



ISLAM  
AND  
DEMOCRACY  
An Alternate Narrative

MUHAMMAD ISRAR MADANI

**ISLAM**  
**AND**  
**DEMOCRACY**  
**AN ALTERNATE NARRATIVE**

**By**  
**MUHAMMAD ISRAR MADANI**



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ircra313@yahoo.com:

+92 332 91 74 191, +92 51 22 25 650

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



# CONTENTS

FOREWORD .....	11
APPRECIATION.....	14

## SECTION I

### RIVALRY: IDEOLOGICAL OR HISTORICAL?

Ideological Rivalry .....	19
Ideological Rivalry and Democracy .....	21
Democracy and Islam debate .....	23
Anti-Democracy sentiment is rooted in history, not in religion.	24
Ottoman ruler dethroned for his accommodation of Western system.....	24
Traditional Approach towards Constitution.....	25
Democracy and Islamic concept of consultation .....	26

## SECTION II

### DEMOCRACY AND DICTATORSHIP IN MUSLIM HISTORY

Evolution of Political System.....	31
Islam and Political Power .....	32
Imam Malik and Constitution.....	33
Modern Concepts of State and Citizenship .....	33
Treaty of Madina and Social Contract.....	35
Removal of tyranny and dictatorship .....	36
Qur'anic Approach towards Justice.....	37
Democracy is anti-thesis to tyranny and dictatorship .....	38
Importance of public opinion in government formation.....	38
Principle of Majority Opinion .....	40
Muslim Jurists on Majority opinion .....	42

**SECTION III**  
**ADDRESSING RELIGIOUS CONCERNS AND DOUBTS**  
**ABOUT DEMOCRACY**

Plurality of Political Parties and Islamic Concept of Ummah ....	45
Western Concept of the Opposition .....	47
Amending the Constitution with Majority Opinion .....	48
Government's adherence to Shari'ah depends on Legislation....	48
Following the Majority' Decision? .....	50
Is Majority the criterion between right and wrong? .....	51
Possibility of wrong decision in Khilafah system.....	52
Adult Franchise - All, good or bad, are equal!.....	53
Dr Muhammad Iqbal and his stance on Democracy.....	54
Vote of the Corrupt.....	56
Voter and Candidates in Elections .....	57
Vote's three dimensions .....	58
Vote is a Witness .....	58
Vote is a Recommendation .....	59
Vote is Representation.....	59
Invitation to Pro-Active Action .....	60
Conclusion .....	61
A Note on Qureshi Rule .....	62
Should the Ruler be a Qureshi? .....	62

**SECTION IV**  
**NATIONAL STATE AND IMPLEMENTATION OF SHARIA**

Practice of Shari'ah and the State's domain.....	67
Implementation of Shari'ah: A Gradual Process.....	67
Call to Islam: A Gradual Process .....	68
Legislation is Easy, Implementation is Difficult .....	69
Modern Nation-State and Jihad .....	71
Nation-State replaced Colonial Domination .....	72

## CONTENTS

Traditional Approach toward Nation-State .....	72
Alternative view of Nation-State .....	73
Principles, Legal and Moral Foundations of Nation-State .....	73
Moral Dimension of International Community .....	74
War in Modern Age .....	74

### SECTION V

#### THE PROBLEM OF TAKFEER IN A MUSLIM STATE: A JURISPRUDENTIAL PERSPECTIVE

Question of Sovereignty .....	79
Principles of Takfeer .....	79
Second principle of Takfeer .....	81
Democracy is the rule of the people? .....	81
Is supremacy of Parliament a <i>Shirk</i> ? .....	82
Right to enforce laws, according to jurists .....	84
Contemporary Muslim Movements and Takfeer .....	85
Rules and principles of faith .....	86
Armed struggle against the Muslim state .....	88
Commandment of the good and prohibition of the evil .....	90
Performing this duty in an Islamic state .....	91
Takfeer of Muslim rulers: Meaning of <i>Ayat-e-Wilayat</i> .....	93
Opinions of the earlier jurists .....	95
Takfeer, the right of Allah and His Messenger .....	99
Conclusion .....	101

### SECTION VI

#### DEMOCRACY IN THE MUSLIM WORLD: EXPERIMENTS AND POSSIBILITIES

Are Muslim societies conducive to democracy? .....	107
Democratic experiences in the Muslim world! .....	108
Relationship between Islam and democracy .....	109



Democracy in the subcontinent.....	110
Democratic parties in the Muslim world and their social influence .....	111
Relationship between religion and state in Asia .....	113
Ennahda's new democratic model in Tunisia .....	114
Muslim democrats .....	116
Religion and Politics: The Experience of Indonesia's Nahda-tul-Ulama.....	117
Evolution of Nahda tul Ulama .....	118
Iran's religious democracy .....	119

## SECTION VII

### DEMOCRATIC VALUES AND ISLAMIC PERSPECTIVE

Public Welfare .....	124
Freedom.....	124
Equality and Equal Opportunities.....	126
Rule of Law .....	127
Right to Information .....	127
Plurality and Variety .....	128
Patriotism and Loyalty to Homeland.....	129

## SECTION VIII

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

The role of scholars in the preparation of the Constitution of Pakistan .....	133
Islamic Provisions of the Constitution of Pakistan 1973 .....	134
Difference between Islamic and non-Islamic documents.....	135
Democratic values are subject to Islamic interpretations.....	137
State Name .....	139
State religion .....	139

## CONTENTS

Objectives Resolution .....	139
Analysis of Fundamental Rights.....	140
Documents prepared by Ulema (Muslim Religion Scholars) ...	142
Basic Principles of Islamic state: Consensus of religious leadership.....	144
The Objectives Resolution.....	148
Paigham-e-Pakistan (Narrative of peaceful Co-existence) .....	150
Summary .....	156
Request for Fatwa regarding State of Pakistan. ....	157
Unanimous Fatwa (Response to the Istifta).....	158

## SECTION IX

### AL-QAEDA AND CONSTITUTION OF PAKISTAN

Islamic Basis of the Constitution of Pakistan .....	165
Historical Development .....	165
Pakistan is a Dar-ul-Islam (Abode of Islam) .....	169
The Constitution of Pakistan: A fair and binding contract .....	169
Following of Shari'ah is not subject to Court's decision or permission.....	170
Parliament has no absolute power for legislation .....	170
Matters out of Shari'at Court's purview are not outside the domain of Shari'ah .....	171
The Recommendations of the Council of Islamic Ideology are not, and cannot be, binding on the Parliament.....	171
Council of Islamic Ideology and Federal Shari'at Court.....	172
The Constitution and peaceful transfer of power.....	172
Implications of Armed Struggle call for prudence .....	173
Need for Education and Training to produce Shari'ah Experts.....	173
A Critical Review of Objections against the Islamic Basis of the Constitution .....	174
The Right to legislate .....	175

The Promise of Elimination of Riba.....176  
Indemnity to President, Prime Minister, other officials .....177  
The Condition of being a "Man" for the ruler, "just and fair" for  
judges.....178  
Ruler's Discretionary Power to Pardon.....179

## FOREWORD

There are various concepts regarding democracy in the Muslim world including Pakistan. Some judge democracy in the context of the country's conditions, while others weigh it on the scale of religion. Someone compares it to dictatorship, and someone considers it the opposite of Khilafah.

In the recent past, all these voices began to be raised in the adverse conditions of the region, in which the most effective approach came from some extremist groups. Because they used some religious arguments in their position, many people began to consider them on the right side.

Initially, I was also a supporter of this extremist view for some time, but thanks to my involvement in continuous dialogue, study, and observation, I got an opportunity to revise my position and embark on a new journey. I started collecting, studying, and analyzing books written against democracy and democratic ideas by traditional religious scholars from India, Pakistan, and to some extent from Afghanistan. After the study, it was interesting that the doubts and objections raised regarding democracy in dozens of books are mostly similar.

I tried to collect all these questions and objections and started looking for a Counter Narrative from within Islamic thought to respond to those objections. While working on this book I derived a lot from the books of early Muslim scholars and theologians, along with some eminent contemporary writers.

Based on the initial findings, I wrote and published an earlier book titled, 'Islam, Democracy and the Constitution of Pakistan'. This book was distributed and debated in our various training workshops and other gatherings, and reviewed by both supporters and opponents of democracy from an Islamic point of view.

With the continuous efforts of our team, a series of regular dialogues on the relationship between Islam and democracy, pluralism, democratic values, and religious freedoms were conducted in schools, colleges, and universities as well as with scholars, religious groups, madrasahs, editors of magazines, and intelligentsia in Pakistan.

As such, I felt the need to address a few more important questions and present the research in more depth, with more references and analysis building upon the previous work. This is the third edition of the book, in which many amendments and additions have been made. This book analyses the arguments against democracy in more depth and tries to provide an alternative narrative.

In many parts of the Muslim world, including Pakistan, some people consider democracy to be an infidel system and call their constitution un-Islamic. Some groups even took up arms because of these objections on theological grounds. In this new edition, these topics have been discussed in detail to restore confidence in democracy through dialogue.

After examining the opinions of various scholars and politicians regarding democracy, the following positions emerged:

Democracy is a system of disbelief or infidelity to God.

- The political system of Muslims is a caliphate, not a democracy.
- Democracy is a western system.
- Islamic democracy is different from Western democracy.
- A 'Muslim democrat' model is better than using the term Islamic democracy.
- Pure secular democracy is true democracy.

## FOREWORD

This book discusses five of the above-mentioned six narratives in some detail with an analysis of both sides of the arguments. The debates in this book not only look at the political aspect of democracy as a system but also take into account many historical, social, cultural, and civilizational dimensions for a comprehensive analysis and understanding of the subject. Moreover, an additional chapter on 'Democratic experiences and problems in Muslim countries' takes a look at the examples of practical obstacles as well as some successful models as experienced and presented by some Muslim-majority countries.

I am personally indebted and grateful to all the elders, teachers, and intellectuals who provided valuable opinions and made practical recommendations. I am also thankful to Abdullah Adnan, Azmat Abbas & Syed Rashad Bukhari who assisted in the translation and editing of this english edition. I am profoundly thankful to all those eminent scholars and writers whose work I read and quoted in this book. It is hoped that the book will be useful in clarifying some confusion about the compatibility of Islam with democracy and take forward the ongoing dialogue on the subject in scholarly and ideological circles.

Although enough care has been taken to prepare a clear and updated edition, any omissions and mistakes found in this book are mine.

**Muhammad Israr Madani**

Islamabad, Pakistan  
Ircra313@yahoo.com

# APPRECIATION

**Professor Dr. Qibla Ayaz**

(Chairman, Council of Islamic Ideology, Islamabad)

The discussion of democracy and Islam is not new. Ever since the fall of the Ottoman Caliphate, this issue has been a topic of debate in the academic circles of Muslim societies being a matter of preference for the political arrangement that was also related to Muslim identity. In every talk of democracy, the question of the preservation of religious and cultural identity was also raised with it.

As a result, the compatibility between democracy and Islam was doubted, and we could not establish a democratic system in the true sense. Furthermore, we could not even preserve our religious and cultural identity. All Muslim societies, more or less, experience anxiety and unrest on the question of democracy. Confusion in the minds of the youth is ever-increasing. As a natural phenomenon, in politically and socially unstable societies, frustration arises and either cut it from its civilizational roots or incites violence. Both these conditions can be observed in Muslim societies.

What is most needed at this time is political and social stability. This stability requires an administrative structure and a political system that is free from intellectual contradictions. In successful countries, this stability has come into being through democratic values and its political system. Its transparent adaptation in Muslim countries can also ensure political stability.

