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EXECUTION OF ISLAMIC DEFICIT UNDER THE ESTABLISHMENT OF PAKISTAN

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Abstract:

Independence movement of Pakistan had a special mission to accomplish. People of Pakistan wanted a state in which they would organize themselves under a modern Islamic welfare political system. Soon after independence while drawing outline of the constitution the Constituent Assembly produced the 'Objectives Resolution. Thereafter the process of constitution making and implementation of its obligations remained simply an ambitious mission. Steps were undertaken by each organ of the state to execute the animated task. But each one remained without success. The Article explores the reasons of failure and resolution of the subject title.

Introduction:

History of geographical alterations may record creation of Pakistan as a normal episode but its emergence does offer distinctive features in the context of political realities prevailing at that time. Muslims all-over were suffering political decline and none of the state with Muslim population had constitutional framework that fitted into modern constitution of Islamic characteristics. Muslims of India had in their minds memories of their dominance in the Sub-continent and had yet to become constant by putting the whole out of their consciousness. In order to establish a state for Muslims they had to resort to independence movement along with

other communities of India. Movement leaders also had to offer support to other Muslims struggling in Asia, Africa and in Palestine.

The 14th of August 1947 was day of deliverance for the Muslims of India. They had attained a sovereign state to administer they had desired for. Independence day offered distinct perception to Hindu and Muslim communities. Muslims had more reason to rejoice the day of freedom. People of Pakistan had carved a new political entity on the world map out of Hindu dominated sub-continent. Their freedom movement partners left in India also had reasons to suppose political support of Pakistan while opting to live there. Imperative task for people of Pakistan was to develop a political system in accordance with the word of honor with which they had commenced their freedom movement. The process of modeling the state on the pattern of ideology had to begin with framing the fresh constitution overthrowing the long operating colonial system.

Constitution making is not a simple process. Constitution of a state is multidimensional document with immense amount of meanings to implement. One of its functions in the society is to standardize the norms and ensure their maintenance. This object is essential for stability and continuity of the norms. The law or constitution making institution while in the process has to firstly ascertain capacity of the society for continuity of the existing and adaptability of the prospective norms. If not, violation or non-assumption of fresh norms is certainty that no society can afford. The possible way left with the society is to take into account the norms for which the whole society eagerly desires to assume by feeling its assumption feasible, desirable and promoting their individual and collective well being. A large section of our population feels it comfortable to adopt system of alien norms. Valued norms of alien system may not be instantly adoptable although working well in another community or society. Assumption of new norm should not be simply based on desire. It involves several characters and qualities like standard education, wide range of good demeanour, or eagerness and respect for obligations. Unless a system of norms develops within the society, smooth assumption may not be expectable. People of Pakistan desired experience of the system for which they had respect and a sense of obligation. Muslim community whenever thinks and speaks of Islamic system of government, they mean the wholesome system of social administration the foundation of which was laid down by the Holy Prophet and his Caliphs. Muslim state under the administration of Prophet (PBUH) and Khilafat was fully devoted to the service of humanity and society. Khalifa was careful in observance of the principle of justice and fair play. He could be questioned by anyone of his subjects on any matter of public importance.^[i] Subsequent eras of Muslim rulers are not as much inspiring as should have been saves few exceptions. These were some of the reasons that inspired Muslim leaders for proclaiming the two-nation theory in the process of independence movement. The ideology of Pakistan was not simply an exploitation to unite Indian Muslims for independence but to have a solid ground for obtaining territory in the occupation of Muslim population for introduction of Islamic rule. He described his solid commitment in his letter to Gandhi in august 1944. He said, “The Qur’an is a complete code of life and provides for all matters, religious or social, civil or criminal, military or penal, economic or commercial. It regulates every act, speech and movement from the ceremonies of religion to those of daily life, from the salvation of the soul to health of body; from the rights of all to those of such individual, from the punishment here to that in the life to come.^[ii] In pursuance of this and several other pronouncements, the founding fathers sought to incorporate the Islamic aspirations underlying Pakistan movement in ‘Objectives Resolution’.

