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The Role of Iudiciary and the Objectives Resolution By Sardar Sher Alam Kban





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has been held inviolable and unamendable, is the dignity and freedom of the individual and his right to the enjoyment of fundamental rights which are guaranteed by the Indian Constitution. Obviously this is because Indian states' distinctive character is claimed to be that it is a secular and liberal democracy. Keeping in mind this approach, it may be noted that in communist and socialist States, their basic values, norms and principles are derived from communist and socialist philosophy respectively.

Therefore in such States no law can be passed which violates their respective basic philosophy. Same applies to the state of Israel which is based on the philosophy of Zionism. In contrast Pakistan is avowedly an Islamic democracy. This is borne out by the scheme of the Constitution as a whole even before insertion of Article 2 : A. For instance the constitution lays down that Pakistan is to be an Islamic Republic of Pakistan; Islam is to be its state religion; all its legislators including Prime Minister and his Cabinet members and Chief Ministers and their cabinet members can be disqualified under Article 62, 63 and 113, if they are not practicing Muslims, and all of them undertake to uphold the Ideology of Islam by their respective oaths under Schedule 3 of the Constitution. Furthermore its President and the Prime Minister must be Muslims. The constitution requires that all laws have to be brought in conformity with Islamic injunctions. Over and above all this the objectives resolution has been made a substantive part of the constitution by means of Article 2 - A.

- In this background and context, the crucial question may now be posed is Article 2 - A amendable? to answer this question, we will have to examine in depth the history and significance of Article 2 - A. It may by somewhat taxing for the patience, but all the same it is necessary to distitl truth from the tangled and confusing maze of facts.
case it was held that parliament could not amend part III of the Indian Constitution that relates to fundamental rights. In Kasevanada's case it was held that the dignity and freedom of the individual was of supreme importance and could not by any form of amendment be destroyed.

The above noted Indian authorities were relied upon with approval in a number decisions by Pakistan's higher judiciary. Applying the principle of Indian authorities to Pakistan's circumstances, the Lahore High Court pronounced following enunciation in ${ }^{14}$ Darvesh M. Arbey case: "The legislature in the circumstances cannot amend the constitution in any manner, so as to make it un-Islmic, Article 2, declaring Islam to be the state religion of Pakistan cannot be deleted by any amendment under Article $238^{n}$. It was further held therein that "In view of the objectives resolution which is enshrined in every constitution framed in this country one after the other, the fetters are there on the part of the legislation by the Parliament". Interestingly enough this view was expressed before the Objectives Resolution had been incorporated as a substantive provision in the constitution. Similarly in ${ }^{15}$ Jehangir Iqbal Khan's case it was held by Peshawar High Court that legislature could amend or modify any part of the Constitution short of complete abrogation of the fundamental of the Constitution. The Supreme Court of Pakistan has also adopted this line of reasoning as is evident from the following pronouncements of the Supreme Court in 16 Asma Jillani's case. "Our Grundnorms are derived from our Islamic faith". It was further stated therein "that the state of Pakistan was created in perpetuity based on Islamic Ideology and has to be run and governed on all the basic norms of that Ideology, unless the body politic of Pakistan as a whole, God forbid, is reconstituted on an un-Islamic pattern, which will of course mean total destruction of its original concept".

In India, we can see, the basic value or principle which

[^0]Article $2-\mathrm{A}$, has to be taken as the most fundamental and pre-eminent provision of Pakistan's Constitution. In the main I will rely on following five arguments which will be explained and elucidated ad seriatim.

1. Article 2-A is not amendable therefore it cannot be put on the same level with other constitutional provisions like Article 45.
2. Article 2-A, became a part of the constitution later than other provisions like Article 45, therefore it should have precedence over them.
3. Violation of Article 2-A involves violation of oaths under Schedule 3 of the Constitution.
4. The impact of the principle in Heyden's case.
5. The subject matter of Article itself reveals ground of superiority. Article 2-A is the only provision dealing with the question of authority, therefore it has been given very special status.

