
THE ORGANS OF STATE AND THE SCOPE OF THEIR AUTHORITY/FUNCTION IN THE ISLAMIC POLITICAL SYSTEM

*Amjad Hussain**

*Yasir Munir**

*Aas Muhammad**

The present paper has tried to introduce the working order of State organs and scope of their function in an Islamic State in the light of primary sources of Islamic Law. It seemed most relevant to depict the operative nature of Islamic system of State governance. The instant research, therefore, has discussed a few basic questions with respect to the Islamic Political System. For example, to whom the authority belongs in an Islamic State? Which organ in an Islamic State is supreme? Whether it is Parliament (*Shura*), Executive or Judiciary? The doctrinal method of research has been used in order to achieve the said objectives. The primary data is the *Quranic* verses regarding the sovereign authority and related matters. The *Quranic*(Arabic) text and English translation is taken from the software known as Quran in Microsoft Word (version 2.2.0.0) developed by Mohamad Taufiq in 2013. **Key Words:** Islamic Political System; Organs of State; Distribution of Powers; Sovereignty of Parliament; Sovereignty of Parliament in Islam.

Introduction:

A good system of governing the society has been a significant issue throughout the history of human civilization. Different schools of thought have answered the above question by offering different structures. An ideal system must cover the personal, spiritual, political, social, economic, etc. aspects of human life. Islam offering a complete code of life presents a system of government which covers all the said aspects in accord with the nature.

The present paper introduces the working order of State organs and scope of their function in an Islamic State. It seems most relevant to depict the operative nature of Islamic system of governance. The instant research, therefore, discusses a few basic questions with respect to the Islamic Political System. For example, to whom the authority belongs in an Islamic State? What is the source of such authority? What is the qualification of the ruler? What is the scheme of distribution of power among different organs of an Islamic State? What is the nature of Legislature (Parliament) of an Islamic society? Which organ of Islamic State is supreme, Legislature, Executive or Judiciary?

* Assistant Professor, Department of Law, The Islamia University of Bahawalpur.

* LLM Scholar, School of Law, University of Gujrat. Gujrat.

* LLM, Department of Law, The Islamia University of Bahawalpur.

The western concept of political system is based on democracy which is known as the government of the people, by the people and for the people (Lincoln, 1863). In this way, the source of authority, according to Western thought is only the people (or the public), which is also known as popular sovereignty. It seems important to know that what is the true source of authority in Islamic Political System.

Source of Authority:

According to Islamic view, the authority (in all respects) over the entire universe belongs to the Almighty Allah alone. He is the source and fountain of all authority and His power extends to everything (Al-*Quran*,42:9). He does whatever He likes (Al-*Quran*,11:107). He is the Lord of universe and everything in it (Al-*Quran*,42:49) and thus, He is all-knowing (Al-*Quran*,57:3). He has to refer to none and He is accountable to none (Al-*Quran*,21:23). He is the only one Whose authority cannot be limited (Al-*Quran*,23:88). He alone is above all aberration and error (Al-*Quran*,59:23). He is the only Lord of all the worlds and everything included therein (Al-*Quran*,7:54). He alone is omnipotent, omnipresent and omniscient. The sovereignty of Almighty Allah as mentioned in the Holy *Quran* and *Sunnah*, is absolute, unlimited and indivisible (Al-*Quran*,59:24; 36:83; 21:22).

The belief in the Supremacy of Almighty Allah is the basic tenet of Islam. The creatures (especially the humans) are his subjects and they are required to follow His commands (Miller and Biondi, 2017). They are bound to setup a government in accordance with His orders. The man is allowed to implement His orders under the limited sovereign authority entrusted to him as a sacred trust. But the man is not only bound to follow the Divine orders in governance of his affairs. He is also bound to follow the orders of the Holy Prophet Hazrat Muhammad (SAWW). At this place, it is necessary to understand the kinds of sovereign authority and its incumbents.

Devolution of Sovereign Authority:

According to Dr. Tahir-ul-Qadri's view (2006), which is extracted from a *Quranic* verse (4:59), the sovereignty may have the following three forms:

- a) Ultimate Sovereignty
- b) Manifestative Sovereignty
- c) Vicegerency

The ultimate sovereignty rests with the Almighty Allah alone. It is neither devolved nor delegated, neither it is transferred or entrusted nor

deputized. Allah is the sole and supreme lord and sovereign of everything. The concept of sovereignty of Allah has significant consequences. For example, when sovereignty of Allah is presumed, it eliminates the possibility of human authoritarianism, totalitarianism, dictatorship, autocracy, despotism, etc. Similarly, it provides room to enforce rule of law in the society. Everyone is treated in accordance with the law, which is the dream of every society. The ruler is not allowed to do anything on his own sweet will but he is bound to act within the prescribed limits (Al-Daghistani, 2017). The western concept of human sovereignty or popular sovereignty is absolutely unknown to this Islamic political thought (Kumar,2017).