Muslims ideology provided the base and strength to Pakistan movement. It also assisted to combine the strength of scattered Muslims of the continent to have one voice for achievement of their homeland. The aim included the enforcement of desired system of government in the new state. Ideology of Pakistan was based on theory of Muslim nationhood. In their meanings Islamic ideology in relation to constitution making means enforcement of the injunctions of Holy Qur'an and Sunnah in progressive and practicable sense. That was the principal factor in the concept of Muslim nationhood, which resulted in the partition of India and is known as the two-nation theory.^{liii}

Framing the Constitution:

Prior to opening the debate on the subject topic certain fact relating to constitution making need comprehension. It may enable to understand disappointment in obtaining success. Constituent Assembly of Pakistan, which had its opening session on 10th of August 1947, had the mandate under the Indian Independence Act 1947 to frame the constitution. New administrative set-up had been created under the guidance of Quaid-e-Azam Mohammad Ali Jinnah to run the affairs of state. In reference to constitution making the most relevant aspect is that it was open for the new state to frame a constitution according to the ideas and choice of nation. People of Pakistan were entitled to take any decision as to nature, form and comprehension of the new constitution. The natures of the obligations provided under the Indian Acts were persuasive. As an independent nation, maintenance of then existing system under the Act of 1935 was just to facilitate switchover from interim system to the system of its own as soon as that was ready for adoption. Paula Newberg has evaluated the circumstances in these words;

“The 1935 and 1947 Acts were preparatory and constitutive laws to provide interim government until a new constitution was framed. They were not constitution substitutes: they were not designed to help the Country confronts its massive state-building challenges, and one can argue that their structures could not provide an adequate basis for satisfying Pakistan's needs.”^{liv}

Muslims of sub-continent had attained their homeland to live but blessings of sovereignty yet to be attained. The moment, days even years of transition in which transfer of power, territory and sovereignty takes place is a difficult mission to transact with. It includes revolutionizing conceptual conditions of the nation for responsibilities providing the basis of self-rule. A corpulent tree had to be replaced with a small delicate plant of hopes and pleasure. Known and unknown consequences followed the partition. Constitution making might have been main concern for the nation to accomplish. However the task of constitution making was over-looked due to many reasons some of those were glaring.

Constituent Assembly was expected to accomplish the task of constitution making as national priority. At the time of independence, the nation seemed prepared to get rid off the Imperial system. The unity and the integrity of the nation at that time may have facilitated decision-making on complicated issues like language, religion and problems relating to geographical separation. Since nation was so deeply united on the basis of Islamic ideology coupled with abiding faith in their leaders that the development of compromising position on some required sections may had been possible practice.

Constitution making is the act of people of a country through which they have to lay down the principles of action to observe for living life of national harmony. This is the real disposition of sovereignty. This is a social contract among the people of a country to act and deal in a manner making the implementation of this a reality. This is natural right of humanity and is in

accordance with dictation of nature without observing which the system of individual and collective life may not be executable. The act of constitution making is the act of people to perform. Neither has any body any right nor is of any use any effort to compel or assume any responsibility of making law or to take any decision for the life and prosperity of any body or community without their express command in that respect. Following concepts will assist to see how people had to perform their responsibilities.

1. After attaining sovereign status people of Pakistan had to dispose of the Imperial system of slavery and develop a new political system in accordance with their ideology.
2. The leader of nation Mohammad Ali Jinnah in his effort to develop national entity and honor of sovereignty had to step back so for people of Pakistan would be able to exercise the right of constitution making themselves.
3. Making constitution was neither permissible nor legitimate through the dictation of founding father. It was deemed the process of evolving national unity by introducing the capacity of public participation for the constitution making.
4. By introducing the honor and prestige of liberty the leader of nation (Mohammad Ali Jinnah) offered an opportunity to the nation of understanding the concept of their social, religious and political responsibilities for the purpose of building a capacity to lay the foundation of new social contract.
5. There seems no reason to speculate that the leader of nation was in any way affording or even willing perpetuity of the polity under the Act of 1935. Mohammad Ali Jinnah had declared his preference to have parliamentary form of government in Pakistan, which had no factual resemblance with then existing system of government under the Act of 1935.

The Constituent Assembly comprising of elected representatives originated the process of constitution making. Amongst those proposals, one, which involved criticism of the sections of population, was the mode and extent of adoption of religious obligations. The theme of religious obligations was resolved with firm and patent determination of the members of the committees in several constitutional documents. However practicality of the premise was still out of sight, which caused substantial loss to further development of political system of the country.

Islamic Inheritance:

The theme of religion in relation to constitution making or other social commotion has been and still holds dormant position in society of Pakistan. This premise of the social order has been dragged and stretched so uneven that by the passage of time it had lost its factual orientation. Currently it has been made a controversial and irresolvable ideology for the public. The majority of population currently doesn't have practical approach for taking any decision as to its need, utility or finally setting it aside as inadaptable Divine ideals. The policy of pendency had produced harm for decision-making capacity of the nation on constitutional, legal, political and social issues, which are connected with religion. What nation ultimately had to do with this 'sacred curriculum' is now in background.

