ISLAM VERSUS DEMOCRACY

VIS-A-VIS PAKISTAN

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PREFACE

In the following pages an attempt has been made to throw light on a subject which has given food for thought to those who understand Islam and the game of politics, generally speaking in the world of Islam and, particularly, in the Islamic Republic of Pakistan. So far as we are concerned some serious attempts have been made in constitution-making by the late Constituent Assembly which did produce a constitution in 1956 which, tragic though it may appear at first sight, was not destined to live for a long time; for hardly two and a half years thereafter, the hard-born 1956 Constitution was given a death blow when Field Marshal Ayub Khan's Martial Law was imposed in the country in October, 1958. Later, President Ayub Khan gave his own Constitution in 1962, introducing a new system of democracy named the "Basic Democracy" restricting franchise to an electoral college comprising 80,000 Basic Democrats in both wings of the country. After the regime was overthrown in 1969 another General Yahya Khan held the general elections which culminated in the secession of East Pakistan and Mr. Zulfiqar Ali Bhutto, assuming power as a civilian Martial Law Administrator and Prime Minister, gave yet another Constitution in 1973 which continues to be in force today with certain amendments made by Mr. Bhutto himself and subsequently by another Chief Martial Law Administrator, Gen. Ziaul Haq, who practically mutilated the 1973 Constitution with a number of very vital amendments. All these constitutions were framed to carry on the affairs of the Islamic Republic of Pakistan and retained the Preamble and the Objectives Resolution that was incorporated by the late Constituent Assembly in the year 1949 vesting absolute sovereignty in ALLAH alone. But, as a matter of fact an Islamic Constitution specifically framed for the administration of an Islamic State should naturally have been "Islamic" both in character and outlook.

On the one hand, we have been trying to run the affairs of the State on the pattern of an Islamic State while, on the other, we are not prepared to get rid of the Western type of democracy, their political institutions and their system of elections on the basis of adult franchise which, according to experts, is not in keeping with the fundamentals of our Islamic polity. An

attempt has been made to explain this discrepancy in the relevant chapters of this modest treatise. For this purpose I had to cover some field of research and consult a number of books available on the subject. Unfortunately, there are not many books yet published on the specific subject dealt with in this short yet modest treatise. This dearth of books and scarcity of material dampened my spirits, but I was determined to run this race at a very advanced age with the help of personal knowledge of day-to-day events extending to about half a century backed by attachment to the professions of law, journalism and in a way with active politics of this country since years before the partition of the Subcontinent. So I decided to run this race which I would call a "Hurdles Race", to reach the goal. I do not feel that I have reached the goal, yet I have run the race.

A list of about seventy to eighty books enumerated in the Bibliography at the end, besides some magazines and journals, enabled me to present, though in a sketchy form, my point of view, for which I am grateful to their authors and editors. Besides, some daily newspapers also had to be referred to, as the subject has so often been broached in their columns because of its special importance in our country. I have gone through all the constitutions of the Islamic Republic of Pakistan but they have left me unconvinced about their "Islamic" character. Neither in form nor in letter and spirit does any of the constitutions contain provisions which could justify their implementation in an Islamic State.

Sometime back I had an opportunity to discuss this very subject with a few learned experts including the late Mr. Justice S.A. Rahman, Prof. U. Kramet, Vice-chancellor of the University of the Punjab, Lahore, and the then Principal of the University Law College, Mr. Imtiaz Ali. At that time the 1956 Constitution had been passed and the political parties were tightening their belts to contest the general elections which, it was hoped, would be taking place shortly. During our talks we discussed how far the 1956 Constitution was compatible with the fundamental precepts of Islam as contained in the Holy Quran and the Traditions of the Holy Prophet of Islam Hazrat Mohammad (May peace be upon him). Without flattery I condemned the pattern of democracy prevalent in Pakistan and pleaded that it was quite unsuitable for our country. Above all, I emphasized that our leaders lacked character and were wanting in piety which was imperative for those who had the right to rule in an Islamic State. My contention turned out to be true, when soon after President (then the Governor General of Pakistan) Iskander Mirza had hardly finished with his game of changing Prime Ministers, one after the other, and converting the Muslim League into the Republican Party, came Ayub's Martial Law, banning political par-

ties, dissolving the ministries both at the Centre and in the provinces, and abrogating the 1956 Constitution. The scheme of Basic Democracies was introduced by the Chief Martial Law Administrator and President of Pakistan Field Marshal Ayub Khan on the ground that the "Western type of democracy did not suit the genius of our people". His system of Basic Democracies also failed as his successor, Gen. Yahya Khan, held the general elections on the basis of adult franchise and these elections were so free, fair and impartial that they paved the way for the breaking up of Pakistan into two parts, the eastern wing seceding from West Pakistan as a result of the fall of Dhaka on Dec. 16, 1971. And many years later we have only recently witnessed the fate of the Benazir Government which was dismissed by President Ghulam Ishaq after levelling serious charges of corruption, misuse of power, horse-trading and misappropriation of funds including loans amounting to crores of rupees taken from banks under political pressure. References against Mrs. Benazir Bhutto, her husband, Asif Zardari, and many other leaders are still pending before courts for decision. Benazir Bhutto did not have even simple majority in the National Assembly, yet she was made Prime Minister "to put the country back on the rails of democracy." It may be noted that good character and the virtue of piety were rare in the politician-ridden regimes of the past as Islamic values were not given the importance that they deserved. Nepotism, favouritism, corruption and horse-trading were the order of the day because those at the helm of affairs in the past regimes lacked what is most important - character, piety and virtue of the highest order in men and women who guide the destiny of the nation and steer the ship of the State. It goes without saying that character, virtue and piety are absolutely foreign to the Western type of democracy which we so much adore. We have been blowing hot and cold together, that is, proclaiming to build Pakistan into an Islamic Welfare State, but following the Western democratic system of government since the inception of Pakistan. No doubt, we have taken certain steps to ensure that no law repugnant to the injunctions of the Holy Qur'an and the Sunnah of the Holy Prophet Hazrat Mohammad (May peace be upon him) shall be promulgated in Pakistan, and that we have adopted the Hudood Ordinance, Qisas and Diyat Ordinance and so on. But the big question is, how to reconcile the Islamic system with the democratic institutions of the West which we value more than the fundamental precepts of Islam. There is a yawning gulf between the two systems of government and even the ways of life in the Western countries and the Muslim countries trying to live their lives in accordance with the teachings of the Holy Qur'an and the Sunnah of our revered Prophet. It is the duty of our framers of the constitution

to remove the contradictions between our own religious convictions and the principles which are actually followed in the election of our assemblies, their functions under the constitution and the formation of government both at the Centre and in the provinces. Let us also give serious thought to the fact whether the gulf between the two systems is at all bridgeable?

It is, however, important to note that in whatever system that may be adopted, character of an individual is of utmost importance. To quote the words of the former Chief Justice of Pakistan, Mian Abdul Rashid, "the building of true character in an individual would help ensure democracy in Pakistan, rather than a mere written constitution .... Democracy was a way of life and not only a form of government .... If one were to take an Islamic constitution as envisaged by the "Ulema", it would hardly be distinguishable from dictatorship, and if one were to look at the Islamic constitution as envisaged by young men, it did not differ from the British and American constitutions." There is also another point which deserves consideration in this context. And to quote Mian Abdul Rashid, again, "the substantive civil and criminal laws of a country could not form a part of its constitution, and the constitutions of all the important countries were based on the principles of social justice and equality ....".

Islam, no doubt, provides a complete code of conduct for men and women who profess this religion but there is no precedent in history where a comprehensive Islamic constitution was ever adopted in the modern sense of the word. Moreover, to quote another eminent authority on law and jurisprudence, "the form of government in Pakistan, if that form is to comply with the principles of Islam, will not be democratic, is conceded by the Ulema. The Objectives Resolution rightly recognized this position when it recited that all sovereignty rests with God Almighty alone. But the authors of that Resolution misused the words "Sovereign" and "Democracy" when they recited that the constitution to be framed was for a sovereign State in which principles of democracy as enunciated by Islam shall be fully observed .... When it is said that a country is sovereign, the implication is that its people or any other group of persons in it are entitled to conduct the affairs of that country in any way they like and untrammelled by any considerations except those of expediency or policy. An Islamic State, however, cannot in this sense be sovereign, because it will not be competent to abrogate, repeal or to do away with any law in the Qur'an or the Sunnah".

Democracy, as we all know, is a government of the people, by the people, and for the people and, therefore, it does not permit any sort of limitations on the sovereignty which belongs to people and to nobody else. In an

Islamic State, the sovereignty belongs to Allah alone. It is imperative, therefore, to examine how far the two systems of government could go together, one fitting into the other rather tightly, and not on the analogy of a square peg into a round hole, loose, lop-sided and awkward-looking on all sides. A study of what Islam prescribes is the only answer to this question that is facing Pakistan in the matter of having a political structure based on the precepts and teachings of Islam. We are still confronted with the task of framing a constitution, de nove, or amending the present one to bring it in line with the dictates of Shari'at which we are determined to incorporate into the provisions of the constitutional framework. We have, however, based our Constitution on the democratic pattern of the West which is hardly compatible with the requirements of an Islamic State.

I have tried to explain in the following pages the salient features of an Islamic society to bring home to the reader the discrepancies existing between the two systems. How far I have succeeded in my mission is for my readers to judge and evaluate.

In conclusion, I would like to remark that it is undoubtedly an uphill task to approve of the Western type of democracy, as opposed to Islamic democracy as some people would like to call it, as well as to preserve the Islamic character of the sovereign and independent State of Pakistan. The problem was discussed by me as a student of Political Science with my teachers of the subject at the Punjab University including Dr. G.M. Fritters, Head of the Department. I am also grateful for the guidance and help received by late Justice S.A. Rehman, late Mr. Justice Maulvi Mushtaq Husain and in Karachi from an Advocate-on-Record and Advocate of the Supreme Court of Pakistan Mr. Akhlaq Ahmed Siddiqi who also holds an LL.M degree, who had been particularly helpful in revising the typed manuscript. As a student of LL.M. at the Lucknow University I was fortunate to have able teachers like Chaudhri Naimullah, Advocate, Oudh Chief Court, who taught Mohammadan law. A brother of Mr. Justice Niamatullah of the Allahabad High Court, Chaudhri Sahib's guidance both at the University and at his house on Niamatullah Road, inspired me to undertake research in Mohammadan law in pre-Partition days., Another able, courteous and helpful teacher from whom I received guidance both at the University and at his bungalow (where he lived with his foreign wife) was Prof. Mohammad Shamim (son of the first Advocate-General of Pakistan Mr. Mohammad Wasim, and real brother of the retired Chief Justice of Pakistan Mr. Mohammad Halim). Indeed, they were teachers in the real sense of the word who inspired their pupils with a mission to continue their studies till the last breath of their lives. I am grateful to all others who have

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Chapter I

FUNDAMENTALS OF ISLAMIC STATE

It is universally recognised that Islam is a democratic religion; but there is an equally prevalent notion that this democracy is limited to the believers only. It is thought that this tends to create an armed community of equal and free partners in hostility to the rest of the world. But there could be no greater mis-understanding. Islam insists upon nothing less than the brotherhood of man. The following verse will reinforce this statement:

"All men are a single nation". (II: 2,3)

The interests of humanity are the same. Once the world realises this great truth, there will remain no "Class-interests". No narrow patriotism of race, country or religion will stand in the way of the millenium of universal peace.[1]

Another reliable authority clarifies this point further. If there is to be any aristocracy among mankind, it is to be the "Aristocracy of good deeds". A Muslim loves others and is loved by others. One who neither loves, nor is loved, is worthless. (Ahya-ul-Ulum)

Islam stresses the importance of good neighbourly relations. It teaches us: "He is not a Muslim who satisfies his hunger by taking food, while his neighbour remains hungry". (Mishkat: Ibn-i-Zubair)

TRUTH AND JUSTICE

Fulfilment of trusts and administration of justice are outstanding features of true Islam. No less difficult than keeping promise is the doing of justice in cases where one of the parties concerned happens to belong to the adverse camp. But the Qur'an says: "Surely Allah enjoins doing of justice".[2] Let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety".[3]

1. Ishtiaq Husain Qureshi, *The Religion of Peace*, p. 106.
2. *The Holy Qur'an*, XVI:90.
3. *Ibid*, V8.

How the Holy Prophet Mohammad (Peace be upon him) himself strictly upheld the principles of justice, is borne out from the following incident:

A woman belonging to the tribe of Makhzoon was found guilty of theft; her relations requested Usama-bin-Zaid for whom the prophet had much regard, to release her. The prophet said, "O Usama, do you mean to come to me and intercede against the laws of God?. Then the prophet convened a meeting and thus addressed them:

"Nations which have preceded you have been wiped off the face of the earth, for the one reason only, that they imposed punishment on the poor and relaxed the laws in favour of the rich. I swear by God that if Fatima, my daughter, were to be found guilty of theft, then I would have her hands cut".[4]

According to another event, the prophet's love for honesty stands out in still brighter colours. On the eve of his death, the prophet proclaimed that if he owed any money to any one, that person should demand it from him: if he ever had hurt the property and life of any man, then his own life and property were at that man's disposal; that he should take revenge therefor on him in this world. The whole congregation was silent. There was only one who rose and claimed the payment of a few dirhams, which were paid off there and then.[5]

Still another incident throws abundant light on the prophet's fair dealings. Once, a Beduin, from whom the prophet had borrowed money came to demand his debt. The Beduin, by nature very rough and uncouth, began to talk rudely to the prophet. The Companions, resentful of such insulting behaviour, admonished him, and said, "Do you know whom you are speaking to?". The Beduin said very calmly: "Yes, but I am doing nothing more than demanding my due". The prophet turned to his companions and said:

"You ought to have sided with him because he is in the right".[6]

The Qur'an lays down:

"Surely Allah commands you to make over trusts of those worthy of them, and that when you judge between people, you judge with justice; surely Allah admonishes you with what is excellent; surely Allah is seeing, knowing. (IV:58)

A Muslim should not hide the truth when its expression is demanded by the requirements of justice. The Qur'an says: "And do not conceal testimony, and whoever conceals it, his heart is surely sinful, and Allah knows made their emancipation a virtue of great merit".

4. Bukhari: Muslim.
5. Ibn-i-Ishaq.
6. Ibn-i-Maja.

what you do". (II:283)

"O you who believe! be Maintainers of justice, bearers of witness for Allah's sake, though it may be against your own selves or (your) parents or near relatives, if he (who is affected by your testimony) be rich or poor, Allah is most competent to deal with them both; therefore, do not follow your low desires, lest you deviate; and if you swerve or turn aside, then surely Allah is aware of what you do". (IV:135)

Justice is still more vehemently inculcated through the following Qur'anic verses:

"O ye who believe! be upright for Allah, bearers of witness for justice, and let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety". (V:8)

"And whoever commits a fault or a sin, then accuses of it one innocent, he indeed takes upon himself the burden of calumny and a manifest sin". (IV:112)

No Muslim is, moreover, allowed to co-operate with another in injustice: "And help one another in goodness and piety, and do not help one another in sin and in aggression". (V:2)

Honesty in commercial dealings and weighment of things has been clearly emphasised as under:

"And o my people! give full measure and weigh fairly, and defraud not men of their things, and do not act corruptly in the land, making mischief". (XI:85)

The Holy prophet is reported to have said:

"He who sells a thing without telling the buyer its faults incurs the wrath of Allah. Abstain from dishonesty, so that you may not be disgraced on the Day of Judgment. He who hides the dishonesty of the dishonest is like him. All the sins of a martyr are pardoned except his un-paid debts. Honesty leads to prosperity, and dishonesty to misery". (Ali: Kinzul Amal)

LIBERTY

The mighty Roman Empire and the European colonisers had practically legalised slavery and carried on trade in slaves. The master enjoyed the right of life and death over the slaves who were regarded as chattel to be sold and purchased. Islam regarded slavery as un-Islamic and by gradual stages ensured their emancipation from the inhuman bondage. Lord Headley in his paper on "Islam on Slavery" says the following:

"In the early days of his Ministry, the Prophet Mohammad (peace be upon him) could not command wealth enough to purchase the freedom of the slaves. He, however, preached the religion of liberating slaves and

Further, we read in the Qur'an: "It is not righteousness that you turn your faces towards the East and the West, but righteousness is this, that one should believe in Allah and the Last Day, and the Angels and the Book and the Prophets, and give away wealth out of love for Him, to the near of kin and the orphans and the needy and the way-farer and the beggars and for (emancipation) of the captives".[7]

Again, the Holy Qur'an lays down that a part of the public funds should be spent in purchasing the freedom of the slaves. "Alms are only for the poor and the needy, and the officials appointed over them and those whose hearts are made to incline (to truth) and emancipation of captives and those in debt and in the way of Allah and the way-farer."[8]

No other revealed Book says anything on the subject, and no other prophet including Jesus, inspired his followers to emancipate those they held in bondage, or mitigate their sufferings. With reference to the unique pronouncements of the Prophet Mohammad as to the freeing of slaves, I may now quote the following from Ameer Ali.[9]

"The Prophet exhorted his followers repeatedly in the name of God to enfranchise slaves, "Than which there was not an act more acceptable to God". He ruled that for certain sins of omission the penalty should be the manumission of slaves. He ordered that slaves should be allowed to purchase their liberty by the wages of their services; and that in case the unfortunate beings had no present means of gain, and wanted to earn in some other employment enough for that purpose, they should be allowed to leave their masters on an agreement to that effect. In certain contingencies, it was provided that the slaves should become enfranchised without interference, and even, against the will of their master. The contract or agreement in which least doubt was discovered, was construed most favourably in the interest of the slave; and the slightest promise on the part of the master was made obligatory for the purposes of enfranchisement. He placed the duty of kindness towards the slave on the same footing as the claims of kindred, neighbours, fellow-travellers and way-farers, encouraged manumission to the freest extent and therewith the gift of a portion of that wealth which God has given you", and prohibited sensual uses of a master's power over a slave, with the promise of divine mercy to the wronged. To free a slave is the expiation for ignorantly slaying a believer and for certain forms of untruth. The whole tenor of Mohammad's teaching made "permanent chattelhood" or caste impossible; and it is simply an "abuse of words" to apply the

7. *The Holy Qur'an*, II:177.

8. *Ibid*, IX:60.

9. Ameer Ali, *Spirit of Islam*, p. 262.

word "slavery", in the English sense, to any status known to the legislation of Islam."

Chapter II

SOVEREIGNTY IN ISLAM

Allah alone is sovereign. He hath commanded that ye obey none but Him; that is the only right way, but most men understand not. (XII:40)

"O ye who believe! obey Allah, and obey the Apostle, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah (His Law) and His Apostle; if you do believe in Allah and the Last Day: That is the best, and most suitable for final determination." (IV:59)

From these verses it is abundantly clear that in Islam sovereignty vests in Allah alone - not in any person or group of persons, however learned, pious or virtuous they may be. This need not, however, raise a doubt in our minds that Islam stands for dictatorship or a totalitarian rule; not the least. To quote Mr. Majid Siddiqi, "there is no dictatorship in Islam - not the rule of one person or one Will but the rule of God and the Will of God. Under such a system neither is the personal liberty of the individual lost nor is the political power concentrated in the hands of one person."[1]

It may also be emphasised that Islam does not envisage a democratic form of government either. There is no sanction under this religion for the Western type of democracy which implies a government of the people, by the people and for the people. I would rather define an Islamic government as a Government of Allah, through His chosen representatives, carried out in the interests of the people at large, and worked in accordance with the laws of God, to promote the common welfare of humanity.

It would appear that sovereignty in Islam would, in no circumstances, vest in individuals and groups who may consolidate power in order to render it into an exclusive authority to be transmitted by the rules of heredity to their own line of succession. In my opinion, it is abundantly clear that Islam would never countenance an Ameer who may become hereditary by virtue of his power and authority for the time being.

1. M.A. Majid Siddiqi, *Pakistan- the Islamic State*, p. 56.

After he became the sovereign of Arabia, the Prophet Mohammad still remained on terms of brotherhood with all believers. He had not to surround himself with guards and janitors; he moved in simple ways among the brethren, the guide, the peace-maker, the trusted friend. "Even at the zenith of his worldly power the good sense of Mohammad, "says Gibbon, "despised the pomp of royalty; the Apostle of God submitted to the menial offices of the family, he kindled the fire, swept the floor, milked the ewes and mended with his own hands his shoes and his woollen garments .... On solemn occasions he feasted his companions with hospitable plenty; but in his domestic life, many weeks would elapse without a fire being kindled in the hearth of the Prophet."[2] This was the life that he led and such were his humble ways when the whole of Arab was at his feet. "The Ideal Prophet" describes how Medina grew wealthy, there was plenty of gold and silver, yet the house of his (prophet's) own daughter showed no sign of riches, no trace of wealth or comfort. On the very day of his death his only assets were a few shillings, a part of which went to satisfy a debt and the rest was given to a needy person who came to his house for charity. The clothes in which he (prophet) breathed his last had patches."

According to Mr. Mazharud-Din Siddiqi, "Islam says, do not trust any other authority, human or supernatural, whether Parliament, State, Dictator, Saint or Philosopher as worthy of obedience in its own right. All obedience and loyalty is subject to the final and absolute loyalty to God and His Commands as revealed through the Prophet. The doctrine of one God has thus the greatest political significance. It does away completely with the Divine Right of Kings and the sovereign right of peoples ad parliaments. The Muslims cannot, by a mere vote of the majority, change one iota of the legal and moral precepts of the Qur'an. Not even by a unanimous vote can they legislate in opposition to the Law of God. The nature of political allegiance is clearly and concisely stated in the Qur'anic Command, "Obey God, obey the Prophet, and obey those in authority from amongst yourselves, but if there is difference of opinion (either amongst yourselves or with those who are in authority over you), turn to God and the Prophet, that is, the Qur'an and the Sunnah of the Prophet, are the final arbiter in all matters whether social, political or economic.[3]

Islam requires us to believe that we are all responsible beings and will one day have to render our account before God and for all that we have done in our life.

2. Khwaja Kamal - ud - Din: The Ideal Prophet, p. 65.

3. Mohammad Mazharud-Din Siddiqi, *What is Islam,* p. 38.

In my opinion, Islam is a religion which would neither tolerate the theory of Divine Right of Kings in the sense in which it was manipulated by the British monarchs, nor would it countenance an irresponsible type of dictatorship. Once we have learnt to behave like true Muslims, a gradual delegation of Divine Authority must come forth in the hands of His (God's) chosen Representatives on earth. Since we have been asked to obey those in authority over us, I do not think, we have been directed to do so as mere dumb-driven cattle and to serve as a puppet in the charge of a tyrant. The sovereignty of Allah would come to be exercised, in course of time, by such men of learning, piety and virtue whom God would appoint over us with sufficient power and authority. Of course, it still remains our collective duty to see to it that the Divine Laws are not flouted but the possibility of necessary additions to such laws cannot be altogether ruled out. According to Mr. Siddiqi (quoted above), Islam means peace as well as submission. The purpose of life is to live it well, in other words, well-being. In the call to prescribed prayers at given times during the day and night the Mu'azzin cries: "Come towards prayers, come towards well-being". Submission to God, therefore, according to Islam, is not submission to any external authority but to our own natures in which God has constituted us. The laws of virtue, called in the Qur'an "the limits prescribed by God" are the laws of our own well-being. Whoever is good, is good for himself and whoever does evil he inflicts no real injury on any one except himself. By the violation of law, the law of the legislator does not suffer; it is the violater who incurs the penalty of violation ... Virtue is its own reward and vice its own punishment. As Emerson has put it, "the thief steals only from himself."

According to Islam, it is clear beyond doubt, the sovereignty belongs to God alone. He alone is the Law-Giver, and no man, even if he be a prophet, has the right to order others in his own right to do or not to do things. The prophet himself is subject to God's commands: Thus, he (prophet) said, "I do not follow anything except what is revealed to me."

Other people are required to obey the Prophet, because he enunciates not his own but God's orders. "We sent no messenger save that he should be obeyed by Allah's leave." (IV)

It is not possible for any human being unto whom Allah has given the Scripture and Wisdom and the Prophethood that he should afterwards have said unto mankind, "Be slaves of me instead of Allah; but (what he said was) Be yet faithful servants of the Lord". (III)

Hence the main characteristics of the Islamic state that can be deduced from the Holy Qur'an, may be summed up as follows:

(1) No person, clan, class or group - not even the entire population of the state as a whole - can lay claim to sovereignty. God only is the real sovereign; all others are merely His subjects.

(2) All legislative power vests in God. The believers cannot frame any law for themselves, or can they modify any law which God has laid down even if the desire for such lelgislation or for a change in it is unanimous.

(3) The Islamic state must, at all events, be founded upon the law laid down by God through His Prophet. The Government which runs this state shall be entitled to obedience in its capacity as a political agency set up to enforce the Laws of God and only in so far as it acts in that capacity.

In my opinion, the scope for legislation (whcih has been dealt with in other chapters) within certain prescribed limits, cannot be ruled out in an Islamic state. The fundamental laws laid down in the Qur'an do not give details which are necessary to be worked out in accordance with the principles of Ijma and Qiyas - both of these procedures pertain to law-making; it may be possible to lay down certain laws on subjects whereof even the fringe has not been touched in the Qur'an. As a matter of fact, the entire super-structure has to be built on the foundations which may exist in the Qur'an or authentic traditions. Without detracting from the sovereignty of Allah, we may, in His Name, embark on the sacred task of framing laws and a constitution for the Islamic State, seeking guidance from the Holy Qur'an and the Ahadith so far as practicable. The Sovereign Allah is the fountain of all power, and we have merely to saturate our institutions from the sacred waters gushing forth therefrom, and lay as many canals as we require, all emanating from that potential source of power and justice.

Chapter III

ISLAMIC STATE AND ITS LAWS

Apart from the sovereignty of God which is the accepted canon of an Islamic system of government, the executive is constituted by the General Will of the Muslims. This General Will is supreme in an Islamic polity and as a corollary of mundane supremacy, the Muslims as a body possess the right to depose the executive under certain conditions. All administrative matters and all questions about which no explicit injunction is to be found in God's Shari'at (Law) are settled by the consensus of opinion among the Muslims.

SYSTEM OF GOVERNMENT

Every Muslim with a developed power of judgment and sufficiently advanced knowledge of Islamic principles is entitled to interpret the Law of God when such interpretation becomes necessary. In this sense the Islamic polity is a democracy - I would call it by a new name, that is, MONOCRACY - a system of government which does not allow all adult men and women to become Sahib-ur-rai (voters); Monocracy in Islam is the rule of God on earth through specially chosen representatives on a restricted franchise basis. The franchise in Islam is strictly confined to a polity of good deeds and noble virtues.

According to some writers, the system of government in Islam is theocracy in the sense that where an explicit command of God and His prophet already exists, no Muslim leader or legislature, or any religious scholar or a man of independent judgment, not even all the Muslims of the world put together, have any right to make the least alteration in it. Maulana Maudoodi describes this system as theo-democracy, that is to say, Divine democratic government, because under it the Muslims have been given a limited popular sovereignty under the suzerainty of God.[1]

Maulana Maudoodi further says that the objection might be raised that God has taken away in this manner the liberty of human mind and intellect

instead of safeguarding it. His reply is that God has retained the right of legislation in His own hands not in order to deprive man of his natural freedom but rather to safeguard that very freedom. His (God's) purpose is to save man from going astray and inviting his own destruction.[2]

My reply to Maulana Maudoodi's aforesaid contention is that God could not be so unjust to His own creatures whom He has created in His own image. Man is the most favoured of His creatures and has been endowed with wisdom. Wisdom, to what end, arises the question. In my opinion, man would be fully justified in carrying out the mission of his existence in accordance, so far as possible, with the laws laid down by Him. But the Absolute sovereignty of Allah cannot be calculated to reduce the human beings to mere automatons - helpless creatures - particularly where the exercise of discretion and collective judgment become a matter of necessity in the multifarious duties of day-to-day administration and management of public affairs. Life is becoming more and more complicated with the lapse of time. It is, therefore, essential that human beings should be endowed with necessary powers of legislation in the fields which have not been covered in detail by the Holy Qur'an and authentic traditions. As already stated, Islam does not envisage democracy as the West has interpreted it.

