

Iqbal's Approach to Legislation in Islam: An Analysis

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Abstract

Ijma' is a recognized device for legislation in Islam. Muslim jurists are divided on the format of *ijma'*. Iqbal contends that *ijma'* at present is possible only through legislative assembly. This device would secure contributions to legal discussions from laymen who happen to possess a keen insight into affairs. The role assigned to '*ulamā*' by him is mainly confined to helping and guiding free discussions on questions relating to law till we have in legislative assembly men possessing knowledge of the subtleties of Islamic law. Even during this temporary arrangement, '*ulamā*' have no right to impair the sovereignty of the legislature.

Iqbal does not envisage participatory and guiding role for all '*ulamā*' but for those who are conversant with the affairs of the world. Iqbal impliedly suggests that members should legislate not in the light of entire *fiqh* literature but by reinterpreting foundational legal principles deduced from the Qur'an in the light of their own experiences and altered conditions of modern life. The judiciary in Pakistan has endorsed Iqbal's approach and it seems that it has practical utility in contemporary times.

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Introduction

Iqbal represents a complex human entity. In his mortal frame, we find an assemblage of a philosopher, a reformer, a jurist, a politician and a leader. His *Reconstruction*¹ introduces us a jurist and philosopher of eminence. After dealing with issues of permanence and change; action versus stagnation; individualism versus organization in Islam and evolutionary character of Islamic law in *Reconstruction*², he contends that *ijma'* [i.e. legislation] in Islam at present is only possible through the institution of legislative assembly.

With these introductory remarks, an attempt is being made, from Iqbal's viewpoint, to deal with reasons for advocacy of legislative assembly formula for legislation purpose; the membership of legislative assembly; the role of the ulama in legislation and the *Grundnorm* for legislation. Additionally, the judicial response to Iqbal's views will be assessed in the pre-conclusionary part of this paper.

Legislation through Legislative Assembly

After al-Qur'an and al-Sunnah, *Ummah* has endorsed *ijma'*, on the basis of several Qur'anic verses³ and Prophetic precepts⁴, as the main source of law in Islam. However, Muslims could hardly avail benefits of this institution in view of jurists expending all energies on divising rules pertaining to definition⁵, participants⁶; constitution⁷; subject-matter⁸; abrogation⁹ and other matters¹⁰ pertaining to *ijma'*. Resultantly, *ijma'* as a *shari'ah* source got theoretically amplified but with least practical utility and relevance. But for Iqbal, *ijma'* is the most important legal notion in Islam¹¹ and he prefers¹² it over individual *ijtihad* or *qiyas*¹³.

But the question is how Iqbal intends the *Ummah* to take the benefit of this institution contemporarily. In other words, how *ijma'* is possible at present and who can participate in the discharge of this divinely ordained obligation. As a realist, Iqbal does not allow himself to be guided by the notions and conceptions of past jurists and theologians. Rather he is ahead of his time when he writes:

The transfer of the power of *Ijtihad* from individual representatives of

schools to a Muslim legislative assembly, which in view of the growth of opposing sects, is the only form *ijma'* can take in modern times, will secure contributions to legal discussions from laymen who happen to possess a keen insight into affairs. In this way alone we can stir into activity the dormant spirit of life in our legal system, and give it an evolutionary outlook¹⁴.

These lines suggest that legislation in an Islamic country is no more a job which can be entrusted exclusively to an individual jurist representing a particular school of thought. Such an approach, according to Iqbal, would simply lead to the growth of opposing sects thereby dividing *Ummah* further. In order to add unifying element to *ijma'* institution, Iqbal considers the legislation through the agency of legislative assembly as the only possible way-out. He is of the opinion that through the agency of legislative assembly we can stir into activity the dormant spirit in our legal system and; give it an evolutionary outlook. It implies that the collective deliberations on a legal issue can result in best formulations and prescriptions for the *Ummah*.

Besides the 'legislative assembly' formula for law making by a Muslim state has become imperative in view of emerging new global scenario. Iqbal envisions this fact when he says:

The pressure of new world-forces and the political experience of European nations are pressing on the mind of modern Islam the value and possibilities of the idea of *ijma'*. The growth of republican spirit and the gradual formation of legislative assemblies on Muslim lands constitute a great step in advance.¹⁵

Membership of Legislative Assembly

Once it has been resolved that legislation in a Muslim state at present is possible only through Muslim legislative assembly, then the question to be addressed is who can become the members of that assembly. Should it be represented by the

'*ulamā* only or even a common man should have some say in the law-making process?

