

IMPLEMENTATION OF SHARIAH

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## IMPLEMENTATION OF SHARIAH

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Some fundamental issues are at the center of debate today; almost everywhere: in private discussions and in political meetings, in the press and in the Parliament. These include deteriorating law and order situation, economic sanctions and financial crisis, poisonous effects of provincial and regional prejudices, specter of sectarianism, country's isolation on the foreign policy front, hegemonic designs of India, American deceits and injustices, external pressure to cap and undo our nuclear capabilities, government's apologetic attitude and consequent complications, and machinations to push us toward the trap of CTBT.

The Islamic movement in this context had invited the nation and its leadership to realize that a real and lasting solution of these problems lies in the enforcement of Shariah. The campaign for the enforcement of Shariah had just started when the government introduced 15th Constitutional Amendment Bill. On the one hand, the amendment was a response to people's old demand for constitutional provisions to make Qur'an and Sunnah the supreme law of the land, on the other hand it was a mischievous attempt to sidetrack the established constitutional process and amend the Constitution to provide for an extraordinary accumulation of power by the government under the excuse of difficulties in introducing Shariah. Resultantly, such an undisputed issue as the enforcement of Shariah became a bone of contention. Instead of adopting Shariah for the solution of problems, focus of attention shifted to political and legal implications and also on ill intentions and the shameful struggle for individual power and party position. A group which lacks grass root support is causing harm to Islam, the Islamic State, supremacy of Shariah and the role of Islam (deen) in collective life simply because it presently enjoys power, favorable media and external backing.

This situation demands to concentrate on the real issue and not to get lost with side issues. It demands rising above all factional, party and personal differences, interests and prejudices, and to realize the importance of the need of enforcing Shariah besides highlighting the mode and modalities for the realization of this goal. This is necessary because Shariah is just another name of Islam and a pattern of thought and action given by Islam and, as the Prophet (peace be upon him) has said, whose qualities are that it leads us single-mindedly to our destination (hanifia); soothes us by removing difficulties (sahla); is easy and inclined to leniency (samha); is radiant and bright (baidha); and so clear that its night is like a day (lailiha ka-nahariha).

Before proceeding further, there is a need to remove some basic misunderstandings that are being created with aplomb by the big and influential people.

The most regrettable is the attitude of secular and non-Muslim lobby in the country. Engaged in an open war against the Islamic State, this lobby is in forefront of the campaign against the

supremacy of Shariah. The leader of the Pakistan People's Party and the organizations working for the so-called human and minority rights are all seen united in this 'cause'. Posing to be a liberal, Ms. Benazir terms every effort towards the enforcement of Shariah as religious extremism and the machination of General Zia's creed. While those who are notorious for creating a lot of noise in the country in the name of human rights are busy emptying their barrels all around, Christian leadership has also plunged into the fray vowing it would not allow Muslims to introduce their Shariah in their own country! Despite all their tall claims of upholding democracy and respecting the will of the majority, the western media and policy makers are rearing this tiny minority in Pakistan.

Then, there is another group which lacks in courage to support or advocate secularism, liberalism and atheism openly, but its motives are no different either. Raising alarm over an imaginary danger, its target is so-called religious theocracy or 'mullah's Islam'. In the name of 'the Islam of Iqbal and Quaid-i-Azam,' it wants to sabotage the cause and efforts of enforcing Shariah in the country.

The constitutional amendment bill presented by the government has defects and flaws. The nation, therefore, cannot accept it without removing these defects and incorporating in it desired changes and improvements. Whatever may be the intentions, objectives and political considerations of those presenting the bill for the supremacy of Qur'an and Sunnah, there are strong reasons and undeniable facts which are causing doubts and apprehensions in this regard. However, people and Islamic leadership of the country should not be bogged down with minor problems at the expense of the real issue. All should strive to strengthen the movement for the enforcement of Shariah and to settle this issue constitutionally and legally once and for all, regardless of the origin and form of the movement. Our target is to attain Allah's pleasure and to achieve the real objectives of the movement for the establishment of Pakistan. We have to honor the sacrifices of Muslims of the sub-continent offered to achieve and make Pakistan a model Islamic State. It was for this objective that Islamic movement raised its voice for establishing Islamic system in 1948 and has been struggling, ever since, for supremacy of Shariah and establishment of the true religion.

When Allah has given man choice of either accepting or denying Him as his master and benefactor, either takes the path of obedience or of revolt against Him (as is guaranteed that there is no compulsion in religion), we or any Muslim state cannot, therefore, refuse this right to people. Two points, however, need to be clear:

While those opting for infidelity and perfidy enjoy right to freedom of belief and action, in no case they are allowed to try to stop the overwhelming majority of Muslims from modeling their personal and collective lives in accordance with Qur'an and Sunnah. Nor are they allowed to employ pressure tactics with the help of foreign political and cultural powers. While accusing others of 'religious fascism', the secular lobby is itself guilty of dirty 'secular fascism'. Despite all its

influence and control of media, this small minority has no right to stop Muslims from fulfilling their religious obligations. Though they have every right to entertain whatever thoughts they like, and we defend it, but they should refrain from imposing their ideas and priorities on the masses of Islamic State of Pakistan. It is in the interest of democracy to control such a fascist and aggressive mentality.

Many historical factors are responsible for the ideological diversity and weaknesses in today's Muslim society. It is necessary to accommodate or tolerate them. Identification of differences and disputes is possible only through a process of education and learning, precaution and understanding, discussion and dialogue. The Muslim society takes its roots from the values of freedom and tolerance. Unity in diversity and all-inclusiveness of the framework of Allah's restrictions are its distinct features. It is like a garden where different flowers blossom.

In spite of all differences, leniency and tolerance have always been our customs. Even today, these are the secrets of existence and progress. This, however, does not mean that just under pressure from differing opinions, an overwhelming majority should give up those ideals for which there is general consensus, which masses believe to be the main objectives of their lives and which they consider to be the only way to success in the life hereafter. The majority has its rights just as minorities have theirs. Mutual respect should be the guiding principle for all.

