IQBAL'S

PHILOSOPHY OF LAW

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My Saintly Father
Hazrat Mian Fazal Hussain
(May Allah bless his soul)
whom I owe an endless quest for Truth
Preface

Iqbal is pre-eminently a religio-legal philosopher. His legal thought is grounded philosophically in his characteristic doctrine of ego or self which he specifically terms as Khudi and which gives a general conception of human life, or a view of human personality and society. Religiously, it is anchored in the Islamic tradition, the apex of which is found in its revolutionary theory of Ijtihad that he rightly regards as the principle of movement in the structure of Islam. It is to this legal aspect of Iqbal's thought that the present study is directed.

The study begins with an introductory analysis of the problem of law as viewed by Iqbal. It gives also a short account of why and how Iqbal was interested in law. The problem of human life is the harmonization of the apparently disharmonious. The riddle of permanence and change has baffled the human mind ever since the beginning of his intellectual career. Iqbal seeks the reconciliation of the categories of permanence and change which, according to him, is best ensured in the Islamic conception.

The study proceeds to a critical discussion of the question of law from a broader philosophical, particularly Western, perspective. This has been done (Chapter Two) in consonance with Iqbal's own view that the treatment of Islamic law should be combined with an intelligent study of modern jurisprudence. It has been particularly noted that there are
inherent unending tensions and irreconcilable conflicts in Western legal philosophy. Recently some Western writers have frankly admitted the defeat of their legal philosophy and have started looking for a philosophy of life that may resolve ultimately the riddles of their legal theory.

The author is of the conviction that Iqbal's philosophy of ego is such a philosophy of life as is much needed by modern man today. Iqbal's philosophy of ego has been discussed in the third chapter, and the place of law determined as being the fundamental stage in the development of human personality and the constitution of an ideal society.

The ideal society, as envisaged by Iqbal, is that provided for in the Islamic tradition. Islam, of course, is not an otherworldly creed. It takes life as an organic whole and tries to build up an ideal state as a spiritual democracy in which law assumes special significance. Law has since been closely interlinked with political theory. An Attempt has been made (Chapter IV) to analyze the nature of Islamic state and to highlight the problem of Law and legislation within Islamic political and constitutional framework. This brings us to a detailed discussion of the nature and dynamics of Islamic law.

Since, in Iqbal's thought, religion is indispensable for man as only Divine norms can impart meaning to human life, Law with him, is by its necessary implication, Shariah (the law of Islam). Hence an attempt has
been made to study the origin and development of the concept of *Shariah* (Chapter V). We have not socked much in technical details and have confined ourselves to only a philosophical analysis of the nature and dynamics of Islamic Law with particular reference to Iqbal.

Change constitutes the major problem of legal theory. The West has recently been quite alive to the need of a theory of law that may reconcile stability with change. Islam, as Iqbal tells us, reconciles the categories of permanence and change in a befitting manner. The question, however, assumes special significance in view of the fact that Islamic Law is essentially religious and traditional in character. The question is, therefore, not so simple as it at first sight appears. The potential difficulty is how can a law, that is of Divine origin and claims eternal validity be susceptible of change. The problem is two fold: theoretical as well as methodological. We have first discussed the problem from an ideological perspective (Chapter VI)

Our investigation has inevitably led us to endorse fully Iqbal's conclusion that Islamic law is not a lifeless mechanism pure and simple. It is a dynamic institution with an inbuilt mechanics or a modality of change. This is known as *Ijtihad*, the unique principle which keeps Islamic law and society intensively as well as extensively mobile.

Despite the conservative disclaimer, the problem of *Ijtihad* has been persistently taken up by audacious thinkers in both the medieval and
contemporary history of Islam. Iqbal, being a leading Muslim intellectual and distinctively an original thinker, in the words of his own teacher Thomas Arnold, (The Faith of Islam p. 7) in modern times has studied the problem with an added vigour and presented fresh insights into the dynamics of Islamic law. He rejects vehemently Taqlid (blind imitation) and fights zestfully for the revivification of the institution of Ijihadi as the modality of change in the legal system of Islam. That forms the subject matter of our seventh chapter.

Iqbal’s theory has however been subjected to rigorous criticism. Particularly, his innovative theory of Ijma (i.e. Ijihadi through Parliament) has been very strongly objected to on both theoretical and practical grounds. Part of this criticism has already been discussed but one major objection viz. Iqbal gives an impression that even the Quranic injunctions can be changed through Ijihadi is reserved for a separate investigation. Besides critical evaluation we have given our own suggestions and conclusion that may be useful in the translation of Iqbal’s Ideas into reality.

The value of constructive criticism cannot be gainsaid. As Iqbal himself said in his Preface to the Reconstruction of Religious Thought in Islam: “There is no such thing as finality in philosophical thinking. As knowledge advances and fresh avenues of thought are opened, other views and probably sounder views than those set forth in these lectures
are possible". Of course, a critical appreciation of Iqbal's thought can only make it relevant to the present realities. That underlies the whole tenor of the present argument.

M.T.S.
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The Problem of Law in Iqbal's View: An Introductory Analysis

The problem of human civilization is the harmonization of the apparently disharmonious. The riddle of permanence and change has baffled the human mind since the beginning of recorded thought. The Eleatics of the old held permanence to be real whereas the diametrically opposed philosopher Heraclitus, believed in the reality of change saying that all is flux. The problem has particularly dominated the legal thinking since the emergence of the Sophists and has, so far like a pendulum swung forward or backward. The Stoics after Socrates believed in the idea of an eternal natural law as the ratio legis of the civil law. The natural law tradition continued to be dominating the legal scene till the advent of legal positivism which has bereft law of all moral and metaphysical considerations and with its exclusive emphasis on logical analysis deprived it of any ultimate rationale.

Law has traditionally been regarded as an instrument of preserving order in society which gives stability to it but it has now been taken to be a vehicle of change as well. Law is the quintessence of human civilization; law exists in and for organized society. Law is the most vital
element in the socio-cultural dynamics of a nation. Law as a body is not the end of life but a means to facilitate the process of living. Certainly law cannot be the supreme principle if we believe that it may be changed with the will of the people to make it more in harmony with their vital needs. But not all rules are to be necessarily changed. Some of the rules of the hygiene laid down by Hippocrates are still applicable today why not some legal rules. Granted that law like every phase of human life changes with time, it does not follow that such changes are devoid of historical continuity. We do not lose our individual identity because we grow older, and sometimes sadder and wiser.

This has given rise to many theories. So far as order is concerned, legal theories are inclined to stress stability rather than change. Savigny's Historical school opposes legal changes. For this school, the task of a jurist and a legislator is to verify and promote existing legal customs. The function of law is necessarily to stabilize, not to be an agent of progress. Analytical positivism by its emphasis on logic and obedience to written law tends to regard stability and certainty as the paramount object of legal interpretation. On the other hand, all utilitarian and sociological theories tend to emphasize the changing content of law because they see it against its social background and the needs of life. The ways to attain pleasure and avoid pain change with
social circumstances, so the law must change with them. Indeed, the emphasis of legal scholarship since the French Revolution has been predominately on the historical note, that is, on the fact that law changes and, therefore, there cannot be any one set of rules, valid for all times and for all societies.

The legal system, according to modern insight, changes according to varying social needs. Law is thus considered to be in flux which is determined merely by social facts that are always changing. Western society is, therefore, in a state of crisis which is proved by the fact that sociology has directed its efforts to organize society on stable basis. As According to Dean Pound: “Law must be stable; yet it cannot stand still.” Hence all thinking about law has struggled to reconcile conflicting demands of the need of stability and of the need of change1. As the celebrated American judge Cordozo says: “The mystery of change and motion still vexes the minds of men as it baffled the Eleatics of old in the beginning of recorded Thought. I make no pretense of having given you the key that will solve the riddle, the larger and deeper principle that will harmonize two precepts which on their face may seem to conflict, and thus to result in an antimony. I can only warn you that those who heed the one without the other will be worshipping false gods and leading their followers astray. The victory is not for the partisans of an inflexible logic
nor yet for the levellers of all rules and all precedents, but the victory is for those who shall know how to fuse these two tendencies together in adaptation to an end as yet imperfectly discerned.² In his epoch-making words:

The Law, like the traveller, must be ready for the narrow. It must have a principle of growth.³

Muhammad Iqbal,⁴ the major contemporary Muslim thinker of vast philosophical culture has had an acute perception of the problem and studied it particularly from the perspective of an Islamic civilization. In the opening sentence of his historic lecture on "The Principle of Movement in the Structure of Islam", Iqbal has made the pertinent observation. As a cultural movement, Islam rejects the old static view of the Universe and reaches a dynamic view.⁵

"The ultimate spiritual basis of all life, as conceived by Islam", he continues, "is eternal and reveals itself in variety and change. A society based on much a conception of reality, must reconcile in its life the categories of permanence and change. It must possess eternal principles to regulate its collective life for the eternal gives us a foothold in the world of perpetual change. But the eternal principles when they are understood to exclude all possibilities of change which, according to the
Quran, is one of the greatest, 'signs' of God, tend to immobilize what is essentially mobile in its nature. The failure of Europe in political and social science illustrates the former principle, the immobility of Islam during the last 500 years illustrates the latter.  

There is no denying the fact that the men, individuals as well as nations, make their own fate according to their understanding of the nature of change in phenomena and the laws of the dynamics of human society. Iqbal's thought was the fulfillment of the urge in our national life to seize this fact i.e. the fact of change. It mainly was directed to create in ourselves the capacity to meet the challenge of our times. The essential mental attitude that the Quran creates in its followers is seeking after the knowledge of natural phenomena through sense perception and the recognition of the great fact of change both of physical phenomena and of social forms of humanity. "The Quran opens our eyes to the great fact of change, through the apprehension and control of which alone it is possible to build a durable civilization".  

The Quran has no doubt dynamic outlook on life and as such it cannot be inimical to the idea of evolution. Only we should not forget, Iqbal truly reminds us, that life is not change, pure and simple. It has within it elements of conservation also. Life moves forward and never comes back. But it moves with the load of its past. It thus keeps within
its fold the categories of permanence and change. Connection with past gives you, your sense of identity and a sense of direction. But for keeping pace with the present, change and adaptability within the framework of identity and the historical past becomes necessary.  

Islam therefore tries to bring about a confluence between permanence and change. Change and dynamism thus is the very stuff of which social patterns are made. Iqbal is, no doubt, assured of the dynamic value of human nature. The possibility of change, he points out is the greatest asset of man in its present surroundings. To declare of anything that it changes does not commit one to the view that everything about it changes or that it has no enduring features. The ideas of permanent and general attributes of man is certainly valid. There has been the familiar tendency to claim the old man’s blessing for one’s own conception of things. Even a Marxist like Norman Geras does not deny that there are some constant attributes of a human nature. Islam therefore tries to reconcile the categories of permanence and change it must possesses eternal principles to regulate its collective life and also a principle to ensure movement in its structure. The principle of movement in the structure of Islam is known as *Ijtihad*.

There is no denying the fact that Islamic Law has profoundly influenced the life, culture and politics of its adherents especially in
those societies which are overwhelmingly of a single religious persuasion. It can still continue to exert influence in various forms in pluralistic societies of the modern world. The question is if it can cope with and counter successfully the onslaught of the modern pluralism and secularism as a result of continuing Western influence. Change has no doubt occurred in the socio-political milieu in the contemporary world of Islam. With the rise of democratic institutions under the impact of the West, a new political set-up is in the making which has radically changed the thought patterns and social behaviour of present generation. Nobody can take back the wheel of history. The problem, therefore, is how to cope with the present situation should we accept on the face of it and maintain status quo or try to effect change into it. Law then can only be the instrumentality of change. But, law as it was practised centuries ago, under different socio-economic and ethico-cultural set-up can not be enforced as it is, in the contemporary times. The need to adjust it to the changing circumstances can hardly be denied. It is to the fulfillment of this need that Iqbal has diverted over attention.

Iqbal highlighted the need for the reconstruction of Islamic Law. Iqbal has advocated the adaption of Islamic Law to modern conditions. Iqbal, therefore, like his other Muslim contemporaries, speaks persuasively for comprehensive reform in the Law and in the social order
enetaully. By preaching the need to relate theories to fact, he helps to build the law of Islam on the foundation of social need. Ands this was certainly not in contradiction to the original Islamic legal theory as adumbrated in the fundamental sources of Islamic Law, i.e., the Quran and the Sunnah and as manifested in the legal history of Islam. In view of the contemporary changing scenario after the emergence of the republican states, Iqbal considered it indispensable to rethink the law of Islam with a view to enabling ourselves to cope with the new challenge. That is why he devoted a large part of his life to and put his maximum time and energy on the study of this problem.

As a legal theorist the main question before Iqbal is to determine if Islamic law is perfect and for all times, or if it admits of social change. The question before Iqbal in other words is if Islamic Law is external and thus immutable or is it susceptible to change. The question is, of course, not a new one and not only restricted to Iqbal. Throughout the annals of history the Muslim scholars have confronted and discussed this problem and presented their own solutions and illuminating views. The classical controversy before the protagonists of Istihsan and Istislah, on the one hand, and the traditionalists on the other, bears testimony to the fact.

The problem has assumed special significance in modern times under the onslaught of western civilization. Not only Iqbal but almost all
notable contemporary Muslim thinkers devoted their time and energy toward the elucidation of the concept and solution of the problem. Iqbal has not been oblivious of this global phenomenon. Being a leading thinker of vast philosophical culture, he had however felt greater responsibility in highlighting the need and importance and formulating philosophically the theory of Ijtihad which might make it more presentable and assimilable to the modern Muslim mind. Iqbal presented a philosophically more sound theory of Ijtihad which is in the opinion of the present writer an important landmark in contemporary legal history. Iqbal has been supremely interested in the idea of Ijtihad in the law of Islam and thereby in the entire methodology of Muslim jurisprudence since the beginning of his intellectual career. He wrote as far back is 1904 in his celebrated article “Qanun-i-indagi”, published in the illustrious magazine of Makhzan under the editorship of Sir Abdul Qadir:

“If we contemplate on the present situation we will come to the conclusion that as, in order to support the fundamentals of religion, we need a new theology similarly we need great jurist who must be able not only to codify Islamic law on a modern pattern but he should also be capable of extending these principles, by his power of imagination to cover all the possible situations of the present day social needs. As far as
I know there is no one such single jurist born yet in the Islamic world. Considering the significance and volume of the work it appears that this requires definitely more than one mind.13

It was this perception that led Iqbal to propounding of theory of *lfma* (i.e., Collective *jihād* through Parliament). In modern times, nobody can deny the creative and reforming work of the Parliament. Iqbal took into account the contemporary social setting and legal significance of parliament and presented his innovative theory of *lfma* which, it is said, is contrary to Islamic historical experience. Iqbal, however tries to impress upon the phenomenal need and importance of Parliamentary Consensus in modern times and thereby wants to blaze new path of legal and political discovery. Truly he says:

To insist on sticking to old ways

and fear adopting a new mode of life;

is the real gordian knot 15

in the life of nations.
The Rationale of Law: A Critique of Western Jurisprudence

What is Law? is a question which man has confronted from the very dawn of civilization and whose clear and precise answer has evaded his grip ever since. Law presents, of course, more difficulties than other complexes of social relations because its subject matter, is nothing less than the whole range of human life. The attempt to define "law" or analyze the concept of law is in a sense to specify its essence, or search for the set of qualities that are necessary and sufficient to characterize law. It is, however, sometimes maintained that the controversies over the nature of law, are just so many stipulations of definitions, proposals for the use of a phrase. Such proposals can at most be said to be convenient or inconvenient, nor correct or incorrect.¹

The word 'law', of course, is used in a variety of contexts. It is used, to refer to a law (a rule of law) and to the law (the laws that prevail in a given society. "Law" is also used to refer to a certain kind of social institution i.e. in the sense of a legal system.
2.1

Law literally means any set of rules of conduct. But in legal philosophy the term is used for those rules of behaviour which are enforced through the agencies of the state. The Pocket Law Lexicon defines law as: “a rule of action to which men are obliged to make their conduct conform; a command enforced by a sanction to acts or forbearances of a class.” According to Salmond: “Law may be defined as the body of principles recognized and applied by the state in the administration of justice.” In other words, law consists of the rules recognized and acted on by the courts of justice. The real benefit of law is that it secures an ordered balance which goes to prevent disputes. The Chambers Encyclopedia gives the following definition: “We can define law as the rules of conduct laid down by the authority of the sovereign power in the state as applied and enforced by all authorities entrusted with their application.” According to Professor Paton, law, on the one side, is an abstract body of rules and on another side it is a social process for compromising the conflicting interests of men in society. Law may thus be defined as: “a legal order tacitly or formally accepted by a community and it consists of the body of rules which that community considers essential to its welfare and which it is willing to enforce by the creation of a specific mechanism for securing compliance.” Any particular law,
properly so-called is a general rule of human action, taking cognizance only of external acts enforced by a determinate authority, while authority is human, and among human activities is that which is paramount in a political society.  

2.2

Law regulates conduct between individuals living in a society. A law in its simplest form is merely a guideline for human behaviour. Its purpose is to encourage a person to do what is right and discourage him from doing wrong. It has been described as a social tool to mould and regulate human conduct. Legally, law is defined as an act of a legislative body written and recorded in some public repository informing people of what is right and wrong. In the case of Ksenig vs. Flynn it was stated that what must be obeyed and followed by citizens subject to sanctions or legal consequences, is law:

Kantorowicz defined Law as a body of rules prescribing external conduct and considered justiciable.  Lord Wright is of the opinion that: Law is not an end in itself. It is a part of the political system of a nation, and it owes its existence to the objects of the Government---in the light of my experience and study I have reached the conclusion and believe that the first and basic object of law is the search for justice.
. All these definitions agree on law being sanctioned by a political authority. Weber however, offers an operational definition of law. His main contention is that the distinctively legal emerges when there exists a co-ercive apparatus. But the threat of punishment according to him is not essential to legal action, for coercion may consist in the threat of public reprimand or boycott. Thus Weber's definition does not limit law to political community, it allows for extra state law such as ecclesiastical law or the law of any other order other than corporate group that is binding on its own members.10

Law is an important instrument in fashioning the life of a community. Of course, life, for its growth and manifestation, employs the channels of law. Law is an essential foundation for the life of man in society and it is based on reason, on the needs of man as reasonable being. "Where law ends, tyranny begins" -- is an old adage. T. Holland has said: "Laws are the bulwarks of liberty. They define every man's rights and defend the individual liberties of all men".11 They are the standards and guardians of liberty, the sheet anchors of society.

The role of law in modern society is not merely negative, its task is not restricted to arresting the hands that create evil. It plays a positive role as well. It regulates the life of every man on every turn and pass, sets before him the ideals and norms of civic life and acts justly. Law has
always comprehended the entire gamut of human life. Its jurisdiction spreads over all the departments of human activity. All sciences and arts are grist to the law's mill. It has always occupied a sovereign place in the life of man and society. Law today has therefore assumed mightier proportions.  

The Modern state occupies a powerful authority and plays a dominant part in moulding the conduct of the community. Law presupposes the existence of a community and society. A society can exist only if there exists a fundamental agreement among its members upon its basis i.e. upon the basic framework of values. This society, in course of time, sets up a machinery through which law is created and enforced, law is always normative and is enforced through the willing acceptance of the community and the sanctions created by it for its unhampered enforcement. A legal order can be effective only if it is endowed with the following:

a) An active and efficient machinery for the administration of law and its strict enforcement.

b) A framework of methods and institutions for incorporating new concepts and ideas into the legal code.

c) Proper sanctions for the enforcement of law; and
d) A peaceful method for the transfer of power in the country from one group to another — at least the opportunity to change who hold reigns of power — should be adequately provided. This is essential for the integrity of the legal system as a whole.

2.3

Law has engaged the attention of the thinkers throughout history. At present it appears to be a welter of conflicting schools of thought. There is the natural school, the metaphysical school, the historical school, the analytical school, the sociological school and the realistic school, to name only the leading ones. The historical school regarded law as a body of fundamental and traditional conceptions developed as the natural result of custom and social experience rather than consciously made by man. The metaphysical school used a philosophical approach, attempting to find underlying principles, based on a fundamental idea of right or justice. According to this school, sometimes called philosophical or ideological school, law was the product of human reason and the study of it should be directed towards the supreme ends that law ought to follow. Metaphysical jurists sought to discover the purpose of law in terms of absolute values and ideals. The analytical school concentrated on the analysis of legal rules and institutions as they actually existed in the developed system of law. This school of legal theory which was also
called the imperative school conceived of law as a general rule of conduct originating in the consciously exercised will of the sovereign. In the 20th century, the predominant schools have been the social-philosophical and sociological. The socio-philosophical school like the earlier metaphysical school analyzed the basic principles of law and directed their attention to the purpose that is served. New emphasis was placed on the practical problem of making law conform to the needs of the changing civilization in which it operated.

The main reason for this diversity of legal thought is the fact that certain authors treat only a portion of the field and approach it from a particular point of view. Thus names of the so-called schools are really specialties within the general field. If we closely examine the undercurrents of these schools, we find that basically they are divided into two major groups: idealistic and positivistic or in other words, rationalistic and empiricistic:16

"Philosophy of law," says Professor Cohen, "must necessarily be described in terms of the opposition of the ideal and the actual elements in Law. Law consists in a body of obligations and a body of facts. According to whether attention is focused on one or the other, philosophical emphasis shifts, Where obligation is thought of as permanent, one easily finds himself to the ideal element of law, to
theories of justice, to idealistic philosophy, to ethics and to value theory: where the fictional element obtrudes, one turns his attention to authoritative legal materials, to positivism, to empirical philosophy, to epistemology, and to science. A basic classification contrasts the idealists and the positivists, giving positivism a somewhat wider meaning than did the nineteenth century French positivist Auguste Comte. But the idealist has often shaped his picture to a familiar actual and the positivist must recognize ideal ends for which law is laid down and enforced. It is largely a matter of stress.  

2.4

There are two main traditions in Western legal philosophy -- natural law and legal positivism. The mainstream of natural law thought flowed from Aristotle's premise that the "nature" of any creature from which obligations must be derived is what it will be in its fullest and most perfect development. The idea of natural law was, however, systematically developed by the Stoics about 300 B.C. They evolved the distinction between lex acterna, jus naturale and jus humana. The natural law, according to them, is the law of the reason of the Cosmos. It partakes of, but is more limited in ambit than, the eternal law. Jus naturale (natural law), according to them, was an emanation of the lex acterna (eternal law), law of the reason of the cosmos. The existence of
innate reason in men linked every one with the cosmic order and subjected all to universally valid moral law. "Stoic speculation / philosophy infused Roman thinking and led to the development of *jus gentium* (the law of the peoples) beside the crude tribal *Jus civile* (civil law) of the Romans.

In the middle ages, St. Augustine reintroduced Stoic philosophy along with Judeo-Christian Thought into the stream of modern jurisprudential speculation. His tripartite division of law into (1) eternal law, (2) natural law and (3) positive law deeply influenced subsequent legal theorizing. At the first level is the unchangeable eternal, divine law, at the second level is the no less unchangeable natural law, being the divine law as man is given the reason, heart and soul to understand it and at the third level is the temporal or positive law, which though changeable according to place and time is warranted by the unchangeable eternal law as long as it respected the limits laid down by the divine and natural law. Augustine distinguished *lex acterna, lex naturalis* and *lex temporalis*, but even temporal law though changeable according to place and time must be warranted by the unchangeable eternal law. His natural law is transcript of eternal law, inborn in men's soul through which God speaks to us in our conscience. Acquinas saw eternal law, divine law and natural law all as unalterable, all based on
divine reason, and setting the standards for human law and justice

According to him:

“As Augustine says, that which is not just; seems to be no law at all. Hence the force of a law depends on the extent of its justice.....Every human law has just so much of the natural law as it is derived from the law of nature, But if in any point it departs from the law of nature, it is no longer law but a perversion of law.” 21

The concept of natural law has witnessed catalysmal changes in different epochs of intellectual and legal history of mankind. The ancients (the Greeks and the Romans), the medievals and the moderns all have different conceptions of natural law.

The 19th of century witnessed a reaction against both Kantian Idealism and iusnaturatism (natural law theorizing). The scientific temper of the age, reflected in the practical achievements of the early decades of the Industrial Revolution, was not conducive to deductive reasoning from apriori hypotheses, which appeared an impractical method of solving the problems of complex societies. Such problems might be approached via a thorough analysis of existing law and institutions. This new climate of opinion came to be know as positivism.

An early intimation of legal positivism is to be found in a fragment of a classical statement preserved in Justinian’s Digest: “What pleases the prince has the force of law.” 23 Putting it in modern terms, “Whatever
is enacted by the law-making agency is the law in the society. Having been deeply impressed by the positivism of Comte and utilitarianism of Bentham, Austin defined law as being the command of the sovereign. In this statement we find an echo of Hobbes's pronouncement in his Elements of Law accepted by contemporary legal positivists. In his bid to define the province of jurisprudence and to separate it from ethics and metaphysics, he remarked that the existence of law is one thing, its merits or demerits another.