## NON - AMENDABILITY OF ARTICLE 2-A:

Every nation or organized human concourse has its own public philosophy, its own basic set of values and principles which serve as a foundation for a particular nation's identity and distinction. These elements represent the living spirit in an inanimate body, when the spirit is gone, what remains is a senseless junk. Recently the Supreme Court of India, bearing this in mind held in ${ }^{12}$ Goalknath's case and in ${ }^{13} \mathrm{Kasevananda}$ V. Kerala case that constitutional provisions. related to such principles and values cannot be subjected a amendment at atl. Of course this conclusion was reenforced with purely formal argument also. According to this argument the dictionary meaning of the word "amend" includes and implies only minor changes which leave the overall character and basic structure intact. In Golaknath's

[^1]Court, the Supreme Court of Pakistan has been explicity and specifically assigned by the constitution itself in Article 187 (1) the task of doing not only Justice, but complete Justice in any matter before it.

It stands to reason, therefore that responsibilities of higher judiciary should also be commensurate with the extraordinary privilege and power with which it has been endowed. It is vital also that the court should be fully alive to this aspect of the matter, while deciding issues similar to those involved in Hakim Khan's case. In this context a remark by ${ }^{11}$ George Mason comes to mind, which he made at the Federal Convention for American Constitution on 21st June, 1787. Justifying the powers of the judiciary he said, "Judges are in the habit of considering laws in their true principles behind the law and all consequences should always be the abiding concern of the judges. They should realise that formula adopted in Hakim Khan's case heads to consequences which can be tolerated if at all only under extreme compulsion of necessity when no other course whatsoever is at all only under extreme compulsion of necessity when no other course whatsoever is at all available. The court should not become a party to process which might in all probability perpetuate a situation of confusion, deadlock, and suspense of doubtful legality. The muddle is aggravated still further when we find for reasons to be explained later in the article a provision like Article 2-A cannot be amended at all.

The aim of the discussion upto this stage has been to demonstrate that if we go by the assumption made by the Supreme Court that Article 2. A is equal in weight and status to other constitutional provisions, we are led to consequences that are either absurd or totally unacceptable. Now I will take the positive side of my argument. Henceforth my endeavour would be to establish by strict legal principles and recognised canons of interpretation that
vote of the other house can kill the amendment.
For us, due to similarity of relevant constitutional features American experience is more instructive and germane. It has been said there by experts of American Constitutional History that there is "no judicial decision apart from the utterly unacceptable that cannot find small minority able to block most attempts at amendment. Without War and the rigours of reconstruction ${ }^{10}$ Dred Scot case would never have been over-turned by amendment". It has been further noted by them that "It took only a small minority, for example, repeatedly to defeat all attempts to overturn judicial support for child labour by constitutional amendment". Thus the national will can be reversed by the court, and the reversal can be kept in force simply by small sympathetic minority. It can be seen that the judiciary has quite extra ordinary privilege and power in a situation like this. Amazingly enough when the Supreme Court has delivered its final judgment on a constitutional question even a considerable majority of the national will is quite powerless to reverse the effects of such a judgment. But only a few judges of the Supreme Court itself can achieve the same required result merely by reversing their earlier judgment. Undoubtedly this situation is parallel to American constitution. Observing this unusual status of the Supreme Court American constitutional experts have expressed the following view "We say that the congress makes the law and the President enforces it. Yet the people allow nine men indeed, five out of nine - to say that a law passed by the congress and the President is no law, and nobody needs to obey it ...... While inferior courts must be courts of law the highest of all should be court of justice .... A court of justice must say, "this is just, and if it cannot do so because of the law, it must strike down the law". Here it is important to observe that our Supreme Court has been entrusted with vaster powers. In contra distinction to American Supreme
lawful exercise of authority. But it was held in Entech Vs. Carrington, the exercise of the Government authority effecting individual interest must rest on legitimate foundation. If this is not done, there will be a progressive trend towards the exercise of arbitrary powers and erosion of general confidence in law.

Let us probe still further the implications of the Supreme Court verdict. In order to negotiate the matter involved in Hakim Khan's case, it has applied a convenient formula. It has left the real issue which is basic to the decision of the case and is undoubtedly of fundamental constitutional importance in an unsettled state of deadlock, and passed the buck to the parliament. It has done so with the pious hope that some day, in the interest of justice and legality, the parliament will come to the aid of the aggrieved citizen. But the snag here is that parliament is not bound to follow the recommendations of the Supreme Court nor is there any guarantee when and if ever the parliament will fulfil the remedial role expected of it in this behalf by the Supreme Court.