It is also to be understood that one's claim of being a Muslim and a believer in Qur'an and Sunnah entails some demands. A person is surely free to accept or not to accept Islam. But accepting it is a responsibility and every responsibility has its own demands. After becoming a Muslim, man's freedom in some areas is restricted because Islam is a pledge given by a person that he willfully believes that Allah is his benefactor, the Prophet (peace be upon him) is his guide and leader and Islam is his religion and way of his life. There is no concept either of 'partial Muslim' or of 'semi-Muslim'. Commonsense and logic also do not accept such notions. Qur'an clearly states:

"O, believers! Enter into Islam completely and follow not the footsteps of the Evil One."  
**(2:208)**

By following some injunctions of Islam and disregarding others one cannot become Allah's obedient. By willful and voluntary acceptance of Islam, a person restricts his freedom within the limits set by Allah. He can exercise his discretion only within these limits. He limits himself of his own accord. Thereafter, he loses his right to accept what he likes and to reject what he does not. This is necessary or it would be incompatible and in fact a duality and hypocrisy for which there is no room in Islam or in any religion because it leads to nothing but to tussles and wastage of time and energies.

Holy Qur'an has declared:

"The Command is for none but God: He has commanded that you worship none but Him; that is the right religion." **(12: 40)**

"Follow the Revelation given unto you from your Lord, and follow not, as friends or protectors, other than Him." **(7:3)**

"If any do fail to judge by (the light of) what God has revealed, they are (no better than) unbelievers." **(5:44)**

"But no, by thy Lord, they can have no (real) Faith until they make the judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction." **(4: 65)**

This is the way of true Muslims and demands supremacy of Shariah. This is the right course for the believers and non-believers have no right to stop the believers from modeling their lives in accordance with their own Faith and belief.

It should also be clear that there are no versions of Islam. It is a deen revealed by Allah and a way shown to us by the Prophet (peace be upon him). It is complete code of life and presents solutions to all matters and the problems of life. It fully provides for what is needed for development and progress of the human society to keep it in line with its ever-changing requirements. Within its framework, obedience and submission, liberty and freedom, difference and diversity each has its own place according to its own laws and principles.

Islam provides clear and unambiguous guidance for life. It also provides for the changing needs of time. It however does not permit anything which opposes, negates or hurts its set of values. The yardstick of Prophet's saying, accept what is right and sounds good and reject what is unbecoming and doubtful, keeps this process going. After Allah's pronouncement "this day I have perfected your religion for you", Islam has remained same despite all the changes of time and space. Islam is not different for Muslims in Arabia, Pakistan, Iran, Turkey, Europe, America and Africa. Similarly Islam in the first century or fourth century was not different from what it is in the twentieth century. Islam is like a river that keeps its own direction of flow while tributaries continue joining it.

The ideas and concepts of Imam Abu Hanifa, Imam Maalik, Imam Shafiyee, Imam Ahmad bin Hanbal, al-Ghazali, Ibn-e Temiya, Shah Waliullah's school of thought or those of Iqbal or Quaid-i-Azam (Muhammad Ali Jinnah) were same. They all adhered to the same Islam. They neither believed in nor advocated anything not contained in the Qur'an and Sunnah, or 'revised' blend of Islam. It is unfair to show them in confrontation with so-called mullah's Islam and to use the names of Iqbal and Quaid to find escape from the code of life prescribed by Allah and practiced by Prophet (peace be upon him).

The sole mission of Allama Iqbal's life was to struggle for the enforcement of Shariah and setting up of a true Islamic society. Similarly Quaid-i-Azam and his colleagues (Liaquat Ali Khan, Nawab Ismail Khan, Bahaduryar Jang, Sardar Abdurrab Nishtar and Maulana Shabbir Ahmed Usmani etc.) were all devoted to this Mission. During Pakistan movement and after establishment of Pakistan, there are at least 200 statements of Quaid-e-Azam alone wherein he declared Islam, Qur'an, Prophet's example, and struggle to establish Islamic laws and Islamic civilization as the raison deitre of Pakistan. It is, therefore, unfortunate that despite all this clarity, a deplorable campaign, based on distortion of one or two speeches of the Quaid, continues unabated to project his views to the opposite. Disregarding the facts, such people continue to propagare their own views, which speak of their ill intentions. They are not interested in Quaid's policy and mission. They want only to exploit his few words for their own ends. But their false propaganda is just like a wall of sand and is, therefore, destined to collapse.

In his concluding speech at the annual session of All-India Muslim League in 1943 in Karachi, Quaid-i-Azam said:

"What is that keeps the Muslims united, and what is the bedrock and sheet-anchor of the community? It is Islam. It is the Great Book, Qur'an that is the sheet-anchor of Muslim India. I am sure that as we go on and on there will be more and more of oneness \_ one God, one Book, one Prophet and one Nation."

In 1945, his message to Frontier's Muslim Students Federation of the was:

"Pakistan not only means freedom and independence but the Muslim ideology, which has to be preserved, which has come to us as a precious gift and treasure."

In his Eid Message, the same year, he said:

"Everyone, except those who are ignorant, knows that the Qur'an is the general code of the Muslims. A religious, social, civil, commercial, military, judicial, criminal, penal code; it regulates everything from the ceremonies of religion to those of daily life."

On Feb. 12, 1948, he pledged in Sibbi Darbar that:

"It is my belief that our salvation lies in following the golden rules of conduct set for us by our great law giver, the Prophet of Islam. Let us lay the foundations of our democracy on the basis of truly Islamic ideals and principles. Our Almighty has taught us that our decisions in the affairs of the State shall be guided by discussions and consultations."

We should be informed as to what is the type of Quaid's and Iqbal's Islam which is not in conformity to the teachings of Qur'an and Sunnah? In fact, it is just an accusation against these two celebrities and is a shameful attempt of confusing the issue. There is no confusion in Shariah and every Muslim is the flag bearer of Shariah and wants its enforcement, as it is a trust from Allah and his prophet. It guarantees our freedom, well being in this world and the success in world hereafter. It had been the way of all the prophets and was brought in its final and finished form to the humanity by Prophet Muhammad (peace be upon him). Muslim Ummah is its trustee and only those would succeed who take this route.

