

## ***The political ideals of Islam and the constitution of the Islamic Republic of Pakistan***

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### ***Abstract***

*Pakistan came into existence as a result of the desire of the Muslim community of India to establish a just social and political order as laid down in the Holy Quran and precepts of Prophet Muhammad (P.B.U.H).*

*Soon after the creation of Pakistan in 1947, the Pakistan's Constituent Assembly passed a resolution known as the Objectives Resolution which reflected the resolve of the legislators to own the Holy Quran as the supreme law of the land. The Objectives Resolution today forms part of the Constitution of the Islamic Republic of Pakistan as a substantive law which calls for the harmonization of laws in line with the dictates of Islam.*

*Despite the laps of over half a century, harmonizing the prevalent Anglo –Saxon Laws in line with the Quran and Sunnah is a dream yet to be accomplished. This research explores the Constitution of the Islamic Republic of Pakistan and the subordinate laws and juxtaposes them with the ideal pattern of Islam with a view to facilitate the legislature and other relevant institutions to perform their function more efficiently.*

***Key words:*** *Islam, politics, state, constitution, law*

### ***Introduction***

Islam in today's world is a subject of heated debate. The fall out of the Soviet Union in 1991 and subsequent declaration by the United States of establishing a new World Order was perhaps the beginning, in contemporary times, that Islam became the focus of attention in the United States.

The U.S war against Iraq in 1992, the deployment of

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foreign troops in the Middle East, the subsequent Al-Qaida's hit and hide policy, the rise of Taliban in Afghanistan, the 9/11 incident in the United States followed by the U.S led world coalition's war against terrorism, the U.S occupation of Iraq and now the emergence of the Islamic State of Iraq and the Levant (ISIL) which the world community have come together to fight, have all contributed a good deal to make Islam a controversial religion.

The Issue, it may be argued, is not within the religion of Islam but an extension of the political climate surrounding the Muslim world. "The points of contention with Western Governments, invoked by al-Qaida's leader Osama bin Laden, revolve around the longstanding issue of the Palestinian right to self-determination and the presence of American troops in Saudi Arabia...The USA's continued support for Israel, even when the international community condemns its violation of Palestinian human rights and settlement policies, along with the US-led attack on Afghanistan, the American and British war against Iraq and subsequent occupation of that country, constitute the key issues of contention in relation with Western Governments, in Particular the US Government<sup>(1)</sup>".

Islam, on the other hand, emphasizes the dignity of man and has never encouraged violence uncalled for. The Quran is replete with injunctions which demand from its adherents to respect life. "In the annals of human history, says Riaz Hassan, "Islam occupies an illustrious position. Besides being one of the greatest religions, it gave rise to some of the greatest civilizations the world has known" <sup>(2)</sup>.

Currently, around 50 countries of the world having an area of about 110000,000 sq kilometers are under the influence of Islam. The total Muslim population of the world today is around 1.6 billion spreading in Muslim and non-Muslim

countries. This testifies the fact that Islam has a value system of which the world is not oblivious.

Islam, according to the Quran, is the religion of the Universe and consists in a belief in one Omnipotent, Omniscient Creator and Sustainer of all life and all the worlds, who demands that man should, on his own volition, surrender his will to the will of God as revealed to Prophet Muhammad (P.B.U.H). Islam means peace which is attained through harmonizing and attuning of the finite with the infinite and whoever has ever believed in this Truth and lived up to it is a Muslim. According to the Quran, Abraham, Moses and Jesus all were Muslims because the essence of their teaching was belief in one good God, the Lord of Mercy, Justice and Righteousness<sup>(3)</sup>.

Prophet Muhammad is the last of all the Messengers of God and the Quran is the last revealed Truth to guide man in spiritual and mundane world. Islam, as preached by Prophet Muhammad, emerged, as a spiritual, social and political force, from the Arabian Peninsula and occupied human mind in different corners of the globe.

The distinctive characteristic of Islam, as contrasted with other religions, is that it looks for spiritual heights by involving man in the mundane affairs when he becomes selfless and seeks the welfare of other human beings. According to Islam, man can rise in the spiritual world by playing his positive role in the mundane world. A pious Muslim is not expected to live his life in retirement from the world but to engage himself actively in the service of humanity.

