

A Study on Muhammad Iqbal's Framework of *Ijtihad*

Kajian Terhadap Prinsip *Ijtihad* Menurut Muhammad Iqbal

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ABSTRACT

In the nineteenth and twentieth centuries, Muslim countries were occupied by Western powers that came across the local Muslim culture and traditions. The Muslim world at that time was thrown into great crisis caused by the conflict between conservatism and modernism. The conservatives became rigid in their outlook and approach. They concluded that the only way to save Muslim society in the conflict of the West was to stick to the past and guard the old establishment. Meanwhile, the modernists confined themselves to the imitation of the West, and argued for the adoption of Western civilization, so that Muslim could emerge as a progressive nation. While the conservatives stood for rigid adherence to fiqh, the modernists wanted to change the entire law in the light of Western codes of law. Iqbal argued that neither conservatism nor modernism was good. According to him, the conservatives' approach was unrealistic because it rejects the ontological principle of change; i.e due to a process of continuous change of life, new situations arise and new problems occur. Meanwhile, the modernists' approach is unrealistic because it has often ended up in the garb of westernization rather than modernization. Iqbal took a balance approach between conservatism and modernism whereby he acknowledged conservatives' approach which firmly anchored in the Muslim heritage, and the modernists' approach which tailored to meet the challenge of modern times to maintain the dynamic character of Islam. In his balance approach, Iqbal tried to reinterpret Islamic thought through the principle of ijtihad, and stressed its dynamic element in it rather than static. For Iqbal, ijtihad was the only way to rescue Muslims from the stagnation of thought. This paper attempts at analyzing Iqbal's constructive approach to the principle of ijtihad, and its significance to contemporary Islam.

Keywords: Iqbal; Islamic thought; Islamic law; Ijtihad; Shura

ABSTRAK

Di dalam abad ke sembilan belas dan dua puluh, negara-negara Muslim telah ditakluki oleh kuasa-kuasa barat. Kesan di atas penaklukan ini, dunia Islam ketika itu dilanda krisis pemikiran iaitu konflik di antara golongan konservatif dan modernis. Golongan konservatif berfikiran sempit dan mempunyai pendekatan yang sangat rigid. Mereka beranggapan bahawa masyarakat Muslim mesti mempertahankan tradisi lama untuk menyelamatkan mereka daripada pengaruh Barat. Manakala, golongan modernis pula menolak tradisi lama. Mereka terlalu mengikut budaya dan tamadun Barat dan menerimanya secara total. Mereka menganggap bahawa masyarakat Muslim mampu menjadi maju dan progresif dengan mengikuti cara pendekatan Barat. Golongan konservatif berpegang kepada pendekatan yang rigid terhadap undang-undang fiqh manakala golongan modernis pula ingin mengubahnya secara keseluruhan dengan menggunakan akta undang-undang Barat. Iqbal menegaskan bahawa pendekatan kedua-dua golongan tersebut adalah tidak benar. Menurut beliau, pendekatan golongan konservatif tidak realistik kerana ia menolak proses perubahan di dalam kehidupan manusia di mana berlaku situasi dan masalah-masalah baru yang tidak wujud di zaman terdahulu dan memerlukan pendekatan baharu. Manakala pendekatan modernis juga tidak realistik kerana ia akhirnya terjerumus ke dalam acuan kebaratan dan bukannya kemodenan yang sebenar. Justeru, Iqbal mengambil pendekatan yang seimbang di antara dua golongan tersebut. Beliau mengakui pendekatan konservatif yang berpegang teguh kepada tradisi Muslim terdahulu; dan beliau juga mengiktiraf pendekatan modernis yang ingin menonjolkan Islam yang dinamik. Melalui pendekatan yang seimbang di antara dua golongan di atas, Iqbal cuba mentafsirkan pemikiran Islam melalui prinsip ijtihad dan menekankan unsur dinamik di dalamnya. Bagi Iqbal, ijtihad merupakan satu cara untuk menyelamatkan Muslim daripada kebekuan pemikiran. Kertas kerja ini cuba menganalisa pendekatan Iqbal yang membina terhadap prinsip ijtihad dan kepentingannya kepada Islam masa kini.