In the light of the above, it may be said that the sovereignty of Almighty Allah is, in fact, the real foundation of Islamic social and political thought. The same was promulgated by all the Holy Prophets(عليهم السلام). Thus, the humans are directed to surrender their rights for Him, act in accordance with the Divine instructions and not follow any other's commands. Only Almighty Allah is the absolute law-giver (Al-*Quran*, 12:40,12:67, 6:62 and 28:70).

The next type of sovereignty is manifestative which is devolved upon (and which has been exercised by) the Holy Prophets(عليهم السلام). They did not act on their own account but with the permission of Almighty Allah and were helped and supported by the Almighty Allah during the time of their Prophethood. (Al-*Quran*,38:26, 6:165, 24:55 and 41:53).

Islamic concept of 'sovereignty' is a belief and a doctrine and it cannot get a constitutional or legal status unless there is a practical example for its exercise in the society. It is because people follow things and if there is no demonstrator among the people who could act, practice and demonstrate in a way so that the manifestation of sovereignty is felt, the concept of sovereignty would be meaningless and a presumption only. Because sovereignty

is exercised in the society, it is necessary that there would be a presentation through which it would be drilled and enforced (Tahir-ul-Qadri, 2006).

The sovereign capacity of the Holy Prophet(SAWW), as pointed out by the Holy *Quran*(7:157), may be divided as follows:

- a) Interpreter
- b) Legislator

As interpreter, the Holy Prophet(SAWW)is authorized to define, describe, explain, elucidate and clarify the *Quranic* principles(Al-

Quran, 16:44). Under this authority, He is also empowered to extend or restrict the operation of a provision, make a special order as general or general as special, or explain the scope of a provision. Examples are as under:

- The Holy *Quran* provides for offering prayers while the Holy *Sunnah* explains the method, timings and other details to offer prayers (At-Tirmidhi, 149-451).
- The Holy *Quran* provides for cutting hand for theft while the *Sunnah* puts the condition of *Nisab*(i.e., theft of 4.457 grams of gold or any other property of equal value)to enforce *Hadd* (a type of punishment whereby the right hand of the thief is amputated, if he has committed theft for the first time) (Abu Dawud, 4383-4387).
- The Holy *Quran* simply provides for paying *Zakat* while the Holy *Sunnah* explains its necessary details (Al-Bukhari, 1395-1498).
- The Holy Prophet(SAWW)extended the punishment of *Zina* (a kind of rape) with one-year imprisonment or expulsion from the State in certain cases (Abu Dawud, 4415).
- The Holy Prophet(SAWW)extended the scope of unlawful conjunction, i.e., marriage with two sisters at the same time, by prohibiting the marriage of one man with the parental aunt and parental niece as well as maternal aunt and maternal niece at the same time (Al-Muslim, 3436).

As legislator, the Holy Prophet (SAWW)may exercise his delegated authority to give orders in matters where the Holy *Quran* is silent or where there is no clear instruction on some matter or in addition to *Quranic* instructions. Nobody can deny the above-mentioned authority of the Holy Prophet (SAWW)by saying that only the Holy *Quran* is sufficient for him. The same view is supported by the Holy *Quran*(64:12, 24:54, 47:33, 4:65and59:7).The Holy *Quran* clearly warns for disobeying the instructions of the Holy Prophet(SAWW)(24:63). According to the Holy *Quran*, when the Holy Prophet(SAWW)directs about a matter by using his legislative authority then it becomes a duty for all to follow it and there is no scope to deviate or disobey the direction(33:36). When the Holy Prophet (SAWW)decides a matter, the parties are bound to accept it(Al-*Quran*, 24:51)because it has been declared that the He does not speak by his will but with Almighty Allah's will(Al-*Quran*, 53:3-4).

Thus, it is clear that the commands of the Holy Prophet(SAWW)are, in fact, in accordance with the commands of the Almighty Allah. The Holy *Quran* proclaims that obedience of the Holy Prophet(SAWW) is just like the obedience of the Almighty Allah(4:80). Similarly, according to a tradition, the obedience of the Holy Prophet(SAWW)is, in fact, the obedience of the Almighty Allah and disobedience of the Holy Prophet(SAWW) is the disobedience of the Almighty Allah (Sahih Al-Bukhari,204). The Holy *Quran* also declares that disobedience of the Allah and the Holy Prophet(SAWW)is punishable(4:14, 72:23, 58:20, 58:5, 59:4 and 9:63).