WESTERN DEMOCRACY

Let us analyse a little the so-called democracy of the West. It is claimed that this democracy is founded on popular sovereignty. The people who constitute a state do not all take part either in legislation or in its administration. They have to delegate their sovereignty to their elected representatives so that they may make and enforce laws on their behalf. For this purpose an electoral system is set up, under which only those persons come out successful who can dupe the masses by their wealth, knowledge, cunning and false propaganda. Although these representatives come to power by the votes of the common people, they soon erect themselves into an independent authority and assume the position of overlords (Ilahas). They make laws not in the general interest of the people who raise them to power but to further their own sectional and class interests. They impose their laws on the people by virtue of the authority delegated to them by those over whom they rule. This is the trouble in England and America as well as in all those countries which claim to be the haven of democracy. It has been established by experience that the great mass of common people themselves are incapable of perceiving their true interests. It is the natural

1. Sayyed Abul Ala Maudoodi, *Political Theory of Islam*. p. 32.
2. *Ibid*, p. 33.

weakness of man that in most of the affairs concerning his life he takes into consideration only some one aspect of reality and loses sight of others. His judgments are usually one-sided and he is swayed by his emotions and desires to such an extent that rarely, if ever, can he judge important matters with the impartiality and objectivity of scientific reason. Quite often he rejects a conclusion which is rationally proved to him if it conflicts with his emotions and desires, for example, the prohibition law of the United States of America.

DIVINE RESTRICTIONS

According to orthodox opinion, man is not competent to become his own legislator. Even if he secures deliverance from the service of other Ilahs (overlords), he becomes a slave to his own foolish desires and exalts the devil in him to the position of a supreme lord. Limitations on human freedom, provided they are appropriate, and do not deprive him of all initiative are absolutely necessary in the interest of man himself. That is why God has imposed those limits which in Islamic phraseology, are termed "Divine Limits". These limits consist of certain principles, checks and specific injunctions in the different spheres of life. They are intended to be the farthermost limits of freedom within which you can frame subsidiary by-laws and regulations for your conduct. Those limits you are not permitted to overstep. If you do overstep them, the scheme of your life will go away. Take for example, man's economic life. In this sphere God has placed certain restrictions on human freedom. The right to private property has been recognised but it is qualified by the obligation to pay Zakat (or tax) and the prohibition of interest, gambling and speculation. A specific law of inheritance for the division of property amongst the largest number of surviving relations at the death of the property-owner, has been laid down and certain forms of creating, accumulating and spending wealth have been declared unlawful. If people observe these just limits and regulate their affairs within these boundary walls, their personal liberty is adequately safeguarded, on the one hand, and on the other, the possibility of class-war and of the domination of one class over another which begins with capitalist oppression and ends in working-class dictatorship, is safely eliminated. Similarly, in the sphere of family life, God has defined and prescribed the purdah, recognised man's guardianship of woman, and clearly defined the rights and duties of husband, wife and children. The laws of divorce and separation have been set forth, conditional polygamy has been permitted and penalties for fornication and false accusations of adultery have been prescribed. He has thus laid down such limits that if man were to observe them and stabil-

ise his family life within the framework of those rules, home life would become a haven of peace and happiness and there would exist neither that tyranny of males over females which makes family life an inferno of cruelty and oppression, nor that satanic flood of female liberty and licence which threatens to destroy human civilisation. In like manner, for the preservation of human culture and civilisation, God has formulated the law of retaliation, commanded the cutting off of hands for theft, prohibited wine-drinking, placed limitations on uncovering of private parts and by laying down a few similar permanent rules and regulations, closed the door of mischief for ever. These Divine Limitations are essential for maintaining equilibrium and moderation in life.[3]

Giving a further illustration, Maulana Maudoodi says, if you have ever happened to visit a mountainous region, you will have noticed that in the winding mountainous paths which are bounded by deep caves on the one side, and lofty rocks on the other, the border of the road is barricaded and protected in such a way as to prevent travellers from straying towards the abyss by mistake. Are these barricades intended to deprive the wayfarer of his liberty? No. As a matter of fact, they are meant to protect him from destruction, to warn him at every bend of the dangers ahead, and to show him the path leading to his destruction. That precisely is the purpose of the restrictions which God laid down in His constitution. These limits determine what direction man should take on life's journey and they guide him at every turn and at all cross-roads towards the path of safety which he should steadily follow. This constitution enacted by God is unchangeable. You can, if you like, rebel against it, as Turkey has done. But you cannot alter it. It will continue to be un-alterable till the Last Day. Whenever the Islamic state comes into existence, this constitution would form the basis of all its legislative acts. As long as the Qur'an and the Sunnah (practice) of the Holy Prophet remain, not even a single clause can be removed from this constitution. Every one who desires to remain a Muslim is under an obligation to follow it.

With due deference to the Maulana whose thoughts have been reproduced above, my submission is that like the ethical, moral and economic teachings contained in the Holy Qur'an, I have not been able to locate any parallel instances about political and administrative problems. The authentic Traditions or Ahadith are also silent on the multifarious duties of the Government, structure of the different organs in the state or their functions which concern the draftsmen of a country's constitution. As such, we are neither aware of the "Barricades" as he calls them, nor do we know which

3. *Ibid*, pp. 39-40

path shall we adopt in order to reach our goal in politics and administration. In view of the theory of sovereignty of Allah, no restrictions may be deemed to exist on His power and, therefore, a federal pattern of government (which envisages a distribution of powers between the various units of the country) seems to be beside the point.

A unitary form of government, it is said, would be best suited to the genius of a people who acknowledge, without grudge, the Omnipotence of Allah who is one and has no equal. Mr. Zulfiqar Ali Bhutto, then Pakistan's Minister for Information and Broadcasting in the Cabinet of Field-Marshal Mohammad Ayub Khan opined that "Pakistan should have a unitary form of government, instead of the federal type." The Minister who was addressing the students of the Islamia College in the Habibia Hall, however, emphasised that these were entirely his personal views on the future form of government in the country.[4]

THE UNIVERSAL STATE

The state envisaged by Islam is a universal state, as it has no racial, ethnological or geographical limits. A state of this sort evidently cannot restrict the scope of its activities. It is a universal and all-inclusive state. Its sphere of activity is co-extensive with the whole of human life. In such a state no one, according to orthodox Muslim opinion, can regard any of his affairs as personal and private. Considered from this aspect the Islamic state bears a kind of resemblance to the Fascist and Communist regimes. But you will find later on that despite its totalitarianism, it is something vastly different from the modern totalitarian and authoritarian states. Under it individual liberty is not suppressed; nor is there any trace of dictatorship in it.

Whoever embraces Islam, no matter what race, nation or country he may belong to, can join the community that runs the Islamic state. They can live within the confines of such state as subjects (Dhimmis) if certain groups do not accept the Islamic state as such, and consequently those groups are not entitled to any voice in formulating the policy of that state. Specific rights and privileges, however, have been accorded to them in the Islamic law. The life, property and honour of each one of such group would be fully protected, and if he is capable of any service, his services may be utilised. There is only one exception: he shall not in any case be allowed to frame the policy of an Islamic state for the obvious reason that the Islamic state belongs to the party which believes in the particular ideology inculcated by Islam. Unlike the Communist state, however, Islam does

4. Reported in the *Pakistan Times, Lahore,* February 14, 1959, p. 3.

not impose its social principles on others by force, or confiscate their properties or introduce a reign of terror by mass executions of non-believers or pack off thousands of people to the Siberian hell. Islam does not believe in a regimentation of thoughts and ideas peculiar to itself, nor has it advocated force in the propagation of its principles. Broad tolerance is the hall-mark of Islam; had it been otherwise, the entire sub-continent of India and a greater part of the rest of the world would have by this time been converted to the religion of Islam.

So far as Pakistan is concerned it is obvious that without being made an Islamic state in the true sense, the very existence of Pakistan would be in jeopardy, hanging by a precarious thread that may break any moment.

If today it be said that Pakistan may be allowed to be administered as a secular state divorced from religion altogether, that would be a bold statement to make. Islam is a code of life and, as such, a constitution based on its fundamental doctrines, can successfully work in environments and circumstances which permit an experiment in that direction. We should, however, be careful and cautious. The Westerners would not tolerate a challenge to their own deep-rooted political institutions which have been blindly followed by a great majority of the people in the present century.

OMAR AS AN IDEAL

After the Prophet Mohammad (Peace be upon him) and his revered followers, we find in Caliph Omar, a perfect embodiment of the religious and mundane virtues in resplendent glory. Omar, the Great, provides us with a practical combination of worldly life embellished with all the traits of a perfect Muslim. Religion and politics, as in the life of the Prophet Mohammad, go side by side so much so that we are unable to find any traces of bifurcation between the two. Gibbon, in his immemorial work "The Decline and Fall of the Roman Empire" (1890 Ed., Vol. 5, p400) says of Omar:

".... Yet the abstinence and humility of Omar were not inferior to the virtues of Abu Bakr: his food consisted of barley bread or dates: his drink was water; he preached in a gown that was torn or tattered in twelve places; and a Persian Satrap who paid his homage to the conqueror, found him asleep among the beggars on the steps of the moach (mosque) of Medina."

Sir William Muir says: "Omar's life requires but few lines to sketch. Simplicity and duty were his guiding principles, impartiality and devotion, the leading features of his administration. Responsibility so weighed upon him that he was heard to exclaim: "O that my mother had not borne me; would that I had been this stalk of grass instead...". The various tribes and bodies in the empire representing diverse interests, reposed in his integrity

implicit confidence, and his strong arm maintained the discipline of law and empire... Whip in hand, he perambulated the streets and markets of Medina ready to punish the offenders on the spot; and so the proverb "Omar's whip is more terrible than another's sword". But with all this he was tender-hearted, and numberless acts of kindness are recorded of him, such as, relieving the wants of the widow and the fatherless".[5]

Washington Irving says: "The whole history of Omar shows him to have been a man of great powers of mind, inflexible integrity, and rigid justice. He was more than any one else the founder of the Islamic empire; confirming and carrying out the inspirations of the prophet; aiding Abu Bakr with his counsels during his brief caliphate; establishing wine regulations for the strict administration of the law throughout the rapidly extending bounds of the Muslim conquests... In the simplicity of his habits and his contempt for all pomp and luxury, he emulated the example of the prophet and Abu Bakr.[6]

The saying with which he began his reign will never grow antiquated. "By God, he that is weakest among you shall be in my sight the strongest, until I have vindicated for him his rights; but him that is strongest will I treat as the weakest, until he complies with the law". It would be impossible to give a better general definition of the function of the state.[7]

Briefly speaking, there is no doubt about the fact that Islam does not lay down any sort of line of clear demarcation between religion and politics as is the practice in the West. We cannot, in actual fact, say where the boundaries of religion end and those of politics begin. Islam, to my mind, does not make any distinction whatsoever, between the respective fields of religion, morality, social behaviour, political or economic activities.

Our political leaders are invariably men of religion, living a pious life in accordance with the tenets and principles of Islam strictly; converse is still more true of our religious leaders and ecclesiastical dignitaries who are nothing like the Popes and Bishops of the West, but are practical administrators, statesmen of sagacity and are equally good leaders in political affairs. Islam knows no separation between religion and politics into two water-tight compartments.

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5. Sir William Muir ,*The Caliphate- Rise, Decline and Fall,* (1924, Ed.), pp. 190-191.
6. Washington Irving, *Lives of the Successors of Mahomet,* (1850, Ed.), pp. 281-82.
7. Allama Shibli Nomani, *Al-Farooq - Life of Omar the Great,* translated by Maulana Zafar Ali Khan, Vol. 1, p. xviii.

Chapter IV

POPULAR VICEGERENCY

The Holy Qur'an lays down: "Allah hath promised such of you as believe and do good works, that He will surely make them to succeed (the present rulers) in the earth as His Vicegerents even as He caused those who were before them to succeed (others):. (XXIV)

Two fundamental points emerge from the Islamic theory of the state. The first point is, that Islam uses the term "Vicegerency" instead of "Sovereignty". Since, according to Islam, sovereignty belongs to God, any one who holds power and rules in accordance with the laws of God would undoubtedly be the vicegerent of the supreme Ruler and will not be authorised to exercise any powers other than those delegated to him. The second point is that the power and rulership of the earth has been promised to the whole community of believers: it has not been stated that any single person among them will be raised to that position. From this it follows that all believers are repositories of the caliphate. The caliphate granted by God to the faithful is popular vicegerency. There is no reservation in favour of any family, class or race. Every believer is a Caliph of God in his individual capacity. By virtue of this position he is individually responsible to God. The Holy Prophet has said: "Every one of you is a ruler and every one is answerable for his subjects. And one Caliph is in no way inferior to another.[1]

The logic followed by Maulana Maudoodi may, I am afraid, lend us in trouble. Would it not be a chaotic state of affairs wherein every Muslim dons the robes of a ruler. Of course, it may be possible to have a caliphate which may not be the exclusive preserve of a family, class or race, but I am sure there must be some individual or individuals who may rightly be regarded as repositories of the collective caliphate so long as they hold the confidence of the Muslim populace. It is wrong to presume that an individual or a single person would be debarred from holding a position of

1. Sayyed Abul Ala Maudoodi, *Political Theory of Islam*, pp. 48-49.

communal authority. If each person be a caliph and the whole community constitute a caliphate, there is no reason why the entire power of the community cannot be vested in a single person, of course, with the consent and approval of the whole community.

Further, according to the same author, three conclusions emerge from an analysis of this conception of popular vicegerency:

(1) Society in which every one is a caliph and an equal participant in the caliphate cannot tolerate any class divisions or distinctions of birth and social position. All men will enjoy equal status and position in such a society. The only criterion of superiority in this social order is personal ability and character. This is what has been repeatedly and explicitly asserted by the Holy Prophet: "No one is superior to another except in point of faith and piety. All men are descended from Adam and Adam was made of clay". Again, he said, "An Arab has no superiority over a non-Arab, nor a non-Arab over an Arab; neither has a white man any superiority over a black man nor has a black man over a white one, except in point of piety".

After the conquest of Mecca, when the whole of Arabia came under the dominion of the Islamic state, the Holy Prophet, addressing the members of his own clan who in the days before Islam enjoyed the same status in Arabia as the Brahmins did in ancient India, said: "O people of Quraish! Allah has rooted out your haughtiness of the Days of Ignorance and the pride of ancestry. O men! all of you are descended from Adam and Adam was made of clay. There is no pride whatever in ancestry; there is no merit in an Arab as against a non-Arab, nor in a non-Arab as against an Arab. Verily, the most meritorious among you in the eyes of Allah is he who is the most pious".

(2) In such a society, no individual or group of individuals will suffer any disability on account of birth, social status or profession that may in any way impede the growth of his individual faculties or hamper the development of his personality. Every one would enjoy equal opportunities of progress. The way should be left open for him to make as much progress as possible according to his own in-born capacity and personal qualities without prejudice to the similar rights of other people. Thus un-restricted scope for personal achievement has always been the hall-mark of an Islamic society. Slaves and their descendants were appointed military officers and governors of provinces, and noble men belonging to the highest families did not feel ashamed to serve under them. Cobblers, who used to stitch and mend shoes, rose in the social scale and became leaders (Imams), weavers and cloth sellers became judges, Muftis and jurists, and to this day they are reckoned as the Heroes of Islam.[2] The Holy Prophet has said: "Lis-

ten and obey, even if a negro is appointed governor over you".

(3) There is no room in such a society for the dictatorship of any person or group of persons since every one is a caliph here. No person or group of persons is entitled to become an absolute ruler by depriving the rank and file of its caliphate. The position of a man who is selected to conduct the affairs of the state is no more than this, that all Muslims (or technically speaking all caliphs) concentrate their caliphate in him for administrative purposes. He is answerable to God, on the one hand, and, on the other, to those ordinary caliphs who have delegated their authority to him. Now if he raises himself to the position of an irresponsible, absolute ruler, that is to say, a dictator, he assumes the character of an usurper rather than a caliph, because dictatorship is the negation of popular vicegerency. No doubt the Islamic state is a totalitarian state and comprises within its sphere all departments of life, but this totalitarianism and universality are based upon the universality of Divine Law which an Islamic ruler has to obey and enforce. The instructions given by God about every aspect of life will certainly be enforced in their entirety. But an Islamic ruler cannot depart from these instructions and adopt a policy of regimentation on his own behalf. The powers which the dictatorships of Russia, Germany and Italy have appropriated or which Ataturk has exercised in Turkey have not been granted by Islam to its Ameer (Leader).

Incidentally it appears to me that the opinion expressed by Maulana Maudoodi regarding the powers of the Ameer, is erroneous. The hands of the Ameer, as experience has proved, cannot be tightened when once he has been elevated to that position with the concurrence of the community whose Mu'tamid-i-A'la he happens to be. In my opinion, the only restrictions on his power are those which Divine limits purport to place on him, and these have been explained in this work elsewhere.

Besides, I am convinced that in Islam every individual is held personally liable to God and responsible to Him for his deeds and misdeeds. This personal responsibility cannot be shared by any one else. Hence, within the limits of the Islamic law, the individual enjoys full liberty to choose whichever way he likes or to develop his faculties in any direction that suits his natural gifts. If the leader obstructs him or obstructs the growth of his personality, he will himself be punished by God for this tyranny. The Maulana, it may be pointed out here, expects a Muslim to be a fatalist, resigning himself to the fate that a tyrant ruler may create for a Muslim, but does not suggest any remedy for the individiual whose liberties and legitimate rights may be crushed in normally peaceful times by a despotic ruler.

2. *Ibid* pp. 50-51.

(4) In such a society, every sane and adult Muslim male or female, is entitled to express his or her opinion, for each of them is the repository of the caliphate. God has made this caliphate conditional, not upon any particular standard of wealth or competence but only upon faith and good actions. Therefore, all Muslims have equal freedom to express their opinions.

The relations between the individual and society have been regulated in such a manner that neither the personality of the individual suffers diminution or repression as it does in the Communist and Fascist social systems, nor is the individual allowed to exceed his bounds to such an extent as to [illegible] the community, as happened in the western democracies. In Islam, the purpose of the individual's life is the same as that of the community's life, namely, the execution and enforcement of Divine Law [illegible] its benefit. Moreover, Islam has, after safeguarding the rights of the individual, imposed upon him certain duties towards [illegible] in this way equilibrium of individualism and collectivism [illegible] that the individual is afforded the full [illegible] his abilities and is thus enabled to employ [illegible] in the community at large.

According to Maulana Maududi, the status of the Leader [illegible] in the administration is not more [illegible] which the general body of Muslims [illegible] person among them whom they [illegible] Imam does not imply that [illegible] the Imamate of the common [illegible] Imam.[3]

[illegible]

[illegible] Islam [illegible] some [illegible] forming the basis of [illegible] the term [illegible] imply [illegible] government. The organs of [illegible] administration [illegible] Keeping this [illegible] the important

LAW OF CONTRACT

The law of contract as applicable to our day-to-day dealings is set forth in the Holy Qur'an as follows:

"O ye who believe! when you deal with each other in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties; let not the scribe refuse to write, as Allah has taught him, so let him write. Let him who incurs the liability dictate, but let him fear his Rabb, Allah, and not to diminish aught of what he owes. If the party liable is mentally deficient or weak or unable himself to dictate, let his guardian dictate faithfully. And get two witnesses out of your own men, and if there are no two men, then a man and two women, such as ye choose for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: It is juster in the sight of Allah, more suitable as evidence, and more convenient to prevent doubts among yourselves; but if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witnesses whenever ye make a commercial contract; and let neither scribe nor witnesses suffer harm. If ye do (such harm), it would be wickedness in you. So fear Allah; for it is Allah that teaches you. And Allah is well acquainted with all things".[4]

"If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose) and if one of you deposits a thing on trust with another let the trustee (faithfully) discharge his trust, and let him fear his Rabb - Allah. Conceal not evidence, for whoever conceals it, his heart is tainted with sin. And Allah knoweth all that ye do". (CH. II. 282-283)

The Holy Qur'an is emphatic on the need for fair dealings and justice, righteousness, piety and chastity.

JUSTICE AND RIGHTEOUSNESS

The Holy Qur'an says:

"O ye who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just, that is next to piety, and fear Allah, for Allah is well acquainted with all that ye do". (CH. V: 9)

Yet another verse says: "O ye who believe: Fulfil all obligations". (CH. V: 1.) Stress has repeatedly been laid on righteousness, piety and chastity. The Holy Qur'an asserts: "And those who launch a charge against chaste

4. M.A. Majid Siddiqi, *Pakistan- the Islamic State*, pp. xxxviii-xxxix.

women, and produce not four witnesses (to support their allegations), flog them with eighty stripes, and reject their evidence ever after for, such men are wicked transgressors, unless they repent thereafter and mend (their conduct), for Allah is Oft-forgiving, Most Merciful". (CH. XXIV: 4-5)

"Co-operate ye with one another in righteousness and piety, but do not co-operate with one another in sin and rancour: and fear Allah for Allah is strict in punishment". (CH. V:3) Honesty in our dealings with one another, decorum and decency in social life, deprecation of hypocrisy and safeguarding of our liberty in the domestic and communal affairs, have been emphasised by the holy Qur'an. Some of the relevant verses are cited below:

"O ye who believe! Enter not houses other than your own, until you have asked permission and saluted those in them: that is best for you, in order that ye may heed (what is seemly)".

"If ye find no one in the house, enter not until permission is given to you; if ye are asked to go back, go back: that makes for greater piety for yourselves: and Allah knows well all that ye do".

The Holy Qur'an is again particular about giving just measure and weight. It is said: "And O my people! give just measure and weight, nor withhold from the people the things that are their due: commit not evil in the land with intent to do mischief". (CH. XI: 85) It does not appear feasible in this context to lay down the criminal and civil laws that may be found there in the Holy Qur'an or the Sunnah. As a matter of fact it would be beyond the scope of this book to enter the domain of the different laws, municipal or local which do not pertain specifically to the province of constitution and politics.

In the words of Mr. A.K. Brohi (*Fundamental Law of Pakistan*, p. 731) "considered purely from the formalistic standpoint, once the idea of the state as sovereign is accepted, law becomes indistinguishable from the will of the state. Law is just that which the state is prepared to enforce; and from this it follows automatically that what it enforces as law is the manifestation of its will.

It is clear beyond doubt that the Islamic state with a peculiar ideology of its own, will certainly see that nothing is enacted as law, which is inconsistent with or in clear violation of the principles and teachings of that religion.

I can do no better than quote some of the verses form the Holy Qur'an, bearing on the subject under study:

"That no bearer of burden shall bear the burden of another, and that man shall have nothing but what he strives for". (CH. LIII: Verse 38-39)

"O you who believe! be maintainers of justice, bearers of witness for Allah's sake, though it may be against your own selves or (your) parents or near relatives; if he be rich or poor, Allah is most competent (to deal) with them both; therefore do not follow (your) low desires, lest you deviate; and if you swerve or turn aside, then surely Allah is aware of what you do". (CH. IV: 135)

"O you who believe! be upright for Allah, bearers of witness with justice, and let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety, and be careful of (your duty to) Allah; surely Allah is aware of what you do". (CH. V:8)

"Surely Allah enjoins the doing of justice and the doing of good (to others) and the giving to the kindred, and He forbids indecency and evil and rebellion; He admonishes you that you may be mindful". (CH. XVI: 90)

"And fulfill the covenant of Allah when you have made a covenant, and do not break the oaths after making them fast, and you have indeed made Allah a surety for you; surely Allah knows what you do". (CH. XVI: 91)

"You (Believing Muslims) are the best of the nations raised up for (the benefit of) men; you enjoin what is right and forbid the wrong and believe in Allah; and if the followers of the Book had believed it would have been better for them.....". (CH. III: 109)

Dealing with the state as an agent of Higher Law, Mr. Brohi says, "once the state itself is defined as an agent or, instrument of a higher law, be that law conceived as the natural law of the religious law" the usual conception of the relationship of law to the state ceases to be relevant. The necessity of grounding jurisprudence on some such transcendental basis is, in a measure, due to the very constitution of the human mind for, as explained by Harold J. Laski, the human mind "revolts from jurisprudence as bare and as formal" as the one referred to above. Mr. Brohi quotes Mr. Laski as under: "It (that is, the human mind) remembers the long medieval effort to identify law with the Will of God, the stoic notion of law as the voice of universal reason, the famous phrase of Ulpian which makes of law the science of distinguishing between right and wrong in human conduct. It rejects the idea of law as that behind which there is found the sovereign power of the state because, as the eminent Jesuit jurist, Cathrein has said, "then one must regard every statute, however absurd, contrary to reason, or despicable, as a true statute, and one no longer becomes entitled to complain of injustice". Law, to be law, it is widely felt, must correspond with something more valid than the coercive power at its disposal". [5]

5. A.K. Brohi , Fundamental Law of Pakistan, (1958, Ed.), pp. 731-32.

ADAPTABILITY OF ISLAMIC LAWS

The question arises: How does Muslim society adjust itself to changing needs and circumstances, when its ideals, values and principles of life are unalterably fixed? The question is pertinent but the answer is not far to seek. You do not expect a man with strength of character to change his principles with every gust of wind that blows, or more appropriately speaking, like the politicians of the pre-Martial Law period in Pakistan. The man who changes his ideals and values with every stress of circumstance is a man in whom no moral strength is left. He is an opportunist having no character. Similarly, a living society with a strength and vitality in its veins, is not blown hither and thither by the change in circumstance. It stands firm on its ideals and values and holds them aloft amidst the windy changes of life. What it does change is not the ends, the ideals or the principles which form its basis but the means for their realisation. The change is thus all in the realm of means, not in that of the ends. Islam admits the necessity of change, in order to make re-adjustments in altered circumstances. The Qur'an and the traditions of the prophet have merely laid down the broad principles of individual and collective life, the policy, so to say, that Muslim society should at all times follow. The details have been left to be filled up as and when the circumstances require. Thus if a particular law fails, due to change of conditions, of the effect it was intended to produce, it may be changed so as to fulfill the object in view. The objects of law remaining the same, law can be changed by consensus of opinion to meet new situations. Consensus of opinion, however, does not mean a majority vote of the adult population or of members elected on that basis to form a Parliament. It means the majority of those who are qualified by their knowledge and character to pronounce opinions on matters affecting the community. Moreover, no consensus of opinion should go against the clear verdict of the Holy Qur'an or the Traditions.[6]

6. Muhammad Mazharud-Din Siddiqi, *What is Islam?* p. 50.

Chapter V

BASIC PRINCIPLES IN ISLAM

As I have said earlier, the state in Islam may, in my opinion, neither be a monarchy nor a republic. It should be what I would call, if I may be permitted to coin a new word, a "MONOCRACY". This system of government would certainly be a departure from the existing forms of government none of which, I am convinced, fits into the particular type of structure and the peculiar mould which Islam required its followers to adopt and preserve.

The monocracy suggested above, would really be a Rule of God on earth, through His chosen representatives for the purposes of the common weal. The Head of the state, whom I would designate as the "MUTAMID-I-ALA", again, a new name appropriate to his position in an Islamic polity, would be indirectly elected through an electoral college consisting of "Electors for Mu'tamid-i-Ala" or "Intikhab Kunindgan".

The basic principles to be adopted by an Islamic state have been enumerated by Mufakkir in his "Draft Islamic Constitution for Pakistan" which may be briefly examined here. According to him, the interpretation and implementation of the provisions of the constitution (drafted by Mufakkir) shall be subject to, and derived from the following six positive and three negative basic constitutional principles of the Shari'at of Islam:

(1) Supremacy of the Rule of Tauhid: "Allah is the Supreme Creator, Owner, Ruler and Judge. Qur'an is His Final word, therefore, the tenets of the Book shall be the first source and authority in all legislative, judicial, executive and administrative decisions of the state.