Iqbal favours election of two types of persons as members of legislative assembly i.e., those laymen who happen to possess a keen insight into affairs and those men who possess knowledge of the subtleties of Islamic law. Who are these laymen whom Iqbal points out? Do they include illiterate common men? The answer is 'no'. By 'laymen', we contend that Iqbal means those Muslims who may not be conversant with the intricacies of *fiqh* but do possess in-depth and profound understanding of other disciplines of life. But why we need such laymen? The reason is that ours is an age of evolution and revolution. The advances made in all disciplines of knowledge especially in the fields of science and technology have dazzled and dazed not only the common man but the very inventors and discoverers. Our present problems are no more confined to marriage, divorce, inheritance, etc. But we have to address to the Islamicity of cyber laws, internet use, organ transplantation, cloning and other recently evolved challenges. Is it any more possible for a single person to provide solution to these problems? Can the traditional '*ulamā*' come out with acceptable solutions to these challenges? Affirmatively the logical answer has to be 'no'. Unless one has an expertise in a particular field, it is difficult to comprehend the problem, not to think over the possible solution to the problem. In view of the vastness of the ever-increasing problems, a contemporary writer tells us that:

We must realize, however, that modern knowledge has expanded immensely and has become so complex that it is impossible for a single person to acquire a command of the multiple aspects of even one branch of knowledge. This means that the ability necessary for *ijtihād* in anyone of the various branches of knowledge requires specialization in and absolute mastery of that branch. In view of this multifacedness of knowledge, and the multifariousness of the fields of specialization, it is clear that *ijtihād*, insights, solutions and alternatives, in the domain of social and scientific knowledge cannot be provided by the specialists in

legal studies alone. [Both]¹⁶ the task and the expectation are impossible.... This is most noticeable in the case of legislators who formulate and categorize the laws and regulations covering economics, politics, information, industry and scientific research or transformation. It cannot be assumed that they are masterminds of the knowledge from which the laws and regulations have been derived. In view of the achievements and progress made in the modern fields of knowledge, we need to bring to bear the expertise of economists, politicians, administrators and others who are well-versed in the various affairs of social life. Such specialists should at the same time have first hand knowledge of the Qur'an and the Sunnah, which give them proper insight into the morals, values and purpose of existence as understood in Islam and validate their activities and contributions¹⁷.

Role of 'Ulama during Legislation

Does it mean that the 'ulamā have no role within the framework of Iqbal's theory of legislation and it is only the legislative assembly which have the ultimate say in judging the legality of any proposed legislation? As usual the answer is not in affirmative. Iqbal has a definite but temporary role for the 'ulamā. Till we have those men in the legislative assembly who possess knowledge of the subtleties of Islamic law, he does not envisage any legislation to their exclusion. In *Reconstruction* he writes:

One more question may be asked as to the legislative activity of a modern Muslim assembly which must consist, at least for the present, mostly of men possessing no knowledge of the subtleties of Muhammadan Law. Such an assembly may make grave mistakes in their interpretation of law. How can we exclude or at least reduce the possibilities of erroneous interpretation? The Persian Constitution of 1906 provided a separate ecclesiastical committee of ulama- 'conversant

with the affairs of the world' - having power to supervise the legislative activity of the Majlis ...But whatever may be the Persian Constitutional theory, the arrangement is not free from danger, and may be tried, if at all, only as a temporary measure in Sunni Countries. *The ulama should form a vital part of a Muslim legislative assembly helping and guiding free discussion on questions relating to law.*¹⁸

