

## ISLAMIZATION AND CONSTITUTIONAL AMENDMENTS IN PAKISTAN: CASE STUDY OF 15<sup>TH</sup> AMENDMENT BILL

Sultan Mahmood\*  
Muhammad Touqeer Akhter Nasir\*\*

### Abstract

*The invocation of Islam as its raison d'être places Pakistan as only country in the Muslim World founded explicitly on religious doctrine through popular democratic movement rather than by historical accident or colonial invention. Islam is complete code of life and it regulates each and every sphere of life. It is political and constitutional structure of Islam which ensures the establishment of Islamic society in its true spirit and manifestation. Prophet of Islam (Peace Be Upon Him) who is role-model for every Muslim, established the first Islamic state at Madina with written constitution, and ruled this state for last ten years of life. In this perspective Islamization of the Constitution has remained a dominant theme of public debate in Pakistan since its inception and every regime faced the imperatives of Pakistan's Islamic mandate. Despite the fact that Objectives Resolution (1949) and the Constitutions of 1956, 1962 and 1973 contained considerable Islamic provisions, an Islamic society in its real spirit could not be established in Pakistan. So the question and quest has always remained there before the people and policy makers that what should be included more in the constitution to realize the dream of Islamic Pakistan on the model of first Islamic state of the Holy Prophet (PBUH)? Proposed 15<sup>th</sup> Amendment Bill in the 1973 Constitution was an important episode of this issue. This paper is an attempt to investigate and analyze 15<sup>th</sup> Amendment bill and its probable impacts on executive, legislature and judiciary in Pakistan. It has been analyzed in the light of political and constitutional concepts of Islam and history of Islamization in Pakistan.*

### Key words

Islamization, Pakistan, Politics, Constitution, Amendments

### Introduction

An objective analysis of the movement for Pakistan reveals that Muslims of India struggled for Pakistan and achieved it on 14<sup>th</sup> August

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\* Associate Professor at Department of Pakistan Studies , Abbottabad  
University of Science & Technology

\*\* PhD Scholar at Pakistan Study Centre, University of Peshawar

1947 which achieved another goal at the same time that unlike to western religions Islam is not only the set of rituals which have nothing to do practically with the life and life style of an human. Need for an independent state was justified on the concept that the religion of Islam is complete in all aspects and need of a human is code of life; a social, cultural, political, religious, moral, economic, legal and judicial code. It regulates private as well as public spheres of the life. Such system of life needs independent state to implement its ideology in each and every sphere of life. It is indeed “more than a religion in the western meaning”.<sup>1</sup> In the terminology of Quran, Islam is *Deen*, for which there is no appropriate single word in English. A combination of several words ‘System of Life’ or ‘Complete Code of Life’ can represent the concept of *Deen*. Prophet of Islam (Peace Be Upon Him) is the role-model for every Muslim. The Prophet (PBUH) established first Islamic state in Madina and ruled that state for last ten years of life. In the city-state of Madina, under the Prophet (PBUH), religion and politics were the aspects of same reality. Keith Callard quotes from Muhammad Mazheruddin Siddiqi’s book *Islam and Theocracy*: “The state and the church in Islam were merged into a single indistinguishable unity from the moment when the Prophet of Islam took over control of Madina.”<sup>2</sup> Concept of Islam as a complete code of life provided fundamental theoretical and logical argument to the demand for Pakistan. This concept of life is exactly opposite to the secularism, dominant ideology of the contemporary western world, which separates religion from all of the collective affairs including political affairs of the state. Iqbal clearly rejected this concept in following verse of *Bal-i-Jibrail*:<sup>3</sup>

جلال پادشاهی ہو کہ جمہوری تماشاہو  
جد اہودیں سیاست سے تورہ جاتی ہے چنگیزی

[Whether it is monarch or democracy, separation between the religion and politics leads to tyranny.]