The Muslim world has a distinct identity and culture that should not be abandoned for this sake. A democratic order has the flexibility to allow specific identities to flourish within it. Western dictates need not be followed, as such, for true democracy in our countries to be flourished. If a modern

## APPRECIATION

political system can be adopted without losing ethical values, it can lead to the stability we so desperately need.

A recent and well-thought-through addition to several books on the subject is titled, *Islam and Democracy: An Alternative Narrative* by Muhammad Israr Madani. The book covers the subject through an insightful combination of modern and ancient intellectual discussions of the Muslim world.

Hopefully, this scholarly work will be a catalyst for change for the readers, especially the youth. In particular, the additions to this new edition are valuable. The analysis of old and contemporary debates will help clarify some of the confusion regarding the subject. Muhammad Israr Madani and his team deserve appreciation from all of us who have played a key role in promoting a healthy dialogue in this country on Islam and Democracy for the past few years. May God make this effort also fruitful. Amen.

**Dr. Qibla Ayaz (PhD, Edinburgh)**

Chairman Islamic Ideological Council  
November, 2022





## **SECTION I**

# **RIVALRY: IDEOLOGICAL OR HISTORICAL?**



## 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.

In the Muslim world, the cultural context is considered very important and closer to religion. It is even said that our civilization is based on religion. 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.

However, it cannot be denied that these movements have a future. The main reason for this is the weak structure of democratic values in the Muslim world, which creates space for movements that call for armed struggle.

## **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 need not accept each and every thing that is Western, yet they

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

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. Affairs of the state should be seen in the context of citizenship and social order.

## Democracy and Islam debate

An Arab thinker, Fahmi Huwaidi<sup>2</sup>, says that "double 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. Rather, a framework can be created according to each country's own needs, taking into account regional and local conditions.

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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.

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



## **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 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> (1761 - 1808), was forced to

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

<sup>5</sup>Salim III was a contemporary of Tipu Sultan of Mysore. He made significant efforts to prevent the decline of the Ottoman Empire. Translated modern sciences, reorganized army and navy and established modern artillery. But he could not take much steps to reform the empire and vested interests turned

relinquish power in 1807, after Mufti Ataullah<sup>6</sup> 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>7</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-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 him. He was deposed and killed in 1807.

<sup>6</sup> Mufti Attaullah Effendi was born in Aleppo, was an Arab by descent, but also mastered the Turkish language and had a special position in the Ottoman Empire. He held many positions and translated several jurisprudential books from Arabic to Turkish.

<sup>7</sup>Fahmi Huwaidi, *Qur'an and...*, Beirut, Dar-ul-Kitab al-Arabi, p 65.

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-Qaradhwai<sup>8</sup> 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. Qaradhwai goes on to say that "There is no much difference between the spirit of democracy and the concept of consultation in Islam."<sup>9</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

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<sup>8</sup> Dr. Yusuf Qaradawi is a prominent religious scholar of the Islamic world. He was active in the Muslim Brotherhood for a long time. The majority of Muslims consider him a moderate religious scholar. He is a great supporter of democracy in the Muslim world. The Palestinians strongly support the resistance. He is the author of more than 170 books. The whole world recognizes his meticulousness in jurisprudential matters.

<sup>9</sup>Yusuf al-Qaradhwai, Contemporary Fatawa (edicts and decrees), Cairo, Dar-ul-Wafa, p 636.

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:

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 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.

3. The ruler represents the people, and people have the right to dismiss him when they feel he is not truly representing them.
4. 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.
5. One of the characteristics of democracy is the peaceful transfer of power, which was established 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.

6. 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.
7. 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 DICTATORSHIP IN MUSLIM HISTORY**



**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>10</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>11</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 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.

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<sup>10</sup>Qur'an, Surah Shura, 38.

<sup>11</sup>Fahmi Huwaidi, al-Qur'an wa al-Sultan, Beirut, Dar-ul-Shurooq, p 20.



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>12</sup> As the contemporary modern system has changed so much owing to progress in the fields of science, economics, 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

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<sup>12</sup>Muhammad Hussein, *Islam and Western Civilization*, 1993, p 128.

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>13</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. 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

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<sup>13</sup>Ibn Qutaiba, *Tarikh al-Khulafa*, Maktaba Ilmiya, p 200/2.

the meaning of individual and people. Even in the works of Kindi and Ibn Rushd, luminary Muslim philosophers who transformed Greek heritage and legacy by translating into Muslim paradigm, we do not find such terms.<sup>14</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 mean 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 been used only once in a Hadith<sup>15</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

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<sup>14</sup>Democracy and Islamic position..., p 128.

<sup>15</sup>al-Bukhari, 5188.

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 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>16</sup> says that the Treaty of Medina covers

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<sup>16</sup>**Rachid Ghannouchi** (b.1941) is the head of Tunisia's religiously oriented political party 'Al-Ennahda'. His services to promote democracy in his country

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 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>17</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 the Prophet (PBUH) used to ask him questions without hesitation. In the

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are commendable. He first remained close to the Muslim Brotherhood model and later parted ways with political Islam. Now he is introduced as 'Muslim Democrat'. After following an ideology for three decades, his party has abandoned it and embraced urban Islamism. He is now closer to the Justice and Development Party of Turkey. Rachid Ghannouchi is the author of many books. His party created the new constitution of Tunisia in 2014.

<sup>17</sup>Rached al-Ghanouchi, *al-Hurriyat al-Amma fi Dawlat al-Islamiya*, 1993, p 290.

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>18</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

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<sup>18</sup>Qur'an, Surah al-Nisa, 58.

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 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>19</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

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<sup>19</sup>Abdur Rahman Kilani, Caliphate-o-Jamhuriyat, Maktaba Salam, p 67.

were coming to the city, and solicited desert-dwellers' (bedouins) opinion. He persisted with this 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>20</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>21</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 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

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<sup>20</sup>Ibn Kathir, *al-Bidaya wa al-Nihaya*, Beirut, Maktaba Ilmiya, p 147/7.

<sup>21</sup>Caliphate-o-Jamhuriyat, p 63.



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>22</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

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<sup>22</sup>Caliphate-o-Jamhuriyat, p 167.

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 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>23</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>24</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.

This principle of majority vote was also observed in allegiance

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<sup>23</sup>Akbar Shah, *Tarikh-e-Islam*, vol 1.

<sup>24</sup>*Nizam-e-Hukumat*, p 324.

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>25</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>26</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>27</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 (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.

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<sup>25</sup>Caliphate-o-Jamhuriyat, p 153.

<sup>26</sup>Ibn Abidin, Sharh Uqud Rasm al-Mufti, p 78.

<sup>27</sup>Sharh Uqud Rasm al-Mufti, p 89.

### **SECTION III**

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



## 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>28</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>29</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>30</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.

Dr. Yusuf al-Qaradhawi 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>31</sup>

He goes on to say that:

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<sup>28</sup>Qur'an, Surah al-Anbiya, 92; Surah al-Muminun, 52.

<sup>29</sup>Wahba Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, Dar al-Kitab al-Arabi, p 5009.

<sup>30</sup>Sahih al-Bukhari, 6026.

<sup>31</sup>Yusuf al-Qaradhawi, *Contemporary Fatawa*, p 652.

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, 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>32</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 rulers of different countries, he was informed that they do not accept unstamped 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

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<sup>32</sup>Qur'an, Surah Aal-e-Imran, 103.



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' Decision?**

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>33</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 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.

### **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 disputes.<sup>34</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.

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<sup>33</sup>Qur'an, Surah al-An'am, 116.

<sup>34</sup>Burhan Ghiliyun, Dar al-Thaqafa al-Arabi, p 61.

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.

### **Possibility of wrong decision in Khilafah system**

If the possibility of making an incorrect decision amounts to a "flaw", then there is no escape from it in 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>35</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, 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?

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<sup>35</sup>Qur'an, Surah Shoora, 38.

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.

### **Dr Muhammad 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>36</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 Imamat (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

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<sup>36</sup>See, Iqbal's lecture on "The Principle of Movement in the Structure of Islam," in Reconstruction of Religious Thought in Islam.



that there is little room for further deliberations on this subject. Democratic system of government is not only according to the 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>37</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.

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

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<sup>37</sup>Lecture "The Principle of Movement in the Structure of Islam".

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>38</sup>

## **Voter and Candidates in Elections**

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>39</sup> to explain this democratic feature from an Islamic perspective.

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

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<sup>38</sup>Khutbat-e-Iqbal, Iqbal Academy, 1996, p 40.

<sup>39</sup>Maulana Muhammad Shafi, *Jawaher al-Fiqh*.

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>40</sup> At another occasion he said that false witness is a serious sin among the other major sins.<sup>41</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>40</sup>Al-Bukhari, Mishkat

<sup>41</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>42</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, 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

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<sup>42</sup>Qur'an, Surah Al-Nisa, 85.

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>43</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>44</sup> and stops from apathy and unconcern: "do not conceal what you have witnessed, for whoever conceals it, his heart is sinful."<sup>45</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

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<sup>43</sup>Qur'an, Surah Al-Nisa, 135.

<sup>44</sup>Qur'an, Surah Al-Talaq, 2.

<sup>45</sup>Qur'an, Surah Al-Baqarah, 283.

"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 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>46</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 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>47</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

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<sup>46</sup>Musnad Ahmad, 1240.

<sup>47</sup>i.e. Musnad Ahmad.

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 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>48</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>49</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 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.

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<sup>48</sup>Musnaf Abdur Razzaq, p 231/5.

<sup>49</sup>Jami Tirmidhi, 3870.



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>50</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>50</sup>Mullah Ali Qari, *Mirqat al-Mafatih*, 3862/9.

**SECTION IV**  
**NATIONAL STATE AND**  
**IMPLEMENTATION OF SHARIA**



## 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>51</sup>

## 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.

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<sup>51</sup>Abdul Fattah, *Al-Ahkam lil-Qurafi*, p 36; *Majmu Al-Fatawa*, Dar al-Baqa li-Taba'a wa Nashr, p 151/3 (with slight change of wording).

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>52</sup>

While appointing Hazrat Mu'az ibn Jabal as governor 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>53</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

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<sup>52</sup>Sahih Al-Bukhari, Hadith 4993.

<sup>53</sup>Sahih Al-Muslim, Hadith 43.

and the Day of Judgment. He did not declare his own 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>54</sup> When the order "proclaim what you are commanded"<sup>55</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 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>56</sup>

Explaining this, Imam Ghazali says: This Hadith advises that an

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<sup>54</sup>Qur'an, Surah Al-Shu'ara, verse 214.

<sup>55</sup>Qur'an, Surah Al-Hijr, verse 94.

<sup>56</sup>Ahmad Abdur Rahman Al-Banna, Al-Fatah Al-Rabbani, Dar Al-Turath Al-Islami, p 19/16.

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>57</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, 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

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<sup>57</sup>Ghazali, *Ahya Al-Ulum Al-Deeniya*, p 77/4.

be held answerable. After all it is better to have good rulers rather than bad ones!<sup>58</sup>

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

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

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<sup>58</sup>Ibn Taymiya, *Al-Siyasah Al-Shari'iyah*, res. Ali ibn Imran, Dar Ilm Al-Fuad, p 241.



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 to 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>59</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.<sup>60</sup>

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<sup>59</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.

<sup>60</sup> Mahnama Al-Sharia, Maulana Dr. Amar Khan Nasir.