(2) Finality of the Authority of Risalat: The Last Apostle is the latest sole direct recipient of Divine Authority in all aspects of life. Therefore, his precepts, practices and traditions, after fixing the quality and degree of their authenticity according to Hadith and Sunnah, shall be second source in deciding all policies and actions of every organ and agency of the state.

(3) Delegation under doctrine of Khilafat is the third positive source.

(4) Decision by the principle of "Ijma" that is majority decision of those male nationals who qualify for the office of Sahibur-Rai (Voter) by conformity in their conduct to the habits of the Last Apostle and acquisition of the requisite knowledge and experience.

(5) The Law of Decree by Fatwa: All contentions as to the proper implementation of "Ijma" in definite instances shall finally be decided in questions of fact by competent courts of Qazis and in questions of law by competent courts of Muftis, acting as an independent judiciary.

(6) Social Compact by contract of Bai'at, that is, contract of fidelity to the six positive and three negative basic principles of the constitution as enumerated herein, entered into at the time of registration as Nationals of the State.

The three negative principles are:

(1) Prohibition of Firaunyat (Shirk: Despotism)

(2) Prohibition of Qaroonyat (Zulm: Exploitation)

(3) Prohibition of Yazeedyat (Talbis: Sanctimony)[1]

In addition to the above principles quoted from Mufakkir, I may submit the following which are equally essential:

(a) Freedom of religious belief and practice should be equally allowed to the Muslims as well as non-Muslims.

(b) Freedom to enter into treaties with the non-Muslim states for the protection of Muslims living there, and with the rest of the countries for cultural, economic, commercial and political purposes common to the treaty-making states would also be guaranteed. Unilateral violation of the treaties would be illegal in any case.

(c) Equality before law of all the subjects of an Islamic state shall also be guaranteed. The non-Muslims would be required to pay a tax for protection of their life, property and honour which shall be secured for them. Equal civil liberties shall be enjoyed by all subject to the demands of the security and stability of the state.

(d) The capital shall be taxed so as to prevent its accumulation in fewer hands.

(e) Islamic state, being a welfare state, its functions would cover all aspects of life to ensure the greatest happiness of the greatest number.

(f) Every one shall be free to follow honest trade and permitted vacations subject to the control of state-made regulations.

(g) On the death of the owner of the property, it shall be divided amongst the survivors according to the law of Islam.

(h) The Islamic state shall contribute to the maintenance of international

1. *Draft Modern Islamic Constitution for Pakistan*, Mufakkir, p. 24.

peace by all means open to her, that is, arbitration, mediation and reconciliation.

(i) Nobody in an Islamic state shall be allowed to break the peace in the commonwealth of Islam - all armed rebellion and violence are banned.

Islam, it may be pointed out in this context, is not only a religion or a name for beliefs or certain forms of worship; it is, in fact, a way of life, a complete code for the guidance of the individual's entire life from the cradle to the grave, and from the grave to the yonder world. The Holy Qur'an lays down the broad principles of life, the details come from other authoritative and permissible channels.

In Islam, religion is not a private affair of the individual. Allah and the universe, spirit and matter, church and state, are all organic to each other. Again, nationalism is foreign to Muslim polity; to a Muslim, the entire world is his abode, for it lies within the sovereignty of Allah. The national idea produces a materialistic outlook upon life, and racial and territorial consciousness counteracts the humanising spirit of mankind. Islam, as a world system is a living force and frees the outlook of man from racial, geographical and materialistic conceptions. Allah is the centre of sovereignty. He bestows power on whom He likes and deprives others of it. The Holy Qur'an says:

"Say, O God, Owner of sovereignty, Thou givest power unto those whom Thou wilt and Thou withdrawest power from those Thou pleasest". (CH. 3:3)

The above-mentioned ideology which is cosmopolitan in outlook, does not envisage a nation-state but it should not let us presume that, as is generally believed by a certain section of population, Islam is aggressive. The truth is that Islam was neither spread with the sword, nor does it survive today in all its resplendent glory because it taught aggression. Islam is nothing if not the religion of peace, pure and simple. The word "Islam" itself comes from the same root as "Salam"- peace. A Muslim, according to the Holy Qur'an is he who has made his peace with God and man - with the former by complete submission to His Will, and with the latter by being good in this life.[2]

LAW AND ORDER

The Holy Qur'an is a unique and complete guidance for the moral, material and spiritual actions of the human beings, and for all times. In modern terminology, it is a written and rigid constitution for the individual, the family, tribe and millat covering the covert and overt actions of human

2. Ishtiaq Husain Qureshi, *The Religion of Peace*, p.133.

society. Islam is a faith, it goes without saying, but it is an organised faith of common sense par excellence, scientific and logical without encumbrances, and conforming most accurately to the laws of nature. Since nature is rigid and immutable, Islamic laws of life are proportionately rigid and immutable and bear the same essentials of Nature's nature.[3]

There is no discrimination between man and man in the matter of obedience to the Laws of God; rich and poor, high and low, are all equal in the eye of law. The Qur'an says: "Obey Allah and obey the Apostle and those in authority from among yourselves. Then if you disagree in anything refer it to Allah and the Apostle." (CH. IV:59).

This is a clear guidance to the people to settle their differences amicably and without resort to arms and tumultuousness. Law and order and discipline are the supreme sine qua non for peace and prosperity, and these must be maintained at all costs.

PEACE AND WAR

Islam discourages aggression but confers the right to defend when any one is wronged in any way. The following verse lays down this principle in clear words: "To those against whom war is made permission is given (to fight) because they are wronged". (CH. XIII:39)

"And fight then on until there is no more tumult or oppression, and there prevail justice and faith in Allah (altogether and everywhere); but if they cease. let there be no hostility except to those who practise oppression". (CH. II: 193)

"But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah for He is the one that heareth and knoweth (all things)". (CH. VIII:61)

Hypocrisy has been condemned by the Holy Qur'an quite emphatically: "Inform the hypocrites that there is a grievous penalty for them". (CH. IV: 138)

Islam is criticised by some of the enemies of this religion who hold that it is violent in its injunctions and was spread by the sword. Nothing is farther from the truth. The Holy Qur'an forbids compulsion in any way: "Let there be no compulsion in religion". (CH. II:256).

WESTERN IDEOLOGY COMPARED

Let us compare Islam's position in a Muslim state to that of Christianity in the West. We would find a marked difference so far as the practical importance of religion in the mundane affairs of the Western countries is

3. M.A. Majid Siddiqi, *Pakistan- The Islamic State*, p. xlix.

concerned.

In the United States of America where religion is completely separated from the state, there exists one of the classic illustrations of the practical effects of this dichotomy. Most Americans, white or black, are Christians and Christianity is a gospel of brotherly and neighbourly love. Yet in political, economic and social life, this powerful religious teaching of brotherly love is powerless against the racial antagonisms of the United States. Religion having been reduced to only a personal matter and forbidden from entering the domain of politics, political America has veered away from the moral principles of Christianity- and its primary doctrine of brotherly love has slipped into racial antagonisms of the sharpest nature. This racial antagonism between brother Christians of different races is one of the outstanding features of secularised western life.

The indictment of the West itself on this arbitrary division and invasion of spirit and matter may be found in the feelings which animated Lord Hugh Cecil when he wrote: "..... Christianity is a far feebler motive than nationalism; and in particular there is lacking among Christians, in vivid contrast to their professed theological beliefs, a sense of corporate membership binding them to other Christians. For their fellow-countrymen they feel such a sense of common membership, and of loyalty that springs out of it, spontaneously, keenly, effectually. But for their fellow Christians as such few feel any sentiment of loyalty, and of those few, very few feel it strongly. We ought to love Christ and His Church better than we love our country and our countrymen; but with the rarest exceptions we do not ..... Yet if we could invert our preference of loyalty and care more for Christ and His Church than we do for our country and our countrymen, we should be very much happier and very much richer".[4] Arnold J. Toynbee, possibly the most eminent of contemporary western historians, has emphasised the same disease in modern Western life in the following words:

"..... Our own Western post-Christian secular civilisation might at best be a superfluous repetition of the pro-Christian Graeco-Roman one, and at worst a pernicious back-sliding from the path of spiritual progress. In our Western world of today, the worship of Leviathan - the self-worship of the tribe, is a religion to which all of us pay some measure of allegiance; and this tribal religion is, of course, sheer idolatry .....". And again: "..... We have obviously, for a number of generations past, been living on spiritual capital, I mean clinging to Christian practice without possessing the

4. *The Times*, London, Oct. 16. 1937 quoted in "Nationalism" a report by a study group of members of the Royal Institute of International Affairs (London, Oxford University Press), p. 308.

Chris tian belief - and practice, unsupported by belief, is a wasting asset, as we have suddenly discovered, to our dismay, in this generation.....".[5]

A half-trained doctor causes death, and half-trained hodge causes atheism. For our health we seek a competent doctor; so for our religion we should look for a competent guide. It is not wise to learn everything from persons whom one meets along the way.

"Is it right for a person who has a tooth-ache to go to a pharmacy and swallow anything he finds there. It is the same with religion; a man may have a good will, but he may get wrong information. The wrong information is like wrong medicine. You may have faith and confidence in God, but this does not help to cure your disease, though the confidence and faith may be practised in some other way.[6]

In reducing religion to the position of a personal matter, the West forgot that in human affairs no matter is purely personal. The individual as a social unit is constantly affecting and being affected by other individuals. Even the thoughts, we think, have a social significance. To make religion purely a personal matter in the life of the individual is the surest method of killing it outright.[7]

WELFARE STATE

Islamic state was a welfare state and the chief of the commonwealth was in loco-parentis towards the citizens. The prophet whom his people honoured with the title of "Al-Amin", the trust-worthy, wanted a system of government in which the state is to be treated as a trust. Later, when Omar, the Great, was at the helm of affairs, he said, that the head of the state should act as if he were appointed a guardian of the property of orphans. If he can sustain himself by his private means he should take nothing from the property of the orphans as his wages for administering it; if he has no other means, he is entitled to take only the minimum for his simple requirements. It is the duty of the Chief to see that nobody starves in his realm. It is his duty to compel the rich to contribute to the welfare of the poor. It is his duty to see that all are equal before the law; in that respect all privileges must be abolished. It is his duty to watch that there is no exploitation of the weak by the strong.[8]

5. Arnold J. Toynbee: "Christianity and Civilisation" in *Civilisation on Trial*, Oxford University Press, New York, 1949, pp. 236 & 237.
6. Quoted by H.H. Allen in *The Turkish Transformation* (Chicago, 1935, The University of Chicago Press), p.192.
7. Muhammad Mazharud-din Siddiqui, *What Is Islam*, p. 20.
8. Dr. Khalifa Abdul Hakim, *Islamic Ideology*, p. 306.

There must be a right of direct approach to the Governors and Chief of the state, and the poorest citizen shall have the right to lodge a complaint in the court against judges, governors and even the head of the state. These were not merely utopian ideals or counsels of perfection; they were actually practised in early Islam.

Islam, much more than other religions, respects women. He (Mohammad, on whom be peace) said: "The good among you are those who are good to women". Furthermore, it was declared by the revered prophet. "Whoever makes sacrifices in bringing up two daughters with love and mercy shall go to paradise". It was also said: "Paradise is under the feet of your mother". The Prophet helped women in all possible ways to get equal status with men. Qur'an says; "The women have rights over you as you have rights over them". Women shared with men equality before law. They were granted civil rights, which some of the civilised countries of today refuse to grant to the weaker sex. Moreover, marriage was made a civil contract between man and woman in which any lawful condition could be inserted. She was granted right of inheritance and the right to own property in her own name; till recently even the British woman was fighting for this elementary right.

It may, therefore, be observed that Islam envisages the establishment of an organisation which shall ensure complete freedom from want, inequality, social, political or economic discrimination, and from monopoly in any of those fields of national activity. It would be a bold experiment to make, but it is worth a trial. Notwithstanding the present day complicated life and an entirely different society in which we are living, it is quite possible to adopt the social, political and economic institutions which Islam has recommended to us.

In his address at Rawalpindi reported in the Pakistan Times dated March 7, 1959, General (later Field Marshal) Mohammad Ayub Khan, President of Pakistan, deplored those "who considered it out of fashion to talk of Islam". "Such men were to be pitied", he said. "It should be a matter of great pride that we are followers of a religion that teaches such great values as fear of God, love of mankind, sympathy towards one's neighbour, care of the orphans and help to the poor", the President reiterated. It would be in the fitness of things that the present regime gave us guidance in the matter of following the teachings of Islam not only in our private affairs but also to solve our political and administrative problems.

SOCIAL JUSTICE

Of all religions, Islam alone can meet the challenge of the modern age.

It does so by giving a working and workable code of conduct, a demonstrable way of thinking and a unique blue-print for the structure and growth of society. The very idea of poverty has no place in the Divine scheme of things because the Holy Qur'an contains God's promises of abundance:

"And He has subjected to you as from Him all that is in the heavens and on the earth". (CH. XLV: 13)

'That man can have nothing but what he strives for". (CH. LIII: 39)

These injunctions have a certain significance. But even among human beings there are great differences. All are not cast in the same mould. Some are more intelligent than others. This difference is reflected in the degree of their standard of living. In the struggle for existence, mental and physical soundness counts for much. A mentally deficient or a physically unfit person drops out of the picture. While those who possess a sound mind in a sound body get the palm, the others remain behind in the race for a prosperous life. the social gradations and stratifications are not quite artificial as they are often imagined by the social extremists. They are the necessary corollary of multifarious factors - heredity and environment being the most important, as they affect human beings one way or the other. Consequently, the fruits of human endeavours also vary with various persons. But for this difference, human life will be dull, drab and colour-less. Social inequality born of varying natural talents is inescapable.[9]

When men differ in mind and body, their efforts to earn their livelihood and the consequent rewards must also differ. The unavoidable sequel is the crystallisation of the different strata of society. A natural social classification inherent in the scheme of things is indicated by the Holy Book. It says:

"It is He Who hath made you (His) agents, inheritors of the earth: He hath raised you in rank some above others. It is He Who divides between them their livelihood". (CH. VI: 165)

"God has bestowed His gifts of sustenance more fully on some of you than on others". (CH. XVI: 71)

Nevertheless, Islam is a religion which stands for the common weal. It inculcates social justice and does not tolerate one class of society prospering at the cost of the other. Fuller brings out this point fully and clearly when he remarks, "let him who expects one class of society to prosper in the highest degree, while the other is in distress, try whether one side of his face can smile while the other is pinched."

Capitalism, as we find it today, has come to signify a religion of money or Dollar Dictatorship as it is sometimes called. Islam neither advocates

9. Mirza Mohammad Hussein, *Islam and Socialism*, p.12.

undiluted capitalism nor does it stand for the dictatorship of the proletariate - it is a religion of the golden mean, and has for its ideal the happiness of all, irrespective of caste, creed or colour, the greatest good of the greatest number, as the Utilitarian philosophy would describe it.

COLLECTIVE GOOD

The Muslim state can only succeed in its divinely entrusted mission if the individuals who compose it also strip themselves of greed and avarice, and disabuse their minds of all aggressive designs against one another. The Qur'anic verse, "It is He Who hath created for you all things that are on earth", is pregnant with great significance. It emphasizes that what God hath created belongs collectively to the whole human society. Nobody has any right whatsoever to claim or usurp the lion's share of this common pool. Superfluous wealth or Al-Afu' (what remains over) as the Holy Book designates it, is not to be retained by the owner. He must part with it in a manner which is conducive to communal good. Excessive wealth corrupts its owner and vitiates his outlook on life.

Regarding the era of capitalism, H.J. Laski remarks "Some live by owning, others live by obeying. One section has what it likes, the other has to like what it has". This is inhuman and is repugnant to the very spirit of Islam. By designating all property as trust from God, Islam cuts away all ground from under the feet of capitalists. The honest enforcement of its teachings stimulates an equitable circulation and communal dispersal of wealth. When every individual must, per force, part with the superfluous wealth (Al-Afu') mal-distribution and its dangerous aftermath are bound to vanish for good. Bacon, unconsciously but nevertheless truly, voiced the spirit of Islam when he said; "Wealth is like a heap of manure, useless, unless it is spread." Ruskin writes in the same strain. He likens the circulation of wealth in society to the circulation of blood. Unless all parts receive their due share of the stream of warm blood, body will not be sound. Islam is alive to the dangerous possibilities of the concentration of wealth in the hands of the few. It permits private property, but does not condone its social ravages by exploitation. Hazrat Abu Saeed Khudri relates that once the Holy Prophet said that he, whose means and resources are more than his genuine needs, should part with the surplus in favour of the destitute and indigent folk. He who has more than he needs, should give away the excess to the poor. Hazrat Ali once said: "God has made it obligatory on the rich to minister to the needs of the poor."

DISTRIBUTION OF WEALTH

A famous Muslim savant, Ibn-i-Hazin Zahiri, maintains that in every town the rich people owe a duty to their poor neighbours. If the Bait-ul-Maal (public treasury) cannot relieve economic misery, a Muslim Sultan or Amir can compel the wealthy people to contribute to relief works. These excess possessions can be forcibly taken away from them to fight out poverty from society. This process can continue until every man has just enough to eat and wear in all seasons, and also has a house as a shelter from the inclemencies of weather.

The ideal of Islam is a worldwide fraternity. So is the case with Communism but the methods used by the latter are barbarous. Communism, unlike Islam, must smash first and build afterwards. "In order to bring in peace you must split open man's skulls", says Lenin. Zinovieff, an able interpreter of the Marxian creed says: "The hate-ridden cry of rage is our delight". It is only under Islam that private property and social welfare cease to be antithetic.[10]

When his pilgrimage on earth was drawing towards the destined end, the Holy Prophet delivered a resounding sermon from Jabal-i-Arfat to his followers - this thrilling disclosure may well be regarded as the Declaration of the Rights of Man. The Holy Prophet said: "All men are equal in their human rights".[11]

Hazrat Abu Bakr adhered to the principle of equality in the distribution of wealth and did not pay heed to the special merits of men. Once during his Caliphate, he received huge wealth and distributed it equally among the deserving people. At this, some men suggested to him that he should have first taken into account the comparative spiritual merits of the recipients and should thereafter have fixed their share in the common pool. The talented caliph rose to the occasion and told the dissentients that he was not unconscious of the widely differing merits and excellences of the people. Rather, he knew and appreciated them more than anybody else. But spiritual superiority was a quality which would be duly rewarded by the Almighty. In matters pertaining to livelihood there could be no preferential treatment. Hazrat Omar at first departed from this course and in the early years of his caliphate he discriminated in favour of the Badr warriors as against those who did not enjoy this distinction. But he soon realised that his predecessor's policy was sounder than his own and followed it. Hazrat Ali also followed this practice.

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10. *Ibid*, p. 27.

11. *Ibid*, p.45.

The Holy Prophet commends and commands socially beneficial expenditure. "Riches should be taken from the rich and returned to the poor". (BUKHARI: 8)

There is a grievous punishment in store for those who abuse their riches, to the detriment of society. God commands: "(The stern command will say):

Seize ye him
And burn ye him
In the blazing fire.
Further, make him march
In a chain, whereof
The length is seventy cubits.
(CH. LXIX : 30, 31, 32)

USURY AND GAMBLING

Jabir relates that the Holy Prophet strongly denounced the recipients of usury, the giver of it and also the one who drafted the documents relating to usurious loans. Satan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, so says the Holy Qur'an (CH. V: 94).

Maulana Abul Ala Maudoodi, while addressing a meeting held under the auspices of the Islamic Society of the Punjab University Union at Lahore on February 19, 1960, expressed the view that "the present system of banking and insurance in the country was opposed to Islamic principles". The Maulana suggested that a new system based on Quranic injunctions should be evolved in this respect. Continuing, he said, that both banking and insurance were identical to gambling and he fortified his view by quoting numerous decisions of the courts in various European countries wherein it was held that the insurance business was done on the principles of gambling.

Regarding the advance of loans by individuals and organisations to the Government to enable it to execute various state projects, the Maulana opined that the Holy Quran did not make any exceptions. If the people desired their savings to be utilised by the Government in matters of defence of the country or in other projects, they were required to make donations rather than to ask for interest on the money they had given to the Government in the form of loan. The Maulana said that if the people of Pakistan were to lead their lives in accordance with the Islamic principles, a new system of banking and insurance should be evolved.[12]

12. Reported in the *Pakistan Times*, Lahore, February 20, 1960.

Chapter VI

GENERAL DOCTRINES

Let us examine now some of the salient and essential characteristics of an Islamic polity including the institution of professional priests, usury, unearned incomes, use of alcohol and other evils which stand in bold contrast to the teachings of other religions.

PROFESSIONAL PRIESTHOOD

It is said about Diogenes, the cynic, that he saw a group of people going through the street having taken someone in custody. On enquiry, he was told that they were priests who had caught a person stealing gold cups from the temples. He remarked sneeringly, "the bigger thiefs have caught a smaller thief". Islam abolished temples as well as priests. Places of worship may be built where people should gather to pray to God in a congregation without any professional priest working as intermediary. Any one considered more learned or more noble than the rest should lead the prayers. The Prophet himself was not a professional High-Priest; he undertook to do all kinds of work: private, communal or administrative. Any Muslim could be a shepherd, a farmer, a craftsman, a soldier and a religious servant or an official of the state at the same time. The Qur'an noticed the fact how professional priests exploited the people economically:

"Most surely many of the doctors of law and monks eat away the property of men falsely". (CH. IX: 34)

MONEY-LENDING

Prohibition of usury by Islam was so categorical that no loop-hole was left to practise it in disguised forms. Islam allowed that capital and labour may co-operate on equitable terms to increase trade and production, but the gains and losses should be shared. It must not be a one-way traffic. In the Roman Empire also, money-lending on interest was a common practice. Whenever its evils became rampant, it was sometimes limited to a mini-

mum rate and at other times abolished by law but as there were no religious sanctions behind these provisions and the state did not enforce its decrees very strictly, evasions were very common. It was Islam only that noted with a firm conviction that it was not a kind of evil that could be controlled or mended, it must be ended.[1] The Holy Qur'an says that he who insists on usury wages a war against God and His Prophet, which meant undermining the social fabric and sabotaging the state.

"O ye who believe! be careful of (your duty to) Allah and relinquish what remains due from usury if you are believers. But if you do it not, then be apprised of war from Allah and His Apostle". (CH. II: 278)

Until recently most economists believed that it was impossible for modern economy to work without interest but Keynes has asserted with all the profundity of his knowledge that interest can be and ought to be reduced to lower and lower rates until it touches the zero level. His view is that a modern industrial state would stand to gain and run no risks if there is no interest. Keynes says: "People invest not for income in the way of interest but for speculative gains and capital appreciation". Speculation in productive investments would continue regardless of the interest rate and even though interest were non-existent.

CONSUMPTION OF ALCOHOL

Next we come to what Islam has to say in regard to the consumption of alcohol. Islam came to the conclusion that alcohol is a poison for the individual and the social organism. So, taking the general welfare of society into consideration, even taking of alcohol in small quantities was not allowed.

CAPITAL AND LABOUR

Islam stresses a sort of healthy co-ordination between capital and labour. Allah, in Islamic jurisprudence, is taken to mean public weal. Private ownership is not absolute: it cannot be permitted if it stands in the way of general well-being.

LAND TENURE

Land rent, if it is fixed, irrespective of what produce a tenant gets during a year, would be cognate to fixed interest on capital, which Islam does not permit. But the system of Batai between landlord and tenant, where whatever the crop brings, is shared according to a contract which is equitable, would be permitted, because here there is allowable co-operation

1. Dr. Khalifa Abdul Hakim, *Islam and Communism*, p. 216.

between capital and labour. Islam prohibits all such transactions in which all the profit is secured by one party and all risk is faced by the other party.[2]

Islam is opposed to feudalism, aristocracy of wealth or land and does not uphold anything that may make the rich richer and the poor poorer. During the time of Khalifa Omar, a number of influential Arabs wanted him to partition the lands (of Persia, Syria and Egypt over which conquerors had obtained dominion) among the Muslims, as the spoils of war. They quoted the example of tribal wars during the time of the Holy Prophet. But Hazrat Omar was steadfast in upholding the spirit of Islam. He refused to grant a single acre of land to any Muslim from the conquered dominions. Ultimately he carried out his decision that all conquered land shall belong to the state but shall continue to be cultivated by the erstwhile cultivators, paying only equitable rent to the state. No cultivator shall be considered as owner in his own right, though he shall be given a guarantee of not being evicted so long as he tills the soil properly and pays the dues to the state. This is the first example in history of legally nationalising almost all cultivable land in a major part of an extensive dominion. In this manner original Islam prevented the creation of a landed aristocracy.

But even if large tracts of land had been granted to the early Muslims, feudalism and large-scale land-lordism could not have developed. The Islamic law of inheritance would have split up these large estates within a generation or two into small peasant-proprietorships. Feudalism and holding of large estates is possible only with the law of primogeniture according to which only the eldest son inherits the entire estate to the total exclusion of other heirs. Once some one pointed out to Dr. Johnson the injustice of this institution to which he replied in a jocose manner that there was one special advantage in it that it made only one fool in the family, who is bound to become silly for not being obliged to make any efforts for his living. Islam prevented the creation of such do-nothing extravagant fools.[3]

The Prophet of Islam was unhappy about the system of landlordism and advised his followers to hold only as much land as they could cultivate themselves, and if they had more than that, it was advisable to give it away to others or leave it as it was preferable to exploiting the labour of a tenant. But it is a definite Islamic injunction that any tract of land lying cultivated for three years shall be taken over by the state.

2. *Ibid*, p. 221.
3. *Ibid*, p. 120.

TENANCY RIGHTS

Islam deprecates landlordism or landed aristocracy, is clear beyond a shadow of doubt. As already stated, land belongs to God who created it for the good of the people at large. This is borne out by the Qur'anic verse "LAHUL MULKO', that is, 'To HIM belongs dominion", (64:1) and 'ARDA WADUHA LIL ANAM" (It is He Who has spread out the earth for (HIS) creatures". (64:10).

The Holy Prophet said: "All land is of God, the creatures are the creatures of God, whoso quickens dead land is best entitled to it". (ABU DAUD). Two similar sayings of the Prophet are as follows:

(a) Whoso quickens a dead land is its real owner. He can not be evicted.

(b) Whoso cultivates and inhabits a land which its owner is not able to do and has left it to go waste, shall have it.[4]

An owner of a tract of land is supposed to cultivate on it himself. In case he does not do it, he may pass the right of cultivation to his Muslim brother without the obligation of paying any rent. The leasing of land on contract or Batai (division of crops between the tenant and landlord) basis, according to some Traditionists, is forbidden in Islam. Hazrat Abu Dharr Ghifari was an enthusiastic exponent of this idea. Muslim and Bukhari record the Holy Prophet's sayings to this effect. Hazrat Abu Hurreirah relates that the Prophet said: "He who owns land should cultivate it himself or let his Muslim brother cultivate it gratis as a favour. If he is not willing to do either, he should let it lie uncultivated. (MUSLIM)

Hazrat Jabir says that the Holy Qur'an forbade any profit from land under Batai or contract. (MUSLIM)

There are, no doubt, other sayings related from the Holy Prophet under which the leasing of land on Batai and contract is regarded permissible. But even in that case the tenant is granted a privileged status. The co-sharing between the owner and the tenant is done on an equitable basis. Rack-renting and summary evictions are severely forbidden. There is a saying of the Holy Prophet recorded in Muslim, Abu Daud, Nasai and Tirmizi, according to which the Holy Prophet did not forbid tenancy but exhorted that the mutual dealings should be conducted with courtesy and leniency and that huckstering spirit should be eschewed. The very spirit of Islam is against living by owning and without working. Such ownership is a perfect sinecure for the only function it involves is that of collecting rents. This amounts to taking other people's labour.[5]

4. Mirza Mohammad Hussein, *Islam and Socialism*, p. 61.

5. *Ibid*, p. 62

.According to English economist Mill, "The reasons which form the jus tification of property in land are valid only in so far as the proprietor of land is its improver. In no sound theory of private property was it ever contemplated that the proprietor of land should be merely a sinecurist quartered in it."