Kata kunci: Iqbal; pemikiran Islam; undang-undang Islam; Ijtihad; Shura

INTRODUCTION

Muhammad Iqbal was born at Sialkot on 9th November 1877 (Hafeez Malik and Lynda P. Malik 1971), of a middle-class and deeply religious family. He grew up at a time when Western civilization was imposing a comprehensive dominance over the Muslim world and the Muslim world was suffering a long time of decline in all aspects – political, cultural, economic, and social life. The decline of the Muslim *ummah*, according to Iqbal, was primarily due to the stagnation of religious thought. Therefore, he proposed the need for the reconstruction of religious thought both in sphere of theology as well as in law and jurisprudence. Iqbal emphasized that the only way to rescue Muslims from that stagnation is through the application of the principle of *ijtihad*.

Ijtihad was exercised from the earliest days of Islam. Some learned companions of the Prophet (p.b.u.h) such as Abu Bakr, Umar, Ali, and many others exercised *ijtihad* in matters which had no specific solutions in the *Quran* and the *Sunnah*. Starting from this early practice, *ijtihad* then was used extensively by the four great scholars of Muslim jurisprudence in the second century of *hijrah*. The sphere of *ijtihad* at that time was very wide. It covered all the aspects of religious, political, and civil life, including the whole field of family laws, the laws of inheritance, and all legal questions that arose in social life. In early years of the growth of Islamic law, any jurist who possessed the requisite qualifications was deemed to be competent to exercise *ijtihad*. However, in the third century of *hijrah*, increasing restrictions were imposed, and the four schools of jurisprudence were regarded as fully developed. This resulted in the closing of the doors of *ijtihad*. Thus, after the third century of *hijrah*, *ijtihad* completely disappeared as a practical intellectual force in Islam. The closing of the doors of *ijtihad* is considered as one of greatest intellectual disasters in the development of Islamic thought. It prevents the advancement of the Muslims in social, political, and legal avenues of Islam. Therefore, Iqbal tried to revive *ijtihad* and to bring back this dynamic element of Islamic civilization.

IQBAL'S FRAMEWORK OF *IJTIHAD*

Iqbal observed that no law or institution can be truly Islamic unless it imbibes the spirit of the dynamic outlook of the *Quran*. Islamic civilization, according to him, has lost this dynamic element due to certain historical events (Gustav Edmund Von Grunebaum 1995). Following the footsteps of great revivalists, such as, Ibn Taymiyyah, Shah Wali Allah and other modernists in Egypt, Turkey and the subcontinent, Iqbal protested against the traditional formulation of theological dogma and emphasized that we have to reevaluate our intellectual inheritance which involves exercising the right of *ijtihad* (Iqbal 1982). Iqbal highlighted few dynamic elements which constitute his principle of *ijtihad*, the dynamic concept of the universe, society, and culture in Islam, the idea of changeability of life, the truth of juristic reasoning in Islam, and the evolutionary and dynamic concept of the intellect and thought in Islam (Muhammad Khalid Mas'ud 1995).

Iqbal elaborates his views on *ijtihad* in his poetry, letters, and lectures. However, he discussed the subject in a comprehensive manner in the sixth lecture of his *Reconstruction* entitled "The Principle Movement in the Structure of Islam" in which some authors translated it as *ijtihad*. He looks into the subject in the historical and the modern perspective. Before highlighting his views on the principle of *ijtihad* and its methods of applications, Iqbal mentioned three causes for the decay of *ijtihad* among the Muslims; first, the adherence of the Muslim community to extreme positions. During the age of the Abbasids, the rise of rationalist movements, such as, *mu'tazilah* was considered as a danger to the Muslim society. The conservative *ulama'* regarded the rationalist movement as a destructive force. Therefore, in order to preserve the social integrity of Islam, they made the structure of their legal system as rigorous as possible. They did not regard *ijtihad* to be a source of advancement of thought or knowledge. Second, the rise and growth of ascetic Sufism which gradually developed under the influence of a non-Islamic character turned the great Muslim intellectuals into *sufis* who confined themselves to the preservation of faith and beliefs. When such extremes penetrated into the Muslim society, the independent thinking and the spirit of *ijtihad*, according to Iqbal, gradually deteriorated