## **SECTION V**

# **THE PROBLEM OF TAKFEER IN A MUSLIM STATE: A JURISPRUDENTIAL PERSPECTIVE**



In today's era, when a political or legal concept is discussed, the discussion of Takfeer is usually started along with it. For the past several decades, Takfeer has been linked to democracy. However, before declaring democracy as blasphemy or Takfeer, we must look at the issue from Islamic legal and jurisprudential perspective.

## **Question of Sovereignty**

In general, a section of society thinks that democracy is the government of the people, which necessitates the negation of divine sovereignty. Dr. Yusuf Qaradawi, while discussing this in *Binat al-Hal al-Islami*, writes:

"Sovereignty does not mean that humans cannot make laws in their sphere of authority. Sovereignty only prevents people from making laws in the unauthorized sphere, such as in purely religious matters"<sup>61</sup>.

Sovereignty or supreme power for Allah does not preclude *Ummah*' right to legislate or make laws as required for managing or ruling. The only condition is that they would not make laws to change or supersede what was already ordained through Sharia. No one can change what Sharia (divine law) declared as permissible or not (*Halal or Haram*) neither they can change the way people are required to pray. All such definitive orders will remain in their original state and there is no room for change. Below are the opinions of the jurists on the issue of Takfeer.

## **Principles of Takfeer**

The most basic principle of Takfeer stated by the jurists is that any statement, even if it appears to be kufr, if it has the possibility of more than one meaning and even one of the

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<sup>61</sup>Muassasatul Risalah, p177



meaning has a weak possibility that makes it kufr, it will not be declared kufr unless the person himself or herself clarifies and declares what they mean. It is stated in the well-known book of Hanafi jurisprudence *Al-Muheet al-Burhani*:

"It is necessary to know that if multiple possible meanings in a statement point to Takfeer, while only one possible meaning precludes Takfeer, the mufti is required to act in good faith with the Muslim and prefer the possibility that precludes Takfeer. Then if the intention of the person who commits this action is the same possibility that prevents Takfeer, then he will be considered a Muslim. Only in the case that if the person accused intends the possible meaning that causes Takfeer, then the Mufti's fatwa does not give him any benefit of doubt. Such a person will be asked to repent and turn away from this practice and renew the marriage contract with his wife"<sup>62</sup>.

This is exactly what the famous Hanafi jurist Allama Ibn al-Najim also repeats. He writes:

"If there are several possibilities in an issue that make Takfeer obligatory and only one possibility prohibits Takfeer, it is the duty of the mufti to adopt the reason that prohibits Takfeer on the basis of good faith with the Muslim"<sup>63</sup>.

Scholars of *Kalam* have stated that a clear sign of a word or action being Kufr is that the word or action being called Kufr should be so clear that Muslims do not hesitate to declare it as Kufr.

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<sup>62</sup> Al Muheet al Burhani, p 5/550

<sup>63</sup> Al Bahr al Raaeq, p 1345

## **Second principle of Takfeer**

The second principle is that no Takfeer shall be made on the basis of the denial of an inductive or *ijtihadi* Shari'a issue, even if there is a consensus of the jurists on it. For Takfeer, it is necessary that a person has denied any principled and fundamental order of the Shari'ah proven by a definite, clear and improbable text.

This is the reason why many of the provisions of the family laws that were approved during the period of General Ayub Khan were contrary to the agreed Shari'a rules. Because they were not about the core principles of religion, but secondary issues and not strictly prescribed but inferred, therefore, from that time until today, no responsible scholar or mufti issued a fatwa of disbelief/ or takfeer on that.

It is necessary to comply with these principles even in the Takfeer of an ordinary person. If the matter is about a whole system of the state and its constitution, in the arrangement and compilation of which the most learned and eminent scholars of the time have participated and they trusted this constitution with full confidence, it becomes extremely sensitive to declare any part or clause of that constitution un-Islamic or Kufr. The importance of abiding by the above-mentioned principles increases manifolds. Therefore, Takfeer of the entire state system by considering a provision of a state constitution or an act as blasphemy is against Islam<sup>64</sup>.

## **Democracy is the rule of the people?**

A group also declares democracy a system of disbelief (kufr)

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<sup>64</sup> Dr Ammara, *Fitna-e-Takfeer*, Darul Wafa, p 51

based on the definition of democracy as "people's rule" instead of "God' rule". They object that even if people in a democracy accept the rule and prohibitions of Quran and Sunnah in their constitution, it is not done because it is a command of God which must be obeyed, but on the principle that it is self-imposed by the majority and they can remove this obligation whenever they want. Therefore, despite its specification in the constitution as Islamic, democracy is actually a system based on the philosophy of "people' rule" not "God' rule".

*Answer:* This specification in the constitution clearly means that the Constituent Assembly considers itself bound by the Qur'an and the Sunnah. It could have simply be written in the constitution that legislation is based on the opinion of the majority and whatever law is made on this basis, it will remain a law as long as it has the support of the majority. However, the Constituent Assembly is going beyond this and stressing on a regular principle that the legislature will be bound by the rules of the Quran and Sunnah. Simply put the legislature cannot make any law against the Sharia, as stated by the constitution of Pakistan in definite terms. Given this clear and set principle, the constitutions cannot be accused of violating the injunctions of the Quran and Sunnah.

### **Is supremacy of Parliament a *Shirk*?**

Another objection is raised against declaring the supremacy of the parliament. In a democratic system parliament is responsible for all legislation and its final approval. Whereas only Allah has the right to legislate<sup>65</sup> and Allah Almighty has given a complete law in the form of the Qur'an and the Sunnah. After that, giving

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<sup>65</sup> *Quran*, Sura Yusuf:40

some other institution the right to legislate or enact new laws is tantamount to associating someone with God in His command. For them, this is clearly *Shirk*.

The answer to this is that if every law made by human beings is considered to be *Shirk fi al-Hikm*, then the same rule must be applied to the decrees issued and the rules laid down by all the rulers from the Caliphs of *Banu Umayyah* to the *Ottoman*. Not only that but the universal system of Islamic law would also be considered *Shirk fi al-Hikam*, because most of it is done by jurists and *mujtahideen* who as humans' derived these laws through interpretation and reason (*ijtihad*).

Every legal system has rules for distinguishing between valid and invalid laws. For example, parliament determines the basic rules for legislation on a subject through a law called Parent Act. Through this act, legislative powers are delegated to another body. The institution which makes the laws, if they are correct in terms of the rules lay down by the Parent Act, they will be considered as part of the legal system of the country, even though these laws are made by a subsidiary body rather than the Parliament.

Then in every legal system there is a basic rule which is self-righteous and on the basis of which the validity or invalidity of all other laws is decided. The basic rule of Islamic law is: *In al-Hikam illa Allah* [Sovereignty belongs to Allah].

Therefore, the man made laws cannot be called divine, but they are a part of Islamic law, provided they are correct according to the above rule. And for this reason, legislation passed through parliament cannot be termed *Shirk*.

This is the reason why the jurists mention the penal punishments

only in the *Book of Huddod [Limits]*, although these are the punishments that have been determined by the *ijtihad* and inference of the jurists. The text of the Qur'an and Sunnah is very limited, in which the principles and solutions of basic and broad problems are explained. The problems faced in daily human life are countless and diverse. Therefore, only the text of the Quran and Sunnah cannot provide a solution to these problems, unless the solution of the problems is found in the light of the correct principles. Similarly, most of the political matters are administrative in nature, about which the general disposition of the *Shari'ah* is to be decided in the light of mutual consultation and consensus of the majority.

Parliament plays a role in resolving differences in these issues and creating a way for consensus through the majority, so it is not at all presumptuous to call this role *Shirk fi al-Hikam*<sup>66</sup>.

### **Right to enforce laws, according to jurists**

In the structure of Islamic law that the jurists have created, each type of law is associated with a specific type of right. The jurists have also formulated special principles for mutual priority among these rights. Until this system of rights is well understood, many misconceptions about Islamic law will persist. In this structure, every law is related either to the right of Allah or to the right of the servant (human), which is called *Haq al-Abd*. Sometimes law is related to the right of the state or society, which is called *Haq al-Sultan* or *Haq al-Sultanah*.

He who has the right also has the power to forgive the crime. In case, if the rights of Allah and the rights of *Sultan* (rular) were

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<sup>66</sup>Muhammad Abu Raman, *Post Islamism*, p 107

the same (as many contemporary scholars have assumed) then the state would have the power to pardon the crimes that are considered to be related to the rights of Allah (*hudud*). Similarly, the evidence of guilt and certain other relevant issues (e.g. the effect of suspicion) also change due to a different right. Sometimes two types of rights combine to form a common right.

Crimes that are related to the right of the *Sultan* (ruler) and the determination of the amount of punishment is also the responsibility of the rulers, they are called "political" crimes by the Hanafi jurisprudence. In these crimes, the quality of evidence is also determined by the government and it also has the power to pardon. The government determines the punishment according to the nature of the crime and there is no such restriction in this regard that the punishment does not exceed the *Hudd* (limit). Therefore, in some situations, death penalty can be given.

### **Contemporary Muslim Movements and Takfeer**

In the contemporary world, many movements have emerged in the Muslim world that issue orders of *Takfeer* for Muslim rulers or certain institutions of the country on the basis of *Jihad*. This has led to problems and controversies. Rather, the situation in some countries went to the state of civil war. The position of these organizations is that the Muslim *Ummah* has deviated from its duty and responsibility and is trying to bring in blasphemous systems like socialism, secularism and nationalism by putting the label of Islam on its forehead. According to them, if the intention is to establish an Islamic revolution (system) in a Muslim country, then it is necessary to uproot the false and

tyrannical democratic system prevalent here through aggressive and direct action<sup>67</sup>.

The concept of these organizations is based on violence in relation to religion, which excludes people from the religion on trivial matters. The essentials of faith are described in the Qur'an and Hadith differently. For example, in the light of *Hadith Gabriel*, the concept of religion is clear, concise and easy to understand, and there are many lessons to be learned in it.

### **Rules and principles of faith**

It is narrated from *Hazrat Abu Huraira* that once the Holy Prophet (PBUH) was present along with his companions (RA) and *Hazrat Jibrail [Gabriel]* appeared in the form of a questioner and asked him, 'What is faith?' The Prophet (peace and blessings of Allah be upon him) said: To believe in Allah, all His angels, all His books, meeting Him after death, all His Messengers and the resurrection after death. He then asked what is Islam? He said: Worship Allah and do not associate anyone with Him, perform the obligatory prayers, give Zakat and fast in Ramadan.

He then asked what is *Ehsan* [kindness]? He said: Worship Allah in this state as if you are looking at Allah and if you cannot find this state, then He is looking at you anyway. After these questions, Gabriel went back and the Holy Prophet said to the Companions: It was Gabriel who came to teach you religion<sup>68</sup>.

In the light of this blessed hadith, the religion of Islam has three ranks:

#### 1. Faith

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<sup>67</sup> Dr. Syed Iqbal, *Islamic Revolution*, p 26-27

<sup>68</sup> *Sahih al Bukhari*, Hadith: 50

2. Islam
3. Ehsan [kindness]

These three words teach safety, tolerance, benevolence and respect for humanity in their meaning. Therefore, the concept of religion cannot in any case depend on violence, coercion, compulsion etc. The desire to impose Islam and religion is undoubtedly a good desire, but its method cannot be determined through violence.

It is narrated from *Hazrat Junada bin Umayyah* that he went to ask about the health of *Hazrat Ubada bin Samit RA* and requested him to recite the blessed hadith of the Holy Prophet. He narrated that the Holy Prophet (PBUH) took the oath of allegiance from us that, "We will obey your command, in joy and sorrow, in hardship and openness, even if someone is preferred over us and on the point that we will not revolt against the rights of the one who has been ordered to rule, against his right to rule, except in the case that his disbelief becomes clear and there is a clear and definite argument from Allah<sup>69</sup>".