What one can deduce from the above observation is that the legislative assembly should enact a law in consultation with the *ulamā*. Dr. Iqbal has his own reasons for such a contention. He thinks that most of the members of the legislative assembly *must*¹⁹ at present consist of men, possessing no knowledge of the subtleties of Islamic law. Consequently, such assembly is likely to commit grave mistakes in the interpretation of law. Such an assumption is absolutely right. Even today we see such persons elected to the legislative assembly who are bereft of academic and moral excellence and it is purely their personal influence on the electorates of his constituency which enable them to reach the corridors of highest law-making institution. So, in order to reduce possibilities of erroneous interpretation, Iqbal advocates the temporary adoption in Sunni countries of a device envisaged in Persian Constitution of 1906 whereby the *'ulamā* form a vital part of a Muslim legislative assembly helping and guiding free discussions on questions relating to law. It means that the role which Iqbal intends to be assigned to the *'ulamā* is confined simply to helping and guiding free discussions on questions relating to law. In other words, if a conflict emerges regarding a future enactment, then? It will be the will of the legislative assembly which would prevail over the reasoning of the *'ulamā*. It seems that Iqbal does not favour dominating role of the *'ulamā* in Shiah Jurisprudence whereby the *'ulamā* consider themselves entitled to supervise the whole life of the community. Actually he does not want sovereignty of legislative assembly to be impaired by any other institution. Further, he expects those persons to dominate Muslim legislative assembly in future who happen to possess the knowledge of the subtleties of Islamic law.

Two distinct thoughts are visible in these observations. One that the legislative assemblies of the modern state may assume the role of *ijma'* and the other that the sovereignty of the legislature should not be impaired by subjecting it to the authority of an external organ.

Qualifications of 'Ulama

The other pertinent question relates to the meaning Iqbal gives to the word '*ulamā*'. Does he mean a person who is well versed in the teachings of Qur'an and Sunnah and relies unfailingly on the interpretation of early jurists while dealing with a contemporary problem. In other words, is he the person who is mostly engrossed in the past and does not acquaint himself with the realities of the contemporary multidimensional world. In this regard, Iqbal insists on those '*ulamā*' who are conversant with the affairs of the world. A vivid depiction of the qualifications of such '*ulamā*' can be found in one of the works of Maulana Abul A'la Maududi in which he provides that our law-makers should, *inter alia*, have acquaintance with the problems and conditions of our times—the new problems of life to which an answer is sought and the new conditions in which the principles and injunctions of the *sharī'ah* are to be applied²¹.

From the above views one can arrive at a conclusion that for the time being the Muslim specialists from different disciplines of knowledge and the '*ulamā*' have, to some extent, role of equivalence in a Muslim legislative assembly. Contemporary approach of Muslims does not seem departing from this stand when it is being contended:

Such well-equipped specialists can develop the legislative source materials on which legislators can draw to meet the day-to-day requirements of the *ummah* and vitalize its existence. By so doing we can define the place of *ifla* and of the legislature in the field of knowledge, as well as realistically assess their potential social performance in order to overburden or misguiding either the experts or the salons. *This means*

that we will continue to call upon orthodox jurist and legislators to provide the insights, originality and answers, to new, intricate problems, but only in conjunction with an unflinching determination to keep them abreast of knowledge by preparing cadres of specialists capable of living to the expectations and requirements of the age²².

The responsibility of these inter-disciplinary specialist cadres should not remain confined to a particular legislative think-tank or authority but should be shared by the academic community, by representatives of interest groups, and by legislative bodies responsible for pronouncements arising from the need and demands of the *Ummah*'s social structure. This approach is necessary to enhance the intellectual vitality of the *Ummah* and to reduce any ambiguities or anxieties in its daily practice²³.

The Grundnorm for Legislation

Once it has been resolved that legislation in a Muslim state at present is possible only through the agency of legislative assembly, does it mean that such assembly is free to legislate anything on anything without any handicaps or barriers. In other words, is there any touchstone or *Grundnorm*²⁴ against which the validity of legislation has to be tested. Iqbal endorses the viewpoint of Imam Shatibi that the law of Islam aims at protecting five things- *dīn*, *nafs*, *‘aql*, *māl* and *nasl*²⁵. It is on the basis of these *Shari‘ah* aims that Iqbal advocated replacement of those aspects of Hanafi law of divorce under which Muslim woman has no alternatives of getting rid from her undesirable husband except to be driven to apostasy²⁶. It is this stand of Iqbal which motivated Indian *‘ulamā* to impress upon British legislature to substitute Hanafi law regarding dissolution of marriage by women by Maliki law resulting ultimately in the enactment of Dissolution of Muslim Marriages Act 1939²⁷.