To Islam, all human beings are the progeny of one father and one mother and are members of a single family, though they have begun living on different portions of the globe and have begun professing different creeds and ideologies. In the eyes of God, however, their lives and their belongings are

sacred and are to be respected in all circumstances.

Allah almighty desires humanity to live in peace and harmony, respect life and not to devour each other belongings. As internal and external peace is dear to Allah, therefore, it has been ordained for the faithful to unite and keep the hand of the powerful aggressor off to safeguard and protect the poor and the weak. This necessitated the definition of the boundaries of individual liberty and the rights of fellow beings.

The formation of a state thus is intrinsic to Islam as without it the wish of enduring peace can not be materialized. The collective force of the society as expressed in the form of a state is to be utilized to promote public good and to take to task those who do not respect the boundaries of freedom.

Islam is the state religion of Pakistan. The Muslim community of the Indian subcontinent struggled to achieve a separate and independent homeland where they could evolve a society in line with the social, economic and political principles of Islam. This desire of the Muslim population, after the achievement of their homeland, found expression in the Objectives Resolution passed by the Pakistan's Constituent Assembly in March 1949.

The Resolution declared God as Sovereign over the entire Universe and the authority of the State of Pakistan to be exercised by the chosen representatives of the people according to the wishes and the desires of Allah as enjoined in the Holy Quran and the Sunnah (precepts) of Prophet Muhammad (P.B.U.H). The Resolution is now part of the Constitution of Pakistan 1973 which serves as the fundamental law of the land.

Pakistan inherited a legal system from the British Imperial Masters in 1947 who had devised their laws in the light of their own understanding of the socio-cultural phenomena of the region and in the context of keeping intact their imperial hold over their subjects. The British bureaucratic-

cum dictatorial laws imposed in the Indo-Pakistan were not akin to the Islamic tradition, therefore, it was desired that all the subordinate laws in Pakistan were to be brought into conformity with the injunctions of Islam. In spite of serious efforts, however, the British legal system continues to dominate in several areas which are to be harmonized with the dictates of Islam.

Pakistan also inherited a democratic tradition from the British Imperial Masters which has been reflected in the 1973 Constitution of Pakistan. According to this tradition, the people of Pakistan choose their representatives and send them to Parliament but the State is yet to evolve a mechanism whereby the representatives are the possessors of distinguished conduct and purity of character necessitated by Islam for men to lead the faithful.

The complaint against the prevalent electoral practices are that representatives to National Legislature are elected not on the basis of their strength of character or intellectual wisdom, but millionaires who seldom stand for justice and fair play with little concern for public good as demonstrated by mega corruption cases on the part of political elite pending before Accountability Institutions and Courts.

This state of affairs has continued to mar the dynamic and progressive vision of Islam about the formation of a just and exploitation-free socio-economic system which is the hallmark of an ideal Islamic state.

This article aims at making a comparison between the existing legal system in Pakistan as incorporated in its Constitution of 1973 with that of the ideal pattern envisaged by Islam and to highlight the inconsistencies and the mismatching with a view to achieve harmonization with the spirit of Islam as envisioned by the leaders of the Pakistan Movement.

As the Constitution of a country is only providing the guiding principles, it is the spirit of the executors that brings about legality to fruition. An attempt therefore shall also be made as to what is the demand of the fundamental law and what prevails in reality, highlighting thereby the inherent weakness of the state structure.

***The Concept of Sovereignty in the 1973 Constitution***

The concept of sovereignty originated in France in 1663 for administering a certain territory, though Ibn-e-Khaldun (1342-1406), a Muslim philosopher, through his theory of *Asabiyah* or Group Mind had identified its roots before the concept became popular in Medieval Europe. As a political theory, sovereignty is the ultimate decision making authority in a state system to ensure peace and order. Political Scientists in subsequent times made it a subject of heated debates and propounded different theories and conceived new concepts to give expression to their speculative propositions<sup>4</sup>. It, however, continues to carry the meaning of the supreme power of a ruler, state or a nation to be fully self-governing and be independent in foreign affairs.