2.5

In the 20th century, with the rise of sociological jurisprudence, emphasis was laid on the practical problem of making law to conform to the needs of the changing civilization in which it operated. Sociological jurisprudence is concerned with the (changing) role of law in society. Its main contribution has come from sociologists e.g. Emile Durkheim, and Max Weber. Law is taken to be a specialized from of social control, and as such the effects of social phenomena on both the substantive and procedural aspects of law, as well as on the legislative, judicial and other means of forming, operating, changing and disrupting the legal order can not be denied and are to be closely studied.
The American school of sociological jurisprudence led by Roscoe Pound, was strongly influenced by the pragmatist teachings of William James and John Dewy. Sociological jurisprudence preached the necessary and approximate relationship or symbiosis, between law and society---that is to say, the notion that the criteria for evaluating and appraising the positive law at any time must include (1) the extent to which that positive law in fact reflects the complex of interests pressed in society at that time, and (2) the extent to which the positive law has changed in measure with society. In his later years, Pound moved toward a kind of natural law thinking arguing for a more intimate connection between law and morality, he abjured the realist tendencies, which has been influenced by his earlier thought, as 'give it up' philosophies.26

Thomas Wendell Holmes, Jr. (1841-1935) who is according to J. C. Gray, the spiritual godfather of American legal realism, in his essay "The Path of the Law" in (Harvard Law Review) defined law, as the prophesies of what the courts will do in fact."26 Certainly, when a honest judge wishes to determine what is the law in a given case, he is looking for a principle or an analogous case embodying one of the principles to guide him as to how he should rule and not to predict how he will rule.30 Law, for the practical purposes of lawyers and citizens, means the sum of those rules of conduct which courts of justice enforce, the conditions on
which they become applicable, and the manner and consequences of their application. 31

In his article, "Some Rationalism about Realism" (1934) Kantorowicz took issue with the empirical tendency then dominant in the United States. He criticized the views of the legal realists, who held that the factual takes precedence over the normative and were more concerned with what the courts were doing than with what could be deduced from the norms of the laws. He stressed that "law is not what the courts administer, but the courts are the institutions which administer the law".

2.6

Free law consists not only of customs and usages but also of judicial opinions and the authoritative statements of legal scholars. The free law school of thought acquired more and more adherents and made a major contribution to the defeat of legal positivism. Kantorowicz asserted in modern century that abstract logical deduction does not suffice for the exposition of rules of law and the formation of judicial concepts. He, therefore, proclaimed that a judge must only apply the rules of law to individual cases but should also create law whenever there is a hiatus in a statute. He also maintained that judicial decision
and jurisprudence should take emotions into account. Kantorowicz felt that as a consequence of positivist legal theory the dictates of justice were frequently ignored and the demands of social reality were neglected, and he tagged the legal-positivist judge as a 'subsumption automation'. Kantorowicz as depicted above, defined law as 'a body of rules prescribing external conduct and considered justifiable. According to Kantorowicz law can be characterized by having a body of rules that prescribe external conduct; it makes a little immediate difference to the law how one feels about it—-the law deals in deeds.  

Positivism is either of analytical or pragmatic type. While the former (analytic positivism) lays stress on the stability of law, the latter (pragmatic positivism) emphasizes the fluidity in law. The pragmatic positivism means "Law in flux" as it is determined by social facts which are always changing. Western society is thus in a state of crises which is proved by the fact that sociology has directed its efforts to organize society on a stable and uniformed basis.  

2.7

Having got disillusioned about the claims of the various forms of legal positivism, the philosophers have once again diverted to the natural law and tried to reinterpret or reformulate it in their quest for an ideal for
higher law which may serve as a standard of justice (normative standard of legal order). But based as it is on reason which is ever changing, it could not once again come up to their expectation and stand its test and ultimately appears to have broken down.35

According to the German legal philosopher Gustav Radbruch, who turned towards natural law at the end of a life of great contributions to democratic legal relativism and positivism and who argued that positivism had encouraged German lawyers to stand by at Nazi barbarism declaring that "Gesetz is Gestz" (Law is Law) came to declare quite openly that:

"Where justice is not even striven for; where equality which is the core of justice is constantly denied in the enactment of positive law, there the law is not only unjust law" but lacks the nature of law altogether: 36

The concept of natural law, however, has undergone rather a metamorphosis in modern times. Earlier (particularly in its Thomistic version) it was taken to be a sort of divine dispersion and therefore immutable. But recently some natural law theorists have taken it in secular terms. Stamler held a conception of natural law with a variable content. Fuller also took it on non-Thomistic lines. They have brought reason again to bear on matters of legal assessment, whereas earlier
natural law was consigned to rationally inscrutable realms of intuition, decision and feelings.\textsuperscript{35} According to Paton, much confusion would have been avoided if the term law had been confined to positive law and another term for the natural law which essentially lays down general principles rather than detailed rules.\textsuperscript{37} The principles of natural justice is a phrase which expresses better the medieval notion. Dr. Robson is of the view that we can reunite natural law with the laws of man by acknowledging the legislative power and creative ability of the human intellect to be the source of both.\textsuperscript{38}

Natural law is viewed as a dangerously vague and misleading slogan in certain quarters. It is, nevertheless, concluded that the administration of law should give a larger place to ideas of ethics and individual justice. This shows an inherent contradiction or inconsistency in modern thinking concerning law.

The revival of natural law doctrines is, of course, one of the most interesting features of current legal thought. Natural law provides a transcendental reference which in fact can be supplied only by religious consciousness. This transcendent reference has saved modern law from becoming moribund and has left it flourishing even in secular societies. So the philosophy of law and its practical application depend, for their validity, upon this transcendent reference.\textsuperscript{40}
Friedmann very correctly portrays the state of natural law thinking in the West. According to him: "The history of natural law is a tale of the search of mankind for absolute justice and of its failure. Again and again, in the course of last 2500 Years, the idea of natural law has appeared, in some form or another, as an expression of the search for an ideal higher than positive law after having been rejected and derided into the interval. The problem is as acute and as unsolved as ever with changing social and political conditions. The position of natural law has changed. The only thing that has remained constant is the appeal to some thing higher than positive law.... It is easy to derive natural law as it is easy to derive the futility of mankind's social and political life in general in its uneasing but hitherto vain search for a way out of the injustices and imperfections for which so far Western civilization at any rate has found no other solution but to move between one extreme and another. It is, therefore, the job of legal theory to find out what justice is.

In the words of Professor Friedman again: "To formulate political ideals in terms of justice and to ascertain the means by which these ideals can be translated into social reality, through the agency of a legal order, is the vital function of which legal theory must fulfil. Lord Wright has, on another occasion, put the thing more squarely when he said:
"I am firmly convinced by all my experience and study of and reflection upon law that its primary purpose is the quest of justice". In the words of the famous judge, Lord Wright: "Law is not an end in itself. It is a part of the system of Government of that nation in which it functions and it has to justify itself by its ability to subserve the ends of government, that is, to help promote the ordered existence of the nation and the good life of the people. Law is closely related to the deepest aspirations of mankind, and the theories of what the law ought to be play their part in changing the law that is. Any true standard of legal criticism requires a basis in a theory of external values but no acceptable doctrine has yet been developed."

2.8

One of the major problems that bests modern legal theory is that of stability and change. According to Roscoe Pound: "Law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of the need of change. The history of legal thought reflects a constant and unending conflict between the demands of stability and change, of rigidity and elasticity, of tradition and progress. To maintain order and establish internal peace, it is necessary that laws should be rigid. Law determines the complexion of a polity and sets its four corners. If it is
ever changing, everything would be cast into a melting pot. Therefore, in the interest of peace and order law must have strength and permanence. If it changes with every social and political change, it would lose its force and strength. But if rigidity is maintained at the cost of justice, then it is too costly. Changes, when they are material and affect justice, should be taken cognizance of. But how to adjust change with rigidity? What element of law is external and what changeable is a question that remains unsolved in the matrix of modern thought. American judge Cardoza has rightly said that one of the greatest needs of the law today is "a philosophy that will mediate between conflicting claims of stability and progress and supply a principle of growth". 

According to Friedmann: "What is the purpose of life is the fundamental question to be answered by legal theory or by philosophy, political theory, ethics and religion. In many endeavours to give an answer, the principal movements in legal thought veer between certain fundamental values of life. Western Civilization at any rate has hitherto been unable to agree even theoretically on the ultimate values and purposes of life. So persistently has the pendulum swung backward and forward between certain antinomic values that we cannot but register a tension which perpetually produces new efforts and a search for harmony." Earlier in the same work, Dr. Friedman, emphasizes: "What emerges from all these
varying attempts is the failure to establish absolute standards of justice except on a religious basis," A theological basis provides the simplest, and perhaps the only genuine, foundation for absolute ideals of justice.
The Place of Law in Iqbal’s Philosophy:
Legal Aspect of His Concept of Self

The concept of law is basic to the whole body of Iqbal’s thought that is characterized by his concept of philosophy of ego or self which he specifically terms as Khudi. Law is the initial stage in the growth of human ego or the organ through which the perfect virtue of self development is realized and harmonious living in a society is made possible. In his concept of law we touch the hub of the whole Iqbalian system: How the personality which is the basis of moral distinctions can be effective in the actual world of human conduct and in the context or complexity of human inter-relationship. He, nonetheless, uses law in the specific sense of Shariah (i.e. the Divine Law of Islam), as Divine norms, according to him, alone can provide meaning to human life.

Before embarking, however, on a detailed examination of his philosophical insights views on the origin and development of the concept of Shariah, it is quite pertinent that we study, though, of course, in an synoptic form, his philosophy of ego and his view of human personality and society on which Iqbal’s religio-philosophical system as a whole ultimately rests. I do not want to give here a detailed account of
his metaphysics or evaluate the philosophical argument he tries to put
forward in favour of his basic contention regarding the nature and scope
of ego because that would be beyond the scope of the present study.
Taking the reality of ego for granted and taking it as an equivalent
expression for human personally. I would like to see how and in which
respects it affects or is affected by law and what role the law plays in the
development of human ego or cultivation of human personality and the
growth of an ideal society as envisaged by Iqbal.

The growth and development of human personality is, of course,
the basic tenet of Iqbal's thought. The goal of life is the realization and
perfection of the individual self which consists in the development of
human faculties in the right direction. The development of the individual
self, however, depends on the nature of the envirioning society and the
ideology that animates the entire social structure. He, therefore,
continued developing an ideology the basic concepts and corollaries of
which would purify and advance human life in every direction. Iqbal has
the keen realization that the revival of man both as an individual and as
a member of a social group can come only from the central principle of
his being, namely, the self or ego. This idea is reinforced by the fact that
all movement and activity, whether theoretical or practical, originate in
the self which is the most comprehensive principle of life and universe.
He, however, feels that the universal all-embracing character of the self, or the ego, has been over-emphasized at the cost of individuality. He, therefore, asserts the primacy of human individuality or personality. 

"The joy of living, he says, is related to the individual status and affirmation, fortification and emancipation of the ego."\

II

Iqbal gives precedence to the view that the Quran takes of the value and destiny of man. The Quran emphasizes the individuality and uniqueness of man and has a definite view of his destiny as a unity of life. According to him, three things are perfectly clear from the Quran: (1) That man is the chosen of God; (2) That man with all his faults is meant to be the representative of God on Earth, and (3) That man is the trustee of free personality which he accepted at his peril and his unceasing reward consists in gradual growth, in self-possession, in uniqueness and intensity of his activity as an ego.

Man is endowed with a most suitable adjustment of faculties, but at the same time is surrounded on all sides by the forces of obstruction. The greatness and, of course, the career of man consists in counteracting these forces. The life of ego, consists in interaction with environment.
Man can effect a purposeful transformation of the environment such as no other species is capable of. Man is the arbiter of his own fate, the architect of his own destiny. The Quran, therefore, brought into existence a new type of man self respecting, self reliant, conscious of his worth and desirous of enhancing it and fired with the ambition to set up a better social order in the world. In conformity with the teaching of the Quran, Iqbal believes in the ultimate goodness of human nature and true to his religious profession vehemently opposes the Church dogma of the Original Sin, the Fall and the Redemption. Iqbal rejects the idea of the Fall of Man which makes of his earthly life a painful exile. The coming or advent of man is, in his opinion, a glorious event hailed by the whole creation. It is true, says Iqbal, that according to the tenets of Islam, man is essentially good and peaceful, a view explained and defended in our times by Rousseau, the great father of modern political thought. Islam believes in the ultimate goodness of human nature as opposed to the Christian doctrine of the depravity of man and the Church dogma of the Fall and the Redemption. According to Islam, the preservation and intensification of the sense of human personality is the ultimate ground of all ethical distinctions, and is also the source of all social obligations.

The Islamic concept of human ego is an integral part of the Quranic weltanschauung. "The Ultimate Reality, according to the Quran,
is spiritual, and its life consists in its temporal activity. The spirit finds its opportunities in the natural, the material and the secular. All that is secular is, therefore, sacred in the roots of its being. The real service that modern thought has rendered to Islam and as a matter of fact to all religions consists in its criticism of what we call material or natural ---- a criticism which discloses that the merely material has no substance until we discover it rooted in spiritual. There is no such thing as a profane world. All this immensity of matter constitutes a scope for the self-realization of spirit. To Islam, matter is spirit realizing itself in space and time.

III

Iqbal holds spirit to be the basic reality. According to him all existence is constituted of egos. Every thing at its bottom is a self or ego. The universe is composed of individual egos, graded according to their stages of evolution; man being relatively the highest of the finite egos, whereas God is the Ultimate and Infinite Ego of the universe. Iqbal, accordingly, affirms the reality of human ego or self. Self is the only Reality in the universe. As Iqbal says in one of his philosophical verses:

Thou alone art the Reality in the universe.
All the rest is a mirage.

The self or individuality, according to Iqbal, is a real and pre-eminently significant entity which is the basis of the entire organization of human life. The ego is the finite centre of human experience. It is essentially the core of our personality, the nucleus of our existence, the organizing principle of our life. By attaining relatively the highest development in man, the ego becomes a personality.

IV

The personality or self is the centre of all activity and action. It is through activity alone that a personality can grow and maintain itself in the universe as an ever-growing ego. 17 There are great possibilities of growth and expansion open to the human spirit. 18 All the living organisms are struggling to achieve a more complex and perfect individuality. 19 In man the creative impulse has triumphed enabling him to develop powers which have opened up before him possibilities of unlimited growth and freedom. Human ego partakes of the life and freedom of the Ultimate Ego who by allowing an amount of freedom to man has limited His freedom out of His own free will which is otherwise absolute. 20 Life, according to Iqbal, is a forward assimilative movement. It removes all obstructions in its march by assimilating them. Its essence
is the continual creation of desires and ideals, and for the purpose of its preservation and expansion it has invented out of itself certain instrument, e.g. Sense, Intellect, etc. which help it to assimilate obstructions. The greatest obstacle in the way of life is matter, Nature; yet Nature is not evil, since it enables the inner powers of life to unfold themselves. The Ego attains to freedom by removal of all obstructions in its way. It is partly free, partly determinate and reaches further freedom by approaching the individual who is most free. 21

The ego appreciates itself in its purposeful activity. "We appreciate the ego itself in the act of perceiving, judging and willing. The life of the ego is a kind of tension caused by the ego invading the environment and the environment invading the ego. The ego does not stand outside this arena of mutual invasion. It is present as a directive energy and formed and disciplined by its own experience. 22 The life of the self then lies essentially in its directive function and will attitudes and depends upon actions, desires, longings and yearnings. The more one tastes of them, the more one ascends in the scale of life. The desires have for themselves a creative force and power, and stir us to life and action. The creative force of desires is the basic characteristic of our personality. Desires become highly strengthened and forceful in intuition and love. According to Iqbal, love means the desire to assimilate and absorb. its highest from
is the creation of values and ideals and the endeavour to realize the most unique individuality individualizes the seeker and implies the individuality of the sought, for nothing else would satisfy the nature of the seeker. 23

The view that the creative activity of God is ceaseless 24 also implies change in the phenomena of the universe and in the conditions of man. Man being the vicegerent of God on earth is given charge over God’s creation which implies necessarily activity on the part of man. The ego activity though purposeful is not fixed or predetermined allowing man to sift his experiences, reflect upon them and change his directive actions as the historical situation demands. 25

The ego is to act in the universe which is growing and not an already completed product which left the hand of its maker long ago and is now lying stretched in space as a dead mass of matter to which time does nothing and consequently is nothing. 26 Time is a great blessing, as it brings out the hidden possibilities of things. The possibility of change is the greatest asset of man in its present surroundings. 27 Iqbal differs from Aristotelian idea of fixed universe and holds that the universe is a free creative movement, and life a free creative activity and so inexplicable in terms of mechanism. It is essentially dynamic in nature. 28
Man is not bound by any internal or external barrier, Mechanical causality does not bind him; it is his instrument. Causation is the artificial construction of the ego which it has arrived at in order to facilitate its adjustment with the environments. When the ego understands its environments, it acquires and amplifies its freedom. Iqbal is strongly critical of materialism. Materialism, according to him, assumes an inevitable bond of necessity between all things and happenings. It tries to explain all organic growth, life, nay even consciousness in terms of the mechanically necessary and determined thus leaving no room for freedom, and as a necessary consequence of this denial of freedom, all moral and religious aspirations are choked and blasted in the very bud of our heart. Freedom, however, is a necessary postulate for all religious and practical activity. Mechanism would make our self a sheer phantom and an unreal supposition. Mechanism regards the self as a mere play of mechanical forces which have no bearing of its own.

Iqbal, therefore, believes in the complete freedom of man. According to him, Ego organizes itself in time that necessarily implies its freedom. Ego, being a directive energy, cannot be solely determined by external circumstances. On the contrary, it musters its energy by which it can change the environment. The human ego, according to the view of
Iqbal, is free personality. About ego, one thing can be said with certainty that it is free, that it possesses unlimited capacity for development and that the urge of self expansion and self development is inherent in it. 33 Life is an endeavour for freedom and man’s personality is a state of tension. 34 That which strengthens personality is good, that which weakens it is bad. Good and bad are ego-sustaining and ego-dissolving deeds respectively.

V

According to Iqbal, therefore, the key to the problem of Good and Evil is to be found in the idea of personality. “The idea of personally gives us a standard of values; it settles the problem of Good and Evil: that which fortifies personality is good, that which enfeebles it is bad.... Art, religion and ethics must be judged from the standpoint of personality”. 46 “A wrong concept misleads the understanding,” “asserts Iqbal,” and a wrong deed degrades the whole man and may eventually demolish the structure of human ego.” 36 Iqbal rejects Nietzsche’s Eternal Recurrence as being only a more rigid form of mechanism which far from keying up the human organism for the fight of life tends to destroy its action tendencies. 37 Iqbal considers the career of human ego undiminished with death. He is of the conviction that it seems unjustified that the career of ego which took countless years of evolution would come to an
end all of a sudden. A stronger ego in his view can survive even the shock of death as he says in one of his philosophical verses:

If man's self becomes evolved, conscious and affirmed:

then it can survive even the shock of death.  

Iqbal says that it is open to man, according to the Quran, to belong to the meaning of the universe and become immortal. He considers it as highly improbable that a being whose evolution has taken millions of years be thrown away as a thing of no use:  

He, however, asserts that it is only as an ever-growing ego that he can belong to the meaning of the universe. According to him, we can make soul grow and save it from corruption by action. Action, effort and struggle open to us the deep recesses of our being. Man has to act and strive and be careful at every stage of his progress lest he revert to the state of relaxation. He would say, personality is a state of tension and can continue only if that state is maintained. That which tends to maintain the state of tension, tends to make us immortal. Highly probable in philosophy, and certain in faith, the immortality of the soul is perhaps possible for the perfect man only, but it is up to us to become perfect through our moral endeavour answering the grace of God.
The ego moves progressively towards perfection in knowledge, power, creative activity, and freedom, all of which are attained by becoming immortal. The progress of the ego requires a system of values. These values stem mainly from the belief in the unity of God, and the possibility of the individual's development and are highly pragmatic. In his thought, all aesthetic, moral social, and economic values are different aspects of religion. Religion thus represents the philosophy of life and action. 48

VI

Iqbal's concept of religion is epitomized in his acute observation: "Religion is not a departmental affair; it is neither mere thought nor mere feeling nor mere action; it is an expression of the whole man. He considers religion to be of undeniable and supreme importance in the life of man. According to Whitehead, one of the greatest modern philosophers whom Iqbal has quoted more than once in his support, religion is a system of general truths which has the effect of transforming character when they are sincerely held and vividly apprehended. The essential aim of religion, according to Iqbal, is the transformation and guidance of man's inner and outer development." He points out that religion in its more advanced form moves from individuals to society and, therefore, believes that religion is a fact of utmost importance in the life of
individuals as well as the states. The world life intuitively sees its own needs and at critical moments define its own direction. This is what, in the language of religion, we call prophetic revelation. Revelation is a universal property not characteristic of saints or prophets only. The Quran uses the same word for revelation granted to Saints and Prophets and the instincts of animals whose unconscious rationality appears to be miraculous; it sees in the humble bee a recipient of Divine revelation and constantly calls upon the reader to observe the perpetual change of the winds, the alternation of day and night, the clouds, the starry heavens, and the planets swimming through infinite space. Why should the intuitions of a Prophet or a saint be less related to reality than the instincts of lower animals? The Prophet, according to Iqbal, tries to redirect and refashion the collective life.

Iqbal disagrees with Western conception of religion as a complete otherworldliness and as being a private affair of the individual which has nothing to do with what is called man's temporal life. In contradistinction to Christianity and other monastic religions of the world, Islam does not bifurcate the unity of man into an irreconcilable duality of spirit and matter. In Islam, God and the universe, spirit and matter, church and state, are organic to each other. Man is not the citizen of a profane world to be renounced in the interest of a world of spirit situated elsewhere. To
Islam, matter is spirit realizing itself in space and time. The nature of the prophet's religious experience, as disclosed in the Qur'an, however, is wholly different. It is not mere experience in the sense of a purely biological event, happening inside the experiment and necessitating no reaction on his social environment. It is individual experience creative of a social order. 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 has created. The rejection of the one will eventually involve the rejection of the other.

VII

Being the first stage in the development of human ego, law constitutes the foundation stone of Iqbal's philosophy. Law, according to him, is the chief formative factor and the essential ingredient in the make-up of man's personality and in the evolution and organization of an ideal society. However, law in the context of Iqbal's religeo-philosophical system means necessarily Shari'ah (the Divine law of Islam).

The Shari'ah, according to Iqbal, has both the normative and prescriptive elements and by proper balance of the two, a harmonious relationship with Allah and His created universe is established. All
obligations, all duties, all rewards and all punishments are designed to make the ascent of man self-conscious and wiser. Iqbal gives two illustrations to highlight the role of law in Islamic society. He points out that stones by submitting to the laws of harmony, become cosmic music. In the process of submitting to law, both stones and sounds are not transformed qualitatively but find fulfillment in an infinitely higher and abiding dimension. So by submitting to the law of God, individuals enter into harmony with God and the ultimate order of the cosmos, and thereby retain maximum freedom and are guided towards their own fulfillment, their own perfection and excellence.

VIII

The ego develops and grows through three stages by creating new desires and ideals, and struggling hard to achieve them. The three stages in the development of the ego are: (1) Obedience to Law; (2) Self-control, which is the highest form of self-consciousness or egohood; and (3) Divine vice gerency. The first two stages contribute greatly to the development of the ego, but they serve only as milestones for the upward march of man towards the goal i.e. perfect manhood. The perfect man is termed as the vice gerent of God, and represents the third and final stage of the evolution of humanity.⁴⁹
"Tis sweet to be God's vice-gerent in the world
And exercise sway over the elements,

God's vice-gerent is as the soul of the universe,
His Being is the shadow of the greatest Name;
He knows the mysteries of part and whole

He executes the commands of Allah in the world.

His genius abounds with life and desires to manifest itself,

He will bring another world into existence.51

The Islamic individual, in the ultimate end, turns out neither to be
like a Hobbesian Leviathan, nor like Nietzschean Superman, but finds
himself as a truly free man growing within the framework of a God-
centered Community—the Millat. The life communal is alone secured, a
verse from the Runuzi-Bekhudi implies: (i) it is in community that the
individual can develop his potentialities, (ii) that solitary life negates
societal values, (iii) stresses individual salvation and breeds egotism; (iv)
undermines the Millat (i.e. community); living in community solidifies
the Millat and engenders social cohesion.56 In this manner, Islam resolves
the irreconcilable dichotomy of freewill and necessity, liberty and
authority, and the individual and the state.
IX

Iqbal did not want the perfect Man to be a myth, nor did he want him to be the excessive dream of a poet. He had understood that man can live in and for society and that he is closely linked to the group to which he belongs. The individual exists in relation to the community. "Alone he is nothing; The wave exists in the River; Outside the River, it is nothing." Again, while expressing the relationship of the individual to society, he says: "For the individual to be bound to society is a blessing. It is in community that his worth is perfected. 51

Self development presupposes a society. Numerous factors favour and stimulate the self-development of the individual --- they are, in short, the natural and cultural forces that make up his being. He regards ego's stirring and awakening to his hidden vitality as primary which can only be had by treading a religio-cultural path. Hence the self having been awakened to its possibilities, its further development becomes possible only in accordance with its own faith determining forms of life and thought. Anyone not having fed form his own sources loses his identity and is reduced to a beggar. 51

The ego grows fully in association with other egos and not in isolation. It has to work in co-operation with others in mutual interest.
The adjustment of personal activity to social goods is mutually beneficial because the individual can achieve his highest possibilities by identifying himself to a social group and purpose. It means that the individual ego has to live in a society. In determining the relation between the individual and the society, Iqbal synthesizes a compromise between atomistic and organismic types of society, and giving each individual its maximum freedom. He holds that the growth of a full and free personality depends upon its spiritual sustenance from the culture of the group to which he belongs. The group in its own interest owes a duty to the individual and hence interferes with his development as little as possible, and only when common goods demand it. Thus the quality of the life of community is simply the quality of life of the individual writ large. For the development and progress of such an ideal society, Iqbal develops certain principles which are known as values (of various kinds). His cosmic conception embraces the idea of the development of all selves to their utmost, whereby the psychological merges with the religio-cultural and social carrying man towards his ultimate destiny.

