

**ISLAM**  
**AND**  
**DEMOCRACY**  
An Alternate Narrative

**MUHAMMAD ISRAR MADANI**

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**AN ALTERNATE NARRATIVE**

**BY**  
**MUHAMMAD ISRAR MADANI**



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*To Syed Azhar Hussain  
and  
Maulana Sami-ul-Haq (late)*



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## FOREWORD

On a calm evening in 1996, as the media reports on the establishment of Taliban Government in Afghanistan reached our village, people raised slogans in support of Taliban and applauded their struggle against injustice and tyranny. People raised funds for them. In adolescence I was unaware of the circumstances in which all this happened. I celebrated the success of Taliban along with others in huge gatherings and religious ceremonies. I also had a collection of the poems of Taliban (Faqir Muhammad Darwish) and listened to it with interest. The zealous speeches and the unending slogans transformed my mind. I along with other children ran around chanting “Rarwan Taliban, Rarwan Taliban” (Taliban are coming, Taliban are coming).

The 9/11 attacks changed everything overnight and the defeat of Taliban resulted in their expulsion from Kabul. For a long time after the downfall of Taliban every morning I woke up with the hope that Taliban will once again rise and will establish a state based on Islamic ideals. In 2002 I enrolled in a madrassa and spent years studying different Islamic scriptures.

In 2007 an Islamic movement rose from Islamabad’s famous Lal Masjid (Red Mosque) raising hope of an Islamic state which was lost with demise of the

Taliban. As had happened earlier, the audio recordings of jihadi message and poems from Lal Masjid became popular. It was difficult to control emotions after listening to those CDs. Soon after there was a crackdown on the leadership of the movement and a military operation was conducted against them. The operation painted an image of oppression of which pictures, videos, and stories brimmed with sorrow made me gloomy. I published a booklet on Lal Masjid's tragedy titled "*The Red Mosque Incident, What are facts?*". The book sold overnight as some other religious groups had similar resentment against the state. The book was appreciated in the circles of Jihadist organizations and gave me an opportunity to study the literature produced by Al-Qaeda, Tehreek-e-Taliban and other organizations. This study helped me challenge their narrative which always resulted in opposition but also lead to my transformation – a discussion which falls outside the bounds of this foreword.

It was quite astonishing for me that the extremist organizations enjoyed leeway over the civil society and state institutions to promote their narrative. Each organization publishes five or six periodicals, drawing the attention of every section of the society. To promote their narrative these organization made full

## FOREWORD

use of social media platforms and in this the cultural narrative of the area fell in line with the extremists' discourse.

Meanwhile Pakistan was ravaged by a deadly wave of terrorism which spared none. Schools, churches, mosques, imambargahs and holy shrines were targeted. Not only men fall prey to the suicide bombings but children and women also. There was nothing but a blood bath. The terrorist organizations used to issue statements defending the suicide bombings and the killing of innocents. They put forward justifications for such brutal acts but there was nothing to challenge their claims and narratives. On December 16, 2014 Taliban attacked the Army Public School in Peshawar killing nearly 150 children and injuring hundreds. Adding fuel to the fire the Taliban issued a statement justifying such a heart-wrenching act. It was saddening that the children were held responsible for the attack as per Taliban statement, which prompted me to start writing to counter the narrative of extremist organizations. I published some works in booklets and in religious magazines so that the religious community can negate the extremist narrative of terrorist organizations.

Analyzing the works of terrorist organizations, I

stumbled upon different narratives, the most effective of which was the *Takfir* of democracy and the revival of Caliphate, published by Al-Qaeda. The TTP was also influenced by the Al-Qaeda Literature and its leader Dr. Ayman al-Zawahiri wrote a book criticizing the constitution of Pakistan, which influenced more people to write such works. This literature was promoted in such a way that influenced the traditional schools of thought and to some degree also influenced other Muslim sects. As there is low literacy in Pakistan so the people fall prey to propagandas easily.

I have compiled most of the literature produced by extremist organizations on the topic of democracy and searched for an alternative narrative in the old traditional Islamic thought to address it. When I analyzed the critique on democracy and other secular ideologies it was astonishing that I found the answers to the many objections in the traditional Islamic thought. It came to light that Islam's traditional thought has a soft approach towards the Caliphate and exhibits a degree of moderation. It became clear that the violent extremist organizations had hijack the true Islamic narrative and use it for justifying heinous crimes.

## **Subject of the Book**

We can categorize the approaches to democracy in Pakistan and Afghanistan into three groups:

- Democracy is a pagan ideology and its stalwarts are also pagans.
- Western democracy is against *shariah* while the Democracy here is according to the Shariah.
- Secular democracy is the real system and its implementation is inevitable.

In “Islam and Democracy interrelation: An Alternative Narrative,” I have tried to address the first approach and the second approach to some extent, and present an alternative narrative. This work is based on an earlier book I wrote on “Islam, Democracy and Constitution of Pakistan,” which was extensively used in counter violent extremism trainings. The debates sparked by the book on the role of Islam in democracy, the inter-relation between the two and many other such aspects, encouraged me to take the process forward and pen down the this work and address the questions from a intellectual standpoint and not engaging with issues embroiled in politics.

Is democracy a complete system of governance? There is abundance of literature on merits and demerits of democracy which is not the subject of this book. The debate on a conflict between the religion and nation state has continued for long but it is always an adornment of the academic discussions. The idea of “*Takfir*,” that all others are “*Kaafir*” has not been the point of discussion for most of the works of this nature, which has had serious consequences and granted people an opportunity to incite an entire generation to rebel against the state. There has been no effort to promote a narrative to counter the misdirected propaganda of the extremists. The best option to counter extremism is through the formation an alternative narrative – which is the objective of this book. If we cannot do it through the strengthening of democratic systems, I am afraid we will not be in a position to peacefully establish any order to run institutions or a political government.

I hope that this book will help promote an understanding of the relationship between religion and democracy and add to the knowledge of the readers.

**Muhammad Israr Madani**

## **SECTION I**

# **RIVALRY: IDEOLOGICAL OR HISTORICAL?**



- Ideological Rivalry
- Anti-Democracy sentiment is rooted in history, not in religion
- Ottoman ruler dethroned for his accommodation of Western system
- Traditional Approach towards Constitution
- Democracy and Islamic concept of consultation

## **Ideological Rivalry**

It was during the colonial era that the Muslim world became apprehensive of democracy and democratic values. Their mistrust persists and it assumed new dimensions with time. These concerns about administration and status in society have, with passage of time, transformed into ideological battle which has divided the world into two ideological camps: democracy and democratic values on the one hand, and Islamic political system and its standards on the other. This battle has assumed foundational importance to such an extent that in the case of the Muslim world, for instance, whenever an attempt is made to identify the root-cause and reasons for unrest and decline in Muslim society, it is only the political system that draws attention and the Western values and governance systems that are held responsible for the malaise.

In Pakistan, the state and society find themselves at the throes of this battle, and face the consequences of the heated debate. Popular fascination with the political system in Islam and acceptance of political parties that championed it along with the Afghan struggle against foreign occupation and rise, thereafter, of armed resistance movements have all affected Pakistani society immensely. The post-9/11 era, made the situation even more complicated.

American and Western intervention and intrusion in the region in the two post-9/11 decades is mostly viewed through the lens of democracy and its avowed values. This gave an impression as if democracy is against Islam - because the West that champion democracy has hegemonic intrusive designs against the Muslim world that wants to uphold Islam and its values in modern times.

Muslim countries' relations with Western nations, political and financial dealings, are all seen through the same lens. Fixation with political challenges along with the ideological twist has resulted in negligence towards other issues - or even the real issues that cause these problems. Moral view and principled-yet-accommodative approach have all been neglected to a very dangerous extent. Now, we live in a make-belief world where it is sufficient for self-consolation and ideological, though unrealistic, contentment that though we are down-trodden, we have our own distinct view of life and its requisite values. Rather, our decline is due to the Western conspiracies and hegemonic designs that aim to destroy our system and values.

It is true that Islamic culture and civilization have distinct values; they are a gift of God that provides

guidance to all people. This does not mean, however, that there should be an ideological animosity and that too to such an extent as would deny benefit from human experience in political evolution, and modern developments in the matters of state and governance. Rejection and non-acceptance of developments in these areas, which *Shari'ah* never forbid to experiment, adopt and benefit from, has only been detrimental to Muslims and their society. This ideological rivalry (going to the extent of animosity) has held the Muslim world back, the growth of armed movements and rise of extremist tendencies have created more questions than answers it had provided for various contemporary problems. Even political parties that championed the cause of armed movements, made use of unrest and extremist sentiments, and talked of the need of a revolution, have failed to solve the problems of Muslim countries and their masses. Instead, they have pushed them into a sort of isolation.

In the meanwhile, the stance and viewpoints about armed struggle have undergone many changes, and at times producing conflicting approaches. A welcome development is that the positions are not as hardened as they once used to be. This came about as a majority of the Muslim world, which never prescribed to

extremist views started to further distance itself from those espousing such views as they failed to bring about the promised benefits to the society at large.<sup>1</sup>

Though post-9/11 era witnessed the emergence of a number of new extremist groups, they failed to gain wider support and acceptance from the general public.

### **Ideological Rivalry and Democracy**

The phase of total rejection of democracy has now entered a defining moment in the Muslim world. With room to discuss the pros and cons of extremist tendencies, the need is to discuss the concept of practice of democracy boldly and openly.

Democracy is still considered a "suspect" agent to bring about ruins in the Muslim countries and societies. While the modern concepts and the way they are applied might provide reasons for suspicion and apprehensions, the need for the religious people is to overcome their negative thoughts, come to terms with modern systems of governance and nation-building, appreciate emerging trends with the aim to find a practical, realistic and decent way of interaction and mutual benefit with the Western world. They

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<sup>1</sup>Muhamad Nur Mustafa, *Democracy...*, 1983, p 493.

need not accept each and every thing that is Western, yet they can still appreciate and benefit from the framework and function of the modern system, along with identifying the areas of common interest and understanding.

Instead of looking at democracy through an ideological lens, there is a need to alter the very nature of this debate. This is required as it helps manage the sensitivity that inevitably takes over an ideologically-tilted discourse.

Any change or improvement in the state system and its governance is possible only when there is no emotional or ideological sensitivity to block the way for open discussion. Religious and cultural values are important and need to be observed, but this does not mean giving way to emotional exploitation. Religion and religious values do not deny the need for development of models for governance and administration of state. If this religiously-sanctioned space is not hijacked by the emotional exploitation, the Muslim society can benefit and progress in the right direction.

If the debate continues with the ongoing ideological strings attached to it, the society will not be able to embark upon the path of reform and development,

progress and growth, in spite of the prevailing unrest, unease and anxiety. Ideological strings will only perpetuate the stagnation, whereas the need is to remove the confusion created by ideological rhetoric.

Any initiative to discuss and debate the phenomena of democracy, along with its manifestations in different regions through history, would be a human undertaking - a humbling factor for all the concerned and interested parties. It needs to ensure that it would not hurt a people's religious, cultural and civilizational identity and distinctions. Attempts to color the debate with ideological rhetoric and misgivings would only complicate the situation where even the main problems having nothing to do with politics and political system, directly or indirectly, would get worse with passage of time. Continuing a debate in such a scenario might keep some people busy, it would not produce solution to longstanding problems.

### **Democracy and Islam debate**

An Arab thinker, Fahmi Huwaidi<sup>2</sup>, says that "double

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<sup>2</sup>**Fahmi Huwaidi** (b. 1937) is an Egyptian columnist and a "moderate Islamist", he writes for *Al-Jazeera* and the Egyptian opposition newspaper *Al-Dustour*. He has been called "probably the most widely read Islamic political analyst". See: [https://en.wikipedia.org/wiki/Fahmi\\_Huwaidi#cite\\_note-3](https://en.wikipedia.org/wiki/Fahmi_Huwaidi#cite_note-3). Accessed on 5/25/2021.

disservice" to Islam is done in discussions on political system in Muslim societies: First, when an attempt is made to compare Islam with democracy, or vice versa; and second, when it is held that democracy is against Islam. Neither a comparison between Islam and democracy, nor the conclusion that they are two parallel systems is warranted.<sup>3</sup> It is not a "never the twain shall meet" situation. Islam is set of teachings that provide Allah's guidance to people of all times and climes - shaping individual life as well as raising human society on moral and value-based foundation for the welfare and benefit of humanity at large. Democracy just provides a framework to come up with a model or models for administration and governance of state according to the urgent needs of the time. This can be done by not only ensuring the distinctions of a religious or cultural entity, but rather getting help from their struggle for identical aims.

### **Anti-Democracy sentiment is rooted in history, not in religion**

As Fahmi Huwaidi says, Muslims' apprehensions, confusion and hostility towards democracy has its roots in history, rather than in religion. The reasons

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<sup>3</sup>Fahmi Huwaidi, Islam and Democracy, Cairo, al-Ahram Center, p 97.



are historical not religious. For instance, it was Crusades and onslaught of so-called Western nations on Muslim lands that sowed the seeds of suspicion and animosity in the minds of Muslim masses. Crusades were followed by a long period of Western colonization of Muslim countries. A few Western colonial powers grabbed and ruled over a vast chunk of Muslim lands, subjugated their people, and pilfered their resources.

In Western colonial rule and domination, there has never been a period of peaceful coexistence and mutual understanding. In the absence of memories of peaceful relations and mutual accommodation, it is quite natural for apprehensions and suspicions to grow only to reinforce the notion that the West is a separate, alien entity and that the Western world does not want Muslims to live in peace.<sup>4</sup>

### **Ottoman ruler dethroned for his accommodation of Western system**

Apprehensions and suspicions about the Western system of state and governance are nothing new. For instance, a Muslim ruler, Ottoman Caliph Saleem III<sup>5</sup>

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<sup>4</sup>Fahmi Huwaidi, *Islam and Democracy*, Cairo, al-Ahram Center, p 139.

<sup>5</sup>**Selim III** was the king of the Ottoman Empire from 1789 to 1807.

(1761 – 1808), was forced to relinquish power in 1807, after Mufti Ataullah had issued a *fatwa* (decree) that the Caliph appreciated the Western political system and was incorporating some of its values in matters of Muslim state and governance. Since the Western system is based on *Kufr* (disbelief), Caliph Saleem III's approach and actions are against the interests of Caliphate and Muslims.<sup>6</sup>

This fatwa led to the removal of the Caliph though none of his steps amounted to wholly accepting the Western model; nor were any large-scale changes ever planned. The actions he took mainly concerned military matters with a view to raise a strong army by using and benefiting from the modern administrative system. Now, after 200 years, no religious scholar or leader can think of prohibiting the use of Western administrative systems and equipment in light of their religious learning.

It also shows, and serves to substantiate the earlier argument that allowing heightened sensitivity to assume ideological and religious dimensions in addition to its historical reasons is a major factor in establishing mutual understanding and mutually-

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<sup>6</sup>Fahmi Huwaidi, *Qur'an and...*, Beirut, Dar-ul-Kitab al-Arabi, p 65.

beneficial relations.

### **Traditional Approach towards Constitution**

There were times when terms such as democracy, constitution and the like were categorically considered against *Shari'ah*. This has subsided, though, with the passage of time. While there is a dearth of strong voices in favor of these concepts, the rhetoric against them has also lost much of its thunder. This all shows that the issue of Islam and democracy is not rooted in religious understanding, and that it should not be made vulnerable to over-sensitivity as it has been at different intervals of time.

### **Democracy and Islamic concept of consultation**

A renowned contemporary Egypt-origin Islamic scholar Dr. Yusuf al-Qaradhawi says that during his stint at a university and Algeria students used to ask if democracy was *Kufr*? Is it against Islam? Is it intrinsically opposed to Islam and its way of life? His response could be summed up, in essence: To hold that democracy is *Kufr* betrays lack of understanding of the phenomenon as well as lack of learning in Islamic *Shari'ah*. It is possible to differ with some notions and details of democracy. This is quite warranted. But to hold that it is *Kufr* is wrong - partly

because it is not a system that runs parallel to Islam. Dr. Qaradhawi goes on to say that "There is no much difference between the spirit of democracy and the concept of consultation in Islam."<sup>7</sup>

It would be useful to go through his fatwa (edict) in this regard. Some excerpts from it are:

1. It saddens me that confusion is created to such an extent that some religious figures make a mess of the concept of right and wrong. The way the question is asked shows that leveling baseless accusations about committing *Kufr* and corruption of ideas is taken very lightly. It is strange that some people declare democracy as *Kufr* though they have no in-depth knowledge about this system.
2. Regarding a definition of democracy, he says that:
3. Irrespective of pure academic definition of democracy, it can be understood as a system where people elect their own ruler, they can keep him away from power in case they dislike him, can hold him accountable, and can remove him from power if he deviates from the prescribed path. It is still possible for people to avoid in a democratic setup those financial and social features that they do not like. For

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<sup>7</sup>Yusuf al-Qaradhawi, *Contemporary Fatawa (edicts and decrees)*, Cairo, Dar-ul-Wafa, p 636.

democracy to flourish, administrative measures are devised that include elections, referendum, respect for the majority opinion, and diversity of political parties. Minorities also enjoy rights and express their views freely. Media freedom is also ensured and political pressure on judiciary is rejected. This is a simple and real definition of democracy.