"Those who follow the Apostle, the unlettered Prophet, whom they find mentioned in their own (Scriptures) \_ in the Law and the Gospel \_ For he commands them what is just and forbids them what is evil; he allows them as lawful what is good (and pure) and prohibits them from what is bad (and impure); he released them from their heavy burdens and from the yokes that are upon them. So it is those who believe in him, honor him, help him, and follow the Light which is sent down with him; it is they who will prosper." **(7: 157)**

In order to understand the pros and cons of the enforcement of Shariah, it is imperative to first understand the Shariah itself: its nature, purpose and objectives. The difference between Shariah (Islamic law) and the western law should be kept in mind. Literally, Shariah means 'path'. In old days people used to fetch water for their daily use from wells, ponds and springs etc. of their area. Due to repeated use of the track by people as well as their animals, a way would chart which used to be straight, short, broad, wide and clear. Such a way is called Shariah in Arabic grammar meaning the straight, wide and clear way leading the people of a settlement straight to the source of the water-reservoir. This word is used in Qur'an again and again. In the Islamic terminology, Shariah means the way of life prescribed by Allah through his prophet Muhammad (peace be upon him) which is the only way of acting upon the injunctions of Islam and modeling life according to them.

Qur'an and Sunnah are the real sources of Shariah. One part of the Shariah is related to beliefs, thoughts and feelings while the other is related to individual and collective life. Fiqh (Islamic jurisprudence and law) is the part of Shariah which deals with the subject of modeling individual and collective life in accordance with Islam. According to the Fuqaha (Muslim jurists), Fiqh is the elaborate knowledge of practical problems of Shariah deducted from its principles and logic. Shariah provides guidance with regard to almost all aspects of human life. It specifies the dos (amr) and dongs (nawahi), the permissible (halal) and the forbidden (haraam), the liked (mustahab) and the despised (makrooh). While describing these limits, it also defines the allowed (mubah) and the scope of human freedom. This is the area where the discretion of law making has been exercised in every period of time and would continue to be exercised.



One part of Shariah pertains to individuals and institution's free will and own initiative. Thus, through a self-executing system, Shariah is an integral part of the individual and collective life of all Muslims and much of the matters is covered in worship and matrimonial regulations. The other part of the Shariah, however, needs the collective force of society and state. This is the part for which the present day constitutions, the laws, the state machinery, the procedural setup and the judicial system have to be structured so that they can serve the purpose of Shariah by implementing all of its injunctions.

Islamic law is not only a religious, ideological and spiritual code, but, at the same time, it is also the law for the state and judiciary. The religious laws and the laws of the land and judiciary may be different in other religions and societies where religion is generally considered to be a personal matter. A person is free to practice it if he considers it fit and suited to his taste. On the other hand, the laws of the land and judiciary pertain only to worldly affairs. Such laws emanate from traditions, orders of the ruler, superior authority, and passage by the constituent assembly or through the verdict of a court. Islamic law is a unified and universal law. 'Religious law' is not restricted only to the relationship between Allah and man; it also covers human relations, a person's relations with society, group and the state. It covers all aspects of life including personal, economic, civil, criminal and international dealings. It regulates worship, family life, economic struggle, social affairs, crime and punishment and war and peace.

Being a religious law, it is a matter of belief for every Muslim, which requires him to act thereupon. A law is, therefore, not a symbol of terror or coercive power but is in fact the requirement of one's belief, call of his inner self, wish of his life-time, and the etiquette of life. Its enforcement, therefore, is not subject to use of force or police. It is simply a call of one's conscience and in obedience to Allah. The Police and the court, no doubt, have their own place. The distinction of the Islamic law is, however, the harmony between the voice of the inner self and the laws in the world outside and the capability of both to supplement each other. That is why the Islamic law is acted upon not for any fear of the police or its informers but because of the call of the conscience and for the sake of one's success in world hereafter. The spirit to act on the law is as strong in the darkness of night and in loneliness as in the daylight and in the presence of a Muhtasib (Ombudsman i.e. a system of vigilance). It is this spirit which forces the 'guilty' not only to repent but also to ask for the punishment (to purify him).

This being the spirit of the Islamic law, it is also a fact that Shariah does not leave its implementation entirely on the call of one's conscience and free will. In line with human nature and the needs of the society, it lays down clear rules for consolidation of the state, establishes the rule of law, puts the administrative machinery in place and sets up the institutions of police and the judiciary. In this way it strengthens the inner strength and the spirit with the help of outer force and system. On one hand, it uses the state and all of its organs for instruction, education, and better demonstration. On the other hand, it mobilizes the state power and judiciary to bring the



lawbreakers under control and clear the society of crime and excesses. Deen (religion) and the State supplement and support each other. In a secular society, the state and all of its organs boast to be free from the guidance of religion and the religion is left without the support of the state and the resources of the society. As Hazrat Usman (may Allah be pleased with him) has said:

"Islam is the foundation upon which the building of Muslims' life stands. The job of the government is that of watch and ward. Any building without foundation would be shaky and collapse and a building without a watch and ward system is unsafe and is in the danger of being looted and usurped."

The discussions so far makes it clear that:

- Shariah provides guidance for the entire gamut of life,
- Only Qur'an, Sunnah and the principles evolved in their light streamline the individual and collective life of Muslim and make them an 'organic whole'.
- Shariah encompasses all aspects of life.
- Like worldly laws, it does not use only the force of the state requiring a person to surrender before it, but encourages modeling the individual and collective life according to the law which is the belief and the call of the conscience.
- Besides the call of the conscience, the state and administrative and judicial systems, all act in unison in the process of enforcement of Shariah and promotion of its objectives.
- The process of enforcement of Shariah is a beautiful blend of an active belief and conscience, the system of teaching and instruction, etiquette, traditions of the society and the force of law. It is neither a mere lecture on ethics nor is it a blind and brutal use of force.

For introduction of Shariah, it is necessary that the above elements come into effect altogether. This process requires wholehearted participation with everybody aspiring for his success in the world hereafter. It also requires the government, the state and all of its organs to undertake the task of enjoining what is right and forbidding what is wrong in addition to caring for education, instruction and setting imitable example. To give to the deserving what is his due and to check the oppressor from his oppression is as necessary as saying prayers and observing fast. Rather, the purpose of saying prayers is to stop one from bad deeds: Prayer restrains from shameful and unjust deeds **(29:45)**. Similarly fasting is meant to make people God fearing and law-abiding: so that you may become God fearing **(2:183)**.