and decayed. Third, Iqbal pointed out that the destruction of Baghdad, which was the centre of Muslim intellectual life was responsible for the decay of *ijtihad* up to the second half of the thirteenth century. It caused the Muslim community to think pessimistically about the future of Islam.

Iqbal paid a tribute to Ibn Taymiyyah, the great Islamic scholar of later thirteenth century, who revolted against the finality of the schools of Islamic law. On similar ground, Iqbal rejected the idea of closing the doors of *ijtihad* and claimed that the founders of the Islamic legal schools never claimed finality for themselves or their judgments. Therefore, he strongly advocated the practice of *ijtihad* in modern contemporary times, at the same time reminded any reform movement to practice it in a proper guideline.

In his approach of legislation, Iqbal emphasized it on the elements of permanence and change. He believed that the legal system of Islam must admit changes within its framework without deviating from its fundamental principles. He said, "the ultimate spiritual basis of all, as conceived by Islam, is external and reveals itself in variety and change" (Iqbal 1982). According to Iqbal, only religious obligations are permanent and cannot be changed, such as, the times of prayer and the period of fasting during *Ramadan*. On the other hand, worldly affairs (*muamalat*) are subject to the law of change. It includes all laws pertaining to civil and criminal matters, which can be changed and reinterpreted in accordance with changing condition and needs as well as the requirements of the Muslim community (Muhammad al-Tahir ibn Ashur 1988). As the principle of movement in Islam, *ijtihad* is the means whereby changes can be affected in the laws of Islam, provided they are not inconsistent with the basis on which the system rests. Therefore, Islamic law should not be viewed as an unalterable code. It is necessary to be changed in order to meet the requirements of modern society. Iqbal stated, "the claim of the present generation of Muslim liberals to reinterpret the fundamental legal principles in the light of their own experience and the altered conditions of modern life is, in my opinion, perfectly justified" (Iqbal 1982).

Iqbal is strongly opposed to the criticism that Islamic law or *shariah* is stationary and incapable of evolution. In view of the dynamic teachings of the *Quran*, Iqbal saw no justification for a situation

whereby people are moving, but the laws remain stationary. It is perfectly justified for Muslims to interpret the rules of *shariah* in accordance with the needs and circumstances of the people. He highlighted, "the teaching of the *Quran* that life is a process of progressive creation, necessitates that each generation, guided by the work of its predecessors, should be permitted to solve its own problem" (Iqbal 1982).

Iqbal regarded Sayyidina Umar ibn al-Khattab as the first Muslim innovator because of the changes he introduced, particularly his inclusion of *istihsan* into the Islamic law of inheritance. Sayyidina Umar received many objections for introducing new perspectives into the legal code; however, he defended them and replied that there are two types of innovation, *bidah hasanah* and *bidah sayyiah*. Iqbal endorsed the former and considered it a positive or commendable innovation. He said, "a commendable innovation is worthy of consideration and should be adopted as a methodology for modern-day *ijtihad*" (Javaid Iqbal 1997).

Islam gives a practical and progressive code of social conduct and discourse. The social order of Islam, in its true spirit, remains responsive to the material and cultural forces. In this way, the importance of *ijtihad* cannot be over emphasized. Iqbal rejected the rigidity of thinking in conservative *ulama'* and disapproved of their uncritical vision of the past; rather pleaded for a return of the spirit of *ijtihad* in the interpretation of the law. In fact, he regarded *ijtihad* as one of the dynamic elements and creative spirit of Islam.