According to him, life is both a custodian of the self and of the group. He admonishes the individual to move in the mainstream of collective activity in such a way the he is both isolated from and united with everyone else. So he says in one of his reflective verses:
Life embellishes association as well as guards itself.

O You traveling in the Caravan be apart from everybody and yet move along with everyone.\textsuperscript{58}

Writing about Iqbal, Arberry says that he was not interested merely in the individual and his self realization, he was equally concerned with the evolution of an ideal society, or community as he preferred to call it. It is only as a member of this community that the individual, by the twin principles of conflict and concord is able to express himself fully and ideally; it is only as an association of self-affirming individuals that the community can come into being and perfect itself. Iqbal thus escapes from libertarianism by limiting the individual's freedom, making him a member of a homogeneous community, and from totalitarianism by limiting the community's authority, making it a challenge and not an insurmountable obstacle to the individual's self realization.\textsuperscript{63}

Iqbal's idea of society comprised the harmony of the individual and common purposes or interests; his concept of collective self or selflessness (bikhudi) thus confirms those principles conducive to such harmony -- the mutual respect of individuals and for each other's purposes and participation of all in the achievement of the common purposes. Iqbal's \textit{Runuz-i-Bekhudi} deals with the evolution of ideal
society where an individual can realize his selfhood to the maximum degree. Iqbal's ideal society is not merely an association of self-affirming individuals. Runuz-i-Bekhudi is an attempt to show or demonstrate the inner structure of human society. An ideal society, according to him, is the society of free men in which they willingly sacrifice some of their inalienable rights for the general welfare of the society. But it does not imply in any sense their suppression by the society. Iqbal dreamt of a society founded on egalitarian democratic and socialist values. He, nonetheless, abhors over-organization or regimentation of society. He advocates the rearing of self-conscious individuals who alone can tell us, by their initiative and drive or creativity that environment is not wholly inviolable thus paving the way for further progress in human thought and activity. This is best ensured by Islam in its principle of Ijtihad.

X

True to the fundamental thesis of his philosophy, Iqbal considers it imperative to evolve such a society in which the latent power of the individual is evolved. That implies the evolution of ideal social, economic, political and spiritual conditions in which individuals have the maximum scope of utilizing their talents and potentialities. It is the state's responsibility to help grow such a homogenous society. For the foundation of such a society it was essential that individual should train
himself in such a way that he develop in him the attributes of God. His theory of *Khudi* in a nutshell, is the message of developing these Godly attributes in oneself. To him, the complete person is one "who comes nearest to God". Iqbal wanted the individual to undergo the training of obedience to law, self-discipline and self-control in order to develop his selfhood and be worthy of the responsibilities of the State. Iqbal's concept implies abandonment of personal and private likes; inclinations and concepts in favour of obedience to the Divine commandments......" 96

Iqbal did not believe in unrestrained freedom of the individual. He advises the world to develop free institutions in the framework of the universal *Shariat* of Islam. So he says:

When a community forsakes its law

Its parts are severed, like the scattered dust;

The being of the Muslim rests alone

On law, which is in truth the inner core;

Of Apostle's faith, A rose is born

When its component petals are conjoined

By Law; and roses being likewise bound

By Law together, fashion bouquet
As sound controlled creates a melody

So when control is absent, dissonance Results. 67

XI

He tried to find out the foundations for an ideal society in Islam. Iqbal holds forth Islamic society as an ideal in so far as Islam in its purity was the first social system to give humanity the gifts of liberty, equality and fraternity and to set aside all limitations of time and space. "Islam as a political ideal, entertains corporate individuality i.e. a legally united body so as to act as an individual. 68 This is the stage where the Islamic Individual merges himself with other fellow Muslims to constitute what the Qur'an describes Millat. The point of the integration of the Millat reaches when all individual believers surrender their individual wills to the Divine Laws --- the Shariah. 69

Philosophically speaking, Islamic political theory, as enunciated by Iqbal, is normative in its character. It is concerned with a specific ethical ideal, the raising of humanity to the highest well-being, both materially and morally, by means of an exclusive commonwealth built up on the belief in one God whose sovereignty is supreme. "Islam, as a polity", he says, "is only a practical means of making this principle a living factor in the intellectual and emotional life of mankind. It demands loyalty to God,
not to the thrones. And since God is the ultimate spiritual basis of all life, loyalty to God virtually amounts to man's loyalty to his own ideal nature.\textsuperscript{71} He again asserts: "The essence of \textit{Tauhid} 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. It is in this sense alone that the state in Islam is a theocracy, not in the sense that it is headed by a representative of God on earth who can always screen his despotic will behind his supposed infallibility."\textsuperscript{72}

The second important point in Iqbal's political theory (or his theory of state as spiritual democracy) is the obedience to the law given from time to time to mankind by the Prophets and completed by the Prophet Muhammad (peace be upon him!). With him, the age of revelation has come to an end and the age of realization has started.\textsuperscript{73} It would be a solemn duty of every state to preserve and obey these laws as illustrated in the teachings and the noble actions of the Prophet. Iqbal vehemently remarked:

\begin{quote}
Our genesis on earth comes from the Prophethood, \\
From the Prophet hood come our Religion and laws, \\
Leaving his side is but to perish
\end{quote}
As the rose withers in the autumnal wind.  

Iqbal's poem on the *Mysteries of Selflessness* deals at length with the Divine guidance, as revealed in the extra-ordinary and remarkable personality of the Prophet Muhammad (peace be upon him!), His love is described as a great unifying force of the Muslim community.  

Iqbal has also found in his teachings of freedom, social equality and human brotherhood, the pillars of Islamic democracy, where none was to be deprived of his rights on the grounds of colour, sect or on social and economic considerations.  

Islam envisages an individual as an integral part of society. The notion of person, bearing both a conscience and a civic identity, becomes the foundation of political, social and legal institutions in Islam. Islam, at the same time, enhances the status of the individual and teaches him to subordinate his individual interest to the national interest. The idea of individuality reveals itself as a guiding principle in the entire system of Muhammadan Law and ethics. Islam wants to inculcate free and law abiding spirit which evolves out of itself a noble type of political virtue. Every member in this society enjoys equal status and rights in the body politic. The community does not curb the freedom of the individual. Both the individual and the society submit to the Divine Code of ethical,
social, and political laws, as interpreted by the prophet. But this law is not absolute. It admits of interpretation and adjustment in changing circumstances. This implies the right of *ijtihad* i.e. independent judgment and interpretation of law in the light of the changed and changing circumstances, which Iqbal holds essential to the healthy development of the body politic.
The Nature of Islamic State and its Legal Perspective

"The truth is", says Iqbal, his historic presidential discourse before the All India Muslim League at Allahabad in 1930. Iqbal that Islam is not a church. It is State conceived as a contractual organism long before Rousseau ever thought of such a thing, and animated by an ethical ideal which regards man not as an earth-rooted creature, defined by this or that portion of the earth, but as a spiritual being understood in terms of social mechanism, and processing rights and duties as a living factor in that mechanism. To elucidate further, he categorically asserts that Islam is an ethical system plus a certain kind of polity by which expression means a social structure.

This is a very correct portrayal of Islam since it explains the relation of Islam with statehood. Islam is, no doubt, a social structure regulated by a legal system and animated by a specific ethical ideal. Islam not only teaches moral principles but also prescribes rules for the regulation of our behavior, individual as well as collective. Islam has the keen realization that merely moral and spiritual principles are never sufficient to reform humanity. It is in the social set-up that the spirituality of an individual is expressed. For the harmonious
development of human personality, social cohesion is the necessary prerequisite which can only be ensured by the establishment of the state organization. In Islam, we have universal polity, whose fundamental principles are believed to have been revealed. The structure and working of Islamic state resets on an analysis and systemization of these principles into a body of rules called the Shariat. The religious ideal of Islam is thus organically related to the social order which it has created.  

II

It is on account of the view that Islam takes of human nature and of the future career of human life that it attaches equal importance to the mundane and spiritual affairs of life. So we see in the Quran not only the proclamation of superterrestrial happiness but also of the earthly happiness.

Being not an other-worldly creed, Islam does justice to both, the world here and the world hereafter. Islam conceives life as an undivided whole. It does not draw a line of cleavage between the corporeal and the incorporeal, the material and the spiritual, the celestial and the terrestrial. Its principles are based upon an equilibrium between matter and spirit. In Islam, God and the universe, spirit and matter, Church and State are all organic to each other and Man is not the citizen of a profane world to be renounced in the interests of the world of spirit situated
elsewhere. To Islam, matter is spirit realizing itself in space and time”. In Islam it is the same reality which appears as a church looked at from one point of view and state from another. Islam, contends Iqbal, is a single analyzable reality which is one or other as your point of view varies. That there is no such thing as a “profane world” fully agrees with the Prophet’s saying: “The whole of earth is a mosque” which implies that the religious and the secular form an integrative unity in Islam. Islam is a happy blend of the ideal and the real. Is a mysterious touch of the ideal that animates and sustains the real. Through it alone we would discover and confirm the ideal. With Islam, the ideal and the real are not two opposing forces which could not be reconciled. The life of the ideal consists not in total breach with the real which would tend to shatter the organic wholeness of life into painful oppositions but in the perfect endeavour of the ideal to appropriate the real with a view to eventually absorb it, convert it into itself and illuminate its whole being

III

It is the union of the ideal and the real, the spiritual and the material that distinguishes Islam from Christianity and other monastic religions of the world. In the words of Iqbal: “It is a sharp opposition between the subject and the object, the mathematical without and the biological within that impressed Christianity with a view to overcome it.
This essential difference in looking at a fundamental relation determines the respective attitude of these great religions towards the problem of human life in its present surroundings. Both demand the affirmation of the spiritual-self in man with this difference only that Islam recognizing the contact of the ideal with the real says "yes" to the world of matter and points the way to master it with a view to discover a realistic regulation of life...."12

According to Noumann, a contemporary Western authority, where as Primitive Christianity attached no value to the preservation of the state, law, organization, production. It simply did not reflect on the conditions of human society. As a concluding remark, he says that either we dare to aim at being without a state and thus throw ourselves deliberately into the arms of anarchy or we decide to possess alongside of our religious creed, a political creed as well" 13 Islamic viewpoint, however, is quite different as the Quran 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 republic14. Islam accordingly does not admit any dichotomy of Matter and Spirit, the Ideal and the Real, the Church and the State. It does not consider politics to be a profane activity because nothing is profane at the heart of its being but rather regards it as not only useful but also indispensable for an orderly social
living of man. This is so because: "If religion is separated from politics, there remains nothing but barbarity." 15

IV

As a matter of historical fact, Christianity has received no definite direction from its founder. Christ did not make any reference to the cultural side of man and was not willing to meddle with the affairs of the state. In Christianity, it is thought that a man of God has no business to bother with politics or economics, his duty is only to be morally immaculate and preach only love and good will towards the mankind. The early Christians were of the conviction that the end of the world was very near and, therefore, nothing was worthwhile except penitence and prayers. They segregated themselves from the affairs of the state with the belief that it was not their duty to resist the evil in the actual state because the Sermon on the Mount had taught them passive submission even to tyranny: to turn the other cheek when slapped on the face and to give away the coat also to a man who had robbed you of your shirt. As to submitting to the laws of state in which they lived they were reminded of the commandment of Jesus, "Render unto Caesar the things that are Caesar's." 16

Similarly in Buddhism metaphysics is far more emphasized than the actual life of man. Buddha attempted to prove that all manifested
and created existence is unreal. He identified all life with evil produced by the desire to live. Accordingly, the ultimate aim of man was deliverance from all personal and social existence by the complete annihilation of desire. It is obvious that such a teacher could have nothing to do with the economic remoulding of society or with the politics of an actual or an ideal state. In Hinduism, in the like manner, the doctrine of the transmigration of souls and the weary round of incarnate life is preached and a believer is urged to get rid of this weary round by annihilating his desire and taking resort to monastic life. 17

Religion, in this way, becomes complete other worldliness, asceticism and renunciation of the natural and physical world. All this is deadly against the spirit of Islam. Here the world is not considered to be an illusion or MAYA, it is regarded as reality and fact which cannot be suppressed by any monasticism or spirituality. To it the conception of salvation of the individual as an isolated entity is absolutely wrong. The human ego is, indeed, highly valuable, but it lives and moves and has its being in society. It is society which generates self-consciousness and develops it. Islam deals with man not as an individual man but as a member of society. 18

Moreover, it regards it as an obligation on every Muslim not to be contented with his personal piety and righteousness but to spread and
propagate it and at the same time to fight against evils prevalent in the society, may be in the field of ethics or economics or politics. Islam is totally against the passive tolerance of evils but lays stress on their suppression by every possible manner. In accordance with its teachings, it is as such an evil to suffer evil unprotestingly as it is to commit evil and it is the slavish sufferers who create tyrants. The Holy Prophet emphasized that "it is the duty of every man to remove evil actively when he sees it, and if he cannot do so, protest against it, and if he cannot even do that, to detest it in his heart which is the least manifestation of Faith". As a matter of fact, if God's good men leave the social and political life of man alone then by perversion of the economic and social structure, even the goodness of the good individuals will be jeopardized. The Holy Prophet warned that, "if in a society some people do evil and others do nothing to prevent it, then all of them will be engulfed in ruin, the good as well as the bad, because the good men have been only passively good and done nothing actively to prevent evil".

From all this, it is quite clear that Islam is not a religion preaching merely otherworldliness; it is a code of life primarily aiming at the betterment of life here and now by dealing practically and comprehensively with it, in all its essential aspects. For Islam, man is a social and political being whose welfare is, in its every respect, bound
with the welfare of society the highest organization of which is the state. So to mould or remould state on Islamic principles is one of the primary aims of Islam without which neither Islamic spirit could be inculcated in the people, nor social evils prevailing in the society can be effectively crushed and eradicated. Social justice and public welfare which are the essential goals of Islam cannot be reached unless the state should be organized strictly in accordance with its truest light and on the grounds prepared by it.

\[V\]

Having viewed briefly that Islam is a State instead of being a Church, let us now turn to the more crucial and at the same time more controversial question as to what is the nature of Islamic State. After that we shall inquire into those principles and concepts which work as bases for it.

The first question which comes to the mind with regard to the nature of Islamic State is whether it is Theocracy or a Secular State. As a matter of fact, it admits of no such distinction. Islamic State is theocratic only in the sense that its fundamentals are believed to be God-given whereas for practical purposes it is more secular and less theocratic because it is deadly against any discrimination among the citizens in the matter of civil rights and it grants complete freedom of conscience to all
of its citizens irrespective of race or creed. No doubt it receives its inspiration from Revelation and is based on certain ideals and injunctions as are believed to be given by God, but only for that reason it cannot be termed as theocracy and identified with medieval Christian theocracies which deprived those, who did not subscribe to their man-made obscurantist and reactionary views, of all fundamental human rights.

In Islam, no orthodoxy is preached, no rigidity is encouraged. It has also set an example for its religious tolerance. In the life of the Holy Prophet and in the days of Great Early Khalifas, there were non-Muslims serving in their households, but they were not compelled to accept Islam and leave their respective religions. Islamic State guarantees social justice and well-being not to Muslims only, but its non-Muslim subjects as well. Before the court of Islam, no distinction is made between the Amir and the public on the one hand, and Muslims and non-Muslims on the other. Even a non-Muslim is liable to challenge the Amir in the court and it has actually happened in the days of early pious Khalifas.

Islam does not recognize any Church claiming infallibility and implicit obedience. It admits of no pope and special class of priests whose words should be the last in all matters. Islam has given only certain fundamentals. The part of the Holy Quran which deals with these
The question is the most intricate one, for, as a matter of fact, democracy has appeared under so many garbs actively hostile to one another. As Late Khalifa Abdul Hakim has put it in his *Islamic Ideology*: "Democracy has been the vaguest of concepts". Hitler's Nazism claimed to be a Democracy and tried to convince or deceive the world that Hitler had been elected as Leader of the Nation by a free democratic vote and he represented the voice and will of the people. The persecution of the Jews was a demonstration of Democracy, because it was the will of an exasperated majority giving its verdict against an alleged anti-national minority. Russian Communism claims to be the most democratic of all the existing systems, they call Anglo-American Democracy as plutocracy, where directly or indirectly capital governs and the labour is exploited. The British and Americans
call Russian Communism as totalitarianism where the clauses of state
capitalism and the domination of one party has deprived the individual of
his fundamental liberties. 48

So we have seen that Democracy has assumed many forms none of
which is coherent with the spirit of Islam. Islam is neither Nazism nor
Fascism, neither plutocracy nor totalitarianism. It is, humanitarianism
and internationalism. It guarantees full liberties of speech and action to
all of its members, belonging to different religions, races, colours,
languages, classes and castes. Here any exasperated majority does not
inflict persecutions on its minorities in the name of national security. In
Islamic state neither capital governs nor labour is exploited, and nor
individuals are deprived of their basic human rights. It is a democracy
only in the sense that all people irrespective of race and creed are
regarded equal before the law. The ultimate aim is to reach the goal of
social justice and public welfare. Islamic state is a welfare state. As we
see, the model welfare state, established by the Holy Prophet and later
followed by his immediate successors was neither plutocratic democracy
nor a totalitarian state. It was a Theocratic Democracy, that is a
Democracy inspired by Revelation and directed by the commandments of
God i.e. having a theocratic basis. 29
The foundation stone of Islamic State is the firm belief in *Tauhid* i.e., the oneness of God. "Islam, as a polity", says Iqbal, is only a practical means of making this principle a living factor in the intellectual and emotional life of mankind. It demands loyalty to God, not to thrones. And since God is the ultimate spiritual basis of all life, loyalty to God virtually amounts to man's loyalty to his own ideal nature."^{30} He again asserts in his lecture: "The essence of *Tauhid* 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. It is in this sense alone that the state in Islam is a theocracy not in the sense that it is headed by a representative of God on earth who can always screen his despotic will behind his supposed infallibility."^{31} The state, according to Islam is only an effort to realize the spiritual in human organization. But in this sense, all states based on mere domination and aiming at the realization of the ideal principle are theocratic"^{32}

The second foundation principle of the Islamic theory of state is the obedience to the law as given from time to time to mankind by the prophets of universal religion and completed by the Prophet Muhammad
(peace be upon him!). With him, the age of revelation has come to an end and the age of realization has started. Islam, with its emphasis on the consummation of revelation tends to create an independent critical attitude and generates the belief that all supernatural authority claiming a supernatural origin has come to an end in the history of man. This kind of belief is a psychological force which inhibits the growth of such authority and which also implies that life cannot forever be kept in leading strings and that in order to achieve full self consciousness man must finally be thrown back on his sources. That implies necessarily the abolition of priesthood and kingship in Islam and also the use of reason and recourse to experience which paves the way for inductive method and scientific progress. The idea that there would be no further revelation binding on man makes the Muslims the most emancipated people on earth.

VIII

Islamic state is certainly not a theocracy in the western sense of the term, as Islam does not recognize any exclusive right or monopoly of any group of people to rule over other Muslims or to interpret their religion for them or in other words there is no provision in Islam of any divinely ordained clergy. Islam is certainly not dogmatic and has no priesthood which constitutes the final authority on Islamic law and life.
Islam considers authority to be inimical to the unfoldment of human personality, be it of a king or of a priest. Islam recognizes the intrinsic worth of the individual. And this stress on individuality is the very basis of democracy.

Democracy, is nevertheless a term of Western political vocabulary but its spirit is truly Islamic. Democracy arose in Europe out of economic considerations; in Islam it is bound with the idea of respect for the individual. During the early years when Islamic principles were strictly followed, we find it fully operative. But it should be particularly noted that democracy, in its Western perspective, is merely counting of heads, whereas Islam does not favour the deification of majority and grant it the absolute authority to legislate. In Islam, God alone is the law giver and has the sovereign powers of legislation. So at the head of this community of equal brethren in faith, is God himself. The rule of Allah over his people is immediate and direct. Allah rules the Muslim community. When the chief of a tribe who had accepted Islam said to the Prophet, "Thou art our prince", the Prophet announced quietly, "The Prince is God, Nor I."

"Democracy", remarks Iqbal, "is the most important aspect of Islam as a political ideal." Islam envisions 'spiritual democracy' which is identified with the kingdom of God on earth. "The kingdom of God on
The democracy of Islam is different from the Western democracies in many respects. Iqbal has pointed out three main differences between them. Whereas Western Democracy is divorced absolutely from religion, Islamic democracy is fed upon the religious ideas. The exodus of religion from political life as explained by him is a direct consequence of Protestantism led by Martin Luther that ultimately replaced the universal Christian Ethics by antagonistic systems of national ethics, thus shattering European community into pieces. Iqbal of course does not favour the repetition of such an error in the world of Islam. Secondly, Western democracy grows out of economic considerations whereas the democracy of Islam is a spiritual principle based on the assumption that every human being is a centre of latent possibilities which can be developed by cultivating a certain type of character. Thirdly, Western democracy is quantitative in approach and is based merely upon counting of heads, whereas Islam entertains a spiritual democracy with a qualitative approach; instead of counting of heads it makes a qualitative assessment of its participants. Islam does not favour the deification of majority and grant it the absolute authority to legislate. In Islam, God alone is the law giver and has the sovereign power of legislation.
scope of legislation in an Islamic state is therefore, quite limited. The Muslim Parliament is required to work strictly within the limits (Hudood) prescribed by God and incorporated in Shariah (the Divine Law of Islam). But the interpretation of Shariah is not the private preserve of any priestly class or political authority. There is no religious and political absolutism in Islam. Islam has given the right of personal inquiry and independent judgment to every competent individual.

**IX**

Islamic system of government is termed technically as Khalifah (i.e. Vicegerency of God). The underlying conception is that ultimately sovereignty rests with God. and His Khalifah (vicegerent) has to follow strictly the commandments of God. The Caliph in Islam is not an infallible being. Like other Muslims he is subject to the same law. He is elected by the people and can be deposed by them if he goes contrary to law. The Caliph has no authority either to define dogma or indeed even to legislate. He is not above law and if necessary can even be deposed at least in theory. Islamic system of Khilafah does away with the concentration of power in an individual person. He is required to follow the principle of Shura (consultation) from those who are experts in the areas of their own excellence. A Majlis-e-Shura (parliament) is to be constituted that would help enable the head of the state not to
transgress the bonds prescribed by God. The Quran lays due emphasis on \textit{Shura} (consultation) which indicate that the nature of Islamic polity is democratic in spirit. The Quran, however, does not specify any concrete institutional form leaving it to the Muslim peoples of different ages and countries to evolve a political structure according to their historical conditions. The future of Islamic civilization lies in devising some from the collective leadership and dismantling of the present structure. Iqbal was fully alive to the fact and envisaged in his theory of \textit{Ijma}\textsuperscript{w} a legislative body which could provide collective leadership to the Muslim Ummah.
The Origin and Development of
the Concept of Shari’ah

5.1 Introduction

Law is generally regarded as the legal norm approved by the people directly or through the organs that represent them and derives its authority from the reason and will of man and his moral value. The Muslim conception is, however, quite different. The chief or ruler of the Islamic community being God Himself, law is naught save the will of God. It is the rule according to which Allah the Legislator desires his creatures to conform. God is the law-giver, as depicted in the Quran. God’s laws and moral obligations coincide on extent and perhaps in conception. But these laws are rational; they are rules which all must follow if the best life for men in a community is to be realized. In a sense, these laws are also natural. They are imprinted on man’s instinctive inclinations and conceptions of what is obviously morally necessary. Shariah is based on human values and Divine guidance, for God being the Creator, best knows as to what is the real constitution or nature of man and in the light of His knowledge alone can determine as to what is the best and most suitable for human creatures in different times and
climes. Shariah can, therefore, only claim comprehensiveness, cohesion, balance, perfection and finality. It is a perfect and final code.¹

5.2 The Nature of Shariah

Shariah is considered to be the most important and comprehensive concept of Islam at the practical level. The term Shariah literally means the path leading to the watering place²; in other words, the source of life. Technically, it means the highway of religious life leading man to God.³ In its comprehensiveness, it includes law, moral principles and the creed to which every Muslim must subscribe. Shariah is accordingly the supreme integrative concept of Islam. Shariah displays Islam as a religion of total guidance for human relationship. Shariah, above all, tells us what is right that is to be enjoined and what is wrong that is forbidden. In Islam the law is an integral part of religion and so Islamic law is in, fact, a science of man's rights and obligations both spiritual and social. Shariah, according to Bergstresser, “is the epitome of the true Islamic spirit, the most decisive expression of Islamic thought, the nucleus of Islam.”⁴ According to Dr. Ahmad Hassan, “Islamic law is not merely legal in the strict sense of the term; rather it embraces all the spheres of life—ethical, religious, political and economic. It has its origin in the Divine Revelation. The Revelation determined the norms and basic concepts of Islamic law and in many respects initiated a break with the history and
tribal legal system of pre-Islamic Arabia. The word ‘Shariah’ accordingly does not imply the canon law of Islam as it is generally mis-understood in the West. Islamic law covers the whole range of human life, it covers the secular as well as religious spheres of life. Laws of Shariah pervade all the fields of human life.