Islam does not believe in the separation of religion and politics. It guides its followers to conduct the political affairs in accordance with the commandments of religion. Keith Callard argues “...to a person with an education in the accepted traditions of the Christians, the politics of any kind and the human nature are at huge difference from each other. But in Islam both terms are embraced”.<sup>4</sup> While clarifying the comprehensive nature of Islam, the architect and founder of Pakistan Mohammad Ali Jinnah also known as Quaid-i-Azamsaid that the religion Islam teaches us a comprehensive and complete code for human life. It is not only religion of beliefs but it contains laws regarding every aspects of life, philosophy of life and politics. It can be said that, it contains each and everything that considerably matters to a human round

the clock. When a person talks about Islam, he talks about all fields of life.<sup>5</sup>

When Indian Muslims were passing through their enthusiastic movement to get Pakistan, they believed that Islam and Pakistan were synonyms to each other. Their sentiments got best expression in the following most popular slogan during the Pakistan movement:

پاکستان کا مطلب کیا؟ لا الہ الا اللہ

[What is meant by Pakistan? There is no God but Allah]

Islam provided the foundations for separate identity and nationhood of the Muslims of India, on the basis of which they demanded the right of self-determination in the areas where they constituted majority in Indian sub-continent. Concept of nationhood on the basis of religion negated the second dominant ideology of western world i.e. territorial and racial nationalism, which considers territory and race as the foundations of nationhood. Iqbal has summarized the difference and divergence between Islamic and western concepts of nationhood in his following verses:<sup>6</sup>

اپنی ملت پر قیاس اقوام مغرب سے نہ کر  
 خاص ہے ترکیب میں قوم رسول ہاشمی  
 اُن کی جمعیت کا ہے ملک و نسب پر انحصار  
 قوت مذہب سے مستحکم ہے جمعیت تری

In these verses Iqbal has advised the Muslims that they should never think in western terms of nationalism, as their concept of nationhood is based upon material foundations like country and race. Nation of the Prophet of Islam (Peace Be Upon Him) is special in its composition, as its concept of nationhood is based upon religion.

In fact Islam had been remained most dominant theme during the Pakistan movement and the Muslims were told by their leaders that “Pakistan would be an Islamic State”<sup>7</sup> The birth of Pakistan consequently witnessed the start of a popular demand for vital place of Islam in the political and constitutional framework of the state or country. People felt about the sacrifices which they had made in the year of independence 1947 which were only for the faith of Islam and consequently that “all these efforts will be in vain if the true spirit of Islam was not ensured in the fabric of the newly drafted constitution of Pakistan”<sup>8</sup> So ever since its inception Islamization of the polity has been dominant theme of public debate and every ruler faced the imperatives of what Charles Kennedy termed as “Pakistan’s Islamic mandate.”<sup>9</sup> Proposed 15<sup>th</sup> amendment bill in the constitution of Pakistan was a prominent example of this fact. The Prime Minister has

claimed that the bill will act as instrument to complete the process of Islamization in Pakistan.<sup>10</sup> However different segments of population expressed their reservation on the bill and it has created number of controversies. In this paper an effort has been made to analyze its different aspects in the light of political and constitutional principles of Islam.

Number of books provide theoretical and historical foundations for the research on Islamic political and constitutional system and history of Islamization in Pakistan. Mohammad Asad's *The Principles of State and Government in Islam*<sup>11</sup> and Abul Ala Maududi's *The Islamic Law and Constitution*<sup>12</sup> are useful to understand nature and characteristics of Islamic state. Kemal A. Faruqi, in his book *The Evolution of Islamic Constitutional Theory and Practice: From 610-1926*<sup>13</sup> and Amir Husain Siddiqi in *Islamic State: A Historical Survey*<sup>14</sup> have analyzed the nature and evolution of the Islamic state in historical perspective. Dr. FazlurRahman's work is also useful to understand the concept of Islamic State and its application in Pakistan<sup>15</sup>. Charles Kennedy's book *Islamization of Laws and Economy: Case Studies on Pakistan* present useful analysis of different experiences of Islamization in Pakistan.<sup>16</sup> Afzallqbal's book *Islamization of Pakistan* provides historical review of Islamization process.<sup>17</sup> Leonord Binder<sup>18</sup> and Keith Callard<sup>19</sup> have analyzed the process of Islamization during initial period of Pakistan while books of Anita M. Weiss<sup>20</sup> and Rashida Patel<sup>21</sup> present critical analysis of Islamization especially during Zia period. Articles of William Richter and Lawrence Ziring<sup>22</sup> are useful in this context. There is no scholarly work on 15<sup>th</sup> Amendment however, some newspaper articles are useful.