BEGGARY AND CHARITY

Acts of benevolence, generosity and charity have been encouraged yet the able-bodied must try to earn their own living rather than live on begging. During the reign of Hazrat Omar, a register was kept of all the citizens of the state, and every child born began to receive a sustenance allowance. The Qur'an inculcates leniency and kindness to those who ask for alms but the prophet persuaded beggars to earn their living. He said the beggar "loses his face; on the Day of Judgment there will be no flesh on his face".[6]

It is stated in "Bukhari" that a man came to the Prophet asking for charity. The Prophet asked him if he possessed any article and the man replied that he had only a cap. He was asked to bring it. The Prophet auctioned his cap for two or three dirhams with which the blade of an axe was purchased. The Prophet himself fixed a handle to it and told the man to go and cut wood to sell as fuel. He was asked to report his condition after a few days, which he did. The man reported with joy that he was satisfying all his needs and also saving something. The prophet desired all men to be workers - the rich as well as the poor. He said, "the worker is the friend of God."[7]

CAPITALISM

The Holy Qur'an is also opposed to capitalism, pure and simple. Islam discourages Imperialism, aristocracy and absolute ownership of property - all these are considered as detrimental to national welfare. National wealth should remain in constant circulation. It is said in the Holy Qur'an: "LAN TANA LUL BIRRA HATTA TUNFIQU MIMMA TUHIBBOON" (Unless you spend away your wealth, you would not attain prosperity). In an Islamic state, it shall be compulsory to levy a tax on capital so that it may not cease to circulate or may not go on accumulating. The main purpose of this tax shall be the relief of suffering and gradual economic levelling of society; it shall be taken from those who have and shall be spent on those who have not.

6. Op cit., p. 223.
7. Ibid, p. 224.

SIMPLICITY

The Holy Prophet is reported to have said that those who strut about in gaudy and garish garments in this world, will be made to wear a dress of disgrace and humiliation in the next world. (ABU DAUD)

It is equally clear that Islam does not tolerate any ostentation or display of wealth and luxurious goods. Hazrat Hozaifah says that the Holy Prophet forbade partaking of food served in gold and silver plates and dishes, and banned the use of silken dresses and beds. (BUKHARI)

Islam aims at simplicity of life for all and sundry, thus obliterating all marks of distinction that may give rise to frustration of the many at the altar of undesirable and unnecessary wealth of the few.

UNIVERSAL RELIGION

Islam has done away with the distinction of nationality and colour. All men are brothers and the whole world is our homeland. As the great poet Dr. Iqbal says "China is ours and Arabia is ours and India is ours", so that instead of nationalism, we have internationalism as the creed of Islam and, therefore, do not hate any body, but, on the other hand, love all humanity.

Again, at the time of the Muslim Pilgrimage, people of all nationalities collect at Mecca. This League of Nations has been meeting every year for the last fourteen hundred years. They all feel like brothers and imbibe the spirit of oneness of humanity.[8]

The Qur'an contemplates and in fact clearly says that all mankind is one nation, but that God has sub-divided them into several nations so that they may vie with one another in noble deeds. And the most honourable in the sight of God are the most virtuous. This teaching does away with all national and colour prejudices.

Speaking of Islam, George Bernard Shaw says:

"If any religion has the chance of ruling over England, nay Europe, within the next hundred years, it can only be Islam. I have always held the religion of Mohammad in high estimation because of its wonderful vitality. It is the only religion which appears to me to possess the assimilating capability to the changing phase of existence which can make its appeal to every age. I believe that if a man like Mohammad were to assume the dictatorship of the modern world he would succeed in solving its problems in a way that would bring it much-needed peace and happiness".[9] A realistic appreciation of the potentialities of Islam from the pen of a non-Muslim personality, has much value in the eyes of the educated and cultured

8. Muhammad Amin, *Glory of Islam* p. 21.
9. *Ibid.*

humanity all the world over. I am confident - it is no flattery, far from that - it is an unbiased appraisal of what Islam really promises to do for the ailing humanity.

Dr. Sheldrake who embraced Islam for its intrinsic worth, in his essay on "Europe and Islam" says: "Let it be fully understood that Islam protects all whether a man be Muslim, Christian or anything else, and persecution is forbidden in any shape or form: complete toleration was the gift of Islam to the world and it is gradually permeating the strata of bigotry and hatred. Muhammad (on whom be peace) came as a "Blessing to the world", and it is through him that mankind is reaching the stage of brotherhood and amity. Islam is peace, the peace will come about when men enter into the "Light" of Islam.

PALATIAL GOVERNMENT

An indication of the spirit of early days of Islam, is furnished by Hazrat Omar's letter ordering one of his Governors who had built himself a palace at Kufa, to demolish it: 'They tell me", he wrote, "you would imitate the palace of Khusroes, and that you would even use the gates that once were his (Khusroes). Will you also have guards and porters at those gates as Khusroes had? Will you keep the faithful afar off and deny audience to the poor? Would you depart from the custom of our prophet and be as magnificent as the Persian Emperors, and descend to hell even as they have done?"

Describing how the desert people managed to conquer half the known world, Pandit Nehru, India's Prime Minister says, "Confidence and faith in themselves was a great thing. Islam also gave them a message of brotherhood - of equality of all those who were Muslims. A measure of democracy was thus placed before the people. Mohammad died in 632 A.D. ten years after Hijrat. He had succeeded in making a nation out of the many warring tribes of Arabia and in firing them with enthusiasm for a cause." Speaking about Hazrat Abu Bakr and Hazrat Omar, Pandit Nehru says [10] "They felt that their strength lay in their simple and hard living and if they took to the luxury of the Persian or Constantinople courts, the Arabs would be corrupted and would fall".

The religion of Muhammad (may peace be on him) by its simplicity and directness and its favour of democracy and equality, appealed to the masses in the neighbouring countries.

Islam treats all the human beings of the globe as members of one family and stresses the need to do away with tribal and racial distinctions which

10. Quoted from Jawahar Lal Nehru's essay on the "Greatness of Muhammad" in his book *Glimpses of History*.

are merely convenient labels, not of classification but of colours of the same stock. Distinction of nobility rests in righteousness only. The Holy Qur'an says:

"O! Mankind, we created you from a single (pair) of a male and a female, and made you into nations and tribes, so that you may know each other (not that you may despise each other). The noblest in the sight of Allah is (he who is) the most righteous of you; and Allah is all-knowing and well acquainted (with all things). (CH. XLIX:13)

WORSHIP IN ISLAM

The system of worship in Islam is such as may be conducive to unity, fraternity and equality. In the chapter on "Worship and Service", Dr. Khalifa Abdul Hakim dilates upon the merits of such a system of prayers. He says, "This is a lesson that in all the greater things of life requiring joint effort they have to work as a team; the individual will have to be subordinated to the social will. It also establishes the principle of leadership. There is no hereditary or ordained priesthood in Islam; professional priests are not envisaged. The best man in the congregation is asked to lead the prayer; he must be considered best from the point of view of knowledge and piety. This is a lesson for the choice of leaders. They are not to be chosen because of their wealth or social position or because of belonging to a particular profession but solely on the basis of knowledge and character. Age, too, is not an essential factor. There were cases during the life-time of the Prophet when in an illiterate congregation a child was asked to lead the prayers because he was the only one who could recite some verses of the Holy Qur'an. Once a leader is chosen he is to be implicitly obeyed in all movements, as the Prophet said, "Obey your leader even if he is a Negro".

Islam has embodied military discipline also in its congregational prayers. At the call for prayers hundreds and thousands of people, sitting or moving about helter-skelter immediately fall into serried ranks.[11]

In Muslim prayer, there is another element of unification. Every Muslim all over the globe turns his face towards one centre, the Kaa'ba. This strengthens the sense of unity in a world-wide brotherhood.

The Islamic mode of worship indicates that Islam is pre-eminently a social creed. In every one of its injunctions there is a direct or indirect reference to society. It prohibits a man to seek his own salvation by isolating himself from society. There is no monkery in Islam.[12]

11. Dr. Khalifa Abdul Hakim, *Islamic Ideology*, p. 121.

12. *Ibid*, p. 121.

After the congregational prayers, the gathering begins to serve all other-purposes of life. Problems of general welfare are discussed. The leader addresses them on all vital topics, political and social. Questions are brought forward for discussion. Any person can stand up and present even his individual need before the community. A nation having this conception of prayers needs no other clubs or assemblies. In the beginning of Islam this was the only assembly of the Muslims; vital questions of war and peace were discussed there. The president of the republic presented his plans and gave his orders after the prayers. Any member of the congregation could openly question the president about anything that he considered to be questionable. By frequently coming together every one got acquainted with every one else. There was no secret diplomacy in politics. Everything was above board.

Chapter VII

DEMOCRACY IN ISLAM

In fact there is no religious order in Islam. Mr. Majid Siddiqi says; "If I were permitted to coin a word for it, I shall call it Theo-Democracy, because in it, under the sovereignty and paramountcy of Allah, a limited popular sovereignty had been conferred on the Muslims. Under such a system, the executive head will be elected by a universal suffrage of Muslims, and they are entitled to overthrow him if need be. He is responsible to the general body of the Muslims for all his acts of commission and omission. All the administrative matters and those problems for which there is no clear injunction in the Book of God will be settled by the unanimous vote of the Muslims. The Law of God, wherever inexplicit, can be interpreted by any Muslim who has acquired sufficient knowledge of the Book of God and is competent enough to form an opinion on legal matters. In this sense, you may call it a Democracy. But in the presence of the Law of God and the clear injunction (Sunnah) of Rasool, no Ameer, no legislature, no cabinet, no legal expert, not even the whole body of Muslims can effect the least change in it. In this sense it is a Theocracy.[1]

EUROPEAN DEMOCRACY

Now an analysis of the so-called European democracy will divulge and remove the myth of popular sovereignty enjoyed by the people. According to European theory there are four essentials of a state, that is, territory, population, independence and organization. The populace, as a whole, seldom make laws, still less enforce them. They have to delegate their sovereign power to a few elected representatives who may compose and enforce laws. An electoral system is elaborated to meet this end and the stage is set for the electioneering campaign. In these elections only those candidates are returned representatives who may compose and enforce laws. An electoral system is elaborated to meet this end and the stage is set for the

1. M. A. Majid Siddiqi, *Pakistan - The Islamic State* , p. 60-61.

electioneering campaign. In these elections only those candidates are returned who have the means, skill and cleverness to hoodwink the electorate. And when they are elected they behave as elected absolute masters of the destinies of the electorate and refuse to submit to the electorate if recalled; thus they pose as Ilahs (Firauns) due to the vote of the masses. Within the representative body (Parliament) vested interests join hands and laws are so framed as to benefit themselves or their own class of men, and the masses are cajoled to believe that everything humanly possible is being done for their welfare. It is our daily observation that the general body of the people have a very poor sense of their own good. His (man's) judgment is one-sided and he is swayed by passions. He often times rejects the advice of intellect and common sense under the pressure of sentiments. Prohibition Law of America is an example of man's perversion. Long experience, knowledge and research had proved beyond any shadow of doubt that liquor was injurious to health, adversely affects mind, intellect and body, and is the cause of much mischief among the society. The American public had recognised these facts and adopted the prohibition law by a very large majority of votes of the common people themselves. But when it was enforced that very people who were responsible for its enactment revolted against it. Illicit liquors of the worst kind were manufactured and consumed. Drinking became fanatically common and crime swelled to unimaginable magnitudes.

As a result, the Government in power failed to maintain the law and ultimately those very votes which were responsible for its enactment, were now cast for its annulment. The verdict of illegality changed into one of legality. The change ushered in was neither due to any research on liquor nor that it had been proved useful for the society, but simply because that a large majority of the people of America had fallen an easy prey to inordinate desires. Similar experiments conducted by other communities can be cited to show conclusively that man is not fit to be his own legislator; man is still the same slave of his inordinate desires. It is on this account that limitations have been placed on the freedom of action of individuals and society by Allah. These are known in Islam as Divine Limits. They comprise definite principles, regulations and laws; the chief aim being to introduce moderation in the outlook of man. They define the last limits of freedom that one can enjoy.

PARTY POLITICS

The nature of Islamic state and society is such that party politics is almost absent in it. Unlike the present system of Cabinet responsibility, eve-

ry individual councillor of the Head of the Islamic state, is an independent unit and may express his opinion freely and truthfully according to his conviction and not according to the wishes of any body else. Western democracy, on the other hand, demands complete loyalty - right or wrong - to its party system, irrespective of any moral principles involved But it is not so in Islam.

The Musalmans, as a whole, constitute one single, indivisible party both religiously and politically. The Western institutions of politics and government would not suit the genius of our people and, therefore, it is my firm conviction that we should devise a system of elections which is entirely different from the West.

OPPOSITION WING

It must be remembered that the existence of various political parties with separate programmes of their own, fighting un-ending battle against one another for power and supremacy, which is today so inseparably associated with the working of democracy, is really an infallible sign of the utter non-existence of true democratic conditions. It is really symptomatic of class distinctions, social privileges and material advantages which every particular party seeks to attain for itself by capturing political power. The political system of Islam is a kind by itself. It is a no-party system based on the co-operation of all. There is no room for an opposition in Islam. And what room for an opposition can there be where the function of the Government is merely that of execution?

Mr. Nur Ahmad, ex-M.CA, in one of his statements to the Press said that according to expert opinion, in the true concept of Islamic democracy there was no party system as it was characterised by an absence of any party system and every member of Muslim society must support the right course without showing any spirit of partisanship. If this definition of Islamic democracy is correct then there cannot be any party, faction, group, opposition or partisanship spirit in the Islamic democracy of Pakistan. He further stated that the demand for Islamic democracy and Islamic constitution for Pakistan was gaining momentum but no correct shape or definition of what is Islamic democracy and Islamic constitution has been thrashed out in complete shape.[2]

Mian Abdul Rashid, former Chief Justice of Pakistan, presiding over a symposium on "Democracy is a Recipe" arranged by the Pak-American Society of Lahore, said that the building of true character in an individual would help ensure democracy in Pakistan, rather than a mere written

2. Reported in the *Pakistan Times* , Lahore, November 19, 1955.

constitution. According to him, democracy was a way of life and not only a form of government. The former Chief Justice further said that if one were to take an Islamic constitution as envisaged by the "Ulema", it would hardly be distinguishable from dictatorship, and if one were to look to the Islamic constitution as envisaged by young men, it did not differ from the British and American constitutions. The substantive civil and criminal laws of a country could not form a part of its constitution, and the constitutions of all the important countries were based on the principles of social justice and equality. For that matter, most of the countries had adopted Islamic principles and embodied these in their constitutions. For instance, he said, the Hindu law denied a share in property to widows and daughters, but the Indian constitution provided that women would share property with them (men). It might look candid, but he failed to appreciate the statement that none of the countries of the world had an Islamic constitution.[3]

Malik Abdul Qayum (the late Principal, Law College, Lahore) speaking at the above-quoted symposium in Lahore, said that democracy could only flourish when an individual was recognised as a dignified personality and was allowed to play his role fearlessly. He said that Islam gave the best form of democracy, as it recognised the right of the individual and enjoined on him certain responsibilities towards the state. According to him, the distinguishing feature of Islamic democracy was that it gave equal status to men and women, which had been denied in the West. This aspect of democracy, which was emphasised by Islam hundreds of years ago, was only now being realised, to give perfection to democracy.

In the programme known as 'ANJUMAN" on 9th March, 1955 night, broadcast from the Radio Pakistan, Lahore, the late Malik Abdul Qayum reiterated that "Democracy and Islam" were by no means inconsistent with each other. In reply to Viqar Ambalvi's argument that a Constitution could not in the same breath be called "Islamic" as well as "democratic and federal", Malik sahib explained that a federation was not inconsistent or unprecedented in Islam and was justified due to the huge distance between the two wings of Pakistan.

DEMOCRACY VERSUS ISLAM

It is interesting to examine how far Islam and democracy could be reconciled in a model constitution for Pakistan. According to the Report of the Court of Inquiry "the form of government in Pakistan, if that form is to comply with the principles of Islam, will not be democratic, is conceded by the Ulema ... The Objectives Resolution rightly recognised this position

3. Reported in the *Pakistan Times*, Lahore, Nov. 19, 1955.

when it recited that all sovereignty rests with God Almighty alone. But the authors of that Resolution misused the words "Sovereign" and "democracy" when they recited that the constitution to be framed was for a sovereign state in which principles of democracy as enunciated by Islam shall be fully observed. It may be that in the context, in which they were used, these words could not be misunderstood by those who are well-versed in Islamic principles, but both these words were borrowed from Western political philosophy and in that sense they were both wrongly used in the Resolution. When it is said that a country is sovereign, the implication is that its people or any other group of persons in it are entitled to conduct the affairs of that country in any way they like and untrammelled by any considerations except those of expediency or policy. An Islamic state, however, cannot, in this sense, be sovereign, because it will not be competent to abrogate, repeal or do away with any law in the Qur'an or the Sunnah".

It is submitted that the learned authors of the Report, have made the usual error of judgment in evaluating the nature of the restrictions which have been placed due to the prior existence of certain fundamentals in our Holy Book and the Traditions of the Prophet, on the scope of our legislation. Even in a democracy of the modern times, all the people do not make laws yet people, in theory, are called "Sovereign". Sometimes the constitution of the state lays down restrictions on the scope of legislation, and certain matters are excluded because the framers thought it necessary.

For example, in England it is essential that her King or Queen must be a Christian Protestant and a member of the Anglican Church. No wonder, therefore, that the head of an Islamic State must invariably be a Muslim. Such a limitation prescribed in the Constitution should not be considered to be undemocratic even in the democracies of the modern world.

Islam, it is claimed, is the most democratic religion of the world which places all human beings on an equal footing irrespective of creed or colour. Therefore, the Constitution of an Islamic State must be democratic. However, Islamic democracy, if we could be allowed to use that term, fundamentally differs from the Western type of democracy for obvious reasons. In the first place, according to Islam the real sovereign is Allah - not the people at large. It is the chosen deputies, caliphs or vicegerents of Allah who administer the Islamic State on behalf of and in the name of Allah, who alone is the absolute sovereign. As such these chosen people are not independent rulers. The Holy Qur'an is clear on the point when it says: "And Allah's is the kingdom of the heavens and the earth, and to Allah is the eventual coming" (XXIV:42)

Secondly, when it is said that equality of mankind is one of the golden

principles of Islam it does not mean that the virtuous are equal to the sinners. The criterion of fitness to rule or administer in an Islamic State is merit, virtue and pious deeds. Unlike other religions Islam does not grant favours to any privileged class or group claiming high birth or noble family.

Thirdly, the head of an Islamic State is not supposed to become an absolute ruler. He is required to consult the responsible people in all matters and all his actions must be in accordance with the Holy Qur'an and the Sunnah of the Holy Prophet Hazrat Mohammad (SAW). Besides being pious and virtuous he must be strictly honest and just towards all and must act in obedience to the Laws of Allah.

In the ordinary sense of the term, democracy means a government of the majority of the people but an Islamic State would not permit any non-Muslim majority to rule. Had it been so the Quaid-i-Azam would have accepted the rule of the non-Muslim majority in the undivided Sub-continent. In a speech delivered at the Aligarh University on 6th March, 1940 the Quaid-i-Azam is reported to have stated categorically: "I was told that I was guilty of disservice to Islam because Islam believes in democracy.

So far as I have understood Islam, it does not advocate a democracy which would allow the majority of non-Muslims to decide the fate of Muslims. We cannot accept a system of government in which the non-Muslims, merely by numerical majority, would rule and dominate us".

There is no doubt that an Islamic State has a peculiar type of Constitution which incorporates all the good points of the constitutions of other states. It is essentially a welfare State dedicated to the service of mankind without any distinction of caste, creed or colour. An ideal Islamic State, however, transcends all geographical boundaries and is opposed to all kinds of racial, tribal, cultural or linguistic prejudices. The basic idea of establishing an Islamic State is to promote brotherhood and develop the concept of Millat.

In fact, according to Islam no man can lay down the law for any other man. Allah alone has the right to determine the aims of human existence. The Last Prophet of Islam Hazrat Mohammad (SAW) is the sole authority to prescribe laws for the faithful. The State itself, as a human agency, is subject to this Divine Law. The State machinery is authorised merely to discover, apply and follow these laws, the courts adjudicating whether a particular inference is correct and whether it is ordained by the Holy Qur'an and Sunnah or not. It is for this purpose that an Islamic Ideology Council has been set up to discover as to which of the laws prevalent in Pakistan are inconsistent with the teachings of Islam. Besides, the Federal Shari'at

Court of Pakistan is to judge the laws operative in the country in the light of the injunctions of the Holy Qur'an and the precepts and traditions of the Holy Prophet of Islam. Both the State as well as the courts, as interpreters of Shari'at, are subject to the precedents of the admitted Ulema and Aulia Allah of the past. One of the functions of the law-making bodies in Pakistan, therefore, would be to prepare the lists of the Ulema, Aulia and Mashaikh who may be accepted as Salf-i-Saliheen, and also to codify their interpretations authoritatively.

MAJORITY VOTE

Islam does not recognize the "Majority Vote" principle. It does not admit that the majority cannot err. None except the Apostle of Allah is infallible, since he speaks through Divine guidance. As such, an individual's opinion can be sounder as against the unanimous decision of the majority in the advisory council. In any case, there is no place in Islam for candidature and electioneering in the modern sense. The Apostle of Allah has left clear instructions to the effect that an aspirant to an office should not be entrusted with that office. To take the charm out of such positions, it would be feasible to reduce their emoluments and facilities to the barest minimum and only such amenities may be allowed as are within the reach of the majority of the population. Islamic spirit revolts and scorns at the mere idea that two, three or more candidates should offer themselves for an office and indulge in pamphleteering, party meetings and propaganda against one another incurring fabulous expenditure and employing all sorts of evil means to exploit the voters and, ultimately, the one who excels in his resources of falsehood, fraud, cleverness and unscrupulousness may win the election.

Judged in the light of the above observations it goes without saying that the Western type of democracy (which alone is the real democracy) does not fit at all into the scheme of things prescribed by Islam. The Musalmans, as a whole, constitute one single, indivisible party both religiously and politically. The Western institutions of politics and government would not suit the genius of our people if we really mean to set up an ideal Islamic State. We shall have to overhaul the entire system of elections and the structure and powers of the organs of the State shall have to be streamlined so that they are brought in line with what Islam stands for. Putting our legs in two boats we are not destined to reach the shore in safety.

Chapter VIII

FUNDAMENTAL RIGHTS

Closely related to the basic principles, is the question of fundamental rights which are so essential as a part of the written document called the constitution of a country, in order to safeguard the legitimate freedom of its citizens in the various spheres of life.

Every citizen of Pakistan shall have the following fundamental rights according and subject to the limitations of "Shari'at". These rights shall be justiciable by a court of law preferably by the High courts and the Supreme Court of Pakistan:

1. The right to life shall be guaranteed to both Muslims and non-Muslims alike - the latter shall, however, be liable to pay a certain tax for their defence and safety.

2. Every citizen shall be guaranteed suitable shelter, proper food (and for that matter, employment), adequate clothing, medical aid, necessary education etc.

3. All residents of Pakistan, whether citizens or aliens, shall have the right to use public property like railways, aeroplanes, posts and telegraphs, telephones, wireless and other amenities of life granted at state expense to the public.

4. Every citizen shall be entitled to posts, both civil and military, subject to the rules made by the Government in this behalf.

5. The right to vote for the Mu'tamid-i-A'la and other high offices of state shall be regulated by laws promulgated in this behalf by the state. These laws would lay particular emphasis on learning, piety and virtue of the Ahlur Rai (voters).

RIGHT TO PROPERTY

There is no struggle between the "Haves" and "Have-Not" in an Islamic state which stands for a compromise between capitalism and labour. Islam believes in a limited capitalism; no person can hoard money to an un-

limited extent and thus deprive others. The wealth of the Millat is in constant circulation. The individual in an Islamic state can acquire private property so that his incentive may not be lost, but at the same time he is bound to dispose of a portion of it according to the Law of the Qur'an so that his other brethren may be benefited by it. If this principle is adopted, nobody can remain needy in an Islamic state. The Islamic state, unlike the Communist state, does not take away "from each according to his capacity", nor does it distribute "to each according to his need". Again, it does not, like individualism, believe in the "minimum possible state action and maximum possible individual freedom". According to the Islamic polity, the state, the Ameer, and the Millat are all animated by an ethical ideal, and it is the duty of everyone connected with the state to achieve that ideal.

RIGHTS OF MINORITIES

The Government of Pakistan shall be run according to the dictates and principles of Islam.[1] So far as the disbelievers in Hadith and non-Muslims are concerned, according to the fundamental principles of democracy, the matters are to be decided according to the majority, and the majority believes in both the Holy Qur'an and the Sunnah. Dr. Muhammad Inayet Ullah says that Islam being the religion from Allah, the Lord and Provident of the whole Universe (not only of Muslims), its dictates and principles are as beneficial for the non-Muslims as for the Muslims. In fact the best safeguard for the non-Muslims is the true Islamic constitution, because of the clear orders to that effect in the last precept of the Holy Prophet (peace be upon him) that all the Muslims are bound to vote for the rights of the minorities. On the other hand, the most that can be done under other constitutions is to give weightage, but what possible difference can it make to have 20 votes against 80 instead of 5 against 95.

Many outsiders and several Pakistani Christians and Hindus, unhappy at the treatment actually received by non-Muslims in Pakistan or potentially to be received by them, have stated or supposed that these minorities would be better off if Pakistan were simply a "Democratic" instead of an "Islamic" state. This is irresponsible glib. For if Muslims do in fact treat non-Muslims unjustly, then a democratic framework (without the Graeco-Roman and religious tradition of democracy to vitalize it) would merely give them as a majority, constitutional authority for doing so without let or hindrance. Let us take a particular village whose population since the Partition comprises a predominance of Muslims, that the Christians are refused

1. Dr. Muhammad Inayet Ullah, *A proposed Islamic constitution for Pakistan*, Art. 1 "Fundamental Principles", and Art. 2 "Objects", p. 1.

use of the only village well. To introduce democratic procedure into that village would do nothing whatsoever to improve the situation; since if the matter were put to a vote the decision would obviously merely confirm and give formal and even legal authority to an injustice. The only hope for the weak group in this community is to appeal, not to democracy but to Islamic conscience of the majority. The latter must be shown that by their action they are being bad Muslims and are running counter to the transcendental concept of an Islamic state.[2]

When pressed to express his views in regard to his successor, Hazrat Omar observed in his last moment: "Of these six persons he, who has the largest number of votes on his side, should be elected Caliph ... He addressed the people who were gathered around him thus: "Whoever is elected Caliph I charge him with respecting to the utmost the rights and privileges of these five sections of the people: The Muhajirin, the Ansar, the Beduins, those Arabs who have emigrated to foreign cities and the Zimmis (viz. the Christians, the Jews and the Magi who were the subjects of Islam).

He then defined the privileges of each section. These were the words used by him with reference to the Zimmis: "It is my parting behest to the Caliph for the time being that he should pay due regard to the responsibilities of God and His Prophet, that is to say, the contract entered into with the Zimmis should be respected, their enemies should be repelled and they should not be subjected to that which is beyond their powers of endurance".[3]

Mr. Manzoor Qadir, then Foreign Minister of Pakistan, (a former Advocate of the High Court of West Pakistan), in one of his interviews to the APP (Associated Press of Pakistan) said: "It was wrong to say that the fundamental rights could only be guaranteed by a constitution. The only difference in the term of fundamental rights as understood by the practising lawyers and enforced by the present Martial Law Regime was that the existing fundamental rights were not enforceable through court.