Hafiz Ibn Hajar Asqalani says about "open disbelief" that "the revolt against the 'clear and open disbelief' will be permissible when there is such a clear proof of the government's disbelief that there is no room for interpretation in this matter<sup>70</sup>".

Allama Shabir Ahmad Usmani writes in this regard:

"From this hadith, the public scholars have argued that armed struggle is not permissible even against the oppressive and corrupt Muslim government, so long as it shows clear

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<sup>69</sup> Sahih al Bukhari, Kitab al Fitan, Hadith: 6647

<sup>70</sup> Ibn-e-Hajar Asqalani, Fatah al Bari, 8/13



disbelief<sup>71</sup>".

*Mother of the believers, Hazrat Umme Salma* (may Allah be pleased with her) narrates that the Holy Prophet (peace and blessings of Allah be upon him) said:

"Rulers will be appointed over you in whom you will see both good and evil. So, whoever dislikes their bad deeds will be freed from this responsibility, but whoever rejects them will remain safe, but whoever likes them and follows them (he will not be free from responsibility)".

The Companions further asked:

Shall we not fight them? He said, "No, as long as they pray."

From the above discussion, it is clear that armed struggle and fighting against a Muslim government, even if it is a transgressor, is not permissible. It is only allowed in the following conditions: 'They explicitly declare disbelief, or become disbelievers; Ummah develops a consensus on their disbelief; they reverse the orders about what is permissible and what is not permissible; they stop people from offering prayers and encourage sin'. Despite the unjust action of the government, armed struggle is not allowed against them.

### **Armed struggle against the Muslim state**

Promotion of truth and struggling for Islamic implementation is a good practice, but to achieve this goal, armed struggle against the Muslim state, rebellion, taking up arms against Muslims is definitely not permitted by Islam, because all this falls under the category of corruption on earth (*fisaad fil arz*). If any person,

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<sup>71</sup> Shabbir Ahmad Usmani, *Fatah al Mulham*, 3/164

group or organization starts an armed struggle against the government by saying that this is the Islamic Republic of Pakistan, therefore it should have Islamic implementation, then this action cannot be justified. Same as the Holy Qur'an has rejected committing idolatry with the intention of achieving nearness to God.

If the government is involved in non-Sharia affairs and the people agree on changing the government through peaceful means, then we must create awareness about the fundamentals of the Islamic system. Armed struggle should be abandoned, because it only harms the common people. By choosing militancy, neither Islam can be implemented nor it can benefit the society. In the last few years, this effort has seen losses not only at the national level but also at the international level. Therefore, it is better to take a peaceful path than to take the path of violence and extremism.

Some organizations present this blessed verse of the Holy Qur'an as an argument that Allah has ordered the end of *fitnah* through fighting and establishing the supremacy of religion. Allah says:

"And fight them on until there is no more tumult or oppression and there prevail justice and faith in God<sup>72</sup>".

Therefore, in the light of this blessed verse, Jihad was started by these organizations to end *Fitnah* and implement religion in Pakistan. But this verse must be seen for the obligation of jihad in its proper context and the whole scenario. There are some clear and concrete rules for the obligation of Jihad which has a whole paradigm which must be kept in mind.

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<sup>72</sup> Quran, Surah Al Baqarah: 193

In the interpretation of the above-mentioned verse, none of the ancient commentators presented the argument of the obligation of Jihad against the state. Most of the scholars have taken '*fitna*' to mean obstacles under which Muslims are prevented from practicing their religion or are persecuted for believing. As the *Quraish of Makkah* used to do to the Companions of the Messenger of God, they prevented them from accepting Islam.

### **Commandment of the good and prohibition of the evil**

There are some fallacies regarding '*Amr al-Ma'ruf*' and '*Nahi an al-Munkar*'. Some people think that perhaps following this commandment some people can gather of their own free will and force the state and the people to do well. The Holy Quran states at many places to enjoin good and forbid evil. And as a Muslim, no one can refuse to fulfill this duty. Allah says:

"Let there arise out of you a band of people inviting to all that is good enjoining what is right and forbidding what is wrong; they are the ones to attain felicity.<sup>73</sup>"

At another place it is said:

"Ye are the best of peoples evolved for mankind enjoining what is right forbidding what is wrong and believing in God.<sup>74</sup>"

In the light of this verse, it is very clear that enjoining good and forbidding evil is certainly an important duty of the Muslim Ummah. This duty has the status of sufficient, that is, if some people perform this duty, it falls on everyone.

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<sup>73</sup> Quran, Surah Aal-e-Imran: 104

<sup>74</sup> Quran, Surah Aal-e-Imran: 110

But the misunderstanding in this regard is that some individuals and organizations think that '*Amr bi al-Mruf* and *Nahi an al-Munkar*' means forcefully implementing the Islamic commandments and all kinds of violence are permissible for that. In Pakistan, many *Da'wa Tablighi Jamaats* are currently performing this duty and this is the initial model that needs to be improved and expanded.

The desire to make people follow the Islamic rules by force is promoting extremism and violence. In this regard, these organizations also present the order of "stopping evil with hands<sup>75</sup>" as an argument.

### **Performing this duty in an Islamic state**

How can the requirements of *Amr al-Maruf* and *Nahi an al-Munkar* be fulfilled in a Muslim state? What will be its limits and procedures? For this, it is important to understand what is entails?

Imam Fakhruddin Razi states:

'Calling towards good' is a broad command that has two types. One is to be encouraged to do those things which are desirable, this is called '*Amr bil-Ma'ruf*', and the other is to be encouraged to quit those things which are not desirable, this is '*Nahi an al-Munkar*'<sup>76</sup>.

Similarly, Allama Ibn Hajar al-Haythami al-Maki writes:

"*Amr bil-Maruf* and *Nahi an al-Munkar*" refers to commanding those things that the Shari'ah has made obligatory and

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<sup>75</sup> Al-Sahih al-Muslim, Kitab ul Iman, 1/29

<sup>76</sup> Fakhruddin Razi, Tafseer al Kabeer, 20/3

forbidding those things that the Shari'ah has forbidden<sup>77</sup>.

This means that it is meant to invite to good and to forbid evil. This duty can be performed with the following injunction in mind:

"Invite (all) to the Way Of thy Lord with wisdom And beautiful preaching" ...<sup>78</sup>

Imam Fakhr al-Din al-Razi advises to perform the duty of '*Amr bil-Ma'ruf* and *Nahi an al-Munkar*' with "love and affection" instead of violence and coercion. He writes in this regard:

"Allah's command to enjoin good and forbid evil is not complete until the one who commands is able to enforce it on the oppressors and transgressors, and this power can be achieved only when there is love and harmony between the people of truth and the people of religion. Surely Allah has warned them from sectarianism and dissension so that they will be able to perform this important duty"<sup>79</sup>.

Imam Ibn Taymiyyah also writes in this context:

"One of the best commands is to order love and gathering and to order not to create differences<sup>80</sup>".

Hazrat Ali (may Allah be pleased with him) said that the believer is commanded to do good and not to do evil, he either takes advice or if he is ignorant of good and evil, he acquires knowledge, but this is not done with sword and whip<sup>81</sup>.

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<sup>77</sup> Ibne Hajar, Al Zawajir, p 146/2

<sup>78</sup> Quran, Surah Nahl:125

<sup>79</sup> Fakhruddin Razi, Tafseer al Kabeer, 21/3

<sup>80</sup> Ibne Taymia, Amar bil Maruf, p 86

<sup>81</sup> Usool al Kafi, p 59/5

In the light of the above specifications, at the individual level, commanding what is good and what is not good will produce positive and long-lasting results only if people create an atmosphere based on mutual love, affection and compassionate behavior and perform the duty of reformation in the best way. Otherwise violent behavior and extremist thinking will create division and hatred in the society.

There are also some individuals and organizations who cite the hadith as an argument for preventing evil by hand. Whereas in the light of religious orders there can be two interpretations of preventing evil by hand:

1. It means for the common man to participate in the practical struggle according to his ability. But for this purpose, if someone starts imposing his will on others by taking his own idea of good, so that the matter goes beyond hand to gun and beyond gun to civil war, then it is not allowed.
2. If it is meant to stop evil by force, then it means the effective force, i.e. the government and the government institutions. And this is the best concept because when individuals and private movements start using force they create difference and fear. If it is allowed it will end up creating rifts and disharmony to send people further away from religion.

### **Takfeer of Muslim rulers: Meaning of *Ayat-e-Wilayat***

The following verse of Surah al-Ma'idah is presented as an argument by those who impose a fatwa of disbelief on Muslim rulers:

“O ye who believe! take not the Jews and the Christians for your

friends and protectors: they are but friends and protectors to each other. And he amongst you that turns to them (for friendship) is of them<sup>82</sup>”.

Today, the rulers of Muslim countries are called infidels by some people in the context of this argument. They claim that the rulers have friendship with Jewish and Christian countries and they are supporting them in harming Islam. They believe that the crusades have already begun and whoever joins the infidels in the war of Islam will become an apostate and will be liable to death.

Scholars who reject the argument of Takfeer of Muslim rulers in *Ayat Wilayat* say that the apparent reasoning of the Takfeer of Muslim rulers is flawed, because this verse addresses the hypocrites of faith. See the words of *Surat al-Maida* verse 52:

“Those in whose heart is a disease thou seest how eagerly they run about amongst them saying: “We do fear lest a change of fortune bring us disaster.”<sup>83</sup>”

Similarly, hypocrites are also mentioned in verses 53 and 54. Imam Ibn Jarir al-Tabari writes in the commentary of this blessed verse that "there is no doubt that this blessed verse was revealed about a hypocrite who would make a Jew or a Christian a friend out of fear of the circumstances that would happen to him. The verse after this verse proves that"<sup>84</sup>.

It is clear from the above arguments that it is not correct to take such verses which apply to the hypocrites out of context to prove the Takfeer of the Muslim rulers. It is also seen in Muslim

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<sup>82</sup> Quran, Surah Al Maida: 51

<sup>83</sup> Quran, Surah Al Maida: 52

<sup>84</sup> Ibne Jarir, Tafseer Tabri, 218/2

history that even the rulers who allowed debauchery were never declared *kafar* by the earlier Muslim scholars. Even today, while following the predecessors and understanding the religion in the light of their teachings, it is important to have the belief that Takfeer of Muslims is not permissible and should be avoided.

The subject of Takfeer is very sensitive. Because of its exaggeration, temptations and disturbances have arisen in the Muslim Ummah and this process is still increasing. Therefore, in order to understand this issue clearly, it is necessary to keep in mind the clear arguments and careful behavior of the hadith of the Prophet (peace be upon him) along with the Qur'an. Because it is neither a small matter to declare a Muslim as an infidel, nor is it permissible to consider an infidel as a member of the Muslim Ummah.

A very wrong attitude is seen that many people assume the responsibility of Takfeer on the basis of their limited knowledge. Declaring takfir and issuing a fatwa is not an ordinary thing. The Prophet (peace and blessings of Allah be upon him) advised caution in this regard. These are such complex matters that even the scholars were careful about them and paused in giving opinions about it.