Ijtihad is defined as the total expenditure of effort by a jurist to infer, with a degree of probability, the rules of *shariah* from their detailed evidence in the sources (Ali ibn Abi Ali Al-Amidi 1986 and Muhammad ibn Ali al-Shawkani 1920). Some *ulama'* have defined *ijtihad* as the application by a jurist of all his faculties either in inferring the rules of *shariah* from their sources, or in implementing such rules and applying them to particular issues (Muhammad Abu Zahrah 1958). Iqbal defined *ijtihad* as to exert with a view to form an independent judgment but not to be independent of the *Quran* and *Sunnah*. He opposed freedom of thought which makes man deviate from Divine guidance but endorsed the freedom of *ijtihad* to oppose rigidity and stagnation. Iqbal mentioned two consequences of the freedom of *ijtihad* claimed

by modern Muslim movements; their revolt against the finality of the schools, and their assertive stand on the right of private judgment (Iqbal 1982). When he talked about the freedom of *ijtihad* or independent judgment, Iqbal did not regard any independent judgment to be *ijtihad*, rather he believed that it must be exercised by those who have knowledge and whose character can be fully relied upon. In his emphasis on the qualifications of exercising *ijtihad*, Iqbal explained in his *Reconstruction*, “It is the duty of the leaders of the world of Islam today to understand the real meaning of what has happened in Europe, and then to move forward with self-control and a clear insight into the ultimate aims of Islam as a social policy” (Iqbal 1982).

Then, Iqbal suggested certain qualifications as follows;

1. Knowledge of Islam, deep understanding of the ultimate aims of its ideology, institutions and politics.
2. Understanding of the modern problems that beset the Muslim world.
3. Closeness to the Prophet’s way and understanding of his methods and approach.
4. Reliable moral character so that decisions may be looked upon with respect.

Since there is an acute shortage of such specialists who are qualified to exercise *ijtihad*, Iqbal observed that a committee of people should be formed which includes Islamic scholars as well as those who have a good knowledge of contemporary problems and possess true Islamic character. Through their combined efforts, they will be able to make some contributions to the reconstruction of the Islamic law as well as fulfilling on an important need of society (Muhammad Hamid 1980). Therefore, Iqbal suggested that the *ulama’* should be nominated to constitute a vital part of legislative assembly, helping and guiding discussions on questions relating to law, along with contribution from laymen who may happen to possess a keen insight into affairs. A body of *ulama’* is needed as the assembly may face difficulties in understanding intricate points of *fiqh*. In this way, they will reduce the possibility of erroneous interpretation. At the same time, Iqbal suggested that the only effective remedy for eliminating the possibility of erroneous interpretation is to reform the present system of legal

study in the universities of Muslim countries, to extend its sphere and to combine it with an intelligent study of modern jurisprudence (Iqbal 1982).

Iqbal clearly proposed the idea of transforming the right of *ijtihad* from individuals to a legislative assembly, which then should be the sole law-making body on the ground of expediency. However, his idea of removing the right of *ijtihad* from individual jurists (*mujtahidun*) to an elected Muslim assembly or parliament or *majlis al-shura* was strongly opposed by the conservative *ulama’*.

Last but not least Iqbal mentioned four sources of *ijtihad*; *Quran*, *hadith*, *ijma’*, and *qiyas*, in order to prove the possibility of evolution within Islamic law when meeting new situations. All those sources contain within them the potentialities of evolution when meeting new situations. Therefore, it is important to highlight Iqbal’s views on these sources of *ijtihad* for the purpose of illustrating the flexibility of Islamic law or *shariah*.

Qur’an as the first source of *ijtihad*, according to Iqbal, contains not merely substantive legal provisions, but also indicates the means by which it is to be interpreted and supplemented. For example, the *Quran* insists that the Muslims should abide by the decisions of the Prophet (p.b.u.h) whenever some differences arise among them. Moreover, Iqbal regarded *Quran* as an embodiment of both the lofty moral principles and positive legal rules. The uniqueness of this two-fold nature of the *Quran* ensured the satisfaction of the needs of people. To Iqbal, Judaism and Christianity got deteriorated and corrupted due to the violation of the unity of these two things; the former became confined to legality and the later to asceticism and other-worldliness. Apart from setting the codes of law for guidance of the people, the *Quran* endows man with a revolutionary outlook and awakens him with a unique insight into life, so that he may reform and refashion his entire life in accordance with the spirit of Islam.