Whatever the reasons for the above statement of the lawyer-cum-foreign minister of a military regime in Pakistan, a written constitution, in my opinion, cannot ignore any important provisions like the fundamental rights.

Basically, it is a problem with every modern state, and minorities must be a bigger problem in the Islamic state because Islam is proverbially known to be generous and tolerant towards this class of citizens.

2. Wilfred Cantwell Smith, *Pakistan as an Islamic State*, (Pamphlet Series No. 1) p.6

3. Allamah Shibli Nomani, *Al-Farooq, Life of Omar, the Great* (Translated by Maulana Zafar Ali Khan), p. 297-98.

Any government guilty of any type of un-Islamic or anti-Islamic conduct, shall forfeit its right to obedience from the people. It would, therefore, be incumbent that the rights of minorities or non-Muslims (Ahl-i-Zimma) should be defined in the light of the Qur'an and the Sunnah, in a separate Charter to be known as the "Minorities Charter". This should be the exclusive responsibility of the Mu'tamid-i-Aala" who may consult about a score of his Mu'tamids in this respect.

The Upper House of the AIWAN-I-SHARIAT (the Parliament in Islam) would contain a sufficient number of the representatives of the minorities or Ahl-i-Zimma. These representatives would further safeguard the welfare of that class.

The minorities shall not be asked to serve in the Army, the Navy or Air Force against their free will under any circumstances. They must, however, subscribe for their defence by paying a special tax that would be levied on them.

The culture, religion and language of the minorities shall receive adequate protection of the Islamic state if they so desire.

QUAID-I-AZAM ON MINORITIES

In his memorable speech on 11th August 1947 to the Constituent Assembly of Pakistan while stating the principles on which the new state was to be founded, Quaid-i-Azam Mohammad Ali Jinnah said:

"All the same in this division it was impossible to avoid the question of minorities being in one dominion or the other .... If you will work in co-operation, forgetting the past, burying the hatchet, you are bound to succeed. If you change your past and work together in a spirit that every one of you, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what is his colour, caste or creed, is first, second and last, a citizen of this state with equal rights, privileges and obligations, there will be no end to the progress you will make ... You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this state of Pakistan. You may belong to any religion or caste or creed - that has nothing to do with the business of the state - you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the state."[4]

4. Quoted from the *Report of the Court of Inquiry* constituted under Punjab Act II of 1954 to inquire into the Punjab Disturbances of 1953 (Printed by the Superintendent Government Printing, Punjab, 1954), p. 201.

The Punjab Disturbances Inquiry Report has, from the above-quoted speech, derived conclusions and inferences with which it is not possible for me to agree. To my mind, it would not be possible for a Muslim to practise his religion only privately, leaving the business of the state to be run on principles divorced form his religion.

Moreover, Quaid-i-Azam was never keen to have a "Modern National State" (to use the words of the Report)[5]. Had it been so, he would not have refused the blank cheque that Mahatma Gandhi was willing to give, or to have become the first Governor General of un-divided India as soon as the Britishers had left the subcontinent.

The passing of the Objectives Resolution on 12th March, 1949 was merely the first step in the direction of setting up an Islamic state. It was not a "hoax" as the Inquiry Report seeks to interpret and emphasise.

Again, the Quaid-i-Azam in a speech at Cairo (reported in the daily "Dawn," Karachi, December 29, 1946) pointed out: "We are resolved to establish two Muslim states in India. In the Pakistan zone we will be able to safeguard the heritage of Islam and all the glory of its culture and civilisation".

On another occasion, while addressing the Karachi Bar Association on January 27, 1948, the Quaid-i-Azam said:

"I cannot understand a section of the people who deliberately want to create mischief, and make propaganda that the constitution of Pakistan will not be made on the basis of the Shari'at. Islamic principles are as applicable to life today they were 1,300 years ago. Islam is not only a set of traditions and spiritual doctrines. Islam is also a code for every Muslim which regulates his life and his conduct in politics and economics and the like".

EQUALITY IN ISLAM

How difficult does the white man find it to be considerate to the poor Negro, and how inhuman is the treatment which the Christian religion metes out to the Christian native of the Congo? For how long has the Hindu Brahmin maltreated and tyrannised over the Hindu untouchables?

The doctrine of the equality of mankind is so inherent in the teachings of Islam that no Muslim country has had to face the problem of class-war. Socialism, Bolshevism, Fascism, agrarian troubles, trade disputes and industrial upheavals are all un-known to Islamic countries, simply because a Muslim is so embued with the spirit of equality that he is constitutionally unable to be arrogant. His poorest brother of the blackest face is on the

5. *Ibid*, p. 203.

same social standing as the all-powerful shadow of God upon earth, the Commander of the Faithful. Bilal and Omar stand shoulder to shoulder in prayers and sit at the same table to partake of a common meal. While the Jew was persecuted and despised everywhere, he (Jew) was welcome in all the Muslim countries. The un-touchable was not, and is not an untouchable in the eyes of a Muslim. He meets the Negro in Africa on equal terms, and wins his love; he respects the Mongolian for his qualities; and he abhors the very notion of race superiority. Wherever he went as a conqueror, he mixed with the conquered as man ought to meet with man. Segregated areas and water-tight social divisions were unknown to him. In Persia he became a Persian and as enthusiastic about the language, traditions and literature of the country as the sons of the soil themselves. In Bengal he developed Bengali, and at Delhi Hindi. The Punjab made him a Punjabi, and Afghanistan an Afghan. He never kept aloof; he was never obsessed with the idea of being too good to mix with the "Despicable natives and adopt their corrupt ways".

The notion of superiority is so foreign to the teachings of the Qur'an that those who are proud and "exult in the land" are condemned in the severest terms: "I will turn away from my communications those who are unjustly proud in the land".[6] Our Holy Qur'an is replete with teachings inculcating simplicity and humility. It lays down inter alia:

"And do not go about in the land exultingly, for you cannot cut through the earth nor reach the mountains in height. All this - the evil of it - is hateful in the sight of your Lord". (Ch. XVII: 37, 38)

"And the (true) servants of the Beneficent God are they who walk on the earth in humility, and when the ignorant address them (insolently) they say "Peace". (Ch. XXV: 63)

The Holy Prophet enforced these teachings by the following saying: "God has revealed to me, be humble, do not exult, nor be high-handed". (Ayaz: Mishkat)

All the aforesaid quotations bring home to us the fact of human equality, simplicity and humility which Islam has preached to its followers. Never was a religion established in the world with such a wonderful message of peace, love and friendship. In my opinion, this trait of Islam alone makes it superior to so many others preaching hatred or conniving at attempts to bring into hatred or contempt the other religions of the civilized world. The ruler and the ruled, the master and the servant, the white and the black, the cultured and the vulgar, the rich and the poor, the Ameer and the subject are all equal in the sight of Allah, the Great and His Apostle (the rever-

6. *The Holy Qur'an* (Ch. VII: 37, 38).

ed prophet Mohammad - peace be on him). As has been pointed out, the only criterion of superiority is that of deeds and actions - not the distinction of birth, wealth etc. The late Dr. Iqbal described this fact plainly in the following verses:

"A gaya ain larahi men agar waqt-i-namaz
Qibla ru ho ke zamin bose hui qaum-i-Hejaz
Aik he saf men kharhe ho gaye Mahmud-o-Ayaz
Na koi banda raha aur na koi banda nawaz

Banda-o-sahab-o-mauhtaj-o-ghani aik huey
Teri sarkar main pahunchey to sabhi aik huey"

DEAD EQUALITY

Dr. Khalifa Abdul Hakim is of opinion that Islam never stood for dead equality, since men are born with varying types of intelligence, talents and other characteristics which are not conducive to dull uniformity. For instance, he says that in Islam, no Will would be valid which disposes of more than one-third of the property and those who have already inherited cannot be again beneficiaries of that Will ... Further, he says, feudalism can have no place in Islam and big landlordism cannot develop because of fragmentation of estates by inheritance. Another great source of accumulated un-earned income is usury which was prohibited categorically.[7]

They say that men are born equal and hence they have equal rights to the goods of life ... Islam does not believe in any Utopian, unrealistic equality between individuals of all types. Human beings are born with varying gifts. As they differ in their bodies and their features so that no two individuals even among countless millions are ever completely alike, so they differ in their mental and other inborn traits. And after having been born, they will encounter different environments and circumstances which would materially affect their conduct and character. This is what is called "Taqdeer" or destiny of man which for him is the data of life or the raw material which he has to mould as best as he can. The Qur'an says explicitly that some of you are more gifted than others.

"See how we have made some of them to excel others" (CH. XVII: 21)

FRATERNITY

Allied with the conception of equality in Islam is its feeling of fraternity and brotherhood with the mankind in general. Islam has laid particular em-

7. Dr. Khalifa Abdul Hakim, *Islam and Communism*, p. 197.

phasis on the need for unity both in the domestic as well as the international spheres. The Holy Qur'an says that a nation should not ridicule another, in the following words:

"O! you who believe, let not one people laugh at another people. Per chance they may be better than you, nor let the women (laugh) at (other women), perchance they may be better than they". (Ch. XLIXXI: 11)

Moreover, the following traditions bear clear testimony to the importance of international unity:

The Prophet Mohammad (peace be upon him) once said to his Companions; "Shall I inform you of the deed which is better than prayers, fasting and alms"? The Companions said, "Surely". The Prophet replied; "It is to make peace between men - one who creates dissensions perishes".

Again, the Prophet is reported to have said:

"Abstain from causing dissensions, because this obliterates good deeds". (Mishkat)

The Prophet said further:

"The least charity is to make peace amongst men". (Mishkat)

According to Muhammad Amin,[8] the Holy Prophet of Islam was the greatest socialist the world has ever known. He did not like to call his followers his disciples, but called them "Ashab" which means comrades.

Sir Archibald Hamilton is quite emphatic when he says" "I do not think I need say much about the universal brotherhood of man in Islam. It is a recognised fact that Lord and vassal, rich and poor, are all alike. In conclusion I would like to say that whereas Islam guides humanity in the daily work-day life, the present day so-called Christianity, indirectly, in theory, and invariably, in practice, teaches its followers, it would seem, to pray to God on Sundays and to prey on His creatures for the rest of the week.[9]

NEED FOR INCORPORATION

According to Mr. Brohi (Fundamental Law of Pakistan, p. 309) the specific mentioning of fundamental rights in constitutional documents owes its genesis and historic orientation to the fashion set in that behalf by the American people. They were the first who emphasised the necessity of incorporating these guarantees, in what they call, the Bill of Rights ... The fundamental rights have also been guaranteed by the Swiss Constitution; by the constitutions of the Union of Soviet Socialist Republic, Ireland, India and Pakistan.

The wisdom of incorporating a chapter on fundamental rights has been

8. Muhammad Amin, *Glory of Islam*, p.1.

9. *Ibid*, p. 133. (Quoted from Sir Archibald's Essay on "Why I became a Muslim")

gravely doubted by those who have been nurtured in the British tradition of constitutional jurisprudence. Under the English Constitution, there are no guaranteed or absolute rights.

The classical statement on the constitutional position in England with regard to the rights and liberties that are available to English subjects is contained in Dicey's "Law of the Constitution" (1952 Ed.) p197: "There is in the English Constitution an absence of these declarations or definitions of rights so dear to foreign constitutionalists. Such principles, moreover, as you can discover in the English constitution, are like all maxims established by judicial legislation, mere generalisations drawn either from the decisions or dicta of judges, or from statutes which, passed to meet special grievances, bear a close resemblance to judicial decisions, and are, in effect, judgments pronounced by the High Court of Parliament".

Safeguard of British liberty is in the good sense of the people and in the system of representative and responsible government which has been evolved", says Lord Wright in the case of Liversidge V. Sir John Anderson and others (1942) A.C 206.

None of the usual rights or liberties which are recognised in a written constitution, is capable of precise and scientific definition, and there are hardly any rights which can be statutorily set forth in the form of absolute propositions. A declaration of fundamental rights, even if embodied in an absolute form in one of the Articles of the Constitution, would be found encumbered by numerous provisos and other qualifying conditions which are calculated to control its scope and its application. Professor K.C. Wheare illustrates this difficulty by making a reference to the constitution of Ireland, and says:

"No realistic attempt to define the rights of the citizen, indeed, can fail to include qualifications. Yet when we see the result it is difficult to resist asking the question: what of substance is left after the qualifications have been given full effect? The constitution of Ireland provides an interesting example of this position. It contains a series of articles- numbers 40-44- enumerating fundamental rights. Consider this statement first: "No citizen shall be deprived of his personal liberty save in accordance with law". What does this guarantee amount to? The answer must be: "It all depends on the law". If wide discretionary powers of arrest and forcible entry are given by the law to the forces of the state, then the right of the citizen will be severely restricted".

This is, however, a correct view of the position of fundamental laws securing the peoples' rights. In my opinion, there would be no need for enumeration of any of the fundamental rights as these already stand guaranteed

to the Muslims. The Holy Quran and the Sunnah are explicit in regard to the right to life, liberty and property of the Muslim subjects, non-Muslim residents and aliens. It would be better to rely on the good sense of the powers that be, than to give to the people rights which are taken away with the other hand in one and the same enactment which is bound to be replete with provisos, and qualifications of a far-reaching nature and content.

HUQUQUL IBAD

According to Islam there are two kinds of rights: one type pertains to those which the Muslim owes to His Creator (Allah); while the others imply his rights against other men or women, that is, man versus man. In the strict sense of the word, the fundamental rights are confined to the rights available to man against man which are termed as "Huququl Ibad". The Allah Almighty as well as His dearest Apostle Hazrat Mohammad (SAW) have laid great emphasis on such fundamental rights which govern human relations in all the fields of life in the mundane world. If these rights are violated even Allah shall not forgive unless the victim himself agrees to offer forgiveness to the transgressor.

To cite an example, the Federal Shari'at Court of Paksitan announced its judgment on August 9, 1991 holding that the State had no power to withdraw from prosecution anyone accused of an offence liable to Ta'zir (punishment) relating to right of individual (Huququl Ibad). The Government was, however, empowered to withdraw from prosecution anyone accused in respect of an offence punishable with Ta'zir relating to the right of Allah (Huququllah) but that too with the permission of the court if it was in public interest. The Chief Justice of Federal Shari'at Court gave this verdict while announcing a judgment of Full Court in three Shari'at petitions wherein Sections 401, 402, 402-A and 402-B, 494 and 495 of Criminal Procedure Code and Section 10(4) of the Paksitan Criminal Law Amendment (Amendment) Act 1958 had been challenged by an advocate on the plea that these were repugnant to the injunctions of Islam. It said these provisions empower the Provincial Government and Central Government to remit the sentence of a convict or to withdraw him from prosecution in a case before the court.[10]

The court, after discussing the relevant verses of the Holy Qur'an, Ahadith of the Holy Prophet (PBUH) and the opinions of the renowned jurists, observed that so far as the sentence of offence liable to Hadd is concerned, it cannot be remitted, commuted or suspended. It is for this reason that the

10.Report published in the *Pakistan Times* , Lahore, Aug. 10, 1991 under the heading "FSC judgment on Violating " Right of Individual."

provisions of Section 401 to 402-B of Criminal Procedure Code relating to suspension, remission or commutation of the sentence were not made applicable in respect of Hadd punishment in the four Hudood laws promulgated in 1979. Similarly, the power to suspend, remit or commute the sentence of death provided in the Criminal Procedure Code 1898 is also not applicable in the cases of murder and hurt liable to Qisas as recently amended and provided in Criminal Law (Amendment) Act-I of 1891. The Court, therefore, held that the sentence of an offence liable to Ta'zir relating to the right of the individual (Huqugul Ibad) can also not be commuted, remitted or suspended except by the victim. The Court, however, held that the Government has the power to remit, commute or suspend the sentences of crime liable to Ta'zir relating ot the rights of Allah (Huqugullah) if it is in the public interest. The court thus declared that the provisions of Section 401, 402, 402-A and 402-B are repugnant to the injunctions of Islam to that extent. The Court further directed both the Provincial and Central Governments to amend the above mentioned provisions by January 1, 1992. On the expiry thereof, if not amended, the said provisions shall cease to be effective.

As an Islamic State which is essentially a welfare State its first and foremost duty is to provide the necessities of life to all people living therein so that they have at least some shelter, food and clothing. It aims at raising the standard of living and improving human character.

Moreover, it must guarantee social, economic and political justice to all its people and must ensure fundamenal rights for all of them without any exception. It must provide equality of status, equality before law, freedom of expression and liberty of conscience for all citizens without discrimination.

SERVICE TO HUMANITY

In Islam after obedience to Allah and His Prophet Hazrat Mohammad (SAW) service to humanity gets first priority. A Muslim's foremost duty is to help the man in distress, look after his neighbours, and be sympathetic and tolerant towards others including non-Muslims. Even a Hindu historian, Ishwari Prashad, has admitted in his books that the Arab administration in India was mild and humane and the temples of Hindus were not molested.

It is common knowledge that the Holy Prophet of Islam had issued the Madinah Charter known as Magna Carta of Islam granting fundamental rights to the whole of mankind without any distinction on the basis of religion, creed, caste, colour, language etc. The Charter proclaimed the princi-

ples of civic equality, the rule of law, freedom of worship and religious toelrance. The Charter shall always serve as a guide to all the countries of the world for all times to come.

The head of an Islamic State is bound to serve his people with justice and his main duty is to maintain peace and tranquillity within his relam so that all the citizens remain happy and prosperous. Economic security and welfare of the people is his special responsibility. In the Muslim society there is no exploitation of one class by another. To ensure this Islam discourages amassing of wealth in a few hands and urges the wealthy to help the poor so that nobody goes hungry.

Whatever is contained in the Charter of the United Nations about human rights, freedom of association and assembly, the right to take part in government and to have equal access to public service either directly or through chosen representatives, is the very essence of Islam. In Islam, authority in public matters is a trust and it must be vested in a man who is best capable of exercising the same. The Holy Qur'an says: "God doth command you to render back your tursts to those to whom they are due". (4:58)

In his farewell address the Holy Prophet (PBUH) declared: "You are all brothers and are all equal. None of you can claim superiority over others. An Arab is not to be preferred to non-Arab nor a non-Arab to be preferred to an Arab, nor is a white man to be preferred to a coloured one or a coloured one to a white except on the basis of righteousness".

Again, forced labour is prohibited in Islam and right to work according to one's own choice is recognised. Persons who are employed have to be treated as brothers. About wages the Prophet (SAW) said: "The wages of the labourer shall be paid before the sweat dries upon his body".

Moreover, slavery and slave trade, torture and inhuman punishment even during war, arbitrary arrest and detention or exile have been prohibited in Islam. Immediately after his marriage to Hazrat Khadija about 15 years before his Prophethood, the Prophet (PBUH) freed all his slaves and maintained none throughout his life. Persons taken captive in a war used to be treated as slaves and they were subjected to inhuman torture and persecution. The Prophet (PBUH) denounced this and declared that "they are your brothers, and you should treat them as such. Provide them with the kind of clothes that you wear, and if you put them on hard work join them into it to help them complete it". Islam declares that when the war is over war captives should be released either with or without ransom.

Rights and duties, it may be observed, are inter-related. My enjoyment of right to life, property, honour, freedom of expression, assembly and con-

gregation and right to worship in any place of my liking etc. is subject to the condition that the rest of the society and even the State should respect it and ensure it at all cost. Almost all the constitutions of the civilised world contain a chapter on fundamental rights. In the case of Islam the Hujjat-ul-Wada sermon of the Holy Prophet constitutes the charter of human fundamental rights. This sermon was delivered during Haj eighty days before the Prophet (SAW) departed from this world. At the very outset it was declared that the most respectable among men was he who was most pious but at the same time "your lives and properties are as sacred as the month of Zilhaj". If anyone holds anything in trust he must return it to its owner. Brotherhood and fraternity is, of course, the basic pillar of Islam but at the same time the legitimate duties and rights of every Musilm have been clearly explained in the Holy Qur'an and if the Qur'an is silent on any matter the Ahadith of the Prophet (PBUH) have to be followed both in letter and spirit. About the Holy Prophet (PBUH) Allah says in the Holy Qur'an: "He enjoins on them good and forbids them evil, and makes lawful for them the good things and forbids them the bad, and removes from them their burden and the shackles that were upon them." (7:157).

Chapter IX

EXECUTIVE IN ISLAM

Islam is a message from God Himself and the Musalmans have a distinct ideology which cannot be the result of any accidents, say, of race, language or geographical location. If Pakistan is to attain its cherished goal of an Islamic state and is to become the cradle of an Islamic renaissance, she must set an example by establishing the three organs of government - the executive, legislature and the judiciary - in the purely Islamic fashion.

Let there be no mistake about it: the people of Pakistan are the only people in the present day Muslim world to have openly broken away from race ad nationalism; and they have proclaimed their intention to build their state on no other foundations but on the fact of their being Muslims. However deficient our behaviour might have been so far from the point of view of this ideal, there is no doubt that the movement that led to the establishment of Pakistan is the only mass movement in modern Muslim history that had an Islamic polity for its declared goal.

THE AMEER (MU'TAMID-I-ALA)

The position of the Head of the State in Islam is no more than that of a "Trustee". The general body of the Muslims elect from among themselves the ablest, upright and the most pious and God-fearing, and vest him with the powers of Khilafat. He is known as Khalifa not because he alone is the Khalifa but because the Khilafat of the Muslims is concentrated in him.

The election of the Ameer is carried out according to the Qur'anic injunction that, "the noblest amongst you is he who is most God-fearing". Once he is elected he is invested with supreme power and authority. So long as he conforms to the Law of Allah and the Sunnah of Rasool, he will continue to enjoy the confidence of the people and command complete obedience of the Muslims.

The head of the state is not above criticism. There is no air of sanctity attached to his person. He is liable to be deposed if found wanting in the

requisite qualities. In the eyes of law he has no other status than that of a common person, or a common citizen. He can sue and be sued in an ordinary court of law in the country, and is not exempted from attendance before any court of law in the country. The court would not treat him with any special favour. He is, thus, not above the common law of the realm, either in theory or in practice. He cannot claim any preferential treatment in a court of law.

ADVISORY COUNCIL

According to the Qur'anic injunction, the head of the state has to rule and govern with the help of an Advisory Council - there being no provision for a Prime Minister in the modern sense. This Advisory Council known as "Majlis-i-Shoora" should, however, command the confidence of the Muslims. This may not be taken to mean that the Advisory Council must be formed out of the party which may be in a majority in the legislature. Since the head of the state is the noblest and the most pious person in the realm of Islam, he is dependable and has a free choice to consult and choose as his Advisors any one he likes.

SELECTION OF THE AMEER

According to Dr. M. Inayet Ullah[1] the world belongs to Allah and He (God) has no partner in His dominion, and God has created His vicegerents on earth, but it is not possible for all to "occupy themselves to carry on the government, so they authorise (give votes to certain number out of them) some of the vicegerents to carry on the government on behalf of all, within the limits authorised by the Monarch (Allah) for their (peoples') benefit. His contention is that because "Momins" are the selected people (with good qualifications) only, it would mean indirect election. The head of the government, according to the said writer, should be selected out of the selected persons with the highest qualifications. He further contends that just as only a socialist can be the head of a socialist government, in the same manner the head of government under an Islamic constitution must be well-versed in the Divine Law (Islam) and must act upon it, because one who does not believe in the truth of and himself acts upon the principles can never be expected to carry on his duties rationally and faithfully.

"Ati'ullah" is a definite command requiring all Muslims to obey God implicitly. The people and more specially the head of the government must obey the commandments of Allah (Holy Qur'an) and should not, at any

1. Dr. Muhammad Inayet Ullah, *A proposed Islamic Constitution for Pakistan*, "Qur'anic Constitution", p. v.

cost, use his authority against those commandments, for the benefit of himself or his relatives or friends. Similarly, he should obey the orders of the Holy Prophet (Sunnah). "Wa-ti'ur Rasool" makes it clear beyond any shadow of doubt that "it is not only necessary to follow the Qur'an, but it is also necessary to follow the Sunnah which are not against the dictates of the Holy Qur'an.

Further analysing the concept of authority in Islam, Dr. Inayat Ullah says: "Wa-ulul amr-i-minkum" (and those charged with authority) clarifies the obligation resting on the people. People are ordered to obey those charged with authority (because they have selected them out of their own free will) to carry on the government. Here the word "Ati-u" is not repeated as before the words "Allah" and "Rasool" respectively. It is, therefore, clear that the orders of the head of the government are to be obeyed only so long as they are in conformity with the commandments of Allah as laid down in the Qur'an and the Rasool's Sunnah, but no further. In other words, it would imply that all those orders which do not conform to the yard-stick provided by the Holy Qur'an and the Sunnah of the Holy Prophet may be disobeyed with impunity. To this interpretation of the verse of the Holy Qur'an, I do not find myself able to agree with Dr. Muhammad Inayat Ullah. Much trouble may crop up as regards the interpretation of conformity or otherwise in this respect. If each one were to put his own meaning on the orders of the executive, there would be no end to disorder and anarchy in the state. The subjects of an Islamic state, like those of other states, are bound to obey the orders of the executive unless, of course, if such an order or orders are declared invalid or void by the judiciary or any responsible and impartial body of persons who, by virtue of their knowledge, ability and experience, are competent to give a correct and unbiased meaning thereof.

POWER AND TRUST

To quote another writer, Mr. Majid Siddiqi, the Holy Qur'an lays down: "Innal laha ya murukun intu'du al amanta ila ahliha" (God doth command you to render back your trusts to those whom these are due). (CH. 4:8).

It is, therefore, clear and undisputed that in an Islamic state (Khilafat-i-Pakistan, if we may call it so) the state holds its power in trust from Allah so as to enable the people to live in accordance with the Law of Allah, Sunnah of Rasool and the conduct of the Khulafa-i-Rashidin and Companions of the Apostle.

The Ameer shall, according to one opinion, be elected for life. On being appointed, he shall take the oath of allegiance to Allah and His Apostle

and pledge to rule and govern in accordance with the Law of Allah, the Sunnah of the Rasool, and the conduct of the right-guided Khulafa-i-Rashidin.[2] Canvassing direct or indirect, for Ameership, shall permanently disqualify a person for holding any office in the Khilafat-i-Pakistan.

AMEER'S POSITION AND QUALIFICATIONS

According to the author of the "Islamic State", Mr. M. A. Majid Siddiqi, the Ameer may be deposed by orders of the Supreme Tribunal if found and proved guilty of contravening any Islamic principle. Ameer is the legal head of the state, commander-in-chief of the land, sea and Air forces, the leader of the millat. He will be selected by a direct universal vote. He must be a popularly devout Muslim enjoying long-standing good reputation. He must be morally sound and Amin (trustworthy) in discharging public duties entrusted to him. He cannot offer himself as a candidate. His candidature must emerge spontaneously from the people. Elders of the Millat may be elected to sit together and select a person for the office of Ameer and present him to the people for confidence and direct voting.

The Ameer is to conduct the affairs of the state in consultation with counsellors according to the injunctions of the Qur'an. The Holy Qur'an lays it down: "And consult with them upon the conduct of affairs; and when thou art resolved thou put thy trust in God".[3]

The political ideal of Islam is to make human beings capable of acting together in the service of God as well as of one another, and to build up institutions by consent and consultation so as to encourage right conduct and justice. The Ameer will carry on the administrative work with the help of a Majlis-i-Shoora (Consultative Body). This Body must in any case, whether selected or elected, enjoy the confidence of the Millat. The Ameer is not bound to accept their advice if he thinks their view is contrary to the Divine Law. There can not be any party system - no question of majority or minority in the Majlis. The Ameer of the Millat becomes in actual practice the servant of the Millat and his office carries with it great responsibilities.[4]

According to yet another orthodox opinion, the leader (Ameer) will be selected on the principle enunciated in the Qur'anic verse: "The most respectable among you is he who is the most pious". This means that only such a person will be elected to this position who enjoys the full confidence of the Muslim public. After his election he will exercise full authority in all respects. He will be completely relied upon and will be fully obyed so

2. M.A. Majid Siddiqi, *Pakistan- The Islamic State: Sketch Constitution*, pp.xcvi - xcix.

3. *The Holy Qur'an*, CH. 3:159

4. M.A. Majid Siddiqi, *Pakistan- The Islamic State:Sketch Constitution*, p. 23.

long as he follows the laws of God and His prophet. Moreover, the Governors appointed by the Ameer will not be above criticism. Every Muslim man and woman will be permitted to criticize not only his public activities but also his private life. He will be liable to deposition. In the eye of law his status will be that of a private ordinary citizen. He can be sued in a court of law and will not be entitled to any discriminatory or preferential treatment in court.