### **Statement of the Problem & Research Questions**

Aim of the study is to investigate the possible impact 15<sup>th</sup> Amendment bill on different segments of the polity, especially on the executive, judiciary and legislature. The available literature on the 15<sup>th</sup> Amendment bill is only in the form of newspapers, articles which are based upon personal opinions of the writers. A systematic analysis of the bill in the light of Islamic political and constitutional principles is not found in available literature. This paper attempts to bridge this gap of knowledge.

Major research questions before the study were: What were the factors that urged the government of Nawaz Sharif to introduce this amendment bill? How could this amendment ensure the socio-economic justice in the country? How could it affect the judicial system of the country? What could be its impacts on the parliamentary system of the country? How could it affect the federal structure of the polity?

## **Constitution, Amendments and Islamization in Pakistan: Brief Review**

The birth of Pakistan in 1947 initiated “the decades-long quest and debate over what Pakistan’s Islamic character should be”<sup>23</sup> The process of framing the first constitution lasted for nine years. The constitutional debate provided the area for a protracted battle between conservative traditionalist and modernist factions – the former more inclined to revival of the past, the latter of modernization and reform<sup>24</sup>. Two general directions before the new state of Pakistan were (1) model of a traditional Islamic state wherein Sovereignty was vested in God Almighty and supremacy of Shariah (deeds, sayings and silent permission by the holy Prophet) was to be mentioned as a comprehensive law governing all aspects of the individual’s life (2) Modern nation state model based on western modes of law. The formidable task for the new state was not the adoption of either model but an adaptation wherein a blue print of a modern state and society incorporating Islamic ideals and values be created on which the mass support of the freedom movement was based. What complicated matters further was the ill equipped leadership in training and orientation or the mammoth task.

The creator and architect of Pakistan Mohammad Ali Jinnah had a very clear vision about the Islamic identity of new state. While addressing Bar Association at Karachi, in the last week of January 1948, he categorically rejected the propaganda about the coming Constitution for the country of Pakistan would not be framed in accordance with fundamental principles of Islam. He reiterated that “Islamic and its principles are still as applicable to the practical life as they were applicable about thirteen hundred years ago” He further clarified that “Islam should not be considered as a set of rituals, old or demonetized traditions. Islam is actually the complete code for the life of every individual Muslim which regulates his life and his conduct in even politics and economics.”<sup>25</sup>Quaid’s this speech pacified apprehensions of all the people to great extent. However Quaid’s broadcasted speech to the residents of United States of America in the month of February 1948 further clarified the minds of all. In this speech he asserted that coming Constitution of Pakistan will be democratic in nature, embodying the fundamental and essential principles of the Islam.<sup>26</sup>

On the other hand, leadership of Muslim League and bureaucracy “largely consisted of a modern educated elite who were not steeped in Islamic learning; indeed they were scarcely knowledgeable of it”.<sup>27</sup> Their behavior towards the delicate question of

Islamization showed that at the time of creation of Pakistan, they had thought no more of it except in terms of a state where the Muslims would hold sway in the political, economic and other fields. So they postponed and procrastinated the fulfillment of their promise of an Islamic state until doubts, suspicions and distrust were created among the masses. Representing the popular sentiments, Jamat-i-Islami (JI) Pakistan under the visionary leadership of Syed Abul-Ala Maudoodi and Jamiyat-ul-Ulema-i-Islam which was struggling under the leadership of Maulana Shabbir Ahmad started a mass campaign for the Islamic constitution. Consequently, in 1949 Constituent Assembly passed Objectives Resolution which is considered the most concrete step towards Islamization in the history of Pakistan. It acknowledged the sovereignty of Allah over the Universe. Moreover the authority delegated by Allah is to be exercised within limits prescribed by Him. It also mentioned that Muslims shall be enabled to order their collective and individual affairs of life according to Islam. The resolution contained other Islamic provisions. Overall it was welcomed by everyone as it manifested a “compromise between the secularists, the traditionalists and liberals”.<sup>28</sup>

First constitution of Pakistan was promulgated on March 23, 1956. It adopted objective Resolution as its preamble. Article 198 was very important which declared that in future no law repugnant to the teachings and commandments of Islam as mentioned in the Holy Quran and Sunnah shall be enacted and existing laws shall be modified in accordance with the teachings and commandments of Islam. Article 32 stated that only a Muslim could be the president of Pakistan. President was required to appoint a commission for Islamization of laws and an organization for Islamic research. According to G.W. Chohdry it was a “successful synthesis of modern needs and Islam principles”.<sup>29</sup>