Iqbal was critical to tradition or *hadith* as the second source of *ijtihad*. He observed that *hadith* is not fully valid in changing times and places. On this ground, Iqbal highlighted that Abu Hanifah, the founder of *Hanafi* school of law did not practically make use of the *hadith* but preferred to use *istihsan*. However, Iqbal did not mean to reject the validity of *hadith* altogether; rather suggested that the study of *hadith* must be taken more seriously and critically.

The third source of *ijtihad* is *ijma'*, and Iqbal considered it as the most important legal notion in Islam. It is a process through which new values are established and preserved in Islam. In *ijma'*, the *mujtahidun* agreed on a point of law and such a consensus becomes a permanent source of law. Iqbal supported exercise of *ijma'* through legislative assemblies and gave its power to both the *ulama'* and the modern lawyers. He was conscious of the misleading and narrow interpretation of the non *ulama'*, therefore, insisted on the vital participation of the *ulama'* in the Muslim legislative assembly.

The last source of *ijtihad* elucidated by Iqbal is *qiyas* or analogical reasoning which is the process of applying Islamic principles to local problems or to changing conditions. Iqbal mentioned some of the early jurists who practiced *qiyas* particularly Abu Hanifah. He said Abu Hanifah made a great use of analogical reasoning in view of changing socio-economic conditions, which arose by the extension of Muslim states. In fact, Iqbal viewed the school of Abu Hanifah as the greater power of creative adaptation than any other schools of *shariah*.

Iqbal's discussion of the sources of *ijtihad* clearly showed that the legal system of Islam has the potential to grow and evolve. It has the capability of meeting the rising needs of our age as well as to transform a modern society into an Islamic way of life.

IQBAL'S FRAMEWORK OF *SHURA* IN RELATION TO *IJTIHAD*

During the nineteenth century, the advocates of modernism throughout the Muslim world agreed that the primary reason behind the backwardness of the Muslim world was embedded in the despotic political system, which was based on one individual's will and denying the rights of the *ummah*. They believed that the only possible cure for the problems arising in the Muslim *ummah* was to return to the institution of *shura*, and the participation of the learned scholars as representatives of the community in the administration of government. Thus, the significance of *shura* was raised in the mid-nineteenth century by prominent leaders of reformist thought. They argued that in order to implement Islam in the public sector, rule must be established in accordance with the will of the people. For example, Jamal al-din Afghani, contended that without the participation of the people

in government, Muslim states cannot withstand the pressures of the West. Besides, rules without public support and confidence give in too easily to the demands of Western powers. Iqbal's ideas on *shura* represented a continuation from previous ideas of reformists giving a deeper understanding on how to revive the concept of *shura* and to abrogate the authoritative political systems. For Iqbal, a political system based on the general will of the people which is called Parliament is the best possible solution to cure the problem of stagnation among Muslims.

Shura is one of the most important Islamic constitutional principles. It is derived from the Arabic word *shawara* which means 'to extract honey from the small hollow in the rock in which it is deposited by the wild bees or honey (Muhammad ibn Mukarram al-Ansari ibn Mansur 1965), or to get it from hives and other places. There are different definitions of *shura* in its technical sense. For example, Ibn Arabi defined it as 'a meeting on a matter on which one seeks the advice of another' (Ali Muhammad al-Bajawi 1958). While Abu Ali al-Tabarsi explained *shura* as 'a dialogue intended to obtain the truth' (Abu Ali Amin al-Din al-Tabarsi). Our contemporary Muslim scholars have defined *shura* in a broader sense. According to Abdul Khaliq al-Duri, *shura* is 'to evaluate the opinion of experienced people in certain affairs so as to direct us to the position which is closest to the truth' (Qahtan Abdul Rahman al-Duri 1974).