The 1973 Constitution of Pakistan declares that Sovereignty over the entire universe belongs to All-mighty Allah. This is strictly in consonance with the teachings of the Holy Quran which proclaims that “God is the real ruler of the world, His Law is supreme, while man is His vicegerent, and of the human species, He appoints kings and magistrates whose most important duty is to do justice according to the Law and never to be led away by personal desires<sup>(5)</sup>”.

This phenomenon has been explained by Maulana Maudoodi pithily. He says, “If I were permitted to coin a new term I would describe this system of Government as a ‘theo-democracy’, that is to say a divine democratic government, because under it the Muslims have been given a limited popular sovereignty under the suzerainty of God<sup>(6)</sup>”.

The concept of sovereignty in Pakistan's legal system was first brought forth by the Objectives Resolution passed by the Constituent Assembly of Pakistan in March 1949. The Objectives Resolution served as the preamble of the 1956, 1962 and 1973 Constitutions. It currently forms part as substantive provisions of the 1973 constitution under section 2A which says, "the principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution (1973) and shall have effect accordingly<sup>(7)</sup>".

According to the existing Constitution of Pakistan, sovereignty is vested in God Almighty and not in any ruler, state or the entire nation. The will of the nation has been circumscribed and made subordinate to the will and desire of God Almighty, the creator and the sustainer of the entire Universe. According to this concept of sovereignty, the Parliament in Pakistan cannot legislate contrary to the dictates of the Quran as expounded by Prophet Muhammad (P.B.U.H). Also no laws in Pakistan can survive or function which are contrary to the general principles of Islam.

#### ***The Ideal Patterns of an Islamic State***

Islam today is being debated as to whether it should form part of the state structure or not. There are certain scholars in Pakistan, who like their counterpart in the West, think that religion, and as a corollary Islam, should be banished from statecraft and that every problem should be approached in the light of human reason, seeking no guidance from divine revelations. It is also being suggested that Jinnah was a secular leader who during the Pakistan Movement referred to Islam only to mobilize political support of the Muslim community and in the post independence period, he clearly pointed out that religion shall have nothing to do with state matters. "There is no doubt", says Rasul Bakhsh Raees, " that, on occasions, Jinnah

made brief references to Islam in seeking support for Pakistan, but dragging him closer to the Islamist position is a very recent phenomena. An objective reading of history would reveal that the creator of Pakistan was a constitutionalist, a democrat to the core, and a secular Muslim. His presidential address to the Constituent Assembly of Pakistan on 11 August 1947 stands testimony to this: ‘You are free, you are free to go to your temples, you are free to go to your mosques or to any place of worship in this state of Pakistan. You may belong to any religion or caste or creed- that has nothing to do with the business of the state’.

*Unfortunately, Jinnah’s real personality and ideological outlook fell victim to the political exigencies of the authoritarian state and obscurantist ulema<sup>(8)</sup>”.*

I do not like to drag myself into the debate as to whether Pakistan should be a religious state or otherwise as the era of such a debate has already been passed once the issue was debated in Pakistan’s constituent Assembly and the Objectives Resolution was passed with an overwhelming majority, thereby putting a seal on the discussion once and for all. To the assertions of Rasul Bakhsh Raees, however, it may be argued, that those who aided Jinnah in his struggle for Pakistan were more aware of the intentions of Jinnah than speculators on his statements in subsequent times. The aides of Jinnah overwhelmingly supported the passage of the objectives Resolution in Pakistan’s Constituent Assembly in 1949 and it is now immaterial to entangle ourselves in unnecessary speculations. As the Objectives Resolution is part of Pakistan’s fundamental law therefore a discussion on the political ideals of Islam is deemed necessary.

In an Islamic state, sovereignty belongs to All-mighty Allah alone. According to the Muslim faith, God is the Creator-Owner of the universe encompassing the human species and hence He is the lord sovereign of the human world. According to this premise, man’s power to legislate for fellow humans is



restricted. The divine wish is incorporated in the Holy Quran and precepts of Prophet Muhammad (P.B.U.H.) and in matters of legislation as well as in the conduct of state, guidance is to be taken from the divine sources.