Further, in Pakistan even for parliament the matter is not so simple and straightforward. It is different in a country like England where parliament is not controlled by any written constitution. For instance, the British Parliament can amend, annul or repeal extremely fundamental legislations like the Bill of Rights with the same case as is involved in case of very ordinary legislations like Prevention of Damage by Pests Act, because same simple procedure is applicable to both of them. However, it is a different ball game in Pakistan where we have written constitution, laying down a special and rigid procedure for the amendment of the constitution. Here in order to pass an amendment in the constitution, two third majority of each house of parliament separately is required under Article 239. This means that even if the entire voting strength of one house were to vote in favour of the amendment just one third plus one more

If the court interferes it would automatically mean giving ascendancy to Article 2-A and refusing effect to Article 45. On the other hand if it refuses to interfere that would similarly mean giving ascendancy to Article 45 and refusing effect to Article 2 - A. There is no escape. The issue cannot be dodged. It is a semantic impossibility. In this either /.or situation the court confronts a classic case of Hobson's choice.
leaving the matter for the parliament and taking none-of-court's business attitude is, therefore, hardly a genuine solution. Non-action in a case like this, has all the positive attributes and features of action. What is more questionable, is that a situation of doubtful legality is allowed to continue which might well perpetuate itself. In the meantime, the question might legitimately be asked what happens to the poor aggrieved citizen who has been dished out solemn guarantees in Article 4 of the Constitution that he has the inalienable right to enjoy the protection of law and to be treated according to law? Similarly his rights under Article 25 are trampled. Furthermore consistency would demand that on subsequent occasions also whenever action under Article 45 is challenged on the basis of Article 2-A the court should return similar verdict as in Hakim Khan's case, otherwise the decisions of the court would become so arbitrary that they would not be justifiable on the baiss of any reasonable explanation or principle. The result is that Article 2-A would stand struck down viz a viz Article 45 as consistent denial of effect to a particular provision by courts is indistinguishable for all practical purposes from its being struck down. It was held in ${ }^{9} \mathrm{Aziz} \mathrm{A}$. Sheikh case giving effect should mean enforceability through court. As such when enforceability through courts is absent then for all intents and purposes the contents of such a provision are stripped of any existence in any practical sense. In a situation like this, the constitution is removed as a frame of reference for the

Council of Islamic Ideology under Article 230.
The second consequence of parity assumption regarding constitutional provisions is to say the lest rather paralysing and enigmatic. This follows from the fact that whenever there is a situation of repugnancy, the court gets tangled up in circumstances where it is impossible for it, to take any satisfactory decision. Following analysis will make this clear. For example, if two constitutional provisions are repugnant but absolutely equal in all respects, then by logical inference, no doubt it is the intention of the constitution itself that any one provision may not be preferred over the other. If on the other hand, the constitution had intended, preference for any one provision then the relevant provisions would not be equal. This is because preference between equals can only be arbitrary. In these circumstances the Supreme Court was quite right in holding that since the court was itself the creature of the constitution, therefore it had to follow the constitution faithfully working under it, rather than against it by striking down or otherwise effecting any constitutional provision arbitrarily, this I must say is rigorously correct position in law, and the principle that underlies this attitude is perfectly sound.