Shariah, according to Iqbal, “is an integral part of Quranic Weltanschauung. The universe, according to the Quran is not created for sport, it is not without purpose or goal, it is throughtout teleological and to this universal teleology, human beings bear no exception. To every one of them, there is a goal and that goal is God Himself. Divine attributes are the ultimate ideals. Man’s highest perfection consists in the achievement and assimilation of Divine attributes. It is to this culture of Divine attributes that the Qur’an refers--God desires nothing but the perfection of His light—the perfection of these attributes. The sole aim of man; therefore, is a progressive achievement of life Divine which consists in the general acquisition of all divine attributes. It is only through the assimilation of Divine attributes that man can perfect his ego and qualify himself for the exalted office of the vicegerency of God, which is the highest stage in the development of human ego but to reach which human ego has to undergo the training of the obedience to law and self discipline. God has created life not as a haphazard phenomenon but
regulated by law. God manifests Himself as the Legislator and the Judge in the natural as well as the moral realms. According to Dr. Muslehuddin, "Islamic law is a Divinely ordained system, the will of God to be established on earth ..... Revealed by God. Who knows what is absolutely good for humanity, the law is to be meticulously observed and interpreted in letter and spirit. As God is the Perfect Being, so is His law perfect and for all times. With its own ethical norms of virtue and vice, good and evil, it represents the standard of judgment for all human actions."\(^9\)

The Qur'an emphasizes the imperative nature of 'Shariah and categorically holds that its rejection or suppression amounts to treason against the Divine law. "Who--so judgeth not by that what Allah hath revealed, such are evil doers."\(^{10}\) In adjoining verses, its rejection has been condemned as an outright infidelity, heresy or duplicity.\(^{11}\) Being the criterion to distinguish between right and wrong, the Divine law cannot be exposed to the vagaries of human reason and has to be preserved in its ideal, that is, perfect form. "Verily we have sent to the Book in truth that thou mayst judge between them of guided by God.\(^{12}\) And those who do not judge (by the light) What God hath revealed, are indeed rebels". Are the Quranic verses which, in definite and unequivocal terms, enjoin upon us strict adherence to the law in all our affairs and at every turn or
movement in life. According to the Qur'an, the commandments of God and the Prophet constitute the supreme law and the Muslims as such cannot adopt any attitude other than that of complete submission to it. A Muslim is not allowed to follow his independent decisions in matters which have been finally and unequivocally decided by God and His Apostle.13

*Shariah* has great metaphysics-ethical implications as well. It is in *Shariah* that man feels a sense of freedom which distinguishes him from animals and from the rest of creatures. The concept of *Shariah* implies a sense of obligation and responsibility and consequently of freedom on the part of man.14 Iqbal in the light of his basic concept of 'Khudi' or self sees in *Shariah* an ample scope or allowance for the freedom of man. 'Shariah' has also another ethical significance: *Shariah* is divine, sublime and hence sacred. Secular law having no sanctity attached to it, is prone to violation. It is often obeyed on account of fear or physical force, whereas *Shariah* being Divine law, on account of its sublimity or sanctity, attracts existential or authentic obedience from man. Man obeys it from the core of his heart for he believes that his salvation in this world and hereafter lies in its obedience. The essence, if not the quintessence, of the message of Islam to mankind is to treat this life as a seedplot of the Hereafter. It is the perception of this truth that provides background for understanding
the earthly role of man, of knowing what are man’s legal duties, his desirable acts and impossible omissions that he is to countenance here below. 15 Shariah therefore, does not draw a line of cleavage between law and morality and hence much of it is not enforceable in a court of law but only at the bar of conscience. This has advantages in that Islamic law is shot through with moral considerations which in turn, have given a moral temper to Muslim community.

The Muslim community is so constituted that it is the primary bearer of the will of God—the command of God for all men—the Shariah which is implemented through its governmental and collective institutions. 16 The idea of corporate existence’ and the ‘state-craft’ forms an integral part of Islamic faith. According to Shah Waliullah: “Khilafat, in general terms, is a form of State which is established for the enforcement of the laws of ‘Shariah in accordance with the will of the Holy Prophet. 17 The Caliph is the chief executive of the community. He is like all other Muslims subject to the same law. Sovereignty and the ultimate authority of making law, in Islamic constitutional theory, belongs to God. 18 According to the Holy Qur’an, sovereignty rests with Allah alone and He is the sole law-giver. In the Holy Quran, the Islamic form of government is described by the term Khilafat. Khalifa means vicegerent of God Almighty Who is de jure and de facto sovereign of the
universe. According to the Quran, the State relinquishes its claims to sovereignty in favour of God, after recognizing the legal supremacy of God and His Apostle, he accepts the position of caliphate (vicegerency) under the suzerainty of the right ruler. In this capacity all the legislative, executive and judicial powers of the State will necessarily be circumscribed by the limits prescribed in the Quran. The concept of Quranic sovereignty also implies that the government of a State established with a view to enforcing the 'Shari'ah - or implementing the will of God cannot claim an absolute or unlimited obedience from the people. They are bound to obey it only so far as it exercises its powers in accordance with the divine law revealed in nature and the Holy Book. There can be neither obedience nor co-operation in sin and aggression.

Closely related to sovereignty is the question of the determination of good and evil which is the basis of legislation in Islamic legal and constitutional theory. The question is if the good and evil are entirely dependent on the absolute will of God or they are based upon, or regulated by certain inexorable laws operative both in the realm of nature or in the course of history. That Shari'ah is based on the principle of good (husn) and evil (qubh), which can be rationally determined is the view first systematically formulated in the history of Islamic theological-jurisitic thought, by the Mutazilites. The rational foundation of the good and evil
is an indispensable requirement of Law. That is why the idea, although it was very strongly objected to by the early traditionalists, gradually gained ground in Islamic legal thought and was supported and advocated by the later Asharite theologians such as Ghazali, Qarafi, Shatibi, Amidi and others who confirmed the rational aspect of Islamic legal injunctions and thus developed a new branch of Islamic jurisprudence known as the science of the 'Objectives of Shariah' (*Maqasid al-Shariah*).

There is a repeated stress in the Qur'an on the rational side of life to persuade men to believe in the essential and fundamental articles of faith ('Iman), such as the existence and the unity of God, the value and working of inexorable laws operative equally in *Nature* and *History*, the need and importance of Divine guidance thorough the agency of the prophets and also to abide by the precepts of Islam. The Quran again and again appeals to reason and repeatedly refers to *maruf* and *munkar* as the basis of Muslim law which are synonymously used for good and evil. Islam believes in the universality and naturalism of the good and evil i.e. it confirms the universal aspect and natural status of good and evil and regards them as *maruf* and *munkar* respectively. *Maruf* means good recognized as such at all hands whereas *munkar* means evil disapproved as such by every body, and the Qur'an, accordingly, appeals to or trusts in, the rational sense of the men in the determination of good and evil.
Whatever is approved or disapproved in principle is called good or evil as the case may be. The rules laid down in the Qur'an and the Sunnah are not arbitrary speculations but universal truths admitted by all those who possess uncorrupted sense and conscience. The principle that legal rules must be based on the good and evil, is the original contribution of Islamic law to the legal science. No other civilization ever thought of it before, as it has been admitted by Professor Ostorog in his remarkable essay, 'Roots of Law' included in his book Angora Reform. According to Dr. Hamidullah: "In fact in expounding the Qur'anic statement, "Do what is maruf (what is good in the eyes of God and man) and abstain from what is munkar (what is evil in the eyes of God and man), the Muslim philosophers of law adopted an all-embracing system."  

5.3 The Sources of Shariah

The life and longevity of a legal system, however, depends much on its sources; unless these sources are adaptable to changing circumstances, it may not survive for long. Iqbal, therefore, proceeds to make a detailed inquiry into the sources of Shariah with a view to discovering the inherent mobility and consequent durability of Islamic legal system."
5.3(1) The Qur'an

Although the main purpose of the Qur'an is to awaken in man higher consciousness of his relationship with God and the universe, yet it lays down a few general principles of a broad nature for the regulation of human society relating to marriage, divorce, succession, wills, gifts, dedications, charities, contracts, torts, crimes, usury, treatment of slaves, taxation and even governance. The Muslims invariably regard the Quran to be the eternal and infallible code of individual and social conduct.

The Qur'an, nevertheless, has given some general principles and a few statutory laws and left the bulk of social, political, constitutional and international laws open for the Muslims to legislate for themselves in the light of prevailing conditions and circumstances. The Qur'an lays down only broad-based principles and leaves the problem of their interpretation to be decided in accordance with the exigencies of time and the requirements of the society. The very fact that no clear injunction is found in the Qur'an or the Sunnah in a certain matter is sufficient to show that the law-giver has himself left it to the good sense of the believers to deduce or devise detailed rule as the case may be. The Qur'an is, therefore, a constitution of the Islamic faith and the corpus of the law which has been evolved from it and which revolves round it,
must be consonance with it in letter and spirit. It is on the basis of this fundamental fact that Iqbal criticizes Trukish poet Zia's demand for the revision of the law of inheritance incorporated in the Qur'an which according to Von Kremer constitutes the supremely original branch of Muhammadan law. 30

5.2(2) The Sunnah

As said earlier, the Quran contained only some general principles and fundamental laws regarding various domestic and social affairs. The Holy Prophet was divinely commissioned to interpret the Qur'anic texts to extend or limit its application and even to supplement the same wherever necessary. 31 The Prophet Muhammad (Peace be upon him), is a paradigm for excellence of a prophet and a law giver. As a true statesman, the Holy Prophet, having adopted pragmatic approach, preserved and approved, such ancient pre-Islamic customs as were consistent with the basic Islamic norms set by the Qur'an. 32

Shah Wliullah, who in his magnum opus, Hujjat Allah al-Baligha, has dwelt on the prophetic methods of building up a universal Shariah. According to him,: The law revealed by a prophet takes especial notice of the habits, ways and peculiarities of the people to whom he is specifically sent. 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 generally train one particular person, and to use them as nucleus for building up of a universal Shariah. In doing so, he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of the specific habits of the people immediately before him. The Shariah 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. 34

The Sunnah which constitutes the second great source of Islamic law is precisely what the Prophet said, or did, approved or confirmed. 35 It is expounded in an immense collection of short narratives called Hadith. The Hadith or Sunnah is, therefore, not only what the Prophet himself said or did but also what he tolerated of the existing practices among the companions practices coming indeed from pre-Islamic habits and customs. Iqbal is, therefore, not in favour of any indiscriminate use of traditions as a source of law. According to him, 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 usage 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 usage left intact by express or tacit approval of the Prophet, if they were intended to be universal in their application. 36 He says on the authority of Shah Wali Ullah, as given above, that the tradition in which the Prophet merely approved either expressly or tacitly, or confirmed in toto or in partial modification thereof, some local custom of Arabia, is in a sense specific to that people and not meant for universal application. 37 He is, however, of the opinion that if used as indicative of the spirit in which the Prophet himself interpreted his revelation, the traditions may be of great help in understanding the life-value of the principles enunciated in the Qur'an. A complete grasp of their life-value alone can equip us in our endeavour to interpret the foundational principles of the Shari'ah. 38

5.2(3) The Ijma

As laws included in the Qur'an and the Sunnah are meant for the welfare or benefit of the community, the Divine legislator has delegated to it the power to lay down by-laws by resolution of those men in the community who are competent in this behalf, that is, the 'Mujahids' or jurists. The laws so laid down or framed are presumed to be what God intended and are, by definition, considered as a communication from
God. But for such a resolution to become a law, unanimity of the jurists is a necessary pre-requisite, which is technically called ‘ijma’ or consensus of opinion which constitutes the third source of Islamic law and which in the opinion of Iqbal is the most important legal notion of Islam. 39

Though, in strict theory, the jurists so acting in a body merely expound the laws found in the Qur’an and the Sunnah but the laws so laid down and formulated by them unanimously have most of the attributes of legislative enactments, whose validity cannot be disputed. The laws arrived at as a result of consensus are presumed to be in accord with the principles of the Qur’an and Sunnah conclusively and, therefore, cannot be treated as invalid on the pretext of repugnancy to the revealed laws. 40 Theoretically, a law resolved on unanimously can be repealed or modified by a subsequent consensus. 41 It is substantially correct to say that Islamic law concedes legislative powers to the jurists acting in a body. Such powers though originally derived from the Divine legislator are practically unlimited, as the Holy Prophet is reported to have said that God would certainly lead His community to the right path. 42 And since the Islamic religion does not admit the possibility of a further revelation after the Prophet Muhammad (Peace be upon him) the
principle of ‘ijma’ may be regarded as the only authority for legislation now available in the Islamic system.

It is, however, strange, according to Iqbal, that this important notion while invoking great academic discussion in early Islam remained practically a mere idea and rarely assumed the form of a permanent institution in any Islamic country. Most probably its transformation into a permanent institution was found contrary to the political interests of the kind of absolute monarchy that grew up in Islam immediately after the fourth caliph. It was considered favourable to the imperial interests of the Omayyad and the Abbaside caliphs to leave the power of Ijihad to individual jurists (Mujtahids), rather than to encourage the foundation of a permanent assembly which might become too powerful for them. 13

5.2 (4) The Qiyas

In view of different social and agricultural conditions prevailing in the countries conquered by Islam, the Muslim jurists, particularly those belonging to the school of Abu Hanifa were driven to the frequent exercise of their personal opinion in those cases in which no express provisions were found in the Qur’an or the traditions. This was, however, bitterly criticized by the traditionalists, but even they could not finally succeed in ruling out the exercise of reasoning in adjudication of the
cases in which no clear-cut injunction was to be found either in the Quran and or in the Sunnah. So the use of personal judgment was restricted not only to the Iraqi school. The jurists of Madina also did have the recourse to it even if not too frequently. Rabiah-al-Rai to whose name the word ‘Rai’ (lit-opinion) is added indicating that he advocated the use of Rai or opinion or personal judgment in juristic matters, was no less a great Madinite jurist and being an important member of this school was included in the Seven Leading Jurists of Madina. It was, however, left to Shafii to formulate systematically the notion of Qiyas in the history of Islamic jurisprudence. In his famous “Treatise” (Al-Risala), he subjected it to strict rules and defined the limitations, conditions and correctives of Qiyas, which though originally appeared as a mere disguise for the jurist’s personal opinion eventually became a source of life and movement in the law of Islam properly understood and applied. According to Shafi, if properly understood and applied, Qiyas is another name for Ijtihad which, within the limits of the revealed texts, is absolutely free, and its importance as a principle can be seen from the fact that, according to most of the doctors, as Qazi Shaukani describes, it was permitted even in the life time of the Holy Prophet.

Qiyas (lit: analogical deduction) is the fourth source or basis of Islamic law. It implies the faculty of reasoning and paves the way for the
extension of a legal rule (hukm) to an analogous case. The underlying principle or presumption is that the Shariah values or Islamic legal injunctions (ahkam) are based on certain purposes or causes (fital) which could be rationally determined or discovered by human reason. It is the duty of a Muslim jurist (who is technically called a Mujtahid) to discover these causes and apply the consequent legal rules to analogous cases having the same causes. For example, in the case of alcoholic drink (khamr), intoxication (sukr) was discovered as the cause of its prohibition. Its legal rule or injunction (hukm) was then extended to Nabidh having the similar cause by way of Qiyas or analogical deduction.

5.2(5) Istihsan and Islislah

But too much reliance on analogy tends to ignore the creative freedom and arbitrariness of life. Of course, the intricate behaviour of life cannot be subjected to hard and fast rules logically deducible from certain general notions. Abu Hanifa was fully alive to this fact and devised the principle of Istihsan i.e. Juristic preference which implies the need of observing the actual conditions of life in legal thinking; other jurists also followed his suit and were forced, under the pressure of circumstances and as a result of their own insights, to adopt similar principles of istislah or masalih al-mursala or qiyas mursal (free analogy), which have been correctly evaluated by perceptive critics as only
alternative or synonymous expressions for the concept of *Istihsan*. The principle of *Qiyas*, along with these complementary principles is, therefore, largely responsible for the extension of legal doctrine and system of Islam.

5.4 The Evolution of Shariah

Not only the sources, but also the history, of Islamic law bears testimony to the fact that it has always acted as a dynamic force. Islamic law is not a life less mechanism, or a mechanism pure and simple. It is a progressive and assimilative system to which history provides abundant example.

5.4(1)

The development of law became an indispensable phenomenon in Islamic history.

As a result of rapid victories and consequent expansion of their empire in their early history, the Muslims were soon brought into touch with new cultures and new needs which necessitated fresh interpretation and in some cases fresh legislation which did not exist in the Arabian peninsula before or just after Islam. The Muslims, therefore, faced a problem of the first magnitude. The need arose to evolve a system of law, in harmony, no doubt, with the essential principles of the original code.
but more supple and capable of modification and retraction. It can be safely said on the basis of historical evidence that the Muslims did succeed in a magnificent manner to cope with the new situation and to meet the new challenges thrown by the new historical development, and they did evolve a system of law more advanced and more attuned to the new requirements of age. "Next to the Romans," Says Von Kremer, "there is no other nation, besides the Arabs, which could call its own a system of law so carefully worked out." 53

The Qur'an remained throughout the ages a sufficient guide for the Muslims. No one had obtained at any stage that the Quran had laid down details of every conceivable law. Recourse had, therefore, to be taken to the exercise of ḥijah. This was the only logical answer to the growing needs of dynamic society which was developing fast and was soon to cater the needs of a growing society. Many of the companions, therefore, did not falter and readily used their individual judgment in cases in which there was no clear text in the Quran nor was there any authentic tradition which could be applied strictly or literally. One can quote extensively to show how the companions appreciated the importance of exercising their own instructed judgment in cases where a clear text was not available either in the Quran or in the Sunnah. They also exercised their personal judgment in interpreting and applying a
divine law rule originally found in the Quran and the Sunnah and kept before them the spirit, rather than the letter, of the text or the context of the specific events in which a certain law was promulgated by the Quran. The succeeding generations of Muslims followed in their footsteps and made strenuous efforts to evolve a system of law that could be consonant with the growing needs of a multifarious society.

The problem subsequently faced by the Islamic culture was to adapt its law to different geographical circumstances. And there is no doubt that our jurists made very painstaking efforts to achieve this end and in their bid for adaptation of Islamic law in the new conditions they propounded different revolutionary theories and made marvelous achievements. We witness in the evolution of Islamic law, a gradual adjustment to practical requirements with due regard to different geopolitical milieu.

Iqbal conclusively remarks: that with the expansion of Islam, evolution of legal thought became an absolute necessity, and our early doctors of law, both of Arabian and non-Arabian descent, worked ceaselessly until all accumulated wealth of legal thought found a final expression in our recognized schools of law. Iqbal, however, duly reminds us that with all their comprehensiveness, these systems are
after all individual interpretations and as such cannot claim any finality.\textsuperscript{56}

It must be particularly noted that before the rise of the Abbasides, there was no written law of Islam apart from the Holy Quran. Then, from about the middle of the first century up to the beginning of the fourth not less than nineteen schools of law and legal opinion appeared in the Muslim World. This fact alone is sufficient to show how incessantly our early doctors of law worked in order to meet the necessities of a growing civilization. With the expansion of conquest and the subsequent widening of their outlook, these early legists had to take a wider view of things and to study local conditions of life and habits of new peoples that came within the fold of Islam. A careful study of the various schools of legal opinion, in the light of contemporary social and political history, reveals that they gradually passed from the deductive to inductive attitude in their efforts at interpretation. According to Iqbal, therefore, 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. Our early doctors of law taking clue mainly from this groundwork evolved a number of legal systems, and the student of Muhammadan history knows very well that nearly half the
triumphs of Islam as a social and political power were due to the legal acuteness of these doctors. 57

But then unfortunately due to a multiplicity of factors, the original dynamism of Islam gradually disappeared. Under the pressure of newly emergent and unfavourable circumstances. That reduced the law of Islam practically to a state of immobility, Iqbal has enumerated three main factors which were largely responsible for this debate viz.:

1. The growth of unrestrained rationalism which was considered to be a force of disintegration and a danger to the stability of Islam as a social polity.

2. The rise of ascetic sufism which taught total otherworldliness and thus obscured men's vision polity of a very important aspect of Islam as a social polity.

3. The destruction of Baghdad -- the centre of Muslim intellectual life in the middle of the thirteenth century which was a great blow to Islam, so much so that all the contemporary historians of Tartars describe the havoc of Baghdad with a half suppressed pessimism about the future of Islam: It was for fear of further disintegration which is only natural in such a period of political decay, that the conservative thinkers of Islam focused all their efforts on the one
point of preserving a uniform social life to the people by a jealous exclusion of all innovations in the law of Shariat as expounded by the early doctors of Islam. Iqbal, however, is of the opinion that the tendency to overorganize by a false reverence of the past as manifested in the legists of Islam in the thirteenth century and latter, was contrary to the inner spirit of Islam itself.  

This unfortunate situation would have been avoided if there had been an effective forum for a decisive and detailed dialogue concerning the issues erupted from time to time in Muslim society. The result was a dreadful divergence of juristic opinions remaining unresolved and unsettled. Scholastic prejudice and sectarian bias were also largely responsible for the fossilization of views and stagnation of juristic or legislative activity in Islam. To this was added the idea of the finality of the schools and the idea of the closure of the gate of *Ijtihad* which played havoc with the original dynamism of Islamic legal system.

5.4(2)

The evolutionary history of Islamic Law is broadly divisible into four periods. The first period commenced with the Hijrah or migration of the Prophet to Madina (A. D. 632). This has been rightly called the ‘legislative period’ of Islam when law were enacted by the divine legislator
and promulgated in the words of the Quran, or by the precepts of Muhammad. These are the texts upon which as their foundation the superstructure of the four Sunni Schools has been constructed.

The second period extends from the date of the Prophet's death to the foundation of different schools of jurisprudence, and would cover, roughly speaking, the time of Companions of the Prophet (ashab) and their successors (tabiun). It was an age as has been observed mainly of collection and of interpretation and extension of laws by collective deliberations.

The third period was marked by a theoretical and scientific study of the law and religion, and it was then that the four Islamic Schools of Jurisprudence were established. It commenced about the beginning of the second century of the Hijra and practically ended with the third century.

Since then there has been no independent exposition of Muhammadan law, and jurists have been engaged within the limits of each school to develop the work of its founders. This may be called the fourth period in the history of Muhammadan law and cannot properly be said to have yet come to an end.59
One of the principal sources of the evolution of Islamic law has been the custom. Islam gave due recognition to the legality / legal force or character of customs. Islamic system also recognizes the force of customs and usages (known as ta'mamul, urf and adah) in establishing rules of law. The validity of such laws rests on principles of authority similar to those of ijma: Whatever the people generally consider good for themselves is good in the eyes of God" is the well known tradition. It is perhaps in view of the universality of the human nature that the Holy Prophet made the following pronouncements.

1. That values of the days of ignorance (Jahilliya) will be acted up in Islam. 

2. A wise counsel is the lost property of the faithful (Mu'mir); wherever discover it, he takes hold of it. (al-Tirmidhi, Chapter IIm, 19) Ibn Majah, ch. Zuhd, 15).

The Holy Prophet himself confirmed some of the customs and practices of the pre-Islamic days. The Holy Prophet preserved and approved such ancient pre-Islamic customs as were consistent with the basic Islamic norms. The Hadith or Sunnah of the Prophet of Islam
include not only what the Prophet said or did himself, but also what he tolerated of the existing practices among the companions practices coming indeed from pre-Islamic habits and customs. And the early caliphs who immediately succeeded him followed his practice. The example of Caliph Umar is quoted by al-Masudi\(^\text{62}\) (p. 1230). This practice of observing customs and absorbing them in the legal construction so continued even after him. Author of \textit{Fusual-i-Imadiyya} cites several jurists who say: There were many law suits which were decided by our predecessors according to the habits and customs of the place where they lived. Those decisions were not necessarily good law for every judge and for every place; “every case should be decided in the light of the usages of the time and the place.” \(^\text{63}\) Provided that these customs or usages do not violate any express provision or text of the Holy Quran and the Sunnah and also a decision unanimously taken by the earlier jurists which is technically called \textit{ijma}.