In matter of religion, there shall be no compulsion and force. Freedom in this world is cardinal to accountability in the Hereafter. A man bound in action and thought in this world can not be held accountable for his deeds in the hereafter. It has been declared in the Holy Quran, “there is no compulsion in matter of religion”<sup>(9)</sup>.

Freedom of human conscience is central to Islam. Islam encourages reflection and creativity and this was perhaps the reason why Muslims in early periods of their history made significant contributions to human knowledge in all branches of sciences.

An Islamic state is to be an ideological state. Islam stresses unity of thought and solidarity in conduct. Man is free in the selection of religion and once he has entered the fold of Islam and adopted Islam as his ideology then he is required to demonstrate a sense of oneness with the large body of the Muslim brotherhood and not to digress from the mainstream.

In an Islamic state, non-Muslims can live in peace and harmony with Muslims. The non-Muslims are exempted to perform duty in the defense of the state. In lieu of this exemption however, they are required to pay a sum as a poll tax. If they are willing to perform duty in the defense of the state, they are then granted exemption from poll tax.

Islam forbids racial discrimination. Non-Muslims are not to be treated differentially as far as fundamental human rights are concerned. Islam emphasizes purity of heart and sincerity of conduct and whoever demonstrates such qualities of character, they are accorded extra honor. The honor, however,

does not place him in a privileged position in matter of justice and economic accrual.

Islam stands for the elimination of all types of exploitation in human society. It encourages and eulogizes labor, mental and physical and anything earned as a result of labor is considered the right of the earner of which he is not to be deprived either by the state or any other individual.

Wealth earned as a result of one's labor, however, is not to remain concentrated in the hands of the earner; the society has a due share in it. A pious Muslim is expected to spend the money on his near and dear ones in particular and the destitute section of the society in general. Money kept in possession for one year is to be taxed at the rate of two and a half per cent for distribution among the poor. For earning money man has to seek guidance from the Holy Quran and precepts of Prophet Muhammad (P.B.U.H.) so that his activity may not be injurious to his health and to society.

In Islam there is no concept of monarchy or kingship. An Islamic State is to be a democratic republic wherein the head of the state is to be elected by the vote of the community. The community however is under obligation to choose their leader sagaciously, keeping in view the capacity, wisdom and strength of character of the man being elected as leader of the community. The head of the state on his part has to keep a council of advisors who must possess a reputation for wisdom, integrity and experience. The mode of their selection, however, is to depend on occasions. In matters not pertaining to faith, non-Muslims can also be consulted.

In Islam there is no special class of clergy. Every Muslim is under obligation to possess fundamental knowledge of Islam. Credit however is given to character-the higher the

degree of piety, the higher the degree of honor, but with no special privileges.

An Islamic state shall ensure equality of opportunity and equality before law to all its citizens. There shall be no discrimination on the basis of religious affiliation both in civil and criminal matters. The Prophet cautioned his beloved daughter to be on her guard against any criminal act lest she is subjected to punishment<sup>(10)</sup>.

The head of the state does not enjoy immunity from prosecution in a court of justice. Every citizen is entitled to obtain a judicial decision against the head of the state. The precedent was set by Caliph Omer when he appeared in a court of law. When the judge showed respect for the Caliph, the latter remonstrated with the former for respect to the Caliph questioning him as how the other party shall have confidence in the judge's sense of justice.

In an Islamic state the judiciary is to be independent from the influence of the executive. In periods of monarchies when the monarchs used to influence the decisions of the judges, Abu Hanifa, the renowned jurist, infused with the original spirit of Islam, refused to accept the position of a judge rather than to be whipped and sent to prison<sup>(11)</sup>.

### ***Islam and Democracy***

The Quranic State is certainly based on consultation and makes room for the provision of a *Shura* or Council. "When the qualities of good Muslims are enumerated, when they are said to put their trust in God, when they are regarded as shunners of evil, when they are said to be brave defenders of their rights, they are also praised for taking one another's counsel in time of need"<sup>(12)</sup>.