The constitution of 1962 adopted most of the Islamic provision of previous constitution with some secular changes. The word “Islamic” was excluded from the name of the country. But in the starting session of National Assembly (NA) at Dacca (East Pakistan), on the historical move of Barrister Akhtar-u-ddin, representing Jamat-e-Islami belonging to EP, word "Islamic" was added with the word or name "Republic of Pakistan" which was named as "Constitution Amendment Act, 1963". Thus the country was renamed as "Islamic Republic of Pakistan."<sup>30</sup> Preamble of the Constitution acknowledged Allah's sovereignty but did not place “public authority within limits prescribed by Him”. It stated that no law should be against Islam and that Muslims residents of Pakistan must be enabled to live their lives according to the teachings of Islam but omitted the reference to “Quran and Sunnah” however due to public pressure and through the

first (Constitution) amendment Act-1963 all of these changes were reverted. Establishment of Advisory Council of Islamic Ideology for Islamization of laws and institute of Islamic research was important advance towards Islamization of the constitution.

The constitution of 1973 contained more Islamic provisions than the previous two constitutions. Beside about all Islamic provisions of previous constitution, it declared Islam as state religion of Pakistan. It also mentioned that Prime Minister must be a Muslim. Oath of the president, Prime Minister of Pakistan required affirming a strong belief in unity of God (Allah), finality of the Holy Prophet Muhammad (PBUH) and his prophethood, the holy book Quran as the last of the all books and finally the Day of Justice and Judgment. Many of the concessions made of Islamic sentiments were matched by a touch of socialist flavor in the constitution of Pakistan<sup>31</sup>. On the basis of this fact Anita Weiss observed “the identity of Pakistan was Islamic but its ideology was to be socialist in nature”.<sup>32</sup>

During the period 1979-1988 (may be called Zia period) number of constitution reforms were introduced which are difficult to summarize here. Reforms were mostly punitive in character. About the constitution, most important change was that Objectives Resolution was made part of the constitution.

The *Shariat* Act 1991 is also worth mentioning here. It imposed number of legal obligations on the government in respect of Islamization of the economy, education, media, justice, social evils etc. But neither any concrete legislative measure nor any meaningful administrative step was taken in this respect.

## **15<sup>th</sup> Amendment in the Constitution of Pakistan: A Brief Introduction**

15<sup>th</sup> Amendment Bill in the Constitution of Pakistan was introduced in the National Assembly of Pakistan on 28<sup>th</sup> August 1998 and it was passed by NA on 9<sup>th</sup> October 1998 by more than two-third majority.<sup>33</sup> Bill mentioned following grounds on the basis of which amendments were being introduced:

1. The faith Islam is the state religion for the country of Pakistan.
2. Objectives Resolution (OR) has been considerably made substantive part of the Constitution of the state.
3. The spirit of Islam “Sovereignty over the whole universe belongs to Allah Almighty alone.
4. The authority which is delegated by God (Allah) to the country of Pakistan through its residents should be exercised as a sacred trust through its chosen representatives of the residents within the limits prescribed by Allah.

5. It is the responsibility of the state to facilitate the Muslims of the Pakistan, to order their lives in all of the individual and collective affairs according to the principles and commandments of Islam.
6. Islam commands the Muslims to establish a social system based on Islamic values of *Amr bil Maroofwa Nahi Anil Munkar* i.e. enjoining what is good and forbidding what is wrong.