Historically, *shura* has been practiced since the life time of the Prophet and his rightly caliphs who applied *shura* in all social networks as well as in their process of decision making in the Islamic state of Madinah. It even played a vital role in the political development of the early Islamic state. In line with the practice of *shura* in Islamic history, Iqbal affirmed the necessity of its application in contemporary time. This section is going to highlight Iqbal's framework of *shura* which is confined to the governmental system, and which is a continuation of his discussion on the principle of *ijtihad* in the previous section. *Ijtihad* and *shura* are connected to each other and this connection existed during the period of pious companions and caliphates, but it ceased to exist in later times. That is the reason why Iqbal emphasized these two concepts in an attempt to evolve a political system based on Islamic ideals and values, rather than adopting Western constitutional principles.

Regarding the field of *shura*, Ibn Taymiyyah has confined it to the things which are not covered by revelation. Moreover, the fundamental teachings of Islam that constitute the pillars of religion are not subject to *shura* (Ahmad ibn Abd al-Halim 1992). While Abduh claimed that the subject of *shura* is in all matters related to worldly affairs especially what is related to peace, war, politics, and economics (Ahmad Khallafullah Muhammad 1981). This includes all matters which are related to general policy as well as to other fields of worldly interest. According to Rashid Ridha, *shura* is applicable to all matters of *shariah* and religion (Muhammad Rashid Ridha 1973). Meanwhile, Maududi strongly emphasized that the primary field of *shura* is legislation (Abu 'Ala Maududi 1960). Iqbal has been very much influenced by Maududi and applied *shura* more to the legislation of state. Clearly, *shura* has been discussed by most of the revivalist pioneers to show its prominent significance in the legal constitution of Islamic state. For instance, Rashid Ridha explained that the Muslim political system decayed because of the absence of *shura*. He claimed that *ulil amr* (people in authority) these days should consist of eminent scholars, chiefs of the army, distinguished merchants and agriculturists, leaders of political parties, medical doctors and lawyers in whom the nation has confidence and to whom they refer their difficulties.

The authority to interpret the *shariah* at the time of rightly guided caliphs lay with the *ummah* which means that people have a right and they should exercise their authority through their elected representatives. During the *Umayyad* and *Abbasid* periods, this right was taken away from the *ummah* and given to various sects and schools of *fiqh*. Thus, Iqbal wanted to bring back the concept of *shura* as practiced in the early period of Islam. He emphasized that the authority to interpret *shariah* is the right of the entire *ummah*.

Iqbal defined *shura* as the opinion of the whole *ummah* with regard to affairs of common interest which are conducive to the healthy development of the state. According to him, the *ummah* should elect their representatives by means of a fair and impartial election and these representatives should carry out the duty of the interpretation of *shariah*. Therefore, Iqbal allocated the authority to interpret *shariah* to elected representatives in Parliament

or *majlis-al-shura*. He gives two reasons why the authority for interpretation of *shariah* should only be made by elected representatives in Parliament. First, followers of different schools of *fiqh* are unable to perform *ijtihad* because they represent different point of views and may interpret *shariah* according to their own school of *fiqh* meanwhile *shariah* is for the entire Muslim community. Second, God has not delegated the right to interpret *shariah* to any person or any sect but He has bestowed it to the entire *ummah* (Guraya Muhammad Yusof 1987). However, Iqbal's idea to remove the right of *ijtihad* from individual jurists to elected representatives in Parliament or *majlis al-shura* was strongly opposed by the conservative *ulama*'.

Pertaining to the members of *majlis al-shura*, Iqbal emphasized that they should possess certain characteristics, thus, the task of *shura* should not be given to incompetent people who are unable to run the affairs of the state. In conformity with Islamic principles, Iqbal laid down the conditions for the members of *majlis-al-shura*;

1. He should possess a firm and profound belief in the tenets of Islam.
2. He should possess integrity of character.
3. He should have reasonable knowledge and necessary understanding of the job and responsibility which is being entrusted to him.
4. He should have not only a good intellectual personality, but also an impressive physical personality (Iqbal 1982).