However the identification of *Shari'ah* aims does not solve our problem of *Grundnorm* for legislation. Generally a Muslim state is expected to legislate, to say the least, in the light of Qur'an and Sunnah. So we can safely say that Qur'an and *Sunnah* constitute *Grundnorm* for future legislation in an Islamic state. Does Iqbal endorse this approach? Possibly not.

Firstly, Iqbal is in no mood to recognize any limitation upon the legislative activity of contemporary Muslim legislative assembly on the basis of *fiqh* literature developed by the imams of various Schools. In *Reconstruction*, he contends:

But with all their [i.e., early doctors of Islam] comprehensiveness, these systems are after all individual interpretations, and as such cannot claim any finality. I know the 'ulama of Islam claim finality for the popular Schools of Muhammadan Law... But since things have changed and the world of Islam is confronted and affected today by new forces set free by the extraordinary development of human thought in all its directions, I see no reason why this attitude should be maintained any longer. Did the founders of our Schools ever claim finality for their reasonings and interpretations? Never²⁸.

His conclusion is that works of predecessors should guide and not hamper the solution of the problem²⁹.

Secondly, he does not envisage any role for Sunnah for testing the validity of legislation at present. He is of the opinion that:

For our present purposes, however, we must distinguish traditions of a purely legal import from those which are of a non-legal character. With regard to the former, there arises a very important question as to how far they embody the pre- Islamic usages of Arabia which were in some cases left intact and in others, modified by the Prophet. It is difficult to make this discovery, for our early writers do not always refer to pre-

Islamic usages. Nor is it possible to discover that the usages, left by the express or tacit approval of the Prophet, were intended to be universal in their application³⁰.

In these lines, Iqbal seems doubtful about the application universality of the Traditions of legal import. And once the universality of a past institution is doubted, it means that it was relevant only to the time in which it was born and cannot guide the, future generation³¹. Such has been the view of Iqbal when he quotes approvingly the following views of Shah Wali-Allah with regard to the role of the Prophet:

The Prophetic method of teaching ...is that, generally speaking, the law revealed by a prophet takes especial notice of habits, ways and the 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 of a universal Shariat. In doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of specific habits of the people immediately before him. *The Shariat values (Ahkam) resulting from this application (e.g., rules relating to penalties for crime) are in a sense specific to that people; and since their observance is not an end in itself, they cannot be strongly enforced in the case of future generations*³².

Now, if the *fiqh* literature developed by our great Imams and legal rules derived from Hadith does not constitute *Grundnorm* for legislation in Islam, then what is the touchstone against which we have to ascertain and assess the validity of legislation by present-day Muslim legislative assembly. In response, Iqbal advocates 'foundational legal principles deduced from Qur'an' to be treated as a

touchstone for verifying the validity of the legislation. And in case the existing interpretation of those foundational, legal principles is not practicable in our times, then these principles can be reinterpreted in the light of our experiences and altered conditions of modern life. We have arrived at this conclusion on the basis of these lines in *Reconstruction*:

The claim of the present generation of Muslim liberals to re-interpret the foundational legal principles [deduced from Qur'an]³³ in the light of their own experience and the altered conditions of modern life is, in my opinion, perfectly justified³⁴.

But who is going to locate 'foundational legal principles' in Qur'an and how? The *ummah* in general is not in know of such categorization but Iqbal seems to have identified himself one foundational legal principle, in Qur'an, i.e., *Tauhid* and re- interpreted it according to his own understanding. *Tauhid* for a Muslim means the recognition of Allah as the Absolute Creator and Master of Mankind³⁵. But, Iqbal reinterprets this word when he says:

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 organization³⁶. Islam as a polity, is only a practical means of making this principle a living factor in the intellectual and emotional life of mankind³⁷.

But what meaning he intends to assign to the words equality, solidarity and freedom'? Are we supposed to interpret them from Islamic perspective or according to the demands of the time? It seems Iqbal is prepared to adopt those interpretations of these words which satisfy the demands of the time. Had it not been so, then he would not have insisted upon us to re-evaluate our intellectual heritage like Turks³⁸.

He is of the opinion that³⁹:

The truth is that among the Muslim nations of today, Turkey alone has shaken off its dogmatic slumber and attained to self-consciousness⁴⁰.