4. The ruler represents the people, and people have the right to dismiss him when they feel he is not truly representing them.
5. Islam had already enunciated the values, rules and principles which democracy stood to champion much later on. Laying out the framework and articulating guiding principles, Islam left it to people to decide about details according to the requirements of changing time and clime.
6. It is an achievement of democracy that after a long struggle against oppressive and cruel rulers it devised a system where public interest is taken care of. People are free to follow whatever system and method of governance they like. If they find a system that is better than democracy, they are free to choose it. However, in the absence of such a system, there should be no harm in benefiting from democratic values to ensure justice and fair-play, consultation,

respect of human rights, and the right to struggle against tyrants' rule.

7. There is no such thing in *Shari'ah* that forbids Muslims from interaction with and benefiting from non-Muslims. The life of the Prophet (PBUH) itself shows the way to dealing with non-Muslims. At the famous Battle of the Trench, the Prophet (PBUH) adopted Persian defense strategy when he decided for digging and preparing a big trench in order to protect and safeguard the city from enemy's onslaught. After the Battle of Badar, non-Muslim prisoners were freed in exchange of teaching Muslim children to read and write.
8. It is wrong to say that the democratic concept of people's rule over people runs against the Islamic concept of Allah's rule. Call to democracy does not mean that people are required to reject Allah's guidance. Those who stand for democracy never think it as a goal target of democracy. To them, democracy means freedom from oppression and tyranny. It is even explicitly put in plain words in the constitution of Muslim countries that Allah is the Real Ruler, that sovereignty and absolute authority belongs to Him only. Therefore, it is necessary to refrain from leveling baseless allegations of *Kufr* and sinfulness against those who champion the cause and values of democracy.



## **SECTION II**

# **DEMOCRACY AND MUSLIM HISTORY**



- Evolution of Political System
- Islam and Political Power
- Imam Malik and Constitution
- Modern Concepts of State and Citizenship
- Treaty of Madina and Social Contract
- Removal of tyranny and dictatorship
- Qur'anic Approach towards Justice
- Democracy is anti-thesis to tyranny and dictatorship
- Importance of public opinion in government formation
- Principle of Majority Opinion
- Muslim Jurists on Majority opinion

**D**EMOCRACY simply means respecting majority opinion in collective, public matters, which is a practical way of conducting day to day administration. The Qur'anic ruling "whose affairs (are determined by) consultation among themselves"<sup>8</sup> enjoins that Muslims should conduct public matters with mutual consultation. This ruling makes it clear that consultation should not be just a formality - a ritual to serve as facade for the system - but it should be real. Decisions would be made after obtaining public opinion; consultation would not be limited or restricted to certain individuals or a group of individuals, rather, all people would enjoy equal right to participate in decision making. This is the essence, *summum bonum*, of democracy.

Islamic principle of "mutual consultation" makes it clear that ruler's election, resignation, and removal, along with other public matters, should reflect the views and aspirations of the people.<sup>9</sup> This was the guiding principle during the era of the Righteous Caliphate and all the Rightly-guided Caliphs were chosen by the people as their rulers.

Let's dive a bit deeper to see how democratic values have been manifested during the Islamic history. It would show that there is nothing in Islam that stops

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<sup>8</sup>Qur'an, Surah Shura, 38.

<sup>9</sup>Fahmi Huwaidi, al-Qur'an wa al-Sultan, Beirut, Dar-ul-Shurooq, p 20.

us from undertaking the development of new political systems; nor does Muslim history ever appear as negating the idea.

### **Evolution of Political System**

No system comes into being "from nowhere" all of a sudden. It is through human experimentation and innovation that systems are developed.

When the Prophet (PBUH) settled in Madina, he introduced Islamic values in place of the customs and practices in vogue at that time. His approach was gradual, whereas the administrative setup remained almost the same. Wherever changes were made, it was done with consultation, on the basis of human experience.

The system after the Rightly-Guided Caliphs too was a product of experiments during different periods of time for the administration of state and government. While it had many Islamic features, the post-Caliphate rule of monarchs reflected evolution and developments in systems of governance.<sup>10</sup> As the contemporary modern system has changed so much owing to progress in the fields of science, economics,

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<sup>10</sup>Muhammad Hussein, *Islam and Western Civilization*, 1993, p 128.

politics etc, it is imperative to change our system of state and society in conformity with Islamic values.

### **Islam and Political Power**

Islam gives us values and guides how to uphold them in different situations, but it does not prescribe specific structures or models in order for us to be able to devise systems according to the needs of varying times. Not deciding the specifics to be just followed and imitated, but allowing for development around its norms and values is the beauty of Islam. God created this world and it changes as He wills. Evolution happens when and as He wishes. His instructions to explore the universe imply that we ought to evolve and respond to the requirements of evolution and development around us. Denying the requirements of the time and rejecting the modern tools go against the divine scheme. As Muslim, it is imperative on us to respond to the evolution of systems while remaining firmly ground in Islamic values.

### **Imam Malik and Constitution**

Abbasid Caliph Mansur offered Imam Malik to declare the Imam's famous book *Muatta* as the constitution for the entire Muslim empire. The Imam stopped him from doing so on the ground that he did not consider his own word as final. He did not rule out

the possibility of making mistakes himself.<sup>11</sup> Moreover, an individual's work cannot practically enjoy universal application. It is collective discourse, consultation and struggle that gives shape to a constitution - which itself keeps changing.

Imam Malik once pointed to the grave of the Prophet (PBUH) and declared that everyone's opinion could be rejected except that of the man of "this grave". With the exception of the Prophet, everybody else's view or opinion runs the risk of being wrong or mistaken. This is because truth is not something static, inert or motionless, but a living phenomenon. Application of any of its commands or demands, principles and values, keeps in view the existing situation. This must also be kept in view in the development of Islamic political system.

### **Modern Concepts of State and Citizenship**

State and its citizenship are modern political terms. We do not find such terms that convey the meaning of citizen and citizenship in the vast treasure of Islamic jurisprudence (*Fiqh*) and history. We only find the term *re'aya* (subjects) to convey the meaning of individual and people. Even in the works of Kindi and

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<sup>11</sup>Ibn Qutaiba, *Tarikh al-Khulafa*, Maktaba Ilmiya, p 200/2.

Ibn Rushd, luminary Muslim philosophers who transformed Greek heritage and legacy by translating into Muslim paradigm, we do not find such terms.<sup>12</sup>

While this underscore the point of ever-changing nature of concepts and systems, absence of such terms from the body of Islamic literature does not means that there was nothing these terms stood for. What these terms come to denote in later times was very much there and evolving during the early Islamic period in its spirit, meaning, and practical purposes. An individual, for example, was not a member of a hapless *re'aya* (subject population), but a "citizen" in every sense of the word, during the times of the Prophet and the Rightly-Guided Caliphs. In Qur'an and Hadith as well as in Caliphs' decisions and actions, the status of the ruler and the ruled has not been described as an authority of a ruling person over his subjects. Rather, we find expression to a relationship that is quite akin to that of a state with its people.

It is interesting to note that the term *re'aya* is nowhere to be found in Qur'an, and the way it has

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<sup>12</sup>Democracy and Islamic position..., p 128.

been used only once in a Hadith<sup>13</sup> clearly shows that it is not in the sense of the traditional meaning of "subjugated" people. It rather underscores the concepts of rights and responsibilities.

This Hadith tells that everyone is responsible in his or her zone of responsibility. A ruler is responsible for his rule over a population in a region, head of a family is responsible for the family members, a woman is responsible for her children and domestic affairs, a servant is responsible for the property and possession of his boss or employer, etc. The style and articulation in this *Hadith* clearly show that *re'aya/ ra'iya* has not been used to denote subjugated people. It only conveys the concepts of rights and responsibilities, duties and answerability - a message closer to the meaning of citizenship, rights of citizens, and their responsibilities.

### **Treaty of Madina and Social Contract**

As the concepts of freedom, equality and social justice are clearly evident in Islamic teachings, it is not possible to deny theoretical and practical roots of citizenship in Islamic Shari'ah. Qur'an calls for respect dignity of humanity, plurality of religions, individual's

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<sup>13</sup>al-Bukhari, 5188.

right to participate in public affairs, the right to struggle and strive for one's cherished goals and aspirations, and the importance of consultation, logic and reason, all point to the fact that the foundations of these modern concepts were laid there much earlier. In other words, these modern notions are very much grounded in Islamic tenets and principles. The Prophet's actions and decision also underscore this point. The Treaty of Madina declares Muslims and non-Muslims living in the city as one nation. This is closer to the modern notions of nationhood and citizenry, than the traditional old view that binds people together according to creed or blood.

All the clauses of the Treaty are educative. Out of the 52 clauses, 25 are about Muslims while 27 concern with relationship of Muslims and non-Muslims.

Rached al-Ghanouchi<sup>14</sup> says that the Treaty of Medina covers two main themes:

The first subject is creed and religion, which have been declared personal matters of people in their individual capacity. Everyone is free to choose

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<sup>14</sup>**Rachid Ghannouchi** (b.1941) is a Tunisian politician and thinker, co-founder of the Ennahdha Party and serving as its intellectual leader. See: [https://en.wikipedia.org/wiki/Rached\\_Ghannouchi](https://en.wikipedia.org/wiki/Rached_Ghannouchi). Accessed on 26/5/2021.



whatever creed and religion they want to follow, and the state shall not interfere or impinge upon it.

The second subject is about worldly affairs, where all people have been declared equal. The essence of these provisions can be expressed in such terms as equality and cooperation.<sup>15</sup>

If we look into the reason for the Treaty's coming into being, it appears that the sole purpose was to protect the people - i.e. the citizens of the new emerging state - from all kinds of oppression, tyranny, cruelty and injustice.

### **Removal of tyranny and dictatorship**

In Islam, holding the ruler accountable is not just a right of the people but rather a responsibility. As evident from the first speech of Caliph Abu Bakar after assuming power, where he said that, people should follow him only in good deeds and decisions and hold him accountable for his mistakes. The rulers are not above the law and Shari'ah dismisses all notions of respect and fear that go against the principle of equality of all before law.

The Companions (May Allah pleased with them) of

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<sup>15</sup>Rached al-Ghanouchi, *al-Hurriyat al-Amma fi Dawlat al-Islamiya*, 1993, p 290.

the Prophet (PBUH) used to ask him questions without hesitation. In the battle of Hunain, when the Prophet distributed all the war-booty among the Migrants (*muhajir*, who had settled in Madina after migrating from Makkah) and kept no share for Ansar (local people of Madina), they could not understand the reason or wisdom behind this action. In order to remove their confusion, and though they did not have an iota of doubt about the Prophet's fair-play and justice, they did not hesitate to ask the Prophet for explanation.

Caliph Umar commanded great respect as well as awe, but people refused to listen to his Friday sermon until he would explain how he managed to make a dress for himself out of the piece of cloth that he had got, like others, since it was not enough for a tall person like him. He called for his son Abdullah and explained that his son had in fact given him some cloth out of his share for the dress. This shows that people were clear in their minds that holding the ruler accountable for financial and political matters was their right and responsibility.

### **Qur'anic Approach towards Justice**

In Islam, the powers of the ruler and the state are not unlimited or unrestricted. They are rather

circumscribed by various provisions. The Qur'anic injunction, "when you judge between people, judge with justice"<sup>16</sup> calls for administering justice "between" people, not "upon" them. This shows that state's powers and authority are not absolute or unrestricted, and that the ruler and the ruled are all equal. There is a clear difference between "rule over people" (*hukooma*) and "justice among people" (*tahkeem*). "Rule over people" means that the ruling individual or the state is an authority imposed upon a people - which can even deny them their freedoms - whereas "justice among people" shows that the state does not have absolute powers to do whatever it wants to do.

### **Democracy is anti-thesis to tyranny and dictatorship**

Democracy rejects dictatorship, i.e., assumption of power by using force and tyranny. If coming to power by such means is accepted, just as the so-called champions of Caliphate consider it legitimate for themselves to come to power by use of force and strong-arm tactics, there might rise a Westernized or Communist group or a religious minority faction as

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<sup>16</sup>Qur'an, Surah al-Nisa, 58.

well to claim power for themselves. This would result only in anarchy and chaos. Therefore, dictatorship in all its forms and manifestations is unacceptable.

### **Importance of public opinion in government formation**

The value and importance of public opinion in the establishment of government and its running is evident. For instance, in order to be able to know as to who should succeed Caliph Umar - Uthman or Ali (may Allah pleased with them) - Abdur Rahman bin Auf exerted himself so much<sup>17</sup> and literally left no stone unturned in his effort to reach the right conclusion.

Abdur Rahman bin Auf would ask people about the two (Uthman and Ali). He would consult elders as well as their followers, would go to individuals as well as to gatherings, would meet people personally as well as in groups, openly as well as secretly, he even went on to meet women to ascertain their views. He reached out to students, those who had dedicated themselves to learning in Madina, inquired from those were coming to the city, and solicited desert-dwellers' (bedouins) opinion. He persisted with this

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<sup>17</sup>Abdur Rahman Kilani, Caliphate-o-Jamhuriyat, Maktaba Salam, p 67.

heavy task for three days and three nights. In his conclusion, he found that everyone was in favor of Uthman, only with the exception of Ammar and Miqdad - who nevertheless pledged allegiance to Uthman after he became the Caliph. During these three days and three nights, Abdur Rahman bin Auf slept very little. He would spend all his time in prayers, seeking Allah's help, and in consulting people he considered worthy of consultation. In the end, he did not find anyone who thought of someone else other than Uthman more capable for the position.<sup>18</sup>

This shows that women and even youth were also consulted. It is interesting to note that being older than 18-years is a requisite condition to vote in a democracy.

Caliph Umar held that consultation was an essential ingredient of Islamic rule. There could be no caliphate (i.e., Islamic rule) without consultation.<sup>19</sup> Its absence or distortion snatches legitimacy of a government.

Consultative nature of government remained alive and dynamic during the times of the Prophet and the Rightly-Guided Caliphs. It guarantees freedom and

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<sup>18</sup>Ibn Kathir, *al-Bidaya wa al-Nihaya*, Beirut, Maktaba Ilmiya, p 147/7.

<sup>19</sup>Caliphate-o-Jamhuriyat, p 63.

instills a sense of duty or responsibility for a given task. In comparison, though consultation appears to be a strong pillar in the modern contemporary political and religious movements, but it lacks in the spirit of freedom and responsibility. When consultation process is limited to a certain group of people, be it in the name of religious learning or piety, or any other pretext neglecting or disregarding the views of the general populace, it paves way for a religious group to impose its version or lets a ruler or his government officials to subjugate the people. This goes against the spirit of Islamic concept of consultation. This leads to monarchy and dictatorship rather than to following the Prophetic model.

### **Principle of Majority Opinion**

In a democracy, decisions are made with majority vote. This principle of upholding majority opinion not just in administrative, but sometimes in religious matters as well was in vogue in the early period of Islam.

In order to arrive at a decision on a given matter, Caliph Abu Bakar (RA) would first try to find for clue in Qur'an and Hadith. He would then meet the Companions and ask for their opinion. If the matter still required further deliberations for clarity, he

would call for the Companions' assembly. Caliph Umar also practiced the same way. Generally, consensus was achieved with coming to fore Qur'anic or Hadith text and the Prophet's example. But there were situations when consensus was not achieved due to difference of interpretation of Qur'anic and Hadith text, or because there would be no instruction in explicit terms, or because evolution and development in governance called for new decisions. In such situations, consensus was not possible and decisions were made according to the principle of majority opinion.<sup>20</sup>

There is not even a single instance during the entire period of Rightly-Guided Caliphate when the Caliph insisted on implementing his own opinion or that of a minority by asserting that it was his prerogative or authority. On the contrary, there are many instances when a caliph stopped himself from implementing his well-founded, reasonable, and well-substantiated opinion simply because the majority view was not in its favor.

Moreover, the election of the Rightly-Guided Caliphs was based on consultation and majority opinion. In

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<sup>20</sup>Caliphate-o-Jamhuriyat, p 167.

the assembly of Banu Saida, Hazrat Abu Bakar (RA) was elected as caliph with overwhelming majority. Only a few individuals from Banu Hashim and the chief of Ansar Hazrat Sa'ad ibn Ma'az did not express their views in his favor at that time.<sup>21</sup>

In case of Hazrat Umar's election, when Hazrat Abu Bakar put forward his recommendation, there was a difference of opinion in the assembly which was specifically called for the purpose. So the question was put to the general public, which favored the election of Umar (RA). Thus, his election was also on the basis of majority opinion.<sup>22</sup>

The six-member committee recommended by Hazrat Umar (RA) for the purpose of election of his successor decided the matter keeping in view the majority view, and Uthman (RA) became the Caliph. The Committee, Umar's instructions for it, and its decision all underscore and explain the principle of majority opinion. Hazrat Umar had advised that it would be best to reach consensus, but if that was not possible, election should be based on majority opinion. If minority opinion holders revolt against the decision, they should be meted out exemplary punishment.

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<sup>21</sup>Akbar Shah, *Tarikh-e-Islam*, vol 1.

<sup>22</sup>Nizam-e-Hukumat, p 324.



This principle of majority vote was also observed in allegiance pledged to Hazrat Ali (RA) in the wake of Hazrat Uthman's martyrdom.

Thus, during the Caliphate, all matters were decided either with consensus or on the basis of majority while taking guidance from Qur'an and Hadith - directly from the text or indirectly as their teachings implied.