A few examples of law-making by the Holy Prophet (SAWW)are as under:

- The Holy Prophet(SAWW)prescribed punishment of stoning till death (Abu Dawud, 4426; Leviticus, 20:10) for adultery.
- The Holy Prophet(SAWW) set punishment for apostasy (Al-Bukhari,6878, 6899 and6923).
- The Holy Prophet(SAWW)declared that there would be no share in inheritance for a legal heir who murdered the person from whom he would inherit(Ibn Majah,2645).
- The Holy Prophet(SAWW) prescribed punishment of forty whips for drinking intoxicant things (Abu Dawud, 4479).
- The Holy Prophet(SAWW) banned *Nikah-e-Shighar*(a type of marriage whereby a man could give his daughter in marriage to another man in return for marrying the latter's daughter, with no dowry given.) (Al-Muslim,3465).
- The Holy Prophet(SAWW) ordered to strike the neck of a person and seize his property who married his father's wife (Abu Dawud, 4457).
- The Holy Prophet(SAWW) directed that burden of proof is on the plaintiff and the defendant shall take oath if he declines (Ibn Majah, 2321).

On the basis of the above examples, it may be concluded that the Almighty Allah's sovereignty has been manifested through the Holy Prophets. And all the Holy Prophets, in this way, were the representatives of Almighty Allah. And after the selection of Hazrat Muhammad(SAWW)as the last Holy Prophet, now, only his teachings and acts are and shall remain the ultimate guidance and solution in all the matters religious, legal, social, etc. till the last day in the world.

And if anyone gets authority, he would be bound to follow the *Sunnah* of the Holy Prophet(SAWW).

The third and last kind of sovereign authority is that which is acquired and assumed by the Man as a trust. It is not, in fact, the real sovereignty. We may use the term ‘limited authority’ whereby the man is just an agent or a trustee to execute the given commands. There is little room to exercise the discretion (Tahir-ul-Qadri, 2006).

Islam is a religion of peace (Akhter and Qadoos, 2017). It literally means ‘submission’. Thus, the person who claims to be a Muslim is supposed to submit himself totally to the will of Almighty Allah with respect to all its affairs. Almighty Allah is the creator and man is the creation, Almighty is the sovereign and man is the subject or representative or vicegerent. The man’s assignment is to lead a life in obedience of the Almighty and to seek His pleasure.

The Islamic concept of sovereignty has the following incidents:

- a) The ultimate sovereign power and ownership of the universe resides with the Almighty Allah (Pakeeza and Qadoos, 2017).
- b) The manifestative sovereignty is assigned to Holy Prophets (عليهم السلام) (Tahir-ul-Qadri,2006).
- c) After devolution of (limited) authority, man becomes the vicegerent (*Khalifah*) of Almighty Allah on earth(Maududi, 1980).
- d) The vicegerent is chosen by the Muslim community (Kumar, 2017).
- e) The sovereign authority given to the vicegerent is a sacred trust (Shelley, 2006).
- f) Almighty Allah has provisionally devolved such portion of His sovereignty on humans which is needed to run and manage his worldly affairs appropriately in the light of Divine commands and the *Sunnah* of the Holy Prophet(SAWW). Thus, the purpose of devolution of trust towards man is to practice Islamic principles which runs the State in accordance with the Almighty Allah’s will (Maududi, 1980).
- g) The vicegerent is required to exercise the devolved limited trust within the prescribed bounds (Ali,2006).He is never allowed to decide the matters in contravention of the will of the Almighty Allah (*Al-Quran* 5:44) or to change lawful into unlawful and vice versa (*Al-Quran* 16:116). Even the Holy Prophets (عليهم السلام) were required to act in accordance with the

- Divine instructions (Al-*Quran* 6:50). They could not deviate from Divine orders.
- h) The vicegerent is under the obligation to maintain justice and peace in the society (Al-*Quran* 38:26).
 - i) Law is equally applicable to all without any distinction of caste or creed. No one is above the law, even a king and a common man are equal and nobody can enjoy any immunity under the cover of status, authority, colour, etc. (Al-*Quran*, 49:13).
 - j) A universal and reciprocal duty, known as 'امر بالمعروف و نهى عن المنكر' which means to do the good and forbid the evil (Al-*Quran*, 22:41), must be performed by the people as they are guardians of one another (Al-*Quran*, 9:71), i.e., by the government with respect to the people, and vice versa and by the people with respect to other people. The conditions, limits, and nature of such duty may be prescribed by the law. The non-observance of this duty would lead them to devastation as it is pointed by the Holy *Quran* (5:78-79).
 - k) The vicegerent is accountable for his deeds (Yaacob and Maamor, 2018).

The human is the noblest creation of the Almighty. The Holy *Quran* also declares the same (95:4, 17:70, 15:29, 38:75 and 2:31) and that is why the Almighty has declared the man as his vicegerent in the world and delegated a portion of His authority to him so that he would be able to discharge his obligations towards the Almighty Allah as well as towards the mankind (Gauhar, 2012). Any negligence or failure to observe Almighty Allah's commands or any incompetency would disqualify the man to continue as a vicegerent. He may be replaced by another person capable to exercise his delegated authority within the prescribed limits.