The concept of 'reinterpretation' of foundational legal principles has got supporters in present day Muslim jurists, economists and the experts from other fields. For example, no one can deny that economic stability of a Muslim nation is *sine qua non* for its survival but is it still possible for us to apply the same rules for realization of this objective as were applied fourteen centuries ago. In other words, is there any scope for variation of these rules in order to obtain the desired results. No sane Muslim can plead for *mutatis mutandis* application of such rules. Much light is shed on this issue by Taha Jabir Al-Awani when he contends:

Muslim scholars should realize that time constantly travels forward, making it impossible for situations or event to recur in exactly the same way. It just is not possible today to impose proposals and ideas put forward in Madinah by Imam Malik and his contemporaries' fourteen hundred years ago. Similarly it is not possible to ignore or discount the developments and achievements made during all the intervening generations in the field of human sciences. In economics, for instance, how would it be possible to follow the Madinah market mentality in reference to contemporary economic issues. To apply the Madinah market model to contemporary financial and economic situations would result in poverty and prevent the *Ummah* from meeting the people's basic requirements. It will neither be possible to have any dealing with today's complex world economic systems nor for any Muslim state to build a strong economy capable of meeting the challenges of the present time. Muslims can, no doubt, learn from their predecessors by incorporating the latter's ideas into their own⁴¹.

Judicial Response to Iqbal's Approach

Iqbal's views regarding legislation in Islam were subjected to judicial scrutiny in Pakistan in 1964. In Khurshid Jan⁴², Yaqub Ali J, quoted extensively from *Reconstruction* about views of Iqbal regarding legislation in Islam and found Iqbal's views constitutionally incorporated in the provisions of Article 198(3) of the 1956 and Articles 199-203 of 1962 Constitutions of Pakistan. The learned judge quotes 1962 Constitution under which those persons are to be appointed as members of the Advisory Council of Islamic ideology who have the understanding and appreciation of Islam and of the economic, political, legal and administrative problems of Pakistan. The men with these qualifications were supposed:

- (a) to make recommendations to the central government and the provincial governments as to means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam, as set out in the Holy Qur'an and the Sunnah and;
- (b) to advise the National Assembly or Provincial Assembly, the president or a governor on any question referred to Council under Article 6, that is to say, a question as to whether a proposed law disregards or violates, or is otherwise not in accordance with the principles of law-making⁴³.

Besides, 1962 Constitution required the president to establish an Islamic Research Institute which shall undertake Islamic research and instruction in Islam for the purpose of assisting in the reconstruction of Muslim society on the truly Islamic basis⁴⁴: *ulamā* participation became further possible by the establishment of Federal Shariat Court under Constitution of Islamic Republic of Pakistan 1973 wherein the judges are entrusted with the task of examining and deciding the question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet (ﷺ).⁴⁵

It is obvious that 'ulamā participation is presently possible in Pakistan by being a member of Advisory Council of Islamic Ideology or a scholar of Islamic Research Institute or a judge of Federal Shariat Court. However, all these institutional bodies do function outside the legislative assembly of a Muslim state whereas Iqbal wanted 'ulamā as a vital part of a legislative assembly, meaning thereby their active participation in discussions and deliberations in the hall of legislative assembly. He did not want them helping and guiding from the outside. However at the same time he fails to inform us how they can become members of the legislative assembly. Perhaps he had nomination device in his mind. At present, in most countries of the world, we have got senate or upper house of legislature, which is manned by those persons who have excelled in different fields of knowledge. These persons do not become members through election process; rather are nominated through nomination process peculiar to a country. Although in Khurshid Jan, the learned judge observes that Iqbal's views about *ijma'* [or legislation in Islam] are constitutionally incorporated in 1956 and 1962 Constitutions of Pakistan, yet we venture, to say that these institutions are not in accordance with Iqbal's thinking. Iqbal favoured an institution which directly participated in legislative process but the judicially quoted institutions do function independently and are not directly involved in legislative process.

And so far as, the *Grundnorm* for legislation is concerned, the judiciary in Pakistan has partially accommodated Iqbal's viewpoint. While referring to earlier quoted constitutional provisions, it definitely agrees with non-finality and unbinding nature of the *fiqh* literature developed by the schools of thought. In *Mohammad Riaz*⁴⁶, Aftab Hussain J. observed:

It would, therefore, be clear that the language of the Constitution does not warrant any attempts at harmonizing the laws with any particular Jurisprudence (*fiqh*) or Jurisprudence of any particular school of thought or sect. On the other hand it appears that reference to any particular

doctrinal approach (*fiqh*) has been eliminated deliberately so as to enable the courts to test the validity of a law, only on the criteria of commandments laid down in the Holy Qur'an or the Sunnah of the Prophet (ﷺ)⁴⁷.