### **Opinions of the earlier jurists**

The jurists of the Ummah also gave guidance, seeing the need and importance of this issue. There is a saying attributed to Imam Abu Hanifa:

"We do not make Takfeer because of a Muslim's sin, even if that sin is great, unless he considers that sin to be halal (permissible). We do not consider him unfaithful, and call him a true believer,



as it is possible that a believer may be sinful but not a disbeliever.<sup>85</sup>"

Imam Abu Lalaith Samarqandi says about Hazrat Imam Abu Hanifa:

"When Imam Abu Hanifa saw his son debating, he forbade it. His son asked: You do this yourself? He responded: We talk as if birds are sitting on our heads. When you argue, each one of you wants their partner to admit disbelieve, and whoever intends disbelief for his partner, he himself becomes a disbeliever"<sup>86</sup>.

The actions and sayings of Imam Abu Hanifa prove that he was very careful in the matter of Takfeer. According to him, especially in a debate with someone, it is not right to say that the addressee should be excluded from the circle of Islam. It should be avoided. We should learn from their examples.

Imam Jafar Sadiq says:

"Accursed is the person who slanders a Muslim. Takfeer of a Muslim is equivalent to killing him."<sup>87</sup>

Takfeer was said to be equivalent to killing a Muslim because if this fatwa is given about a person, taking his life and property will be considered lawful.

Imam Malik says:

If a person does not associate partners with Allah, he will go to Paradise despite committing great sins. According to them, no sin other than shirk excludes a Muslim from the circle of Islam,

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<sup>85</sup> Al Fiqhul Akbar, p 1/43

<sup>86</sup>Umair Siddiquie, Kafir Kon, p 41

<sup>87</sup> Baqir Majlasi, Bihar al Anwar, p 72/209

as is stated in the verse of the Holy Qur'an:

"God forgiveth not that partners should be set up with him; but He forgiveth anything else to whom He pleaseth; to set up partners with God is to devise a sin most heinous indeed<sup>88</sup>."

Imam Bukhari has established a chapter in Sahih Bukhari:

"A person who calls his brother a disbeliever without explanation becomes a disbeliever himself"<sup>89</sup>.

Hafiz Ibn Hajar Asqalani writes in his commentary on this chapter:

"Imam Bukhari has bound absolute news if it has no justification, that is, if someone calls his Muslim brother a disbeliever without justification and argument, then the person who said it becomes a disbeliever, and if there is a clear text and evidence for calling him a disbeliever, then the one who says it will not be a disbeliever"<sup>90</sup>.

Imam Ibn Hibban states:

'Whoever declares a Muslim person to be a disbeliever will inevitably become a disbeliever'.

Therefore, imposing a fatwa of disbelief is not such an easy task that even a scholar of religion has to tread very carefully, what to talk of a common man doing it because if the conditions of it are not met the person issuing such a fatwa can become disbeliever.

Imam Abu Jafar Tahawi says:

'We do not make Takfeer because of the sin of any of the people

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<sup>88</sup> Quran, Surah Nisaa: 48

<sup>89</sup> Kitab ul Adab, Chapter 83

<sup>90</sup> Fatah ul Bari, pp 13/689

of the Qibla, unless he considers that sin to be permissible and halal'<sup>91</sup>.

Thus these scholars of Islam denied the belief of the *Khawarij* who tend to declare Takfeer for every sin. He also states that:

'A Muslim is not excluded from Islam by committing a sin, unless he considers it lawful'.

The well-known Maliki jurist Allama Ibn Albar explained this problem as such:

"Ahle-Sunnah wa Al-Jama'ah agrees that no one is expelled from Islam because of a sin, no matter how great that sin is. However, the Ahl al-Bidat have disagreed with this principle. Therefore, it is obligatory that a person should not be declared Kafir until the Ummah agrees on his disbelief or there is a proof for this disbelief that something contrary to this proof from the Qur'an and the Sunnah could not be found"<sup>92</sup>.

Imam al-Ghazali shows tolerance and limits the scope of Takfeer. He advises people to avoid Takfeer. He writes:

"It is appropriate for one who distinguishes between truth and falsehood to avoid Takfeer as much as possible. It is a mistake to declare permissibility of taking the life and property of those who pray facing the Qiblah and those who recite the Kalima. It's better to leave a thousand infidels alive than shedding blood of a Muslim by mistake"<sup>93</sup>.

It is clear from these explanations of the scholars that they do not declare the perpetrator of a sin as a disbeliever until he considers

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<sup>91</sup> Aqeedah Tahavia, p 50

<sup>92</sup> Al Muatta

<sup>93</sup> Al Iqtasad fil Etqaad, p 125

this sin as halal. It is necessary to clearly understand the Shariah arguments for Takfeer of a Muslim. In the same way, Takfeer will not be made in issues of ijihad and difference of opinions.

### **Takfeer, the right of Allah and His Messenger**

Takfeer is a Shariah ruling that belongs only to Allah and His Messenger. In fact, only Allah can decide whether a person has faith or disbelief. During the time of the Prophet, there are many examples in which Allah Almighty informed the Prophet about the faith and disbelief of the people in front of him.

Ibn Taymiyyah says:

"It is the right of Allah to declare someone as an infidel, so an infidel can be whoever is declared an infidel by Allah and His Messenger<sup>94</sup>."

He further clarifies:

Declaring something obligatory or forbidden, assigning reward or punishment for it, or declaring someone a disbeliever or a transgressor is only the authority of Allah and His Messenger. It is obligatory upon the people to consider what Allah Almighty and His Messenger (PBUH) have declared as obligatory or forbidden for themselves, and to confirm the same teachings that Allah and His Messenger (PBUH) have informed about"<sup>95</sup>.

Takfeer is a Shariah ruling and like other Shariah rulings, the power of declaring Takfeer is with Allah and His Messenger (peace be upon him). It is not right for the people to get involved in such issues because Allah knows best about the inner matters.

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<sup>94</sup> Al Isteghasa, p 61

<sup>95</sup> Majmu al Fatawa

That is why the Prophet (peace be upon him) also accepted the outward faith of the hypocrites and left their inner affairs to Allah.

Al-Shaykh Ibn Uthaymeen wrote in response to a question, "Do you make Takfeer or tafsiiq of *Ahl al-Taweel*?"

"*Tafseeq* or *takfeer* of someone is not our right, but it is the right of Allah and His Messenger. It is one of the Shariah rulings source of which is the Book and the Sunnah, and this alone should be confirmed. So neither *Takfeer* nor *Tafseeq* of anyone is correct until there is clear proof of its disbelief and transgression"<sup>96</sup>.

Shaykh Abdul Rahman bin Nasir Saadi says:

"Declaring someone' disbelief is the right of Allah and His Messenger (pbuh), so the disbeliever is the one whom Allah and His Messenger, declare to be a disbeliever"<sup>97</sup>.

The position of Javed Ahmed Ghamdi in this regard is as follows:

"A person knowingly refused to accept it after it became clear. Now it is obvious that it is related to the motives of the intention. This is only in the knowledge of God. Only God can do Takfeer. That is, only God can tell that such and such a person has become a disbeliever, except that someone confesses his disbelief. We ourselves cannot say this about anyone; our job is to tell people what religion is. What is Islam and what is Allah's guidance? It is our job to invite. It is not our job to make people unbelievers. This decision is made by the Prophet and by Allah's command. And He will clarify it finally on the day of the

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<sup>96</sup> Al Qawaed al Musla, p 87-88

<sup>97</sup> Irshad Ululabsaar, p 191

judgment. We have no right to say this about anyone"<sup>98</sup>.

Javed Ahmad Ghamdi limits the authority of Takfeer to Allah and His Messenger, and excludes Parliament and the State. According to him, it is not a human's job to decide the faith and disbelief of people. One can be warned about his misguidance, after which the duty of a Muslim will be fulfilled and the matter of these misguided will be between them and Allah. In addition, he prefers the term non-Muslim for those who do not follow the religion [instead of calling them kafir].

## Conclusion

The conclusions drawn from the above details are summarized as follows:

- 1- Takfeer is a derivative of *Kufr*, it means to exclude a person from the circle of Islam.
- 2- Takfeer is one of the basic orders of faith with respect to Muslims. It is not permissible to declare a Muslim as an infidel for some of his sin and to deprive him of the rights of Muslims. It is not correct to take this matter for granted. This matter requires great care and delicacy in making any decisions. One section of Muslims is unduly strict about it and the other is not convinced of it at all. The straight path is the path of moderation and balance between the two.
- 3- The *Kharijites* and the *Rawafiz* were such groups who made Takfeer of the first groups of the Ummah of Islam.
- 4- In relation to who has the right to Takfeer, these points

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<sup>98</sup>A Lecture from Youtube

came up:

- Like other Shariah commands, Takfeer is the right of Allah and is a Shariah command.
  - Takfeer is a Shariah order which is the task of the scholars to understand and derive the guidance about the right path. It is not the responsibility for the common people to get involved in such problems.
  - It is not the right of an individual to decide the Takfeer of a particular person, but it is the right of the state after Allah and His Messenger. A case of which can be that there should be a panel of scholars in the parliament that gives a decision after reviewing the causes and factors of Takfeer, terms, conditions and obstacles to Takfeer.
  - Punishment of apostasy and enforcement of Hudood is the sole responsibility of the Islamic state.
- 5- In the hadith, caution has been advised in the matter of Takfeer. The Prophet's good deeds also teach the same. He (peace be upon him) refrained from giving such a fatwa for the sake of pragmatism and to prevent corruption.
- 6- Infidelity has very dangerous effects on the life of both the one who gave the fatwa and the one who has been subjected to this fatwa of Takfeer. In case a fatwa of takfeer is issued against someone, then as consequences he will be deprived of his right to inheritance, his marriage contract will be nullified and he will face the death penalty for being an apostate. His funeral prayer and other rituals will not be performed; his burial will not be done in the Muslim cemetery and will suffer the curse and wrath of Allah in the Hereafter.

- 7- Similarly, the person who issues a fatwa of disbelief without justification, then all the Takfeer will be reversed on him for issuing a wrong fatwa.
- 9 - With the Prophet, peace and blessings be upon him, who was the last of the Prophets, the only means of knowing one's faith and disbelief i.e. divine revelation, has stopped. Fatwa of Takfeer can only be given when a blatant infidelity or disbelief is committed, in which there is no doubt of any other possible interpretation. In all other cases, it should be avoided.





## **SECTION VI**

### **DEMOCRACY IN THE MUSLIM WORLD: EXPERIMENTS AND POSSIBILITIES**



## **Are Muslim societies conducive to democracy?**

The most important debates regarding the political order in Muslim countries have been about the relationship between Islam and democracy. These debates are generally theoretical as to whether democracy is a social system parallel to Islam and whether there is a correlation between the values of the two.

Regardless of the historical motivations for this debate, it has been so prevalent that an element of skepticism has been added to democracy in Muslim societies. More over democratic experiments in the Muslim world did not prove to be particularly fruitful. In this way, the elements that discourage democracy in Muslim societies got a chance to expend their influence.

Question of whether Muslim societies are conducive to democracy in their structure and mood or not, was also raised. Some assume that democratic experiments have failed in Muslim countries because Muslims cannot assimilate democratic values. They are undemocratic in their very nature.

Whether the reasons for the general failure of democratic experiments in the Muslim world are historical, religious, or due to hurdles from bureaucracy and totalitarianism, a strong impression has been that the Muslim religious factor is one of the main reasons for this problem.

Amid these apprehensions, some successful experiences of democracy also emerged in some Muslim countries. Interestingly, the religious sectors in these countries played prominent role in the democratic development, especially in Tunisia, Turkey, Malaysia, and Indonesia<sup>99</sup>.

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<sup>99</sup> Muhammad Israr Madani, "Preface", *Tahqiqat*, Annual Issue 2021, published by IRCRA.