Fifteenth Amendment Bill introduced insertion and addition of Article 2B: Supremacy of the Quran and Sunnah after Article 2A of the Constitution. Article 2B declared that the Holy Quran and the Sunnah will be the supreme law. To accommodate the difference of interpretation regarding commandments and teachings of the Quran and Sunnah, bill explained that “on the practical application of this clause of the personal law of any Muslim sect, interpretation of that sect will be applicable. Bill declared that it will be the responsibility of federal Government to take steps for enforcement and implementation of the spirit of *Shariah* to establish *Salat* and also to administer *Zakat* then to promote *Amar bil Maroof and Nahi Anil Munkar* (enjoining what is good and forbidding what is wrong), to eliminate corruption at all levels and to provide meaningful socio-economic justice according to the principles and teachings of Islam, mentioned in the Holy Quran and Sunnah. However, the bill clarified that nothing contained in the newly introduced Article shall adversely affect the religious freedom, personal law, customs, traditions and status of non-Muslim citizens. Most importantly the bill stated that the provisions of Article 2B shall have effect notwithstanding anything contained the constitution, any law or decision of the court. Bill also proposed amendment in Article 239 of the Constitution, according to which insertion of articles 3A, 3B, 3C and 3D after the clause 3 was proposed. These clauses relaxed and simplified the method of amendment in the Constitution, in the matters regarding enforcement of above mentioned Article 2B. According to original Constitution, amendment in any clause requires two third majority in both houses. But 15<sup>th</sup> Amendment proposed amendment by the simple majority, for the removal of any hurdle in “the enforcement of any matter relating to *Shariah* and the implementation of the Injunctions of Islam”. Proposed Articles 3B and 3C stated that if a bill passed by simple majority by one house is rejected or not passed by other house of the Parliament within 90 days or is passed with amendment, the matter will be decided by simple majority in the joint sitting of both houses.<sup>34</sup>

## ANALYSIS

### **15<sup>th</sup> Amendment Bill and the Process of Islamization in Pakistan**

Major question before this study is that; To what extent this amendment would have been helpful and instrumental in Islamization of the polity in Pakistan? There is no doubt that Islamic provisions in the constitution provide legal foundation to establish an Islamic polity, but it requires a subsisting will of the ruling elites to realize these provisions. Unfortunately this will and determination always lacked in the ruling elites. This question can be analyzed in the perspective of the attitude of previous rulers who frequently used Islam for their personal interests, but did not show single-mindedness to create an Islamic polity in the letter and spirit. Even Muhammad Ayub Khan who never claimed “that his system was Islamic in form and content, and who deliberately omitted reference to the nation as an Islamic Republic”<sup>35</sup> could not resist the temptation of using religion to legitimize his over-centralized system and argued that “without centralization, unity and solidarity no system can claim to be an Islamic system.”<sup>36</sup> Similarly revival of political parties in 1962 was conditioned on their adherence to Islamic ideology. In fact “it provided government with a flexible instrument for suppressing political parties”<sup>37</sup> Zulfikar Ali Bhutto who considered practical application of Islam as “obstructive” and refused to implement any recommendation of council of Islamic ideology during his tenure<sup>38</sup> introduced number of Islamic reforms in 1977 to pacify the people when movement against him was in full swing. William Richter terms these measures of Bhutto regime as “defensive Islamization” which banned horseracing and the use of alcohol and changed the weekly holiday from Sunday to Friday.<sup>39</sup> Dr. Hassan Askari Rizvi thinks that focus of Islamization drive of Gen. Zia has been regulative, punitive and extractive.<sup>40</sup> It appeared to be more concerned with the appearance than with the real spirit of Islam.<sup>41</sup> However, it considerably helped him to legitimize and perpetuate his rule. Referendum held in 1984 is specific of his attitude in which government presented voters with a choice of voting for Zia against Islam. The referendum helped him “to strengthen his hand vis-a-vis opponents and supporters alike.”<sup>42</sup> In this perspective, many people who expressed their dissatisfaction about the 15<sup>th</sup> Amendment Bill thought that that the incumbent rulers were not sincere with the cause of Islam and they would use the name of Islam to arm themselves with extraordinary dictatorial power.<sup>43</sup>

### **Addition of Article 2-B in the Constitution**

The bill suggested insertion of a new article 2-B in Pakistan's constitution, with title of 'Supremacy of the Quran and Sunnah'. In this article it has been declared that: the Quran and Sunnah shall be the supreme law of the country".

Although the Constitution already stated that none of any law can be enacted that is against Quran and Sunnah, but repugnancy clause is used in the negative sense and does not ensure the Islamization of the constitution. Even if all that is repugnant to Islam is immediately and directly outlawed, the result will not be Islam, simply because everything that is not repugnant to Quran and Sunnah is not necessarily Islam.<sup>44</sup> In this perspective, proposed article 2-B should have been made mandatory otherwise it would have no impact on the constitution. This argument is very important and has considerable credibility if it is viewed in the light of experience of addition of article 2-A in the constitution according to which "Objectives Resolution" was incorporated in the constitution. Article 2A of the Constitution has been considered various judicial cases in the Supreme Court of Pakistan and different High Courts. During the period of 1985-1993 superior courts judged various cases in the light of Objectives Resolution on the basis of the argument that "its incorporation in the constitution as the article 2A give the superior judiciary the jurisdiction to examine all matters against the benchmark of Islam"<sup>45</sup> because it is stated in the resolution that sovereignty over the whole universe belongs to Almighty Allah alone and Muslims shall be enabled to live their lives according to the principles of Islam. But Supreme Court in Hakim Khan Case declared that like article 8 about Fundamental Rights, it is not mentioned with 2A that any law or act repugnant to it will be considered as void, so it is declaratory not mandatory, so any other article cannot be judged and considered void in the light of it.<sup>46</sup>