Islamic democracy entails consultation in state matters but in its essence it may differ from some of the modern democracies. An Islamic government is not based on a party

system. “My party, right or wrong”, is morally as undesirable as “My country, right or wrong”<sup>(13)</sup>.

Islam demands from its followers to adhere to the dictates of conscience, be just and stand by what is true and is in consonance with the general weal of the society. Party politics often revolves around the principle of sticking to power, be it right or wrong which results in polarization among people not on the basis of principles but on the basis of adhering to the party. Party politics is not run on moral principles; it is supposed to strengthen party position and weaken opponents be they on right side of the fence. “Every day persons and parties come together or separate to dislodge others; no division on the basis of principles is involved”<sup>(14)</sup>.

“Government of the people and by the people” necessitates universal franchise even in those societies where majority of the people are illiterate who are unable to comprehend the dynamics and intricacies of modern life. This type of democracy reportedly was promoted by “exploiting bourgeoisie” who enticed and duped the working class people and dependant women through the use of their power and influence to grab more power. “People must have equality of opportunity and equality before law, but equality before law does not necessarily mean equality of wisdom and capacity to make laws”<sup>(15)</sup>.

Islam ordains to organize society and evolve a collective machine in the form of a government to fulfill the needs of the society and the formation of government must be through a process of consultation, but who are to be consulted and who from amongst them are to be elected is a vital question. Can an ordinary citizen endowed with wisdom and abilities but having no money ever hope to become a legislator? Franchise in any society ought to ensure provision of education and economic emancipation for all irrespective of class and creed. Even when these conditions are fulfilled, “representatives should be chosen on the basis of knowledge and integrity, the possession of wealth playing no part in it”<sup>(16)</sup>.

***Islamic Economic Order***

The economic order of Islam is based on the principle that all men enjoy equal right to have a free access to what has been created for their benefit in the Universe. They are free to exert their energies, apply their abilities and fulfill their basic needs of life. Man is endowed with abilities and if he is afforded an opportunity to have a share in the free gifts of Nature, he will always be able to produce enough to satisfy his basic needs of life. If a man is able to do work, possessing a sound mind and a sound body, but is not willing to work, the society and the State shall decline him support until he is obliged to do work for himself. If a man is incapacitated, the society and the State shall support him in the provisions of the necessities of life. And if a man is able and willing to work, but unable to find the means and the opportunity to do work, the State is under obligation to provide him appropriate work. At the same time, the State is bound to provide him with honorable sustenance and support him until he is able to support himself<sup>(17)</sup>.

It is important that the economic system in an Islamic State must guarantee through statutory provisions an equitable distribution of the resources of Nature among the members of the society. At the primary stage of economic development, the mal-distribution of the free gifts of Nature is the root of all economic evil- unemployment and unequal opportunities and unjust reward for skill and labor. When a class of people is in the possession and ownership of the gifts of Nature beyond their legitimate and equitable share in them, it reduces the rest of the population to destitution, thus opening the gate for exploitation in the form of rent for the free gifts of Nature and unfair wages<sup>(18)</sup>.

It is unlawful on the part of the State to tax directly or indirectly the common consumers to benefit a class of producers in the name of industrialization. Strengthening industrialization through this process has made the rich richer and the poor the

poorer. “The growth in the G.N.P. only swells the bellies of a few, while the common people are called upon to tighten the belt under compulsion of the authority of the State<sup>(19)</sup>”.

Islam encourages labor, mental and physical, and seeks that each one should get the due fruits of his labor. In an Islamic economic order, neither the Government nor a group nor an individual can monopolize the resources which God Almighty has created for the benefit of His creatures. Economic activity is regarded by Islam as a moral obligation and is stressed frequently in the Quran:

*He it is who has subdued the earth to you. So walk about on its chest and eat of God's provisions. To Him you shall return on resurrection<sup>(20)</sup>.*

Allah is the Creator-Owner and Lord- Sovereign of ‘all that is in the heavens and the earth. He is also the Lord- Sustainer of all the worlds. Everything belongs to Allah. Only He has delegated to man the authority and the power to exploit and utilize the resources of Nature’ for a time. Thus man is a Khalifa and is authorized to utilize what is actually owned by Allah<sup>(21)</sup>.