## **Democratic experiences in the Muslim world!**

Whatever the dimension of the debate, it is of utmost importance to analyze the democratic experiences of the Muslim world to identify the reasons for success or failure from a broad perspective. What has been the actual role of the religious element in the democratic process? Unfortunately, international media has largely been unable to differentiate between the Muslim religious-political parties and the armed Muslim groups espousing religious ideology [with their interpretation].

In Pakistan, the challenges of nurturing democratic values are complex and are rooted in political chaos and instability. Most people are aware of the problems but do not seem interested in exploring their true causes. Perhaps such discussions do not arise from sources of knowledge in Pakistan.

The curriculum does not properly guide students about democratic values and the formation of modern political order and society. The media ignores it, and a lack of informed discussions in intellectual circles exists. There is an urgent need to have an open dialogue on democracy at the social level and to identify all the factors and incentives that can lead to a welfare state and a prosperous society.

Discussions on democracy in Pakistan usually remain confined to comparing it to the Islamic system or in the context of secularism that does not lead anywhere. Instead, it gets more confusing. Democracy is not a problem of Islam or secularism, per se. It is an issue of the political system and related social norms that do not require labeling it as Islamic or un-Islamic. We can also learn from some Muslim countries where democracy

proved successful without tying it to ideological strings<sup>100</sup>.

## **Relationship between Islam and democracy**

What doubts persist about democracy in Muslim religious thought? The question about the compatibility between Islam and democracy is quite old and discussed among Muslim intellectuals. One such prominent thinker in the subcontinent who discussed these topics at length is Muhammad Iqbal. His famous lectures between 1930 and 1938 shed light on almost all important aspects and issues which remain relevant in contemporary Muslim political thought. These lectures are compiled and published in a book form titled as *Reconstruction of Religious Thought in Islam*.

The question of the relationship between Islam and democracy came to light in the twentieth century, and scholars tried to answer it in many ways. Earlier in the nineteenth century, some thinkers may have been talking about it individually but the question of democracy as a political system and social necessity got prominence in the twentieth century with lengthy discussions.

Why was this question not discussed in Muslim societies before the twentieth century? The political system that prevailed in the world before the concept of modern nation-states was on the pattern of empire and kingship. All societies had formed their state system under this concept. That explains, to some extent, the lack of discussion about the need for a new political dispensation in Muslim empires.

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<sup>100</sup> Muhammad Israr Madani, "Preface", *Tahqiqat*, Annual Issue 2021, published by IRCRA.

The democratic system emerged and developed in the West. It is not that the spread or predominance of democracy came naturally to the whole world and was accepted, but that it was shaped in the West by specific historical factors. Gradually it was introduced and adopted in other societies in one form or another<sup>101</sup>.

## **Democracy in the subcontinent**

During the nineteenth century, the debate on democracy in the subcontinent remained limited to the concept of ‘representation’. For example, in the dialogue that Sir Syed Ahmed Khan had with the British, he asked for a place for Muslims in the representation system to remove mutual mistrust.

The British did not introduce democracy to the subcontinent in the same way as it was practiced in their own country, Britain. They introduced democracy to the extent of a representation of local nations, in which local national leaders had no real political power or authority. In the 19th century, the focus of the debate on democracy within the subcontinent remained a partial phenomenon.

Democracy as a whole package was neither introduced nor talked about in this phase. These were the initial debates, the scope of which expanded over time, and with this, the political case was established that if the right to self-determination is respected in democracies, then the people of the subcontinent are a permanent nation, they should also have this right, and they wanted an end to British rule in the subcontinent. As a result of this struggle, in 1947, British rule ended in the subcontinent, and two independent states, India and Pakistan,

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<sup>101</sup> Dr Ammar Khan Nasir, “Suspensions about democracy in Muslim political thought”, *Tahqiqat*, Annual Issue 2021, IRCRA.

came into being<sup>102</sup>.

### **Democratic parties in the Muslim world and their social influence**

Two types of political parties speak in favor of democracy in the Islamic world. One has a secular and the other a religious point of view. The secular community feels insecure based on misconceptions about their being anti-religion. In such a case, they do not continue their activities openly and keep closer to the state elements, even if they are totalitarian.

The majority and popular section of the religious class supports democratic order and the peaceful political struggle. Some religious groups that are anti-democracy are in the minority. Some have been turned to terrorism by wars; others have taken refuge in criminal organizations. Some others have devoted themselves to social welfare issues. However, the majority of the religious community of the Muslim world is not opposed to democracy. Although religious-political parties do not enjoy a close relationship with bureaucracy or occupy high positions, their role in democracy has not been negative.

In this context, the historical role of all major religious and right-wing political parties in Muslim societies is apparent. For example, when the Ottoman Caliphate fell in Turkey, the religiously oriented class started a peaceful political struggle. They faced restrictions and abolitions but did not make attempts outside the political framework.

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<sup>102</sup> Same as above.



From 1950 to 1970, many right-wing political parties came into existence, some of which are worth mentioning: the Democratic Party, National Movement Party, and Justice Party. Najmuddin Arbakan founded the National Nizam Party in 1970, which was declared illegal a year later.

In the same year, together with his like-minded friends, he formed another party, the National Salvation Party, to be banned in 1980. Turkey's religious-political circles established another party, the Welfare Party in the 1980s, to be banned by the military in 1998. After that, in 2001, under the leadership of Recep Tayyip Erdogan and Abdullah, a new political party 'Justice and Development' was formed. It is still in the government. From this example of Turkey, the religious communities' seriousness for democracy and their continuous efforts to restore the democratic order have to be acknowledged.

Similarly, the United Malays National Organization, a political party of Malaysia, has been active since 1946 and is playing a significant role. The Muslim Brotherhood of Egypt has been fighting a political struggle for a long time. Algeria's Al-Jabhat al-Islamiyyah, Tunisia's Ennahda, Kuwait's Jamiat al-Islah, or Indonesia's Muhammadiyah and Nahda al-Ulama, all these political parties have vast political constituencies in their respective countries and have a long history of struggle for the right of democracy.

The case of Pakistan is more interesting. Historically, in a weak democracy, the parties raising voices for democratic order are right-wing, some of which are purely religious. Apart from this, there is a similar situation in other Muslim countries where the

religious element is generally democratic. Therefore, it would not be correct to say that the obstacles in the way of democracy in the Muslim world are of a religious nature<sup>103</sup>.

### **Relationship between religion and state in Asia**

Muslims in Asia have been considered very peaceful in history. Islam reached here through traders and there were no civilizational wars in this region historically. Although the oldest local and divine religions had a presence here, there has always been an atmosphere of harmony between them. Civilizational wars and intolerance started here after the colonial era when the power struggles polluted the religious atmosphere. Today this region is marred with growing intolerance, and armed movements have established roots. Now Muslims are struggling to maintain peace and respond to these challenges intellectually as well.

The debate on the relationship between religion and state in Asia also started during the colonial era, like in the rest of the Muslim world. Maulana Abul A'la Maududi, one of the leading figures of political Islam, is also from this region. After the end of the colonial era, the question arose in Muslim countries about what should be the status of religion in the constitution. Some countries declared Islam the official religion constitutionally. Some of the others did not do so. The Asian Muslim countries which have called Islam the official religion of the state in their constitution included:

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<sup>103</sup> Dr. Hassan Yujal Bashidimer, "An introduction to the democratic movements with Islamic background and their ideological structure", *Tahqiqat*, Annual Issue 2021, published by IRCRA.

Malaysia: Article 3 of the Malaysian Constitution states that Islam shall be the official religion of the country. Article 11 has also clarified that the followers of all religions of the country shall have complete freedom of worship and performance of rituals and that no section shall be deprived of rights on religious grounds.

Pakistan: The constitution of Pakistan has also specified from the beginning that Islam would be the official religion. Similarly, it stated that no law would be against Islam in the country.

Iran: The constitution of Iran also declares Islam as the official religion. It also stated that the religion of the majority population is the religion of the Athna-ashari.

Bangladesh: Bangladesh declared in its constitution that Islam would be its official religion, but in 2012, the government announced the removal of this clause. However, the government had to withdraw its decision after strong protests by the majority population.

Many other Muslim countries in Asia did not declare Islam as the official religion in their constitution. Among them, Indonesia is at the top, which is the largest Muslim country in terms of population. Similarly, Central Asian countries have not made such provisions in their constitutions<sup>104</sup>.

## **Ennahda's new democratic model in Tunisia**

Ennahda, the most influential political party in the Arab world and an important player in Tunisia's democracy, is considered a moderate political party. The role of Ennahda has been very

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<sup>104</sup> Dr. Majida Ali Saleh, "Relationship between religion and state: Balanced model of Indonesia and Malaysia", *Tahqiqat*, Annual Issue 2021, published by IRCRA.

prominent for the restoration and improvement of democracy in Tunisian politics. It is also presented as an excellent and acceptable model for the Muslim world. Ennahda has been characterized by being the representative of political Islam for a long time, but later it separated itself from political Islam and announced a historical change. After this announcement, it is understood that his intellectual model now matches that of Turkey's ruling party, the Justice and Development Party. The changes that took place in Al-Nahda and what were the reasons are explained by an article by Rashid Al-Ghannoooshi, the leader of the party, some brief excerpts of which are as follow:

The evolution of Ennahda reflects the social and political changes of Tunisia. The organization/ party began as an Islamic [resistance] movement against a dictatorial and secular government that oppressed the people and imposed restrictions on their religious freedom and freedom of expression. Tunisian dictators had banned all kinds of political debates and discussions in the country for decades and all movements with political objectives were bound to only function as socio-cultural organizations. But the Arab Spring of 2011 put an end to this dictatorial era, due to which the atmosphere of political competition improved.

Ennahda has removed the label of Islamic party from itself. According to Ennahda's point of view, secularism is no longer competing with religion in this historical stage of democracy in Tunisia. Secularism cannot be enforced through coercion and now after the new constitution there is no need for any such organization, including Al Ennahda, to work for religious freedom along with political activities.

It is imperative that Islamic values are the real guide in a Muslim's life, but now is not the time to get involved in old ideas and debates regarding the Islamic state and the secular state.

Tunisia no longer needs to work on religion, but there is a need for a good democratic system, which will improve the lives of ordinary people. Ennahda is part of the Tunisian coalition government, and now its only goal is to improve the quality of life of Tunisians and the people living there by solving their problems in a better way.

Now Al-Ennahda's focus is only on political activities. Other social, educational, cultural and religious activities are no longer the goal of Al-Ennahda. As a [political] party it will work for a free civil society. The implementation of the prescribed changes has been started. Under the new policy of the Ennahda, now the workers of the party can neither give religious speeches or preach in mosques or accept important positions in welfare associations.

Our aim is to keep religion and politics separate. We believe that no political party should interpret religion. It is equally important for religious institutions to remain independent and impartial<sup>105</sup>.

## **Muslim democrats**

Rachid Al-Ghinoshi further elaborates that Ennahda should not be considered an Islamic movement, but a party of "Muslim Democrats". We want to focus on solving the daily problems of the Tunisian people instead of calling for religious teachings. Let me make it clear here that I have no doubt that Al-Ennahda will always be based on Islamic principles and these traditions will be our guiding light. But after the implementation of the new constitution, there is no special need for Al-Ennahda to strive for religious rights. Under the new constitution, everyone has

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<sup>105</sup> Rachid Al-Ghinoshi, "A journey from political Islam to Muslim democracy", *Tahqiqat*, Annual Issue 2021, published by IRCRA.

religious freedom, whether one believes in a religion, any religion, or no religion. With the separation of religion and politics, the authorities will not be able to use the tactics of accusations in religious politics to mislead the public. Likewise, religious organizations and institutions will have full opportunity and freedom to preach. Before the revolution, the state even used to ban religious activities<sup>106</sup>.