### **15<sup>th</sup> Amendment and Relationship between Executive & Legislature**

Consultation in the matters of state is one of major characteristics of Islamic polity. Legislature i.e. Parliament representing the mechanism of consultation, holds pivotal role and position in the Islamic state. Muhammad Asad has observed that "the real eternal Shariah consists of Quran and Sunnah which is concise, clearly conveyed and relatively small in volume."<sup>47</sup> The detailed, supplementary and additional Shariah (legislation) is provided through the exercise of *ijtehad*. According to Allama Muhammad Iqbal the power and spirit of *ijtehad* in the Islamic state claims to be modern should be exercised by the elected assembly. He says "The complete

transfer of power of *Ijtehad* from individual representatives of sect to a Muslim legislative assembly or otherwise which, is the only possible with *ijma* which can take place in modern times”.<sup>48</sup>

Consultation is very important function of the parliament. In Islamic state no one has right to rule without an issue arbitrary edicts to all organs of state for compliance. Quran Says: “Consult with them upon the conduct of affairs” (3:159) Consultation can be exercised through the parliament which represents community. According to the Quran the whole community of believers is vicegerent of Allah on the earth (24:55). So there is no room for the dictatorship in a Islamic society “since” everyone is a caliph of God herein.<sup>49</sup> Being the representative of the community parliament has very important position. Due to its pivotal position in the draft Islamic constitution prepared by Research Academy of Al-Azhar (Egypt) it is stated that its function is “to exercise its surveillance over the continuous activities of the executive authority.”<sup>50</sup> But the 15<sup>th</sup> amendment place executive edict above the parliament. The bill stated that the step taken by the federal government shall have effect notwithstanding anything contained in the constitution and law. It could give enormous arbitrary power to federal government so as to establish a kind of prime ministerial despotism. Constitution of the state already states in Article 2A that the sovereignty “belongs to Almighty Allah alone” and authority will “be exercised by the people of Pakistan within limits prescribed by Him”.<sup>51</sup> So all acts of the federal government should be taken in consultation with the Parliament, which represents the people of Pakistan.

### **15<sup>th</sup> Amendment and Constitutional Structure**

It has been stated in the bill that steps taken by the federal government shall have effect notwithstanding anything contained in the constitution. Constitution is framed by the representatives of the community and the “Islamic State derives its sanction from the Islamic community.”<sup>52</sup> These words of the proposed 15<sup>th</sup> Amendment should be seen in the perspective of Hakim Khan case in the Supreme Court of Pakistan, which has made Article 2A almost ineffective. Article 2A was discussed in the *Hakim K. and Others Vs. Government of Pakistan and Others* (PLO 1992, SC 595) had decided, in the month of July 1992 on the appeal from Judgment dated January 14, 1992 of the Lahore superior Court reported as *Sakina Bibi Vs. Government of Pakistan* (PLD 1992, Lahore 99). It was directly discussed in the case whether Article 45 of the Constitution of the Pakistan empowering the President to grant in his own will, pardons., contravenes, the Injunctions of the Faith Islam and if so, could it be struck down as

against by virtue of Article 2A of the constitution of Pakistan or not? The High Court held it to be so. The Supreme Court in another case of Hakim Khan while examining both the Articles 45 & 2A accepted the required appeal against the said Judgment of the superior Court of and then observed ,that:

...in the case, if the High Court of Lahore considered that the existing provision of Article 45 of the Constitution contravened the Injunctions of faith Islam in some respects it should have brought the transgression to the notice of the Parliament, which have authority to amend the Constitution of Pakistan, and parliament could initiate remedial, or so, legislation to bring the impugned provision in conformity with the Injunctions of Islam.