Continuing his observation, the learned judge further contends:

Looked in this context it would be clear that though doctrinal approach (*fiqh*) of different schools of thought may have a persuasive value which it undoubtedly has and in many cases full assistance may be obtained from it in the interpretation of the texts of the Holy Qur'an or traditions, yet this Court cannot blindly follow the doctrines (*fiqh*) of a particular sect. If the intention of the Constitution had been to apply a sectarian doctrine to matters of public law (as distinguished from personal law) all the difficulty would have been obviated by replacing the present public law by *Fatāwa Alamgīri*. But clearly this is not the object of this Constitution to which it appears abhorrent to demolish the existing legal structure in order to raise a new structure of public law. The constitutional intent is only to repair the existing structure by eliminating from it what is repugnant to the divine law comprised in the Holy Qur'an and the Sunnah of the Prophet (ﷺ) and amending the law to make it conform to the to the said Divine law⁴⁸.

However, the courts have not, so far, theoretically been impressed by Iqbal's contention that for the purpose of legislation we must concentrate on 'foundational legal principles' in Qur'an and can ignore non-foundational legal principles in Qur'an and the *corpus juris* based on Hadith. Likewise, none of the Constitutions adopted in Pakistan have stipulated the legislation based on Qur'an only, not to talk of foundational legal principles in Qur'an. The constitutional provisions in Pakistan and the judiciary have unfailingly insisted upon law making in the light of Qur'an

and Sunnah. For example, 1962 Constitution of Islamic Republic of Pakistan empowered the president or the governor of province to establish Advisory Council of Islamic Ideology and the function of Council included:

To make recommendations to the central government and the provincial governments as to means of enabling and encouraging the Muslims of Pakistan to order their lives in all aspects in accordance with principles and concepts of Islam as set out in the Holy Qur'an and the Sunnah⁴⁹.

Likewise, In Muhammad Riaz⁵⁰, Aftab Hussain J, observed:-

The principle under which the repugnance of a particular law to the injunctions of Islam has to be judged is limited to the consideration of the question whether the laws sought to be challenged before this court are in conformity with the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of Prophet (ﷺ).

But, if one goes dispassionately through the judicial observation in Ghulam Bhik,⁵¹ it is obvious that the court did not consider strict adherence to all legal verses in al-Qur'an essential; impliedly recognizing thereby the dichotomy of foundational and non-foundational legal verses in the Qur'an as propounded by Iqbal. In this case, one of the questions before the High Court was whether for the enforcement of a divorce on the ground of *laan* (imprecation), it was necessary for a court to follow the elaborate procedure prescribed by the Qur'an. Answering negatively, Justice Kayani observed:

He would have no hesitation in holding that a procedure whose adaptation has been recognized through the ages and which had become obsolete by our present law of evidence, should be allowed to remain obsolete because it did not possess any particular merit⁵².

Conclusions

From the preceding discussion we have come to know that Iqbal is of the opinion that legislation in a Muslim state at present is only possible through legislative

assembly, the law-making of which he treats as equivalent to *ijma*⁵³. He expects two categories of people as members of the legislative assembly i.e., those laymen who happen to possess a keen insight into affairs and those men who possess knowledge of the subtleties of Islamic law. In view of absence of men from second category in large number at present, he endorses as a temporary measure, guidance and help from the *ulamā* to the members of legislative assembly during the legislation. He does not recognize any impediments on the law-making power of the legislative assembly so long as five aims of legislation are satisfied. While legislating laws with the above aims, the *Grundnorm* for validity of laws enacted by legislative assembly is the foundational legal principles deduced from Qur'an. Where the existing interpretation of these principles is not helpful to us, he advocates re-interpretation of these principles in the light of our own experiences and altered conditions of modern life. Judiciary in Pakistan has endorsed Iqbal's 'legislative assembly' institution for legislation in Islam but simultaneously has recognized (1) Federal Shariat Court, (2) Advisory Council of Islamic Ideology, and (3) Islamic Research Institute as other institutions through which laws can be enacted in a Muslim country. Besides, it seems reluctant to give recognition to "foundational legal principles deduced from al-Qur'an" theory when it approves legislation by above institutions in the light of the Qur'an and *sunnah*. Somehow, judiciary in Pakistan does not subordinate future legislation to jurisprudence of any particular school of law. In brief, while Iqbal's 'legislative assembly' as a device of *ijma* can hardly be questioned contemporarily, we have to look future regarding accommodation by *Ummah* of his two views; i.e., guidance from the *ulamā* in legislation as a temporary measure and laws to be formulated only in the light of foundational legal principles deduced from Qur'an.