### **Muslim Jurists on Majority opinion**

Muslim jurists of later periods also upheld the principle of majority opinion. They favored this in two situations<sup>23</sup>: First, in a situation about which earlier jurists have not given any ruling or observation, and those later jurists too have difference of opinion. In such a situation, decision shall be made on the basis of majority opinion<sup>24</sup>. Second, there are two, or more, rulings and edicts on a matter, and both or all are considered right. In such a case, the ruling which is subscribed by more jurists shall hold sway.<sup>25</sup> It is the principle that shows the way to one in matters of even the jurists' diverse opinions.

In brief, Qur'an, Hadith, example of the Prophet

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<sup>23</sup>Caliphate-o-Jamhuriyat, p 153.

<sup>24</sup>Ibn Abidin, Sharh Uqud Rasm al-Mufti, p 78.

<sup>25</sup>Sharh Uqud Rasm al-Mufti, p 89.

(PBUH), actions and decisions of the Rightly-Guided Caliphs and the Companions, and jurists' verdicts all validate giving preference to the principle of majority opinion, and its being a legitimate and suitable method for decision making. In case of difference of opinion during the process, or as a result of consultation, there is no harm or obstacle in decision-making on the basis of majority opinion. More so, if this principle is invoked in an agreement or treaty, then it would be obligatory to decide matters on this basis.



## **SECTION III**

# **ADDRESSING RELIGIOUS CONCERNS AND DOUBTS ABOUT DEMOCRACY**

- Plurality of Political Parties and Islamic Concept of Ummah
- Western Concept of the Opposition
- Amending the Constitution with Majority Opinion
- Government's adherence to Shari'ah depends on Legislation
- Following the Majority results in Failure?
- Is Majority the criterion between right and wrong?
- Adult Franchise - All, good or bad, are equal!
- Allama Iqbal and his stance on Democracy
- Vote of the Corrupt
- Vote's three dimensions
- Vote is a Witness
- Vote is a Recommendation
- Vote is Representation
- Invitation to Pro-Active Action
- Conclusion
- A Note on Qureshi Rule
- Should the Ruler be a Qureshi?

## **Plurality of Political Parties and Islamic Concept of Ummah**

The existence of political parties in a democratic system has attracted considerable criticism from the religious perspective that holds that multi-party system gives rise to mess and turmoil. It is contrary to the Islamic concept of Ummah (i.e. Muslims are one nation).

Qur'an and Hadith exhort to ensure unity among Muslims: "Indeed this nation of yours is one nation, and I am your Lord".<sup>26</sup>

The Holy Prophet (PBUH) said: Muslims are like a body (in feelings of mutual sympathy, empathy, and compassion); the entire body feels the pain of any of its part.<sup>27</sup>

At another place, he said: A Muslim for another Muslim is like a brick for another brick in a building - strengthening one another.<sup>28</sup>

In contrast to this vision of unity of Ummah, political parties are a must in democratic systems. When each party works for its own interests, it only deepens provincial, tribal and religious divides - rather than contributing to national cohesion and unity.

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<sup>26</sup>Qur'an, Surah al-Anbiya, 92; Surah al-Muminun, 52.

<sup>27</sup>Wahba Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, Dar al-Kitab al-Arabi, p 5009.

<sup>28</sup>Sahih al-Bukhari, 6026.

Dr. Yusuf al-Qaradawi<sup>29</sup> says that plurality of political parties is not unlawful according to Shari'ah because there should be some evidence in the form of text of Qur'an and Hadith or a precedent by the Caliphs to reject and ban the existence of parties. In its absence, there is no reason to not allow or ban political parties in a country.<sup>30</sup>

He goes on to say that:

In fact, in contemporary times, the existence of many political parties is necessary to stop the way of dictatorship and oppressive rule from taking hold. Plurality of political parties makes it easier to hold a government accountable. However, these parties should fulfill two conditions:

They should not work against the teachings of Islam.

They should not work for anti-religion organizations or people.

He notes that today's Muslim governments are not "religiously sacred" governments - a notion that was,

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<sup>29</sup>**Yusuf al-Qaradawi** (b. 1926) is an Egyptian Islamic scholar based in Doha, Qatar, and chairman of the International Union of Muslim Scholars. His major works include *The Lawful and the Prohibited in Islam* and *Islam: The Future Civilization*. See: [https://en.wikipedia.org/wiki/Yusuf\\_al-Qaradawi](https://en.wikipedia.org/wiki/Yusuf_al-Qaradawi). Accessed on 27-5-2021.

<sup>30</sup>Yusuf al-Qaradawi, *Contemporary Fatawa*, p 652.

for example, associated with the governments of Christendom in the past. Muslim governments are public governments that seek guidance from Islamic values. The rulers are not "sacred" in that they cannot commit mistakes, nor are official members of "sacred body". All are fallible humans, with the potential to do both good and bad deeds. Those who become part of the government as well as the general public should encourage them in good deeds and stop them from making mistakes or committing crimes. This is the role of political parties in a country.

Appreciating the existence of opposition parties, Dr. Qardhawi says that ruling party in the absence of opposition might take the path of oppression and tyranny, which is harmful and dangerous for society. When, for example, Mo'tazilites became powerful during the Abbasid rule, it was a nightmare for all those who differed with them. They tried to impose their views on others during the rule of Ma'mun, Wathiq, and Mu'tasim. They resorted to using sword as well as whip for this purpose.

He refutes the doubts that plurality of parties gives rise to divisions and chaos. The Qur'anic instruction of "holding firmly to the rope of Allah all together and



do not become divided"<sup>31</sup> tells nothing against existence and plurality of parties. Moreover, we ought to understand the meanings of "differences" and "divisions". Qur'an forewarns against divides and divisions, not against differences - which are quite natural and legitimate. In the presence of the Prophet (PBUH), his Companions (RA) used to give different opinions on social and political matters. The Companions had differences among themselves. In Islam, difference of opinion has, in fact, been considered a blessing.

### **Western Concept of the Opposition**

An objection against the existence of political parties and the opposition is that this is a west oriented system, and Shari'ah warns against "imitation of others". This objection is baseless because Shari'ah stops us only from blindly following others. Imitation of religious rites and symbols - such as wearing the Cross - is not allowed, but human societies and civilizations can benefit from one another's experiences and developments in the fields of administration and governance.

When the Holy Prophet (PBUH) wrote letters to the

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<sup>31</sup>Qur'an, Surah Aal-e-Imran, 103.

rulers of different countries, he was informed that they do not accept un-stamped letters. So the Prophet issued letters with his own stamp. Hazrat Umar (RA) introduced taxation and financial administration system while incorporating many features from other nations. Hazrat Mu'awiya (RA) introduced postal service as was in vogue in other countries.

So, says Dr. Qaradhawi, if there is no violation of Shari'ah objectives or an instruction of Qur'an and Hadith, there is no harm in benefiting from non-Muslims in political and civil administration.

### **Amending the Constitution with Majority Opinion**

If the constitution can be changed with majority opinion, it means a majority can remove from it such clauses that call for and accept the supremacy of Qur'an and Sunnah. It appears that adherence to the supremacy of Qur'an and Sunnah is subject to the will of the majority - and not for itself.

This confusion, and the objection arising out of it, can easily be removed by realizing that there can be no law or regulation to remove the possibility that those who accept it at one time might not reject it at another. For instance, a person recited Shahada and becomes a Muslim. His being a Muslim is accepted on

the assumption that he decided to embrace Islam on his free will and volition, though there is every possibility of his going back on his commitment. Would it be, then, right to suspect his acceptance of Islam - i.e. he accepted Islam for some interests and reasons but he did not aim to follow it sincerely.

Acceptance of any law or regulation in the world is based on human freedom - which can be used in favor of a law today with the possibility of turning against it tomorrow. Yet, before the "negative" use of freedom to revoke allegiance to a law or a system, we cannot say, merely on the basis of suspicions or apprehensions, that an individual or a group of individuals does not really accept it.

### **Government's adherence to Shari'ah depends on Legislation**

In a democratic setup, Shari'ah injunctions are not automatically enforced, but depend on legislation to enjoy the status of law. This means that of Shari'ah is dependent on human approval for its implementation. Without public approval, no Shari'ah regulation can be implemented. Apparently, this is an un-Islamic and, hence, an unacceptable proposition.

This confusion too is unfounded. The inherent logical flaw in this argument can be understood by an

example. If a person kills another, Shari'ah rule of Qisas (avenging the violation of a prohibited act) demands that the killer be killed for the crime of murder. But this rule cannot be applied unless the case is presented before a duly constituted court, which after a due process, awards death penalty. It does not mean that Shari'ah depended on a judge's decision for implementation of its injunction. The function of the court is to regularize the application of a Shari'ah injunction and make it as much error-free as humanly possible. The same logic applies to the process of legislation.

Acceptance of supremacy of Shari'ah in the Constitution means that all Shari'ah teachings assumed the status of law. Any following legislation is actually about procedural details; it does not mean that Shari'ah implementation depends upon its approval.

Moreover, it should be noted that a Shari'ah injunction cannot be applied before answering a few questions with legal perspective. For example, mere acceptance of the injunction that stealing shall be punishable with the cutting of a hand is not enough for deciding a case of theft. Before passing a judgment, we need to know answers to a number of

questions - such as: What were the conditions in which the crime of theft was committed? How much of amount be considered as theft? Is the punishment uniform for all circumstances or can there be any relaxation? Where the hand would be cut from? etc. These are all valid questions but not explicitly enunciated in the text of Qur'an and Hadith. Without their answers, however, not a single case can be decided. In other words, every Shari'ah injunction for its implementation requires answers to legally-rooted questions. Legislation is meant to cover this area.

Any attempt at implementation of law without an agreed-upon interpretation of an injunction leads only to complications. In the modern political system, legislatures play the role of removing hurdles and clearing the way for implementation of laws. If they do not determine the main features of laws and do not decide the procedural details, the courts would have to bear the entire burden - which, in turn, would result in differences in judgments and legal confusion. Difference of opinion at academic and theoretical levels do not result in practical problems, rather, as discussed earlier, they contribute to enrich the debate. But at the judicial level, it is necessary to have a kind of uniformity for smooth functioning of the system.

Thus, the need for Shari'ah injunctions to go through legislation process is only for the purpose of achieving uniformity. In no way does it construe that Shari'ah is dependent on human approval. By acceptance of supremacy of Shari'ah in the constitution, Shari'ah teachings already enjoy the status of law in a country. Their implementation, however, requires some "preparatory" steps - legislation being the most important of them.

### **Following the Majority results in Failure?**

Those who consider democracy as against Islam, quote a few Qur'anic verses that caution against following the majority. If you obey the majority of those who live on earth, they will lead you away from Allah's path. They only follow idle fancies, indulging in conjecture.<sup>32</sup>

The context of this, and other similar verses, clearly shows that it is talking about the people who refused to accept the Prophet's call to Islam. They are knowingly bent on opposing him. History tells us that the people who rejected Prophet's call always constituted a majority. Only a small minority accepts Islam in its early days. Thus, the believers are warned

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<sup>32</sup>Qur'an, Surah al-An'am, 116.

against following the rejecters. This cannot be applied to a situation where believers themselves come to establish a society. In this case, all the affairs of the society shall inevitably be run according to majority opinion.

Today, political or legal debate is often marred by allegations of *Kufr*. Before casting aspersions on modern systems and democracy, it is important to go through Islamic laws regarding *Kufr*, how one becomes susceptible to committing *Kufr*, etc.

In contrast to the people who tend to level allegation of *Kufr* at the slightest hint, the jurists' approach is very cautious and practical. They hold that even if one utters such words or statements that apparently lead to *Kufr* but there is a possibility of more than one interpretation, we should go for such an interpretation that would absolve him of the act of committing *Kufr* unless the person making such statements insists that he did intend to convey *Kufr*-based meaning.

It is explained, for example, in a famous Hanafi book *al-Muheet*: If there are more than one interpretation establishing occurrence of *Kufr* and only one interpretation comes to fore to deny the occurrence of *Kufr*, then Mufti (the one who issues edicts) should

opt for the later. If the intention of the accused confirms the possibility of his inadvertent or involuntary utterance, he shall remain a Muslim; but if his intention establishes that his act was deliberate and he did intend to convey *Kufr*-based meaning, Mufti's verdict in his favor would not help him. Still, he would be asked to repent and reject his act of *Kufr* and renew his Nikah (nuptials).<sup>33</sup>

Renowned scholar Allama Ibn Nujaim too says: If there are more than one possibilities that establish the occurrence of *Kufr* but only one to deny it, then it is necessary for Mufti to opt for the later in view of his well wish for the fellow Muslim.<sup>34</sup>

This has been explained by an example in Al-Muheet: In a war, if Muslims take a prisoner and feel that he might just declare his acceptance of Islam to avoid prison hardships; they seal his mouth with something or start beating him so as to render him unable of declaring his acceptance of Islam. They do a wrong, yet they do not become *Kafir*... If a person feels happy and is content with occurrence of *Kufr* by others, he becomes himself guilty of committing *Kufr*; but if he is neither content with others committing it nor does

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<sup>33</sup>Al-Muheet Al-Burhani fi Al-Fiqh Al-Numani, p 550/5.

<sup>34</sup>Al-Bahr Al-Raiq, p 1345.



he like it for himself, rather he only wants that a mischief-maker *Kafir* die or be killed in his state of *Kufr* to warrant Allah's punishment (in exchange of hardships he caused to Muslims), then himself he would not become *Kafir*.<sup>35</sup>

This explanation shows the extent to which jurists go in order to subdue allegations of occurrence of *Kufr*. Though stopping anybody from accepting Islam is a serious matter. Those who do this run the risk of becoming *Kafir* themselves. Yet, the jurists refrain from passing judgment by putting forward an interpretation that might absolve them from occurrence of *Kufr*. Since the intention is not of being content with others' *Kufr* and the motivation for anger is that the mischief-maker should face Allah's wrath, those who stopped one from accepting Islam would not be charged with committing *Kufr* - and their intention would be given due consideration for the purpose of absolving them.

An act leads to occurrence of *Kufr* only if there is no confusion about it, there is no other possible interpretation, and there is consensus-like situation that Muslims have no hesitation in declaring it an act

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<sup>35</sup>Al-Muheet Al-Burhani, p 551/5.

of *Kufr*.

A judgment of *Kufr* should not be passed on any act or utterance unless there is a consensus of Muslims that such an act or utterance can come only from a *Kafir*. If it is established (that such a thing has really happened), only then it be declared as occurrence of *Kufr*.<sup>36</sup>

The second rule in this regard is that judgment about occurrence of *Kufr* shall not be passed in legal and jurisprudential matters that have been "deduced" from Qur'an and Sunnah - even if there is a consensus of jurists on such a matter. Occurrence of *Kufr* entails a person's categorical, explicit, and unambiguous rejection of a belief or principle founded in Qur'an and Hadith. This is why the family laws that were introduced during the rule of Ayub Khan had many flaws and many provisions against Shari'ah requirements, yet these matters based on the details deduced from the text of Qur'an and Hadith (rather than being directly found in these sources), jurists and scholars did not pass judgments of occurrence of *Kufr*.

These rules need to be observed in individual cases.

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<sup>36</sup>Fatawa Subuki, 578/2.

The issue becomes even more sensitive when it comes to dealing with a group or a nation. There should be utmost care in passing judgments or making remarks in case of a system involving a whole state and its constitution, which was framed and formulated by the united effort and consensus of renowned scholars and jurists. Therefore, it is wrong to pick a clause or two, without keeping in view their context or the whole scheme of things, and pass judgments against the whole system of the state.<sup>37</sup>

### **Is Majority the criterion between right and wrong?**

In a democracy, decision-making on the basis of majority opinion gives the impression that it is for the majority to decide what is right and what is wrong. Can it really be so? If a majority sides with a view, can we be sure that this view is the right view?

Decision-making on the basis of majority opinion does not mean that majority can decide between right and wrong. It is reason that is the criterion. Majority can make mistakes, yet it is a way to decide disputes. It is, in fact, the only practical and less risky than all other possible ways to solve human problems and

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<sup>37</sup>Dr. Ammara, *Fitna takfeer*, Dar al-Wafa, p 51.

disputes.<sup>38</sup> If there is a difference of opinion among the decision-makers on an issue, there is no way for them to proceed ahead except through the principle of decision by majority. All other methods lead to anarchy and chaos.

Let's consider that decision-makers in an educational institute are faced with the question that if there would be co-education in it or if boys and girls would be educated separately. The decision-makers are divided into two groups. One of them says that Islamic values do not allow co-education, while the other holds that in the light of Islamic teachings there is room for co-education if it is imparted in a properly arranged and decent system. Irrespective of the question of what is right and what is wrong, the only practical way to solve this issue is to decide it according to the majority opinion. Though there is still a possibility of decision's not being correct. But the doors are also open for the minority opinion to change the decision in its favor on the basis of sound reasons in the future.

If the possibility of making an incorrect decision amounts to a "flaw", then there is no escape from it in

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<sup>38</sup>Burhan Ghiliyun, *Dar al-Thaqafa al-Arabi*, p 61.

any system - even the supposed "Caliphate" that is being so vociferously proposed. There will be no "revelation" on Khalifa (Caliph) or his cabinet and advisory body. Their piety notwithstanding, they will be fallible humans. They will not be free from making mistakes. These mistakes are very much a possibility in "Caliphate" as they are in a democratic system. Caliph Umar had decided to fix the amount of matrimonial alimony (*muhr*). But on the objection from a woman, he withdrew his decision. It was quite possible that Umar would have restored his earlier decision after getting more feedback from others or because of change of his own opinion. After all, it is within the ruler's powers to determine the amount of matrimonial alimony (*muhr*) in certain conditions. In short, there is a possibility of making incorrect decisions in "Caliphate" with the provision of correction through alternative "corrective measures". The same hold true for a democratic setup too.