Exercise of Authority through Institutions:

Once the authority is devolved towards the man it becomes a sacred trust and he is bound to exercise it with due care and diligence to follow the Divine instructions. Now the question is who shall exercise this authority and how and subject to what limitations? The answer to this question is that it would be exercised by the *Khalifah* (an Arabic word which literally means the successor and technically means the Muslim ruler) who would be chosen/elected by the people. This election may be direct or indirect. This authority would also be shared

with the *Shura* (an Arabic word which means consultation. *Shura*, in simple words, is an Islamic institution similar to the parliament, which requires Muslim scholars to get together and participate in logical debates, to form independent and productive opinions to formulate schemes and policies for the society.) which would be composed of the scholars and *Mujtahids*. The *Khalifah* would establish the judiciary, executive and other State institutions. An aggregate of the above institutions would manage the affairs of the society in the light of the Holy *Quran* and Sunnah within the prescribed limits.

The Office of *Khilafa*:

The objective of the Islamic State is public welfare by practicing Islamic principles through creation of different State institutions and appointment of competent persons into such institutions. The first of these institutions is the "*Khilafah*". The Holy *Quran* in forms about the appointment of *Khalifah* (of Almighty Allah) on earth (2:30, 6:165, 38:26, 7:69, 10:14). *Khilafah* is not a birth right of any person. The Holy *Quran* provides that only believers are competent to hold this office (24:55, 4:141, 18:28). The condition of being Muslim is not because of any bias but because an Islamic State is based on a certain theory. And only such persons qualify for caliphate who are able to understand this theory and have belief on it (Khan, 2009). A person who neither understands nor believes on it, is not eligible for *Khilafah* in an Islamic State. The conditions for a candidate for the office of *Khilafah* are:

1. He must be a *sui juris* (means a person under no legal disability, i.e., who has attained puberty/age of majority and is sane.) (Abushouk, 2018). He must not be a minor or insane. Because a person who himself is dependent on others cannot become a ruler. Thus, it is not lawful for such a person to become a ruler or to hold any post of authority that the *Shariah* has exempted from holding any office. It is also an accepted principle of the modern world that the ruler must be an adult person and must have sound mind so that he would be able to perform his functions in the best possible way.
2. He must be an *Aadil* which means a person of justice (Calder, 1982). He must be obedient to the commands of Almighty Allah and His messenger (SAWW) and must not be a *fasiq* (violater). He must abstain from major sins and also be careful in his deeds. He should also be saving himself from minor sins too. The Almighty orders in the Holy *Quran* (65: 2):

“... and seek the testimony of two men of justice from among you....”

It means that if the witness must be just, then the *khalifah* should, by a greater reason, also be a just person.

3. He must be a scholar as provided by the Holy *Quran*(2:247,39:9, 35:19).

The above cited verses clearly declare that an ignorant can never be a ruler in an Islamic State. Only the learned persons should be selected for such post. An ignorant person being unaware of the Islamic thoughts shall lead the nation to destruction.

4. He must be a *Muttaqi* which means very much careful. The Almighty Allah likes such persons who take care of their affairs (*Al-Quran*,49:13 and 5:100). Thus, a person who does good deeds and is careful in his matters would definitely be good and careful in State affairs.
5. He must be a competent person. He must be able and skilled in carrying out his tasks and participate to fulfill the goals of the Islamic society (*Al-Quran*,12:55 and 28:26).

All the persons possessing the above-mentioned qualities are eligible to be chosen. Now to whom people should select and to whom not to select? The answer may be found in the following verses of Holy *Quran* and the sayings of the Holy Prophet(SAWW):

1. The Holy *Quran* says to handover the offices of authority to the competent and trustworthy people (4:58).
2. The Holy *Quran* again provides not to choose those who are slaves of their desires (18:28).
3. A tradition of the Holy Prophet(SAWW),says, a position is not assigned to a person who applies for it or who is greedy for it (*Al-Bukhari*,2261).When the followers of Hazrat Ali (R.A.) asked him to assume the office of caliph, he replied that he was not interested to become caliph secretly. He said that the Muslims could elect anybody with their mutual consultation. Later he was elected accordingly (Usman, 2009).
4. According to another tradition, as cited by Maudoodi (2000), a person cannot be appointed to a post who wants it (Abu Dawud, 3579).

Shura:

The Islamic political system is based and governed by the scholars in *Shariah*. And the scholars are supposed to decide the matters according

to Islamic law by mutual consent. In this way, the institution of consultation is so important that one of the Chapters of the Holy *Quran* has been named as '*Shura*'. The approval for this institution may be found in the following sources:

1. The Muslims decide their matters by mutual consultation(*Al-Quran*).
“...They decide the affairs by mutual consultation...”
(42:38)
“... Consult them in affairs...”(3:159)
2. “*When your leaders are the best of you, the richest are the most generous among you, and your affairs are consulted among you, then the surface of the earth is better for you than its belly. And when your leaders are the worst of you, the richest are the stingiest among you, and your affairs are referred to your women, then the belly of the earth is better for you than its surface.*” (Ibn Majah, 2266)
3. It is reported that nobody was more apt to consult his companions than the Holy Prophet (SAWW) (At-Tirmidhi, 1714)
4. The Holy Prophet(SAWW)decided the mode of *aqaan* (call for prayer) after consultation with his companions (Al-Bukhari,604).
5. When the followers of Hazrat Ali (R.A.) asked him to assume the office of caliph, he replied that he was not interested to become caliph secretly. He said that the Muslims could elect anybody with their mutual consultation. Later, he was elected accordingly (Usman, 2009).