But it so happens that the court is stuck in a muddle here and it cannot avoid what it sincerely wants to avoid affecting constitutional provisions arbitrarily. This is due to the inexorable logic of the repugnancy situation. To illustrate this let us take the relevant two repugnant provisions Article 45 and Article 2 - A. We know that Article 45 empowers the President of Pakistan to do certain things. Now, as long as Article 45 is a part of the constitution, in the absence of any legal bar or binding judicial precedent to prevent the President, he can legitimately go on taking action under Article 45 and thus effect the rights of different citizens both favourable and unfavourably. Whenever such an action of the President is challenged, the court has choice between two possibilities only. It can interfere or refuse to interfere.
explicitly stated to be merely declaratory (vide Article 30) having no force of law. Similarly Islamic provisions of Part IX can only be giver effect to through advisory jurisdiction of Council of Islamic Ideology vide Article 227 (2). In other words these provisions are also merely declaratory. In contradistinction to this, in case of Article 2 - A, the constitution - makers have taken extraordinary and abundant care to state that this provision shall be given effect to. There is in fact a simple proposition which is more to the point and helpful in a situation like this. According to this proposition, whenever two or more provisions overlap or cover the same ground with the same purpose and object in mind (bringing laws in conformity with Islamic injunctions in the present case), the presumption of law is that the latest provision must have intended some improvement. The improvement can be widening of the purview and scope of action or introduction of more effective provision than the previous ones. If any such improvement can in fact be discovered then it would, without any doubt represent the will and intention of the law maker. In the present reference Article 2A does both these things. It widens the scope of Islamisation which was previously limited to the jurisdiction under Article 203 D read with Article $203 \mathrm{~B}(\mathrm{c})$ to include within its scope mattes excluded from it by Article $203 \mathrm{~B}(\mathrm{c})$, and it makes Article 227 more effective by replacing the recommendatory and advisory procedure contemplated by Article 227(2) read with Article 230, with effective adjudicatory procedure.

The practical effect of this interpretation could be that the bars contained in Article 227(2) and in Article 203 B(c) would melt away. The net effect would be that the jurisdiction of Federal Shariat Court would remain confined to matter indicated in Article $203 \mathrm{~B}(\mathrm{c})$ but after insertion of Article 2 - A matters excluded by Article 203 B (c) would now fall under the ordinary jurisdiction of the court under Article 2 - A. At the same time no interference will be caused to the advisory and recommendatory jurisdiction of
except those relating to constitution, Muslim personal law / procedural law, fall within the exclusive jurisdiction of Federal Shariat Court. Whatever is excluded by Article 203 $B(c)$ is entirely covered by Article 227 and in this field all matters are in the exclusive jurisdiction of Council of Islamic Ideology contemplated by Article 230. That all these matters are in the exclusive jurisdiction of the council of Islamic Ideology is ensured by word "only" occurring in Article 227(2) of the Constitution. Due to explicit bars of jurisdiction, contained in Article 203 G read with Article 203 B(c) and Article 227(2) nothing is left over to which Article 2 - A can have relevance or applicability. Clearly in this view of the matter, Article 2-A is reduced to the level of principles of policy or Islamic provisions of Chapter IX of the Constitution, because all of them are substantive provisions of the Constitution and all are equally unenforceable. In these circumstances one might ask what can be the meaning of the insertion of Article 2-A in the Constitution? In fact, the act of insertion would look like a practical joke. Particularly, when we keep in mind that the Constitution had to be amended for this purpose which due to rigidity of procedure requires quite' extraordinary effort. Such an effort would have to be described as a costly much-ado-ablut-nothing an exercise in futility, a sound and fury signifying nothing, or just an outburst of pious but meaningless sentimentality. Another question that arises is why put the contents of the objectives resolution in the substantive part of the constitution if it is to be merely declaratory, when they are already there and retained in the preamble of the constitution also? This would be merely duplication without having justification or purpose or sense.

Plainly this view of the matter is totally unacceptable. It is reductio at absurdum. Most of all, one must bear in mind the extraordinary contrast in the way provisions of Article 2 A on the one hand and provisions of principles of policy and provisions of part IX have been drafted. The principles of policy and Islamic provisions contained in part IX have been
matter, for the present purposes this aspect of the matter is beside the point. The Supreme Court assuming the repugnancy to exist, held that whenever, tow constitutional provisions are found to be repugnant, the court's duty is to read the constitution as a whole, and try to hormonise these provisions, if possible according to well known canons of interpretation. If this is found impossible, the court itself, being a creature of the consitution is helpless. All constitutional provisions must be taken as equal in weight and status unless the constitution itself indicates that some provision is to be preferred over others. Where there is no such indication all that the court can do is to draw the attention of the parliament to the matter, who can then resolve the conflict through suitable amendment in the constitution.