### **Adult Franchise - All, good or bad, are equal!**

Democracy grants everyone equal right to vote without distinguishing between good and bad, and without considering who is learned and who is not. This is an unnatural and unjust, dubious and questionable proposition. How can a learned person

be equal to an ignorant individual?

This viewpoint is full of contradiction. To begin with, all Muslims are equal in the eye of Shari'ah and *Fiqh*. Whatever might be an individual's status with Allah, it is to be rewarded in the Hereafter only. In their legal rights and duties, all people are equal - and so is their opinion and vote. Qur'anic injunction of "conduct of affairs by consultation"<sup>39</sup> requires inclusion of all the concerned people. If, for example, it is about electing the ruler and government in Pakistan, then the whole population is equally entitled to participating in the process. How can it be handed over to a select group or a class to decide on matters concerning millions of people? It would clearly be in violation of the Qur'anic injunction of consultation - which should be broad-based, not restricted to a few, mutual and reciprocal. Let's just suppose giving only to ulema the privilege of consultation on grounds of their learning and capacity to decide on matters concerning the general public. The question would arise then who among the ulema would be consulted? All ulema do not enjoy the same standing: While some might have great experience and specialization in different areas of knowledge,

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<sup>39</sup>Qur'an, Surah Shoorah, 38.

others might only be graduates; some are established Mufti and Sheikh, others are much lower in rank and status. So, would all have the same equal right to vote - or decide on a matter? Similarly, this applies to other fields of knowledge and activities. One is a fresh medical graduate, while the other is an established authority in the field of health and medical sciences. Should they be given equal voting rights? The crux of the matter is that no matter what criterion you set for consultation, universal franchise without consideration to piety or otherwise, knowledge or lack of it, needs to be given to all without discrimination.

### **Allama Iqbal and his stance on Democracy**

The critics of democracy quote Iqbal very fervently. Quoting from his poetry, they say that Iqbal holds that Western democratic systems appear good from outside, but its inside is worse than tyranny of Genghis. It is the same old wine in new bottle. Iqbal opposes democracy because it is a system where people are not valued, they are just counted; but numbers are not important - 200 brains of donkeys are not equal to even one human mind, or donkeys' brain is not helpful in nurturing human thought.

Iqbal's stature as a luminary well-versed in Western political system and philosophy along with being an

avid and devoted student of Islamic learning is recognized by all. To be able to quote him against democracy and its system is a serious matter that warrants a deeper look into his thoughts.

A thorough glance at his poetry shows that Iqbal was opposed to Western democratic system as was, and still is, practiced in some countries - where parliament has absolute power to legislation. Their legislation is not subject to divine teachings and commandments.

Iqbal, obviously, could not subscribe to parliament's such overriding powers. He was also against some practices. But, it should be noted, he himself contested and won election for the Legislative Council from Punjab in 1926. He fully participated in the assembly's proceedings and expressed his views boldly and freely. He stood for the rights of farmers, labors, and women.

This shows that Iqbal believed in democratic struggle. A renowned Muslim philosopher and thinker could in no way tolerate any kind of dictatorship and imposition of any system on a people against their free will and aspirations. He always called upon people to rise up to decide their own fate, and observed that the time of peoples' power to rule has come and they should wipe out traces of old



oppressive system.

We should also keep in view that poetry only gives vent to a people's sentiments and reflects their aspiration in symbolic terms. It is in prose where solid arguments are presented. Iqbal expressed his thoughts in prose as well. In his famous "Reconstruction of Religious Thought in Islam" he said that parliament in modern times should be allowed to practice "ijtihad" (i.e. draw legal provisions and teachings from Qur'an and Hadith) with certain conditions.<sup>40</sup>

He says that Sunni *Fiqh* holds appointment of Imam or Khalifa as inevitable. The first question that arises in this regard is if Caliphate devolves around a single individual. Supporting the view of Turk scholars, he says that the spirit of Islamic teachings demands that Caliphate or Imamatus (i.e. the elected or selected authority) be handed over to a group of individuals or to an elected assembly. Saying that ulema from Egypt and India are silent on this matter, he takes sides with Turk position and feels that there is little room for further deliberations on this subject. Democratic system of government is not only according to the

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<sup>40</sup>See, Iqbal's lecture on "The Principle of Movement in the Structure of Islam," in *Reconstruction of Religious Thought in Islam*.

spirit of Islam, it is also necessary for the new emerging powers in the Muslim world.

At another place, he urges the Muslims to appreciate their position, reconstruct social life in light of the main principles, and evolve, for the realization of the purpose of Islam (which is still not clear to us) i.e. establishment of spiritual democracy.<sup>41</sup>

### **Vote of the Corrupt**

An objection against democracy is that corrupt and ignorant people constitute the bulk of our population. They will only choose people like themselves.

It is a fact that people select those who are like them. But its remedy does not lie in "forcefully" appointing a pious person as "Khalifa". Such a person, and arrangement, would either be rejected or removed from power the way it had assumed it, or would become like the rest of the society in order to perpetuate its rule. The right and natural way is to impart moral training in society for character building and development. A better society will develop a better system for itself. This is what Iqbal says in his lectures.

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<sup>41</sup>Lecture "The Principle of Movement in the Structure of Islam".

There arise the question concerning the performance of modern Muslim assembly. In the present circumstances, a larger number of members do not have proper knowledge or understanding of Islamic *Fiqh* (law or jurisprudence). Such an assembly can commit some big mistake in interpreting the law. How can we minimize or eliminate the possibilities of such mistakes in interpretation and formulation of law? For this to achieve, the only option is for Muslim countries to improve legal education system, broaden its horizon and connect it with deep study of modern philosophy of law.<sup>42</sup>

Serious objections are raised about voters' ability to choose right persons to represent them, and contestants' eligibility to stand in elections and truly represent the people. It is said that the former do not realize the importance and value of their vote and often end up giving it to those who lack in integrity and honesty, and fail to reflect their constituents' true aspirations.

Mufti Shafi addressed these problems in a fatwa<sup>43</sup> to explain this democratic feature from an Islamic perspective.

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<sup>42</sup>Khutbat-e-Iqbal, Iqbal Academy, 1996, p 40.

<sup>43</sup>Maulana Muhammad Shafi, *Jawaher al-Fiqh*.

A person who stands for membership of an assembly in fact claims two things before the whole nation. One, he is capable of the task; two, he would perform it sincerely and honestly. If he is really capable and honest, then his seeking the membership is correct; though it would be better for him not seek any position for himself but a group or party should nominate him for it. If he is not capable then his bid is not correct. In fact, he is a fraud and deceitful person. His success in election would result in harm to the nation, and he would earn punishment in the Hereafter for his dishonesty and disloyalty toward the nation.

A person who stands for membership of an assembly, and believes in the Day of Judgment, should realize that his zone of responsibility that was limited to himself and his family is going to expand to include all the people looking toward the assembly for their representation. He would be answerable for assuming this responsibility - if he delivered it well or not.

### **Vote's three dimensions**

It is important and necessary to understand the value of vote from three dimensions:

Vote is a witness

Vote is a recommendation

Vote is representation

### **Vote is a Witness**

A voter stands witness that he is giving his vote to a person whom he considers both honest and capable of performing the task. If he is not so, but the voter gives him his vote, this amounts to false witness - which is a major sin. The Prophet (PBUH) has counted false witness among major sins along with the sin of associating partners with Allah (*shirk*).<sup>44</sup> At another occasion he said that false witness is a serious sin among the other major sins.<sup>45</sup>

If there are many contestants in a constituency, and the voter knows who is honest and capable but instead votes for someone else, he is committing the major sin of false witness. A voter should keep in mind the result of his act on the Day of Judgment, and therefore, should not do anything detrimental to himself merely for some momentary gains, fear or favor.

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<sup>44</sup>Al-Bukhari, Mishkat

<sup>45</sup>Al-Bukhari, Al-Muslim

## **Vote is a Recommendation**

A voter recommends a person for assembly membership. He should know that Qur'an says: He who intercedes in a good cause shall have a share in its good result, and he who intercedes in an evil cause shall have a share in its burden.<sup>46</sup>

A good intercession here would be to recommend a person who is honest and capable, who fulfils his duties towards the people diligently. A bad intercession would be to recommend a person who is not fit for the job and thus impose an incompetent and corrupt, errant and criminal on people. It tells us that who wins membership because of our votes, we would be considered his associates in whatever he does during his tenure.

## **Vote is Representation**

When a voter casts his ballot for a person, he in fact chooses that person to represent him. Representation is a serious matter. If it were about representing a single person, it would have consequences only limited to that person who made the good or bad selection. But as it involves a large number of people,

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<sup>46</sup>Qur'an, Surah Al-Nisa, 85.

in fact a whole nation, he would be held responsible for committing the sin of trampling upon the rights of whole nation if his selection results in the success of an incompetent corrupt person.

Summing it up, we can say that we ought to value our vote for its being a witness, a recommendation, and a means of representation. Voting for a person who is known for his integrity and capacity would result in great rewards from all three accounts both here and in the Hereafter; casting the vote for a person who is incompetent and corrupt is like providing false witness, making a bad recommendation, and harmful representation incurring bad results for the voter both here and in the Hereafter.

### **Invitation to Pro-Active Action**

Islam not only forewarns about taking the path to doing bad deeds, it also shows the way to doing good deeds. Whereas casting one's vote for an incapable and errant person is a sin, casting the ballot for an honest and capable person is a great act, rather a responsibility, to result in great reward. While Qur'an forbids false witness, it calls for witness in favor of the right cause. Qur'anic injunction to "Be upholders of

justice and bearers of witness to Truth for the sake of Allah"<sup>47</sup> calls upon Muslims not to avoid their responsibility and, instead, stand up for the right cause. It calls for "upright testimony for the sake of Allah"<sup>48</sup> and stops from apathy and unconcern: "do not conceal what you have witnessed, for whoever conceals it, his heart is sinful."<sup>49</sup>

A main reason for the ills and flaws of elections is that good and pious people avoid participating in the exercise. The votes of those who sell themselves for petty considerations result in imposing on the nation such representatives that are neither honest nor capable of the onerous responsibility. So, not voting for an honest person amounts to committing a crime and cruelty to the nation. Even if there are many contestants in a constituency but none of them is truly competent and honest, we should vote for the one who is better of the rest of the lot. This is not only allowed, but is "desirable" in view of the principle of "reducing" the impact of mischief and scope of oppression. We should strive for elimination of oppression, but if it is not practicable, we should do

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<sup>47</sup>Qur'an, Surah Al-Nisa, 135.

<sup>48</sup>Qur'an, Surah Al-Talaq, 2.

<sup>49</sup>Qur'an, Surah Al-Baqarah, 283.



everything in our power reduce its scope and spread.

Since vote is a witness. Concealing a witness or selling it, or giving a false witness, are all forbidden. It is wrong to consider it as mere political wrangling. To whoever you vote, you in fact stand witness that your choice is better than others in his character and integrity, knowledge and determination to doing good.

### **Conclusion**

We can conclude the debate by noting that:

Whoever reaches assembly because of your vote, you would also shoulder the responsibility of whatever he does during his tenure. You would share the reward or punishment with him.

The results of an error or mistake in personal matters are restricted to a person or a few persons. Their reward or punishment would also be light. But if a wrong decision affects the whole nation, naturally its reward or punishment too would be greater.

It is forbidden by Qur'an to conceal a witness. Not going to vote for an honest and competent person from your constituency amounts to committing a major sin.

Vote for a person who entertains ideas against the

Islamic system amounts to committing the major sin of providing false witness.

To sell one's vote is the worst form of bribery and shows disloyalty to the country and the religion in exchange of petty gains. It is naive to destroy one's own prospects by helping in others' temporary success. The Holy Prophet (PBUH) has told us that the most destitute person is one who loses his own religion while helping others in their worldly matters.

### **A Note on Qureshi Rule**

#### **Should the Ruler be a Qureshi?**

Some people infer from a Hadith<sup>50</sup> and the Companions' example that being a Qureshi is a necessary condition for a ruler of Muslim state, whereas anybody - whether a Qureshi or not - can be a ruler in a democracy. This is, to them, a big difference between Caliphate and democracy. Contemporary armed organizations have propagated this view in territories under their control in order to give legitimacy to their occupation as "Caliphate" merely on the ground that it is headed by a Qureshi.

Scholars and jurists know it very well that Hazrat

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<sup>50</sup>Musnad Ahmad, 1240.

Umar (RA) considered non-Qureshis such as Mua'az ibn Jabal (RA) and Salim Maula Huzaifa (RA) among those qualified to rule the Islamic state. This too is narrated in the same Hadith compilation.<sup>51</sup> It all shows that this was not a matter of consensus among the Companions (RA).

In later times, renowned figures like Imam Abu Bakr Baqilani have put forward differing viewpoint. There is no consensus among the later scholars on the issue either.

The confusion is only because the Companions accepted this and did not express differing views during the rule of Hazrat Abu Bakr (RA). This is taken as if there was a consensus on it. There are many reasons to refute that such a consensus on this subject ever existed.

Prophet Isa (Jesus) would come again near the end of the world and he would eliminate mischief and chaos, and would be the ruler (Khalifa). He would not be a Qureshi!

Similarly, there would be a rule of a Qahtani before the advent of Qiyama (end of days leading to

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<sup>51</sup>i.e. Musnad Ahmad.

resurrection).

These narrations, among others, show that Qureshi-origin is not a condition to rule over an Islamic state. Though Hazrat Muawiya (RA) expressed anger for such a notion and brought the other (aforementioned) Hadith (that mentions Qureshi condition to rule) to counter it. But Hadith scholars and ulema do not dismiss it.

It may be construed that the Holy Prophet (PBUH) in fact gave information in advance that those coming to rule would happen to be from Quresh. As Quresh were accorded respect all over the Arab, the Hadith purported to underline their eligibility more than others. This is what Abu Bakar thought when he said that Arabs would not accept others' rule.<sup>52</sup>

There is another saying of the Prophet (PBUH) that government would go to Quresh, judiciary to Ansar, Call to Prayers (Azan) to Habsha, and treasury (amanah) to Azd.<sup>53</sup>

It clearly shows that while Ansar deserve to be judges, but this is not their "exclusive" domain. Similarly, Quresh were more eligible to run the government, it

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<sup>52</sup>Musnaf Abdur Razzaq, p 231/5.

<sup>53</sup>Jami Tirmidhi, 3870.

was not a privilege "exclusive" to them. Access to judiciary, to Azan, and to treasury cannot be denied to others if they are not Ansar, Habsha or Azdi.

Mullah Ali Qari, therefore, says that "people will follow Quresh" indicate to the acceptability of Quresh, that people would not revolt against them because they have the leadership qualities in them. So, it was out of prudence of not giving rise to unnecessary opposition that they were not excluded from government.<sup>54</sup>

If the Hadith is taken to mean that it provided information ahead of time, that Quresh would come to rule, then it is just for a certain time. Allama Suyuti and Mulla Ali Qari say. The description "as long as they hold firm to the religion" in a Hadith mentioned in al-Bukhari also rules out the need for "exclusive" privilege for Quresh. Obviously, Quresh ruled only as long as they upheld the religion and performed their duties. Then, it was taken away from them!

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<sup>54</sup>Mullah Ali Qari, *Mirqat al-Mafatih*, 3862/9.

## **SECTION IV**

# **SHARI'AH AND JIHAD IN A DEMOCRACY**

- Practice of Shari'ah and the State's domain
- Implementation of Shari'ah: A Gradual Process
- Call to Islam: A Gradual Process
- Legislation is Easy, Implementation is Difficult
- Modern Nation-State and Jihad
- Nation-State replaced Colonial Domination
- Traditional Approach toward Nation-State
- Alternative view of Nation-State
- Principles, Legal and Moral Foundations of Nation-State
- Moral Dimension of International Community
- War in Modern Age

## Practice of Shari'ah and the State's domain

Those who champion the implementation of Shari'ah hold that they want to implement all of its injunctions through the state machinery. It is their misconception that the state is responsible to implement all directives of religion in its realm. The state neither has the right nor retains the power to implement all Islamic teachings immediately on its own in one go.

Sheikh Abdul Fattah Abu Ghudda quotes Imam Ibn Taymiyah: The ruler's order will be applicable to matters like *hadd* (major crimes where offender has to pay retribution) and general public issues such as murder, false accusation, and financial affairs - not on all the questions in the fields of *Tafsir* (exegesis of Qur'anic text), Hadith (what the Prophet said and did) and *Fiqh* (law and jurisprudence). There is consensus on *hadd* and public issues (so the state can execute order). When there is no agreement on the meaning of a Qur'anic verse or Hadith, or in the details of an injunction, then the state's decision or order cannot determine the validity or otherwise of any of the viewpoints. The ruler's order applies to specific, not all matters.<sup>55</sup>

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<sup>55</sup>Abdul Fattah, *Al-Ahkam lil-Qurafi*, p 36; *Majmu Al-Fatawa*, Dar al-Baq'a li-Taba'a wa Nashr, p 151/3 (with slight change of wording).



