public opinion in favour of the enforcement of the Shariah becomes an act of duress. The mass movement of 1977 spelled the fall of Bhutto in Pakistan in the same manner as the mass movement of 1978-79 led to the fall of the Shah in Iran. The mass movement of the American people forced the U.S. Government to change its policy on Vietnam. Was that duress? If people are the sovereign, it is their will that must be found out and respected. Public rallies, mass meetings, resolutions and representations are one way to express their verdict.

There are other ways of assessing the pulse of the people. In the Swiss and the French systems refrendum is one such method. Even the British resorted to it when they wanted to assess the popular will about joining the ECC. Holding elections on a particular issue is another accepted means to seek popular mandate. If the Government has any doubt about the will of the people on this issue, the *Dawn* has come up with a very useful suggestion: "reference to the real sovereign, the people of Pakistan". There can be two constitutional methods for the same, and anyone of them would be acceptable to the supporters of the Shariat Bill. If the Parliament, where the Muslim League enjoys absolute

majority, is not willing to adopt the Shariat Bill, let there be new elections on this issue. Under Article 58 of the Constitution the Prime Minister has the right to advice the dissolution of the National Assembly to hold fresh elections. If the Government is in real doubt about the peoples' verdict on this Bill, let it give them a fresh choice. Let the Shariat Bill be the basis for new mandate from the people acquired through fresh elections. Le it be a clear contest between those who support the Bill and those who oppose it. Ideologically speaking this may also have great educational value.

There exists a second choice as well. The Constitution provides for refrendum on any matter of national importance. Under Article 48(6), the President can, in his discretion, or on the advice of the Prime Minister, hold a refrendum. If the Prime Minister does not want to go to the polls, the other method to seek the verdict of the people is to go for a refrendum on this issue. Give the people the choice to say 'Yes' or 'No' to the Bill. Is the Prime Minister prepared to face the people and accept their verdict? This should be acceptable to all, the supporters as well as the critics of the Bill.

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