Islamic law consists not only of the revealed injunctions of the Quran and the Sunnah, but it contains also of the customs and traditions (\textit{urf} and \textit{adah}) incorporated into the framework of Islamic law as well as the opinions, (both individual and collective, of the jurists (\textit{mujtahids}). Islamic law, even in the opinion of Dr. Muhammad Hamidullah, the eminent Muslim intellectual today, is not merely a
collection of divinely-revealed laws, there are rules of customs, orders of superiors and the rules arising from the deliberations of jurists. The precepts of the practical part of the Shariah (i.e., Fiqh) being based on the use and custom possess features of automatic change with the change of time. It is an accepted maxim that the terms of law vary with changes in the times.
Islamic Law and Social Change: an Ideological Perspective

6.1

Human history "says Dr. Khalifa Abdul Hakim, has created and transcended so many systems of law, some believed to have Divine origin and others the creation of the human sense of rationality and social justice, which properly speaking is also Divine. All systems set a seal of eternity on themselves and for long periods held sway as unchanging realities, having systematized human relation once for all. Hindu Shastras, the Babylonian code of Hamourabi, the proverbially unchanging laws of the Medes and the Persians and the Pentateuch were believed to be Divine and eternal, but no modern state or society considers them now to be sacrosanct. The Romans who had a genius for lawmaking believed to have offered the world a perfect code. They were all good in their own times but changing circumstances have abrogated a major part of them, some of them having been scrapped altogether."

6.2

According to the Quranic view, reality and appearance are both conceived as Divine. Changes occur in appearances, not in realities; but
the changes are also subject to unchanging laws rooted in reality. It is on account of the Divine nature of changes taking place in appearances that revelation has been changing in the matter of laws and regulations of conduct, which denotes no fickleness or unreliability on the part of the Creator, but only indicates that Laws promulgated by one revelation are abrogated by succeeding revelation when due to change of circumstances they ceased to be helpful for life and their continuance would have thwarted the course of human development. The Quranic verse clearly enunciates: "We abrogate not a verse unless we replace it with something similar," meaning thereby something not the same in all respects but having a similar object or purpose. It is also said: "God negates as well as affirms," but changing revelations are in accordance with the abiding Source Book which the Quran designates as the "Mother of Books." meaning the eternally abiding Divine Consciousness, the Divine knowledge of the Laws of Being and Becoming, according to which changing manifestations take place. The succession of revelations was partly necessitated by changes in the needs and affairs of men, a concomitant of all created things, calling for the repeal or modification of previous laws. For instance in the days of Adam and his immediate progeny, the closest relationship by blood was no bar to intermarriage,
but when the female population sufficiently increased, marriage was prohibited within certain degrees of relationship.  

6.3

Man gradually rose through many ages from the primitive life of the cave man to the cultured civilization of today. He passed through periods of hunting and agriculture and moved on into the industrial area. With the development of modern large-scale industry, life became more and more complex and very intricately organized. Mundane things undergo change all the time which may be imperceptible in nature. Society is a living organism, and the interaction of circumstances and inventions progress made in the material domain profoundly affect our conceptions and, indeed, our practices. The nature of life, be it of the individual or of a society, reflects variety and change or movement. Therefore conscious experience which is individual as well as collective cannot be typified as static.

6.4

It is an established historical fact that manifestations of social life differ with the change in time and place. Since laws and rules are part of these manifestations and affect the life and are affected by it to a marked degree, we can readily understand the reason for the variation of laws in
different ages and countries, and can perceive the reason for the laws being colored by the special characteristics of nations and epochs, depending upon their customs, traditions, predilections and peculiarities. The eminent sociologist-philosopher of Islam, Ibn Khaldun in his Maqqaddimah (Prolegomena) says: "The conditions, customs and sects of the world and nations do not continue according to any specific pattern or stable program. There is always change from time to time and from one condition to another. Inasmuch as this applies to persons, times, and provinces, it applies likewise to countries, ages and states. Such is God's order amongst his creatures. This social fact undoubtedly results in a change in peoples' interests as the social structure alters. In view of the fact that the interests of the people are the basis of all laws, it is both necessary and reasonable that Shariah rules should undergo changes to suit the changing times; and that these rules be affected by the social organization and the environment." Ibn Qayyim al-Jawziyyah was right when he said that "legal interpretation should change with the change in times, places, conditions, intentions and customs". He was right also when he underscored this clear fact by saying, "Ignorance of this fact has resulted in grievous injustices to the Shariah, and has caused many difficulties, hardships, and sheer impossibilities, although it is known that the noble Shariah, which serves the highest interests of
mankind, would not sanction such result. The Quran and the Sunnah no doubt provide us with some legal rules with regard to the individual and social life of Muslims. But human life, being dynamic, requires laws that should change with the changing circumstances. Ray is an instrument that enables the coverage of diverse situations and enables Muslims to make new laws according to their requirements.

The legal rules do not change except with the change of the means and the technicways which materialize and express the object of the lawgiver. The reason is that the Shariah does not concern itself with the means and the technicways, but let them free so that according to the need of the time, the most efficient for the relative organization and the most effective for the relative arrangement may be adopted.

6.5

Needless to say that society is a living organism, and the interaction of circumstances, inventions, and progress made in the material domain profoundly affect our conceptions and indeed, our practices. Social change technically implies “transformation of society.” The term, however, is used in a general sense to signify that the change in question has happened in a society in response to social needs. A legal change that interacts with such social changes or recognizes the social needs,
demonstrates the adaptability of a particular legal system. A sophisticated legal system must give effect to both the interest in a reasonable stability of settled legal expectations and the interest in immobility and change in law, lest the positive law, if too unimaginatively and rigidly applied should act as a brake on future social development. The law, like the traveller, must be ready for the narrow. It must have a principle of growth.” (Mr. Justice Cardozo).13

6.6

The problem of social change is especially very acute in Islamic law. The question is how can a law that is generally defined as religious, sacred and immutable meet the challenge of change. The question, in other words, is if Islamic law is immutable or is it adaptable to the ensuing changes in society under the impact of modern science and technology in the modern times. The question of the adaptability of Islamic law to social change has been raised more frequently than before. In the nineteenth century when most of the Muslim peoples, directly or indirectly, came under Western domination, a number of attempts were made to reform the laws of the Muslim peoples whether they were attempts to codify or to modify the Muslim laws, the strong religious reaction among the Muslim peoples against such legislative attempts
made the reformists aware of the complexities of the problem of change in the Islamic law.

6.7

There is a bitter controversy among the scholars of both the East and the West concerning the position of Islamic law vis-a-vis social change. Some writers have been inclined to regard Islamic law adaptable to social change, while others have stressed the immutable character of Islamic law. Orientalists like C.S. Hurgronje and J. Schacht and also most of the traditionalist Muslim jurists maintain that Islamic law, by its very nature and history and methodology, is immutable and hence not adaptable to social change. While orientalists like Linnet de Billefonds and the majority of Muslim reformists and liberal jurists like Subhi Mahmasani hold that such leading legal principles as *maslaha* (public interests) and *ijtihad* (independent legal reasoning), corroborate the adaptability of Islamic law to social change. Hurgronje points out that it was a mistake to treat Islamic law like Western law and that Islamic law was a doctrine of duties that is, an ethics and not law in the proper sense. By its nature it was a religious law, and a such it was immutable.
Those who deny the adaptability of Islamic law to social change maintain that Islamic law is, by its very nature, immutable and not adaptable to social change. According to them, Islamic legal theory has been divorced from social realities, and as such has been separated from these institutions which are adaptable to social needs and for that reason could not develop a method of adaptation of its own. They argue that Islamic law is divine, authoritative and absolute in its nature and so it cannot change or allow change in any of its precepts and institutions. The very nature of its development in its formative period in isolation from the institution of legal and social change i.e. the courts and the state has made it immutable; and it did not develop an adequate methodology of legal change. Not only that Islamic law does not change, but also that in fact it cannot change and as such the rulings pronounced by the earlier jurists are final, eternal, absolute and inalterable: 10 While others consider Islamic law as adaptable to social change. They argue from the nature of law's development and say that in practice Islamic law is accommodated to social changes. The making or remaking of law takes place in response to social needs and so in respect of its strict subject matter and methodology it always showed adaptability to social change. Islamic law in fact has changed, and can
further be changed. Thus law can be changed and modified to fit new social conditions. Its adaptability in this specified context has, therefore, a distinct implication of modification to meet new conditions. 17

6.9

The term adaptability, however, has been used by the modern scholars in two senses "(1) the possibility of expanding the already existing body of law", (2) openness of this body of law to change (according to social conditions)." Adaptability in the first sense is hardly in question here. With the exception of a few literalists, it has always been allowed by the jurists on the basis of analogy. In fact the need and method of analogy arose from this sense of adaptability. No one disputes that social changes occurred in Islamic history and that legal changes did take place accordingly. Even those who hold immutability view admit that Islamic law was adaptable in its formative period whereas those who subscribe to adaptability view, do not deny that after the closure of the gate of Ijihad, Islamic law showed less and less adaptability. But whereas the former view connect the change to the nature of Islamic law, the latter asserts that those changes took place only in practice but were not recognized by the theory of Islamic law. The question is, therefore, obviously not about the historicity of legal changes, but about the theory of Islamic law regarding these changes. The difference of the two views is
confined therefore to the theoretical aspect of the question. The question which arises in this connection is: Does Islamic law in fact change further, or is Islamic law changeable? 18

6.10

This brings us to an investigation of the meaning of Islamic law, as understood differently by the protagonists of the two views. Those who hold immutability view believe that Shariah and Fiqh are inseparably connected, Shariah being the law and Fiqh the science of knowing the law. According to Kerr, there are four levels of meanings implicit in discussion of juristic theory (1) Divine will, the sole metaphysical reality; (2) the spiritual relationship between man and God; (3) the normative relationship between man and man, and (4) the non-normative relationship of man and nature. Shariah belongs to the first level, and Fiqh covers both the second and third levels. The third and fourth levels concern social changes. Now social changes would usually have immediate effects on the third level; its effects on the second level are not immediate. In respect of the question of adaptability, therefore, the Fiqh at level three is more significant than at level two. 19
6.11

The question whether Shariah or Fiqh can be called law is another source of ambiguity. The question stems from the fact that the English term “law” has a special sense which is not covered by the Islamic terms. According to Linent de Billefond Fiqh may be called “law”. He has argued that the theocratic and religious nature of Islamic law has been stressed in an exaggerated manner, by referring its teachings on Ibadat (rituals, act of worship), and by comparing it with Western concepts of law. He maintained that even if the theocratic nature of its origin be admitted, it was not prevented from becoming a juristic system so long as its precepts were sanctioned by a secular authority. Implicit in his argument is the view that Fiqh became law as much as and whenever it was sanctioned by governors and administrators. Fiqh, though not law in the strict sense of the term, is the science that deduces rules of law from Shariah. Accordingly, Shariah is known through Fiqh. The question is if there exists Shariah outside Fiqh? According to Dr. Masud the answer should be in the affirmative, yet there are different answers to, the question of its location. In the abstract sense, the Shariah is a metaphysical reality known through the Quran and the sayings of the Prophet. The question whether everything contained in the Quran and the Hadith is law takes us back to Fiqh, as that is where the law is
spelled out. Hence for practical purposes, even in this position, *Fiqh* comes to stand for Islamic law.  

**6.12**

There has been a romantic tendency to exaggerate the element of legal tradition and continuity and to make it a dogma. But the legal theory as well as history of Islam denounces such an approach. The legal history of Islam records the community's effort to master its environments to make social life possible. Islamic legal theory calls for a dynamic rather than a static approach. It duly takes into account the evolving human relationships and may call for continued reassessment of models or concepts in the light of which human law is analyzed and clarified.  

**6.13**

As a matter of historical fact, the interaction between social change and legal theory have been at work in Islamic law, right from the beginning of the cultural career of Islam. The growth of constitutional theory and practice in the early Islam, even in the days of the pious caliphate also bears testimony to the fact that the fundamental law of Islam admits of the social and political change and redesigns or reshapes its political and constitutional structure accordingly which is also a
further proof of the fact that Islamic law is not rigid or inflexible; it assures adaptability of Islamic law to the changing and growing needs of the society. It is an accepted fact that the terms of Law vary with the change in the times. Islam is a definite forward moving force; it is enlightened, peaceful, dynamic and progressive. Islam, the religion of human progress, never aims at stagnation or retrogression, or oppression or enslavement of the mind or body, but always at advance, at even justice, at emancipation. The rules laid down by the sacred law of Islam are therefore not static but dynamic. We should, however, not forget the fact that the Islam reformed is Islam no more, what logically follows is that Islam is the norm by which the world is to be judged and not vice versa. Islam is to be regarded as a norm by which the world is to be judged.

6.14

Is there any place in the legalism of Islam, for a theory of progress. The question concerns not only a system of human laws; it is a general problem, and must, therefore, be solved according to general principles. Let us observe briefly how Islam succeeded in reconciling the constant and the variable and in what degree it admits the possibility of change for the better. Islam takes a very dynamic view of life. According to it, the ultimate basis of all life is spiritual and eternal that reveals itself in
variety and change. ‘A society based on such a conception of Reality must reconcile, in its life, the categories of permanence and change. It must possess eternal principles to regulate its life for the eternal gives us a foothold in the world of perpetual change, but eternal principles, when they are understood to exclude all possibilities of change, which according to the Quran is one of the greatest signs of God, tend to immobilize what is essentially mobile in nature. 24

6.15

Islam, therefore, regards both aspects of change and permanence as the essentials of life. Exigencies of life are regularised in keeping with some fixed, unchangeable laws. But in order to proceed with further development, constant evaluation is necessary, and that is another form of change. Hence it is ceaseless change that paves the way for more and more development and perfection. Laws or rules devised by human intellect need change with a change in time and space; but permanent values admit of no such change. In the words of the Holy Quran, “There is no changing in the words of Allah and you will find no change in the way of Allah”. 25 A combination of “permanence and change” can be achieved if in framing laws, human intellect keeps itself within the boundaries of eternal values revealed by God.
6.16

Islamic law has, therefore, an amazing capacity to reconcile stability with change. Islamic law has been revealed for the benefit of man. Hence maslaha or public interest (weal) is the spirit or guiding principle of Islamic law; wherever is maslaha, there is God’s law; is an admitted rule of Islamic jurisprudence. Maslaha is, therefore, identified as the principle of dynamism, which is amenable to reason and without which Islam and its law would become petrified.

Shari’ah being divine in its origin but human in its subject matter is a blend of idealism and positivism. Instead of being far from realism i.e. the present conditions of society as alleged by many western critics of Islamic law (Shari’ah), it contains broad principles which duly accommodate the change and provide for the growing needs of society. The principle of maslaha or public interest is the most important of all, which implies that Islamic law has been revealed for the benefit of man; wherever is the maslaha, there is God’s law. Maslaha is, therefore, identified as the principle of dynamism, which is amenable to reason and without which Islamic law would become petrified.

6.16(2)

Islamic law, says Professor Santillana, is divine in its origin, human in its subject matter; it has no other end but the welfare of man,
even if the end may not at first sight be apparent, for God can do nothing which does not express the wisdom and mercy of which He is the supreme source.  

30 In the opinion of Dr. Khalifa Abdul Hakim, law according to the Qur'an has a utilitarian basis, the main purpose of which is to promote human values.  

31 Long before Bentham and Mill thought of promulgating or improving the law on the basis of utilitarianism defining it as the greatest happiness of the greatest number, the Qur'an had laid down as the basis of legislation that benefits and injuries must be weighed and action allowed or prohibited solely on this basis. In amplyifying the law given in the Qur'an or based on the Sunnah to meet the demands of a growing and complex civilization the Muslim jurists kept this principle in view. Imam Abu Hanifa in his doctrine of Istihsan and Imam Malik in his doctrine of Masalih Mursalaha accepted it as a basis of fresh laws and rulings.  

32 Muslim jurists enumerated two principles to create flexibility in Shariah law and its application: necessity and public interest. The political authority, thanks to these two principles, could promulgate new measures. In later medieval centuries, the Ottoman rulers and others systematically promulgated new laws by invoking these particular principles of Shariah.  

33
6.17

Islamic law is a divine law in as much as its principal source is Divine revelation (embodied in the Quran), yet it left a number of points including certain matters of penal law, to the discretion of the ruler and his delegates (jurists). Law in Islam has a divine origin, yet the exercise of judgement, or its interpretation, application and implication is human. This exercise of judgment is known as *ijtihad*. When it is individual it is termed as *qiyaṣ*, and when collective *ijma*. These private opinions are valid only in so far as they are not against the revealed law, the principal source. But the opinions of jurists are not infallible hence these same jurists have approved that the *qiyaṣ* by one could be rejected by another and a better one suggested. Similarly an earlier collective opinion can be superseded by a better one.\(^3\)

6.18

The Quran, as pointed out earlier, embodies essentially a dynamic outlook on life and with such an outlook, says Iqbal, it cannot be inimical to the idea of evolution. "Only we should not forget that life is not change, pure and simple. It has within it elements of conservation also.\(^3\) While enjoying his creative activity, and always focusing his energies on the discovery of new vistas of life, man has a feeling of uneasiness in the presence of his unfoldment.\(^3\) In his forward
movement he cannot help looking back to his past and faces his own inward expansion with a certain amount of fear. The spirit of man in its forward movement is restrained by forces which seem to be working in the opposite direction. This is only another way of saying that life moves with the weight of its own past on its back, and that in any view of social change the value and function of the forces of conservation cannot be lost sight of."

6.19

"It is with this organic insight into the essential teachings of Islam" Iqbal suggests, "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." 37

Explaining this thesis Iqbal says: "Islam is non-territorial in its character, and its aim is to furnish a model for the final combination of humanity by drawing its adherents from a variety of mutually repellent races, and then transforming this atomic aggregate into a people possessing a self-consciousness of their own. This was not an easy task to accomplish. Yet, Islam, by means of its well-conceived institutions,
has succeeded to a very great extent in creating something like a collective will and conscience in this heterogeneous mass. 38

"In the evolution of such a society", "Iqbal continues," even the immutability of socially harmless rules relating to eating and drinking, purity or impurity has a life value of its own, inasmuch as it tends to give society a specific inwardness, and further secures that external and internal uniformity and counteracts the forces of heterogeneity always latent in a society of a composite character. The critic of these institutions must, therefore, try to secure before he undertakes to handle them, a clear insight into the ultimate significance of the social experiment embodied in Islam. He must look at this structure, not from the standpoint of social advantage or disadvantage to this or that country, but from the point of view of the larger purpose which is being gradually worked out in the life of mankind as a whole." 39

Mazharuddin Siddiqui has presented a very faithfull summary of Iqbal's views: "Islam believes in meliorism and according to Iqbal, it recognizes a growing universe and is animated by the hope of man's eventual victory over evil. Therefore, it seeks not merely to control the forces of nature which man worshipped in the earlier periods of history, but also to control the forces which govern society, for the victory over evil, to which Iqbal has referred cannot be gained by mastering the work
of nature alone. He who seeks to fight against the evil of human nature must also be prepared to effect the necessary changes in the social organization of man. This means that society should not be allowed to drift along the course of events as they arise. Rather the events themselves should come under man’s control. He should fully master his destiny in the social sphere.

As Iqbal says: It is the lot of a man to share with Islam that the ideal and the real are not two opposing forces which can not be reconciled. It is the mysterious touch of the ideal that sustains the real. The life of the ideal, says Iqbal, “consists not in a total breach with the real which tends to shatter the organic wholeness of life into painful oppositions but in the perpetual endeavour of the ideal to appropriate the real with a view to eventually absorb it, to convert it into itself and to illuminate its whole being. He also said that Islam recognizing the contact of the ideal with the real says ‘yes’ to the world of matter and points the way to master it with a view to discover a basis for a realistic regulation of life. 40 The legal systems built by the early Muslim jurists have been widely recognized as the signal contribution of Islam to human civilization. But it is not realized that the legal system was only a part of the total Islamic effort to gain control of the forces which move and change society.” 41
Islam, says Anderson, is a complete code of life, a religion and ethics and a law. It is not the society that influences the law but the law that provides divinely ordained norms standards to which society is under a perpetual obligation to conform. White discussing the question of change in the context of Islamic law we should not in any way ignore the fact that Shariah has created society and not vice versa. So instead of advocating changing Shariah according to the exigencies of society, attempt should be made to transform society according to it.

According to Dr. Muslehuddin, Shariah precedes the state and controls the society. Both the state and society have ideally to conform to its dictates. The superiority of Islamic law lies in the fact that it is divinely revealed and preserved to this day in its pristine purity and original form. According to Muslehuddin, Shariah would work well only when its ideal form is retained for it regulates human life and activity in its own way and with its own ethical norms which are not susceptible to change.

The question of changing Islamic personal Law, according to Nasr, should be approached with the spirit of belief in the Shariah, thereby attempting to apply and preserve it to the extent possible in the modern world, and to build the life of Muslim society according to it. It should not be approached with a firm belief in all "values" and norms prevalent
in the West today according to which one should seek to change Islamic Law. These practices and values which seems permanent today are impermanent as the most impermanent aspect of human nature upon which they are based.  

“If the question of change” so continues Nasr, “is approached by the Muslim intelligentsia in the spirit thus proposed, it will be seen in a completely different light. The rift between the Western educational classes and the rest of the Muslim community will pass and everyone will realize the real significance of the Shariah as the basis of stability in human life. They will also learn that, although to concern oneself with matters pertaining to Islam is the duty of every Muslim, applying the Shariah in detail to newly created situations is a question of fiqh that should be dealt with by fiqaha. If one understands the real nature of the Shariah, one would think no more of passing on a sick person to some one who is not a physician than to turn over matters concerning Muslim personal laws to one who is not a specialist in the Shariah, that is to say a faqih or alim who specializes in fiqh. Otherwise in both cases, the patient whether he be an individual or a society, faces the danger of a grieve malady and even death.  

According to Hossen Nasr, “the blind acceptance of Western ideas in matters concerned with law, as in so many other domains, will never
solve any basic problem of Islamic society. It is a form of taqlid or blind following much more dangerous than the traditional type of taqlid which has always been decreed by Muslim sages all over the ages. Only by accepting the validity of the Shariah and especially of the personal laws promulgated by it and by relying upon these laws, can Islamic society face the problem of the modern world. And only through the Shariah can meaningful change be brought about. In fact, the value of any change can only be gauged vis-a-vis a permanent truth. If we were to lose the Shariah, we would lose that very thing for whose subsistence we are trying to reform our present society. In such a case, our reformations would only become deformations. Thus we would only let loose forces which would disrupt the basis of our society and open doors which would enable individual whims and fancies to exert themselves over the Divine norm which alone gives meaning to human life. 

To sum up: Islam believes in a dynamic view of the universe. The universe is essentially an assimilative movement and life a progressive creation, of course, when the universe is growing and life moving, the needs and exigencies of man would vary from epoch to epoch and from place to place. Islam being a natural religion kept this indubitable natural fact in view while it legislated. Its legislation consists, in the main, of two parts.
1. Laws which are abiding and everlasting as they are concerned with external aspects and permanent requirements of human nature. They are of universal application.

2. Laws dealing with local habitations and temporal needs or exigencies of man and hence are not required to be applied universally in all times and at all places.