Moreover, Iqbal added that the candidate must have the ability to understand the teachings of the *Quran* and the *Sunnah*, knowledge of modern science and disciplines, and knowledge of international and national problems. Since the duty to interpret *shariah* is given to the *majlis-al-shura*, the people will realize their responsibilities in the matter of electing such competent persons who can satisfactorily shoulder their responsibilities. Iqbal divided the tasks of *majlis al-shura* into three fields;

1. to amend existing laws so that they conform to Islamic injunctions.
2. to implement Islamic laws that are not being enforced, and
3. to establish new laws that are not repugnant to the injunctions of Islam (Iqbal 1982).

In his framework of *shura*, Iqbal wanted to change the system used in the monarchical period in which the *ummah* was deprived of the right to collective legislation. Only a handful of jurists and kings used to perform *ijtihad* among them. For Iqbal, this is not possible in the present democratic era and he claimed the right of the entire nation to take part in this process. Undoubtedly, the legislative work is done by the Parliament or *majlis-al-shura* but when the bill is introduced to it, the entire nation along with its elected representatives takes part in it. The experts and laymen express their views about it; the information media provide many avenues for thoroughly thrashing out the issue, thus, everyone takes part in the legislation. For the *shariah* bill, the Parliament has to seek direction, guidance, and assistance from the views of all, and the fundamental teachings of the *Quran* and *Sunnah* must have been examined on from all angles. Iqbal emphasized that the knowledge and experience of all the experts, the jurists, and the judges who are exerting themselves over a problem are able to perform the task of interpreting the *shariah*. Although the right of interpreting the *shariah* is given to the Parliament, it does not mean that only the members carry out the duty. The process, according to Iqbal, will include participation by the entire nation for the discussions and debates will take place publicly over any issue. For Iqbal, public's participation profoundly affects the deliberation of the Parliament, and no Parliament can ignore public opinion on an issue. Therefore, the collective thinking of the entire nation eventually takes the shape of a law. According to Iqbal, *ijma'* was a democratic principle in which the right to legislate was not limited to a few individuals only but to the whole Muslim community. He said, "the transfer of the power of *ijtihad* from individual representatives of schools to a Muslim assembly is the only possible form *ijma'* can take in modern times" (Iqbal 1982).

Iqbal reminded that *majlis-al-shura* is significant for the Muslims as he saw it the only possible legal form that *ijma'* (consensus of opinion) can take in modern times. The religious scholars of all various sects could sit together in the legislative assemblies and thrash out their differences through *ijma'*. Iqbal is, however, doubtful whether such an exercise could be possible in the non-Muslim assemblies. Nevertheless, the question of non-Muslim

participation in legislation has been highlighted by Abu Ishaq al-Shatibi. He observed that, "the jurists have permitted the possibility of *ijtihad* by a non-believer and for a person who does not believe in the creator, does not believe in prophecy, and does not believe in *shariah*. The reason is that *ijtihad* has been based on the soundness of such premises which is not to be questioned. It does not matter whether one believes them to be actually true or not" (Abu Ishaq).

Thus, it is not the duty of a legislator to investigate or prove the validity of the premises used in legal reasoning. His duty is rather to take those premises as to be the basis of legal reasoning to proceed further. It does not matter whether he believes them to be true or not. Consequently, a non-Muslim may proceed in his legal reasoning without establishing the validity of premises. So far as the activity of legislation is concerned, the question of non-Muslim's participation is immaterial.