## **Implementation of Shari'ah: A Gradual Process**

In the face of difficulties in implementing a law or a set of laws, Shari'ah allows to implement only as much as possible in line with the principle of graduation and gradual progress.

In the early days of Islam, when it was not possible to introduce and implement Islamic tenets in one go, all Islamic teachings were revealed gradually. And, as a Hadith tells us, reform of this nation in the later days would be on the pattern of reform in its early days. So we have to keep this principle in view.

Hazrat Ayesha (RA) says: In the early days of Islam, long passages of Qur'an describing Heaven and Hell were revealed. When people started to accept Islam, then teachings about permissible and forbidden matters were revealed. If wine were to be forbidden in the very beginning, people would not have quit drinking wine; if adultery were to be banned at the start, people would have said they were not going to stop it.<sup>56</sup>

While appointing Hazrat Mu'az ibn Jabal as governor

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<sup>56</sup>Sahih Al-Bukhari, Hadith 4993.

of Yemen, the Holy Prophet (PBUH) advised him to adopt a method of gradual introduction to Islamic teachings. He should invite people first of all to oneness of God. When people have firm belief in Allah and His Being the only One worthy of worship and obedience, he should educate them about prayers. When they start offering prayers regularly, he should tell them about Zakat.

The famous and oft-quoted Hadith "Whoever of you sees an evil, he should stop it with his hand (i.e. use the powers he is entitled to); if it is not possible, then he should speak against it; if it is not possible, then he should have a sense of dislike for it in his heart - and this is the lowest level of one's belief"<sup>57</sup> underscores the same principle of gradual development as well as implementation.

### **Call to Islam: A Gradual Process**

As in matters of worship and social conduct, the Holy Prophet (pbuh) did not introduce all of the beliefs in one go. First of all, he introduced people to the concept of Allah's Oneness, then educated them on His attributes, then told them about angels and the Day of Judgment. He did not declare his own

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<sup>57</sup>Sahih Al-Muslim, Hadith 43.

Prophethood all of a sudden in front of all. He first of all informed his wife Hazrat Khadija (RA) about it. Then, he told his close friend Hazrat Abu Bakar (RA) and his cousin Hazrat Ali (RA) about it. Later he started inviting his close relatives to the call of Islam according to the Qur'anic order of "warn your nearest kinsmen."<sup>58</sup> When the order "proclaim what you are commanded"<sup>59</sup> was revealed, the Prophet (PBUH) started calling general public openly to Islam.

### **Legislation is Easy, Implementation is Difficult**

Making a law is not that difficult compared to its implementation and convincing the people to observe and follow it. Even the routine rules and regulation that people draft for themselves aren't easy to implement. It takes time to change people's attitudes and behavior.

Moreover, Islam provides guidance for every walk of life with fine details. This, however, does not mean that all the details are applicable at once, that they are "immutable" in that they should be kept unchanged during all times. The fact is that details of a law keep changing according to the needs of the time, and law

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<sup>58</sup>Qur'an, Surah Al-Shu'ara, verse 214.

<sup>59</sup>Qur'an, Surah Al-Hijr, verse 94.

is implementable to the extent of its acceptance by the people.

The Holy Prophet (PBUH) has said that the way (to follow the religion) is difficult; care and compassion should be observed all the way.<sup>60</sup>

Explaining this, Imam Ghazali says: This Hadith advises that an individual should not force himself to observing Islamic values all at once against his established routine and habit. He should rather adopt practicable, gradual approach. He should not jump to the other extreme because giving up on bad habits and evil deeds is made possible only with a gradual and sustained effort. If he does not adopt a gradual approach, he would only face hardship. His condition may change - what was good may now seem bad and what was bad may appear good to him. This is all about going through experience himself.<sup>61</sup>

Once the Prophet (PBUH) shared with Hazrat Ayesha (RA) his intention about reconstruction of Ka'ba and raising it on the foundations that were laid down by Prophet Hazrat Ibrahim (AS). In pre-Islam era, it was not maintained on its original foundations. However,

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<sup>60</sup>Ahmad Abdur Rahman Al-Banna, *Al-Fatah Al-Rabbani*, Dar Al-Turath Al-Islami, p 19/16.

<sup>61</sup>Ghazali, *Ahya Al-Ulum Al-Deeniya*, p 77/4.

as the people were new to Islam, undertaking the reconstruction would have given rise to apprehensions among them. The Holy Prophet, therefore, let it stand on its then present form.

This brings home the message of care and caution, prudence and gradual progress. The Prophet himself desires to do something but gives up the idea just for the sake of not creating anxiety among the people.

Shari'ah holds us responsible to which we are capable of. We have not been asked to do what is beyond our means, nor does Shari'ah like for us to overburden ourselves.

Ibn Taymiya says: A Muslim is required to strive only as much as he can. If a ruler wants to obey Allah, implement religious teachings, and work for public welfare, but he fails to eliminate all evils and bad things despite his best effort, then he would not be held answerable. After all it is better to have good rulers rather than bad ones!<sup>62</sup>

### **Modern Nation-State and Jihad**

Today, most of countries in the world are nation-states. This means that every country's borders are

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<sup>62</sup>Ibn Taymiya, *Al-Siyasah Al-Shari'iyah*, res. Ali ibn Imran, Dar Ilm Al-Fuad, p 241.

determined and protected, unlike the past a powerful country cannot occupy a weaker one or infringe upon its borders. This gives a great deal of protection to weaker countries from the wrath of more powerful ones.

But a religious mind agitates against this concept because, according to the hitherto traditional notion this negates the concept of Islamic state where geographical border and boundaries have no importance. They are rather considered as part of the scheme to divide the Muslim ummah. Its acceptance, it says, also amounts to accepting the redundancy of Jihad - which is an integral part of the idea of Islamic dominance and government. According to Shari'ah, it is one of the main duties of the Islamic state to strive for upholding Allah's message by declaring war against adjoining non-Muslim governments to either eliminate them or, at least, make them submit to its rule and dominance. However, there is no room for this in the nation-state system where every country's right to freedom and political sovereignty is an accepted norm. In modern state there is no room for such agitation.

However, religious thinking does concede that peace and tranquility in present times depends on nation-

state system. The question of Jihad in modern system is though important, even more crucial issue is: what is the alternative to the nation-state system for the protection and existence of present-day nations?

### **Nation-State replaced Colonial Domination**

It is an acknowledged fact that the concept of nation-state not only stopped powerful countries to annex their weaker neighbors, it is this system that has stopped powerful countries' mutual hostilities and wars as well.

In the present scenario, adherence to the concept of nation-state is beneficial for the Muslim countries - it is they who make the bulk of weaker countries. An end to international agreement on these principles would instantly bring about another World War that would be detrimental to weaker countries around the world.

### **Traditional Approach toward Nation-State**

This is a challenging situation for religious thinking and traditional ulema put forward two types of response:

The concept of nation-state has been accepted only under compulsion as a temporary arrangement. As long as it lasts, Jihad would be considered as "suspended", but this would not be a permanent or

standard principle.

The concept of Jihad has undergone a change. Instead of physical intrusion into a country's geographical region, Jihad is now waged through progress in economic and scientific fields.

This shows that the religious mind is facing a dilemma. If it rejects the nation-state concept, it would jeopardize the very existence of the present day societies that are supposed to go on waging Jihad; and if the nation-state concept is adhered to, it entails giving up on the hitherto in vogue traditional approach to Jihad.

### **Alternative view of Nation-State**

The viewpoint of declaring Jihad against non-Muslim countries for elimination or subjugation is based on traditional interpretation of Islamic *Fiqh*, though this is not the only viewpoint. The other view accepts the existence of non-Muslim states and does not consider it necessary to wage Jihad against them. This is a view that calls for re-interpretation of and a fresh look at the reservoir of *Fiqh* (law and jurisprudence) keeping in view the modern day challenges. Here, we would only say this much about it, and would rather focus on the traditional approach.



According to the traditional approach, war and hostility define the relations between nations. So, it is necessary to wage Jihad in all times. But the nation-state comes as a barrier to this end. This has been accepted only grudgingly and under compulsion (of circumstances).

This is understandable only within a limited scope. It does not address the real challenge of the complex situation, which is to be taken care of from 3-4 dimensions. One of this has already been mentioned, i.e. it would be weaker countries that would be hit hard by even a slight imbalance in the wake of rejection of the existing nation-state system.

### **Principles, Legal and Moral Foundations of Nation-State**

In contemporary times, deviation from the nation-system has more to do with legal and moral justification and less with the provision of power or lack of it. World conscience has converged here, and no matter how powerful a country might be, its violation will not be accepted on moral and legal grounds. Such an action will be immoral and illegal, unless the world conscience changes again and, for instance, use of force becomes an accepted norm according the political notions of olden times.

### **Moral Dimension of International Community**

The challenge of modern times cannot be met by asserting that Muslims are obliged to follow Shari'ah and are not bound to get anyone's certification for their acts and beliefs.

The issue is not about getting endorsement or certification, but about the validity of a view and an action according to the established international norm. It would be naive to think that Shari'ah is unconcerned about this or that it wants Muslims to be considered morally bankrupt or decrepit in the eyes of the international community. The real need is to understand that political power is not an answer to all problems; that use of force needs moral basis, and this moral view should be founded on common human values and conscience. Power can subdue minor and temporary differences about an act's moral justification, but it cannot address key questions of moral nature.

### **War in Modern Age**

We have to keep in view the changes that have taken place in the conduct and scope of war. Today, war is not limited to battlefield. In addition to its effects on economy and finance, modern weapons have blurred the concept of combatants and non-combatants - in

fact, sometimes weapons are made and used in a way that war does not remain limited to combatants. Those having nothing to do with war, its decision or conduct, end up being hit the hardest.

The traditional religious view of war is that though bloodshed is itself odious, but it paves way for establishment of peace by elimination of evil, it is a means to achieving a good. It is, therefore, good "for reasons other than itself". This view has lost much of its meaning, though, in the face of large-scale destruction brought about by modern wars. This is because "proportion" is an important is the assessment of something as good or bad, permissible or otherwise. A thing can be good or permissible, rather than bad or avoidable, only if its benefit is both achievable and more than its harm. The situation is, however, quite different in the present modern times.

There is yet another important dimension to this issue. The idea of expansion of Islamic state through Jihad was based on world's division into two camps of Dar-ul-Islam (abode of Islam) and Dar-ul-Kufr (abode of evil or disbelief). Modern world system has rendered this division quite irrelevant due to two main factors: one, large scale relocation of population; and two, modern political concept of citizenship and

the rights associated with it.

In olden times, Muslims mainly lived in Muslim territories. Their numbers in non-Muslim countries were almost negligible. This has greatly changed now. For varied reasons, a large proportion of Muslims reside in non-Muslim countries. In many cases, the status of Muslims in their adopted countries is not of second-class citizens, they rather enjoy equal status and same social and political rights. They have opportunities, according to their numbers and economic condition, to participate in the formulation of these countries' policies and decisions. So, the view about non-Muslim majority countries that they are basically "abode of non-Muslims / *Kafir*" does not hold the ground as it used to be in the past.

It is important to note that contemporary Islamic jurists have felt the need to develop a new branch of *Fiqh* as *Fiqh-ul-Aqaliyat* (laws and jurisprudence about minorities) for such Muslim communities around the world.

The changes in the world system have directly affected the main postulates as well the structure of international law. The traditional concept of Jihad,

which was operational in quite different a situation, appears to be no more applicable.<sup>63</sup>

These are the dimensions of the present day challenge that call for fresh and robust thinking. The main question before the religious thinking is that if, in addition to the compulsion under prevailing circumstances and the law of necessity, there can be a theoretical and moral basis for interaction with and accommodation of new political and moral concepts due to these concepts' intrinsic value and practical benefits. If it is so, would it mean an end to the traditional concept of Jihad? Or can it be interpreted in a way as to indicate to the evolution and development of thought according to the universal and comprehensive nature of Shari'ah? It is, however, clear that these question require deep thinking, and cannot be dealt cursorily by superficial understanding or emotional rhetoric.

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<sup>63</sup>Some experts of classical *Fiqhi* and legal tradition still hold that the concept of Dar-ul-Islam and Dar-ul-Harb (the battleground) is still valid and the existing international law provides its justification.

## **SECTION V**

# **DEMOCRATIC VALUES AND ISLAMIC PERSPECTIVE**

- Public Welfare
- Freedom
- Equality and Equal Opportunities
- Rule of Law
- Right to Information
- Plurality and Variety
- Patriotism and Loyalty to Homeland

**D**EMOCRACY is considered as the most practical and reliable of all political systems despite ceaseless criticism of its flaws and failings. The best thing about this system is that it is not bogged down with static and ever-fixed notions but is amenable to changes according to the development of society. Its ideas of division of power among different players in the state (i.e. branches or pillars of the state such as the legislature, the judiciary and the executive), transfer of power, peaceful social development, accountability, and public opinion etc have practically manifested that this system can be adopted or subscribed to for the betterment of humanity.

The extent of its success can be gauged from the fact that almost all civilizations and religious traditions have either accepted or incorporated its principles. It is not merely a political arrangement but its close-to-nature social values make it acceptable to religious teachings.

As for the Muslim world, it is true that some segments and groups of people did condemn it because they considered it a means to introducing Western culture and, eventually, leading to Western political domination. But this resistance lost much of its steam with the passage of time - not only because the critics could not present any viable, practical alternative to democracy, but also because of the strong voices from



within<sup>64</sup> the Muslim world that there is no contradiction between democratic values and Islamic teachings. Going a step further, they held that it was in fact Islam that had introduced these values much earlier.

From this thought perspective, we try to understand the extent and depth of harmony between Islamic teachings and democratic norms.

### **Public Welfare**

A democratic government works for the welfare of its people. It is kind of a Welfare State in which there is no room for any privileged classes. Opportunities are provided to people to benefit from and attain collective well-being and betterment.<sup>65</sup>

Islam calls for collective, public welfare and considers those who work for social good and betterment as the best people. The Holy Prophet (PBUH) said that the best of the people are the ones who do good to others.

Islam demands that people should collectively work for the welfare and uplift of society; and government

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<sup>64</sup>Sarmad al-Tai, *Tahawulat Al-Fikr Al-Islamiya*, Alexandria, Dar Al-Hayy, 2003, p 266.

<sup>65</sup>Mustafeez Alvi, *Maghribi Jumhuriyet: Haqiqat aur Sarab*, Fazli Sons, p 25.

should frame laws that benefit all with no element of discrimination. In their individual capacity, every citizen should strive to fulfill their social obligations by working together or in harmony with each other.

### **Freedom**

Generally, there is no value of human life under dictatorship or monarchy. Criticism, even if true or for rightful purposes, never goes unpunished. Democracy, in sharp contrast, values human dignity, provides for freedom of expression, and accepts criticism.

Freedom is an inalienable right of all. It means that an individual is not bound to political views or personal choices of his or her parents or forefathers, nor can law coerce them. Freedom consists of **personal freedom** - everyone is free to think and work as they may choose, and government cannot interfere in personal choices; **political freedom** - everyone can freely participate in political system to elect and dismiss public officials, they have the right to gather and express opinion, and to get information; and **economic freedom** - everyone has the right to own private property, use it and transfer it, seek employment or undertake economic activity for their income, etc.

Freedom means one is free to believe and have own views and opinion, to publicly express these views, to gather for social cause or economic activity.<sup>66</sup>

In Islamic society, everyone enjoys the right to freedom and protection of life. Hazrat Umar's (RA) saying "when did you make people slaves whereas they were born free" underscores, and thus has become hallmark of human freedom and dignity.

All people have the right to live without the fear of getting killed or injured or subjected to torture. Protection of life and belongings is state's responsibility. How valuable is human life can be gauged from Qur'anic injunction: he who slays a soul unless it be (in punishment) for murder or for spreading mischief on earth shall be as if he had slain all mankind; and he who saves a life shall be as if he had given life to all mankind.<sup>67</sup>

Allah sent Prophets to liberate people from the yoke of slavery. As Qur'an told us, (Moses said): Deliver to me Allah's servants; I am a trustworthy Messenger to you!<sup>68</sup> i.e. not enslave people, but let the Israelites, whom you have made slaves, come with me - as they

<sup>66</sup>See, Democracy and Islamic View about it (Arabic), p 224.

<sup>67</sup>Qur'an, Surah Al-Ma'idah, verse 32.

<sup>68</sup>Qur'an, Surah Al-Dukhan, verse 18.

themselves want.

In democracy, every person can enjoy his or her rights as long as they do not infringe upon others'. Enjoying one's rights at the cost of others' is denying them their due rights. It is not permissible in democracy. Similarly, Islam clearly prescribes everyone's rights and responsibilities so that there is no confusion about the scope of rights or clash between the people.

### **Equality and Equal Opportunities**

Everyone in democracy enjoys political rights, equal opportunities to develop and progress, and no one is discriminated against. Irrespective of one's forefathers and their birthplace, race or language, color or creed, all are equal at political, social and economic levels. In the eyes of the law, all are equal citizens; at social level, there is no class distinction; and equal economic opportunities are afforded to all.

Islam does not distinguish between people on the basis of race or color or belief system. The Holy Prophet (PBUH) instructed in his last sermon during Hajj: Arab is not superior to Ajam, nor is Ajam superior to Arab; neither the black is superior to the white, nor is the white superior to the black - except

for piety.<sup>69</sup>

Islam demands social justice. No one - person, group or class - can be given preference over the other. There should be fairplay and justice in distribution of rights and responsibilities, information gathering and decision-making. The Prophet (PBUH) said: Many nations before you were destroyed because when someone from elite class committed a crime, for instance theft, they would let him go scot-free; but they would punish the weak. By Allah! if daughter of Muhammad (PBUH) had committed the act of stealing, I would have cut her hand too.<sup>70</sup>

This sets the high standard of justice in an Islamic society.