From the above few arguments, it is evident that consultation is the core principle to run the affairs of an Islamic State. The above-mentioned principles may be summarised as follows:

1. A matter of public interest must not be decided without consultation. The Islamic political system does not allow autocratic rule rather it is based on peoples' consensus (which must be subservient to Divine will) and essentially a consultative system (Kurzman, 2002). This consultation is not optional but obligatory (Al-Sulami, 2004). It is not allowed to decide the matters of common interest at someone's personal desire because it would cause injustice in the society at greater scale.

2. A matter must not be decided without participation of the concerned persons who would be given freedom to express themselves (Bhattacharya, 2001). Their participation may be direct (in person) if they are few in number or indirect (through agents) if they are great in number. They would be allowed to give their proposals and they would be informed with the progress and results. They would also be allowed to comment, object or point out any relevant thing. An Islamic State does not work for the advantage of an individual or a certain group at the cost of the whole community. Its objective is human welfare independent of any bias or distinction. It may be added that consultation in law-making has become a requirement of the modern world.
3. The consultation must be independent, sincere and open to reach the best decisions. It requires that the members of the *Shura* must be impartial. It is, thus, necessary to choose such people who would be scholars, skilled, competent and who must not be demanding but accept this office on request. And a person who himself wants a position and insists as such, must not be given this office (Al-Bukhari,7149) because he is declared as a slave of his own desires (Al-*Quran*, 18:28).
4. The consultation must not be a bare consultation. The matter decided through consultation must be implemented and obeyed (Al-Bukhari,6830) otherwise all the effort would become meaningless.
5. The consultation must be done in accordance with the Holy *Quran* and *Sunnah*.

The persons who possess expertise in different fields of life, i.e., economics, education, medical, engineering, theology, etc., may be opted/invited or elected as members of the *Shura* so that they may (on the basis of their expertise) guide and propose solutions on public issues of their field and propose policies to achieve the desired goals. Thus, a person who lacks the capacity and competency to do so cannot be allowed to become part of the *Shura*.

The main function of the *Shura* is to decide the affairs by consultation. Its decisions must be in accordance with the injunctions of the Holy *Quran* and *Sunnah*. It is also competent to codify the Islamic principles in the forms of Acts containing Sections to get them enforced. It is also responsible to setup a system based on the pure Islamic injunctions so that a welfare State would emerge. First of all, its duty is to elect a

ruler for the society as it was done by the companions of the Holy Prophet(SAWW). Then, it may act as a council/cabinet of the ruler. Directly or indirectly, the *Shura* of a modern Islamic State is bound to legislate *inter alia* to:

1. promote good governance (Sarkam, Jalal et al., 2018).
2. prevent social evils and control crimes (Fish, 2011).
3. safeguard human rights (Fedtke and Oliver, 2007).
4. protect minorities (O'Brien, Stapenhurst et al., 2008).
5. cause social wellbeing (Al-*Quran*, 4:2 & 59:7; Krieger and Crahan, 2001).
6. promote friendly relations with the Muslim States (Pande, 2011).
7. preach and exercise Islamic thoughts (Al-*Quran*, 22:41).
8. provide the nation with best defense system (Al-*Quran*, 8:60).

The *Shura* is a very prestigious forum of the State, and in the Islamic society it is a platform for *Ijtihad* (means an individual scholar trying to solve public issues/problems using utmost effort to discover or propose legal principles). It is a consultative body to consider the issues and problems faced by the nation and to find solutions there for (Sheikh, 1998). And where guidance for certain matter is not found in the Holy *Quran* and *Sunnah*, the *Shura* being a body of scholars would be competent to legislate or resolve the issues through *Ijma* (a tool for solving the issues by consensus of the scholars of the Muslim society), *Qiyas*, (a way of discovering the solution of the problems in the light of previous similar cases) *Istehsan* (means to address the problems by choosing the most appropriate solution on the basis of preference), *Masaleh* (denotes to frame rules on the touchstone of the principle of public good), *Urf* (means custom. In the absence of any express law, the *urf* attains the status of law), etc., while keeping in view the spirit of Islam (Maudoodi, 2000).

Judiciary:

In an Islamic State, there is no scope for the absolutism or totalitarianism, i.e., the old so called divine authority of the kings as adopted by different societies in different parts of the world like India, Egypt, Persia (nowadays known as Iran), Japan, etc., whereby a king was not only the source of law but was also above the law and thus was never answerable to anyone for anything. At that time, the King was considered as image or face of God and therefore people were bound to take his commands as they were from the God. The King was

authorised to demand anything in the name of God. Under the Islamic political thought, the king is a nominal sovereign and is always subject to the law and is not superior to an ordinary man. The noblest in the sight of Allah is one who is best in his deeds.