Generally the economic activity is termed “seeking the bounty of Allah”. Prophet Muhammad is reported to have kissed the hands of Saad bin Muaaz which were hardened by manual labor and declared that “these are the very palms that are loved by Allah”<sup>22</sup>. Also the Prophet stressed, “None of you ever took food better than that earned with one’s own hand.” Reportedly, Umar (RA) saw a group of Quran –readers who were sitting with their heads bent down. He was informed that they were *mutawakkilun* (resigned to fate). Umar declared: No. Rather they are *Mutaakkilun*, that is parasites who consumed other people’s money. “The true *mutawakkil* is one who sows the seed and depends on Allah for its germination”<sup>(23)</sup>.

The essential purpose of the economic system in an Islamic State is to ensure that the gifted and enterprising members get

the just reward, no more and no less, for their skill and labor and the less gifted ones are supported by the state to enable them to have an honorable earning. The destitute have a right over the state to get subsistence grants accrued out of the poor tax levied upon the ones who possess the resources over and above the prescribed limits. Islam stands for a just and exploitation-free economic system where man enjoys full freedom in matter of earning and possessing wealth within the limits prescribed by Allah. “Remaining within the restrictions of Halal (lawful) and Haram (unlawful), an individual enjoys full freedom to earn and spends wealth as he likes”<sup>(24)</sup>.

***Inconsistencies and Aberrations in Pakistan’s Legal System***

The Objectives Resolution passed by the Constituent Assembly of Pakistan in 1949 serves as the preamble of the existing Constitution of the Islamic Republic of Pakistan, 12<sup>th</sup> April, 1973. Besides, the Objectives Resolution has been declared by the existing Constitution<sup>(25)</sup> to be as substantive part of the Constitution. Under the impression of the Objectives Resolution, the Constitution of Pakistan<sup>(26)</sup> has declared that Islam shall be the State religion of Pakistan. The Objectives Resolution has declared that “Sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust”. It has further been declared that “the principles of Democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed”. It has further been provided that:

*“the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the holy Quran and Sunnah”.*

The Objectives Resolution has also provided that the people of Pakistan shall “make full contribution towards International peace and progress and happiness of humanity”.

The Fundamental Rights and Principles of Policy as detailed in Chapter 1 and 2 of the Constitution has fulfilled the commitment in the Objectives Resolution and truly reflects the requirements of the principles of social and economic justice as

laid down in the Holy Quran and Sunnah of Prophet Muhammad (P.B.U.H.). Also, in Part ix of the Constitution, there are Islamic Provisions which says,

*” All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah... and no law shall be enacted which is repugnant to such injunctions”<sup>(27)</sup>.*

The Constitution has also provided for the establishment of a Council of Islamic Ideology<sup>28</sup>, the functions of which include making recommendations to the Parliament as to how the Muslims of Pakistan can order their lives individually and collectively in accordance with the principles of Islam as enunciated in the Holy Quran and Sunnah and also to suggest measures for bringing existing laws into conformity with the injunctions of Islam. The Constitution<sup>(29)</sup> has also provided for the establishment of a Court called the Federal Shariat Court which has the power to hear the petition of a citizen of Pakistan or the Federal Government or the Provincial Government to examine and decide a question as to whether or not any law is repugnant to the Injunctions of Islam as laid down in the Holy Quran and sunnah of the Holy Prophet.

These provisions of the Constitution of the Islamic Republic of Pakistan have provided sufficient legal ground for the introduction of Islamic Sharia in Pakistan.