The introduction or ordination of religious concepts in socio-political system never had been optional in states with Islamic inheritance. These have been providing foundations in the process of constituting governments or other political organizations in Muslim societies. People of these states practice religions not only as part of their faith or legal obligation but as part of their social

and psychological contentment. They believe Islam as a social system having potential to accommodate certain social requirements of the nations. Our legal system obtains lot of dependence upon juristic findings of Islam. The fact has been observed by Superior courts in their judgments. Courts in Pakistan under constitutional compulsion and command have to fill the void by the Islamic common law dispensation.^[v] Where there is a vacuum on a question of law left by the statutory silence, it should be filled by Islamic common law.^[vi]

Besides, in societies of conservative outlook religious wisdom for a long time has been source of inspiration of the people. There are sections of people in these societies who believe that primitively religions had been main source of guidance of humanity. Fundamental rights and obligations and several other aspect of human concern has been its main effort. Large number of people further visualizes fancies of this system of social obligations. It may comfortably be presumed that force of customary beliefs of majority of the people have sufficient energy to maintain the situation of status quo. Therefore, the situation demands that somehow there should be practical approach on resolution of 59 years old national challenge on adoption of Islamic legal system.

In historical perspectives constitution-making bodies/forums failed in creating standardization of thoughts among different sections of faith in Islamic world. It is not unique as for our society is concerned. Religious approach of various levels of different societies have unmatched divergence. It is not unconstructive and has its own dimensions of realism. It is not difficult to understand / maintain that religion is un-detachable fragment of people almost allover the world. The most relevant question is to discover why people belonging to same truism have found such a vast abyss of dissimilarities among themselves. This is an intricate issue of mysticism currently needing severe span of investigation. The exploration if honestly and wholeheartedly done can perform unmatched service to peace and humanity in the world prickly settings. Nevertheless most relevant initiative may be undertaken by exploring the causes of lamentation of the society of Pakistan, which has enthusiastic orientation of adoption of ideological basis of its freedom and continuity of that in its constitution.

Every constitution prescribes its objectives and procedure of function of state system. In such system all organs along with each national has to perform constitutional obligations. Each institution and individual has to perform destined obligations how minor the obligation may be. Being densely fabricated, disregard of any constitutional obligation may vibrate organization of state. Hence, it is necessary to emphasize necessity of faithfulness to the constitutional obligations and then to ascertain the nature and consequences of deviation of Pakistan's constitutions. The objectives resolution is basic document describing determination of the nation on the area under discussion.

Objectives Resolution:

Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;

And whereas it is the will of the people of Pakistan to establish an order:

Wherein the State shall exercise its powers and authority, through the chosen representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teaching and requirements of Islam as set out in the Holy Qur'an and Sunnah;

Wherein adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures;

Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed:

Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expressions, belief, faith, worship and association subject to law and public morality:

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes:

Wherein the independence of the judiciary shall be fully secured:

Wherein the integrity of territories of the Federation. Its independence and all its rights, including its sovereign rights on land. Sea and air, shall be safeguarded: So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity;

Now, therefore, we, the people of Pakistan; conscious of our responsibility before Almighty Allah and men; cognizant of sacrifices made by the people in the cause of Pakistan; Faithful to the declaration made by founder of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah, that Pakistan, would be a democratic state based on Islamic principles of social justice; dedicated to the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny;

Inspired by the resolve to protect our national and political unity and solidarity by creating an egalitarian society through a new order; do hereby, through our representatives in the National Assembly, adopt, enact and give to ourselves, this constitution.

Objectives Resolution still forms foundation of our desired Islamic socio-political system. It has a profound history. The first Constituent Assembly of Pakistan passed the Objectives Resolution in 1949. The Resolution was discussed in five successive meetings of the Constituent Assembly. The Pakistan National Congress, which was the main opposition party in the assembly, objected to it on the plea that it mixed up politics with religion and that it would reduce the minority communities to the status of surfs. Among the Muslim members with the solitary exception of Mian Iftikharuddin, all upheld the Resolution. The non-Muslims were definitely dissatisfied with this resolution. They expressed apprehensions that it would allow the state to interfere in personal life of the citizens. Leader of the Congress party, S.C. Chattopadhyaya, protested that Resolution would make the non-Muslims in Pakistan "drawers of water and hewers of" wood. ^[viii]