The task of enforcing Shariah is very singular and sacred. Both the law and the spirit of the law are important in this process. That is why the process requires overall participation of the people, the system itself, the education, the media, the public institutions and the government. The role of the government is, however, most important for two reasons: First, the state today has become a

‘wholesome’ institution which controls most of the resources of the country and the society and there could be no change unless these resources are subjected to and employed for the implementation of Shariah injunctions. Second, Muslim society is struggling for a new life after centuries-old anarchy, inactivity and slavery. Institutions established during the course of centuries and working as anchor in Islamic system have been destroyed and Muslims have been made to live with a secular educational system for nearly two centuries. As a result the situation has become as described by Iqbal:

What was not good, has become good because slavery changes conscience of the nations

Un-Islamic institutions and the administrative setup imported from the western world have been forced upon Muslims. Unless all organs working in unison for the right to prevail, supplement individual efforts to get rid of injustices and the falsehood and with an overall participation of the society, the state and its organs, no change is possible under the present circumstances. That is why the individual efforts are not materializing. Whatever being done individually for propagation of the good and for eradication of the evil is, no doubt, valuable but it is certainly not sufficient for the desired change. The ill effects of the tussle, which has continued throughout Pakistan’s fifty years of existence, are clearly visible. Without removing this contradiction in our lifestyle, we cannot properly utilize our human and material resources or achieve the desired results.

Today, the problem is not the individual crime and waywardness but the general disorder and the organized crime which is so widespread as if the whole universe is full of crime and disorder (mischief has appeared on land and sea because of what the hands of men have earned (30:40). So, without the use of the collective forces for education, instruction, redresser of the grievances of the oppressed, and stopping the oppressor from oppression, the purpose of Shariah cannot be fulfilled. Besides bringing the spiritual and moral changes, Shariah wants to establish the system of collective justice. Unless injustices, lawlessness and poverty are eradicated and the weak and the oppressed are made powerful and the oppressors are brought under control, the targets of Shariah cannot be achieved. As required by Islam, this is the field where the state and its collective force needs to be harnessed so that a system of justice and equal dispensation for the human being could be set up in accordance with the teachings of Qur’an: that men may stand forth in justice **(57:25)**.

The question is: why we have failed to make headway towards this goal? What is really lacking and where lies the fault? What are the real constraints in the way of implementing Shariah and how can these be removed?

As we pointed out above, Shariah itself has followed four ways for its implementation:

- a) Faith and inner stimulant;
- b) A comprehensive Da’wah system of education, preaching and wise counsel;

- c) Civil society and its institutions, from family to waqf and social security net; and
- d) State, law and administration of justice (judicial system).

Shariah wants that all these be practiced individually as well as collectively. As the state is the centre of decision and order and stands entrusted with all the functions once performed by the holy Prophet (pbuh.) as head of the State, therefore, the responsibility of the state and the government is two-fold: to take up its duties within its own circle, and also to support and patronize all other organizations and bodies so that the individual and the social institutions perform their respective functions properly.

For implementation of Shariah at the mass (social) level the strategy followed by the Muslims in their history provides innovation and variety. That proves how different ways were taken up subject to the prevailing conditions and in the light of problems faced. The true model is one provided by the Prophet (pbuh.) himself, who was the preacher, the patron and the teacher, as well as the head of the State, judge and ruler. Under the Prophets' (pbuh.) guidance, the above four aspects of Shariah were taken carefully and most appropriately, resulting into the most prominent and highly successful revolution of human history. The right-guided Caliphate followed the model. When aberrations surfaced in the system of state and leadership, Umar bin Abdul Aziz successfully attempted to revive it during the Umayyid rule. In the later stage this comprehensiveness and centrality could not be maintained, yet effective arrangements were made for each area and new experiments were conducted and approaches were tried in the light of contemporary challenges. The areas most attended were to maintain the law and the justice administration according to the teaching of Islam and within the limits of Shariah.

In this regard the most prominent, great and historic achievement is the compilation of Fiqh and its principles by highly creditable and trustworthy scholars (Ulema and mujtahideen). This was purely a non-governmental enterprise undertaken by distinguished Muslim scholars. It became the law of the state owing to its moral force and popular support. Their yet another achievement was the institution of an effective and free judicial system which guaranteed the implementation of Shariah in its true spirit. The rulers were subjected to this law exactly as were the ruled.

The perception of law as prevalent in other civilizations and which simply meant the 'will of the ruler' is unheard and un-thought of in an Islamic society. Within the Islamic State only Shariah was the law of the land and the will of the ruler was subservient to it. This law was not legislated by any people's representative assembly. Its constitution and progress was not due to state patronage or through help of any organization attached to the government. Rather, the Muslim Ummah, its free thinking leadership, scholars and jurists (Fuqaha) and other experts, participated in the process. The law thus came to being through a popular and democratic system and continuously progressed. Through the rich traditions of reasoning and interpretation (ijtihad and istehsan) analogy (Qiyas), deduction (istimbat), clarification (Istidrak), consensus (ijma) and safeguarding the

common interests (Masalih), it has developed like the stream of sweet fresh water and guided the whole area of Muslim influence for 1000 years.

There are examples of God-conscience rulers as well who properly compiled these laws and attempted to implement them in their dominions. The prominent amongst these is the Fatawa Alamgiri in the (South Asian) sub-continent. A similar example is the Mujallah Ahkam-e-Adliyah in the Ottoman Caliphate, jointly compiled by the State and the scholars and jurists. The fundamental point in the Islamic law (Shariah), however, is its essence that it does not represent priority of the ruler or the legislative body, it in fact means taking full account of the commandments of Allah and His Prophet (pbuh), His will and intent and to struggle and obtain guidance for the contemporary issues and situations, from the real sources in the light of the Qur'an and Sunnah.