The central hypothesis that unlerlies the verdict of the Supreme Court in Hakim Knan's case is that all constitutional provisions are of equal weight and status, and if they conflict inter se, the court cannot touch any of them. The question arises, is this posture of strict neutrality between provisions possible? Would it not lead to consequences that are absurd and unacceptable? Let us see what happens when such a posture is adopted with reference to Article 2-A. Immediately the first consequence is that the Article 2 - $\mathbf{A}$ is reduced to the level of principles of policy in the constitution provisions of part IX of the constitution. This fact is recognised by judgment of Supreme Court in Hakim Khan's case.

The aim and purport of Article $2-\mathrm{A}$ is to ensure that all laws must be implemented in such a way that they are brought in conformity with the injunctions of Islam, as they must be confined within the Nmite prescribed by Allah. However, in aetual fact.we find that thedeld in which Article 2 - $\mathbf{A}$ is to operate is already fully ucciupied by pre-existing provisions. For the purpose of testing ba the touchstone of Islamic injunctions,' according to Article 203 B(c) all laws
in the context of one country, that has ever taken place in Islamic history. "Ijma", we must remember is the third source of Islamic Law. Therefore Objectives Resolution has inherent legal sanction of its own that is embedded in Islamic Shariah. This aspect of the Objectives Resolution is highly significant and can be lost sight of only at the peril of falling in serious error and misconception.

This is the background in which Article 2-A was inserted into the constitution. The idea obviously was to make the Objectives Resolution a substantive part of the constitution also, and thus remove the technical shortcoming pointed out in the Zia-ur-Rehman case. Even in the case under discussion, that is Hakim Khan's case, the Supreme Court has expounded the proposition that the observations of Supreme Court in Zia-ur-Rehman's case are open to different interpretations. One of the intepretations according to Supreme Court view is that, "8 In case the Objectives Resolution got incorporated in the constitution and became its substantive part, it, then could control the other provisions of the constitution. "In my submissions to be presented hereinafter it will be my humble endeavour to establish that considering the peculiar circumstances of the adoption of the Objectives Resolution as a substantive provision of the constitution, and history of Pakistan struggle and peculiarities of its constitutional evolution, this in fact is the only possible interpretation which any reasonable person can adopt.

This is the backdrop and factual setting which is integrally related to the issues involved in Hakim Khan's case. In that case the President of Pakistan had exercised his powers of pardon, commutation of sentence etc. under Article 45 of the Constitution, which was challenged on the ground of repugnancy to Article 2 - A. The court did not go into the question whether the supposed repugnancy actually existed. Although much can be said on this aspect of the

[^2]Supreme Court came to the view that the objectives resolution had been made a part of the preamble only, which is not a substantive part of the constitution. The Supreme Court held therein that, "Constitution consists of the substantive provisions thereof and it cannot be controlled by its preamble or even the objectives resolution if any, adopted by the peoplen. In other words despite tremendous importance of the objectives resolution for the polity of Pakistan, on the narrow technical considerations, it was found legally unenforceable.

Later on, in Nusrat Bhutto case, the Supreme Court once again emphasised the vital significance of the objectives resolution as a meta-legal fact, notwithstanding its opinion in Zia-ur-Rehamn case. The opinion of the court as per Mr. Justice Malik Muhammad Akram was ${ }^{77}$ Moreover as observed by my Lord, the Chief Justice, ours in an ideological state of the Islamic Republic of Pakistan. Its ideology is firmly rooted in the objectives resolution with emphasis on Islamic laws and concept of morality".