Mr. Justice Nasim Hasan Shah, who was heading Bench at that time, said that a provision of the Constitution of the Pakistan cannot be tested on the touch-stone of Article 2A. Then the honorable Mr. Justice Shafiur Rehman, observed that even a law, as to its repugnancy, cannot be tested or struck down on the touchstone of Article 2A of the Constitution.<sup>53</sup>

### **15<sup>th</sup> Amendment and Federation.**

Pakistan is a federation and legislative subjects and administrative departments are divided between federal provincial governments. According to 15<sup>th</sup> amendment bill it is federal government which will take steps to enforce *Sharia*. There is no reference of provincial governments in the bill. Aziz-ud-Din Ahmad rightly felt that through this bill centre's intervention in provincial subjects would have the necessary legal cover.<sup>54</sup> An analyst questioned "Why this concentration of powers in Islamabad? Is it more Islamic than provinces."<sup>55</sup> It is on this ground that Jamaat-i-Islami proposed that it should be mentioned in the bill that both federal and provincial governments shall take steps to enforce Shariah in their own spheres of legislation and administration.<sup>56</sup>

### **15<sup>th</sup> Amendment and Sectarian Differences**

It is said in explanation to the clause 1 of the Bill that sect of a Muslim will govern the personal law applicable to him or her. This is an effort to accommodate sectarian differences in the society and create an atmosphere of understanding and tolerance between sects. Similar words have also been included in previous constitutions of Pakistan. But it is not clear that what law would be applicable to a person who does not believe in sectarian division. So in this way the bill provided

legal cover to the sectarianism. Fazul-ur-Rahman while discussing the same “explanation” in the constitutions of 1962 and 1956 argued that “It would prevent an achievement of uniformity of the law and morality of Islam in Pakistan<sup>57</sup> while Muslim argued that it means “the legislature was denied the right to introduce any change in existing sectarian positions” and “new interpretations” were not permitted.<sup>58</sup>

### **15<sup>th</sup> Amendment and Judiciary**

Judiciary in Islam occupies a very high place. An independent, speedy and efficient judiciary is absolutely compulsory for the implementation of justice in a state.<sup>59</sup> During the Prophet (PBUH)‘s life judges could accept a suit even against the very person of the Prophet (PBUH) and could try him in an open court.<sup>60</sup> The bill stated that any of provisions of article shall have effect notwithstanding any of judgments of any court of law, which means that any judgment of any court which is against the injunctions of Quran and Sunnah may be nullified by this act. While piloting the bill in the National Assembly, Nawaz Sharif stated the objective of the bill that “I want people to get justice, the process of committing excesses is to be halted, and the rights of the society are to be restored in every sense”<sup>61</sup> After approval of the bill by National Assembly of Pakistan, he told the press that “My prime aim is to end injustice In every sphere and people have given me this responsibility”<sup>62</sup> Justice is ultimate goal of the Islamic state. Quran says: We sent our messengers and revealed Book through them so as to establish justice among people (57:25). Due to the importance of the justice the constitution of first Islamic state at Madina mentioned: “God-fearing believers shall be against any who rebels or seek to spread injustice”<sup>63</sup> According to a survey “availability of justice to all is one of the most prominent indicator of Islamic state considered by ordinary citizens of the Pakistan.<sup>64</sup>But justice can only be exercised by sincere Muslim ruler. The ruler in an Islamic state must be trustworthy, reliable and fearful of Allah.

### **Conclusion**

Political life of the Prophet of Islam (PBUH) has always remained ideal for every Muslim. Holy Prophet (PBUH) established the first Islamic state in Madina with a written constitution. In this perspective, desire for establishment of Islamic state was major driving force behind the movement of Pakistan and quest for Islamic constitution was logical outcome of this aspiration. If passed by the Senate and implemented sincerely in real Islamic spirit, 15<sup>th</sup> Amendment would have been proved an instrument to create a just

society in Pakistan on the basis of Islamic principles. But the major objection against bill was that it empowered the PM to enforce or can implement what he thought, according to him, was right and he can also prohibit what he thought was wrong in according to Islam and Sunnah, without consideration of fact that what any of judgment of the court of law and the Constitution of the state said. So there were valid apprehensions that the amendment could grant dictatorial powers to the Prime Minister, which was against the democratic spirit of Islamic polity. These apprehensions could have been removed through review and rectification of the bill by the experts of Islamic law and constitutionalism.

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