This is exactly what the Muslim nation of Pakistan is striving to avail back after having got rid of the era of slavery and having established a free Muslim State. The list of losses sustained and oppressions of the British colonial rule is lengthy, but the first target of attack of the foreign imperialism was Shariah and our judicial system. Slowly and steadily other institutions were also destroyed. The last protecting fortification — the family institution — was also attacked from all sides. The grand social and collective system the Muslims had created and maintained was ultimately shattered to pieces.

The first thing to do after the independence was to correct the direction of the state, to set its objectives and goals and to formulate the principles and regulations of its legal system. During the British rule, about 4000 laws were imposed through government fiats and decrees. The need was of framing the constitution on sound foundations and then laws were to be reviewed and all laws inherited be scrutinized in accordance with teachings of our Faith (Iman) and national sovereignty. Then to do away with all those laws found repugnant to our deen and in conflict with the demands of an independent state, and undertake fresh legislation so that the two pre-requisites were met in a positive manner and a new legal system and judicial infrastructure was developed — all done in such a smooth way that no crisis situation was created.

The Objectives Resolution was the first welcome step in this direction. Since then, however, the nation has been in a state of repeating 'one step forward and two step s back' exercise. This situation creates a need to demand implementation of Shariah every now and then. Just to save their skin the rulers do some window-dressing, but real progress is not made. The writer had a close personal experience during the Zia-ul-Haq regime. With utmost sincerity, we provided him with a complete and integrated program of implementing the Islamic system. Despite all his 'willingness' and sincere feelings for Islam, he could not make a real headway in this regard.

The reality underlying the implementation of Shariah needs to be properly understood. Then keeping in view the nature of the problem, a multi-dimensional action plan be designed, along with effective and mobile machinery to put the program to practice. Implementation of Shariah

does not mean making some declarations; it is a continuous process, which has varied directions — each supporting and reinforcing the other. Only then we can expect integrated and lasting results. General Zia used to say time and again ‘tell me the thing the declaration of which implements Shariah’. In reply, the writer always told him that if he really wanted implementation of Shariah, then it is not a matter of mere declarations; rather it needs a detailed and integrated program for change. Its important components are:

- i. Declaring Qur’an and Sunnah (Shariah), the supreme law, in the constitution, and to accept it the permanent source of legislation and policy-making. Then bringing such amendments in the constitution that cleanse off anything repugnant to Shariah. Opening the constitution every now and then, or leaving it permanently to judiciary is not correct. That is why constitution-making and legislation are seen distinct and that difference must be respected. Particularly, when we have a written constitution, we must honor its prerequisites.
- ii. Indicate a clear and effective working mechanism in the constitution, for the implementation of the Shariah laws:
  - a) Article 227 is an important arrangement. This however requires that the Parliament completes its duty within a specified period. The 1973 Constitution provided 7 years for this purpose, that all laws will be brought within the Shariah ambit during this period. This work has not been done even to date (1998).
  - b) The same article (227) also provides that future legislation was incumbent for the implementation of Shariah; and this was to be done by the Assembly and the Senate in consultation with and support of the Council of Islamic Ideology (CII).

Our record in this respect too is dismal. Against the more than 4000 laws enacted during the British rule, we have passed at best 400 laws in the last 50 years, and even their majority covers only some partial amendment in the laws in vogue. Legislation during these 50 years is meager in terms of number of laws. As for quality, it is better to keep silent! The CII has, since 1962, prepared about 50 reports; none has been used for legislation.

- iii. For implementation of Shariah, the constitution, other than article 227, opened another avenue called "Policy Principles" (chapter 2, articles 29-40). This was not supposed to be implemented through the courts, but was meant to push forward the process in the shape of report of the performance of the Parliament. Progress in this area is also ‘nil’.

After having proved practical ineffectiveness of these three methods, yet another and relatively short-cut method was to authorize the judiciary to take suo motto action or at filing a suit, to

review a law to see whether it was in accordance with the Qur'an and Sunnah. In case of non-conformity and clash, the court could declare it null and void.

The problem faced here was that usually the honorable judges of the courts had neither the knowledge nor desired piety required for such undertakings. The proper course was to first change the system of law-education, training of lawyers and judges, selection and the principles and rules of promotion. And to make arrangements, that within a reasonable period, we should have judges — from top to bottom — equipped with Shariah knowledge and trustworthy before the nation for their morality and piety, in religious matters. Though correct and ideal, this process required lot of time. That is why, during the Zia period, the idea was first to have Shariah Benches in the High Courts, but that was not liked by the judiciary. Then the approach of Federal Shariah Court was followed, which is being acted upon since 1980. A full chapter was added to the constitution for that purpose. While constituting the FSC, some major flaws were left:

- i. Jurisdiction of the FSC was limited, most laws were out of its domain;
- ii. It could only deal with a rule or its component, but not to touch the 'executive' actions;
- iii. With regard to appointments of its judges, their transfers, demotions etc., such disruptive and whimsical regulations were framed which were not only against the freedom of judiciary and permanent existence of FSC, but amounted to sheer joke with Islam;
- iv. It had no powers to redress wrong or to make interim injunctions, This means that the court was totally powerless;
- v. It could take up appeals only in case of Hudud matters. Its real jurisdiction was limited to decide about the existing rules. The only consolation was that if within the time-frame given by FSC, its proposed legislation was not enacted, or an appeal is not filed in Supreme Court (against FSC's decision), then the Shariah-repugnant part of the law under question, would become extinct. Again, it is a rarity.

So, the two ways open for implementing the Shariah (to the extent of modern perception of law), remained practically non-effective. Today, the real decision to make is: Which way to go? Or, should we follow both the approaches (which is what the writer suggests). However, to activate the process the changes required are to be provided in the Constitution through amendments. Furthermore, other actions required to keep the process going, need be considered.

Shariah implementation is not a simple law enforcement action; though the task is to be undertaken within the law circle and employing the legal machinery, but other effective steps are also required. We would first list the actions that are required along with the legal process. Then, we shall make observations regarding the present 15th amendment bill.