There are, however, certain inconsistencies within the constitution which need re-examination by the Council of Islamic Ideology and the other relevant institutions for harmonization of laws in accordance with the dictates of Islam. The same are discussed as under:

*The first inconsistency in Pakistan’s legal system is related to the power and authority of the Head of the State. According to the 1973 constitution the Head of the State or the President of Pakistan enjoys the power to grant pardon. “The President shall have power to grant pardon, reprieve and respite and to remit, suspend or commute any sentence passed by any court or other authority”<sup>(30)</sup>.*

The Constitution states, “Islam shall be the State religion of Pakistan”<sup>(31)</sup>, but according to Islamic tradition the Head of the



State does not enjoy the power to grant pardon once the guilt has been established and a sentence awarded by a Court. Islam, broadly speaking, consists in what is in the Quran and what has been told and acted by Prophet Muhammad (P.B.U.H.). Islam stands for undiluted justice. Once a person has been proved guilty, he has to bear the brunt of his deed. The prophet informed his beloved daughter that “she should bear in mind that if she stole anything, she would receive the same dire punishment as any common thief”<sup>(32)</sup>.

According to the Quran, in the execution of punishment there is the secret of the continuation of life<sup>(33)</sup>. The Prophet as President of the republic of Madina identified himself with the poorest citizen neither eating nor dressing better than the humble folk. He never built a palace or even a middle class house for himself.

The second inconsistency found in the Pakistan’s legal system is that the Constitution grants protection to the President or a Governor against criminal proceedings as a privilege in comparison to ordinary citizens. The Constitution says, “No criminal proceedings whatsoever shall be instituted or continued against the President or a Governor in any court during his term of office”<sup>(34)</sup>.

This section of the Constitution also runs counter to Article 25 sub section 1<sup>(35)</sup> which says, “All citizens are equal before law and are entitled to equal protection of law”. Further, this Article of the Constitution runs counter to the practice of Caliph Umar who appeared in a court as a party in a suit when he was ruling the Arabian Peninsula<sup>(36)</sup>.

The third inconsistency visible in the Constitution is that the Federally Administered Tribal Areas have been declared as part of the territories of Pakistan<sup>(37)</sup> to which as a corollary the Constitution of Pakistan extends. Thus the people of the Federally Administered Areas come to be the citizens of Pakistan. The Constitution as regards the citizens of Pakistan states, “All citizens are equal before law and are entitled to equal protection of law”<sup>(38)</sup> which as a corollary means that the people of Federally Administered Tribal Areas as citizens of

Pakistan are entitled to approach the Judiciary in Pakistan for seeking justice. But in another place the Constitution says, “Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area unless Majlis-e Shoora (Parliament) by law otherwise provides”<sup>(39)</sup>.

The Frontier Crimes Regulations states, “No Civil Court shall have jurisdiction to call in question the legality of anything done or purported to be done in respect of any matter, the cause of action whereof has arisen in the Tribal Area”<sup>(40)</sup>. The people of the Federally Administered Tribal Area (FATA) thus have been deprived of the right to equal protection of law and this speaks of the inconsistency within the Constitution.

### ***Non Implementation of Constitutional Provisions***

The Constitution of Pakistan states, “the State shall eliminate *Riba* as early as possible”<sup>(41)</sup>. However, save a few Islamic Banks, all Banks in Pakistan are dealing in *Riba*. *Riba* is interest over and above the principal amount charged at a specified rate after the expiry of a specified time. The case of the eradication of *Riba* was heard by the Federal Shariat Court, yet the problem still persists.

The Constitution also states, “The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law”<sup>(42)</sup>.

In this regard the Constitution further states, “the State shall remove illiteracy and provide free and compulsory secondary education within minimum possible period”<sup>(43)</sup>. But removing of illiteracy and provision of free and compulsory education to all the children of Pakistan is a gigantic task lay ahead of the State. There are children who do not have the facility of education in their area and thus a vital asset of the nation goes waste. Moreover education has been left at the mercy of circumstances. Divergent educational institutions in the country exist which leads to stratification in the social milieu.

Education is a vital sector of human development and it is the state responsibility to ensure that its citizens uniformly have access to education. In Pakistan the Government has yet to pay attention to the introduction of a uniform curriculum and uniform system of education. There are educational institutions in Pakistan where individual stake holders have devised curricula according to their line of thinking. This state of affairs has told negatively upon social conditions in Pakistan and perhaps this is why extremism is on the rise and has posed a serious threat to Pakistan's security.