The leader (Ameer) will have to take counsel. The Advisory Council will be one that is trusted by the common Muslims. There is nothing in the Islamic law to prevent this Council being elected by Muslim votes, although no instance of such a procedure is to be found in the Khilafat-i-Rashida (The Caliphate of the first four Caliphs).[5]

The correct opinion appears to be that the Holy Prophet of Islam left no hard and fast rule as to the title of the supreme head of a Muslim state, or as to whether that head was to be one man or a body of men. That point was to be decided by the people themselves through Ijma' or consensus of opinion of the entire Muslims. They could appoint a king, a sultan, a president or a council. But no matter who was appointed and in what manner, the ruler, governor or the governing body was there only to see that the laws contained in the Holy Qur'an or the Sunnah of the Prophet, were carried out, and that any fresh laws of detail in state management were in conformity with the general principles enunciated by the great law-giver. It was the duty of the head of the state to safeguard the interests of the state internally as well as externally, according to the laws of Islam. The head of a Musilm state is merely administrative and executive. No Khalifa or Governor was at liberty to act contrary to the decision of a court of justice. Tribunals of justice were independent, and rich and poor alike, sultan and servant, were tried equally by the Kadi (Chief Judge), a pauper on application to the judge having the power to call the king to account.[6]

Prophet Mohammad (Peace be on him) was once asked, "What is Islam?" to which he repleid: "Obedience to God's Commandments and kindness to His creatures". On another occasion he was asked, "Who is a Muslim?" and he replied: "A Muslim is that from whose tongue and hand the people are safe". This goes to show that Islam is a religion of peace and, therefore, the head of the state should be peace-loving, peace-abiding and a promoter of peace, both internally as well as in the external sphere.

5. Sayyed Abul Ala Maudoodi, *Political Theory of Islam*, p.178.

6. Muhammd Amin, *Glory of Islam*, p.178.

Chapter X

SCOPE FOR LEGISLATION

The Holy Qur'an and the Sunnah of the Rasool are the only criteria by which we judge the correctness of our actions. Anything that conflicts with it has to go without remorse, without pause. Injunctions of the Qur'an and the life examples of the Apostle, are the last word for us. That is our stand and we abide by it in diversity, prosperity and adversity alike. Whatever the course of political events in the history of Islam, it is the outstanding fact, throughout the long centuries of Muslim hegemony, that the personal law, fundamentals of commercial law, taxation and civil law, taxation and civil law, political, social and public regulations as expounded in the Qur'an and practised by the Apostle of Allah, were seldom flouted publicly or held in abeyance deliberately. The Holy Qur'an says:

"He it is who made you vicegerents (Khalifas) on land; he who rebels, rebels at his own risk: the revolt of the rebels earns nothing but the disdain of their Maker, Sustainer; and their intransigence shall spell nothing but ruin on them". (AL-FITR-37).

The Sunnah of Rasool (life example of the Apostle) is "Qur'an in action". Hence these two sources form the only foundation stones whereon we rely for information and guidance of every kind. Further, it is laid down in the Holy Qur'an: "Obey Allah and His Apostle. One who obeys the Apostle, obeys Allah. His word is Allah's word; hence his word is law. Your comrade (the Apostle) errs not, nor is he deluded (re counts not futilities nor relates vanities) nor speaks he from personal motives; it is but the word of Allah".[1] Abdullah bin Abbas reported a directive of the Apostle of Allah thus: "One who disregards my life-example, is not of me".

CONCEPTION OF SHARI'AT

According to Mr. W.C. Smith, the author of "Pakistan as an Islamic State", our intention is to take the SALAF as a model. Before we introduce

1. *The Holy Qur'an*, Ch. 53:2-4.

the classical penalty for theft, we must first preserve the entire population from hunger, nakedness and so on and so forth. Before we punish ZINA (adultery) with stoning we must reform NIKAH which has acquired all sorts of un-Islamic elaborations. For morals, we must teach Islam, inculcating its principles and precepts. Only then shall we be heard on immorality, thus said a Maulana.[2]

The question of an Islamic state is one of laws. Indeed many of those who speak of wanting an Islamic constitution, I find on pressing them, actually have in mind the quite different matter of Islamic laws. That the laws of Pakistan should be Islamic is a proposition that, so stated, would command considerable agreement. Some wanted that the law of Pakistan should be the Shari'at. Some groups vociferously advocated adoption of Shari'at and declared that the Constituent Assembly "should expedite the drafting of the constitution wherein it should be explicitly laid down that the Islamic Shari'at shall form the inviolable basic code of all legislation in Pakistan and that all legislation which may contravene the Islamic Shari'at shall be null and void and considered "ultra-vires". A senior member of the Administration with an Oxford degree remarked: "Certainly the law of Pakistan must be the Shari'at. Otherwise there was no point in having Pakistan".[3]

For some the question in these terms is quite simple. The Shari'at, they feel, can be pointed to: it exists in the books. The laws of Islam, in their view, have been worked out by the FUQAHA over the centuries. Many of those who adopt this position do not in fact know what it is in these law books. Some feel that the fundamentals of the laws were worked out once and for all in the early golden age of Islam. In this view it would be the task of Pakistan to apply these fundamentals to twentieth century circumstances, a task that many admit would be of imposing proportions, demanding the highest calibre of knowledge, acumen, judgement and devotion. Every thinking Muslim agrees now with Iqbal that "fiqah is flexible". It is a process. Fiqah has changed, must change and will change", a great creative effort is needed on the part of Pakistan or the Muslim world, in order to reproduce the new adaptation or version of the law for the modern world. One might emphasise each one of the words "Great", "Creative", and "Effort". Even for most of those, then, who would characterise an Islamic state by Islamic law, the latter concept like the former, is an ideal to which Pakistan ought, through constructive diligence of its citizens, to aspire. Those who urge that Pakistan should adopt Islamic laws, and yet

2. Wilfred Cantwell Smith, *Pakistan as an Islamic State*, (Pamphlet Series No. 1) p. 52.
3. *Ibid*, p. 54.

cannot define precisely what those laws are, are not merely acting from confusion; they are, however, unconsciously expressing the fact that those laws in mundane, tangible form do not yet exist, but are something to be striven for. It is part of the Muslim faith that they do exist transcendently or, to use less classical terminology, that, to strive for them is meaningful.

The learned author quoted above has tried to show that Shari'at is either misunderstood or is incapable of implementation in the twentieth century circumstances. Both the notions appear to be devoid of truth. In my opinion, if it could be possible for England to have a most efficient and successful government without a written constitution even upto date, I do not think Pakistan would, at all, be handicapped in any respect. Islam, at least, can boast of fundamental laws categorically laid down in the Holy Qur'an- and these laws, it may be stated, are not mere sacred principles of religion, but pertain to the mundane and material aspects of the life of the individual and the community. There is a whole panorama of administrative and legislative injunctions which are to serve as the bedrock for the governance of life in an Islamic state. England, in this respect, had nothing spiritual-cum-mundane to fall back upon, and practically started from the scratch in the sphere of legislation and administration. Incessant struggle between the King ad parliaments gave rise to a series of precedents, traditions and fundamental rights of the people which became embedded in the constitutional structure of the country. Islam, in more ways than one, has to give a solid bulwark whereon an Islamic state can be built up into a magnificent and ever-lasting edifice.

I have quoted Mr. W.C. Smith at some length, and commented on his views with a twofold purpose. My first idea is to reproduce the thoughts of a non-Muslim on the most vital aspects of the subject. In the second place, I think that Mr. Smith, whatever else, is not at all biased or prejudiced in the treatment of his subject, yet, notwithstanding his candidness and sincerity, his views must be studied with caution. To me, it is not at all difficult to understand that Shari'at cannot be altogether divorced from laws as both of these are complementary to each other.

SALIENT FEATURES

Broadly speaking, the salient features of a typically and ideally Islamic constitution, are as follows:

(1) The well-being of all citizens is the chief purpose of an Islamic state; it shall not be merely a police state whose functions end with the securing of law and order. The Islamic state is a welfare state.

(2) No citizen, Muslim or non-Muslim, shall be taxed beyond his capac-

ity; those who are incapable of earning shall pay no taxes; on the other hand, they shall be helped by the state exchequer.

(3) There shall be freedom of trade but speculation in trade shall be prohibited and cornering or hoarding of commodities for profiteering shall be considered unlawful.

(4) There shall be a circulation of economic goods in society. Keeping property undivided in a joint family system shall be unlawful. On the demise of a property-holder, his near relations shall inherit according to an equitable system so that capital may be dispersed in society in order to make its benefits wide-spread.

(5) No system of the election of a president of the Republic is prescribed. Recommendation to elect a president may be made from among a panel of names but no nomination of a successor, not ratified by the people, is allowed. The principle is elicited from the practice of the Prophet and his immediate successors. Everyone has a right to be elected and every one has a right to vote if he satisfies certain elementary conditions of mental and moral fitness. The president may be called to account for any of his actions by any citizen, and it will be his duty to justify his conduct.

(6) According to Islam, sovereignty does not belong to any monarch or a class nor does it rest with the people, in general. Sovereignty belongs to God and the principles of social justice are derived from His attributes. To men of character and integrity, that sovereignty is delegated. The fundamentals of the constitution of the state are ordained by God; the fundamental principles of legislation are also sanctioned by Him. With the alteration of circumstances new legislative adaptations are allowed by consensus of the learned.

(7) The principles of logical reasoning and analogical deductions were adopted by Muslim jurisprudence under the terminology of Istinbat, which literally means digging out and bringing forth water; Ijtihad and Istikhraj which means logical and analogical deductions. The Holy Prophet was quite aware of the fact that no code could be comprehensive enough to cover all the multifarious situations of life. Human beings are endowed with reason and that requires to be exercised, developed and moralised. Even a moral code could not be comprehensive enough to deal with the infinite variety of human situations; any attempt at covering the details of applied morality results in a casuistry which often leads to the reductio-ad-absurdum of moral principles. He was averse to the multiplications of regulations. It is related in a well-authenticated Hadith that he was very angry with a man who pestered him about details of what is lawful and what is unlawful to be eaten. He said, "Do not put me questions unnecessarily and

be contented with what God has ordered or forbidden. I am afraid, any answer that I give you to your questions, would become binding on the followers of Islam, and thus curtail their liberties in the spheres of life that have been left free for rational judgment". There are a number of sayings of the Prophet and verses of the Qur'an which form the basis of logical or analogical deductions. On being appointed the Governor of Yaman, Muadh was asked by the Holy Prophet as to the rules by which he should abide. He replied; "By the law of the Quran". "But if you do not find any direction therein", asked the Prophet. "Then I will use Ijtihad or exercise my judgment and act on that", came the reply. The Prophet approved of it and blessed him. It is related about a similar enquiry that the Prophet advised the man to consult his OWN HEART, that is to say, OWN REASON AND CONSCIENCE in coming to a decision. It showed that during the very life-time of the Prophet, IJTEHAD was freely resorted to by his Companions, whenever necessary. There are numerous instances in the lives of the early Khalifas in which they exercised their own judgment in a way that appeared to contravene even an injunction given in the very text of the Quran. When other civilised nations inflicted capital punishment on the thief, Islamic practice was only to cut one hand of the thief. But during a famine Hazrat Omar ordered that so long as the famine lasted, a thief's hands shall not be cut because the conditions were abnormal. Omar's rule is full of cases in which he deviated from the ordinary rules and laws because, according to him, circumstances demanded the modification or abeyance of a rule. He refused to distribute the lands of the conquered countries among the Muslim conquerors. Some Companions of the Prophet quoted the example of tribal warfares in which sometimes the land of the vanquished enemy was confiscated and distributed. They thought that Omar was introducing an innovation and was violating the accepted rule. But he stuck to his opinion that tribal warfare was different from the conquest of civilised countries with settled governments, and refused to grant land to any Muslim soldier.

FREEDOM TO LEGISLATE

The Muslims, it is clear from the above, are free to legislate as need arises in the spirit of social justice. The few laws in the Qur'an are often permissive and give large latitudes to suit any change in circumstances. Its theocratic basis grants equal civil liberties to the non-Muslims who live as loyal subjects of a Muslim state; their personal laws are respected and even a Muslim judge must decide the cases of non-Muslims according to their respective personal laws, provided they do not violate the general princi-

ples of social justice on which all rules and regulations are based.

Honest difference was, however, respected. The four great jurists or Imams whose systems of jurisprudence later on hardened into Sunni orthodoxies, freely differed among themselves after the fashion of the present-day members of the judicial bench. Inspite of their differences they all receive the veneration that they deserve for having freely and candidly applied the principles of Islam according to their own enlightenment, erudition and angle of vision, in the situations they had to deal with. The great Mujtahids of Islam have endeavoured to meet these demands by various methods known as QIYAS (analogical reasoning), ISTIHSAN (equity) and ISTISLAH (public good). And towering above all is the great foundation of democracy, IJMA' (the consensus of opinion of those who are endowed with knowledge). Decision by raising of hands and counting the votes of the ignorant and the wrongdoers alike, each one to count for one and nobody as more than one, has no place in Islam, so far as the framing of essential legislation is concerned. All must be equal before the law, but all could not be equal in framing the law. Framing of just law is the concern, the right and the duty of men of knowledge and integrity; it should not become the ignoble game of party politics where legislation is proposed or opposed in order to maintain the strength of a party or to dislodge from power a ruling clique. Ijma' or the consensus of the community is a vital principle in Islamic jurisprudence but any democracy, if it claims to be Islamic, would be of a different type from both the British and the Russian pattern, the one based on the clash of two or more parties, and the other, based on the monopoly of power by a single party, which can brook no opposition. Islamic society is a class-less society; there is no church and no classes with special privileges or interests. But there must be a method of choosing the councillors from among the people of learning, intelligence and character. Money must not play any part in politics, otherwise, it would become democracy in name, and plutocracy in practice. An Islamic practical type of democracy should create its own distinctive system; no slavish or blind imitation of any existing system claiming to be a democracy would accord with the spirit of Islam.

QUALIFIED LEGISLATION

The aim of an Islamic vicegerency or state is to enable its citizens to live openly according to their beliefs and its major problem is to see that they do not become hypocrites or that the laws of the state do not force them into hypocrisy. These are the inalienable rights of the citizens of an Islamic vicegerency. These rights, however, imply certain duties, the du-

ties of ensuring that the rights of one do not infringe upon the rights of another.

The primary laws of an Islamic vicegerency must, therefore, concern themselves with the preservation of the conditions in which individuals may live honestly according to their beliefs; in other words, the preservation of the Islamic vicegerency. The Islamic state's existence would be in danger if an attempt were made to overthrow it violently, whether from within or without. A portion of the primary laws must, therefore, enable the machinery of the state to protect itself from violent overthrow from within or without.[4]

No individual, no Ameer and not the whole Millat can lay claim to the sovereignty of the state: their status is that of subjects (khalifa - vicegerent) under the sovereignty of God. In the words of the report of the Court of Inquiry.[5] When it is said that a country is sovereign, the implication is that its people or any other group of persons in it are entitled to conduct the affairs of that country in any way they like and untrammelled by any considerations except those of expediency and policy. An Islamic state, however, cannot in this sense be sovereign because it will not be competent to abrogate, repeal or do away with any law in the Qur'an or the Sunnah. Absolute restriction on the legislative power of a state is a restriction on the sovereignty of the people of that state and if the origin of this restriction lies elsewhere, than in the will of the people, then to the extent of that restriction the sovereignty of the state and its people is necessarily taken away. In an Islamic state, sovereignty in its essential juristic sense, can only rest with Allah. In the same way, democracy means the rule of the demos, namely, the people, directly by them as in ancient Greece and Rome or indirectly through chosen representatives as in modern democracies. If the power of the people in the framing of the constitution or in the framing of the laws or in the sphere of executive action is subject to certain immutable rules, it cannot be said that they can pass any law that they like, or, in the exercise of executive functions, do whatever they like. "Indeed", continues the Report, "if the legislature in an Islamic state is a sort of Ijma' the masses are expressly disqualified from taking part in it because Ijma'-i-Ummat in Islamic jurisprudence is restricted to Ulema and mujtahids of acknowledged status and does not at all extend, as in democracy, to the populace".

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4. Kemal A. Faruki, *Islamic Constitution*, (1952) p. 77.

5. *Report of the Court of Inquiry* constituted under Punjab Act II of 1954 to enquire into the Punjab Disturbances of 1953 (Printed by the superintendent, Government Printing, Punjab 1954), p. 210.

These observations made by the learned author of the Report are open to serious objections: Firstly, there is no priesthood in Islam and, therefore, ulema and mujtahids are not a privileged class. Secondly, even modern democracies exclude certain classes, for example, insane, idiot, criminal, insolvent, minor and in certain cases, woman. The Basic Democracies in Pakistan had debarred politicians upto December, 1966, those convicted and dismissed from service, and a host of others. It is, therefore, submitted that if suffrage and candidature are to be regulated by certain necessary qualifications on the point of character, knowledge and virtue, democracy would not at all be handicapped; rather, it would considerably improve in its utility and effectiveness.

THE LAW OF GOD

God alone is sovereign and the Law-Giver. The command of the Sovereign is law. The Apostle and the Ameer both are subject to God's commands.[6] They can neither make laws nor modify or change the Law of God. The Millat is to submit to the Apostle and the Ameer because they proclaim and enforce the Divine Commandments as His Agents or Deputies.[7] The Ameer of the Millat has thus delegated and not original powers. All Muslims have a claim to Khilafat and every Muslim, in the real sense of the term, is a Khalifa of God on earth and is personally responsible to Him. Consequently, all Muslims have equal status and enjoy equal rights in the body politic. The prophet declared: "The Arab has no superiority over a non-Arab. the best among you is the one who is most virtuous". It is the responsibility of the Millat and the Ameer to establish the Rule of God according to the Book of God and the Traditions of the Prophet. Thus, the supremacy of the Divine Law is one of the fundamental tenets of Islamic polity, and the Ameer as well as the members of the Millat have to submit to the Shari'at for their guidance, considering it as the Will and Command of Allah. It is clear from the above that the Islamic system of government is not democracy of the Western type where a law may be enforced, changed or modified at the will of the majority. In Islam, it is the Rule of God and the Law of God that prevails. The Muslim Law imposes

6. "I only follow the command which emanates from Allah above". *The Holy Qur'an*, Ch. 6:50

7. "Allah has promised to those of you who believe and do good that He will appoint them as His vicegerents on earth as He had appointed others before them". *The Holy Qur'an*, Ch. 24:7.

upon the individual the duty of obedience to the Imam.[8]

According to Islam no man can lay down the law for any other man. Allah alone has the right to determine the aims of human existence. The last Prophet is the sole authority to prescribe laws for the faithful. The state itself is a human agency which is subject to this Divine Law. The state machinery is authorised merely to discover, apply and follow these laws, the courts adjudicating whether a particular inference is correct and whether it is ordained by the Holy Qur'an and Hadith at all.

Both the state as well as the courts as interpreters of Shari'at are subject to the precedents of the admitted ulema and Aulia Allah of the past. One of the functions of the Legislative Assembly of Pakistan will be to prepare the lists of the ulema and Aulia who may be accepted as Salf-i-Saliheen, and also to codify their interpretations authoritatively.[9]

The fundamental sources of Islamic Law (Ilal-i-Arba') are four in their order of priority as follows:

1. The Book (Kitab): 2. The Traditions (Sunnah): 3. The consensus (Ijma'): and 4. Inference (Qiyas).

A clear rule of law for the first two sources is imperative and primary (Nass). It has merely to be known and carried out. But if there is some doubt about the exact connotation or denotation of a rule from the first two sources, or it has to be inferred form the rest of the sources, then it is a question of opinion (Rai) of those who are fit and qualified to express an opinion (Ahlur-rai). It is the fourth and last source which comes nearest to modern legislation. Inference is only permissible when the prior three sources are silent on the question, or there are new factors in a case to justify a deviation. An inference is always to be governed by the fundamental principles of the prior sources. All this means that there are certain basic values and practices which Islam considers permanently essential for human society as its "Steel Frame" without any change throughout the ages. However, when a completely novel problem or situation arises, it is evident that it is not a question of inferring (Qiyas) but also a question of selecting (ijtihad) one of the various possible parallel inferences. This variety of choices is finally determined under the rule of preference on the basis of equity, justice or public good (Istihsan) or ratio legis (Mafhoom). In this

8. The Prophet said, "One who obeyed me obeyed God; one who obeyed the Imam obeyed me. One who proved faithless to me is faithless unto God and one who was disobedient to the Imam was disobedient to me. (*Sahihain*)

9. Mutakkir, *A Draft Modern Islamic Constitution for Pakistan*, p.15.

preference, popular custom (Urf-i-A'm), special custom (Urf-i-khas) or mere usage (A'dat) may prove a helpful guide. When no definite rule of law is available then good conscience (Taharri) can be followed.

When a novel rule of law or practice (Bid'at) is adopted, its test is conformity to principles of law (Shari'at) and public good (Rifah-i-A'mma). If approved by this test it is a popular novelty (Bid'at-i-Hasna), if disapproved then it is an improper novelty.

PROGRESSIVE LEGISLATION

According to authoritative opinion, the following are some of the principles which govern legislation under a progressive regime in Islam which, to all intents and purposes, is a religion of peace and progress.

IJMA' OR CONSENSUS

Ijma' or consensus implies the will of the people whose opinion should count on account of knowledge and character which creates a large scope for the sovereignty of the people.

In the words of the Report[10] Ijma' means concurrence of the mujtahids of the people, i.e., of those who have a right, in virtue of knowledge, to form a judgment of their own, after the death of the Holy Prophet. The authority of Ijma' rests on the principle of a divine protection against error and is founded on a basal tradition of the Holy Prophet, "My people will never agree in error", reported in Ibn Maja. The essential point to remember about Ijma', according to the authors of the said report, is that it represents the agreement of the Mujtahids and that the agreement of the masses is especially excluded.

In my opinion, it is difficult to agree with this narrow definition of Ijma' in an ideal Islamic state where knowledge should not remain the proud privilege or the exclusive domain of the few at the expense of the many who constitute the masses. So many hundreds of years after the death of the Holy Prophet, it would be no longer possible to limit Ijma' to the selected few who could at that time know what the Prophet would have done in a particular situation in his own life-time. The long distance of time has mitigated the severity with which the segregation of Mujtahids as a class could have been possible. Now, every pious, virtuous and learned man would be a Mujtahid and Ijtihad would not be confined to any particular class.

10. *Report of the Court of Inquiry* constituted under Punjab Act II of 1954 to enquire into the Punjab Disturbances of 1953. (Printed by the Superintendent, Government Printing, Punjab 1954), p. 208.

Again, according to the Report of the Court of Inquiry[11], the distinction between "Ijma" and "Ijtihad" is that whereas the former is collective, the latter is individual. Ijtihad means the exertion of one's self to the utmost degree to force an opinion in a case or as to a rule of law. This is done by applying analogy to the Qur'an and the Sunnah. Ijtihad did not originally involve inerrancy, its result being always a Zann or fallible opinion. Only combined Ijtihad led to Ijma', and was inerrant. But this broad Ijtihad soon passed into special Ijtihad of those who had a peculiar right to form judgments. When later doctors looked back to the founding of the four legal schools, they assigned to their founders an Ijtihad of the first rank (Ijtihad-i-mutlaq). But from time to time individuals appeared who returned to the earliest meaning of Ijtihad and claimed for themselves the right to form their own opinion from first principles.

I may point out in this connection that these individuals were not wrong when they claimed for themselves the right to form their own opinion in the light of the older directives. Of course, it would be difficult to agree with Suyuti (died 911) in whom the claim to Ijtihad unites with one to be the Mujaddid or renewer of religion. Again, the views that there must exist at least one Mujtahid just as in every century there must come a Mujaddid, do not appear to be rational or based on any sound reasoning. Collective Ijtihad may lead to Ijma' but the theory of Ijma' having divine protection against error or inerrancy, is not sustainable. To me it appears that Islam is a dynamic force and a later Ijma' may supersede the previous Ijma' as being unsuited to the situation obtaining in later times.

IJMA' AND LEGISLATION

It is contended that Ijma' as known to the Muslim jurists, cannot be identified with what is called legislation in the sense in which the term is used today. The argument may be stated in the words of the authors of the Report of the Court of Inquiry: "Since Islam is a perfect religion containing laws, express or derivable by Ijma' or Ijtihad, governing the whole field of human activity, there is in it no sanction for what may, in the modern sense, be called legislation. Questioned on this point, Maulana Abul Hasanat, President, Jami'at-ul-ulama-i-Pakistan says:

Q: Is the institution of legislature as distinguished from the institution of a person or body of persons entrusted with the interpretation of law, an integral part of an Islamic state?

A: No. Our law is complete and merely requires interpretation by those who are experts in it.

11. *Ibid.* p. 209.

Q: Who were Sahibul-hall-i-wal-aqd?

A: They were the distinguished ulema of the time.. These persons attained their status by reason of the knowledge of the law. They were not in any way analogous or similar to the legislature in modern democracy.

The same view was expressed by Amir-i-Shari'at Sayyed Ataullah Shah Bukhari, in one of his speeches reported in the 'Azad' of 22nd April, 1947 in the course of which he said that our Deen (religion or faith) is complete and perfect and that it amounts to Kufr to make more laws. Maulana Abul Ala Maudoodi, however, is of the opinion that legislation in the true sense is possible in an Islamic state on matters which are not covered by the Qur'an, the Sunnah or previous Ijma' and he has attempted to explain his point by reference to the institution of a body of persons whom the Holy Prophet and after him, the Khulafa, consulted on all matters relating to affairs of state ... That there was a body of men who were consulted, is true, but whether this was a standing body and whether its advice had any legal or binding force, seems somewhat doubtful. These men were certainty not elected in the modern way, though their representative character cannot be disputed. Their advice was certainly asked on ad-hoc basis but that they were competent to make law as the modern legislatures make laws, is certainly not correct. The decisions taken by them undoubtedly served as precedents and were in the nature of Ijma' which is not legislation but the application of an existing law to a particular case. The conclusion arrived at by the authors of the Report on this point, does not carry conviction. I am certain that Ijma' was nothing else but legislation, as in those times there could be no complete separation of powers or the theory of checks and balances, which came to be expounded much later.

QIYAS

Qiyas or judgment by comparison, is reasoning based on analogy. When cases come up that could not be covered by the prescribed texts, decision is arrived at on the basis of analogy. In other words, Qiyas may be described to be a decision on the basis of a previous decision of the court or analogical deductions on the ground of similar reasoning.

It is of importance to note that however great the Imam or the jurist, no infallibility is attached to his rulings which are not, really speaking, legally binding like the decisions of the Supreme Court of Pakistan in relation to the subordinate courts of the country. Any jurist may err or disagree, and there is always room for the coming generations to apply analogical deductions to new circumstances in the manner which they consider to be more reasonable. The doctors of law differ among themselves as much as other

doctors, and Islam would not recognise any church claiming infallibility and implicit obedience.