### **Rule of Law**

Democracy creates political awareness that it is not rule of an individual but "rule of law" that ensures stability in society and paves way for real progress. Rule of law is important for democracy to take roots in a society<sup>71</sup> - and it means that government and people both are subject to law and its universal

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<sup>69</sup>Musnad Ahmad, Hadith 43536.

<sup>70</sup>Sunan Nisai, Hadith 4901.

<sup>71</sup>Maghribi Jumhuriyet, p 75.

application.

While Qur'an underscores the importance of observing the law and not to cross the limits set by Allah, saying "those who transgress the limits set by Allah are indeed the wrong-doers," Islamic jurists have set a general principle that government can make and implement laws in the light of Islamic teachings, including matters where there are no explicit legal rulings by Qur'an and Hadith, and it is obligatory to accept the law that the government of the day has made.<sup>72</sup>

### **Right to Information**

In a democracy people can ask the government to share with them information and facts - rather than try to conceal facts and avoid sharing information, as happens in other systems. This is essential for trust building between government and people, which is, in turn, a basic ingredient of democracy and its function.<sup>73</sup>

Islam forbids concealing the truth and facts. It is a famous Hadith that tells us all to "be truthful, as

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<sup>72</sup>Qazi Ibn Abidin, *Fatawa Shami*, Idara Zia-ul-Musanifeen, Bhaira Sharif, p 422/5.

<sup>73</sup>Haider Ibrahim, *Al-Thiyarat Al-Islamiya*, Markaz Al-Wahda Al-Arabiya, 2009, p 95.

truthfulness takes to the way of Allah, which eventually leads to paradise (jannah); and refrain from falsehood, as it leads to disobedience of Allah, which eventually leads to hell (jahannam).<sup>74</sup>

### **Plurality and Variety**

Existence of a variety of cultures, race and customs, colors and creed is a reality. The more a society accepts variety of existence and plurality of opinion the more healthy and strong it becomes. Islam appreciates variety and considers it a sign of Allah's creative powers. Qur'an says: O people, We created you all from a man and a woman, and made you into nations and tribes so that you may know one another.<sup>75</sup>

There is a whole branch of *Fiqh* that concerns itself with minorities' affairs (*Fiqh Al-Aqaliyat*). Its existence and development in recent times indicate to the acceptance of plurality throughout Muslim history.

### **Patriotism and Loyalty to Homeland**

Love for one's country, culture, values and customs is quite natural. As people participate in government

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<sup>74</sup>Sahih Al-Bukhari, Hadith 6094.

<sup>75</sup>Qur'an, Surah Al-Hujurat, verse 13.

formation in a democratic system, their sense of association with government and their beloved country gets stronger. Islam appreciates love and attachment to one's homeland, provided it does not come in the way of its cause and objectives.

The Holy Prophet (PBUH) had to leave his birthplace Makkah for the sake of Allah. Yet, when he chose Madina as his home, he said: O Allah, make Madina dear to us - just as much as we love Makkah, or even more!<sup>76</sup>

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<sup>76</sup>Sahih Al-Bukhari, Hadith 1889.





## **SECTION VI**

# **CONSTITUTIONAL FRAMEWORK IN PAKISTAN AND RELIGIOUS LEADERSHIP'S CONSENSUS PRINCIPLES**

- The Objectives Resolution
- Basic Principles of Islamic state: Consensus of religious leadership
- Paigham-e-Pakistan (Narrative of peaceful Co-existence)
- Summary
- Request for Fatwa regarding State of Pakistan.
- Unanimous Fatwa (Response to the Istifta)

**W**HEN the independence movement was in full swing in the Sub-continent and Muslims were rallying for a separate homeland of their own, Muslim religious leadership was divided on the question of Muslims' political future. While some held that Muslims should continue to live in India after the British withdrawal, others asserted that it was about time to struggle for a Muslim homeland where they could live according to their culture.

Those who stood for separate Muslim state played an important role in the freedom movement. Even after the creation of Pakistan, their struggle continued for implementing Islamic system in the new country.

Though there have always been some among the religious people who oppose democracy and its system, but it is also an irrefutable reality that a large number of religious leaders have always struggled for democratic norms to take roots in Pakistan. Theoretical and partial differences notwithstanding, they have always stood for democracy and tried to bring reforms in the system.

The value of their struggle reflects in country's three main documents:

- 1: The Objectives Resolution, which was passed by the Constituent Assembly in 1949 and is the Preamble to the Constitution;

2: Basic Principle of Islamic state, which represents consensus of scholars and religious leaders of all schools of thought;

3: Message of Pakistan (Paigham-e-Pakistan), which reposes confidence in the existing political system in Pakistan. These documents show Muslim scholars' and jurists' approach to making Pakistan an Islamic democratic welfare state.

### **The Objectives Resolution**

The Objective Resolution passed by the First Constituent Assembly on 12th March 1949, determined guiding principles for the Constitution of Pakistan. Religious leaders who have been part of democratic struggle in Pakistan consider the Objectives Resolution as the hallmark and essence of the Constitution.

The Objective Resolution is the preamble of the constitution which clearly shows that the argument of people who call it infidel or un-Islamic is a baseless argument.

The Pakistani Objectives Resolution proclaimed the following principles:

Sovereignty over the entire world belongs to Allah Almighty alone and the authority which He has

delegated to the state of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust.

This Constituent Assembly representing the people of Pakistan resolves to frame a constitution for the sovereign independent state of Pakistan.

The state shall exercise its powers and authority through the chosen representatives of the people.

The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.

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

Adequate provision shall be made for the minorities to freely progress and practice their religions and develop their cultures.

Pakistan shall be a federation and its constituent units will be autonomous.

Fundamental rights shall be guaranteed. They include equality of status, of opportunity and before law, social, economic and political justice, and freedom of

thought, expression, belief, faith, worship and association, subject to (the) law and public morality.

Adequate provisions shall be made to safeguard the legitimate interests of minorities and backward and depressed classes.

The independence of the judiciary shall be fully secured.

The integrity of the territories of the federation, its independence and all its rights, including its sovereign rights on land, sea and air shall be safeguarded.

So that the people of Pakistan may prosper and attain their rightful and honored place among the nations of the world and make their full contribution towards international peace and progress and happiness of humanity.<sup>77</sup>

### **Basic Principles of Islamic state: Consensus of religious leadership**

From the early days of the creation of Pakistan, religious leadership in the country was aware of the need of an answer to questions about Islamic constitutional framework, if there is any, and if there

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<sup>77</sup>Preamble of the Constitution of Pakistan published by Ministry of Law Pakistan

can be an outline of a system on which all schools of thought could agree. In the absence of a comprehensive effort, piecemeal and scattered recommendations or advice by legal and constitutional experts had only added to the prevailing confusion.

In such a situation, the country's religious leadership felt to sit down together and come up with a consensus declaration for the future direction of constitutional development according to the Islamic values and norms.

With this end in mind, a representative session of scholars from all schools of thought was convened under the chairmanship of Syed Sulaiman Nadvi in Karachi on January 21-23, 1951.

The session ended with emergence of a consensus declaration enunciating the basic principles of Islamic state. It said that it was necessary for an Islamic state's Constitution to conform to the following:

Allah is the Ruler and real Legislator.

The law of the country shall be based on Qur'an and Sunnah, and no law shall be made or an order be given against the Qur'an and Sunnah.

*Explanatory note:* If there already exist laws that are



against Qur'an and Sunnah, it is necessary to determine that they shall be cancelled or changed according to Shari'ah within a specific time period.

The state is not based on geographic, racial or some other notion, but shall be based on principles and objectives of Islamic way of life.

It shall be the duty of the Islamic state to establish the good and remove the evil as enunciated by Qur'an and Sunnah, to work for revival of Islamic tenets and values, and to arrange for necessary education of established Islamic schools of thought according to their own system.

It shall be the duty of the Islamic state to work for protection and stability of Islamic unity among Muslims of the world and to eliminate racial and regional, or other prejudices of among the Muslim people of the state.

The state shall provide for basic human needs such as food, dress, home, education and health facilities without any discrimination of color and creed to those who are not able to earn a living for themselves, or have been rendered jobless, or are unable to make a living for some other reasons.

The people of the country shall enjoy all the rights

that Islamic Shari'ah gives them, i.e., within the legal provisions, protection of life, property and honor; freedom of belief and creed, freedom to worship, personal freedom, freedom of expression, freedom to move, freedom to gather, freedom to earn a living, equal opportunities to development and benefit from welfare schemes.

None of the above-mentioned rights shall be denied to a citizen except for a valid legal justification; and no one shall be punished for any crime without providing opportunity to defend themselves in a court of law.

All Islamic schools of thought shall have full freedom under the Constitution. They shall have the right to educate their followers about their school/sect. They shall be able to propagate their views. Their personal matters shall be decided according to their own *Fiqh* (jurisprudence), and it is better to arrange for their own Qazi (judges) to adjudicate in these matters.

Non-Muslims shall have full freedom under the Constitution to practice their religion, worship, culture and civilization and religious education. They shall have the right to adjudication in their personal matters according to their own religious law, custom and norm.

Adherence to agreements with the non-Muslim

people within the Shari'ah provisions shall be obligatory; Muslims and non-Muslims shall all be equally entitled to the citizens' rights mentioned in No. 7.

It is necessary for the head of the state to be a "man" who is pious, capable and commands confidence of the elected representatives.

The head of the state shall be responsible for the administration of the state, though he might delegate part of his responsibilities to an individual or to a party.

The head of the state shall not be oppressive, but consultative - i.e. he shall perform his duties in consultation with government officials and elected representatives of the people.

The head of the state shall have no power/right to abrogate the Constitution, fully or partially, and govern without consultation.

The constituency that is eligible to appoint the head of the state is also eligible to dismiss him.

The head of the state shall have rights equal to those of the general Muslim public, and shall not be above legal accountability.

There shall be same law for application on members

and officials of the government as well as the people, and courts shall enforce the law on them both.

Judiciary shall be independent of the Executive branch of government, so that the judiciary is not influenced by the administration in the performance of its duties.

There shall be prohibition of ideas and thoughts that might cause damage or decline to the foundational principles and objectives of the Islamic state.

Different regions and territories of the state shall be considered administrative units of the same unified state. They shall not be racial or tribal units, but merely administrative areas with administrative powers under the central leadership for administrative purposes. They shall have no right to separate themselves from the Center.

No interpretation of the Constitution against Qur'an and Sunnah to be accorded recognition.

### **Paigham-e-Pakistan (Narrative of peaceful Co-existence)**

This unanimously agreed document titled "Paigham-e-Pakistan," prepared in accordance with the injunctions of the Holy Qur'an, the Sunnah of the Prophet and the Constitution of Pakistan, reflects the

collective thinking of the State of Pakistan. The Message identifies the problems faced by the State of Pakistan and provides basis to devise a strategy to achieve the goals of Objectives Resolution. Moreover, through this message, Pakistan is being projected as a strong, united, developed, civilized and modern nation in the international community. This consensus based document shall be helpful to reconstruct Pakistani society whose core values are tolerance, spirituality, justice, equality and balance in fulfilling rights and obligations.

Following are the key aspects presented through a joint declaration of Paigham-e- Pakistan:

1. The 1973 Constitution of Islamic Republic of Pakistan is Islamic and democratic and it is a social contract between all Units of Pakistan that has been unanimously endorsed by all the political parties as well as *ulama-o-masha'ikh* of all schools of thought. Therefore, the supremacy and implementation of this Constitution shall be ensured at all cost. Moreover, every Pakistani must fulfill his/her oath of loyalty to the State of Pakistan in every situation.
2. In accordance with the Constitution of the Islamic Republic of Pakistan, all citizens have the

guarantee to fundamental rights within the parameters of law and ethics. These rights include equality in status and opportunities, equality before law, socio-economic and political justice, right of expression, belief, worship and freedom of assembly.

3. Islamic Republic of Pakistan is an Islamic state and its constitution begins with the national oath that sovereignty belongs to Allah, the Almighty alone and He is the Supreme Ruler of the world and the authority bestowed upon people of Pakistan to govern and decide matters is a sacred trust which should be practiced within the prescribed limits. It also states that no law shall be enacted in Pakistan against the dictates of the Holy Qur'an and Sunnah and the existing laws shall be brought in conformity with the injunctions of Islam.
4. Operating within the limits of law and the Constitution of Pakistan, peaceful efforts for the implementation of the injunctions of the Holy Qur'an and Sunnah is the religious duty of every Muslim. This right is given to him by the Constitution of Pakistan and it is not prohibited in the country. Whereas, many national and

internal problems are due to deviation from the promise made by us with Allah, the Almighty. A progressive strategy is needed to enhance the role of Islamic Research Institute, Council of Islamic Ideology, Federal Shariat Court and Shariat Appellate Bench of the Supreme Court of Pakistan in order to address these issues.

5. Negligence in acting upon any part of the Constitution of Pakistan in no way justifies denial of Islamic identity and Islamic basis of Pakistan. On the basis of such negligence there is no justification to declare personnel of the government, military or other security agencies as infidels. There is no justification in Shari'ah to launch any armed activity against them. This type of action, according to Islamic teachings, is considered a heinous crime and rebellion. In the name of implementation of Shari'ah, use of power, armed struggle against the state, terrorist activities and all forms of anarchy, that our country is confronted with, are strictly prohibited in Shari'ah and considered rebellion. These conflicts weaken the country, state and nation and benefit anti-Islam and anti-state forces. To eradicate these forces the operations "Zarb-e-Azb", "Radd-ul-Fasaad" and National Action Plan

are fully supported.

6. In war against terrorism, ulama, mashaikh and people from all walks of life are in full solidarity with armed forces. The whole nation, in this battle of national survival, is in full support of armed forces and other security institutions of Pakistan.

The fatwa with the title of “qatl-e na haq” (unjust killing), declaring suicide attacks absolutely prohibited (haram qat‘i), issued by the representatives of all religious schools of thought in the light of Shari‘ah is fully endorsed. Thus the groups active against the state in the name of lingual, regional, religious and sectarian prejudices are all against the teachings of Shari‘ah and are root cause of national disintegration. Therefore, it is imperative for the state institutions to take strict action against these groups.

Sectarian hatred, armed sectarian conflict and imposing ones ideology on others by force is in clear violation of the injunctions of Shari‘ah and cause disorder on earth. Further, it is a national crime as per the law and the Constitution of Islamic Republic of Pakistan.

The core objective of all the educational institutions in Pakistan is enlightenment, schooling and character



building. All public and private educational institutions must not impart any hostile military education or training, hatred, extremism and violence. It is the responsibility of state institutions to take strict action against an individual or institution, on the basis of proof and evidence, who is involved in such activities.

It is imperative to take administrative steps and engage in intellectual jihad against extremist mindset. Since the past decade there have been indicators on national and international level that such negative tendencies do exist in different educational institutions. This mindset, wherever it exists, is our enemy. Such people deserve no concession regardless of their educational institution.

All schools of thought are permitted to propagate their doctrines, beliefs and juristic ideologies as per the Shari'ah. However, in accordance with the Islamic teachings and the law of land no one is permitted to speak or write against any person, institution or school of thought using insolence, hatred or baseless allegations.

Sections 295-298 of Pakistan Penal Code shall be fully enforced in its letter and spirit through state institutions. The law shall take its course against

anyone who by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred names of the Holy Prophet Muhammad (PBUH), the other Holy prophets, any wives (Umm ul-Mu'mineen), or members of the family (Ahl-ebayt) of the Holy Prophet, or any of the righteous Caliphs (Khulafa-e-Rashideen) or Companions (Sahaaba) of the Holy Prophet and Islamic spheres. If this law is misused somewhere, proper solution shall be provided to address such grievance, however, no individual or group is permitted to take the law in his own hands or to establish a parallel justice system.

It is the responsibility of an Alim and Mufti to explain Shari'ah ruling on clear statements of infidelity, but to decide about someone that he/she has committed infidelity is the prerogative of judiciary.

The land of Pakistan is a sacred trust from God. Every inch of it is a blessing from the Almighty. Therefore, the land of Pakistan at no time shall be allowed to be used for the propagation of any kind of terrorism, intellectual and practical training of terrorists, recruitment of terrorists, conducting terrorist activities in other countries and other such ulterior motives.

Schools of thought and juristic denominations are there among Muslims from the early period of Islam and do exist today. Juristic and ideological discussions, on the basis of reason and proof, are part of our Islamic intellectual wealth and shall remain so. These are the subjects of research and education and their original place is educational institutions. Ethics of disagreement shall be made part of the curriculum of public and private educational institutions.

According to Islamic teachings and 1973 Constitution, the rights and obligations of the government and the public are predetermined. As it is the obligation of the public that it fulfills its duties in the light of Islamic teachings and the Constitution of Pakistan. Likewise, the state institutions and their officials are also bound to perform their duties in accordance with true Islamic teachings and requisites of the Constitution of Pakistan.

Building upon Islamic principles, the reconstruction of Pakistani society is imperative where democracy, liberty, equality, tolerance, harmony, mutual respect and justice are ensured. So that congenial atmosphere for peaceful coexistence is achieved.