Here an important phenomenon needs attention. The Madrassa (privately run religious institutions) in the pre-partition period was an institution of Islamic learning financed by the Muslim community. The reason was that the British Government looked upon the Madrassa as an adversary. The Madrassa administration too did not have any confidence in the Government. Surprisingly, this lack of confidence between the Madrassa administration and the state continues to this day.

The State of Pakistan also has not bothered to regulate Madrassa education<sup>(44)</sup>. Steps are needed to be taken whereby the Madrassa and the College educations are merged together and a uniform system of education is evolved, combining in it both religious and mundane scholarships.

### ***Conclusion***

The political ideals of Islam necessitate the formation of an Islamic State and a Muslim may long to hear something about an ideal Islamic State. However, as a consequence of the American occupation of Iraq in 2003, a state called the Islamic State of Iraq and the Levant (ISIL) also called Islamic State of Iraq and Syria (ISIS) has emerged in the Middle East which is considered to be a threat to world peace.

The ISIS or ISIL because of its violent posture is proscribed and a huge media campaign is going on against it in the world. An interesting phenomenon however has come to

light. The Fox News, an American Television channel, arranged to elicit the opinion of students of the Harvard University and posed a simple question, “what is a bigger threat to world peace: ISIS or America”. The answer of the majority students surprised the interviewers when they heard that America was greater threat to world peace than ISIS. Caleb Bonham, Editor in Chief of Campus Reform, was “shocked” to hear that only two or three students said ISIS was a threat and the rest blamed America.

It is also being debated as to whether Islam is a religion of peace or not. The Oxford Union Society arranged a debate on Islam to which leading personalities of the world were invited. Some of the participants argued for and some against. Those who argued for mostly pointed to the injunctions in the Holy Quran and said that majority of the Muslim world is peace loving. Those who argued against were pointing to prevailing social and political conditions in the Muslim world. Both were perhaps correct: The supporters pointed to the ideal and opponents pointed to the real and there is always a gap between the ideal and the real. Today, the Muslim world has to improve conditions in the social, technological and the political spheres. The Muslim states have an obligation to set their home in order if they wish to play their role in world prosperity and peace. Pakistan as a leading Muslim country has a greater responsibility in this regard.

Pakistan in the post independence period framed three Constitutions; each one containing Islamic Provisions, reflecting the desire of the populace to order their lives in accordance with the dictates of Islam. An Islamic Ideology Council was set up with the purpose to help and facilitate legislature to harmonize prevailing laws with the dictates of Islam, but considerable work is yet to be accomplished, as pointed out in the foregoing pages, to reform the legal system in Pakistan.

There are several sections within the Constitution itself as also in the subordinate laws which need revisiting with a view to harmonize them with the dictates of Shariah. Harmonizing laws with the dictates of Shariah is a constitutional obligation as well as a debt of the nation over the state to see their dream materialized. The task before the Islamic Ideology Council as well as the legislature is to expedite work on removing the accretions of the colonial tradition to achieve a just social and political order. Concomitantly, the State is under obligation to improve governance mechanism so as to obstruct the path of vested interests-elements who leave no opportunity un-availed in grabbing money, caring little for lawful or unlawful means. Equally important is the fact that the state should focus attention on evolving a uniform education system, seeking to prepare the young generation for shouldering the burden of creating political conditions that suit our ideals.

The political ideals of Islam are rooted in the purity of the human heart, compassion and mercy for the less privileged, dignity of man, ruthless accountability and a transparent justice system. Pakistan's society and State, as is their desire, are yet to achieve these goals. The justice system in Pakistan is rotten and leads to frustration and alienation, the remedy of which is the State foremost responsibility. In the economic sphere also, a great deal is needed to ameliorate the lot of the common man. Pakistan is yet to achieve a corruption-free society and an effective governance system.

All this is possible perhaps through an education system of our own making. The educational ideals of Islam which seeks the purification of the human heart, has the potential to transform society and lay the seed for the germination of a new generation devoted to the welfare of Self, family, society, state and humanity at large.

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