1. The most important thing, in addition to law, is the policy, policy-formulation method, policy monitoring and judicial review of the executive orders. Legislation is not enough for Shariah enforcement, a quite big area is the policy-making. Nothing has been done in this direction, nor there any machinery for the purpose. Each ministry and department is free and there is no system of Shariah-guidance and accountability. The Council of Islamic Ideology is only an ineffective consultative body. It has no other linkage with the government machinery. It works like a satellite, whereas it should be made interactive, constitutionally and administratively, with all the consultative bodies and the Planning Commission. The writer had first-hand experience when as Deputy Chairman Planning Commission and as Minister for Planning and Development, he took steps towards the Islamization process. He came to know that the consultative council had no link with any policy-making body. Nor any policy forming institution ever bothered to benefit from the services of the Council. We organized joint sessions of the Planning Commission and the Ideology Council and constituted their joint committees. Only then it transpired how in policy-making the guiding role of Islam can be mobilized. This was very precious lesson drawn, but very brief too. After the Pakistan National Alliance (PNA) left the government in 1979, the whole exercise fell to ground.

This gives two important lessons: One, unless the policy-formulation institutions and individuals are involved in the task, no progress can be made. Second, it is no make-shift; it has to be done on permanent footing and through institutional arrangements. However, much will depend on the political power, will and commitment. Looking at the 50-years history of Pakistan, the factor that has made the process of Islamization ineffective and fruitless, is the lack of political will. And it is not the problem of the commitment of one individual; in fact, it concerns the determination of the whole political machinery and the collective leadership. Until that problem is solved, nothing will move an inch.

2. The second important factor and necessity is, therefore, the political will and determination. This should be expressed at all levels. But it will be possible only if there is 'a revolution in and of leadership'. Excepting a few individuals, the position of our leadership so far has been utterly disappointing. The change in law and policy is ultimately dependent on the change of hands and leaders. Not only political, but change of leadership should come from within in every sphere of life, bringing forth individuals who provide a model and true leadership. Three things would be essential for this leadership:

One, its own determination, vision, character and role model;



Two, its knowledge, experience, working capability, consultative system and high performance; and

Three, Effective monitoring, evaluation and accountability, so that the leadership does not go astray and made to stay on the right path.

The most prominent example is that of the Caliph Umar bin Abdul Aziz (RA). When the old Jahilia had succeeded nullifying the effects of the revolutionary reforms of Islam and put everything in the reverse gear, he was successful to put the government back on the track of Khilafat-e-Rashidah within a short span of two and a half years. He made this achievement with total selflessness, sacrifice, a blow to the vested interest group, and organizing the state once again for realization of Islamic objectives. He started the process by correcting himself and then bridled his family and tribe. He was non-compromising on principles, followed the truth, helped the wronged, arranged the merit and cared least about the consequences, refused to make deals with the falsehood (batil). This was the model of leadership that Umar, the Second, presented; and this is what we need today.

3. After the constitution, the law, the policy and the leadership, is the system of education and training. Preparing the required manpower through a system of incentives and inducement, so that we have appropriate individuals installed in positions at all levels and tiers. The masses should trust and rely upon the system. Whereas it is necessary to take immediate initiatives, it should also be ensured that the process is to be continued with resoluteness so that the change occurs in a natural way within a reasonable time-frame.
4. In this whole process, the law is certainly very important, but equally necessary is the preparation of individuals and society in such a way, that all participate in the implementation of Shariah whole-heartedly. This can neither be accomplished through preaching alone, nor with exclusive use of force and coercion. For introducing Shariah the approach taught by the Prophet (pbuh) and which he himself followed to show a model, is characterized by the change of mind and heart. Then, along with correcting individual morals, is the collective mood and the balance and beautiful mixture of the state administration and punitive forces and law. For enforcing Shariah, in any period of time, these two currents have to meet and support each other. This is a wide-spread wholesome process in which everyone has a role to play. The objective cannot be realized by mere sanctions and creating an atmosphere of fear and coercion. For the duty of enjoining what is right and forbidding what is wrong, freedom, difference of opinion, tolerance and understanding are a must. Otherwise, in a state of dictatorship and regimentation

the process of Shariah implementation cannot succeed. Its pre-requisites are: determination and wherewithal to perform duties, an atmosphere of consultation, respecting rights, mutual respect, urge to compete in virtue and good deeds, sacrifice and over-flow of cooperation. That is how support can be provided to the dwindling as well as to those who may be going astray to save them from losing in this world and from the hellfire. To create such an environment and promote such sentiments constitute an important part of the process of enforcement of Shariah.

5. This whole task is to be undertaken with mind set and determination which, as a model, is to be found in the life of the Prophet (pbuh.). That is, to do justice among people in this world and pay everybody which is his/her due. Salvation in the hereafter and pleasure of Allah and His Prophet must remain the real target. The Shariah amendments cannot be implemented while overlooking its true and clear

**Objectives:**

- Protection of Deen and Faith;
- Protection of life;
- Protection of honor, family and human progeny;
- Protection of intellect and understanding; and
- Protection of property.

These measures are a must for ensuring peace in Islamic society. It is worth noting that in the Islamic penal code, the punishments prescribed in the Qur'an and Sunnah as Hudud are meant to achieve the above mentioned five objectives. While other penal codes of the world list hundreds, rather thousands, of crimes and prescribe their punishments, Islam restricted its Hudud to five areas only:

- Hud of apostasy or Irtidad; (for the protection of faith and belief);
- Hud of Qisas and Diyat; (for the protection of life);
- Hudud of fornication, adultery, rape, and false allegation; (for the protection of morality, family, honor, chastity and the progeny);
- Hud of prohibiting alcoholic drinks; for the protection of intellect; and
- Hud of theft and dacoity; for the protection of property.

These Hudud are not mere punishments but provide protection to the foundations of human society and the prime objectives of Shariah. The purpose is not to punish, but to protect the foundations and ensure their strengthening and to promote equity and justice, honor and welfare for the masses. These are the aspects of Shariah which by coming together and getting integrated,

make an organic whole. The program of Shariah implementation should cover all these aspect, or else the whole effort will remain incomplete and ineffective.

Seen in the light of above discussion, the 15th Amendment Bill proposed by the government is grossly deficient, weak and falls short of meeting the purpose. Before making comment on these aspects, we wish to appreciate the declaration that Qur'an and Sunnah are to be made the supreme law via an insertion in article-2 of the constitution. It is a step in right direction and we welcome it.