In the very early system of Islamic governance at Medina, the rulers themselves performed the legislative, judicial and executive function. However, sometimes they consulted the scholars in the resolution of disputes. This practice was followed by the subsequent rulers. Simultaneously, with the expansion of Islamic State, the office of the judge was created. The judges were being appointed for distant areas under the authority of ruler. Then, this authority was delegated to the governors who could appoint the judges for different areas under their administration. This practice continued for a prolonged period. In the reign of Harun Al-Rashid, the position of chief judge was created. The chief judge could appoint the other judges (Böwering, Crone et al., 2013).

The Islamic judicial system is based on the principles of rule of law and equality in performing its judicial function. It is independent of executive control. The competent persons well versed in the Islamic teachings and affairs would be appointed as judges. They are required to decide fairly and impartially (Al-*Quran*,4:58). Their jurisdiction would extend to all the citizens whether Muslims or non-Muslims. The rights of non-Muslims are as sacred as of the Muslims. The authority of the judges would also extend to the State officials even it would include the uppermost executive authority of the State, i.e., the ruler, who may be called upon into the courts of law. The same law would equally be applicable to the *Khalifah* as it is applicable to ordinary people without any discrimination. We may take a number of examples in this respect from the Islamic antiquity.

When, in a dispute with a non-Muslim, Hazrat Ali(R.A.) appeared in the court, the judge stood up to welcome him. On this Hazrat Ali(R.A.) said that it was injustice and condemned the judge for this act of biasness(Usman 2009). In another case, the judge decided against Hazrat Ali(R.A.) without taking into account his position as caliph and rejected the evidence of the witness being his son. Hazrat Ali(R.A.) accepted the decision graciously (Jafri, 2008).

In a similar situation, Hazrat Umar(R.A.) also reacted in the same way when the judge tried to give him unusual care and attention while he appeared in the court as a defendant (Mahmood, 1995). When city of Jerusalem surrendered and Hazrat Umar(R.A.) went to settle down the

affairs in order to take over the territory he travelled by a single camel with one servant. Both were taking turns one by one while riding it. When they reached the city, it was the servant's turn to ride the camel. When they arrived, the people were assembled to welcome the caliph, but they were amazed to see him leading the camel ridden by the servant (Khan and Rahman, 2014). In Egypt, the son of a governor tortured a native person taking benefit of his father being the governor. When Hazrat Umar (R.A.) came to know this, he allowed the natives to punish the wrongdoer (Rehman, 2010). The above events clearly picture the Islamic system of government based on justice and equality.

It is reported that once a lady from a wealthy tribe was held for committing theft. One of the close companions, i.e., Osama Bin Zaid (R.A.) of the Holy Prophet (SAWW) asked to reduce the punishment. The Holy Prophet (SAWW) said that the previous nations were punished and destroyed because they freed the wrongdoer if he were a rich and punish the wrongdoer if he were a poor. The Holy Prophet (SAWW) further added that if his daughter would have done that, she would have also punished with cutting of her hand (Al-Bukhari, 6788).

Executive (Government)

The existence of good laws alone is not enough to create a welfare State. For the implementation of such laws and to get maximum prosperity in the society, an executive authority must be available to assist the execution of laws (Khomeini, Khomeini et al., 2002). In an Islamic State, the executive consists of the ruler and the governors (who are answerable to the ruler). These governors may further appoint such officials as necessary who are answerable to the governors as well as to the ruler. It has to perform certain duties, for example:

- 1) Its duty is to implement the Divine commands (Al-Quran, 22:41). It is required to form a society which would receive these commands and to prepare themselves to follow these commands in their daily affairs (Ibid.).
- 2) The Islamic Government, in accordance with the said commands, is required to provide its citizens the basic necessities of life including security of life, privacy and liberty (Al-Quran, 17:33, 24:27 and 49:12; Al-Bukhari, 4403), protection of property (Al-Quran, 2:188), justice (Al-Quran, 4:58 and 5:8), appoint officials and maintain law and order in the society. In this respect, it may establish such institutions which may be required to achieve the

desired objectives, i.e., education, health, welfare, treasury, taxation, police, prosecution, judiciary, jail, army, etc.

- 3) It is bound to assist the legislature and the judiciary when needed.
- 4) It is the responsibility of the executive to control any internal or external aggression against the State by its forces (Martin, 2003).
- 5) It is bound to protect the person and property of the people without any discrimination (Jamil and Javed, 2002).
- 6) Its duty is to setup a system of accountability to control the corruption and mis-deeds of the officials (Qasmi, 2008).
- 7) Its job is to conduct public hearings to resolve the complaints (Berkel, 2011). Its officials are required to conduct sudden visits of the places under their jurisdictions and to take proper action against any wrongful act.