It was against the faith of Muslims to draw a line between religion and political system. This inspiration of separation between religion and political affairs is so frequently propagated by people ignorant of Islamic teachings that the idea has obtained wide recognition. In spite of

reservations overwhelming majority adopted the resolution. It was introduced as preamble of 1956 Constitution. The Objectives Resolution was also made Preamble of 1962 Constitution. Again when 1973 Constitution was framed, the Objectives Resolution was incorporated as Preamble of the Constitution. In 1985, a further development took place: the Objectives Resolution was made operative part of the Constitution by adding Article 2-A in the Constitution. Function of a preamble is to explain certain fundamental facts, necessary to be explained before the enactments contained in the Act can be understood. The preamble is the key to the mind of the Constitution makers.^[viii] In order to understand complex situation of our legal system the contents of resolution can link our present with our commitments resolved during the course of freedom movement for realization of our responsibilities.

Judicial analysis:

As resolved earlier objectives resolution has central place for Islamization of laws in Pakistan. Superior Courts examining its contents have analysed its three separate distinct components. The first is purely structural feature that sovereignty of Almighty descending on the people of Pakistan constituting state is to be exercised through their chosen representatives. So the people operating through their chosen representatives and the All mighty Allah at the apex exhaust the pristine devolution, distribution and sharing of Divine sovereignty. The individuals, the authorities, the institutions and the courts, do not figure in this structure. They make their appearance on terms, with limitation, as a result of further delegation of authority expressly made or impliedly conferred. The second is its qualitative feature. The sovereignty shared or enjoyed is delegated capable of further delegation, is by its very nature a sacred trust and has to be exercised within limits prescribed by the Almighty Allah. The third is its normative feature. The norms, the goals, the ideals, mostly mundane in nature are spelt out with particularity, which has to be achieved through the constituent assembly by the process of framing a constitution. Nowhere in the Objectives Resolution, either expressly or impliedly one finds either a test of repugnancy or of contrariety, or empowering of an individual or of an institution or authority or even a court to invoke, apply and declare Divine limits, and go on striking everything that comes in conflict with it by reference to Article 2A. Such an interpretation of Article 2-A of the Constitution and appropriation of authority so to do amounts to usurpation. It would indeed be so when the amplitude of power reserved for the Parliament, in the same Constitutional instrument is kept in view.^[ix]

The Constitution of 1973 provides following contributors / forums in the matter of Islamization of laws of Pakistan. These are (i) Parliament and Provincial Assemblies (ii) Council of Islamic Ideology (iii) Federal Shariat Court, (iv) President of Pakistan and Governors of Provinces, and (v) the Courts, Tribunals and authorities required to enforce law.^[x] Arts. 1- 5, 8- 40 and 227 to 231, contain a scheme and procedure for Islamization of laws and lays down guiding principles and methods to be adopted in this regard.^[xi] To begin with, Article 2 of the Constitution unequivocally declares that Islam shall be the state religion. Article 29 in chapter 2, Part II of the Constitution, further declares that the "Principles of Policy set out in the chapter in the Articles 29 to 40, shall be followed by each organ or authority of the state and each person performing functions on behalf of an organ or authority of the state. Article 30 places the responsibility with respect to principles of policy on the state institutions. Reference is also necessary to Article 31 of the Constitution, which enjoins upon the state to take steps to enable the Muslims of Pakistan, individually and collectively to order their lives in accordance with fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the

meaning of life according to the Holy Qur'an and Sunnah. Besides other Islamic Provisions are embodied in Parts VII and IX of the Constitution. Article 227(I) in part IX provides that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah. No law shall be enacted which is repugnant to such injunctions. It may be pointed out that in accordance with the provisions contained in part IX, the Council of Islamic Ideology has been set up which can make recommendations as to the measures to bringing existing laws into conformity with the injunctions of Islam and advise on any question referred to it, whether a proposed law is or is not repugnant to the Injunctions of Islam, etc. It is also pertinent to refer to chapter 3-A, which has now been inserted in Part VII of the constitution whereby Article 203-A to Article 203 J have been added thereto. A Federal Shariat Court has also been constituted under Article 302-C, which has been empowered either of its own motion or on a petition by a citizen of Pakistan or, the federal government or a provincial government, to examine and decide the question, whether or not any law or provision of law is repugnant to the injunctions of Islam. ^[xiii]

Interpretation of Courts:

There are two viewpoints amongst academic circles regarding adequacy of required provisions in the constitution for implementation of Sharia. Article 2 is midpoint of attention. In Article 2 Constitution provides that Islam shall be the state religion. One side see the provision possessing the potential to influence rest of the body of the constitution. The other side holds it an introductory article and mere continuation of this not enough to islamise the system of law. The provision came to be interpreted in the courts of law in reference to certain petitions needing its implementation in letter and spirit. Courts held liberal interpretation of the Article. A Full Bench of Sindh High Court held that: Article 2 is incorporated in the introductory part of the constitution and as far as its language is concerned, it merely conveys a declaration of the state. Court observed that question arises as to the intention of the makers of the constitution by declaring that 'Islam shall be the state religion of Pakistan'. Apparently, what the Article means is that in its outer manifestation the state and its government shall carry on Islamic symbol. This Article does not even profess that by its force, it makes Islamic law to be the law of the land. The Court further observed, "There is, therefore, no scope for the argument that Islamic laws are to be enforced in their entirety by virtue of Article 2 itself." ^[xiii]

There is also difference of opinion on reading substance of objectives resolution inside all Articles of the Constitution. Article 2-A declares Objectives Resolution an effective part of the constitution. The background of introduction of this Article seems to bring compatibility amongst provisions of constitution. Whereas in State v. Zia-ur-Rahman case Chief Justice Hamoodur Rahman observed that Objectives Resolution 1949, even though is a document which has generally been accepted never repealed or renounced, will not have the same status or authority as constitution itself, until its principles are incorporated within its provisions. ^[xiv] Despite the fact that inclusion of Article 2-A within articulated body of the constitution was deemed enough to implement Islamic obligations enshrined in the objectives resolution. But status of the issue remained unresolved. Practicality of Article 2-A came up for consideration in several petitions before the High Courts of the provinces. The Lahore High Court in a case Sakina Bibi v. Federation of Pakistan ^[xv] had to resolve command of the Article over rest of the provisions of the constitution. The court answered in affirmative. The issue resolved was that Article 45 of the Constitution empowering the President of Pakistan to grant pardons etc. contravenes Islam, could be struck down as repugnant to Islamic injunctions. The

Supreme Court in Hakim Khan case^[xvii] seeking conciliation of conflicting position of Article 2-A and 45 accepted the appeal against the judgment of Lahore High Court. The Court observed that court was not the proper forum to rule as such. If the High Court considered that the provision of Article 2-A and 45 of the Constitution were mutually conflicting, it should have referred the proposition for consideration of the Parliament. On finding incompatibility parliament was competent to amend the Constitution bringing the impugned provision in conformity with injunctions of Islam. The court ruled that a provision of the constitution couldn't be tested on the touchstone of Article 2-A of the Constitution. The provision if found repugnant, could not be struck down by the court.

The proposition if seen in broader view, Superior Courts of Pakistan have held consistent views that on the basis of Article 2-A, no law or provision of the Constitution could be struck down. The task may appropriately be performed by the Parliament. In this context guidance may be inferred from Article 8, which has enabling analogy for the object. It clearly declares that no law can exist or be made in contravention of Fundamental Rights. Nevertheless, in the present case superior courts are unanimous in holding that for interpretation of the provision of constitution and all other laws provisions of Article 2-A are to be kept in mind and applied as yardstick wherever necessary.^[xviii]

Judgments of the superior courts do not seem to have created constraints against Islamization of the system of laws. Judicial organ maintaining independence of judiciary refrained from entering in the area of Parliament. This option of the judiciary has ensured two imperative obligations.

1. It is the parliament that commands delegated authority to enact or correct inconsistency or deficiency in the provisions of the constitution.
2. There should be authentic harmonious inclination in provisions of the constitution enabling unambiguous performance of Islamic obligations.

The interpretations of courts retain genuine piece of guidance for attainment of the object. These observations have neither blocked the introduction of the process of Islamization nor have imposed their own version to reform the corpus of law. Rather courts have found appropriate forum for remedial supremacy of representative institution. Every law to be framed by the Parliament has to conform to the Injunctions of Islam as contained in Holy Qur'an and Sunnah. If any such law is found to be repugnant to the Injunctions of Islam, the Federal Shariat Court as well as the Shariat Appellate Bench of the Supreme Court has the power to scrutinize the said law on the touchstone of Islamic injunctions and make necessary declaration as contemplated in Article 203-D of the Constitution. Federal Government or provincial Governments, as the case may be, shall have to initiate process to amend the law suitably as required in the judgment.^[xviii] Indian courts have held the same view regarding implications of the preamble inside the provisions of the Indian constitution.