Despite the fact that the Objectives Resolution was the Preamble in the first constitution, had become substantive part through amendment in 1985 in the form of Article 2-A, and that the provision of Article 227 had prohibited any legislation repugnant to Qur'an and Sunnah, yet the true and complete supremacy of Shariah was not accepted in the constitution. This is particularly evident from important court decisions over the past 40 years, concerning constitutional matters.

When the 1956 and the 1962 constitutions were abrogated through the force of Martial Law, the Lahore High Court and the Federal Court, in their bold decisions maintained that the Objectives Resolution was non-revocable. This is the basic deed settled by the first constituent assembly and carries the position of grundnorm. This position was particularly highlighted in the Asma Jahangir Case. But soon the Justice Hamoodur Rehman Bench in the Supreme Court, took the position, in an important decision, that although the Objectives Resolution was the most important constitutional document and declaration, yet it was not supreme because of its not being substantive part of the constitution.

To remove this flaw, General Zia-ul-Haq, at the recommendation of the Council of Islamic Ideology, made the Objectives Resolution an applicable part of the constitution in the form of Article 2-A. After that, a few important cases were decided at the Karachi and Lahore High Courts, in which the Objectives Resolution was declared as controlling the rest of the constitution. The constitutional protections available to Family Law and certain other matters were reviewed in the light of Objectives Resolution. However, the supreme court in the Justice Nasim Hasan Shah Bench put a break to this process, and decided that Article 2-A was like other constitutional articles and the rest could not be valued on the criterion of Article 2-A.

This was the decision which necessitated that the supreme position of Qur'an and Sunnah be included in the constitution in quite unambiguous terms — with an explanation, that Qur'an and Sunnah will be foremost and supreme against all other provisions in the constitution, law, judicial decisions and the rest, whatsoever. Also, that the foundation of the laws of the country is Shariah and any other thing is subservient to it. Without such an amendment, the said decision of the Supreme Court holds good and till such time, the Qur'an and Sunnah and the Objectives Resolution do not form the true supreme law. So, the amendment is necessary. Mere declaration that Islam is

the official religion, or provision of Article-227, are not sufficient. We believe that the amendment is essential to this extent and effect and, therefore, be immediately made part of the constitution.

Excepting this positive aspect of the proposed (15th) amendment, the Bill in its present form is defective, and warrants correction. It appears that government, in its customary haste, presented the bill in the assembly for some expediency and immediate gains without proper consultation and necessary preparation. Then, Prime Minister delivered a speech and the promise of implementing Shariah was 'fulfilled'. This all is very superficial. The necessity of amendment is there, but it should be faultless, as far as humanly possible. Making any amendment in the constitution is a very sensitive and responsible task, and becomes more sensitive if the matter pertains to Shariah. It is not only irresponsible to take up the matter in easy-going way; it could rather prove highly dangerous and troublesome for the country and the Muslim Ummah.

For brevity sake, we shall not take up the objections one by one. Instead we would submit proposals, whose consideration would automatically highlight the objections:

1. Such types of amendments should not be brought before the Parliament in haste. Before presentation the Bill should have been widely discussed and thoroughly consulted. The nature of the subject was such that the whole gamut of Shariah implementation would have been reviewed. The exercise should then have led to presentation of a 'white paper' before the nation covering constitutional amendment, the manner of changing the law and required steps, the system of re-designing the policies, the accountability system, and education and preparation of the society, and the related laws. The proposed amendment bill being part of that white paper would have been openly discussed on popular level and proposals would have come from all directions. Then, in the light of this discussion and accommodating various proposals, the government could have come in the Parliament, with a constitutional bill. This approach can be adopted even now.
2. Seen analytically, the 15th Amendment in its present form covers five areas, and attempts to settle all with one stroke:
  - a. Supremacy of Qur'an Sunnah;
  - b. The (enhancement of) authority of the central government, in total disregard to constitution, law and the judicial decisions;
  - c. Regard for every Fiqh (jurisprudence) in matters of personal law;
  - d. Protecting the rights of minorities;
  - e. To bring down constitutional amendment to the level of law-making, so that constraints in the way of Shariah implementation are removed.

It is neither just nor a right way to bring all these five areas together. Every issue merits separate handling. Only necessary measures must be included while others, which can cause objections and mischief, should be abandoned. We therefore, propose that article-1 of the proposed amendment should make Qur'an and Sunnah as the Supreme Law with an explanation that this article will be "comprehensive and over and above all other provisions, laws and court decisions." In this way the supremacy of Shariah will become final and unambiguous as far as the constitution and the laws are concerned. This is the fundamental amendment and should form core of the proposed Bill.

3. We feel that central government does not need any special enhancement of authority. The government is already authoritative. According to the same (given) rules and regulations, the government should fulfill its responsibility regarding Shariah. It should stay accountable before the constitution, the law and the courts and refrain from acts which may put the country in the lap of dictatorship, for which there are many clear indications and tendencies. It is therefore, necessary that the exceptional authorization of article-5 should be provided only to the matter of supremacy of Qur'an and Sunnah, and not to the executive orders.
4. If the government insists to have this provision, then it requires an amendment by adding provincial and local government along with the federal government and that every entity will fulfill its respective responsibility within the constitutionally delegated framework of authority. Furthermore, if the federal or provincial government creates an alternative or supportive (administrative) machinery, it should do so through proper legislation so that door is not opened for whimsical acts. The whole process should be transparent and should not be above accountability.
5. One highly objectionable aspect of the proposed (15th) amendment is its proposed manner for amending the constitution. It is loaded with enormous dangers. What a pity that constitutional amendment — the most difficult task in any constitution the world over — has been brought down to the level of normal legislation, where not only the two-third majority (currently required) of the total membership of the two Houses is waived, but also the simple majority (i.e. the presence of 50 percent of the members) is not considered necessary. According to the proposed amendment a majority of those present will be sufficient. That means if members are available even to the extent of quorum, amendment can be brought with their simple majority. We know very well how far the words 'elimination of constraints' can be stretched. General Zia availed one such permission granted by the Supreme Court by to implementing first 'provisional constitution' and when restored the (1973) constitution inserted 104 amendments in it. Therefore, such authority can never be

granted. If there is a real need of reviewing the constitution, an appropriate way could be followed (We shall propose it later).