On the other aspect, Iqbal has made a distinction between *shura* and democracy in which he condemned Western democracy which is devoid of religious guidance. Iqbal mentioned some basic principles of an Islamic state which are different from Western democracy. For instance, all decisions of an Islamic state are made due to the principles of *shura* by the means of *ijtihad* and *ijma'*. Muslims are entitled to make laws which are of public interest, keeping in view that such laws do not conflict with basic laws of *shariah*. Therefore, both *Quran* and *sunnah* always play the decisive role and are to be the main sources of *ijtihad* and *ijma'* (Parveen Shaukat Ali 1970). Moreover, elections in Western democracy are held on the basis of adult irrespective of pre-requisites. This makes it possible for incompetent people to run the affairs of the state. Islam, on the contrary, has imposed certain restrictions on the suitability of candidates for different offices of the state. Islam also prevents any individual from nominating himself for state office or asking to be nominated to any official position. Furthermore, the representative member of *majlis al-shura* has a more difficult task than the representative member in Western democracy. He always speaks and acts on behalf of entire Muslims to present and to look after their interests in accordance to *shariah*. Therefore, he performs dual responsibilities to his electorates as well as to the Islamic Divine law (H.H Bilgrimi 1966). In

the Western democracy, however, a member of an Assembly or Congress or Parliament has a single responsibility which is to the electorate only.

CONCLUSION

Iqbal was highly critical of the contemporary Islamic thought which had become narrow, rigid, and static. He considered *ijtihad* to be the key to updating the legal, political, and social institutions of Islam. For him, *ijtihad* is the intellectual method to create an intellectual creativity among Muslims. Iqbal's ideas are part of the continuing tradition of Muslim intellectuals' concern about the problem of stagnation of religious thought among Muslims. He also rejected the classical concept of *shura* as being the exclusive privilege of the *ulama*'. He wanted to give it a new meaning by assuming *shura* as a consensus which should be derived from a parliamentary system of an Islamic state government. Iqbal's attempt at enlargement of the scope of *shura* was to show the compatibility of Islam with the socio-political institutions of modern age. In addition, he wished to revive the democratic machinery of *shura* in operation during the period of rightly guided caliphs which has been demolished over the centuries. He observed that a modern legislative assembly or Parliament or *majlis al-shura* can become an agency for its performance. Although Iqbal was conscious of certain practical difficulties, such as, the lack of religious understanding and knowledge of Islamic law among the present legislators, he suggested the ways and means through which this principle could be implemented in the modern world. For example, he proposed to reform the present system of legal education in Muslim countries, to extend its scope, and to combine it with the study of modern jurisprudence.

Iqbal presents *ijtihad* as a dynamic principle that keeps law responsive to the changing needs of society. However, his contribution to the new idea of *ijtihad* has not been fully appreciated. Some conservative Muslims regarded change as a defect, thus, they disagreed with Iqbal's conception of *ijtihad*. In addition, Iqbal was also accused of being apostate and declared outside the pale of Islam. This accusation is unacceptable since Iqbal used the *Quran* and *Sunnah* to defend his arguments. It is also seen that the *umma*

favoured Iqbal's principle of *ijtihad* and believed that it was based on correct foundations. It is no doubt that his principle of *ijtihad* is quite controversial when he opposed the supremacy of a nominated religious advisory council over the elected parliament. However, his opposition to any nominated institution for the purpose of dealing with legislation should be justified. This is due to his basic reason that nominated person cannot go against the wills and wishes of the nominator. Obviously, every nominator would have his personal views on certain issues and the nominee tends to bring his voice. This scenario then would be against the collective interest of the nation. In that case, the *shariah* would come under their personal views. In such institutions, there is no chance for the entire nation to take part in the deliberations, unlike the parliament, where the entire nation, directly or indirectly, is involved in the deliberations. In conclusion, Iqbal has transformed the right of *ijtihad* from individual jurists to an elected Muslim assembly or Parliament, and even laid down the ground rules of *ijtihad*. The significance of Iqbal's ideas of *ijtihad* was revealed by the constitutional developments in Pakistan, particularly, in relation to the role of *ulama*'. The debate whether this role should be participative or recommendatory still continues, but Pakistan is gradually moving towards Iqbal's idea that it should be participative.

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