Human dignity and respect for Muslims are to be ensured. Further, to protect the rights of senior

citizens, women, children, hermaphrodites, and all other underprivileged classes it is necessary to implement Shari'ah rulings on official and unofficial levels.

Non-Muslims living in Pakistan enjoy all such civil and legal rights for the protection of their life, property and dignity that their fellow Muslims avail within the bounds of law and constitution. Furthermore, non-Muslim citizens of Pakistan have full right to worship in their places of worship and during the occasion of their religious celebrations as per the teachings of their religions.

Islam gives dignified status to women and protects their rights. The Messenger of Allah (PBUH) in his last Sermon reiterated for the protection of women's rights. Further, the women are being educated since the Prophetic era. In accordance with the teachings of Islam, women have right to vote, education and employment. To destroy women educational institutions, to attack on female students and educationists is contrary to human values, Islamic teachings and the law of land. Likewise, honour killing, marriage with the Qur'an, exchange marriage (watta satta) and violation of other women rights are strictly prohibited as per the injunctions of Islam.

Moreover, it is the responsibility of the government to ensure that women are guaranteed their rights.

All forms of illegal use of loudspeaker shall be discouraged and relevant law shall be implemented in its letter and spirit. Legal action shall be taken against the hate speeches delivered from the platform of mosque (minbar-o-mihrab). Furthermore, polemical discussions on religious topics on television channels are reprehensible and shall be declared cognizable crime.

Right of freedom of expression of the electronic media shall be regulated by law and its limitations may be defined. Every program that damages Islamic identity of Pakistan shall be banned.

### **Summary**

1. The 1973 Constitution of Islamic Republic of Pakistan is based upon Islamic injunctions and democratic values and a social contract between all Units of Pakistan that has been unanimously endorsed by the religious scholars of all schools of thought. Therefore, in accordance with the requirements of the Constitution of Islamic Republic of Pakistan, no law which is against the dictates of the Holy Qur'an and Sunnah shall exist in Pakistan. Furthermore, in presence of this Constitution, no

individual or group has the authority to instigate any armed activity against the state of Pakistan and its institutions.

2. Use of force in the garb of implementation of Shari'ah, armed struggle against the State or use of violence and terrorism to settle ethnic, geographical, religious and sectarian disagreements are contrary to the injunctions of Shari'ah. Defiance against the Constitution of Pakistan and imposition of one's ideology on others by force are also against the teachings of Shari'ah and tantamount to creating disorder in the country and a national crime as per the law and the Constitution of Islamic Republic of Pakistan. For the stability and defense of Pakistan all such anarchistic tendencies should be rooted out; therefore, it is imperative that all possible administrative, educational, intellectual and defensive measures are taken.

3. Construction of Pakistani society, in the light of the Constitution of Pakistan is needed where the trends of hatred, bigotry, intolerance and false accusation are curbed and resultantly a society is formed that rejoices tolerance, brotherhood, mutual respect and offers a comprehensive system of justice.

### **Request for Fatwa regarding State of Pakistan.**

What the Ulama (Religious Scholars) opine about the issue of continued involvement of certain groups in insurrectionary acts against the Government and Armed Forces of Pakistan. In the name of implementation of Shari'ah, these groups allege that the Government of Pakistan and its armed forces are infidels and apostates as they have yet to implement Shari'ah in its entirety. Basing on this analogy, these groups attract the youth for an armed uprising against the state, terming it as jihad. And during the process, they carry out suicide attacks to target innocent citizens and army personnel declaring these as righteously rewarding activities.

In this context, answers to the following questions are required:

1. Whether Pakistan is an Islamic state or an un-Islamic state? Further, can a state be declared un-Islamic and its government and armed forces as non-Muslim if *Shari'ah* is not implemented in its entirety?
2. Under the given circumstances, is armed rebellion against the government or army permissible, in the name of struggle for implementation of *Shari'ah*?

3. Whether the Holy Qur'an and Sunnah provide any justification for suicide attacks that are being carried out all over Pakistan in the name of implementation of *Shari'ah* and jihad?
4. If the answer to the above three questions is in negative, then whether the actions taken by the government and armed forces of Pakistan to combat insurrection are permissible according to *Shari'ah*? Should the Muslims come forward and support these actions?
5. Several armed sectarian clashes are also taking place in our country aiming to impose ones ideology on others by force. Are these activities justified in *Shari'ah*?

### **Unanimous Fatwa (Response to the Istifta)**

In the Name of Allah the Most Beneficent the Most Merciful

#### **The Response:**

**All praise belongs to Allah and peace and blessings of Allah be upon the Messenger...**

Response to the questions is as under:

1. Indeed Islamic Republic of Pakistan is an Islamic State according to its Constitution that begins



with the following sentence of the Objectives Resolution, “Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust.”

This Objectives Resolution was made part of the Constitution with the consensus of all religious and political parties and remained part of every constitution from 1956 to 1973, and does exist as such in the current constitution. Additionally, Article 31 of the Constitution provides detailed policy principles to enable the Muslims of Pakistan to order their lives in accordance with the Islamic way of life. Likewise, in Article 227 it is affirmed that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Qur’an and Sunnah, and no law shall be enacted which is repugnant to Islamic injunctions. The Federal Shariat Court and Shariat Appellate Bench of the Supreme Court of Pakistan, established under the Constitution, are empowered to ensure that these constitutional principles are respected. Every citizen of Pakistan has the right to challenge laws that are repugnant to the injunctions of Islam in

these courts for bringing them in conformity with Islam. Based upon this statement, Pakistan, without any doubt, is an Islamic State and merely due to some functional issues, declaring the country, its government or its armed forces as infidel is not permissible, rather it is a sin.

2. Since Pakistan is an Islamic State and its government and armed forces operate under and testify its Constitution upon oath, therefore, armed struggle against Pakistani government or its armed forces certainly fall within the category of rebellion that is categorically HARAM (illegal) as per the Shari'ah. Indeed, it is the responsibility of the government to fully implement Islamic provisions of the Constitution. And undoubtedly, peaceful and constitutional struggle for its attainment is an important responsibility of every Muslim. However, taking up arms to achieve this purpose is to mischief on the earth i.e. "fasaad fi'l-Arz". And those who take part in such armed struggle or assist and support in any form, openly disobey the commandments of the Holy Prophet (PBUH), who said:

”أَلَا مَنْ وَبِيَ عَلَيْهِ وَالٍ، فَرَأَهُ يَأْتِي شَيْئًا مِنْ مَعْصِيَةِ  
 اللَّهِ، فَلْيَكْرِهْ مَا يَأْتِي مِنْ مَعْصِيَةِ اللَّهِ، وَلَا يَنْزِعَنَّ يَدًا مِنْ  
 طَاعَةٍ.“

(صحیح مسلم، کتاب الامارۃ، حدیث نمبر: ۴۷۶۸)

*who has a governor appointed over him and he finds that the governor indulges in an act of disobedience to Allah, he should condemn his act, in disobedience to Allah, but should not withdraw himself from his obedience.*

(Sahih Muslim, Hadith No. 4768).

This subject is discussed in several concurrent (mutawatir) Ahadith that bloodshed and taking up arms against an Islamic government are grave sins.

3. Suicide is unacceptable in Islam and considered a grave sin. The Holy Qur'an says:

لَا تَقْتُلُوا أَنْفُسَكُمْ (سورة النساء: 29)

*And do not kill yourselves. (Qur'an 4:29)*

It is stated in several Ahadith that committing suicide calls for severe punishment. In one Hadith the Holy Prophet (peace be upon him) said:

من قتل نفسه بحديدة فحديدته في يده يتوجأ بها في بطنه  
 في نار جهنم خالدا مخلداً فيها أبداً (جامع الاصول بحواله بخاري و مسلم)

*He who killed himself with a steel (weapon) would be the eternal denizen of Hellfire and he would have that weapon in his hand thrusting that in his stomach in Hellfire for eternity. (Jami' al-Usul, with reference to Bukhari and Muslim)*

Likewise, when the Holy Prophet (PBUH) was informed about the people who committed suicide, he issued serious warnings for such people and for one such person the Prophet even did not offer his funeral prayer. (*Abu Da'ud, hadith 1395*) This is the ruling against committing suicide where an individual only kills himself, however, if suicide is committed to kill another believer then such suicide is like committing a double crime; one for committing suicide and the second for killing another person for whom the Holy Qur'an says:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَدِّيًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ  
 اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا (سورة النساء: 93)

(But whoever kills a believer deliberately - his recompense is Hell, wherein he shall remain forever, and Allah shall become angry with him and shall caste

curse upon him, and has prepared for him a mighty punishment. (Qur'an 4:93)

Furthermore, the Prophet has issued the following strict warning about the one who kills non-Muslims living in an Islamic state peacefully:

مَنْ قَتَلَ نَفْسًا مُعَاهِدًا لَهُ ذِمَّةُ اللَّهِ وَذِمَّةُ رَسُولِهِ فَقَدْ أَخْفَرَ

بِذِمَّةِ اللَّهِ فَلَا يُرِيحُ رَائِحَةَ الْجَنَّةِ (جامع ترمذي، حديث: 1403)

*Indeed, whoever kills a Mu'ahid that has a covenant from Allah and a covenant from His Messenger (peace be upon him), then he has violated the covenant with Allah, so he shall not smell the fragrance of Paradise. (Jami' Tirmidhi, Hadees: 1403)*

The suicide attacks which are being carried out in Pakistan, constitute three different types of grave crimes; first, the suicide; second, killing an innocent person; third, rebellion against an Islamic State. Therefore, these attacks are not justified through any interpretation. Supporting such attacks is like supporting a collection of sins (crimes).

4. It is clear from the above three points that all those people involved in violent activities against the government, in the name of implementation of

Shari'ah or in the name ethnic groupings are committing high treason against the State, as per the Islamic injunctions. The Holy Qur'an is clear about it when it states:

فَقَاتِلُوا الَّذِينَ تَبِعُوا الَّتِي تَبِعِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ

(Then fight the one that commits aggression until it comes back to Allah's command. (Qur'an 49:9) Therefore, it is not only permissible for the Government of Pakistan and its armed forces, by restraining themselves within the limits of Shari'ah, to fight against these rebels but is obligatory under Qur'anic injunctions. In this regard, it is also obligatory on all Muslims to support and assist, within one's means, armed forces of Pakistan in their operations.

5. Ideological differences among various schools of thought are reality which cannot be denied, however, these differences must be restricted within the limits of scholarly and ideological debates. In this regard, it is our duty to respect the sacredness of all the Prophets, the Companions, the wives of the Prophet and members of the family (Ahl-e-Bayt). And there is no justification for anyone to abuse or defame

others, or to incite violence and spread hatred among people. Moreover, on the basis of ideological differences, it is completely prohibited (HARAM) to kill each other, or to impose one's ideology on others by force and to commit homicide.

And Allah, the most Praiseworthy and the Almighty, knows the best.

*Ref: Pegham e Pakistan by Islamic Research Institute(IRI),IUII, Islamabad-2018*

## **SECTION VII**

# **AL-QAEDA AND CONSTITUTION OF PAKISTAN**



- Islamic Basis of the Constitution of Pakistan
- Historical Development
- Pakistan is a Dar-ul-Islam (Abode of Islam)
- The Constitution of Pakistan: A fair and binding contract
- Following of Shari'ah is not subject to Court's decision or permission
- Parliament has no absolute power for legislation
- Matters out of Shari'at Court's purview are not outside the domain of Shari'ah
- The Recommendations of the Council of Islamic Ideology are not, and cannot be, binding on the Parliament
- Council of Islamic Ideology and Federal Shari'at Court
- The Constitution and peaceful transfer of power
- Implications of Armed Struggle call for prudence
- Need for Education and Training to produce Shari'ah Experts
- A Critical Review of Objections against the
- Islamic Basis of the Constitution
- The Right to legislate
- The Promise of Elimination of Riba
- Indemnity to President, Prime Minister, other officials
- The Condition of being a "Man" for the ruler, "just and fair" for judges
- Ruler's Discretionary Power to Pardon

**A**L-QAEDA leader Dr. Aimen al-Zawahiri wrote a book in Arabic titled “Qandil-e-Subh” against Pakistan’s political structure and its constitution, the Urdu translation of which was published under the title of “Safaida Saher”. The book aimed at the youth, was successful in influencing many people and a number of other books appeared in the market that were influenced by Zawahiri’s work, which had criticized Pakistan’s constitution in the light of Shari’ah. It declared the constitution of Pakistan as un-Islamic and instigated the youth to rebel against the state. At the same time, it also presented an alternative constitution and the Zawahiri narrative was effectively dispersed across Pakistan. Since, the constitution of Pakistan is not taught at religious and contemporary educational institutions, many people were influenced by Zawahiri’s book.

## **Islamic Basis of the Constitution of Pakistan**

For an appraisal of the Constitution of Pakistan in terms of its Islamic character, we need to note, among other things, its historical development.

### **Historical Development**

1. The first Constituent Assembly in 1949 adopted the Objectives Resolution that holds that Islamic law shall enjoy supremacy in the country. This Resolution, which determines the main objectives of the constitutional

framework in Pakistan, has been given the status of Preamble to all the three subsequent Constitutions of the country - 1956, 1962 and 1973. Moreover, in 1985, through the 8th Amendment to the 1973 Constitution, under Article 2 (A), it was declared that the Objectives Resolution cannot be suspended or abrogated even during the times of Constitutional abeyance. This is why in the Asma Jilani case in 1972, the martial law administration was declared illegal and the government was compelled to restore the Constitutional order.

2. In 1952, Islamic scholars (ulema) from all schools of thought and sects presented a 22-point agreement for the Islamic framework of the constitution. In the light of these 22 points, Islamic clauses were made part of all the subsequent Constitutions. For instance, it was made compulsory for the head of the state to be a Muslim; a definition of "Muslim" was made therein and Qadiyanis and Bahais were declared non-Muslims. It was also held that all laws shall conform to Shari'ah and all un-Islamic laws shall be removed. To this end, the Council of Islamic Ideology was also established for the purpose of providing guidance in the form of advice to the Parliament.
3. In the post-1977 changes, Shari'at Benches were established at all the provincial High Courts. Later, these Benches were replaced by a Federal Shari'at Court with powers to declare "null and void" those laws

that it deemed not conforming to Shari'ah. Federal Shari'at Court's judgment can be appealed against at the Supreme Court's Shari'at Appellate Bench. Islamic scholars and ulema are appointed as judges at both the Federal Shari'at Court and the Shari'at Appellate Bench of the Supreme Court. It is pertinent to note that if Federal Shari'at Court's judgment is not challenged, then it becomes binding even on the Supreme Court. However, matters pertaining to

- Constitution
- judicial system
- Muslim personal law, and
- monetary and finance policies

were kept out of the purview of the Federal Shari'at Court, in 1980.

#### 4. Religious validation of rulers and courts

An important document in this regard is the Fatwa that, while addressing the issue of Moon Sighting, gave important and clear guidance on the subject under discussion. In his endeavor to build consensus on the issue of Moon Sighting, Mufti Muhammad Shafi first prepared a questionnaire and then organized a conference of learned scholars from all over the country at Qasim-ul-Uloom, Multan, in September 1954. At the end of

the two-day thorough deliberations, a Fatwa "Essence of research on moon sighting" was issued. In it, the questions and their answers serve as "the final word" for the subject of our interest here. The Fatwa raised three questions regarding the religious validation of rulers and courts' decisions:

- Is the rule of a person who gains power by use of force legal and permissible? What about his appointments of judges?
- Can a corrupt and errant person qualify for the post of a judge?
- If a judge is not well-versed in Shari'ah, does it disqualify him to serve as a judge?

In response to the first question, it is said that rulers should preferably be elected and chosen by the free will of the people. Yet, if a person gets to occupy the seat of power by use of force, it is compulsory for the people to follow him in good deeds and acts. It is permissible to accept judicial and other positions under him, even if none of the scholars and learned people had accepted his rule as legitimate - unless he commits *Kufr*. So, the Fatwa goes on to say that some decisions and actions of Pakistan's rulers may be good and should be implemented while others may be

wrong to be implemented.

Regarding the second question, it says that being a just person is though desirable, it is not compulsory for appointment to a judge's post. Ibn Abidin has been quoted to say that if we hold that a corrupt and errant cannot qualify for the post of a judge, then it is unthinkable that the judicial system would even be able to work in our circumstances. Then, Ibn Humam is reported to say that a judge's decisions are to be implemented, even if he is errant and wayward. Such a judge should, however, base his decisions on others' Fatwa, findings and decrees.

For an answer to the third question, it refers to the Ibn Humam's aforementioned view to assert that an errant and wayward judge's decisions need to be implemented, nevertheless.

It is educative to note that learned scholars and ulema gave this Fatwa in 1954, i.e. when even the Constitution was not drafted - which eventually came in 1956. In the Constitution, the country declared itself to be an "Islamic State" and vowed to make all laws in conformity with Shari'ah. The 1962 Constitution pledged this once again and established two institutions of Council of Islamic Ideology and Islamic Research Institute, for Islamization of laws. A

number of additional Islamic clauses were added in the 1973 Constitution. Through an amendment, being "Muslim" was given a definition, and, in its light, those who did not believe in the "Final Prophethood of Muhammad (PBUH)" were declared non-Muslims. In the post-1977 developments, many changes were incorporated in the laws, and efforts were made to make laws conform to Shari'ah, Federal Shari'at Court and Shari'at Appellate Bench at the Supreme Court were established.