Another share of the constitution that should have played effective role on the subject is implementations of principles of policy. Under the provisions state institutions shall enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the fundamental principles and basic concepts of Islam as described in Holy Qur'an and Sunnah. Nevertheless the responsibility of deciding whether any action of an organ or authority of the state or person performing functions on behalf of an organ or authority of the state is in accordance with the Principles of Policy is that of the organ or authority of the state or of the

person concerned to determine. Moreover the validity of an action or of any law shall not be called in question on the ground that it is not in accordance with the Principles of Policy. No action under the constitution shall lie against the state any organ or authority of the state or any person on such ground. In the absence of judicial check cum institutional responsibility such obligation are not supposed to be carried out faithfully by anyone.

State Omissions:

There is no doubt that only legitimate representative government shall accomplish process of Islamization. Abuse of political process by extra constitutional ruling of the country reduced the strength of political parties as much that they felt no hesitation to beg Islamization from the government of Zia-ul-Haq. His regime exploiting the same demand prolonged his rule for a decade. Besieged by prolongation of the cause religious parties made several frivolous attempts for Islamization. One of their move succeeded in 1980 when a Superior Constitutional Court 'Federal Shariat Court' under Article 203-C was created. The Court has unique procedure to follow and has the jurisdiction to examine and decide the question whether or not any law is repugnant to the injunction of Islam. By virtue of relevant law, Federal Shariat Court under the procedure could exercise jurisdiction suo moto, or on petition of a citizen or governments. When it decided that any law or its provision is repugnant to the Injunctions of Islam, it was necessary to specify the day on which the decision shall take effect. An appeal from the decision of the Court was provided to the Supreme Court. For that purpose, under clause (3) of Article 203-F, a Bench known as Shariat Appellate Bench of the Supreme Court was created. The Bench consists of three permanent Muslim Judges of the Court and two Ulama who were to be appointed as Ad-hoc members of the Bench. The provisions of Chapter 3-A were given an overriding effect. However, defining the term law under clause (c) of Article 203-B, it was provided that for purposes of this chapter, it would not include the Constitution of Pakistan 1973, Muslim Personal Law, any law relating to the procedure of any court or tribunal or, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure.^[xix]The entire body of law and constitution needing drastic reforms was placed out of the jurisdiction of the court. Petitioners seeking remedial control invoked jurisdiction of the court on number of issues. The court examined questions relating to succession, Muslim personal laws and Muslim family laws ordinance etc. and delivered judgments. The Government filed appeal in Shariat Appellate Bench of the Supreme Court, which set aside the judgments holding that the Federal Shariat Court had no jurisdiction in the matters.^[xx]The court could hardly perform the function for it was constituted and has remained unsuccessful. This move was political had political consequences for further development of the Islamic system.

Most of the obligations for Islamization of the legal system are to be executed by parliamentarians. Chosen public representatives/ trustees have to exercise delegated authority within the limits prescribed as sacred trust. These representatives must believe in equality, tolerance, and social justice as enunciated by Islam. It means they themselves must have required knowledge of Islam. Public representatives must first enable themselves to order their lives in accordance with teachings of Islam. Article 62-63 on qualifications of the members of parliament seems good addition to ensure induction of qualified parliamentarians who have to initiate the noble cause of reforming the existing as well as fresh provisions of Islamic obligations. Parliament and executive organ mainly comprising of unqualified members have resisted implementation of this stipulation of constitution. Resultantly as emerging beneficiary of the running system they do not seem to care about implementing provision on qualifications.

In order to reform electoral process in the light of prescribed qualification constitutional petitions were filed under Article 203 of the Constitution for seeking a declaration that the entire electoral system of Pakistan is un-Islamic, against the Sharia and repugnant to the concept of society visualized in Holy Qur'an and Sunnah. It was contended that formation of political parties, election campaign, the method of canvassing for winning support, the adult franchise, and the legislative organ created through the above process are totally un-Islamic. The entire system should be completely eliminated and replaced by a new system in accord with 'Objectives Resolution', which is cornerstone of state laid by the founding fathers of Pakistan. It was argued that the entire election campaign is mounted on the pattern of a carnival or a circus. The first priority of each candidate is self-projection and the character assassination of the rival candidate. Shrouded in a cloak of hypocrisy and deceit candidate contrary to Islamic concept, chases the voters from door to door bagging and boasting offering allurements, threats and false promises to bag as many votes as possible etc.