It is here that change is introduced that implies the exercise of *Ijtihad* i.e. independent interpretation of law in the light of the changed a circumstances which Islam holds essential to the healthy development of the body-politic.
Ijtihad: Modality of Change in Islamic Law

No religion as well as no Law, if it is to be progressive and dynamic, can afford to ignore the imperative of change. Islam, being a progressive religious ideology, never aims at stagnation, at retrogression, at oppression or enslavement of the mind or body but always at advance, at even justice, at emancipation. The rules laid down by the sacred law of Islam are, therefore, not static but dynamic. Islam, says Jamaluddin Afghani being not contrary to reason appreciates change and development and is thoroughly capable, by reason of its inner spiritual force, of adaptation to the changing conditions of every age. Islam has tremendous capacity to outlive even cataclysmal changes due to its infinite power of adaptation to the changing circumstances. Islam possesses an inherent mobility and intensive methodology for bringing its law at par with changing society. That methodology is provided for in its great institution of *Ijtihad*, which Iqbal rightly terms as the principle of movement in the structure of Islam. Islam puts emphasis on *Ijtihad* to meet any situation for which there may not be any clear injunctions in the *Qur'an* and the *Sunnah* (the two basic sources of Islamic law.) By
keeping the door of Ijtihad open, it encourages healthy positive and progressive attitude toward life and its problems.\textsuperscript{3}

7.1

*Ijtihad* literally means to exert. In Islamic legal terminology, it means to exert with a view to forming an independent judgment on a question of Law for which there is no express provision in the revealed sources of the Qur'an and the Sunnah.\textsuperscript{4} It is derived from the *Qur'anic* verse: “And to those who exert we show our path”: and is based on the famous tradition in which the Prophet is reported to have asked his companion Ma'adh bin Jabal, on his being appointed ruler of Yemen, as to how he would decide matters coming up before him. Ma'adh replied: I shall judge according to the Book of God. “But if there is nothing expressly provided for in the Book of God, the prophet again asked. Then I shall judge according to the Sunnah of the Prophet” was his reply. “But even if the Sunnah also contained, no such provision,” the Prophet continued asking. “Then I shall exert and form my own judgment,” Ma'adh humbly submitted. At this the Holy Prophet prayed and thanked God for having fortified his companion with what pleases Him and His prophet.\textsuperscript{6}
The Muslims throughout their history, were guided by this principle and formed independent judgments in cases about which the Qur'an and the Sunnah did not contain any definite prescriptions. Originally, it was taken to be synonymous with qiyas (lit: analogical deduction) and it was practised in the life time of the Holy Prophet. The underlying idea, as already pointed out, has been that Shari'ah values (ahkam) have been revealed on the basis of certain causes. And if we exercise our reason and discover those causes, we can apply the same legal rule (hukm) to analogous cases having the same causes. It was, however, soon realized that the Law cannot be subjected to hard and fast rules of Logic and so keeping in view the spirit, instead of merely the text, of the Law they gradually moved from deductive to indicative method in their interpretations. Their guiding principle in this respect was maslaha (or public weal) for which Shari'ah was considered to have been revealed9. Ijtihaad, therefore, in respect of its subject matter assumed two forms: (1) Ijtihad Qiyasi (Ijtihad, based on qiyas and (2) Ijtihad Maslahi (ijtihad based on maslaha). The latter again took many forms like Istihsan, Istislah (Maslaha Murasala) and Qiyas Mursal (free analogy) etc.10 Whereas, Ijtihaad, with reference to the persons exercising it falls into two kinds: (1) Ijtihad Fardi, (Individual Ijtihad i.e., Ijtihad exercised in
individual capacity.) and (2) Ijtihad Jama' (collective Ijtihad i.e. resolved
collectively by jurists and adapted unanimously or by majority). 11

Ijtihad, however, cannot in any way be taken to imply unfettered
thinking on the law of Islam. It is, on the contrary, a form of responsible
thinking on the part of competent thinking individuals. According to
Shah Waliullah, since this important task entails great responsibilities, it
cannot be entrusted to everyone. He recounts three main qualifications of
a mujtahid:

1. He should be able to frame the principles according to which the
individual judgment is to be exercised.

2. He should be fully conversant with the Qur'an and the Sunnah,
and should know the ahadith which form the basis of Fiqh;

3. He must be capable of exercising his judgment to draw injunctions
from the Qur'an and the Sunnah in order to meet the new
requirements of his times. 12

Iqbal supplements another qualification to these qualifications
(traditionally accepted and held as valid) i.e., he must have "a keen
perception of the spirit and destiny of Islam and the trend of modern
history." 13
It should also be noted that *Ijtihad* is an exercise of human reason which is liable to err. That is why the Holy Prophet (Peace be upon him) is reported to have said: "If a jurist or administrator exercised *Ijtihad* and arrive at a true opinion he is entitled to receive double reward but if he arrives at a wrong opinion, he deserves a single reward." The Mutazilites who put absolute reliance in human reason, however, subscribed to the view that a Mujtahid (the authorized interpreter of the religious Law) can never be wrong in his views, as against the opinion of the Asharite scholars that the *Mujtahid* some times errs and sometimes hits the marks. The opinions or edicts of the Mujtahids, therefore, could not be held as infallible oracles or immovable objects.

7.2

*Ijtihad* in all its forms was frequently exercised in early centuries of Islam until all accumulated wealth of legal thought found final expression in the recognized schools of law. Since then, due to a number of factors which Iqbal has adequately explained in his lecture, viz. the growth of unrestrained rationalism, the emergence of asceticism and the Fall of Baghdad, the door of *Ijtihad* was considered to have been closed for good. The result is that today while the people are moving, low remains stationary. Iqbal being completely dissatisfied with this state of affairs, sets himself to the task of analyzing and examining critically the
nature and scope of the problem of *Ijtihad* with a view to exploring and determining the possibility, as well as tenability, of its resurrection in modern times:

The prominent schools of Islamic jurisprudence as explained duly by him originally recognized three degrees of *Ijtihad*.

1. Complete authority in legislation which remained practically confined to the founders of the schools.

2. Relative authority which could be exercised within the confines of those schools.

3. Particular authority which entitles a jurist to decide a matter which has not been conclusively and unanimously determined by the founders or his predecessors. ¹⁸

Iqbal is obviously concerned with the first degree of *Ijtihad* i.e. complete authority in legislation and opines that there is nothing either in the nature and structure of law, or in its history and methodology, which precludes the exercise of such *Ijtihad*. ¹⁹

It is, however, quite unfortunate that although the theoretical possibility of the first degree of *Ijtihad* is admitted by nearly all the authorities, yet in practice it has always been denied since the establishment of the schools, inasmuch as the idea of complete *Ijtihad* is
hedged round by conditions which are well-nigh impossible of realization in a single individual. But such an attitude, according to Iqbal, seems exceedingly strange in a system of law based mainly on the groundwork provided by the Qur'an which embodies an essentially dynamic outlook on life. 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 predecessors, should be permitted to solve its own problems.

According to Iqbal, neither in the foundational principles nor in the structure of our systems, as we find them today, is there anything to justify the present attitude. Iqbal therefore considers the attitude of ulema with regard to the closure of the door of Ijtihad wholly unjustifiable. Since Islam is a progressive concept of life, those rejecting Ijtihad in effect propose something that never was part of its spirit. In his concept Islam has given to its followers the right of personal inquiry (Ijtihad) and the right to reinterpret the problems of life and religion in the light of changed circumstances and conditions.

Iqbal condemned, in strongest possible terms, the lethargy among the modern Muslims which he rightly considered as repugnant to the spirit of Islam. He wanted the Muslims to shake off the inertia and march towards progress along the lines prescribed by the Holy Qur'an.
Muslims must refashion and reconstruct their lives. If they did not, they would sink deep down into the morass of degradation. Iqbal was fully alive to the fact that when the realities of life are hard and unpalatable, decadent communities like neurotic individuals take refuge in the past and find solace in their earlier achievements.21 He is well aware of the intellectual stagnation of the Muslim world which he considers to be a direct result of wrong interpretation of the Qur'an and false view of Islam, and suggests that for the reawakening of the Muslims, *Ijtihad* as a form of responsible thinking on the part of the competent thinking individuals in required. Iqbal had the keen perception that the legal tradition of Islam has become stultified on account of self-imposed limitation. The principle of *Ijtihad*, for him, is the only key for escape from the gilded cage of our history. It is not merely a methodology of bringing Islam in line with modernity but of recapturing the universe with the spirit of abiding revolution, implicit in the Qur'an, and the idea of finality of prophethood. Iqbal called upon Muslims to enter the original dynamism of the Islamic law and enter the world not as strangers but as liberating conquerors.

Iqbal, therefore, championed the freedom of *Ijtihad* with a view to rebuild the law of *Sharia* in the light of modern thought and experience. He fully agrees with Saeed Halim Pasha, contemporary Turkish Muslim
thinker and political leader according to whom the only alternative open to us is to tear off the hard crust which has immobilized an essentially dynamic outlook on life and to rediscover the original verities of freedom, equality and solidarity with a view to rebuild our moral, social and political ideals out of their original simplicity and universality. He accordingly impressed upon the Muslim community in the present age to devise, through the exercise of Ijtihad, the principle of legal advancement, new social and political institutions.

With Iqbal, Ijtihad is the principle of social reconstruction. Under the changed world circumstances, the Muslims must appreciate their position, reconstruct their social life in the light of ultimate principles, and evolve out of the hitherto partially revealed purposes of Islam, that spiritual democracy which is the ultimate aim of Islam. Of course Ijtihad must be exercised with a view to achieve this great end and emancipate humanity from the unfortunate situation in which it is afflicted today under the stress and strain of materialistic ideologies and secular democracies and to establish a truly democratic ideal state of Islam.
7.3

Iqbal was impressed immensely by Shah Wali Ullah, who according to him, was the first Indian Muslim to feel the urge for rethinking the whole system of Islam without in any way breaking away from its past and stressed the importance of *ijtihad* at a number of places. His juristical endeavour consisted in explaining and resolving satisfactorily the apparent contradictions and dichotomies between the eternal values and the changing conditions. "He was keenly aware of the fact that it was impossible to wheel back the march of history. It was, therefore, unwise to think that the Muslims could afford to live usefully on the pattern of life accepted as valid in the past, under the illusion that it would remain valid for all times to come." Shah Wali Ullah is said to have shattered the bonds of *taqlid* and prepared the Muslim scholars for research. Shah Wali Ullah not only emphasizes the catholicity of Islamic law and explains its assimilative spirit, but also stresses the need of reasoning in matters relating to the Shari’ah. He believes that the *ijtihad* of the old jurists, however, high and exalted their status, is open to correction in the light of the *Qur'an* and *Sunnah*. He thus opens the gate of *ijtihad* which had been sealed long ago. Shah Wali Ullah laid special emphasis on *ijtihad*, for it is only through *ijtihad* that progressive adjustment to environment is possible. The dynamism of religion can only be
maintained if requirements of ever changing social milieu are effectively met. Time has come, he wrote, in the introduction to *Hujjat Allah al Belighah*,

"that the religious law of Islam should be brought into the open fully dressed in reason and argument."[31]

Earlier in the history of Islamic jurisprudence many a distinguished jurist have revolted against the orthodox view of the closure of the door of *Ijtihad*. Iqbal particularly referred to Ibn Taimiyya who, according to him, had a powerful reaction against the classical view of *Ijtihad* and al-Suyuti who also claimed the authority of *Ijtihad* to which he added the idea of a renovator at the beginning of every century.[31]

The thought of Ibn-i-Taimiyya, however, found its full expression in the Wahabi movement initiated by Muhammad Ibn Abdul Wahab of Najd, whose influence spread to almost all parts of the Muslim world thus giving rise to a number of political religious movements in the modern times. This movement, which owes to Ibn-i-Timiyya as its godfather although challenged the finality of schools and upheld the cause of *Ijtihad* yet internally this too is conservative in its own fashion for its uncritical view of the past and finally falling back on precedents.[34] However, as a result of the efforts of Mohammad bin Abdul Wahab a
critical attitude was developed amongst Muslim scholars who would not accept anything which came down from the past without resting its validity on the basis of the Qur'an and the Sunnah. There was an urge for stock-taking of Fiqh. It was felt that the pristine simplicity and reasonableness of the Sharī'ah had almost been buried in a forest of subjective deductions propounded by scholars several years ago. These deductions, however valuable, cannot be held final for all times. New problems had cropped up with the march of time, and these demanded new solutions in the light of the Qur'an and Sunnah. Thus, with the development of the critical attitude, valid in itself and the direct result of Islamic revival, the gates of Ḥijath sealed for six hundred years ago were reopened again. The whole Muslim society has awakened to the need of a fresh approach toward Fiqh. There was a general feeling of unrest toward everything which did not have the sanction of the Qur'an and the Sunnah, and the educated people began to feel that no finality and definiteness could be legitimately attributed to any interpretation or conclusion regarding any problem not justified by the mass of either of the two. In other words, they began to believe that the Ḥijath of even the greatest Muslim scholar could not be binding on them.33

Even in modern times many of his immediate predecessors and contemporaries thought along these lines. Jamaluddin Afghani whom
Iqbal would like to be ranked as a renovator (mujaddidi) of the modern century[16] held it necessary for the reawakening of the Muslims that there should be a movement for the renovation of religion to eradicate ideas which have taken form roots among the masses and elite of the Muslims concerning some of the religious doctrines of Islam and some of the nusus (clear injunctions) of Shari'ah-ideas which distort the true nature of their doctrines and nusus. Islam needed a Luther. This indeed was a favourite theme of al-Afghani and perhaps he saw himself in that role. 17 Islam, according to al-Afghani, is a system of rationalist beliefs, shorn of any supernatural content, it always addresses reason and bases its ordinances on it. Its text clearly state that human felicity is the product of human reason and insight, and the misery or perdition are the outcome of ignorance, disregard of reason and the extinction of the light of insight. [18] The principle that reason and not blind prescription was to be the test of truth opened the door of the possibility of reforms. [19]

Muhammad Abduh also felt the need for the restoration in the Muslim world of the principle of ijtihad and of the freedom of research on every subject. It is thus, he thought, that the fiqaha (the Muslim jurists) would come to treat the religious law with greater independence and personal initiative so that when they came to determine the licit and the illicit, to put forward prescriptions and prohibitions, they would be able
to judge the spirit of the law according to reason and not stop as they did in the past at the letter, and rather than restrict themselves to the usage of the single principle of analogy (Qiyas), they would examine new facts liberally and apply them solutions which would be more suited to the spirit and the exigencies of the modern age. Abduh, by this rationalism, hoped to realize the ideal of emancipating minds from routine, imitation and intellectual stagnation which had marked the past few centuries of Islam. 40

Qasim Amin, a well known disciple of Abduh and a great scholar-reformer of Egypt likewise made an appeal to Muslim theologians and jurists to become aware of the needs and exigencies of the modern age, and, therefore, cease to cling, in the application of the laws, to the advice of the one religious authority more than that of another, the only order indeed is that which, while arising from the spirit and essential principles of the Islamic law, is in conformity with the interests of the nation and with the new conditions of its evolution.41

Rashid Rida, another notable disciple and follower of Abduh and an eminent religious scholar, who is rightly considered to be the interpreter of the religious thought of Muhammad Abduh also did not cease to declare that one could work for effective reform only through the direction of the Book and the Sunnah which are in harmony with human
interests in every country and at all times. From the moment of the foundation of al-Manar, he indefatigably put forth the idea that neither in the dogmas nor in the rites of Islam is it held that the Muslims should imitate any particular imam.

Muhammad Kurd Ali (1876-1953) who served as president, for many years, of the Arab Academy at Damascus, and was a notable contemporary of Iqbal agrees with him that the ‘closure of the gate of Ijtihad makes a very deplorable episode in Islamic history. Both of them agree that the ulema’s irrational insistence on static orthodoxy has made the Shari‘ah which is inherently dynamic, an antithesis of change and progress. Kurd Ali believes that the adoption of western legal codes by Turkey and Egypt is due to the stubbornness of the ulema to recognize the challenge of the modern era.

From among his own compatriots, Sir Sayyid Ahmed Khan, whom Iqbal held in very high esteem and regarded him as one of his beloved intellectual guides also firmly believed that the door of Ijtihad was open and that Islam needed Islah (reforms). He wanted to reopen the door of Ijtihad which was considered to have been closed since long. According to him, we must distinguish between what the Qur’an says and the rules and regulations which the jurists have formulated through inference. He is of the opinion that however praiseworthy and commendable the
efforts of the jurists may be, we are not bound to accept their conclusions, for after all these are no more than man-made regulations which can and must be altered with the change of circumstances. He made a distinction between *Din*, *Shari'ah*, and worldly affairs. In the first category he includes belief in God and His attributes as well as acts of worship. In the second category he includes those matters which deal with moral and spiritual purification of mankind. He denies that a Prophet is concerned at all with matters relating to our daily life. *Din* is not subject to change, but our needs and the way we satisfy them depend on differences of time and place. If we include those things within the sphere of Prophetic function, then with the change of time we shall need another prophet which is contrary to the spirit of the finality of Prophethood. What is claimed to have been perfected and finalized by Islam is *Din* and not the *Shari'ah*. If the *Shari'ah* is not final, it logically follows that it is the duty of Muslims in every age and every country to deal with their problems in the light of their needs in accordance with the basic moral and spiritual tenets of Islam. For this purpose he took the step which had been taken by Ibn Tammiyah in the seventh thirteenth century. Like him he revolted against the finality of the four schools of jurisprudence and went back to the very source in order to make a fresh start. 
Syed Ameer Ali, another distinguished Indian Muslim scholar-jurist defined Islam as a religion in complete accord with progressive tendencies and dynamic agent of civilization. Despite the fact that he had a very clear grasp of the historical dimension of Islam and had a keen appreciation thereof as a culture, he was of the view that the obsession with the history should not serve as a bar to progress, but as a spur to infinite progress through the exploitation of the judicial methods of independent judgment (Ijtihad) which had been the glory of early Islam.

7.4

Iqbal, like his enlightened contemporaries, refutes the notion that Islam is dogmatic and has priesthood which constitutes the final authority on Islamic law and life. According to him, Islam is against all sorts of absolutism either in politics or in religion and so it has discarded, in theory, every form of monarchy or kinship and priesthood. With the doctrine of the finality of prophethood and the consummation of revelation with the Prophet Muhammad (Peace be upon him!), the Muslims are spiritually the most emancipated people of the world.

Iqbal criticizes the religious orthodoxy for their insistence that law framed centuries ago to meet conditions then prevailing should continue
to be operative now without change, even though it may not satisfy the present needs. This insistence compels the people to confine religion within the four walls of the Church or the mosque and adopt secularism themselves. We feel convinced, he tells us, that even legal reforms were under consideration in Turkey, if some one could ensure the reformers that what was unalterable was limited to the inviolable principles embodied in the Holy Qur'an and that within their ambit an Islamic state was absolutely free to frame whatever laws were required to satisfy present demands, Turkey would not have gone that way.

Iqbal had, therefore, strongly reacted against the above conception which had transformed the simple Islamic law into a complex and rigid system serving only as a prop for the unchanged and unchanging feudal, and latter colonial-feudal status. The very insistence of the Mullah (orthodox religious leadership) that there is no change possible in life, in society, or in the law, is the main cause of trouble of the Muslim people today. He, therefore, took strong exception to the Muslim theologians' imperative that their flock must submit to their consensus which blots an independent critical attitude. Iqbal considers the attitude of the Ulema with regard to the closure of *ijtihād* wholly unjustified. Since Islam is neither anti-progress nor non-progressive, those rejecting *ijtihād* in effect propose something that never was part of its spirit. The Ulema,
being aware of the theoretical possibility of a complete *ijtiḥad*, ought to reach a new consensus permitting the individual to think independently and creatively. Their role is to guide not to stifle the mind.58 According to him neither in the foundational principles nor in the structure of our system as we find them today, is there anything to justify this attitude. He, therefore, reiterates his demand that the foundational principles of Islamic law and hence of Muslim life be interpreted in the light of modern knowledge and great necessity.59

Iqbal’s demand for a fresh interpretation of foundational principles relates not only to the intellectual inclusive of the philosophical, historical and legal domains, it bears reference also to the social, political and administrative arenas. He, conclusively remarks: “Equipped with penetrative thought and fresh experience, the world of Islam should courageously proceed to the work of reconstruction before them. This work of reconstruction, however, has a far more serious aspect than mere adjustment in modern conditions of life.” This involves equally the need to reform old institutions after having examined their structure carefully and taking into account the larger purpose which is being gradually worked out in the life of mankind as a whole.60
Iqbal raises in his lecture the question: Is the law of Islam capable of evolution and then quotes approvingly Horten who said in connection with the development of theological thought in Islam that the spirit of Islam is so broad that it is practically boundless. With the exception of atheistic ideas alone, it has assimilated all the attainable ideas of surrounding peoples, and given them its own peculiar direction of development. According to Iqbal: The assimilative spirit of Islam is even more manifest in the sphere of law.\(^{62}\)

Iqbal has no doubt that a deeper study of the enormous legal literature of Islam is sure to rid the modern critic of the superficial opinion that the law of Islam is stationary and incapable of development. He, however, deplores the fact that most Muslim countries today are mechanically repeating old values with the single exception of the Turk with whom life has begun to move, change and amplify giving birth to new desires, bringing new difficulties and suggesting new interpretations. Iqbal is of the conviction that 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...\(^{64}\) In view of the dynamism and elasticity inherent in the Islamic thought and structure, Iqbal was of certainty that with the return of new life, the
inner catholicity of the spirit of Islam is bound to work itself out inspite of the rigorous conservatism of our doctors.\textsuperscript{65}

He is, however, fully aware of the fact that the Ulama of Islam claim finality for the popular schools of Muhammadan Law, though they never found it possible to deny the theoretical possibility of a complete Ijtihad\textsuperscript{66}...but since things have changed and the world of Islam is today confronted and affected by new forces set free by the extraordinary development of human thought in all its directions, he sees no reason why this attitude should be maintained any longer.\textsuperscript{67} He then raises the question if the founders of our schools ever claimed finality for their reasonings and interpretations and himself answers it in the negative. In his opinion, the demand of present generation of liberals to reinterpret the foundational legal principles in the light of their own experience and the altered conditions of modern life is perfectly justified. 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 predecessors, should be permitted to solve its own problems.\textsuperscript{68}

Exploding the myth of finality and the fiction of the closure of the door of Ijtihad, Iqbal conclusively remarks: “The closing of the door of Ijtihad is pure fiction suggested partly by the crystallization of legal thought in Islam, and partly by that intellectual laziness which especially
in the period of spiritual decay, turns great thinkers into idols. If some of the later doctors have upheld this fiction, modern Islam is not bound by this voluntary surrender of intellectual independence. This statement factually describes the legal situation in Islam since the close of the Middle Ages and at the same time contains a harsh criticism of those continuing to oppose intellectual independence at a time it was urgently needed. According to him, neither in the foundational principles nor in the structure of our systems, as we find them today, is there anything to justify the present attitude. He thus reiterates his demand that the "foundational principles" of Islamic Law and, hence of Muslim life, be reinterpreted in the light of modern knowledge and great necessity.

7.6

Iqbal was, however, fully aware of the psychological and practical difficulties in the way of reconstruction or re-evaluation of the law of Islam. In order to initiate such an adventure, a critical discussion of Fiqh is indispensable but unfortunately enough, the conservative Muslim public is not yet quite ready for such a discussion which if undertaken is likely to displease most people, and raise bitter sectarian controversies. The public opinion is to be mobilized to realize the fact that a critical evaluation of Fiqh is most necessary.
7.6 (1)

One of the major problems facing the Muslims today, in the field of law, is, how to bridge the gulf that yawns amongst the different schools of Fiqh. The first thing to be noted in this respect, as pointed out by Shah Waliullah, is that the differences are found in external forms only i.e. in the rituals and routine activities and not in their essentials. Secondly, all the prevalent systems of Fiqh draw their inspiration from one single source so that there could be no fundamental differences in them; differences there had been and there would be, but these are differences in interpretation only, not in principle.74 According to Tritton: “There is little difference between these schools, their conclusions are not always the same; but the method is one with slight changes of emphasis. All use traditions and all employ intelligence but they have different names for the latter”.75

7.6(2)

Another main objection to the exercise of Ijtihad at present is that in modern times it is not easier to formulate new legal opinions for ourselves for want of adequate potential and requisite material. Iqbal removes this superficial objection with reference to Sarkhsh who writing in the tenth century of Hijra rightly observes: “If the upholders of this
fiction (i.e. the closure of the door of Ijtihad) mean that previous writers had more facilities, while the later writers had more difficulties in their way, it is non-sense; for it does not require much understanding to see that Ijtihad for later doctors is easier than for the earlier doctors. Indeed the commentaries on the Qur'an and Sunnah have been compiled and multiplied to such an extent that the Mujtahid of today has more materials for interpretation than he needs. 6

7.6(3)

There is also another difficulty that the competent persons eligible for the exercise of Ijtihad are no more available. In this respect a detailed list of qualifications or conditions of eligibility of a Mujtahid is drawn up in various books on Usul al-Fiqh (Islamic jurisprudence). Suyuti has enumerated, with reference to a number of authorities these qualifications in his epochal treatise. Taqrisr al-Istinafi Tafsir al-Ijtihad recently edited and published in Egypt. 77 We have already given some of these qualifications above.

Iqbal has rightly pointed out that these qualifications are well nigh impossible of realization in a single individual. He, therefore, proposes that this difficulty can be overcome with collective effort or Ijtihad Janai to use the technical term adopted by the great contemporary
jurisprudent Ali Hasabullah in his book: Usul al-Tashri al-Islami. 24 *Ijihad* in collective form can be exercised in a joint forum where persons of different intellectual achievements and academic excellences meet together and exchange with their colleagues the technical information of their respective field, with a view, to finding out the most plausible opinion on a question of law coming up before them. But what type of forum it should be? This question brings us to a detailed discussion of Iqbal's theory of *ijma* which has been rightly evaluated as an innovative theory but it is in this invocation that the real difficulties as well as importance of Iqbal as a jurisprudent or legal philosopher lies. We may differ with him but we should keep this fact in mind that Iqbal is not singular in this proposal. Many of his distinguished contemporaries have held similar views to which we shall return after giving a brief synopsis of Iqbal's theory of *ijma*.

7.7

The old controversy of tradition (*hadith*) vs. opinion (*mifta*') continues affecting adversely, although in a slightly modified form the course of development of Islamic Jurisprudence, thus constituting another impediment in the way of the exercise of *ijihad*. On the one hand, are the traditionalists who would like to follow traditions and on the other are those who are generally called upholders of opinion (*ahl-al-
ray] i.e. those who would follow valid qiyas and would try to base their judgments only on those traditions which are either continuous (mutawatir) or famous (mash'uur).

Iqbal tries to strike a middle course between the two extremes. He, on the one hand, eulogizes the traditionalists for their great contribution to Islamic jurisprudence by insisting on the value of the concrete vis-a-vis idea79 and on the other he appreciates the efforts of the upholders of opinion, the common leader and chief spokesman of whom is Abu Hamila who emphasizing the role of reason paved the way for progressive legislation in Islam.80 Iqbal, does not favour indiscriminate use of traditions and follows, in this respect the example of Abu Hanifah but he also does not favour frequent recourse to reasoning and hatching imaginary cases as had been the practice or custom of the school of ray in the legal history of Islam.