ISTIHSAN

The next principle of Islamic jurisprudence is Istihsan which literally means preferring a regulation because of its obvious good- ness or justice. Public good and interests of justice are recognised as principles of legislation, that is, the Istislah of the Malikies. This doctrine incorporates the well-known principles of justice, equity and good conscience which form the essential ingredients of all modern legislation.

ISTIDLAL

This theory gives recognition to the customs and usages of old pre-Islamic Arabs, which, in case they do not conflict with the principles of natural justice, public good and the law contained in the Holy Qur'an and the accepted Traditions would serve as one of the sources of law in an Islam state.

In Islam there is complete equality before law. The Prophet himself asked others to exercise their right of retaliation or compensation against himself if he had inadvertently done them any wrong. The mighty Khalifa Omar and the wise and pious Hazrat Ali appeared in the courts as claimants or defendants to demand even-handed justice.

Islam inculcates government by consultation. The Prophet almost daily held consultations with his companions on matters of the State. The Qur'an mentions as one of the good qualities of a Muslim that he is not autocratic or dictatorial but settles all matters of social importance by consultation.

As the Muslim nation has received in the Qur'an the designation of the nation of the "Middle Path", the nation follows the golden mean in all extremes. This is analogous to the Greek view of life whose motto was "Nothing in Excess". This characteristic of Islam runs through all its teachings and practices. The entire ethics of Islam is a practical ethics which made Renan remark that "Islam is a religion for men. It is not meant for angels."[12]

It was really an Islamic consultative body that was convened off and on by the great Khalifa Omar; men of understanding and character came together, without forming a single dictatorial party, or splitting up into majority and minority groups. If an Islamic state convenes Assemblies or Consultative Groups for the settlement of specific or general problems, every member must be an independent member representing particular regions or

12. Dr. Khalifa Abdul Hakim, *Islamic ideology* . p. 264.

particular interests, not elected on any party tickets. He must be chosen only on the basis of his knowledge and character.

PRINCIPLE OF REPRESENTATION

Islam enjoins that the best in a community should rule and the best can only be judged on Islamic principles according to their faith and deeds. Only on this criterion of affinity of belief or of action does Islam recognise the categories of human beings - not on birth, language, appearance or geographical nearness. This point as to who are the best, the most Al-Amin, must absolutely and unequivocally, in this world rest with God's vicegerents - the citizens of the state. In choosing those who shall act as the agents of the people, their method of selection by the vicegerents should be on these two criteria: their beliefs and their deeds. For those who state that they are Muslims first, the constituency in which they should vote for representatives to a house of belief, is best expressed by the mosque in which they say their Friday prayers. Here in the company of those who believe like him and whom he knows personally through weekly association, a Muslim should choose the best, the most Al-Amin from amongst the congregation. In choosing the best he should be motivated by the character of the candidate which in view of his knowing them personally, he will be in a satisfactory position to do, to evaluate to what degree they merit the description of Al-Amin.[13]

For non-Muslims, the basis will be similar. Thus Christians will go to their church, Parsees to their firetemple, Hindus to their Shaivite or Vaishnavite temple, and similarly for Jews, Budhists etc. For those whose ultimate belief is Communism, they will vote through the local Communist Office and those who believe in secular nationalism, with their religion being only a secondary loyalty, a Nationalist House will be formed in each region by the adherents to this belief. These belief representatives would constitute an electoral college of belief, who in turn would choose a house of belief (of approximately 350 members) to equate in members and also in proportion to the electoral college between differing fundamental beliefs, with the other house.

I do not quite agree with the above-mentioned suggestion regarding the principle of representation in Islam. I am very clear in my mind that Mr. Faruki's scheme of representation would introduce a sort of party system from the back door; and as has been said earlier, Islam abhors the party system with all its attendant evils. Election through the agency of mosques would also not solve the problem. Communism would have no place to

13. Kemal a, Faruki, *Islamic Constitution*, (1952) pp. 58-60

breathe or flourish in an Islamic regime; the Parsees, the Hindus and the Buddhists etc. shall be selecting their representatives only to the Upper House by means of separate electorate and reservation of seats in the Upper House alone.

To ensure that only men of character and virtue are returned to the legislature, we shall have to introduce an oath of allegiance and supremacy before allowing anybody to contest an election. For the first few years of our beginning, it shall be absolutely necessary for the entire Muslim electorate to take an oath swearing allegiance to God, and another oath declaring that he believes in the supremacy of the Prophet Mohammad (may peace be on him) over all the other prophets.

Mr. Manzoor Qadir, a former Foreign Minister and an Advocate of the High Court of West Pakistan, Lahore, declared at Jaranwala (Distt. Lyallpur, West Pakistan) on March 8, 1959 that "It was not easy to frame an Islamic constitution". Clarifying his stand he asserted that "the greatest obstacle in the way of framing an Islamic constitution was the existence of 72 sects among the Muslims and their different interpretations of the Holy Qur'an and the Sunnah". My reply to the learned Foreign Minister would be that it is not an obstacle at all. The sects have no meaning whatsoever. One must profess to be a Muslim and be prepared to take the oaths of allegiance and of supremacy suggested above. One who does not so swear, shall be declared at once to be a non-Muslim who must join their own respective communities to secure representation to the legislature. Islam would not tolerate any black sheep- a man must either be a Muslim or a non-Muslim; he cannot be both at the same time.

MAJORITY VOTE

Islam does not recognise the "Majority Vote" principle. It does not admit that the majority cannot err. None except the Apostle of Allah is infallible, since he speaks through divine guidance. An individual's opinion can be sounder as against the unanimous decision of the Advisory Council. The best example is that of the first caliph of Islam, Hazrat Abu Bakr, who declared war, overriding the overwhelming opinion of his closest advisers who later on confessed boldly the soundness of the caliph's action, and on those who refused to pay zakat, though they had entered the fold of Islam and were paying zakat during the life-time of the Apostle of Allah. Hence according to the principle of Islam it is possible that the opinion of a single individual might be nearer to the truth than the whole house of councillors. In this context I am reminded of the attitude of a president of the United States of America, Abraham Lincoln who put a certain proposal before his

cabinet of seven ministers. The vote was Seven Noes, as all the ministers opposed it. The American president alone cast his vote in the affirmative. So the President remarked, "The vote is seven Noes and one Aye, and therefore, the Aye has it".

Chapter XI

ELECTIONEERING IN ISLAM

In Islam there is no place for candidature and electioneering in the modern sense of the term. The Apostle of Allah has left clear instructions to the effect that the aspirant of an office should not be entrusted with an office. To take the charm out of such positions, it would be feasible to reduce their emoluments to the barest minimum, and only such amenities may be allowed as are within the reach of the majority of the population.

Islamic spirit revolts and scorns at the mere idea that two, three or four candidates should offer themselves for an office and indulge in pamphleteering, party meetings, and propaganda against one another, employ all sorts of evil means to exploit the voters and ultimately, the one who excels in his resources of falsehood, fraud, cleverness and unscrupulousness may win the election.

FRANCHISE

Islam does not concede that physiological puberty is the only condition for conferring franchise. It also takes into account mental and moral maturity. The measure of judgment in an Islamic state is its quality and not the quantity in the first instance. It is not the opinion of the many that prevails, but the opinion of the pious (Muttaqi) and the wise (A'lim). Pious are those whose conduct conforms to that of the last Prophet. Wise are those who know the sciences of the world and have experience of dealing successfully with the affairs in question.

The same writer suggests that "the mosque and the schools in Pakistan shall be organised in such a manner as to record at the mosque each national's conformity to his Major duties in Sharai Faraiz as well as any judicial declarations against him (Irtikab-i-Kabir) and register his educational qualification at the school". The staff of the mosques and the schools shall be appointed on the basis of competitive examinations including a scrutiny of their character. Their conditions of service shall ensure their independence

on the analogy of the judiciary.

Furthermore, every adult male national who comes up to the requisite standard of piety according to the record at the masjid (mosque) and who is also qualified educationally according to the record at the Madrassah (school) shall be registered as a sahibur-rai (voter). The main chambers suggested by him are:

Aiwan-i-khamsa: 1. The Administrative Chamber (Aiwan-i-Siyasat). 2. The Legislative Chamber (Aiwan-i-Shari'at); 3. The Financial Chamber (Aiwan-i-Amanat); 4. The Educational Chamber (Aiwan-i-Fazilat); and 5. The Military and Health Chamber (Aiwan-i-Askariat wa Sehat).

Auxiliary Chambers: 1. The Ladies Chamber (Aiwan-i-Nisaiyat) and 2. The Residents' Chamber (Aiwan-i-Rifaqat).[1]

The franchise in Islam, briefly speaking, is not the adult suffrage permitted by the modern democracies. Only such adult male and female citizens would be allowed the right to vote who are qualified on the basis of a fixed standard of knowledge of the faith, virtuous deeds and nobility of character.

Let us see what it is that God desires of the Muslims to do in regard to the matters of legislation and administration. Kemal Faruki poses the question, "What it is that God desires of His vicegerent?". His reply is pertinent and definite. He (God) desires, according to the Qur'an that above everything else they (Muslims) should not be hypocrites. Hypocrisy is the one unforgivable sin. Therefore, the basic aim of an Islamic state for its Muslim and non-Muslim citizens alike, must be to ensure that they do not become hypocrites and that the conditions existing in the state are such that, no matter what an individual's belief may be, he is not forced by penalisation in any form, to become a hypocrite. For those who are Muslims (that is, have recognised the absolute and all-embracing sovereignty of God), an Islamic state aims at trying to assist, but never forcing them, to develop the potentialities of divine attributes that exist within them, best summarised in the description of Al-Amin or character which is both personal as well as social - towards God (to be judged by Him on the Day of Judgment) and towards fellow human beings (to be judged by society). In all cases, character posseses, according to Islam, two primary facets - faith and deeds.

In the light of what has been stated above, it is evident that an Islamic state should be based upon the laws of God as laid down in the Holy Qur'an and the Sunnah. Broadly speaking, no law can be framed which is opposed to the clear injunctions contained therein. Notwithstanding this guiding principle and rigidity of our laws we cannot help interpreting the

1. Kemal A. Faruki, *Islamic Constitution*, (1952), p. 57.

teachings of Islam in a liberal spirit so that these may easily be adapted to the needs of an everchanging society. The present day life being complicated and our social, economic and political institutions having undergone vast changes, would it be possible to stick literally to the words of the law prescribed over 1400 years ago? In my opinion, the Divine Law cannot remain un-affected by the current of events that render a man-made law ineffective or obsolete after some time. As it relates to human beings in their day-to-day life which is dynamic and moving from one height to the other, even soaring to the heavens, the Divine Law must be open to a liberal and progressive interpretation. Moreover, especially in the field of administration and politics, it becomes inevitable to modify certain procedures and policies in the light of the circumstances in which we may have to live.

While acting according to the letter of the law we should not ignore the spirit and environments in which the same was given to us by the supreme Law-Giver. "Heart within and God over-head" should be the beacon light to guide us in our ventures in the fields where clear guidance is either altogether lacking or is incapable of practical implementation. The form of government would really be the rule of God through His chosen representatives on earth, for the purposes of the common weal. The Head of the state known as the Mu'tamid-i-A'la would be indirectly elected through an electoral college consisting of "Electors for Mu'tamid-i-A'la" or Intikhab kunindagan, Now, it is our moral calibre, our behaviour and our actions that will decide the future of Islam for many generations to come. If we, the people of Pakistan succeed in making our land a full-fledged Islamic state; if we are able to prove to a disillusioned world that Islam still provides a solution for mankind's social and political ills, other Muslim nations are bound to follow our example sooner or later, and Islam will recover its pristine glory.

We have already seen that without being made an Islamic state in the true sense, the very existence of Pakistan would be in jeopardy, hanging by a precarious thread that may break any moment. If today it be said that Pakistan may be allowed to be administered as a secular state divorced from religion altogether, that would be a bold statement to make. That is one of the reasons why even the Martial Law regimes in this country had repeatedly asserted that we must act upon the principles of Islam and that we should have an Islamic constitution. Islam is a code of life and, as such, a constitution based on its fundamental doctrines, can successfully work in environments and circumstances which permit an experiment in that direction. We should, however, be careful and cautious. The Westerners would not tolerate a challenge to their own deep-rooted political institutions

which have been blindly followed by a great majority of the people in the present century. I do hope that a lead taken in this matter must bear fruit and our example can be emulated by those who love Islam and its most natural and most practicable doctrines.

LAW AND STATE SOVEREIGNTY

It is difficult for me to agree with Mr. A. K. Brohi[2] when he says, "Considered purely from a formalistic standpoint once the idea of the state as sovereign is accepted, law becomes indistinguishable for the will of the state. Law is just that which the state is prepared to enforce, and from this it follows automatically that what it enforces as law is the manifestation of its will. The content of the laws, considered strictly from the juristic point of view, becomes a matter of no consequence: It may be wise, mistaken or foolish rule of conduct which may have been sanctioned by the state as law, but all these criteria are totally irrelevant once it is realised that what is law is law only because the state has ordained it". My reply to Mr. Brohi would be that there is a difference where sovereignty vests - not in the state which is fallible, but in God who is infallible and whose judgements are based on infinite wisdom and limitless knowledge of everything that is on earth or in the heavens. There is no such thing as absolute sovereignty vested in anything or body which is mortal and subject to natural limitations. Like the proverbial sovereignty of the British Parliament, it is open to that body, if it likes, to make a woman a man or a man a woman, or do even an easier task, that is curtail the average life of a person or increase it by an order. It may take away the life but cannot restore it to the dead. In the same manner, the Parliament cannot pass any foolish act, for example, asking the parents to kill their children as soon as they are born, or to deprive the people of their liberty without rhyme or reason. The Laws of Allah, based on limitless wisdom, as they are, would, I am sure, not detract from their basic human rights to life and liberty, and would effectively maintain peace and happiness in the community.

ROLE OF EXECUTIVE IN LEGISLATION

The legislative powers in Khilafat-i-Pakistan according to Majid Siddiqi, vest in the Ameer-in-Council or Ameer-in-Majlisi-Shoora. The Ameer shall preside over the deliberations and freely take part in the discussions of the Majlis-i-Shoora and express his opinion. The Ameer-in-Council can legislate only in matters of doubt or matters not otherwise expressly stated and found in the Holy Qur'an, the Sunnah of the Rasool and the conduct of

2. A.K. Brohi, *Fundamental Law of Pakistan*, p.731.

the Khulafa-i-Rashidin and Companions. If no precedent would be available in a certain matter then the Ameer-in-Council will act in accordance with the spirit of Islam.

The decisions of the Ameer-in-Council can become law only when the Jurists' Supreme Tribunal certifies that the legislation under reference does not contain anything repugnant and contrary to the spirit of the Qur'an, the Sunnah of the Rasool and the conduct of the Khulafa-i-Rashidin and Companions of the Apostle of Allah.[3] Maulana Maudoodi is of opinion that the decisions of the Council will generally be made by the majority of votes. "But", he says, "Islam does not regard number as a criterion of truth and rectitude". In support of his contention, the Maulana cites this verse of the Holy Qur'an: "Say (O Prophet!), that the filthy and the pure are not equal even though the abundance of the filthy may fascinate you".[4]

Islam holds it possible that the opinion of a single person may be sounder than the unanimous opinion of the entire council, and if this is so, there is no reason why truth should be given up only because its supporters are in a minority, and error be accepted merely because it has the support of a large majority. Hence the Leader (Ameer) has the right to concur either with the majority or the minority and is further entitled to disagree with the whole of the council, and decide the matter according to his own judgment. Maulana Maudoodi says that no person shall be elected to the leadership, the membership of the Advisory Council or any other responsible post who puts himself forward as a candidate for these posts or tries to secure them. He adds, there is no room is Islam for candidature and electoral propaganda. The Holy Prophet has expressly commanded that no candidate should be given any post ... Islam detests the notion that the voters should be fed and taken about in motor-cars and that only that candidate among them should win the game who beats others at the game of lying, cheating and squandering money. These accursed methods are characteristics of Satanic democracy. Under an Islamic Government if the activities of a person were even to smack of such a procedure, far from being elected to the Advisory Council, he would be prosecuted and punished in a court of law.

Again, according to the same exponent of the Islamic political theory, there can be no party divisions in the Islamic Advisory Council. Every individual will be independent of others and will express his opinion freely without being influenced by party considerations. Islam does not permit that you should take sides in party politics without considerations of truth

3. M.A. Majjid Siddiqi, *Pakistan- The Islamic State*, Sketch Constitution. p. xcv.

4. Sayyed Abul Ala Maudoodi, *Political Theory of Islam*:, p. 57.

and justice.[5] This view is supported by the following verses of the Holy Qur'an: Ya ayyuhal lazina a'manu wa'tasimu behablil lahe jameea, wa la tafriqu" (O ye believers) And hold fast, all together, by the rope which God (stretches out for you), and be not divided among yourselves".[6] The Gracious Allah addresses believers (Muslims) and commands them to hold fast all together. He (God) commands them in strong words not to be divided into parties and remain only one indivisible party which would not admit of any dissensions whatsoever.

Politics is a sort of Deen (religion); as in religion so in politics no parties are allowed. In other words, party government, like the parliamentary system of the West, has no place in an Islamic Constitution. Mr. Bosworth Smith, an un-prejudiced English historian writes of Mohammad (peace be on him); "Head of the state as well as of the Church, he was Caesar and Pope in one; but he was Pope without the Pope's pretensions, Caesar without the legions of Caesar. Without a standing army, without a fixed revenue, if ever any man had the right to say that he ruled by a right Divine, it was Mohammad, for he had all the powers without its instruments, and without its supports.[7] By a fortune unique in history, Mohammad is a threefold founder- of a nation, of an empire, and of a religion. Illiterate himself, scarcely able to read and write, he was yet the author of a book which is a poem, a code of laws, a book of common prayer, and a Bible in one, and is reverenced to this day by a large part of the human race, as a miracle of purity of style, of wisdom and of truth. It was the only miracle claimed by Mohammad- his standing miracle he called it, and miracle indeed it is. Furthermore, according to H.G. Wells, Islam prevailed because it was the best social and political order the times could offer. It prevailed because everywhere it found politically apathetic people robbed, oppressed, bullied, uneducated and unorganised, and it found selfish and unsound governments out of touch with any people at all. It was the broadest, freshest and cleanest political idea that had yet come into actual activity in the world, and it offered better terms than any other to the mass of mankind.[8]

5. *Ibid*, p. 59.

6. *The Holy Qur'an*, 3:11.

7. Muhammad Amin, Glory of Islam, p. 77. (Quoted by A.A. Galwash (Cairo) in *Person and Character of Prophet Mohammad.*

8. *Ibid* , p.105 (Quoted from H.G. Wells' Essay on "Contribution of Islam" in his book, the *Outline of History.*

Chapter XII

JUDICIARY IN ISLAM

In Islam judiciary and executive are two separate departments, independent of each other. It is the business of the Qazi to apply the Law of God in matters of dispute, irrespective of the position of the parties appearing before him. Moreover, the courts do not represent the executive so as to serve like the proverbial court of Star Chamber or the Court of High Commission in England where judges like Jeffreys carried out the despicable policy laid down by the king for his own personal aggrandisement. The head of the executive, as has been pointed out elsewhere, holds the same position as a common citizen, before a court of law. The splendid record of judiciary in the history of Islam is a unique achievement in the annals of the world. An ordinary wage earner, a poor cultivator, even a beggar has full rights to sue the highest official and noble including the Mutamid-i-Ala himself, and none dare refuse appearances in the Court. The Qazi, if satisfied with the suit of the plaintiff, has full powers to enforce the Law of God on the respondent, be he the head of the state or any other high placed official or personality. Similarly, if the Mu'tamid-i-Ala has a cause of grievance in his personal capacity against anybody he must, of necessity, knock at the door of the court of the Qazi as an ordinary citizen to establish his case and have the wrong redressed. To ensure the absolute independence of the judiciary, the head of the state is not allowed to exercise the usual powers of mercy or pardon, over-riding judgments or decrees of the courts of law in the state.

SEPARATION OF POWERS

Another distinguishing feature of Islamic polity is a complete separation of powers; the separation of judiciary from the executive and the legislature. It is to be controlled neither by the Ameer nor by the law-making body as such. There is equality before the law in Islam, and the Ameer, like other individuals, is subject to the same law and to the same judicial

authority as exists for the ordinary people. In regard to their appointments, the judges must owe them to the head of the state in consultation with certain section of the legislature, but after their swearing-in they shall be removable in very rare cases by a special body set up for the purpose. Such a body would neither be subordinate to any organ of government nor susceptible to the influence of the Mu'tamid-i-A'la or the legislature as a whole.

IMPORTANCE OF JUSTICE

"Allah doth command you to render back your trusts to those to whom they are due; and ye judge between man and man, that ye judge with justice; verily how excellent is the teaching which He giveth you! For Allah is He Who heareth and seeth all things". (CH. IV:58).

The verse quoted above clearly emphasises the importance of justice. How that justice should be administered is, however, a problem for the jurist. Despite the fact that judiciary occupies an important place in all the civilised countries of the world, Islam is unique in assigning to it a place not so far accorded in the West.

With a view to ensuring that the Qazi remains independent of the control of the chief executive the renowned religious scholar Maulana Sayyad Abul Ala Maudoodi, in his work "Political Theory of Islam", suggests the setting up of a supreme tribunal of expert jurists by the Ameer which shall act as the highest court of law in civil, criminal and constitutional matters. An appeal against the decisions of the tribunal, with the permission of the chairman of the tribunal, which ordinarily may be granted, may be made to the Ameer for any omission or negligence on the part of the court. The Ameer shall not interfere with the working of the judiciary. All the Qazis (or the judges) as soon as appointed, shall be under the directions of the chairman of the supreme tribunal. The Ameer shall have nothing to do with their removal, transfer or appointment to any other post or place. There is one peculiar suggestion put forth by the learned author; he says that no court shall try its own contempt. It shall always refer the case to the Ameer who shall deliver judgment on its merits.[1] I do not find myself in a position ot agree with this view. The dignity and independence of the courts would be at stake if this power of punishment in respect of their own contempt is not granted to them. Moreover, we must have faith in the integrity and impartiality of courts so that justice may be done without fear or favour or even interference from the head of the state.

Maulana Maudoodi however appears to be correct when he says: "In Islam, the judiciary has been made entirely independent of the executive".

1. Sayyed Abul Ala Maudoodi, *Political Theory of Islam*, p. 60.

This is what should be the aim of an Islamic constitution. He further says that the task of the judge is to implement and enforce God's laws among His servants. He does not sit on the seat of justice in the capacity of a representative of the Caliph or the Ameer (Leader) but as Representative of God Almighty. Therefore, even the Caliph does not have any significance before the judge in a law court. No one is entitled, in virtue of his personality, connections or office to be exempted from appearance before the court.[2]

QUALIFICATION OF JUDGES

According to Dr. Inayat Ullah, the qualifications of a judge in Islam include the measure of his private character and spiritual beliefs, besides the normal qualifications, in religious as well as worldly education and experience. He says that the western civilisation has lately learnt to differentiate between the administrative and judicial functions of the state machinery. But it has not yet learnt to divided the fact-finding and law-prescribing functions of the judiciary itself. Drawing a line between the duties of a Qazi and Mufti he says that court which frames the issues (civil) or the charge (criminal), records the evidence and decides the facts is the Qazi. The court which, in the particular contest of the facts, declares the law, is the Mufti.[3] Thus individual cases have to be decided by twin parallel law courts: 1. Mufti, and 2. Fact-finding Qazi.

MODE OF TRIAL

The law may take the form of positive mandates (Awamir) or negative prohibitions (Nawahi). Punishments, if laid down in the Book, are immutable and called "Hadd"; if, on the other hand, the offence is defined by the Qur'an or Sunnat, but the exact punishment is to be determined by the court, then it is a "Tazir"; if both the offence as well as the punishment is created by an authority lesser than the two primary sources of law (Nass) then it is merely an "Aqoobat".

According to Dr. Inayat Ullah, in an Islamic system, the expenses of the trial shall be reduced to the minimum and justice shall, so far as possible, be administered free. Furthermore, cases shall not take long to be decided and the time of the people shall not be wasted un-necessarily. He suggests that dates of hearing should not un-necessarily be spaced long, and the time of the day be divided into three parts, and the people informed as to the

2. *Ibid*

3. Dr. Muhammad Inayat Ullah, *A proposed Islamic Constitution for Pakistan*:, Article xii, "Judiciary", pp. 21-22.

portion of the day during which they should attend the court. He also opines that when the guilt is proved beyond any doubt, the punishment should be exemplary and that it should be given publicly so that the public learns a lesson and everyone may be afraid of committing a crime.

SUPREME COURT AS FINAL AUTHORITY

Sometime back, the sub-committee of the Pakistan Bar Association which was set up to consider constitutional and electoral questions, in its report, recommended a strong and independent judiciary for Pakistan. It was said that the Supreme Court should be given full power to finally determine all justiciable disputes. The rights of the citizens also could not be guaranteed unless the constitution provided means for vindicating and enforcing those rights through courts. The report said that like the Indian constitution, the power to issue writs should be vested in the High Court and it should be within the power of the courts to direct implementation of the fundamental rights of the citizens. The Supreme Court, acting by itself or assisted by the High Courts, can be the only true guardian of the constitution. The rights of the citizens also cannot be guaranteed unless the constitution provides means for vindicating or enforcing those rights through courts. It is only a strong and independent judiciary that will be able to discharge the functions entrusted to it by federal constitution.[4]

The report said that "the fulfilment of the oft-repeated promise of separating the executive and the judiciary can no longer be postponed. The principle of independence of the judiciary should be fully recognised and all magistrates and revenue courts should be placed under the direct control of the High Courts exercised through the District and Sessions Judges.

Apart from the complete independence and integrity of the judiciary inculcated by Islam, there is also one aspect of it which is rather important, Islam is keen to impose deterrent punishment, an exemplary chastisement, once the offence is proved without any reasonable doubt. The Holy Qur'an, for instance, lays down "as to the thief, male or female, cut off his or her hands - a punishment by way of example, from Allah, for their crime, and Allah is exalted in power". (CH. V:41).

DETERRENT PUNISHMENT

Again, it is said in the Holy Qur'an, "The woman and the man guilty of adultery or fornication - flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Belivers witness

4. Reported in the *Pakistan Times* , November 3, 1955 (Lahore).

their punishment". (CH. XXIV:2)

These injunctions of the Holy Qur'an make it crystal clear that punishment should be publicly imposed and not inflicted secretly within the confines of the prison or a dark and dingy cell or even by way of electrocution in an easy chair. The present practice of hanging prisoners to death in the calm early hours in an isolated place far off and screened away from the public gaze, is anti-Islamic in so far as this serious punishment for really serious crimes is meted out stealthily and the potential offenders are not made to feel the pinch of so serious a sight. It is much easier to sustain a punishment secretly than to suffer even a slur before the multitude. Undoubtedly, the Islamic method of executing punishments would be an effective deterrent and give a never-to-be forgotten lesson to the would-be offenders.

Everybody is equally liable to punishment, irrespective of his status, wealth and resources, is clearly brought out by the following Hadith from Hazrat Aesha, wife of the Prophet (peace be upon him):

It is reported from Hazrat Aesha that the Quraish were greatly perturbed over the award of punishment to a woman of Bani Makhsoon- an influential branch of the Quraish - who had committed theft. Hasty consultations were held among them, how and through whom to approach the Apostle of Allah ... Some suggested that Osama alone could speak to the Apostle on the matter. When Osama did approach the Apostle to quash the sentence of the woman, the Apostle faced him angrily thus: "Osama! have you come to recommend to set aside the sentence decreed in accordance with the Law of Allah". The Apostle stood up greatly agitated and addressed the audience as under:

"Former nations were annihilated simply because they acquitted the rich and punished the poor. Whenever an influential person committed a crime or theft, he was let off scot-free, and when a poor, destitute man happened to be the culprit, he was awarded the maximum punishment. By Allah! If Fatima, my daughter, were to commit theft, I shall have her hand cut".