### **Religion and Politics: The Experience of Indonesia's Nahda-tul- Ulama**

The religious leaders of Indonesia were the first to feel the effects of religion-state integration and religious politics in Muslim societies. In the matter of religion, the religion of Nahdat-ul-Ulama is the same as that of the majority in our country. They call themselves Ahle-e-Sunnah Wal-Jamaat.

The explanation of the religion of Ahl al-Sunnah wal Jamaat by Nahda-tul- Ulama is very interesting. They describe the four principles of Ahl-e-Sunnah. The first principle is 'large heartedness'. Extremist behavior under this principle is not acceptable in any way. Middle way will be taken in every case. As in the inference of rulings, rational reasoning will also be seen along with the literal meaning of the texts. The orthodox Salafist thought and Mu'tazilite rationalism will also be considered, besides the philosophical Sufism and Sufism of the Salafs.

The second principle is 'balance'. This means that a balanced attitude will be adopted between our priorities in this world and for the hereafter. The third principle is 'tolerance'. This refers to ignoring differences and avoiding giving undue importance to

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<sup>106</sup> Same as above.

minor issues. They maintain that personal preferences in practicing one's religion should be tolerated in a multi-religious society. The fourth principle: *Amr bi al-Mruf wa Nahi an al-Munkar*, which is about calling towards virtue and avoiding evil doing. This is an invitation, where no coercion is allowed. In this matter, Nahda is so clear that Abdul Rahman Wahid accepted the opposition of Muslims but did not accept the ban on the freedom of non-Muslims keeping their opinions<sup>107</sup>.

### **Evolution of Nahda tul Ulama**

Nahda tul Ulama was a religious and social organization which was established in 1926 based on these principles. At that time, Indonesia was not an independent country. After independence, under the circumstances, Nahda got involved in politics and in 1952 it became a full-fledged political party. It was during this time that the serious people of this Jamaat realized that the time had changed and the party was no longer what it was established for.

In mid-1980s it was decided that Nahdat-ul-Ulama will have nothing to do with power politics. It will be a socio-religious party and will stand on the principles on which it was founded. Its purpose is building a Muslim society, only an aspect of which relates to politics. If a person associated with a party has a taste for politics, he can join any party he wants as an individual. Nahda-ul-Ulama will continue its work based on two principles: First is the unity of Indonesia as a republic and the second is called *Panch Shela* with social justice and democracy as its key priorities.

Nahda established this as a cultural and civilizational value, in

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<sup>107</sup> Khurshid Nadeem, "Religion and State: Indonesian experience", *Tahqiqat*, Annual Issue 2021, published by IRCRA.

which the society had the primary importance. It mobilized to establish a system of values in which the Muslim cultural tradition prevailed and people remembered that they were also accountable to God. For this Nahda established social, business and training institutions in its efforts to stabilize the people economically, morally and politically. This can be observed by looking at Indonesian Muslims on the occasion of Hajj.

Indonesia is a multi-religious society. They have learned the nature of the relationship between religion and politics in such a society. Keeping this in mind, scholars like Noor Khals Majeed presented the concept of Islamic secularism. It was not to secularize Islam, but I think it is to Islamize secularism. As Islam is the bearer of religious freedom, there is no need to further secularize it. However, secularism needs to acknowledge the cultural and civilizing force of religion and, keeping it in view, restructure the relationship between religion and the state<sup>108</sup>.

### **Iran's religious democracy**

Iran's religious-political system is enviable for all the Shia Muslims of the world. Although there are some objections about it, this system does not see any threat to it at present. The opposition exists within Iran. People are more concerned about economic and social restrictions. Some people are tired of this system because they think it isolates them from the world. Observers who claim to be aware of the activities of Iran's inner circles say that there is a conflict between the moderate and hard-line elements of Iran in the circles of power.

As a result of the political and social changes that have taken

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<sup>108</sup> Same as above.



place in recent years, conservatives have split into different groups. These people are completely loyal to the leader of the Islamic revolution and to the values of the 1979 revolution. But different opinions especially regarding political tendencies exist.

Iran's experience of religious democracy has not caused major problems at the domestic level and that is why it is still stable. Most of the challenges it faces stem from foreign policy. As a religious democracy, some reforms might be needed, but it cannot be completely ruled out or rejected as a failed system.

The political system established in Iran after the revolution in 1979 is called 'Islamic Democracy'. Though, there are many democratic countries with Islamic identity. Pakistan for one is also called Islamic Republic. But Iran's political system is unique in that the religious community is directly involved in the government process and its influence in decision-making is final. Therefore, in the context of Iran, it is important to know their concept of Islamic democracy and the form of political arrangement in the constitution. Sociologists are divided on whether a religious democracy can be considered a government based on popular opinion or not. The boundaries of religious democracy are not clear and it is found in different forms in different Muslim countries. Especially in Iran, the influence of the religious class is immense, which is final in the important affairs of the state and cannot be challenged. Their influence is fundamental in every matter including constitution, parliament, judiciary, and military. That's why it is criticized for not having full transparency in the dimension of supreme power<sup>109</sup>.

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<sup>109</sup> Hassan Fahas, "What is Iran's religious democracy", *Tahqiqat*, Annual Issue 2021, published by IRCRA.

## **SECTION VII**

# **DEMOCRATIC VALUES AND ISLAMIC PERSPECTIVE**



Democracy 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>110</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.

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<sup>110</sup>Sarmad al-Tai, *Tahawulat Al-Fikr Al-Islamiya*, Alexandria, Dar Al-Hayy, 2003, p 266.

## 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>111</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 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 chose, and government cannot interfere in

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<sup>111</sup>Mustafeez Alvi, *Maghribi Jumhuriyet: Haqiqat aur Sarab*, Fazli Sons, p 25.

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>112</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>113</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>114</sup> i.e. not enslave people, but let the Israelites, whom you have made slaves, come with me - as they themselves want.

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<sup>112</sup>See, Democracy and Islamic View about it (Arabic), p 224.

<sup>113</sup>Qur'an, Surah Al-Ma'idah, verse 32.

<sup>114</sup>Qur'an, Surah Al-Dukhan, verse 18.

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>115</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

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<sup>115</sup>Musnad Ahmad, Hadith 43536.

committed the act of stealing, I would have cut her hand too.<sup>116</sup> This sets the high standard of justice in an Islamic society.

However, it is a matter of regret in modern times that corporations are becoming powerful due to the weakness of democratic institutions in some societies, which is a great threat to economic equality.

## **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>117</sup> - and it means that government and people both are subject to law and its universal 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>118</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

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<sup>116</sup>Sunan Nisai, Hadith 4901.

<sup>117</sup>Maghribi Jumhuriyet, p 75.

<sup>118</sup>Qazi Ibn Abidin, Fatawa Shami, Idara Zia-ul-Musanifeen, Bhaira Sharif, p 422/5.



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>119</sup>

Islam forbids concealing the truth and facts. It is a famous Hadith that tells us all to "be truthful, as 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>120</sup>

In this regard, the incident of Hazrat Umar is well-known. When he had a kurta (a shirt) from the portion of the booty, someone stood up in a meeting and objected that the amount of cloth that we got from the portion could not make a kurta for a man. So how did you do it? Upon this, Hazrat Umar's son stood up and explained that he had given his portion of the cloth to his father. Caliph Umar did not deprive the people of their right to information, and his son explained it by his order in the meeting on the spot.

## **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

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<sup>119</sup>Haider Ibrahim, *Al-Thiyarat Al-Islamiya*, Markaz Al-Wahda Al-Arabiya, 2009, p 95.

<sup>120</sup>Sahih Al-Bukhari, Hadith 6094.

that you may know one another.<sup>121</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 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>122</sup>

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<sup>121</sup>Qur'an, Surah Al-Hujurat, verse 13.

<sup>122</sup>Sahih Al-Bukhari, Hadith 1889.



## **SECTION VIII**

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



When 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 role of scholars in the preparation of the Constitution of Pakistan**

Immediately after the formation of Pakistan, there was no new constitution in the country, so till the preparation of the new constitution, the affairs of the state were run under the Government of India Act. When it came to the preparation of the constitution, Islamic scholars (Ulama) also played a role, which is evidenced in the form of 'Ulama's twenty-two points' and 'Objectives Resolution'. The National Assembly formed a committee consisting of experts and scholars and headed by Allama Shabir Ahmed Usmani to prepare a Constitution of Pakistan and present it to the National Assembly for approval.

The first Prime Minister of Pakistan, Liaquat Ali Khan, also

formed an institution called "Board of Islamic Education" on August 9, 1949, to take religious guidance in the drafting of the Constitution of Pakistan. Its chairman was Allama Syed Sulaiman Nadvi. When the constitution was drafted 9 years after the formation of the country, it contained Islamic provisions suggested by the Islamic scholars (Ulama). Ulama also took part and played an important role in the formation of the current constitution, which was framed in 1973. When General Zia-ul-Haq came into power, the constitution was suspended for some time.

In 1985, under his leadership, the third general elections of Pakistan were held and after that the constitution of 1973 was restored. Even then some amendments were made demanded by religious circles. The objectives resolution was added as the preamble of the Constitution. A new permanent chapter was added in the constitution related to the Federal Sharia Court. A Shariat Appellate Bench was established in the Supreme Court for appeal against its decisions. Elections for minorities were separated from elections for the Muslim population. A strict eligibility criteria for the members of both houses of Parliament and Provincial Assembly was set.

Following is a review of the Islamic provisions in the Constitution of 1973, in its current form after passing all the above mentioned processes.

## **Islamic Provisions of the Constitution of Pakistan 1973**

The main purpose of this discussion is to understand the Islamic provisions in the current constitution.

It is known that the framers of the constitution have tried to harmonize it with the Islamic principles while believing in the

objectives of the movement for Pakistan. It clearly defines its Islamic character without any hesitation. Thus we can say that the constitution of Pakistan is largely in accordance with Sharia politics.

Thus, by studying all the provisions of the constitution, it will be easy to assess whether the current form of the constitution is fully compatible with Islam or there is a need for additions or amendments in this respect. And if Islamic teachings have been partially incorporated in the constitution then what extent further improvements can be made.

### **Difference between Islamic and non-Islamic documents**

Promulgated on April 12, 1973, this constitution begins with the customary preamble, which consists of nineteen paragraphs. These paragraphs range from half a line to five lines. In the beginning of the preface, it is acknowledged that 'Allah's authority is supreme' over the entire universe, so the authority that the people of Pakistan have acquired is not their own, but it is assigned by Allah. It will be used as a sacred trust within the prescribed limits of Allah. This is the basic belief difference that can exist in the constitutions of non-Muslim countries of the world and the constitution of the Islamic state. In the constitutions of Western countries, the people are declared to have the supreme power. The people are considered the source of all powers. The affairs of the government and the state are run through the powers delegated by them to their representatives.

In the United States, this constitutional requirement is stated in the preamble of the Constitution as follows: " We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the



common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America”<sup>123</sup>.

In this preamble to the Constitution, the people of the United States enact a constitution to achieve certain goals. There is no trace of any external force here. The people there are in power and they are in charge of all their affairs. They collectively neither recognize the existence of a Creator of the Universe nor claim to derive authority from His supreme authority. Thus implicitly asserting themselves as the source of all powers, in Article 1 of the same Constitution they delegate legislative powers to the legislature. Thus, in constitutional matters, the existence of two forces is known, the people and the representatives of the people.