The entire presentation given above constitutes an incontrovertible evidence of the fact that regarding the objectives resolution there is a complete and impressive consensus that it represents the commitment of the nation about certain ideals, goals and aspirations which must be given practical institutionalised shape in the state of Pakistan. Objectives Resolution was articulated and adopted with consensus by a representative body set up for the solemn task of giving a constitution to the country. The leading figures of the Pakistan Movement and prominent Ulema were there to take part in its adoption. Ulema of every sect have always endorsed it. Judiciary and the legal community has also consistently recognized its fundamental and pre-eminent status there, it can be said with full assurance that the Objectives Resolution represents the most complete and consistent "Ijma", of the Islamic Ummah
of Pakistan as a whole, God forbid is reconstituted on an unIslamic pattern, which will, of course, mean total destruction of its original concept. The Objectives Resolution is not just a conventional preface. It embodies the spirit and the fundamental norms of the Constitutional Concept of Pakistan". In the same case Chief Justice Hamood-urRehman in his leading judgment gave vent to following observations, "SIn any event, if a grund-norm is necessary for us I do not have to look to the Western legal theorists to discover one. Our grund-norm is enshrined in our own doctrine that the legal sovereignty over entire universe belongs to Almighty Allah alone and the authority exercisable by the people within limits prescribed by him is a sacred trust. This is an immutable and unalterable norm which was clearly accepted in the Objectives Resolution passed by the Constituent Assembly of Pakistan on the 7th of March, 1949. This resolution has been described as the corner stone of Pakistan's legal edifice and recognized even by the learned Attorney General himself as "The bond which binds the nation" and as the document from which the Constitution of Pakistan must draw its inspiration. This has not been abrogated by any one so far, nor has this been departed or deviated from by any regime military or civil."

Apparently somewhat discordant note from generally and consistently accepted view was struck in Zia-urRehman's case. The leading judgment in this case was also written by Chief Justice Mr. Justice Hamood-ur-Rehman. This in itself is a pointer to the fact that a remarkable difference of opinion from that in Asima Jillani case quoted in extenso above does not represent a change of opinion. The difference arises due to the fact that the court was required by the facts of the case to focus, for the first time, on the technical aspect of the objectives resolution regarding its constitutional status. In ${ }^{6} \mathrm{Zia}-\mathrm{ur}$-Rehman case the

Islam. In other words there existed a general consensus that Pakistan from its very inception was established as ideological or Islamic state and not as a secular state in which Muslims pre-dominated. It was in this background that Objectives Resolution 1949 was passed and thereafter in 1953 Pakistan was declared an Islamic Republic. The Grund-norm of Pakistan is enshrined in the objectives resolution which clearly says among other things that Muslims in Pakistan would be enabled individually and collectively to order their lives in accordance with teachings and requirements of Islam as set out in Quran and Sunnah. The principles contained in the Objectives Resolution have not been abrogated by any one so far, nor have they been departed or deviated from by any regime military or civil. In this context it may be noted that the preambles of three Constitutions of Pakistan (1956, 1962, 1973) incorporated the contents of the objectives resolution in one form or the other and in each case it was also laid down as principles of policy that no law should be enacted which was repugnant to the injunctions of Islam, and the existing law should be brought in conformity with such Injunctions. But such provisions were not made justiceable".

Let us see now what view the Supreme Court has delivered on this question in its judicial and authoritative capacity. In this respect Asima Jillani case is well known and truly celebrated. In that case, following view was expressed by Sajjad Ahmad Jan, J. ${ }^{44}$ Our Grund-norms are derived from our Islamic faith, which is not merely a religion but a way of life. These Grund-norms are unchangeable and are inseparable from our polity. These are epetomised in the Objectives Resolution passed by Constituent Assembly of Pakistan on 7.3. 1949". He further went on to say in his judgment, "the State of Pakistan was created in perpetuity based on Islamic ideology, and has to be run or governed on all the basic norms of that ideology, unless the body politic

19th march, 1944, while addressing meeting of Punjab Muslim Students Federation, Quaid-i-Azam said "Islam is our guide and complete code of our life. We do not want any ism, secularism, communism or national socialism". On 13th January, 1948, Quaid-i-Azam made following statement, "We did not demand Pakistan to secure a piece of land. Instead, we want a laboratory where we should be able to test the principles of Islam".

Quaid-i-Milat Liaqat Ali Khan, while delivering a speech in Chicago uttered following words" The principles I have stated are a part and parcel of Islam and we say that we want to follow Islamic way of life what we mean is that we could not possible do otherwise. These are the principles that are embodied in the concept of Pakistan when we fought for it". Then at the historic moment when the Objectives Resolution was adopted Liaqat Ali Khan addressed the following words to the First Constituent Assembly of Pakistan. "Sir, I consider it to be the most important occasion in the life of this nation, next in importance only to the achievement of independence". He, then asserted that the basis and purpose of Pakistan was to implement traditions and teachings of Islam. He went on to say in the same speech, "I would like to remind the house that the founding Father of the nation, Quaid-i-Azam gave expression to his feelings on the matter; and his vies were endorsed by the nation in unmistakable terms". Thus it may be seen that words reproduced above bear testimony not only to the view of Quaid-Milat Liaqat Ali Khan but indirectly on his authority to the view of Quaid-i-Azam also.