The above controversy between the traditionalists and opinionists have assumed new emphasis. Some would like to follow the method of the traditionalists (muhaddithin) while others would stick to the method of jurists (fuqaha). Iqbal obviously did not say anything about it but the fact remains that this divergence of opinion is a matter of great dispute still having a deadening effect on the course of ijithad.
Shah Waliullah, whom Iqbal holds in very high esteem and whose example he tries to emulate has certainly offered decisive comments on this great issue. Shah Waliullah, while offering a workable solution of the differences of pure traditionalists (Muhaddithin) and the followers of the four Imams remarks: "The general practice with regard to the framing of Fiqhi law is that either the deductions are directly based upon the Hadith or they are drawn in the light of the principles enunciated by the jurists. The scholars of every age have been following these two courses, some stressing the former, others stressing the latter. It is unfair to tilt the balance to one side only and neglect the other altogether. The right procedure is to harmonize them. Both these methods should be employed for raising the superstructure of Islamic jurisprudence. The edifice of Shari'ah so erected would be sound and well consolidated. The Muhaddithin should judge their deductions on the principles enunciated by the great jurists. On the other hand, those who follow the practice of deducing laws on the basis of the procedure adopted by great jurists should never give preference to their own principles over those of the nass, and see that their conclusions do not in any way contravene the injunctions of the Hadith. In the same way it is not proper for any Muhaddith to lay unnecessary stress on the principles laid down by the old compilers of the Hadith. They were after all human beings and their
principles could not, therefore, be claimed to be final and free from all errors.

7.8

It is also said in certain traditional religious quarters that Ijtihad of the first degree (that is, in the sense of complete authority in legislation) is no more required, because it relates to the formulation of general rules. And once these rules have been laid down and settled by our previous authorities, they are not to be reopened or questioned for the sake of the economy of ideas and expression. Just as the rules of Grammar of a language are not always subject to alteration, so the recognized rules of jurisprudence are to be taken for granted in any juristic endeavour. Qari Muhammad Tayyib, the late principal of Darululoom Deobandi (India) has taken up the problem in his illustrious book on *Ijtihad wa Taqlid* in characteristic traditional manner. According to him the general rules of Jurisprudence are final as they had been laid down by earlier authorities and we are bound to follow them literally and rigorously. Just as the rules relating to the authenticity and tenability of a hadith are final and it is not legitimately possible for us to reopen them. In the like manner, the general rules framed by the earlier authorities on jurisprudence are final and are to be accepted exceptionlessly and we are bound to follow either one or the other authority according to our choice.
or profession. This is what is technically called *taqlid* and this is an indispensable requirement of common men as well as those who embark upon the study of jurisprudence and have not yet been able to attain the status, or cultivate the qualifications, of a Mujtahid.83 (I have given a brief resume without going into details of the arguments of the learned scholar as the same falls outside the scope of my short treatise). This insight is reinforced by the idea that those matters decided unanimously by the previous authorities cannot be reopened. Iqbal has taken up both these issues, although in his characteristic synoptic style. As for the second issue, Iqbal has touched it in rather greater detail and has pointed out categorically that the *ljma* of one age may be reversed by the *ljma* of latter age.84 So much so that even the *ljma* of the companions on a matter of law can also be reopened and reversed by a subsequent one. We have already seen his views in detail on this issue in the course of our discussion of the sources of Shari‘ah above.

7.9

In regard to the first issue, he persistently insists that *taqlid* in any form is to be held no more tenable. In a passage of *Rumuz-e-Bekhudi* he, however, realizes the importance of Taqlid in periods of decay as the same helps avoid social disintegration. But now particularly when new world order is in the offing, we cannot stick to the classical idea. He.
therefore, vehemently rejects *Taqlid* and fights zestfully for the
revivification of *ijtihad*. In this respect, he seems to be influenced by
Shah Walliullah who speaking on the issue of *taqlid* made very incisive
remarks. While acknowledging the importance of *Taqlid* in certain
matters, Shah Walliullah boldly declared: "I neither look upon any *bra'm*
as infallible, nor do I believe that his judgments were revealed to him by
God Himself and so are obligatory for us. When we follow certain Imam.
we do so on the explicit understanding that he was possessed of a deep
insight into the teachings of the Qur'an and the Sunnah and his findings
were drawn from the Qur'an and the Sunnah.... Had it not been so, we
should not have attached any importance to them. It would be the height
of misfortune to give priority to the reasoning of man over the command
of nass."

He attacked the conventional notions prevailing during his
time. His main endeavour consisted in freeing the concept of the divine
law from the subjective elements that had intruded into it, thus restoring
to it the purity and compactness which it had at the time of the
companions. He also tried to bridge the gulf that yawned amongst the
different schools of *Fiqh*. According to him, all the prevalent systems of
*Fiqh* drew their inspiration upon one single source, so that there could be
no fundamental differences in them; differences there had been and
there would be but these were differences in them; differences there had
been and there would be, but these were differences in interpretations only, not in principle.  

7.10

Perhaps, of course, the greatest obstacle in the way of the exercise of Ijtihad (in the sense of complete authority in legislation) is the doctrine of taqlid al-ama (blind imitation). Taqlid technically means acceptance of the rulings of others when such rulings are not coupled with a conclusive argument.  

Taqlid (imitation) in the sense of following the opinion of others without understanding or critical evaluation is not permitted to a person who is capable of Ijtihad (interpretation). It is only permissible to those who are incapable of it, the ignorant man or the educated who is unqualified for the task of interpretation. Imitation in the sense of blind following of schools and their imams even on the part of those who are capable of Ijtihad is an innovation introduced in Islam as a result of certain very unfavourable historical developments. During the creative periods, Muslim thinkers continued to think and expound the problems of their religious thought in consonance with the spirit of changing times but after the Fall of Baghdad, when political and social life was disrupted, the doctrine of Taqlid was put forward with the intention of arresting any further deterioration and disintegration. It was little realized that a blind reverence for the past, however, cannot help
overcome their short comings. The only thing that can counteract the force of reactionism is the freedom of expression enjoyed by creative individuals. Iqbal accepted this truth; whereas in Runuz-i-Bikhudi he advocated blind allegiance to authority during a period of decline. In his lecture on the "Principle of Movement in the structure Islam," he upheld the freedom of jihād in view of the forces leashed forth in the world of Islam as a result of the influence of the modern West. He, however, warned against the imitation of the West. This imitation of the West, in the words of our distinguished contemporary Muslim thinker Seyyed Hossein Nasr, is even worse than the traditional imitation.91

7.11

Iqbal, therefore, heartily welcomes the liberal movement in Islam but points out at the same time that the appearance of liberal ideas in Islam constitutes also the most critical moment in the history of Islam.92 Liberalism has a tendency to act as a force of disintegration. Moreover, our religious and political leaders in their zeal for liberalism may overstep the proper limits of reform in the absence of a check on their youthful fervour.93 Iqbal considers it the duty of the leaders of the world of Islam today to understand the real meaning of what has happened in Europe and then to move forward with the self control and a clear insight into the ultimate aim of Islam as a social polity. Iqbal very rightly points out:
"We are today passing through a period similar to that of the Protestant revolution in Europe and the lesson which the rise and outcome of Luther's movement teaches should not be lost on us." Iqbal is rightly of the opinion that a careful reading of the history shows that the reformation was essentially a political movement, and the net result of it in Europe was a gradual displacement of the universal ethics of Christianity by systems of national ethics: The result of this tendency we have seen with our own eyes in the current European war which far from bringing any workable synthesis of the two opposing systems of ethics has made the European situation still more intolerable. It is the duty of the leaders of Islam today, Iqbal warns, to understand the real meaning of what has happened in Europe and then to move forward with self-control and a clear insight into the ultimate aims of Islam as a social polity.

Iqbal nevertheless, warned against too much liberalism and was of the view that the Muslims could progress only by providing the basis within their own religious tradition. The task before the Muslims is, therefore, immense. He has to rethink the whole system of Islam without completely breaking away with the past. Iqbal said about the Turks that they failed to rise to the occasion in a very critical period of their history. The Turks have departed from their own selves, drunk with
Europe. Having quaffed honeyed poison from the hand of Europe. While making an appraisal of Ataturk's supposed or real innovations, Allama Iqbal observes, The adoption of the Swiss code with its rule of inheritance is certainly a serious error.... The joy of emancipation from these fetters of a long standing priest-craft sometimes drives a people to untried courses of action. But Turkey as well as the rest of the world of Islam has yet to realize the hitherto unrevealed economic aspects of the Islamic law of inheritance which Von Kremer describes as the supremely original branch of Muslim Law.

The abolition of the caliphate by the Turks was a shock to the Muslim world. Though the office lived for centuries in name only, it had a sentimental value. Some suggested that a caliph with only spiritual functions should be elected. This would have been an innovation for the caliph had no spiritual functioning being only the servant of the law and not its master; his function had been to see that the law was obeyed and how could he do this if he had no force behind him. In theory, the nationalists, who held that the salvation of Islam depended on the building up of strong independent Muslim states, were committing the sin of breaking the unity of the community. But in the past separate states have existed without damage to the unity and there is no reason why the same should not happen again. The tradition "The differences of
Iqbal, in agreement with Turkey believes that the Caliphate or Imamate can be vested in a body of persons, or an elected assembly. It was the study of Ibn-e-Khaldun, he thinks that paved the way for pan-Islamism. He had argued that since the power of the Quraish had gone, there was no other alternative but to accept the most powerful man in the country as Imam. "Thus Ibn Khaldun", observes Iqbal, "realizing that hard logic of the facts, suggests a view which may be regarded as the first dimmision of an International Islam fairly in sight today". For the present, every Muslim nation must sink into her own deeper self, temporarily focus her vision on herself alone, until all are strong and powerful to form a living family of republics. Islam is neither nationalism, nor imperialism, but a League of Nations which recognizes artificial boundaries and racial distinctions for facility of reference only and not restricting the social horizon of its members. Islamic emphasis lies on some form of democratic order. Iqbal envisages a system of Kheilat which does away with the concentration of power in an individual person. The future of Islamic civilization lies in devising some form of collective leadership and the dismantling of the present structure. Iqbal was fully alive to this fact and envisaged in his epochal theory of juma a legislative body which could provide collective leadership to the Ummah.
The question, however, is how to exercise *ijtihad* i.e. complete *ijtihad* in the sense of complete authority in legislation in modern times. Iqbal has a definite answer to this query. According to him, complete *ijtihad* is practicable collectively. Iqbal is fascinated by the idea of *ijma* which, according to him, is the most important legal notion in Islam but which though it invoked great academic discussions in early Islam, remained practically a mere idea. It was in the interest of monarchic rule established soon after the pious caliphate to discourage the formation of a permanent institution which could exercise *ijma* and so become too powerful for them. Iqbal however, asserts that with the growth of republican spirit in modern Islam such institution could be established and entrusted the task of exercising *ijtihad* as a body and so legislating or making law according to the exigencies and norms of modern times. This appears to be the only form which *ijtihad* can take in modern times. This can be the only way out of the existing morass of the sectarian prejudices and theological wranglings so rampant among the Muslims. And only in this way Islamic law can take evolutionary outlook and stimulate the dormant spirit of legislation latent in Islam.
Two objections, however, may be raised here which are to be necessarily discussed in the interest of clarity of thought and precision of outlook: they revolve round the question of the power of exercising *ijtiḥād* could legitimately be entrusted to a modern legislature or assembly constituted after the modern democratic norms and practice, according to the classical Islamic jurisprudential theory. Dr. Muhammad Hamidullāh, in his valuable article on "Islamic jurisprudence" included in a *History of Muslim Philosophy* edited by M.M. Sharif has adopted the classical view that legislative activity in Islam has been a strictly juristic activity. Islam has always kept legislation separate from the encroachment of the executive. It is, therefore, outside the scope of a legislature having also executive authority to make or interpret laws which is the prerogative of the jurists or those learned in law. S. M. Yusuf has also criticized Iqbal's concept of *ijma* on practical grounds, that the assemblies constituted after the modern democratic norms and practice are mostly constituted of men ignorant of *Shari'ah* (Islamic law). How could these be entrusted the task of interpreting law which they do not know. Iqbal seems to have tackled both the objections raised on theoretical and practical grounds against his theory of *ijma*. So far as the classical view of *ijma* is concerned, it is according to him based on
political considerations and interests. As a matter of historical fact, the monarchy (mulukiyat) established soon after the end of the short lived Pious Caliphate considered in detrimental to its interests to encourage the constitution or formation of a permanent institution for the exercise of *Ijtihad* or resolution of *IJma*, or in other words making or legislating law as a body. Under the new circumstances, however, with the growth of republican forms of government there seems to be little justification as to why we should still stick to the classical view.110

So far as the second objection levelled against his concept of *IJma* on practical grounds is concerned, Iqbal seems to be fully apprehensive of the same, and tries, in anticipation, to suggest possible solutions or remedies for the same. He frankly admits that modern assemblies in view of their being at present mostly constituted of men ignorant of the subtleties of Islamic law may commit grave mistakes in the matter of interpretation and formation of new opinions. In order to remove, or lessen, the possibilities of erroneous interpretation of *Shari'ah*, he recommends to form a constitutional committee of *Ulema* or Islamic legal experts (jurists) to guide or advise the legislature in the arduous process of law making. But such committee should not be given supervisory control over the legislature as provided for in the Iranian Constitution of 1906. The arrangement, though dangerous in many respects, however,
can be adopted only as a temporary measure. He suggests that *Ulema*
should form an effective part of assemblies and help and guide
legislature in the intricate work of legislation. As a permanent and
effective remedy, Iqbal proposes large scale reforms of legal education
which may provide for a critical study of Islamic law along with an
intelligent study of western jurisprudence. Only in this way, we can
rear lawyers and statesmen with adequate knowledge of *Shari'ah* (Islamic
Law) who may be returned to our modern assemblies or legislature. This,
however, seems to be a dream of Iqbal which still awaits realization.
Iqbal’s Juridical Theory:
A Critical Estimate

Iqbal’s conception of Islamic law and his theory of *ijtihad* has been subjected to rigorous criticism. I have alluded to some of those objections above, but have left deliberately one criticism to be discussed here separately. This has been levelled by a prominent contemporary religious scholar Prof. Rafi ullah Shahab in his review of my article “Iqbal and Shariah” published in the maiden issue of the *Quest* a philosophical journal of the Department of Philosophy, Govt. College Lahore Vol. 1 (1991) in the Frontier Post Lahore dated. as it entails gross misconception of the view of Iqbal on Islamic Law and *ijtihad* on the part of the critic, I would like to discuss evaluate his criticism at a rather greater length even at the cost of the repetition of certain important facts already adumbrated in the course of my investigation.

**Critical Observations**

According to the learned critic, Iqbal has given the impression in his epochal lecture entitled: “The Principle of Movement in the Structure of Islam” included in his *Reconstruction of Religious Thought in Islam* as if
the injunctions of the Quran can be suspended or amended under the changed circumstances, whereas, even the whole Ummah can not change even an iota in the law of the Quran. To quote Prof. Shehab's own words: "Iqbal's view point on Ijtihad is not based on facts. Actually he had quoted the viewpoint of ulema who lack proper knowledge of this institution. The door of Ijtihad had never been closed in Islamic society as is maintained by the Allama. Whenever Muslims faced new issues, they exercised the authority of Ijtihad and issued their verdicts accordingly. The latest being against smoking which was issued by the prominent ulema of all the Muslim countries." The learned critic continues to say: "Ijtihad can only be exercised in the light of the Holy Quran and the Sunnah. but the Allama in his sixth lecture has given the impression that even those injunctions which have been mentioned in the Holy Quran and Sunnah can be changed. It is on this account that some of the so-called scholars are demanding from the government to legalize Riba by exercising the authority of Ijtihad. Such an exercise will be against the basic teachings of Islam. No authority on the face of this earth can change Quranic injunctions."

These remarks of the learned critic are, however, quite unfounded and unjustified as nothing in evidence has been given by him. They are greatly damaging and misleading as Iqbal has nowhere said that any
injunction of the Quran could be revoked under any circumstances whatsoever. He has, on the other hand, fought a crusade against the so-called ‘Ijtihad’ of the Turks who under the inspiration of their national poet-philosopher, Zia Gokalp, held similar views concerning Islamic Law of Inheritance, particularly relating to women according to which a daughter is entitled to the half of the share of the estate left by her deceased father. Iqbal considers Islamic law of inheritance as a boon for mankind and quotes Von Kremer in his favour who remarks that: The law of inheritance is the supremely original branch of Muhammadan law and is unprecedented in the legal history of mankind. Iqbal then rebuts the dangerous Turkish view of ijtihad as unwarranted as the same is based on an insufficient or imperfect understanding of the legal wisdom of the Quran implied in the rules of inheritance. Defending the Islamic law of inheritance and refuting the proposed theory of the Turkish national poet, Iqbal asserts that if we keep before us the economic fact that a daughter has more economic opportunities, and less economic obligations, than the son as she is entitled to dower and inherit both her husband and father, whereas the son has greater economic obligations than her sister as he is to bear the burden of a family, the implicit wisdom of the Quranic law of inheritance would become manifest and the
equality which the Turkish poet demands between man and woman would be better ensured.

Further, Iqbal criticizes, in most emphatic terms, the views of the orientalists and 'in particular' the conclusion drawn by Aghnides, the author of the famous *Mohammaden Theories of Finance* (1916) who from a superficial study of the Islamic jurisprudence and "without citing any authority held that according to some Hanafi and Mutazilah writers the *ijma* can repeal a law of the *Quran.*" Iqbal categorically denies any such charge and is of the opinion that "there is not the slightest justification for such a statement in the legal literature of Islam. Not even a tradition of the Prophet can have any such effect." According to all the authorities of Islamic Jurisprudence, therefore, neither the Quran nor even the Sunnah (Traditions) can repeal any text or provision (nass) of the Quran. The Sunnah only interprets, specifies, and limits, but cannot revoke, 'Quranic values (ahkam). How, after these categorical assertions, could it be said that Iqbal favoured the idea that *Ijtiad*, even if it obtain the status of consensus, can change any rule of the *Quran*, particularly when Iqbal does not consider *ijma* (unanimity of juristic opinion) even unauthorized to amend or suspend any express provision (nass) of the Quran, nor even the *Sunnah* can do so. How could then individual *Ijtiad* be permitted to effect any change in the law of the Quran.
Perhaps Prof. Shehab (although he does not mention it particularly) has in mind a passage in *The Reconstruction* in which Iqbal discusses the legal values as enshrined in the Quran pertaining to extreme penalties (*hudood*) of the specific crimes as a part of the general treatment of the nature of the laws revealed to the Prophet. He quotes Shah Wali Ullah who has made a very illuminating discussion and penetrating analysis of the nature of the revealed laws. I would like to reproduce the whole passage as, I think, I can not give a better paraphrase of the views of the great Indian Muslim jurist on the point.

"The prophetic method of teaching, according to Shah Wali Ullah, is that, generally speaking, the law revealed by a prophet takes especial notice of the habits, ways, and peculiarities of the people to whom he is specifically sent. 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 up of a universal Shariah. In doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of the specific habits of the people immediately before him. The Shariah clause (*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."

Shah Wali Ullah is not unique in this respect. Many other scholars, classical as well as contemporary, have held identical views. Shakir Hambali, one of the great contemporary Egyptian jurisprudents has also expressed similar opinion in his *Usul al-Fiqh al-Islami* 12 Even if the leaves such an impression in the minds of general readers, the overall argument of Iqbal does not support the contention of the learned critic. Islam, according to Iqbal, reconciles in itself the categories of permanence and change13. The revealed laws can give us foothold amidst the day-to-day changing world on the basis of which can be established a durable civilization. How could a man with such a view advocate the induction of change in the fundamental law of Islam?

No faithful Muslim can afford to disbelieve the final authority of the Quran on all religious, political, economic and legal matters. Iqbal has said nowhere that even the *Quranic* injunctions can also be made subject to change through *Ijtihad*. It appears as if Prof. Shehab has not fully assimilated or deeply appreciated Iqbal's views on Islamic Law and *Ijtihad*. Iqbal no where suggests that the *Quranic* injunctions can be changed through *Ijtihad*. His polemics against Turkish poet Zia Gokalp on the question of woman's right of inheritance referred to above is a
testimony to the fact that he does not, and cannot, subscribe to such a
view. It may be reiterated for the facility of reference and for the sake of
the convenience of the readers that Iqbal analyzed and elaborated fully
the conception of *fitnah* and has given importantly relevant views of the
classical as well as the modern authorities on the subject. *Fitnah* means
to exert with a view to finding an independent judgment on a question of
Law not already given in the *Quran* and *Sunnah*. According to the
traditionally accepted authorities, it may be of three degrees\(^4\). (1) *Fitnah*
Mutalq (complete authority is legislation) (2) *Fitnah Muntasab* (relative
authority in legislation) (3) *Fitnah fi almadhhab* (special authority in
legislation). It is true that *fitnah* in its last two degrees is admitted nearly
by all authorities and has been exercised in the juristic history of Islam
throughout. What Iqbal wants, however, is the complete authority which,
after the consolidation of Muslim jurisprudence and the emergence of
schools is not admitted by the conservative Ulema\(^5\). They say that since
all the necessary things have already been said or done, there remains
no need of exercising *fitnah* in its first degree\(^6\). The door of *fitnah* (in the
sense of complete legislative authority) has hence forth been closed for
good.

It was against this background that some veteran leaders of
thought and theologian-jurists had to compose treatises to rebut the
theory of the closure of the door of *IJtihad*. Among them are included al-Suyuti, Ibn Taimiyyah, Shaukani and Shah Wali Ullah, the great Indian Muslim thinker. And it is in this historical and ideological perspective that Iqbal emphasizes the need and urgency of the exercise of *IJtihad* in view of the great colossal changes in scientific and cultural conditions of contemporary times. We see that many modern Muslim thinkers unequivocally stress the necessity of opening the door of *IJtihad*. Notable among Iqbal’s own contemporaries are Jamal al-Din Afghani, Mufti Muhammad Abduh, Rashid Raza, Saeed Haleem Pasha, Kurd Ali, Sir Sayyid Ahmad Khan, Syed Ameer Ali etc. An International Islamic Colloquium to that effect was held in Lahore in 1958 in which the participants from various Muslim countries, unanimously highlighted the paramountancy of the need of exercising *IJtihad* with a view to coping with the modern challenge. 16

Prof. Shehab has, therefore, been quite unfair to cite a recent verdict against smoking issued by ‘prominent ulama’ of the Muslim countries, as being the latest case of the exercise of *IJtihad*. 17 This is quite insignificant a case from the point of view of Iqbal. No body rules out the possibility of thinking juridically and giving any opinion or verdict on such issues; what Iqbal emphasized really was the social reconstruction of mankind in the light of the consummate revelation and
the most abiding and everlasting principles of Islam. Majority of the *ulema* and the general public under their influence are still reluctant to allow freedom of thought and think anew on these vitally important socio-economic and politico-cultural issues. We have, of course, witnessed the horrible scene at the eve of the introduction and enactment of some Islamic penal and financial laws during Zia's regime. It was partly for political and partly for religious reasons that some groups under the leadership of their *Ulema* reacted violently to the above move. They insisted on the enforcement of *Shariah* laws in the light of their own sectarian and partisan claims. It was mainly due to this factor that the law of *Qisas* and *Diyat* could not be enforced promptly and was held in suspense for long. Nobody is prepared to rise above his petty religious and political prejudices and rethink or reconstruct, in an independent and impartial way, the existing legal opinions as expounded and formulated by Muslim doctors centuries earlier according to the needs and exigencies of their own times. This is what Iqbal apprehended long ago in his own life time. 18

If some people refer to Iqbal's thought while demanding from the Government to legalize *Riba* by excising the authority of *Ijtihad*, the blame is not to be put on Iqbal but on those who indulge in such malpractices. Such an attempt is certainly not coincident with Iqbal's
own original views. It would also be antithetical undoubtedly to the basic teachings of Islam. As pointed out by the learned critic himself, "No body on the face of this earth can change Quranic injunction". The problem, however, can not be simple dispensed with. The real question at the stake is how to reconstruct our socio-economic and political life in the light of the dynamic principles of Islam. And a scholar like Prof. Shehab can not himself be completely oblivious of the need and urgency of Ijtihad in this respect as held by Iqbal.

Concluding Remarks

Iqbal advocated a redefinition of Islamic political theory and reformulation or reconstruction of socio-legal structure for which he wanted to employ s as an indispensable instrument. But the process of reconstruction made only a slight headway due to a multiplicity of factors. Despite the pointed emphasis and repeated assertions of Iqbal, the need and urgency of Ijtihad has not yet been able to find home in the heart of our scholars for one reason or the other. The main difficulty in this way is that Iqbal has not proposed any definite modus operandi which may be acceptable to the majority of the jurists. His suggestion that Ijtihad may be entrusted to an elected assembly seems to be untenable under the modern circumstances in view of the fact that the overwhelming majority of the members of the Parliament are virtually
ignorant of the laws of Shari'ah. How could these gentlemen been entrusted the great and task of reconstructing or reinterpreting Islamic law which they do not know.