People are bound to accept the executive members and to follow their orders (Al-Quran 4:59). The authority of executive, as cited by Maudoodi (2000), cannot be denied on the basis of personal liking or disliking (Al-Bukhari, 7144). Even a defaced slave (if he is appointed as caliph) deserves obedience (Al-Bukhari, 7142). However, people have right to criticize the government policies and may choose to disobey if these are found in conflict with the Islamic injunctions (Al-Bukhari, 7145). If the executive does not take notice of these conflicts and continue to act in contradiction of Islamic orders, it loses the support of the people. People are not bound to follow any further directions (Maudoodi, 2000). The Holy *Quran* clearly orders to withdraw the allegiance if the executive follows its own desires (Al-Quran, 18:28) or where it exceeds the limits (Al-Quran, 26:151-152).

Conclusion:

At present, it has been (wrongly) assumed by the non-Muslims and a majority of Muslims that Islam has no concern with the political, sociological or economic issues of human life and that it is just concerned with the religious matters or worship only. Such people are, in fact, unaware of the Islamic Political System which shrouds the whole life span of a man which gives rise to a democratic and welfare society. One can find many examples of Muslim rulers who established their States according to the guideline provided by Islamic injunctions and who got their States and people prosperous. Examples may be quoted from the first four worthy and pious caliphs to *Abbasi* caliphs (subject to a few exceptions). In later times, one may also acknowledge the efforts of Muslim rulers like *Feroz Shah Tughlaq*,

Kuli Kutub Shah, Haidar Ali, Tipu Sultan, Shah Jahan, Aurangzeb Alamgir, etc. to make their people prosperous and happy.

As far the issue of supremacy is concerned, it may be deduced from the aforesaid *Quranic* verses, traditions of the Holy Prophet (SAWW) and the other events from the Islamic history, that only Divine commands are supreme. Among the State organs, powers are distributed and each one is supposed to act accordingly. But if one encroaches the authority of the other, the issue would be resolved by the judiciary. If the legislature enacts against the spirit of the *Shariah*, the judiciary would be competent to declare it null and void. This is the spirit which has been derived by the Muslims to establish the Islamic system as enshrined in *Shariah* and practiced by the Islamic *Khalifahs*.

Reference & Notes

- Abushouk, A. I. (2018). Muhammad Rashīd Riḍā's Reformist Project to Establish a True Caliphate: Prospects and Challenges. In *Ways of Knowing Muslim Cultures and Societies* (pp. 55-80). Brill.
- Afzal-ur-Rahman. (1992). *Muhammad, Encyclopaedia of Seerah*. Muslim Schools Trust.
- Ahmad, M. (2005). *Towards the Development of Hadhari Society in Malaysia*. Pusat Penerbitan Universiti, Universiti Teknologi MARA.
- Akhter, N., & Qadoos, A. (2017). Islam Is the Religion of Peace: Analytical Review from the Life of Holy Prophet (PBUH). *Research Gate*.
- Al-Daghistani, S. (2017). The Making of Islamic Economics. *PhD diss., Leiden University*, 389-404.
- Ali, M. M. (2006). *The Clash of Civilizations Or Civilizational Peaceful Co-existence: An Analysis of the Views of Huntington and Khurshid Ahmad*. Other Press.
- Al-Sulami, M. F. (2004). *West and Islam: Western Liberal Democracy Versus the System of Shura*. Taylor & Francis.
- Angelina, V. (2009). *History and Civics 7*. Pearson Education India.
- Bhattacharya, A. K. (2001). *Community Participation and Sustainable Forest Development: Global Perspectives*. Concept.
- Böwering, G., Crone, P., & Mirza, M. (2013). *The Princeton Encyclopedia of Islamic Political Thought*. Princeton University Press.
- Calder, N. (1982). Accommodation and revolution in Imami Shi'i Jurisprudence: Khumayni and the classical tradition. *Middle Eastern Studies*, 18(1), 3-20.
- Chaurasia, R. S. (2002). *History of Medieval India: From 1000 A.D. to 1707 A.D.* Atlantic Publishers & Distributors.