6. Articles 3 and 4 (of the Bill) are un-necessary. Both these provisions (in respect of personal law and religious, educational and cultural freedoms for the minorities) are already there in the constitution and need not be repeated everywhere. This only reflects inferiority complex, which does not look appropriate to be expressed in the constitution. If, however, the intention is to satisfy some specific pressure groups, then we have no objection to it in principle. Fact of the matter remains that the minority, particularly the Christian minority which constitutes only one percent of the population, is not pressing for its rights but objects to the right of Muslims of having their Shariah in their own country. This reflects the colonial mentality which the Christian minority used to express during the British and other Western colonial dominations at the instigation of the ruling powers. Even today, they do so at the provocation of western powers. In France, a Muslim woman is not allowed to wear scarf and in our country a minority group demands that Muslims should not follow the tenets of their own religion. We, therefore, need not be defensive and offering regrets or 'incentives'. Its true response is what the Qur'an has prescribed: "To you be your Way, and to me mine" (109:6).
  
7. The biggest fault of the 15th Amendment is that it does not provide answer to the real problem, which necessitates a clear declaration about the supremacy of Qur'an and Sunnah in spite of the Objective Resolution being part of the constitution. In fact, the Supreme Court has made an important observation that in interpreting the constitution every article has its own merit and is not subservient to any other article, unless so clarified as in case of article 58 (2) B or 203-A. Also, certain articles, like article 8, are self-executing while others, e.g. 2-A are not. The amendment should have aimed at removing these difficulties. In our proposed scheme, addition of notwithstanding any provision in the constitution, law or decision of any court of law in article-1 (of the Bill), will take in its scope the whole of constitution and the legal system. This is exactly the position the Qur'an and Sunnah should have. The difficulty to be encountered is, however, what has been pointed at by Maulana Muhammad Taqi Usmani, Judge Shariah Bench (SC), and Dr. Tanzeel-ur-Rehman, former Chief Justice of Federal Shariah Court: Who is to decide where the clash is and how to resolve it. There could be many ways to follow. But, proceeding ahead without addressing this problem would mean that Pandora box of court suits and controversies is opened and the nation gets further confused. In that case Shariah would become an instrument of legal anarchy, instead of providing justice. Surely, this would not be a proper treatment of Shariah.

- a. It is important that flaws and contradictions in constitution and the clashes and inconsistencies found in laws, should be dealt separately (case to case). The constitution cannot be permanently left at the mercy of central government or to the courts, either. These entities are the product of the constitution and derive their authorities from there. Thus, there is a need of a Constitutional Commission, consisting of constitutional experts, mature and trustworthy politicians and distinguished religious scholars, to bring amendments in the constitution.. The Islamic Ideology Council should also be consulted. The Commission should indicate within 6 month, or a year at the most, all the discrepancies in the constitution inhibiting supremacy of the Shariah. Then the Parliament should remove these discrepancies through a suitable amendment in the constitution. All this be done in one go. The door should not be let open for government or any other group to raise their problems every now and then.
- b. For general laws two methods can be employed: following the pattern of article-8, an addition to article-2 that as laws in clash with fundamental rights constitutionally stay null and void, similarly the laws in vogue that are repugnant to Qur'an and Sunnah would be considered void, after the expiry of the stipulated time — say, one year. Most of this task has already been done by the CII and the Law Commission. The Parliament should consider these recommendations and reform the present laws in one year, or such repugnant laws should automatically become null and void. The other method is the empowerment of the Federal Shariah Court. The number of its judges should be increased and its jurisdiction extended to cover, other than the constitution, all laws to be reviewed and scrutinized. This will be a normal process to synchronize all laws with Shariah through the FSC. The question of any law being against Shariah, raised in any court, should be referred to FSC because if this (review) authority is delegated to every court it would create confusion. Every court cannot be relied upon because of the lack of knowledge of Shariah, and capability. In the normal courts, including High Court and the Supreme Court, Muslim and non-Muslim judges has equal position. To see whether an article, law or order is according to Shariah or against it, is a delicate issue and cannot be left to non-Muslim judges. The only way, therefore, is that the jurisdiction and authority of the FSC is enhanced, its number of judges and resources increased, and to include in it competent and religious-minded judges and erudite scholars. That is the way the issue can be solved amicably.
8. The issue of the jurisdiction of the Federal Shariah Court should necessarily be settled in the proposed constitutional amendment. Important in this regard is that appointment of judges to the FSC should be regular and that rules of appointment, transfer, change in job assignment and degradation should be identical to those for



the High Courts and the Supreme Court. Also, FSC should be authorized to redress grievances and to issue interim orders. To have an effective accountability system, it is necessary that the scope of judicial review be extended, with certain restraints, to include executive orders along with the laws. This is a right the Federal Shariah Court should enjoy.

9. The whole system of constitutional and law education and training needs immediately overhauling. There should be academic and training courses for legal practitioners and experts of all levels. In the reforms of 1980, International Islamic University, the Judicial Academy, the International Institute of Islamic Economics and Da'wah Academy were set up to also meet this requirement. If we are really sincere to our claims about enforcing Shariah then all these areas merit urgent consideration. The whole government and administrative machinery is to be geared up. The masses are also to be educated and trained. Without covering all these aspects, and making simple announcements every now and then, will be useless. Rather, these are injurious to the cause, against the sanctity of Shariah, would disappoint people and could invite the wrath of Allah.
10. The simple and straight way is that with utmost honesty, confidence and transparency, we stand up to fulfill all the requirements the task of implementation of Shariah demands. If we cannot do so, we should at least refrain from taking such steps which only confuse matters of consensus, give rise to new controversies, invite adversaries to launch fresh attacks and only deceive the sincere and innocent people. We should always keep in mind what Allah Almighty has ordained:

And when your Lord declared (publicly):

"If ye are grateful, I will add more (favours) unto you; but if ye show ingratitude, truly my punishment is terrible indeed." **(14: 7)**

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