53. Some jurists define *ijma* as unanimous agreement of Muslim jurists on a legal point, while for some it means consensus of jurists on a legal point. For details see Ahmad Hassan, *The Doctrine of Ijma in Islam*, 72-82 (Islamabad: 1978).

References and Notes:

1. Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, Lahore: Institute of Islamic Culture, 1986.
2. *Reconstruction*, 116-131.
3. Some of the Qur'anic verses referred to in this connection are:
You are the best nation raised up for man: You enjoin good and forbid evil and you believe in Allah. (3:109).

And thus have We made of you an Ummat justly balanced that ye might be witnesses over the nations and the Messenger a witness over yourselves (2:143).

And follow the way of those who turns to Me. (31:15).
4. The often-quoted Hadith in this regard include:
Whatever the Muslims consider good is good in the eyes of Allah, and whatever they consider evil is evil in the Eyes of Allah. .
[Al-Shaybani- *al-Muwatta*, 111-12 (Lucknow:1925).
The heart of a Muslim shall never harbour vindictive feelings against three: sincerity in working for God; faithfulness to Muslims; and conformity to the community of believers-their call shall protect (the believers) and guard them from (the Devil's) delusion.

Only those who "seek the pleasure of paradise will follow the community, for the Devil can pursue one person but stands far away from two. Majid Khadduri [translated], *al-Shafi's Risāla*, 252-53 (Baltimore: 1961).

My community will not agree on error. [Hadith related by al-Tirmidhi in *Kitab al-Fitan*]
5. Some jurists define *ijma'* as 'unanimous agreement of Muslim jurists on a legal point' while for some it meant 'consensus of majority on a legal point'. For details, see Ahmad Hassan, *The Doctrine of Ijma' in Islam*, 72-82 (Islamabad: 1978).

6. According to some jurists, general masses can participate in *ijma'* while most jurists are of a view that only a *mujtahid* is competent to participate. Some jurists have even attached binding force to the views of a heretic and impious *mujtahid* in view of vastness of his knowledge and understanding. Hassan, *ijma'*.83-92.)
7. Jurists are on record who consider only *ijma'* of the Companions valid although majority of jurists consider *ijma'* valid in every generation. We have even jurists who confine *ijma'* to the consensus of Caliphs and the people of Madina. Hassan, *Ijma*, 93-102.
8. Some jurists have contended that *ijma'* is an agreement only on religio-legal question. For some jurists, *ijma'* may mean agreement also on temporal affairs provided agreement is that of reliable competent persons. Other group of jurists extends *ijma'* jurisdiction to all matters. Hassan, *ijma'*, 103-110.
9. Some jurists treat *ijma'* on any particular point infallible and decisive to the extent that it cannot be abrogated by the Qur'an, the Sunnah or subsequent *ijma'*. Contrarily other set of jurists treat it abrogatable in the same generation or subsequent generations. Hassan, *ijma'*. 148-163.
10. The other related matters include by silence, compound *ijma'*, evidence of *ijma'*: Hassan, *ijma'*, 111-134, 157-163.
11. *Reconstruction*, 137. ,.
12. Id., at 138.
13. *Qiyas*...is only another name for *ijtihad*. Id; at 141. Qiyas the juristic analogy is one of the methods of *ijtihad*
14. Id., at 138.
15. *Ibid*.
16. The original word is 'But'. We think it should be 'both' because that conveys the intended meaning.
17. Abdul Hamid A. Abu Sulayman, "Islamization of Knowledge: A New Approach Toward Reform of Contemporary Knowledge" in the book, *Islam: Source and Purpose of Knowledge*, pp. 93-118 at 104 (U.S.A: 1988).
18. *Reconstruction*, 139-140. [Emphasis Supplied].
19. Emphasis Supplied
20. *Kuhurshid Jan v. Fazal Dad*, PLD 1964 (W.P) Lahore 558.
21. Sayyid Abul A'la Maududi, *The Islamic Law and Constitution*, 77 (Lahore,