After this example of the capitalist world, the People's Republic of China is the country that is handling the intellectual leadership of the socialist countries, whatever remains of them, so some extent. The constitutional history of this country consists of many periods. However, this fact is prominent in all constitutions that in them the source of power is declared to be the people. As Article 2 of its constitution states that ‘all power shall be in the hands of the people’. The same article describes the exercise of people's power through the National People's Congress at the national level and local people's congresses at other levels<sup>124</sup>.

In the Chinese Constitution we also find the existence of two powers, one is the people who have absolute supreme power

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<sup>123</sup> Preamble of the Constitutions of the United States of America.

<sup>124</sup> See Constitution of the People's Republic of China.

and the other is their representatives through whom the people run the affairs of the state. Here too we do not find even the slightest hint of acknowledging a creator of the universe.

Among the Islamic countries, Article 2 of the Constitution of the Islamic Republic of Iran has described certain constitutional issues relating to belief system. In this long article, the Islamic Republic of Iran refers to a system based on 14 beliefs, including the oneness of Allah, the importance of divine revelation, the belief in the Resurrection, and the recognition of God's justice in creation and legislation<sup>125</sup>.

In the constitution of Iran, we find similarities with the constitution of the Islamic Republic of Pakistan to the extent that in both of them the source of supreme authority is believed to be with Allah Almighty, and the people and their collective institutions derive their authority from the supreme authority of Allah the Exalted.

### **Democratic values are subject to Islamic interpretations**

In the fourth paragraph of the preamble of the Constitution of Pakistan, some internationally recognized terms are used. At this point, democracy, freedom, equality, tolerance and social justice have been acknowledged, but the implementation of all these attitudes has been conditioned by the interpretation of Islam. Freedom here does not mean absolute freedom. Rather, it refers to freedom within the scope of Islamic teachings. Democracy does not mean the absolute supremacy of the parliament here,

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<sup>125</sup> Constitution of the Islamic Republic of Iran, Translation by Mohsin Najfi, Markaz Tehqiqat Farsi Iran, 1980

but it is possible through legislation in specific fields, as it is also clearly stated in the constitution of the Islamic Republic of Iran. After acknowledging the sovereignty and supremacy of Allah Almighty, relating the well-known political terms to Islam shows a logical connection from which the thinking of the framers can be easily understood.

Related to this, in paragraph 5, the scope of individual and collective life of Muslims is determined according to the requirements of Islam mentioned in the Qur'an and Sunnah.

In the thirteenth paragraph, the members of the constitutional committee, on behalf of the people of the Islamic Republic of Pakistan, with full sense of responsibility before Allah Almighty and His creatures, with the recognition of the sacrifices of the people for the country, approved this constitution, with the sweeping declaration of the founder of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah, that Pakistan would be a democratic state based on the principles of collective justice.

In this text, not only an attempt has been made to adopt the basic beliefs of Islam, but Western democracy has also been negated. A reading of the rest of the relevant passages of the preamble shows that the basic beliefs and teachings of Islam are to be adopted into political terms while remaining within the constitutional requirements.

Here we see that political vocabulary has been used to the fullest extent that Islamic teachings can allow. There is no harm in saying that it would probably be unnecessary to say more at this point.

This text of preamble is not the actual constitution. No claim can be filed on the basis of these words in court proceedings. But this is the legal aspect of the issue. From a rational point of view, it is

necessary that what is being described with the force at the beginning, should be seen with the same force till the end. It would be completely irrelevant to start preaching polytheism immediately after describing the blessings of monotheism in an article. The common sense of man does not recognize it. This is the reason why human common sense itself demands to see the same thought found in the preamble of the constitution in the future constitutional provisions.

In view of the brevity of the preface and staying within its requirements, it would be unnecessary to say anything more regarding Islam. The sincerity of the intention of the framers of the constitution is clearly evident from this text of the constitution, but the action is expressed in the future constitutional provisions.

### **State Name**

This Part I of the Constitution has six introductory articles out of which Article 2A was added after the adoption of the Constitution. In Article 1, the name of the state was declared as the Islamic Republic of Pakistan.

### **State religion**

Article 2 declared Islam as the state religion of Pakistan. The purpose of this article is that state affairs will be run according to Islam. This means that if the intervention of Islam in individual affairs is acknowledged, then the need for this acknowledgment does not arise at the state level. Therefore, it only means that Islamic principles will be kept in view while making legislation.

### **Objectives Resolution**

Article 2A of the Constitution was inserted by Presidential Decree 14 in 1985. This article states that the Objectives

Resolution is now a permanent and functional part of the Constitution. Therefore, the principles mentioned in this resolution should be followed. This resolution was actually passed by the then National Assembly in 1949 for the purpose of determining its direction, which has left a deep impression on the constitutional history of Pakistan. The fact is that after the passage of this resolution, it is not easy for any assembly, senate or any other body to try to take the constitution of the country beyond the restrictions imposed by this resolution.

A resolution passed in a parliament is an expression of the will of that parliament. Legal proceedings cannot be initiated on the basis of it. This is because in order to obtain the force of law, all the necessary legal steps must be completed so that the same resolution ultimately becomes law. From this point of view, this resolution was also a manifestation of the desire of the assembly at that time, which was a testimony in our constitutional history, but the presidential decree of 1985 declared this resolution as a practical part of the constitution<sup>126</sup>.

## **Analysis of Fundamental Rights**

The first chapter of Part II of the constitution deals with fundamental rights. By looking at these fundamental rights, it can be assessed that the basis for citizenship in the Constitution of Pakistan is compatible with Islam or not. The Fundamental Rights stated in Article 8 to 28 are given below:

- 1- That all laws inconsistent with fundamental rights shall be void.
- 2- That no person shall be deprived of life or liberty, except

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<sup>126</sup> Presidential Decree 14 issued in 1985.

- by law.
- 3- That the person arrested shall be informed of the reason for the arrest and shall be produced before the nearest Magistrate's Court within the next twenty-four hours.
  - 4- That any form of slavery and forced labor will not exist and will not be introduced in Pakistan.
  - 5- That no person shall be punished for any offense which at the time of the commission was not an offense under the law.
  - 6- That no person shall be convicted of any offense more than once.
  - 7- That the dignity and privacy of the individual shall, under the law, be respected.
  - 8- That every citizen shall be free to move freely throughout the country.
  - 9- That every citizen has the right to be unarmed and to assemble peacefully.
  - 10- That every citizen has the right to form an association.
  - 11- That, subject to certain necessary qualifications, every citizen has the right to take up every lawful business, profession or trade.
  - 12- That every citizen has the right to benefit from freedom of speech and expression.
  - 13- That every citizen shall be free to practice and preach his religion subject to law, social requirements and morals.
  - 14- That no citizen shall be compelled to pay any tax which is spent on the propagation of a religion in which the taxpayer does not believe.
  - 15- That no citizen shall be asked to take religious instruction, participate in religious ceremonies or perform religious worship in any educational institution other than his own religion.

- 16- That every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, provided that compensation shall be provided if the State takes his property in the public interest.
- 17- That all citizens shall be equal before the law.
- 18- That all citizens regardless of race, religion, caste and gender, place of residence, or place of birth will have access to all public places except places reserved for religious purposes.
- 19- That there shall be no discrimination in employment except for the first ten years.
- 20- That any class of citizens possessing a particular language or script or culture shall, under law, have the right to their protection and development.

The fundamental rights guaranteed by the constitution of Pakistan are the basic human rights stated in the United Nations Universal Declaration of Human Rights. If the two sources are seen from a comparative point of view, it can be concluded that while the manifesto of Human Rights shows unrestricted human concern, all the basic human rights mentioned in the constitution of Pakistan are in accordance with the teachings of Quran and Sunnah.

### **Documents prepared by Ulema (Muslim Religion Scholars)**

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.



## **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 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:

1. Allah is the Ruler and real Legislator.
2. 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.

3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

10. 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.
11. 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.
12. It is necessary for the head of the state to be a "man" who is pious, capable and commands confidence of the elected representatives.
13. 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.
14. 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.
15. The head of the state shall have no power/right to abrogate the Constitution, fully or partially, and govern without consultation.
16. The constituency that is eligible to appoint the head of the state is also eligible to dismiss him.
17. The head of the state shall have rights equal to those of the general Muslim public, and shall not be above legal accountability.

18. 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.
19. 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.
20. There shall be prohibition of ideas and thoughts that might cause damage or decline to the foundational principles and objectives of the Islamic state.
21. 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.
22. No interpretation of the Constitution against Qur'an and Sunnah to be accorded recognition.

## 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>127</sup>

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<sup>127</sup>Preamble of the Constitution of Pakistan published by Ministry of Law Pakistan

## 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-e-bayt) 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 وَّابَىٰ عَلَيْهِ وَآلٍ، فَرَأَهُ يَأْتِي شَيْئًا مِنْ مَعْصِيَةِ  
 اللَّهِ، فَلْيَكْفُرْهُ مَا يَأْتِي مِنْ مَعْصِيَةِ اللَّهِ، وَلَا يَنْزِعَنَّ يَدًا مِنْ  
 طَاعَةٍ.“

(صحیح مسلم، کتاب النار، 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 فحديده في يده يتوجأ بها في بطنه في نار جهنم خالدًا مخلدًا فيها أبداً (جامع الاصول بحواله بخاري ومسلم)

*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 مُتَعَمِدًا فَقَدْ حَزَّ أُوهُهُ جَهَنَّمَ خَالِدًا فِيهَا وَعُذِبَ 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 cast 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 يُرِخُ 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 الَّتِي تَبْغِي حَتَّى تَنْفِيءَ إِلَى أَمْرِ اللّٰهِ ۖ

(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.<sup>128</sup>

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<sup>128</sup> *Pegham e Pakistan by Islamic Research Institute(IRI),IUII, Islamabad-2018*

## **SECTION IX**

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



**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, he 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>129</sup> At another occasion, the Prophet let Banu Thaqif go with their condition that, after accepting Islam, they would not pay Zakat, or go to Jihad!<sup>130</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 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

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<sup>129</sup>Al-Ahad wa Al-Mathani, 941; Asad-ul-Ghabah, 4756

<sup>130</sup>Sunan Abi Daoud, 3205

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>131</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

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<sup>131</sup>Fatah-ul-Qadeer, 2775.

Constitution amounts to *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 Shari'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.

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## IRCRA INTRODUCTION

International Research Council for Religious Affairs (IRCRA) is a non-profit, non-government, advocacy think-tank and research organization, established in 2013 under the Societies Act 1860. IRCRA has been regularly involved in promoting positive behaviour among the communities on social and civic issues such as polio eradication and safety of polio workers under international humanitarian law, human rights, role of youth & Community leaders in promotion of democracy and democratic values, tolerance, peace and harmony, and social inclusion.

IRCRA engaged 10000 government officials, youth's young leaders/scholars, media, political leaders and civil society actors to play a critical role in conflict resolutions and to effectively counter inappropriate use of social media. With IRCRA's supervision and support, the trained young editors of magazines wrote/published more than 250 articles supporting the polio vaccination campaigns across the country, and on topics like democratic pluralism, International treaties and its importance and peace building.

In addition, IRCRA has developed network of international democrats on regional level including Indonesia and Tunisia to understand muslim world democracy model.

IRCRA developed some research based training manuals, curriculum booklets, leaflets on polio eradication, human rights education, international humanitarian laws, civic education, democracy and constitution of Pakistan and peace book for capacity building of civil society organization, young leaders, religious schools and faith leaders.