For further elucidation of the significance of the Objectives Resolution and a comprehensive survey of its genesis and subsequent history, I will now quote at length from an article by Justice (Retd) Dr. Javaid Iqbal "3Pakistan was established as a national homeland for the Muslims. In the eyes of the masses it had been created on the basis of
and eminently belongs to our higher judiciary.
In the context stated above the objectives resolution is in fact, the central theme. As such, it is crucial to have perfect grasp of the exact significance and historical perspective of this Resolution. This is necessary in order to determine with precision what was purported to be achieved by this Resolution, what technical and other problems effected its implementation and what is its present status after the evolutionary process it has undergone. For the purpose in hand we can do no better that to present the views of those who are most entitled to speak with authority on the subject.

First of all, let us advert to the view of the founding fathers of the Nation. In December, 1943 at Karachi Session of All India Muslim League where Quaid-i-Azam was presiding, Bahadar yar Jang addressed following words" ${ }^{2}$ The achievement of Pakistan will not be so difficult. Your Quaid-i-Azam has proclaimed more than once that Muslims have no right to frame constitution and law of any one of their states. The law governing the Constitution of Muslims are definitely laid down in the Holy Quran. There is no denying the fact that we want Pakistan for the quaranic system of the Government". In August, 1941 while addressing the students of Osmania University, Hyderabad, Quaid-i-Azam made following classic statement. "The concept of an Islamic government which should always be kept in mind is that in it one has to obey Almighty Allah faithfully. This obedience is through the injunctions and principles of the Holy Quran. In Islam the sovereign powers are not vested in a king or a parliament or any particular person or constitution. The injunctions of the Holy Quran have prescribed the limits of the political and social life. In other words, Islamic government is the rule of the Quaranic injunctions and principles. For the establishment of such government, a separate country or a state is a must". On

# THE ROLE OF JUDICIARY AND THE OBJECTIVES RESOLUTION 

By Sardar Sher Alam Khan, Advocate, Lahore

What is the role of judiciary and scope of judicial function in a federal state where judiciary is also the bulwark, guardian and expositor of the Constitution? What is the status and significance of the objectives resolution, particularly, now, when as Article 2-A. it is substantive part of the Constitution? Does it contain the Grund-norms of Pakistan which are immutable and unalterable and which define and give distinctive character to the fundamentals of Pakistan's society and State? Or alternatively is the objectives resolution just a decorative piece, a mere declaration of ideals that in actual practice and legal reality lacks adequate enforceability even after the insertion of Article 2-A in the Constitution? Furthermore is Article 2 $A$ as a constitutional provision, equal in weight and status to other constitutional provisions, or does it have highest weight and status due to manifestly higher significance of its contents? There are, as no one can deny, extremely vital questions going to the roots of our being as a nation and a State. It so happens that all these questions have been brought in a remarkable sharp and vivid focus by a recent judgment of Supreme Court of Pakistan in a case titled ${ }^{1}$ Hakim Khan Vs. The Government of Pakistan. In view of the seminal and pivotal importance of the matters involved from the national point of view, I have been unable to restrain my reaction. In what follows I am offering a comment on the above mentioned judgment. I am doing so with all humility and sobriety of purpose, remaining fully alive and conscious of the dignity and respect that rightfully




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[^0]:    14 P.I.D. 1980 lahore 206 at 263.
    15 P.L.D. 1979 Peshawar 67
    16 P.L.D. 1972 S.C 139 at 242.

[^1]:    12 Golaknath case = A.I.R. 1967 S.C. 1943.
    13 Kasevanada V. Kerala A.I.R. I973 S.C. $146=1973$ SCMR. 9

[^2]:    8 Hakim Khan case P.L.D. 1992 S.C. at 622 last line and at 612 Ayst seven lines.