The Court inter alia, observed that the spirit of the Qur'anic Injunctions has been embodied in Articles 62 and 63 of the Constitution and identified number of problems contaminating the process of electioneering. The Court made number of suggestions for reforming the electoral process bringing the system of state close to Islamic values and required proper scrutiny of the candidates for determining suitability of their contribution for legislation. The Court desired screening committee for dealing complaints by members of the constituency on malpractice, unethical conduct committed by the members. The court disapproved general trends of the candidates using excessive resources during the campaign. The court ruled that Sections 13,14,49,50,52 of Representation of Peoples Act are against the Holy Qur'an and Sunnah and section 38 (4) (c) (ii) excluding from the count otherwise valid vote merely because the voter has disregarded the rule of secrecy is also repugnant to Qur'an and Sunnah. The Court observed that the Representation of the peoples Act 1976 and the Houses of the Parliament and Provincial Assemblies Election Order, 1977 should accordingly be amended.^[xxi]The provisions of the constitution are prevented to operate for mutual benefits of aspiring parliamentarians of all sides. The situation is maintained almost the same except when these are made to operate for personal reasons. Recent move against Imran Khan of Tehrik Insaf is example of that. Majlis-e-Shoora as major contributory of enactment and promulgation of laws in conformity with the Injunctions of Islam needed to be reformed in the light of judgment referred above. Review of scrutiny record reveals that public representatives so far have not realized to comply with those terms and failed to honour the oath taken under the constitution for implementation of the Islamic Obligations.

Maintainability of Islamic provisions was ensured but practicality remained unattended. The society not only failed to implement Islamic share of constitution in the country, it failed to implement rests of social obligations in material terms and has yet to establish any other system free of impurities. Islamic social / political system equally demands constitutionalism. The state system influenced as a result requires enforcement of Fundamental Rights, efficiently functioning judiciary, guardianship of the needy and elimination of poverty etc. Islam also stresses simplicity of public functionaries and impartial system of accountability of head of state to common servant. This has been deviation of legal obligations to evolve a system of reimbursement at time when society was capable not only to contribute adherence but to guard against resistance. It was the occasion of independence of the nation. Rest of the time mostly had been the period of deviations, which has contributed the amount of diversity of thoughts in social sects enough to take equivalent time for its reconciliation.

Faithfulness of the governments for Islamization of laws out of existing emaciated provisions remained question mark. The governments instead of making consolidated efforts rather applied the provisions for discretionary appointment/transfer of Judges to get rid of judges upholding independence of judiciary. The president under the law had unusual, inequitable powers under sub-Article 4-B of Article 203. The President may at any time modify the term of appointment of a Judge; assign a Judge to any other office and require a Judge to perform such other functions as the President may deem fit. He may still pass such other orders, as he may consider appropriate. Thus, a constitutional Court constituted for Islamization of laws in Pakistan became a dumping ground for the serving Judges who were considered to be undesirable by the President or Prime Minister of Pakistan.^[xxii]

System of Sharia is not man made system. Its foundations are in Divine commands combined with juristic instinct of humanity. This is practically proved code of life backed by rule of law and system of good governance. It combines each and every phase of human life therefore is consistent and consolidated scheme of law. It is a system of welfare and its implementation demands submission. Mohammad Ali Jinnah had exact vision for Islamic political system as system of life derived by realistic, modern and academic deduction excluding customary beliefs and practices of orthodoxy values. Quaid-e-Azam in his speech on 19th March 1944 in a meeting of Punjab Muslim Students Federation proclaimed, "Islam is our guide and complete code of our life. We don't want any ism, socialism, communism or National Socialism". Liaquat Ali Khan acknowledged it as body of faith, tradition and belief, which has been a part of man's heritage for over thirteen hundred years. He believed that this ideology when applied to statecraft and conduct of human affairs is bound to promote human welfare. He added that we want to follow Islamic ways of life. What we mean is that we could not possibly do otherwise. These are the principles that were embodied in the concept of Pakistan when we fought for it.^[xxiii]

Review of the existing position of law reveals that Articles of the constitution on the subject have no consistency and compatibility with other provisions of the constitution. The status of these Articles seems neglected portion of the Constitution. Nation had high hopes from council of Islamic Ideology. Chairman of Council Dr. Khalid Masood has said that the Council did provided valuable suggestions to the government on important issues but most of them went unheard. The Chairman added that during the last three years as many as seventy-two recommendations were sent to the government but only seventeen received the positive response. He also said that the Council has suggested that amendment in all laws enacted from 1977 to 1990 be made consistent with Quran and Sunnah. He deplored that the recommendations of Council of Islamic Ideology were not implemented. He proposed to the government to form a committee comprising members of the National Assembly tasked to give practical shape to suggestions of the Council but all in vain.^[xxiv] Same is the situation in financial sector. There is mockery in the name of Islamic Banking. While from January 1, 1985 the interest-based banking has vanished and under the law no interest based banking system exist in Pakistan since July 1, 1985 as per State Bank circulars. Rest of the matters also have the same status. Practically we have not been able to travel much in either of the directions. It is needed to give full effect to the objectives behind the creation of the state.^[xxv]