- 7th edition, 1980). Other qualifications, according to the learned author, are (i) faith in *Shari'ah*. (ii) proper knowledge of Arabic language, (iii) knowledge and insight in the teachings of the Qur'an and Sunnah, (iv) acquaintance with contributions of earlier jurists and commendable character and conduct. (Ibid).
22. Emphasis Supplied.
 23. *Supra* note 17 at 102-103.
 24. *Grundnorm* means superior or basic norm. This word was used Hans Kelsen, [1881-1973] in his definition of law. According to him, it is the *Grundnorm* which serves as the basis of all norms. The validity of all other norms has to be tested against the *Grundnorm* but the validity of *Grundnorm* has to be pre-supposed or assumed. For details, G. W. Paton, *A Text-Book of Jurisprudence*, 14-18 (Oxford, 3rd. edition, 1964).
 25. *Reconstruction*, 134.
 26. *Ibid.*
 27. For further details, see Muhammad Khalid Masud, *Iqbal's Reconstruction of Ijtihad*, 155-178 (Iqbal Academy Pakistan, Lahore, 1995).
 28. *Reconstruction*, 133-134.
 29. *Id.*, at 134.
 30. *Id.*, at 136.
 31. For further details, see Muhammad Altaf Hussain Ahangar, 'Iqbal and Hadith: A Legal Perspective', *Iqbal Review*, Vol:37 No:3, 89-110 (Lahore, October 1996).
 32. *Reconstruction* 136. [Emphasis Supplied].
(The passage is the 'substance' of Shah Wali Allah's views which Iqbal quotes from an incomplete excerpt of the former's *Hujjat Allāh al-Balighah* found in Shibli Nu'mani's *al-Kalām* and, thus, may lead to misinterpretation of Shari'ah-values. Editor's note).
 33. The words in brackets have been supplied as Iqbal makes this observation under the heading "Qur'an".
 34. *Reconstruction*, 134.
 35. See *Philosophy Behind Establishment of International Islamic University Malaysia*.
 36. *Reconstruction*. 122-123.
 37. *Id.*, at 117.

38. *Id.*, at 121.
(In Iqbal concern for the demands of time is implicit in his Islamic perspective—approaching issues in totality. His appreciation of the Turkish Reform party was simply to promote the intellectual freedom and bring new situations suggesting fresh interpretation of principles which are only of an academic interest, to a people who have never experienced the joy of spiritual experience. Editor's note).
39. *Id.*, at 128.
40. For further details, see Muhammad Altaf Hussain Ahangar, 'Iqbal and Qur'an: A Legal Perspective', *Iqbal Review*, Vol:35, No:3, 1-22 (Lahore, October 1994).
41. Taha Jabir al' Alwani, *Ijtihād*, 24-25 (IIIT, USA, 1993).
42. *Khurshid Jan v. Fazal Dad* PLD 1964 (W.P) Lahore 558.
43. See *Constitution of Pakistan*, 1962 Arts 199-203. [Emphasis Supplied]
44. *Supra*. note 40 at 577-578.
45. Art 203 C-203 D.
46. *Muhammad Riaz v. Federal Government*. PLD 1980 F.S.C.
47. *Id.*, at 14.
48. *Ibid*, [Emphasis Supplied].
49. Art.230.
50. *Supra*, note 14.
51. *Ghulam Bhik v. Hussain Begum*, PLD 1957 Lahore 998.
52. Emphasis Supplied.
53. For further details, see Muhammad Altaf Hussain Ahangar, "Iqbal's Theory of *ijma'*: Perspectives and Prospects", *Iqbal Review*, Vol:38 No: 1, 17-37 (Lahore, April, 1997); M. Altaf Hussain Ahangar, "Classical Sources of Islamic Law: Judicial Responses in Pakistan", *Islamic and Comparative Law Review*, Vol. XII, No.2, 101-113 (New Delhi, 1992).