We have already noted the criticism of this view by the reputed scholars like Dr. Muhammad Hamidullah and S.M. Yusuf. Syed Horsien Nasir, our distinguished contemporary Muslim thinker is also one of the vehement opponents of this idea. In his article Shari'ah and Historical Change, he opines that “Islamic law can not be done by anyone except those who are competent in Shari'ah. It would be unthinkable from the Islamic point of view to change Muslim personal law through any simply elected legislative body”. 20

Majority of the scholars who participated in the historic Islamic colloquium held at the University of the Punjab Lahore in 1959 also expressed their reservations about such innovative idea. 21 Iqbal, in anticipation of these apprehensions, suggested the following possible remedies.

1. Reform of legal Education.

2. Election of Ulema to the Legislation.

3. Organization of Advisory Council of Islamic law comprising ulema and modern jurists that may advise the legislature on legal (fiqhi) matters.
Pakistan has tried to follow the judicious proposal and provided for a Council of Islamic Ideology under its 1956, 1962 and 1973 Constitutions. The Council has done its level best to make due recommendations for the Islamization of laws. Unfortunately, most of its recommendations have not so far been given constitutional guarantee by our legislatures for one reason or the other. Recently the Federal Shariat Court has also assumed the task of interpreting Shariah which is in consonance with the historical experience of the Muslim Ummah. And since prominent ulema form part of this Court its verdict carry weight of confidence of the people. But as its verdicts are subject to revision or revocation by the Supreme Court they are not having the immediate result in reconstruction of our legal system. Quite recently when it passed its historic judgment against *riba* (usury) the Central Administration decided to challenge it before the Supreme Court.

No substantial reform has yet been effected in the legal education at our modern educational institutions. Mere introduction of a paper on Islamic law would not suffice. Of course, specialized courses are required to be initiated to make up general deficiency in the knowledge of Shariah. We, therefore, propose that just like Diploma courses are conducted in other laws, a Diploma in Islamic Law (at least of one year duration) should be introduced for the law graduates in addition to this, a Degree
of M. Phil, (Shariah) should also be started following the precedent set by the International Islamic University Islamabad. It is not necessary to follow the above course in all its details. Modifications, if deemed necessary, can be made according to the particular circumstances of each University. Moreover, traditional religious educational institutions should be persuaded by different means to include also courses on Western laws in their system. If these institutions can still continue to teach Aristotelian logic, Euclidean Geometry, Polemic Astronomy, why not Western jurisprudence be started to be taught by them. That would, of course, widen the outlook of our Ulema and bring the desired proximity and cohesion between the two systems in immediate future.

So far as the question of the returning of ulema to the Assemblies is concerned Iqbal has not given any definite suggestion in this respect. Perhaps it was too earlier and not possible in the special circumstances prevailing under the British colonial rule. I think, Iqbal's idea can be realized by taking the following measures:

1. Spread of education with greater emphasis on religious values which alone can make the people aware of the importance of ulema as specialists in Shariah (Islamic law).
2. Joint political effort of the ulema which can win them greater confidence of the people or active participation of *Ulema* in popular political parties.

3. Reservation of seats for *Ulema* as technocrats or specialists of Islamic law. It can assure greater participation of the Ulema in legislative activity and can be adopted at least as a temporary measure.

Appointment of a high-powered Commission of Muslim Jurists in every Muslim country that may advise the legislature on legal and constitutional matters. This may be either in addition to the present Council of Islamic ideology or be an effective part of it. The purpose can be served by widening the sphere jurisdiction of the present Council both horizontally and vertically, by enlarging the scope of its membership and eliciting greater support from the traditional religious academic circles as well as from the quarters of the modern qualified jurists.

5. We propose also an International Commission of the Muslim jurists under the auspices of the Organization of Islamic Conference comprising the prominent jurists of the member Muslim Countries who may guide discussions of juristic problems coming up cropping up for the time being and help reconstruct Islamic law.
Our efforts should not, however, remain confined to the reconstruction of our legal system, they should necessarily be accompanied, or rather preceded by the reorganization of our socio-economic structure and the provision of social justice. As Mazharuddin Siddique has very rightly pointed out:

"Unfortunately, we are giving more importance to the legal system than it deserves and are in danger of forgetting the question of economic justice which is a matter of decisive importance for our survival as a nation." Iqbal himself was not oblivious of the fact and anticipated that the reconstruction of Islamic law should also necessarily solve the economic problem of the Muslim people. This was clearly stated by Iqbal in his letter of 28 May 1937 to Jinnah  "Happily there is a solution in the enforcement of the Law of Islam and its further development in the light of modern ideas. After a long and careful study of Islamic Law, I have come to the conclusion that if the system of Law is properly understood and applied, at least the right to subsistence is secured to everybody.

We should try to translate into reality the great idea of Iqbal expressed in the following couplet: I think the reconstruction of our economic system ensuring greater social justice would be the last thing to be disputed by the different religious and political sections or factions of our nation. With that, we should courageously proceed to realize what
Iqbal calls spiritual democracy and what he considered to be the desired good or last hope of humanity. As Iqbal said towards the end of his epochal lecture: "Humanity needs three things today spiritual interpretation of the universe, spiritual emancipation of the individual and basic principles of universal import directing the evolution of human society on a spiritual basis...." Iqbal considered contemporary Europe to be the greatest hindrance in the way of man's ethical advancement. The Muslims, on the other hand, he thought are in possession of the ultimate ideas on the basis of a revelation which, speaking from the inmost depths of life internalizes its own externality. With him, the spiritual basis of life is a matter of conviction for which even the least enlightened man among us can easily lay down his life. Iqbal was convinced that to achieve the social and political goal of the Muslims in the modern era, the reconstruction of Islamic Law was an imperative necessity. The work of reconstruction does not mean merely adjustment in modern conditions of life. It has a far greater aspect. In the end, Iqbal fervently appeals to the Muslim Ummah to reconstruct their social life in the light of the ultimate principles of Islam and evolve out of hitherto partially revealed purpose of Islam, that spiritual democracy which is the ultimate aim of Islam. That he considered to be a necessary prerequisite for global reconstruction on spiritual lines. Iqbal certainly visualized an active role
for Islam in the new world order. He called upon the Muslims to arise and create a new world. But they must first of all set their own house in order and by reconstructing a just and equitable social order and viable political system establish a precedent for the rest of the world. This great end can, however, be achieved through the exercise of *Ijtihad*. It is yet to be seen how far we live up to the expectation of Iqbal, the great poet philosopher of the East, and the ideological father of Pakistan, and be able to translate his idea into reality.
End Notes

1

The Problem of Law in Iqbal's View: 
An Introductory Analysis

Introduction to the Philosophy of Law, pp. 13-14.


Prof. M. Saeed Sheikh, Iqbal Academy of Pakistan, and Institute of Islamic
Culture, Lahore, 1985, p.146.

6. Ibid. p.147

7. Ibid, p.166

8. Ibid

9. Ibid, p.167


11. Ibid

12. Iqbal developed a keen interest in the Islamic law and the problem of
Ijihad since the beginning of his intellectual career. Long before the
dereliverance of his famous lecture at Madras and Hyderabad, he read a
paper before the select intellectual gathering at Islamia College Lahore
which he titled as “the Idea of Ijihad in the Law of Islam”. In his press
conference a little before the Second Round Table conference he expressed
his intention of writing a book on the system of (Fiqih) in the light of
modern jurisprudence which would be another work of Reconstruction on
legal aspect of Islam, much more important than its purely theological
aspect. And of course the present work of Reconstruction of Religious
Thought in Islam would be necessary as a prelude to this second work of
Reconstruction. Although Iqbal could not write the much cherished book
i.e. the Reconstruction of Legal Thought in Islam, yet in view of his
ambition and also on account of the importance which he attached to the
writing of this book signifies perhaps his will to posterity. vide Prof. M.
Saeed Sheikh op cit. Intro.

2

The Rationale of Law: A Critique
of Western Jurisprudence


12. Ibid.


17. Legal positivism adopts a strict separation between fact and value. Its focus is upon the identification and operation of legal rules as social facts and its central preoccupation the identification of valid rules. It thus involved a search for a sharper differentiation between the legal and the non-legal, and so embodied a complacent and unproblematic conception of law which, by virtue of its status as law, was the object of obedience. Thus positivism moved increasingly towards a concern with the internal functioning of law as a system of rules. This is manifest, for instance, in Hans Kelsen’s *The Pure Theory of Law* (1911, English edition, 1970) whose theory is pure in that it sought to be uncontaminated by metaphysics or sociology. Legal norms were hierarchically organized in a logico-deductive process founded on a fundamental Norm (Grundnorm), the only norm not logically derived from other legal norms. A different aspect of this trend is found in H.L.A. Hart, who dissatisfied with Austin’s imperative command theory, focused on the different types of legal rules that fulfill different functions within the legal systems. Hart advanced a distinction between primary and secondary rules, one directed to legal subjects, the other to legal officials and judges (The Concept of Law 1961). The long ascendancy of legal positivism encouraged an isolationist conception of law as an arena to be understood through the special properties of judicial logic and the definitional analysis of legal concepts.


21. Ibid.


23. Natural law theory adopts criteria external to the positive law against which the latter could be evaluated. The invocation of divine law as a basis for comparison with human positive law characterized theological versions of natural law. The close association of natural law theory with Catholicism accounted in part for the ascendancy of legal positivism in the Protestant Anglo-American tradition. This association has been less pronounced in more recent literature. With varying degrees of emphasis, natural law theorists reject the positivist theses. They tend to maintain that law making is a purposive activity that must satisfy certain moral requirements in
order to have laws as its outcome. Secondly, they tend to maintain that the question of the existence of laws cannot be completely separated from the question of their moral obligation or moral quality. Antony Flew, op. cit. p. 197.

25. Ibid.
27. Paton, op. cit. p. 450 Also see Lon Fuller, The Law in Quest of Itself p. 98.

3

The Place of Law in Iqbal’s Philosophy: Legal Aspect of His Concept of Self

2. Ibid.
6. Ibid. p. 14
7. Ibid. p. 14
8. Ibid. p.
10. Ibid. p. 64
14. Ibid.
15. Ibid.
16. Ibid.
19. Iqbal, His letter to Saiyidin dated included in his Iqbal’s Educational Philosophy,
27. Iqbal, His letter to K. G. Saiyidain, included by the latter in his Iqbal’s Educational Philosophy, Lahore, p. nil.
29. Ibid., p.
30. Ibid., p.
32. Iqbal, op. cit. p.
33. Ibid., p.
34. Ibid., p.
35. Iqbal, Islam As an Ethical and as a political ideal, ed. S.Y. Hashimy, Book Service, Lahore. 1977 p. 64.
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<td>Dr. A. Shakoor Ashan, <em>An Appreciation of Iqbal’s Art and Thought</em>, Lahore, p.</td>
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63. A.J. Arberry (tr.) *The Mysteries of Selflessness* (being an English translation of Iqbal's *Rumuz-i-Bikhudi*), preface, p. xi.
66. Dr. A. Shakoor Ahsan, op. cit. p.
72. Ibid., p. 155.
73. The Quran repeatedly emphasizes the individuality or personality of man. Individuality is very much a sacred trust which was offered, in the Quranic words, to the Heavens and the Earth but they refused to carry it while man carried it at his great risk. Since he is a restless being engrossed in his ideals and is ready to undergo hardship to the extent of forgetting or ignoring himself completely for the sake of the attainment of his ideal. That is why he has been described in the *Quran* as *sahum* and *jahul*.
74. Iqbal’s philosophical system rests ultimately on his concept of Self or Ego for which he uses the specific term *Khudi*. The word “*Khudi* has been used in Persian and Urdu literature to mean vanity, arrogance and haughtiness” He, however, takes it as an equivalent expression for self or ego. “Thus”, as Iqbal explains himself, the word *Khudi* is used in the sense of that indescribable feeling of “I” which forms the basis of the uniqueness of each individual”. He accordingly uses *Khudi* or ego in the sense of personality and regards personality as the central fact of the universe and also the central fact in the constitution of man. Ego is the pivot of al reality. Throughout the entire gamut of being runs the rising note of egohood until it reaches perfection in man. Everything that exists in the universe from the lowest scale to the highest is an ego, though each object possesses this characteristic of life in a varying degree. That also sufficiently explains the relationship of the human ego with the objective world. But this means that there are various grades of existence; some grades of being possess closer affinity with the nature of God and are to be regarded as more real than other states of being. This
consideration led Iqbal to emphasize the relative superiority and reality of the human self over the rest of the phenomena.

75. Elucidating his concept of the viceroy of God, Iqbal writes to Prof. Nicholson: "The Naib (vice-gerent) is the viceroy of God on earth. He is the Complete Ego, the goal of humanity, the acme of life both in mind and body; in him the discord of our mental life becomes a harmony. The highest power is united in him with the highest knowledge. In his life, thought and action, instinct and reason, become one. He is the last fruit of the tree of humanity, and all the trails of a painful evolution are justified because he is to come at the end. He is the real ruler of mankind; his kingdom is the Kingdom of God on earth. Out of the richness of his nature, he lavishes the wealth of life on others, and brings them nearer and nearer to himself. The more we advance in evolution, the nearer we get to him. In approaching him we are raising ourselves in the scale of life. The development of humanity both in mind and body is a condition precedent to his birth. For the present he is a mere ideal; but the evolution of humanity is tending toward the production of ideal race of more or less unique individuals, who will become his fitting parents. Thus the kingdom of God on earth means the democracy of more or less unique individuals presided over by the most unique individual possible on this earth. Nietzsche had a glimpse of this ideal race, but his atheism and aristocratic prejudice marred his noble conception." 50

76. Although Iqbal emphasizes the individuality or unique personality of a man in his concept of ego adumbrated in his lectures on the Reconstruction of Religious Thought in Islam and as embodied also in his famous philosophical poem: Secrets of the Self (Asrar-i-Khurdi), yet in his later poem, Mysteries of Selflessness (Rumuz--Bekhudi) he deals with individual in relation to society and opines that the individual fulfills himself through identification with group consciousness. Whereas Khudi, according to Iqbal, means self-consciousness, self-affirmation and self-expression, Bi-Khudi is used by him in the sense of abandonment of the interests of the self or ego for the sake of the higher collective good. If Asrar-i-Khudi emphasized the fundamental role of the self in human life, Rumuz-i-Bikhudi preached the doctrine of the sacrifice of the self in the larger interests of the society; The two are complimentary to each other: one without the other lacks full significance and perfection. 57
The Nature of Islamic State 
and its Legal Perspective

5. *Al-Quran*, p. 3:54
16. The author is indebted to Khalifa Abdul Hakim for this brilliant analysis and comparison of Islam with Christianity and other monastic religions like Buddhism and Hinduism. See his *Islamic Ideology*, Institute of Islamic Culture, Lahore, sixth edition, 1988, p. 195 ff.
19. Khalifa Abdul Hakim op. cit., p. 196
21. Ibid. p. 196.
22. Ibid. p. 197
24. Khalifa Abdul Hakim, op. cit., p. 197
25. Ibid. p. 197
26. Khalifa Abdul Hakim, op. cit, p. 198
27. The spirit of tolerance shown towards non-Muslims and equality of treatment in a court of Law between the ruler and the ruled was not only limited to the days of the pious caliphate. Even subsequent political history of Islam is also not devoid of such examples. Iqbal has particularly mentioned Sultan Murad of Turkey, in recent Islamic history who appeared in person before a court of law and was fined by the judge (Kadi). See his lecture on Islam As an Ethical and as a Political Ideal ed. S.Y. Hashimy, Islamic Book Service, Lahore, 1977, p. 103
28. Khalifa Abdul Hakim, op. cit., pp. 204-205
29. Khalifa Abdul Hakim op. cit., p. 208. Browne also expatiates on the point with the remarks that "The ideal Muslim State is conceivable and was actually realized, or very nearly so, by Muhammad and his immediate successors", A Literary History of Persia, I, p. 158.
31. Ibid., p. 122-23
32. Ibid., p. 123
33. Ibid., p. 101
34. Ibid., p. 101
35. Ibid. p. 142
39. Ibid. p. 103
41. Ibid, p. 85. inter p. xv
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6. Al-Qur'an, 3:104, 110, 114, 7:157, etc.
6

Islamic Law and Social Change: an Ideological Perspective

2. *Al-Qur’an*, XII: 39
3. *Al-Qur’an*
4. *Al-Qur’an*
5. Khalifa, Abdul, Hakim, *op cit*. p. 426
8. *Ibid*, p. 106
14. See for details, Dr. Khalid Masud, *Islamic Legal Philosophy*, Islamic Research Institute, Islamabad, 1977
17. Khalid Masud, *op. cit*.
18. *Ibid*.
20. See Khalid Masud, *op cit*.
22. Ibid.
25. *Al-Qur'an*, 10:64 33.62
26. Ibn Qayyum *op, cit.*
27. Khalifa Abdul Hakim, *op cit.*
29. Ibid.
30. Sanli Ilaana, Law and Society in *The Legacy of Islam* ed. Arnold and gurlluami,
31. Khalifa Abdul Hakim, *op cit.*
32. Ibid.
33. Ibid.
35. Muhammad Iqbal, *op. cit.*
36. Ibid.
37. Ibid.
38. Ibid. *p. 67.*
39. Ibid.
40. Ibid, I.
41. Mazharuddin Siddiqui, *Concept of Muslim Culture in Iqbal*, Institute of Islamic Culture, Lahore, p. 35.
42. J.N.D. Anderson, *Islamic Law in the Muslim world*, Lahore, Reprint 1951, p. XI.
43. Dr. Muhammad Musleuddin, *Philosophy of Islamic Law and the Orientalists*, Islamic publications Ltd., Lahore, 1983, p. X.
44. Ibid.
45. Ibid.
46. Ibid.
7

Ijtihad: Modality of Change
in Islamic Law

1. Jamal-ud-Din Afghani, Al-Roedd ala al-Dahriyyin, Cairo 1955 P.83 cf. C.C. Adam, Islam and Modernism in Egypt P.19


5. Al-Qur'an, 29:69, Full translation of verse runs as follows: But as for those who strive hard in our cause- We shall most certainly guide them our paths.

6. Abu Dawud, Aqdiya: 11; Trimidhi, Ahkam: 3 rd Dirimi, Kitab al Sunan 1,60

7. Shafi'i, Al-Risala, (Treatise), eng. trans. Sh. Muhammad ashraf, Lahore, 19,p

8. Ibid


11. Ibid


14. 

17. Ibid, P. 134
18. These three degrees of legislations are technically termed as Ijithad fi al-shar, Ijithad fi al-modh'hab, and Ijithad fi al-Masial Subhi Mahmasari, *Falasfat I-Tushri fi Islam*, English trans. Muhammadan Theories of Finance, pp 121-22 There are, however different schemes of gradation of jurists, e.g. one laid down by the ottoman scholar and shaikh al-Islam Kamal pashazadeh (A. 940 / 1534) in his *Tabaqat al-Fiqaha* and universor differences in nomenclature in different schools of law (Hanafis, Shaftis and others). See Zahid al-Kauthari, *Husan al-Taqadi fo Sirat al-Imam abi Yusuf al-Qaid* pp. 24-25 e.f. m. Saeed Sheikh (ed.) op Cit p. 189.
19. Muhammad Iqbal, *The reconstruction* p. 118
20. Ibid p. 118
21. Ibid p. 118
22. Ibid. p. 118
23. Ibid., p. 142
24. M.M. Sharif (ed.) op. cit. vol. II. p. 1428
27. Ibid p. 124
29. Muhammad Iqbal, op cit, p. 142
32. About Ibn Taimiyya, Iqbal wrote "Ibn Tamiyya was brought up in Hanbatite tradition, claiming freedom of *Ijithad* for himself herose in revolt against the finality of schools and went back to the first principles of schools and went back to the first principles in order to make a fresh start. Like ibn Hazum The founder of Zahiri school of Law he rejected the Hanafite principle of reasoning by analogy and Ijma as understood by other Legists for he thought that agreement was the basis of all superstitions And there is no doubt that considering the moral and
intellectual decrepitude of his times, he was right in doing so cf. his
Reconstruction pp. 120-21

33. Muhammad Iqbal, op. cit. p.122. Jalal al-Din al-Suyuti, a classical
authority on Islamic sciences claimed the right of jihād together with
the stat of a Mujtahid (renovator) for himself in Nunchenth century
Hijrah see his Husan al-Muṣka darah 1, 183 and also Abdul-Mutaal Saidi,
al-Mujaddidun fi al-Islam, pp. 8-12

34. Muhammad Iqbal, op. cit. p. 121


38. Jamal al-Din Afghani, Al-Radal ala al-Duhriyyin, Cairo, p. 83.


40. M.M. Sharif (ed.) op. cit., Vol II pp. 1500-1

41. Ibid., p. 1509

42. Ibid., p. 1510

London, 19 p. 207

44. Iqbal was a great admirer of this all round reformer and in a poem,
which belongs to a very early period of his opetic production, while
paying a heartfelt tribute to him, he makes the spirit of the departed
leader advise the young poet to inspire his nation with broad, liberal and
rejuvenating ideals a task which Iqbal adopted as his divinely ordered
mission and fulfilled in a manner that placed him in the galaxy of the
great intellectual luminaries of all times.

45. Sayyid Ahmad Khan, Tahdhib al-Akhlāq, Vol. II

46. Sayyid Ahmad Khan, Mjma-e-Lectures ed. M. Ismail Panipati pp. 78-96
cf. M.M. Sharif (ed.) op. cit Vol. II. p

47. Ibid.

1977, p. 183 w.c. Smith, Modern Islam in India, pp. 51 f.

49. S.Ameer Ali, op. cit, p. 80, cf also Majid Fakhri, A History of Islamic

50. Muhammad Iqbal, The Reconstruction p. 101

51. Ibid, p. 101
52. Ibid. p. 142
53. Ibid.
54. Ibid.
55. L.S. May, M. Iqbal His life and Times Sh. Muhammad Ashraf, Lahore, 1974, p. 276
56. Muhammad Iqbal, op. cit., p. 142
57. Ibid., p. 120
58. L.S. May, op. cit., p
59. Muhammad Iqbal, op. cit., p. 142
60. Ibid., p. 142
61. Vide Muhammad Iqbal, op. cit., p. 130
62. Ibid., p. 130
63. Ibid., p. 129
64. Ibid., p. 128
65. Ibid., p. 131
66. Ibid., p. 133
67. Ibid., p. 133-34
68. Ibid., p. 134
69. Ibid., p. 134
70. Ibid., p. 141
71. Ibid., p. 142
72. Ibid., p. 142
73. Ibid., p. 131
76. Muhammad Iqbal, op. cit., p. 141 Arabic text of this statement has been given by Prof. M. Saeed Sheikh in his annotations of The reconstruction from Shukani’s Irshad al-Fuhul but has been attributed to Zarkashi instead of Sarkhasi see his annotations pp. 199-200. In the humble opinion of the present writer Zarkashi is an exegist and not a jurisprudent whereas Sarkhasi is a well known Hanifa jurist and jurisprudent and is the author of magnum opus Al-Manbsut a comprehensive boom spreading over volumes and also his illustrious
book on Usual ascribed his name and published as Usul al-Sarkhasti Haderaabaad (India).

79. Muhammad Iqbal, *op. cit.*, p. 137
84. Iqbal is of course not unique in this respect. Many classical authorities have also held similar views. See for details Shaukani *Irshad al-Fahul*, Cairo pp. and also abdur Rahim, *Principles of Muhammadan Jurisprudence* P.L.D. Lahore, 19
88. Subbi Mahmasani, *op. cit.*, p. 97
89. Muhammad Iqbal, *Rumuz-i-Bikhudi* p. 124 When the Almanic of life seems to be expired
A nation can be stable
only by following its tradition ! Now tread the Path
of your Ancestors
For it can ensure unity of the Muslim!
The real meaning of “Taqhid” is
To be faithful, To the National Traditions:
Tariq A.R. Secrets of Collective Life p. 111 Iqbal, M. Rumuz-i-Bikhudi p. 124 He said about Wahaki movement which started in Arabia in the seventeenth century the first throb of life in modern Islam.” Itjihad in the time of decadence destroys the the cohesive life of th society.
Far safer than the ljthiad of the narrow-minded jurists is following in the footsteps of the Ancients.
90. Muhammad Iqbal *op. cit.*, p. 129
98. Muhammad Iqbal, *The reconstruction*, p 124
104. Muhammad Iqbal, *The Reconstruction* p. 137

8

Iqbal’s Juridical Theory
A Critical Estimate

   Dr. Khalid Masud has put Iqbal’s evaluation of Aghnides’ conclusion to detailed scrutiny. See his book *Iqbal ka Nazariyyah-e-Ijtihad*, Iqbal Academy, Lahore
4. Prof. Saeed Sheikh, in his annotated edition of the Reconstruction has given the original passage in Arabic from the Hujjah which leaves no
doubt that Iqbal reproduced almost verbatim Shah Valiullah on the point. See pp. 136-37

6. Iqbal, op. cit, p. 117
7. Ibid. p. 118
8. Ibid., p. 118
9. See papers contributed to the International Islamic colloquium published by the University of the Punjab, Lahore 1958
10. Iqbal, op. cit., p. 138
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