-
- Fedtke, J., & Oliver, D. (2007). *Human Rights and the Private Sphere: A Comparative Study*. Taylor & Francis.
 - Fish, S. (2011). *Are Muslims Distinctive?: A Look at the Evidence*. Oxford University Press, USA.
 - Gauhar, H. (2012). *Khudi is sovereignty*. <https://archive.pakistantoday.com.pk/2012/03/31/khudi-is-sovereignty/>
 - Jafri, M. (2011). *The Ideals of Bhutto*. National Book Foundation.
 - Jamil, J., & Javed, I. M. (2002). *The Essence of the Divine Verses: A Systematic Study of the Holy Qur'an*. Mission Publications.
 - Kareem, C. K. (1973). *Kerala under Haidar Ali and Tipu Sultan*. Kerala History Association: distributors, Paico Pub. House.
 - Khan, H. (2005). *Constitutional and Political History of Pakistan*. Oxford University Press.
 - Khan, S. N., & Rahman, V. (2014). *Umar Farooq*. Goodword Books.
 - Khomeini, I., Khomeini, R., & Algar, H. (2002). *Islamic Government: Governance of the Jurist*. Institute for Compilation and Publication of Imam Khomeini's Work.
 - Krieger, J., & Crahan, M. E. (2001). *The Oxford Companion to Politics of the World*. Oxford University Press, USA.
 - Kumar, M. Y. (2017). Democracy and Khilafah in Maulana Sayyid Abul Ala Maududi's thought. *North Asian International Research Journal of Social Science & Humanities*.
 - Kurzman, C. (2002). *Modernist Islam, 1840-1940: A Sourcebook*. Oxford University Press, USA.
 - Lincoln, A. The Gettysburg Address, November 19, 1863. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307473/>
 - Mahmood, M. D. (1995). *A Biased Judge: A Collection of Essays and Short Stories*. Frontier Publications
 - Martin, V. (2003). *Creating An Islamic State: Khomeini and the Making of a New Iran*. I. B. Tauris.
 - Maududi, S. A. A. (1980). *The Islamic Law & Constitution*. Islamic Books.

 - Maududi, S. A. A. (2000). *Islamic State*. Islamic Publications (Pvt.) Limited, Lahore, Pakistan.
 - Mayer, I. A. (2007). *Medical Geography*. APH Publishing Corporation.
 - Miller, F. D., & Biondi, C. A. (2017). *A Treatise of Legal Philosophy and General Jurisprudence: Volume 6: A History of the Philosophy of Law from the Ancient Greeks to the Scholastics*. Springer Netherlands.
 - Muhsin, D. M. (Ed.). (1997). *The Translation of the meanings of Sahih Al-Bukhari*. Maktaba Dar-us-Salam.

-
- O'Brien, M., Stapenhurst, R., & Johnston, N. (2008). *Parliaments as Peacebuilders in Conflict-affected Countries*. World Bank.
 - Pakeeza, S., & Qadoos, A. (2017). Imposition of tax in Islam and debate of Jurists in historical context. *Al-Azhar*, 32(47), 13-20.
 - Pande, A. (2011). *Explaining Pakistan's Foreign Policy: Escaping India*. Taylor & Francis.
 - Qasmi, A. H. (2008). *Islamic Government*. Isha Books.
 - Rehman, K. U. (2010). *The Concept of Labor in Islam*. Xlibris US.
 - Saeed, A. (2006). *Islamic Thought: An Introduction*. Taylor & Francis.
 - Sarkam, K. A. M., Jalal, B., & Ismail, A. S. (2018). The concept of members of the Shura Council (Ahl Majlis al-Shura) in Islam: An analytical study towards the members of the Malaysian parliament. *Advances In Natural And Applied Sciences*, 12(7), 14-18.
 - Sheikh, M. A. (1998). *The Parameters of Parliamentary Sovereignty*. <http://users.erols.com/ziqbal/mar22.htm>
 - Shelley, M. (2006). Created by God, blessed with a sacred trust: some biblical and Qur'anic perspectives on humanity. *Currents in Theology and Mission*, 33(3), 239-246.
 - Shridevi, S. (1976). *Luminaries of Andhra Pradesh*. Andhra Pradesh Sahitya Akademi.
 - Tahir-ul-Qadri, D. M. (2006). *Al-Hukum-u-Sharei (Urdu)* (2nd ed.). Minhaj-ul-Quran Printers.
 - Taufiq, M. (2013). *Quran in Ms Word: (Software)*. In (Version 2.2.0.0) <https://quran-in-ms-word.software.informer.com/>
 - Usman, M. (2009). *The Islamic Concept of Leadership*. <http://www.pkhope.com/the-islamic-concept-of-leadership/>
 - Van Berkel, M. (2011). Embezzlement and reimbursement. Disciplining officials in 'Abbāsid Baghdad (8th-10th centuries AD). *International Journal of Public Administration*, 34(11), 712-719.
 - Yaacob, H., & Maamor, S. (2018). The Restricted Autonomy of Will: The Disregarded Values in Shariah Based Contract. *Indian Journal of Public Health Research & Development*, 9(11).
 - Zubair, H. A. T. (Ed.). (2007). *English Translation of Jami At-Tirmidhi*. Maktaba Dar-us-Salam.
 - Zubair, H. A. T. (Ed.). (2007). *English Translation of Sahih Muslim* (1st ed.). Maktaba Dar-us-Salam.
 - Zubair, H. A. T. (Ed.). (2007). *English Translation of Sunan Ibn Majah*. Maktaba Dar-us-Salam.
 - Zubair, H. A. T. (Ed.). (2008). *English Translation of Sunan Abu Dawud*. Maktaba Dar-us-Salam.