In the history of Pakistan, the courts have given many decisions that went on to establish and preserve the Islamic identity of Pakistan's Constitutional framework and legal system. Only recently, over 1,800 ulema issued a consensus-fatwa which held that Pakistan is an Islamic state and it is not permissible to rebel against it.

With this historical background about the development of Constitutional framework, we now go on to exploring the salient features of the Constitution. For a fuller comprehension, it would be helpful to look at the Constitution keeping in view the following important aspects:

### ***Pakistan is a Dar-ul-Islam (Abode of Islam)***

Pakistan certainly qualifies to be a Dar-ul-Islam. Its

population is overwhelmingly Muslim, who agreed upon a contract stipulating that their ruler, head of the state, shall be Muslim. Even if some people think that some clauses of this contract or the details of some of the laws lead to the "expression of *Kufr*," the main two conditions to change a Dar-ul-Islam to Dar-ul-*Kufr* are still not there. Muslims enjoy rule and domination, and there is no such condition which can be termed as proximity to Dar-ul-*Kufr*.

### ***The Constitution of Pakistan: A fair and binding contract***

The Constitution is like a contract that binds the people of Pakistan together as well as to the state.

As for a contract, all of its clauses must, in principle, be considered legal and binding. If there is something that appears to be non-conforming to Islamic laws, it would be interpreted in a way that would give it acceptance according to the Islamic view.

A clause that cannot be interpreted in such a way shall not be admissible for implementation - even if the contract may stipulate that it is a binding clause, and even if the courts have declared it to be so, because it is an established principle of Islamic law that a judge's decision is "null and void" if it goes against the revealed text or consensus of scholars.



### ***Following of Shari'ah is not subject to Court's decision or permission***

Acting upon Shari'ah injunctions and teachings does not depend on court's ruling or order. For instance, if a person considers that bank interest is a form of Riba, then he can, and should, refrain from it. He cannot say that he would not refrain from it because the courts have not yet judged it as Riba.

The perpetuation of Riba, the interest-based system, is not because the courts have refused to declare it illegal or illegitimate. Rather, the reason for this is that the people of the country are either insensitive to the issue or merely not well-informed.

### ***Parliament has no absolute power for legislation***

Pakistan's Constitution and laws are based on Qur'an and Sunnah. The Parliament does not have the "supreme authority" to legislate on any matter in any manner as it may please, its legislation is rather subject to the injunctions of Qur'an and Sunnah. Even if it adopts a law in conflict with Islamic Shari'ah, this would not be "admissible" for implementation. In fact, the Parliament in such a case would be committing an act of "excess". If it removes all the Islamic clauses through an amendment, it would not affect the

clauses or the Islamic character of the Constitution. Rather, the amendment would itself be considered "null and void".

This is not just because the Supreme Court has decided in the Judges Case that the Parliament cannot remove Islamic clauses from the Constitution. This is because the state is an "Islamic state" and its members pledge allegiance to Islam as being Muslims or, at least, pledge loyalty to the state even if they are not Muslims.

***Matters out of Shari'at Court's purview are not outside the domain of Shari'ah***

To keep some matters outside the purview of the Shari'at Court is an administrative issue. If the Court cannot hear family laws, it does not mean that these laws have got supremacy over Shari'ah. As it is a Muslim country, where Muslims enjoy rule and domination, all of its laws including the Constitution are and will remain subject to Shari'ah. This is independent of the court's ability or inability to decide, for whatever reason, if a law or laws are Shari'ah-compliant or Shari'ah-repugnant. By the same token, the court's declaration of a law to be in conflict with Shari'ah does not necessarily mean that it really is in conflict. The court's decision is after all a

human act and effort - hence prone to error. The court may err; the law and its injunction will prevail.

As for the right to appeal, it reduces the chances for mistake. Meeting of more minds reduces the probability for error less likely. If the objection is that this right has been misused, then almost all discretionary powers, privileges and rights can be misused. A legal and rightful provision cannot, therefore, be denied or withheld for the fear of being misused.

***The Recommendations of the Council of Islamic Ideology are not, and cannot be, binding on the Parliament***

Council of Islamic Ideology is like "Mufti of the State," whose recommendations are not binding for the government or the parliament. Caliph Haroon-ur-Rasheed, for example, used to ask ulema for their views and interpretations in different matters. Was he bound to implement their interpretations and recommendations? Was it incumbent on him to adhere to their views, or did he take the final decision by himself?

Moreover, it is imperative to consider the implications of making the Council's recommendations binding on the government. Who would be its members? Would

they be appointed by the government? Or, would they be elected in some way. Such a selection is not difficult in a tribal setting; but it is quite an arduous matter in a cosmopolitan, civic system. The matter, in the final analysis, ends with the discretionary powers of the government.

### ***Council of Islamic Ideology and Federal Shari'at Court***

In contrast, Federal Shari'at Court is like "Qazi of the State" whose decisions are binding for the government. The Shari'at Court and the Shari'at Appellate Bench have played an important role in removing un-Islamic legal provisions and for introducing new Islamic laws in the system. The courts have also done a good job in interpretation and implementation of Shari'ah laws. Even if their performance has not been exemplary, it can still be appreciated as a step in the right direction. Yet, there is a lot that needs to be done and taken care of. For instance, the Federal Shari'at Court should not be barred from taking up cases involving monetary and fiscal policies, family laws, judicial system and the Constitution.

### ***The Constitution and peaceful transfer of power***

Those who have complaints against or reservations about the existing government system and, therefore, keep calling people to rise up in arms and revolt against the system, should realize that a main condition for the justification of armed struggle does not exist in Pakistan. Since transfer of power is possible quite peacefully, the call to arms is meaningless, illegitimate, and counter-productive.

According to Shari'ah, war against infidels and enemies is allowed only when inevitable. War against fellow Muslims is far too serious an issue. It cannot be allowed in a situation where change in government is possible through peaceful means.

### ***Implications of Armed Struggle call for prudence***

While Imam Abu Hanifa was aware of the incompetence of Umayyad and Abbasid rulers, he advocated for real and radical change, and in principle accepted the need and legitimacy of armed struggle or rebellion, yet he avoided taking the route of armed struggle. When renowned scholar Ibrahim al-Saigh tried to convince him of the urgent need for armed struggle, his responded by asserting:

This is not a one-man endeavor. Unless assigned by Allah to do so, even the prophets were not allowed to take such a course of action. Unlike other tasks, this cannot be done by an individual. If some individual sets out to do this by himself, he would only endanger his life, and I am afraid he would be responsible for abetting and aiding in his own death. Moreover, with the killing of such a person, it would become harder for others to stand up in times of real need in hard times.

### ***Need for Education and Training to produce Shari'ah Experts***

Interpretation of Islamic law in the light of contemporary thinking and modern challenges, and seeking guidance from Islamic law and jurisprudence are gigantic and onerous tasks. Rather than sloganeering, or indulging in wishful thinking, it needs education and training of people in such a way as to prepare them for meeting the challenges of modern times in the light of the guidance provided in Qur'an and Sunnah - and thus bringing to fore or refreshing the whole reservoir of Islamic learning, law and jurisprudence.

This task is humongous, yet it is not for everyone to undertake. It calls for dedicated, capable individuals

to come forward and do this duty on behalf of the rest of the society and Muslim Ummah - for reward from Allah and gratitude from people.

The irony is that those who are capable of this huge undertaking are engaged and exhausted elsewhere, and those who have no orientation as to how go about doing this want to be regarded as experts. It is only a matter of guess which of the two amounts to a greater disservice to the cause of interpreting Islamic learning and law in the light of contemporary challenges so as to enable the Muslim community live by Islamic teachings honorably amid the comity of nations.

### **A Critical Review of Objections against the Islamic Basis of the Constitution**

The objections of the critics and doubts regarding the Islamic character of the Constitution of Pakistan can be sum up as:

- Under the Constitution, some individuals and institutions have not been held answerable or accountable for their actions and performance.
- The head of the state can pardon death penalty awarded for a crime.

- The condition of being 'just and fair' for a judge is not there in the Constitution; only being a "Muslim" is considered for the Shari'at Court judge.
- There is no mention that only a man shall be the head of the state.
- Indemnity and protection has been provided to those who commit a crime prior to its being legally declared a crime.
- There is a provision that a penalty cannot be given twice for the same crime.
- It is only promised that Riba shall be eliminated; it has not yet been acted upon.

According to the critics, these features are all against the Sahri'ah. Any attempt to incorporate or include into law a thing that is against Shari'ah leads to *Kufr* (denunciation of Shari'ah); inclusion of such things renders the Constitution un-Islamic.

Let's examine, therefore, these objections and doubts about the Constitution, and review it from different aspects:

### ***The Right to legislate***

As there is no apparent condition binding the Parliament to accept the supremacy of Qur'an and



Sunnah, and to uphold the Islamic article and clauses in all its legislation, it seems that the Parliament's authority is absolute. It implies that the Parliament can refuse supremacy to Shari'ah and can legislate without any check on it.

The reality is, however, far from this superficial view. What does the Constitutional clause say? Can it be interpreted to mean absolute authority? Then, is it the only interpretation, or can there be still other interpretations? To us, this interpretation has been put forward only by the extremist elements, whereas Islamic scholars, ulema, jurists and lawyers have never held such a view of the Constitution and its provisions.

It is quite clear that the meaning of a certain provision of a document or a text cannot be determined without understanding its context, basic principles, nature and character, aims and objectives of the document along with its other provisions and assertions. The Constitution is clear in that it is being devised by the Parliament of an Islamic state with the objective to govern it according to the will and pleasure of Allah and teachings of His Prophet. Acceptance of the guidance of Allah and His Prophet in all the matters of the state and society is the main idea and assumption

of the Constitution. So, a superficial reading of the apparent wording is not helpful. Moreover, it is beyond comprehension that those who put forward such an Islamic constitutional framework might have kept for themselves some room to escape and refuse supremacy of Qur'an and Sunnah in legislation.

### ***The Promise of Elimination of Riba***

Regarding the aim of elimination of Riba, there is an objection against the constitutional clause 38 that states that Riba shall be eliminated as soon as possible - for the financial and social development and welfare of the people. It is said that this noble cause has only been promised and, in practical terms, nothing has yet been done.

If, however, the same clause is viewed with an open-minded positive approach, it would appear as championing the Islamic character of the Constitution - aiming to eliminate Riba. This cannot be done overnight, however. As it is not possible to remove it in one go from the whole of the system, it is left to evolve according to the obtaining circumstances.

If the critics are against gradual development and evolution, as required for elimination of Riba for instance, then the issue becomes either too complicated or merely an intellectual exercise far

removed from practical considerations. If they are really opposed to the process of gradual development in bringing an individual or a society or a polity to the observance of the tenets of Shari'ah, and consider it as un-Islamic or leading to *Kufr*, then how would they interpret the Prophet's permission to a convert, on his insistence, that after accepting Islam he would offer prayers only two times (rather than five) a day?<sup>78</sup> At another occasion, the Prophet let Banu Tha'qif go with their condition that, after accepting Islam, they would not pay Zakat, or go to Jihad!<sup>79</sup>

### ***Indemnity to President, Prime Minister, other officials***

As for the indemnity that constitutional clause (4) provides to the President, it is restricted to the matters where he already has discretionary powers. In other matters, President is bound to the advice of the Prime Minister and the Cabinet.

Similar is the case with the Clause 148. It gives exemption to President, Prime Minister, Governors, Chief Ministers, as well as Federal and Provincial Ministers from appearing before the Court, in matters

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<sup>78</sup>Al-Ahad wa Al-Mathani, 941; Asad-ul-Ghabah, 4756

<sup>79</sup>Sunan Abi Daoud, 3205

where they take decisions or actions as required by their duty to the state or the government.

It is asserted that this clause is against Shari'ah and its inclusion into law leads to *Kufr* (denunciation of Shari'ah), even though the subject-matter itself might just be 'sinful' falling short of committing *Kufr*.

It should be noted that these constitutional provisions do not give absolute indemnity to the state or government officials, it only exempts them from appearing before the Court in matters where they have discretionary powers and are using their powers as government functionaries. This does not give an impression of them being above-the-law; it is rather aimed to discipline various institutions and stop them from infringing upon one another's domain. If the government functionaries are not given an exemption from appearing before the Court, it would be very difficult for them to manage even the routine governance matters.

Islamic *Fiqh* (jurisprudence) allows such provisions. For instance, Imam Abu Hanifa says that the head of the state, or the ruler, cannot be held accountable to Court if he happens to commit even a major crime (hadd) like adultery or stealing.

Allama Kamal-ud-Din Ibn Humam says: If the chief

ruler commits a major crime (hadd) other than murder and financial corruption - such as adultery, drinking, false accusation, or stealing - he will not be held accountable to Court, for the reason that Hadd is implemented for the sake of Allah and it is only the ruler who is authorized to implement it. He is excused to implement it on himself because a punishment is given for the purpose of remorse and shame. While no one is expected to put himself in such a situation, others are not authorized to implement Hadd on him!<sup>80</sup>

One can differ with this view. Yet, it is a view of a renowned jurist and an Imam whose authority and position in legal matter is acknowledged by all.

This is why such provisions in the Constitutions cannot be termed as *Kufr* - or leading to it.

***The Condition of being a "Man" for the ruler, "just and fair" for judges***

The condition for the ruler (head of the state) to be a Muslim man, and for the judges to be just and fair Muslims is though desirable, but it does not mean that its non-inclusion in the Constitution amounts to

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<sup>80</sup>Fatah-ul-Qadeer, 2775.

*Kufr.*

The condition for judges to be just and fair has been "deduced" by jurists. Qur'an and Hadith text does not prescribe this, nor explicitly makes it a binding condition. The condition that the ruler should be a man is also "deduced" from a comment of the Prophet (PBUH) on the accession to throne of Khusro's daughter in Iran. The observation of the Prophet in this incident cannot be construed to mean a universal ban on woman's rule.

Maulana Ashraf Ali Thanawi, a renowned scholar of Islam in the sub-continent, holds that it is total dependence and reliance of a woman ruler's decisions that the Muslims have been cautioned against. In a democratic system, where a ruler is accountable to Parliament, the case of a ban on woman's rule does not apply.

Summing it up, it can be said that non-inclusion of such conditions might be contrary to a particular "deduced" interpretation or prescription of scholars, it cannot be termed un-Islamic or amounting to *Kufr*.

***Ruler's Discretionary Power to Pardon***

The provision in the Constitution that the President can pardon or commute a punishment in any crime

appears to be a matter in conflict with Shari'ah.

Other than the punishment for murder (Qisas), this power of the President does not come in conflict with any explicit Shari'ah demand. In murder cases, pardon or of substitution of punishment is allowed, according to Shari'ah, only with the consent of the aggrieved party. This has not been taken care of in the Constitution.

While it can be termed as partly conflicting with the demands of Shari'ah, it cannot still be interpreted as having led to *Kufr*. It is unthinkable that the drafters of the Constitution deliberately kept the room open for such an implication as might conflict with Shari'ah. It is quite possible that implications of such a provision were merely omitted. It can be considered a flaw that needs to be removed, but terming it *Kufr* is not the answer.

In addition, the courts have debated whether this provision can, in view of the other clauses that guarantee supremacy to Shari'ah, even be maintained and implemented.

Though the Supreme Court judgment in Hakim Khan's case says that all clauses enjoy equal status, and none can nullify the other, it does not assert anything in categorical terms. Nor is it the only

interpretation in this regard. For instance, High Court has in contrast held that the provision of supremacy of Shri'ah enjoys supremacy over all other provisions and laws. While the Supreme Court is the higher forum, this all shows that this issue warrants debate and discussion.

The sum total of all the discussion so far, about the power to pardon or commute a punishment, is that, in spite of the assertion of supremacy of Shari'ah, there exists a glitch that "technically" comes in the way of the courts in nullifying a law or a provision that conflicts with the Shari'ah. There is no reason to say, merely on the basis of this flaw, that the Constitution is un-Islamic. Hakim Khan's case draws attention to the point that the resolution of this flaw, a technical glitch, calls for action on the part of the Parliament, rather than the courts.

## References

- 1- Muhammad Mushtaq Ahmad, March 2012, Takfeer and Khurooj: In light of constitution of Pakistan, Al-Shariah. Vol.23.
- 2- Ammar Khan Nasir, March 2012, Is Pakistan a pagan's constitution, Al- Shariah. Vol.23.







Many books have been written on the subject. 'Islam and Democracy: An Alternate Narrative' is a valuable addition to this valuable collection. The book deals the subject with a commendable combination of classic and modern political thought and explores the prevailing narratives on democracy and Islam in Pakistan and Afghanistan to present an alternative narrative against belief that democracy is a system designed against Islam. I hope that the book will be a precursor to change, especially in the minds of religious youth. Israr Madani deserves our appreciation and thanks for the useful work he undertook during the past few years to promote a healthy debate on the important subject of Islam and democracy in the country.

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This book is an effort towards realization that the Muslim societies should develop through consultation and consent at academic and practical levels, so that people can enjoy the benefits of freedoms and live according to their own free will. The book presents an alternate discourse based on the belief that no system- religious, political or personal- can properly function without shura (democratic) principal. It aims to create a firewall through peaceful dialogue, against all forms of political and social violent radicalization. The book will be helpful in understanding the teachings of Islam, especially for people with background in classic and traditional education.

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