FEATURES OF ADMINISTRATION OF JUSTICE

According to Mr. Majid Siddiqi, the following characteristics of Islamic law are of fundamental importance in regard to administration of justice in the Islamic state:

1. The Islamic law does not recognise any distinction of poverty or affluence.
2. It recognises the distinction of Taqwa alone;

3. It denies to riches and wealth any human status.
4. It applies with equal force to all classes of people, poor, upper or middle.
5. Secret consultations, recommendations, influential approaches and dilatory tactics are strictly unlawful in Islam.
6. No toleration should be shown if the application of the Law of Allah be at stake.
7. On the contrary, all possible efforts should be be made to see that the word and spirit of the Law of Allah prevailed.
8. No compromise with or obedience to Fisq-o-Fijoor is permissible under the laws of Islam.[5]

There is no doubt that judiciary is the pivot on which revolves the entire administrative machinery and it is the only organ of government which can effectively provide justice to the man in the street. The fundamental rights granted to the individuals have little meaning unless they have been made justiciable. The courts of a country are custodians of people's rights without which the common citizen can have neither security of life nor can he enjoy his sacred right to the property, movable or immovable which he owns. His right to freedom is meaningless unless the courts come to his rescue in the face of arbitrary exercise of powers by the irresponsible elements in the police and administration. And at the same time a common citizen must be in a position to receive immediate relief and the criminal should be brought to book and punished without loss of much time for it is a well known maxim that justice delayed is justice denied. After all, of what use is justice when the criminal goes unpunished or get the punishment when all his victims depart from this world without any solace or compensation in their lifetime.

Our legal system and the court procedure which are a legacy of British rule, are unsatisfactory in so far as they cannot ensure administration of speedy justice to the aggrieved. The promulgation of the 12th Constitutional Amendment by the present regime appears to be a step in the right direction since it has fixed a period of thirty days for completion of trial and another 30 days for the Appellate tribunal to announce its verdict.

One essential characteristic of an Islamic constitution is said to be the separation of judiciary from the executive and the legislature. It is true so far as the independence and impartiality of the judiciary are concerned. But what about Hazrat Omar's proverbial whip which used to punish the offenders on the spot without any trial before the court of the Qazi? Could we devise some system whereby the offender, when caught red-handed,

5. M.A. Majid Siddiqi, *Pakistan- The Islamic State*, p. lxxxii.

could be punished on the spot by any responsible authority without undergoing the lengthy and cumbersome process of registration of the case, investigation by the police, putting up of challan, day-to-day hearings which linger on for years and then acquittal or punishment after the court has finished with the trial. But this is not the final verdict. There are many more courts for appeal, revision etc. which take more than a lifetime to decide the case. If the sanctity and effectiveness of the judiciary have to be maintained and preserved the entire legal system and procedure shall have to be overhauled to ensure fair and prompt administration of justice.

The splendid record of judiciary in the history of Islam is a unique achievement in the annals of the world. An ordinary wage-earner, a poor cultivator, even a beggar has full rights to sue the highest official and noble including the Ameer himself and none dare refuse appearance in the court. In the Islamic Republic of Pakistan there are constitutional provisions exempting certain dignitaries from attendance before the courts of law which is, however, in conflict with the teachings of Islam. In an Islamic State, the Qazi, if satisfied with the suit of the plaintiff, has full powers to enforce the Law of God on the respondent, be he the Head of State or any other high placed official or personality. Similarly, if the Ameer has a cause of grievance in his personal capacity against anybody he must, of necessity, knock at the door of the court of the Qazi as an ordinary citizen to establish his case and have the wrong redressed. To ensure the absolute independence of the judiciary, the Head of the State is not allowed to exercise the usual powers of mercy or pardon overriding the judgements or decrees of the courts of law in the State.

In the modern world some of the countries confer the right of interpreting the constitution on the highest court in the realm. In Islam it is different. According to Islam no man can lay down the law or interpret the law according to his own whims. Allah alone has the right to determine the aims of human existence. The Last Prophet (PBUH) is the sole authority to prescribe laws for the faithful. The State itself as a human agency is subject to the Divine Law. The State machinery is authorised merely to discover, apply and follow these laws, the courts adjudicating whether a particular inference is correct and whether it is ordained by Qur'an and Hadith at all. Both the State as well as the courts, as interpreters of Shari'at, are subject to the precedents of the admitted Ulema and Aulia Allah of the past and they cannot budge an inch from their verdicts. To take another example, even the decisions of the Ameer-in-Council can become law only when the Jurists Supreme Tribunal certifies that the law does not contain anything repugnant and contrary to the spirit of the Holy Qur'an, the Sun-

nah of the Rasool, the conduct of the Khulafa-i-Rashideen and Companions of the Apostle of Allah.[6]

6. M.A. Majid Siddiqi, *Pakistan- The Islamic State: Sketch Constitution*, p. xcv.

Chapter XIII

CONCEPT OF DEMOCRACY

Broadly speaking, democracy has been defined as a "government of the people, by the people, for the people" -- the Government of a State by the elected representatives of its adult citizens. A country with such a Government is called "democracy" which implies that such a Government is supposed to allow free discussion of policy, is ruled by the majority of its elected representatives, and has to ensure political and social equality for its citizens irrespective of their caste, colour and creed.

The concept of democracy owes its origin to the ancient Greek City-states where the entire population of a small city-state would sit together on a "chaupal" to discuss their day-to-day affairs and resolve them by majority vote in case no consensus could be reached amongst them. When the population of the city-state grew to rather unmanageable proportions it was thought feasible to elect their representatives who, instead of the entire population, sat together to form an "assembly" in the modern sense.

As we turn over the pages of history we shall find that it was not democracy which was practised as a form of government in any of the continents of the world including the civilised countries for centuries after the concept had been discovered and even implemented for the first time in history. In fact, it was rule by might, sheer brute force, which resulted in bloody wars stretching even to hundred years. Whether it was Britain, Europe or Asia the kingdoms were not set up by any democratic process, that is, the consent of the governed. "Might is right" was the principle recognised all over the world by those who had the ambition to become rulers, kings, monarchs or dictators. Some of them were mere adventurers who came to loot, plunder and take away all the precious things which their big armies could lay their hands upon. In all cases, however, big colonial empires were established wherein the rulers regarded their subjects as slaves and chattel. "Man was born free yet he was everywhere in chains". He or she had no rights but duties only to be performed under the command of

his or her masters. This state of affairs continued for centuries until the subjects themselves realised that as human beings they had certain rights for which they must fight against their despotic rulers. As a result there were such movements as the French Revolution with the watchwords of "liberty, equality and fraternity", rebellion against the Czar of Russia in which his whole family was massacred, and organised struggle for freedom and independence in many parts of the world.

The struggle, however, was not in vain, it cost the King of England Charles I his head at last when he was executed.

CHARTERS OF FREEDOM

The sermon of the Holy Prophet of Islam, Hazrat Mohammad (May peace be upon him) on the occasion of Hujjatul Wada was a charter of freedom for the humanity at large including the slaves, both men and women. Every human being, no matter what was the colour of his skin, whether he was an Arab or Ajmi (outside the community of the Arabs), was equal in the eyes of Allah, the Holy Prophet of Islam declared in clear words. Islam prohibited the killing of babies after birth, for the Holy Prophet said, the Sustainer and Provider of bread is Allah. This shows the value of life of every creature on earth.

As for the rights of men and women we find in history many examples like the Magna Carta, the Petition of Rights, the Bill of Rights and the fundamental rights guaranteed in almost all the constitutions of the world except those with autocratic regimes. In some of the advanced countries these fundamental rights have been made juticiable and the courts have been given the powers to redress the grievances of the people but in the dictatorial regimes, as opposed to democratic rule, the right to liberty, the freedom of speech and even right to a fair trial are denied.

PARTY GOVERNMENT

The basic requisites of a democracy are adult franchise (every adult man and woman having the right to vote at elections), periodic elections (elections on the basis of adult franchise after a fixed period of time which may be either annual, triennial or after every five years), and an educated electorate or electoral college in which each voter should be fully conscious of his precious right to vote in the interest of the people whom they have to serve to the best of their ability, honesty and absolute sincerity. The Party system is a sine qua non for the existence of a democratic pattern, each political party having a programme of its own for ensuring the welfare of the people. The people are, as a matter of fact, called upon to

vote for the party whose programme they like most.

The party winning a majority of votes at the general elections is called upon to form the government. In most cases it is leader of the party securing the highest number of votes at the polls, who becomes Prime Minister who selects his own cabinet colleagues. In other cases it may be a coalition government with a number of political parties joining hands to form what is known as a coalition government in which the Prime Minister is the person who commands the confidence of the majority of the parties forming the coalition. In any case it is a weak government and may collapse when one or more parties withdraw themselves from the coalition. A stable government is the one whose leader has bagged an overwhelming majority of votes cast at the polls, preferably two-third or three-fourth which put him or her firmly in the saddle for the whole term of office.

In case there is no direct election of the Head of the State (in most cases called President) through the general vote or the votes of the electoral college, it is the leader of the majority party who has to play the most important role, but once elevated to the position of the President he derives his powers and privileges from the Constitution of the country and cannot be removed before the expiry of his fixed term except in accordance with the procedure laid down in the constitution, such as impeachment as prescribed under the American Constitution.

SCOPE OF LEGISLATION

It is said that the British Parliament which is called "The mother of parliaments" can make a man a woman or a woman a man. This simply indicates the scope of the powers which an elected parliament or legislature enjoys so long as it holds the confidence of the people's elected representatives. There are neither any moral nor legal curbs imposed on its powers. It may legalise immoral acts like adultery, fornication or even rape; it may abolish the death penalty for heinous murder; it may also exempt certain persons from trial by a court of law and award very simple punishment for otherwise serious offences. Thus it may appear that under a democratic system of government the law-making body is Sovereign and Omnipotent in the legal sense of the word. The limitations on their powers arise only from the conscience and humane nature of the members who constitute the legislature or parliament as we call it in many democracies of the world. In the larger sense, however, it is the people, the entire adult male and female population with few exceptions like insanity, insolvency or conviction for some heinous crime, who are sovereign in a democratic system of government for it is admitted on all hands that they form the

backbone of this system, irrespective of their character, merit or ability in any sense of the term. Even their merit or demerits are ignored under the system of elections prevalent in the democracies of the world. Inhabited by people professing different religions, speaking different languages, having mutually contradictory tribal or cultural pattern, the democracies of the world make no distinction on any of these grounds. All of them are equal so far as their political rights are concerned but in case of mixed populations a system of rotation may be evolved to give a chance to the other big majority to run the government. No community, as a whole, is debarred from holding the highest political office in the realm.

In short, a democratic state must guarantee social, economic and political justice to all the inhabitants and must ensure fundamental rights to all of them. It must provide equality of status, equality before law, freedom of expression and liberty of conscience for all citizens without discrimination. The idea is service to humanity irrespective of caste, creed or colour, particularly, to the citizens of the State. Its main duty is to preserve peace and tranquillity in the country and adopt appropriate measures to make its people happy and prosperous.

Chapter XIV

ISLAM AND DEMOCRACY: Points of Contrast

The Muslims of the undivided Subcontinent were highly emotional and orthodox in their beliefs, customs, usages and traditions, culture, dress, language and the laws governing their family life and day-to-day affairs so that they could keep up their separate identity. This was, to them, a matter of life and death. They held steadfast to their faith of Islam which did not permit them to become secular in outlook even in matters of politics and education. It was for this reason that they strove for and secured the system of separate electorates from their British rulers. They also stayed away from the Christian educational institutions and suffered on this account in many respects. They were agitating for the restoration of the Caliphate of Islam when the strong man of Turkey Mustafa Kemal Ataturk had himself abolished that institution. To achieve this object the Muslims of the undivided Subcontinent had, perhaps for the first time in history, joined hands with the astute leadership of the Indian (rather Hindu) saint-philosopher Mahatma (whom the Quaid-i-Azam addressed as "MR") Gandhi. Otherwise, even during the British rule Hindu-Muslim riots were a common feature of life and the gulf between the two communities continued to be unbridgeable. Even today, after the Partition of the Subcontinent the two major communities of India, that is the Hindus and the Muslims, are still at loggerheads and come to blows after small intervals which results in massive killings, arson, loot and plunder. The Kashmir dispute has not been resolved since it is linked with the fate of the Muslims of the Indian-held territory. It is unfortunate that even after the creation of Pakistan the two communities are engaged in bloody riots, merciless killings, arson, loot and plunder -- and what not?

It was due to this sort of estrangement between the two major communities of undivided India that democracy of the Western pattern could not function -- as a matter of fact, it was never given a fair trial. It was the factor of religion which disrupted the very basis of political parties which

were, in most cases, more religious than political. Later developments, however, changed the character of the Muslim League which was the architect of Pakistan. In the context of Indian politics neither the Indian National Congress nor the All-India Muslim League had any impartial role to play as political parties representing the people of the country as a whole, irrespective of caste, creed and colour. The Muslims had chosen a platform of their own to prove that they were a nation separate from the Hindus who were in absolute majority in most of the regions of the country. The concept of the Islamic State turned into a concrete reality with the establishment of Pakistan as a sovereign and independent State on the map of the world.

ISLAMIC STATE

Ever since the establishment of Pakistan the controversy about Islam prescribing a tangible concept of State and political system has gained in intensity. One school of thought is determined to convert Pakistan into an Islamic State relying on the slogan: "Pakistan ka matlab kiya, La Ilaha Illallah" (What is the meaning of Pakistan -- There is no lord except Allah) which was raised vociferously during the Pakistan Movement. This slogan was the need of the hour to prove that the Muslims were a nation separate from the Hindus. They believed in the Oneness of God. It did not, however, mean that in Pakistan the Muslims, apart from setting up a sovereign and independent State, would try the experiment of a new concept -- that of the Islamic State. After all, with one billion Muslims spread all over the globe how many of them have tried to take the risk of establishing an ideal Islamic State in the teeth of opposition by the non-Muslims who have not yet forgotten the days of the crusades. The Muslim States themselves are divided on the issue. The latest instance is that of Iraq which has been virtually destroyed in collusion with some of the Muslim states by the combined forces of the enemies of Islam led by President George Bush of the United States.

UNIVERSAL RELIGION

Islam is a universal religion which does not permit the concept of Nation-States on the basis of nationalism. It is a religion which discards segregation of Muslims on the grounds of race, tribe, language, culture, customs and usages and territory. It is a religion meant to be practised by the whole world and, therefore, it would not permit any geographical boundaries to separate Muslims from each other. After all, ALLAH is the repository of absolute sovereignty and according to the Holy Qur'an he is RAB-

BUL ALAMEEN -- the Master and Lord of this world and also the other worlds.

With particular reference to Pakistan this debate heated up during the regime of "Mard-i-Momin Mard-i-Haq Ziaul Haq" when he assumed office of the President and Chief Martial Law Administrator on July 5, 1977, after overthrowing the then Prime Minister Mr. Zulfikar Ali Bhutto. He adopted certain measures to enforce "Saum-o-Salat" (Fasting and prayers), "Muzariba" (an economic reform), Hudood (the punishment of "Hadd"), "Tazeer" (punishment) prescribed by Islam like stoning to death for "Zina" (adultery), cutting of hands of the thief and stripes for some offences. Most of these matters relate to crime and punishment which should, no doubt, be exemplary when crime reaches uncontrollable limits. In Saudi Arabia as well as the Communist China, for example, the heroin smugglers are awarded death penalty.

SEVERE PUNISHMENTS

Every State, whether Islamic or not, has the right to inflict any kind of punishment to curb crime in the State. The Muslims have the additional advantage of deriving inspiration from the Holy Qur'an and the Sunnah (Traditions) of the Holy Prophet of Islam Hazrat Mohammad (Peace be upon him) which provide valuable guidance to the community spread all over the globe.

WESTERN DEMOCRACY & Islam

In any case there is no scope for western type of democracy in Islam because the former cannot work without a number of political parties and regular elections on the basis of party system which are alien to Islam. Moreover, the distribution of powers between the Central and Provincial governments is not permissible in Islam. It may be pointed out that party system is the foundation-stone of the western type of democracy but the system of political parties and the electioneering campaign are simply repugnant ot Islam and there is no sanction in Islam for the election of the Head of the State either. The basic requisites of democracy -- adult franchise and periodic elections on the basis of political parties -- are, judged by any standard, un-Islamic.

Moreover, it is the people who are sovereign in a democratic form of government whereas in Islam, ALLAH alone is sovereign. Islam does not sanction democracy in any form. It is absurd to call it Islamic democracy because the system of government has nothing to do with the religion of the people. Just as we cannot call democracy as Christian, Hindu or Jewish

democracy we cannot call it Islamic democracy simply because it is being practised in a predominantly Muslim State.

As stated already there is no adult franchise in Islam. Islam is opposed to candidature, proposal, secondment, or in any manner putting up candidates, canvassing for individual candidates or the party to which they belong, spending money on their transport to the polling booths or their entertainment at the cost of the candidates or in any other way persuading or bribing or threatening the voters. As a matter of fact, nobody is allowed to offer himself as a candidate. There being no adult franchise the right to vote or select any person for any post of responsibility is restricted to those only who are respected due to their piety and virtue. All appointments are made by selection on merit and the Muslim Ummah has the right to persuade anyone considered most suitable to hold the office of the Khalifa or Qazi. Once appointed the Qazi is supposed to be impartial and independent of any control by the Khalifa who also is supposed to appear in the Qazi's court where the former is charged with any breach of law by any ordinary citizen of the State. In any case, there is no provision in Islam for the election of the Head of the State (chief executive), members of Majlis-i-Shoora (Parliament/Legislature) or members of Judiciary (Qazis and Muftis). The argument that an elected Parliament (in the modern democracies), if it functioned within the parameters of the Shari'ah, was in every way the Shoora envisaged in Islam, has no force and stands rejected. The Holy Prophet's saying that "my community will never unite in error" is not applicable to the majority decisions in the parliaments elected on the basis of adult franchise under the present party system and the community referred to by the Holy Prophet refers only to the small community of pious and virtuous Muslims who, in most cases, are not returned to the present-day parliaments constituted on a different standard. It is wrong to presume that any political system can be acceptable to the Muslims provided it ensures observance and enforcement of Shari'ah, ensures security and stability of the State and promotes the unity of the Muslim Ummah. Such baseless arguments crop up because of the hard reality that the Qur'an and the Sunnah do not give any guidelines about the political system and if election and political parties are not mentioned neither is the method of appointment of Khalifa or his removal. This, however, does not imply that Islam sanctions the western type of democracy with all its corrupt practices and foibles. Certain protagonists of modern democracies even compare the "Baiyet" (acknowledgement of spiritual leadership) by the people of Madinah invariably secured by the early Caliphs with a form of election by popular vote but they probably forget that the people of Madinah who expressed their

confidence at such "Baiyat" were not the kind of masses who throng the polling booths to cast their votes at the party-based general elections conducted in the democratic States today. Again, to quote another instance, the supporters of Hazrat Usman and Hazrat Ali did not form any groups like the political parties of today since they had not put forth any progammes which could be called as pro-Islam or anti-Islam. It may be noted that in Islam there is no opposition in the sense of its opposition to the basic principles and teachings of that religion.

ALLAH IS SOVEREIGN

No doubt Islam is the most democratic religion of the world which places all human beings on an equal footing, irrespective of caste, creed or colour but Islamic democracy, if we could call it by that name, differs from the traditional type of democracy of the western type being practised today.

According to Islam, the real sovereign is ALLAH and His vicegerents administer the affairs of a particular State on His behalf and in His name. The rulers are not supposed to be independent since the Holy Qur'an repeatedly says that everything from the heavens to the earth belongs to God and there is none to share His power. "And Allah's is the kingdom of the heavens and the earth, and to Allah is the eventual coming". (XXIV-42)

The sovereignty of Allah is to be exercised in this world by His vicegerents but the criterion of fitness (to rule) is merit and worth -- not birth or so-called noble family. In the democratic pattern this criterion is not adopted as a rule. Birth, nobility or heredity, irrespective of merit and worth, enable the unworthy and illiterate capitalists, Waderas and Pirs, chaudhris and jagirdars to get elected to the assemblies. Unlike other religions Islam does not recognise any privileged group or class of persons for special favours.

However, an Islamic State, like the modern states, is essentially a welfare state whose chief function is to serve mankind in general without any distinction of caste, creed or colour. Its first and foremost duty is to provide the necessities of life to all people living in it so that they have at least food, clothing and shelter. Another common characteristic between the two kinds of states is the guarantee for economic, social and political justice to all the inhabitants alongwith ensuring fundamental rights for all of them. On paper at least, both the kinds of states must provide equality of status and equality before law, freedom of expression, and liberty of conscience to all citizens without discrimination. The only difference between the two systems lies in the fact that whereas in Islam any transgression is to be punished by God, who alone is sovereign, in the case of modern democ-

racies it is the people and their elected representatives who are sovereign and are fully competent to deal with the transgressors.

SHARI'AT ACT

'The population of Pakistan being predominantly Muslim the political as well as social legislation and institutions of Pakistan will be influenced by Islamic standards and Islamic values". This is a quotation from an address to a London gathering of Pakistani Students Federation by a former Foreign Minister and Judge of the International Court of Justice Chaudhri Zafarullah Khan.

Another view is: "We continue to adhere to this process without realising that there are certain groups of intellectuals who would 'keep religion out of politics' now that Pakistan had been achieved, and construct in it a frankly secular State". These are the views of Mr. Wilfred Cantwell Smith who wrote a series of pamphlets on "Pakistan as an Islamic State". He, however, admits: "By and large the consensus is that the Pakistanis would like to see their domain Islamic". On the contrary, the prominent Jamaat-i-Islami leader Maulana Abul A'la Maudoodi was jailed for sedition when he had said that "Pakistan is not an Islamic State at all. It deserved no moral support even from the soldiers in the Army ..."

The rulers of Pakistan have made the country a democracy and they intend to keep it so. In other words, it would mean that their State will be not Islamic and democratic, as two distinct attributes, but Islamic via democratic. Democracy thereby becomes an aspect of its Islamicness.

Explaining what is Shari'at, Mr. Smith is of the opinion that our intention is to take the SALAF (Past generations) as a model. But we shall proceed slowly. Before we introduce the classical penalty for theft we must first preserve the entire population from hunger, nakedness and so on and so forth. Before we punish "zina" with stoning we must reform "Nikah" which has acquired all sorts of un-Islamic elaborations. For morals we must teach Islam, inculcating its principles and precepts.

Again, Mr. Smith seems to be right when he says that the question of an Islamic State is one of LAWS. The National Assembly and the Senate have passed the Shari'at Bill which received the assent of the President on June 6, 1991. So it is an Act now but as the Prime Minister Mr. Nawaz Sharif has said a package of laws shall have to be framed before the Shari'at Act is implemented. Nobody seems to be very optimistic about the passage of this Bill which, as many of us would like, should have been moved as a Bill to amend the Constitution to give it the colour of sanctity and supremacy.

The Act is criticised for a number of reasons. The only good step taken is the establishment of Baitul Mal for the destitutes and needy. It retains all the existing institutions including banks charging usury, the Constitution of 1973 as amended, the Muslim Personal law including Family laws and the substantive and procedural laws as in force today. It has been observed by some critics that instead of a law the Shari'at Act appears to be the Manifesto of a political party or the resolution passed at a public meeting. In spite of declaring that Shari'at -- the commandments contained in the Holy Qur'an and the Sunnah of the Holy Prophet of Islam Hazrat Mohammad (Peace be upon him) -- shall be the supreme law of Pakistan, the existing legal and constitutional systems remain intact in every respect. The Act has been passed as an ordinary law and, therefore, it cannot override any provision of the Constitution. It has not been explained as to how the Shari'at Act would be regarded as supreme law and how this supremacy is to be judged by our courts. The Act has not rendered "VOID" any of the existing laws which cannot be challenged in the High courts except the Federal Shari'at Court or the Shari'at Appellate bench of the Supreme Court which derive their powers from the Constitution for declaring any law repugnant to the Holy Qur'an or the Sunnah. Even after the passage of the Shari'at Act, the Constitution of Pakistan remains the supreme law of the land and no court is competent to declare any clause of the Constitution null and void if it contravenes Shari'at Act because the latter is simply an ordinary law, which cannot abrogate or amend the Constitution. Similarly, the Family laws are protected by the Constitution and, therefore, the Shari'at Act cannot change their character in any manner. Last, but not the least, there is an all-embracing clause in the Shari'at Act which says that notwithstanding anything mentioned in the Act (Shari'at) the judgement of any court of law or any other law for the time being in force, the present political system including the Majlis-i-Shoora (Parliament) and Provincial Assemblies, and the existing system of government, shall not be challenged in any court including the Supreme Court and the Federal Shari'at Court or any tribunal of Pakistan.

DO WE NEED SHARI'AT ?

The Shari'at Act passed by our Parliament is rather vague in so far as it does not clearly state as to whether the courts or the parliament are competent to decide about any law being repugnant to the Shari'at. The Federal Shari'at Court, on the other hand, is too much under the control of the Government as past experience has proved. The Chief Justice, during Ziaul Haq's regime, had to resign from the Shari'at Court because he handed over

a judgement on the issue of "Rajam" which the Mard-i-Haq, Mardi-i-Momin did not like. The judiciary, as a matter of fact, is under the control of the Executive (administration) as the conditions of service, retirement, extension, confirmation of the judges of superior courts are determined by the executive at the highest level. This is harmful to the independence of the judges who, even in an Islamic regime, are supposed to be completely independent of this control. As already stated elsewhere the Caliph was bound to appear before the Qazi when summoned on the complaint of a humble citizen of the State. In the Islamic Republic of Pakistan the President and the Prime Minister are privileged persons enjoying immunity from such appearance in courts.

There is a very interesting point brought out by no less an authority than the son of Allama Iqbal and a retired Judge Dr. Javed Iqbal who, in an interview published in the Urdu Press (Daily Jang of June 18, 1991) deserves attention. In reply to a question of the interviewer (Mr. Irshad Ahmed Haqqani) Dr. Javed Iqbal said that the "Shari'at Bill (now an Act) had no connection whatsoever with "Shari'at" because "the enforcement of Shari'at did not require a Bill. Explaining further he said: "Shara'i Nizam (the system of Shari'at) is that in which the political system is democratic, the rule of law prevails, and morality is practised, and the State is a welfare state. "He emphasised that every state which is a welfare state is in accordance with Shari'at and it is "Islamic". Questioned further, Dr. Javed replied that even Britain was an "Islamic State" because it was a welfare state. Clarifying the point he added: "If the people of Britain become Muslims today they would not have to change any of their laws or their State structure because these are already "Islamic". Shari'at, according to him, was a way of life which did not require a Bill to enforce it. Giving the example of daily "shave" he said it becomes a habit if one does it every morning. No law would be necessary to make it a habit. Similarly, to enforce Shari'at there was no need to make some law to enforce it. Perhaps Dr. Iqbal is right when he says that the laws which have been prevalent since the times of the British rule over the Subcontinent and which are in force today are in accord with "Islam". Some of the judgements delivered by the Christian and Hindu judges, even today, have the force of law and nobody, not even the Ulema, could challenge them.

About the laws in force many centuries ago Dr. Javed made it clear that they have to be changed with lapse of time and, therefore, we need "Ijtehad" to bring those centuries-old laws in line with the requirements of the modern age.

Dr. Iqbal's candid views must be appreciated by those who are keen to

put an end to the controversies relating to the type of State that Pakistan should be. Ever since the passing of the Objectives Resolution in March, 1949, we had to live under various constitutions and regimes including Martial Law rule but none of our rulers or representatives could bridge the gulf between the two systems of government, that is, Islam and democracy. Let us not be dogmatic. On the contrary, let us try to bridge the gulf between the two systems which at first sight appears to be unbridgeable. In actual fact it is not so. Much is common in both the systems. Of course, it requires wisdom and a broader outlook to infuse the blood of Islam into the veins of the body politic of democracy being practised throughout the civilised world.

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