Common man has been given a wrong concept of Islamic values. He has been allowed to redeem the adulterated version of Islamic obligations. The two distinct areas of Islam dealing public and private sections of Divine system of obligations have to be partitioned facilitating separation of relatively optional fragment. The section of obligations comparatively belonging to personal

responsibilities may have been made of no controversy. Islamic popular welfare system of public administration based on joint responsibilities is produced by concrete efforts. Deviations have caused fatal consequences. Nation paid the cost of mishandling implementation of Islamic obligations in the country. The movement of Nizam-e-Mustafa in 1977 was hijacked by Zia-ul-Haq resulting in revocation of political system for the period of ten years. Society is facing a strong wave of extremism causing imposition of compulsory international aggression on Pakistan. Talabnization is deemed a serious menace against breeding Islamic values amongst hesitant members of the society. Talaban mainly a conservative student community has turned reactionary and is challenging authority of the governments of the region. Instead of arbitrarily resisting this community belonging to Pakistan, government has to evolve political reforming strategy to bring them in national mainstream.

A considerable majority of Pakistan seems steadfastly affiliated with their socio-religious commitments. Islamic principles have shaped the grund norms of the Muslim societies. Grund norm is an ideology, aim and final object of the country and nation. The situation in Pakistan has not yet radically altered. The objectives resolution of 1949, which inter alia provided that the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed” has been held to be the grund norm of Pakistan.^[xxvi] There is active faith in general population to have religious colour in certain matters of their life. This controversy may be resolved on the basis of Islamic principles. The policy of ignorance may continue to result in deviation of constitutional obligations. No nation can afford existing languish situation in the interest of devotion of people of the society in strict compliance of the entire body of legal obligations. There are certain concerns the nation had to focus for explication and are produced here;

1. Islam is an imperative segment of social order which nation cannot keep pending forever without decision on the range of its intermingling in the legal system of the state.
2. The state of irresolution has created current languish situation in social sectors preventing growth of standardized legal / social norms in the society.
3. This is also causing consequent impairment on securing the sagacity of political system in the country.
4. The mode of management of its unconstructive implications in the society has to be determined for development of Islamic representative constitutional and political structure for our country.

Resolution:

Islamization of the society is a virtuous national mission. Only a legitimate and representative government would undertake it. At present the nation is politically based beyond August 1947. It happened due to suppression of political process since birth of the society. Outcome for this failure is that nation has no democratically developed constitution as the forefathers desired. We have survived without standard fair general elections in between forty years of our independent life. Therefore no system of representative government has so far emerged in the country. Consequently no durable positive steps have been taken to determine the nature of public legal system. Presently curatives are seen naturally making their place in the society. Fair transparent general elections seem due in near future. Keeping in view the past experience representative

government may need to evolve a system free of ambiguities. All pending constitutional issues along with Islamization of the system should be resolved in the following manners.

1. In founding base for Islamization of legal structure national movement has to be launched for durable social reforms in the society to upgrade academic and moral standard of general population. State shall provide opportunities of inexpensive education of same standard for all at all level. Government should plan to own the parallel academic empire run by religious charity organizations all over the country with their participation.
2. Government should constitute a broad based constitution commission to review the constitution in the light of proposals of federating units on all outstanding national issues inclusive of the judgments of courts on Islamization of the system.
3. The Commission should comprise of qualified representative parliamentarians, superior court judges of higher integrity, moderate Islamic scholars of all schools of thought and members of legal fraternity.
4. A coherent scheme of Islamization of laws as prepared by the commission be incorporated in the Constitution replacing the existing one.
5. A Federal Constitutional Court be constituted to examine implementation process of Islamization. The Court should have jurisdiction to resolve intermingling issues of all nature and propose review of its recommendations by the parliament.

With all of these efforts state may succeed in resolving the issue that has delayed accomplishment of structural development of the country. Prime Minister Liaqat Ali Khan rightly observed on the occasion of presentation of the Objectives Resolution that “It is not every day that great nations come into their own; it is not every day that people stand on the threshold of renaissance; it is not every day that destiny beckons the down-trodden and the subjugated to rise and greet the dawn of a great future. It is the narrow streak of light heralding the brilliance of the full day that we salute in the form of this Resolution. ^[xxviii]

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