

Course Outline

Center for General Education (CGED)

Course Title: Political Thoughts and Social Behavior

Course Code: URED-3503

Credit Hour: 1, Contact Hour: 2

Spring 2022

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	15	Hisbah (Meaning, Importance, Objectives, Functions and Selection of Muhtasib)	
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References: _

1. Islam: Beliefs and teachings/ Professor Golam Sarwar.
2. The Government and Politics in Islam, MD. Shafiul Alam Bhuyan, Dhaka: Noor Publications, 2007.
3. The Qur'an & Politics/ Eltigani Abdelgadir Hamid
4. Islamic Constitution: Qur'anic & Sunnatic perspective / Dr. A.B.M. Mahbubul Islam
5. The Islamic Law and Constitution / Sayyid Abul A'la Maududi
6. Islamic Law and Judiciary / Islamic Law Research & Legal Aid Bangladesh
7. Political thought of Abul A'la Mawdudi / Professor Ghulam Azam
8. Islamic Legal System, Advocate Ansar Ali...

Political thoughts and Social Behavior

The objective of the course

Islam demands from its followers to perform their entire activities according to its eternal belief system where *Tawheed* (oneness of Allah) is the nucleus point. *Risalah* and *Akhirah* are another two important articles of that belief system. This course will help the students enabling them to create a relationship between their belief and actions and make their activities perfect accordingly.

So, the main objective of this course is to discuss how to deal their worldly life based on *Tawheed* following the footsteps of the Prophet (SAAS) exactly in every spare of their life.

However, there are some specific objectives of this course. These are as follow-

- To help the students demonstrate an in-depth understanding of their real position in this temporary world
- To make them understand their relationship with their state and society
- To help them in performing their duties and responsibilities towards their state, society and humanity at large

Course learning outcome (CLO)

After successful completion of this course a student will be able to-

- Understand the nature of worldly life and the real position of human being here
- Understand how to buildup a proper relationship between governor & governed, state & citizen and able to perform duties and responsibilities towards the state and government.
- Understand the social relationship through understanding the family, kinship, neighborhood and other general relationship with whole humankind and entire material or immaterial and universe.
- Provide knowledge with Islamic insight from their practical life

Part A: Political thoughts

The main objective of this part is to provide the students of various faculties other than Faculty of Shariah and Islamic Studies the knowledge about how to relate themselves and some of their activities with the state and government from Islamic perspective.

Chapter 01

Politics and Islamic Politics

Objective of this chapter

The main objective of this chapter is to provide the students a clear understanding about politics from Islamic perspective.

There are some specific objectives for this chapter. These are-

- To describe meaning of the word politics from its origin
- To find out the connectivity of the word politics and *siyasa*
- To provide them understanding of Islamic politics from given definition and
- To provide them proper information to evaluate the basic principles of Islamic political system
- To make them able to distinguish between Islamic politics and conventional political systems

Items discussed

- ❖ Meaning of Politics
- ❖ Islamic Politics
- ❖ Principles of Islamic Politics
- ❖ Difference between Islamic politics and conventional political systems

Chapter 01	POLITICS & ISLAMIC POLITICS
	Meaning of the Word “politics”
	Meaning of Islamic Politics
	Fundamental Elements of Islamic Political System
	Basic Principles of Islamic Political System
	Fundamental differences between Islamic Politics and Conventional Political Systems

1.1. Meaning of the Word “politics”

Islam is a complete way of life. It has given guidance for every part of our life. As politics is an important part of our life Islam has given proper guidelines for that also. To discuss politics from Islamic perspective it needs first of all to discuss its meaning from traditional political thinking. So, in order to understand the precise meaning of the term politics, we should look firstly at the celebrated languages in the world through which the term politics has got existed and developed.

Politics in Greek Language:

Abdur Rashid Moten mentions: *“the word politics originating from the Greek word” polis, meaning a city, and confined to the study of the state”*¹.

Plato mentions:² *“The Greek title of the republic is politeia, a word which can mean citizenship, government or administration, constitution or republic. Polis, usually translated city-state, was the basic Greek geo political unit”*.

Politics in Anglo-Saxon Languages:³

There are two words “**Politics**” and “**Policy**” which are used in Anglo-Saxon language. The Word “**Politics**” pertains to polis and city, which are under the control of authority, agency, organization and Institution that is however, dubbed now a days as “**State**”.

On the other hand, the word “**Policy**” is used even in the sense of Politics. It designates methodical activities, for example; internal policy, external policy, party policy, government policy, foreign policy and the like. However, it is also used in corresponding to politics and signifies all type of activities.

Politics in Arabic Language:

¹ Political Science: Abdul Rashid Moten, P 17.

² **Plato’s the Republic**: Harry Eyraas., ed 2nd, London, hooder and Stoughton P 26, 2001

³ **‘Ilm Al Siyasah**: Dr Ibrahim Shalabi, P 17.

Imam Muhammad Abduhu says: the word (**Siyasah**) is derived from “**Saasa-yasus**”, it is widely known in the world since the outset of Islam. In this regard there is an Arabic proverb: **Sauwasahu al Qawm**:⁴ (i.e. the Nation chose him leader).

In favor of this view there are a lot of evidences. Of them, there is notable Hadith, unanimously mentioned in the *Sahih* (authentic) *al Bukhari* and the *Sahih al Muslim*: *It is reported from the great prophet Muhammad (PBUH) that the Bani Israel was ruled by their Messengers, but then whenever any messenger passed away other was replaced; however, I am the last prophet none of you would take after me as prophet. So, he who treads step of my life he obeys Allah and who disobeys me he disobeys Allah, and who disobeys me he mutinies against Allah, who obeys the leader, he obeys me and who disobeys the leader he disobeys me*.⁵

Foregone Hadith brings the fact into focus that the word “**Siyasah**” is undoubtedly originated from the Arabic and means to establish the accountable and responsible leadership that put the man in order. It is mentioned in “**Al Mausuh al Fiqhiya**” that the word “**Siyasah**” is used in two senses: First, it is used concerning the activities of stablemen those who look after the pet animals and tame them. Second, it is used to mean something that mends some one’s ways. Therefore, as the Ruler look after the citizen he is called in Arabic “**Saai**’s. From this point, we may say that politics means management, Rectification, adjustment etc.

Politics in View of Conventional Political Thinkers

- (1) Raymond Garfield Gettel asserts “*It is thus a study of the state in present, past, and future*”⁶.
- (2) According to Paul Janet “*Political science is the part of social science which treats of the foundation of the state and the principle of the government*”⁷,
- (3) Garris the famous German author is of the opinion that ‘*Politics deals with origin, development, purpose and all political problems of the state*’⁸,
- (4) Dr Garner believes that “*Political science begins and ends with the state*”.
- (5) Lord Acon said, “*political science concerned with state and with the conditions essential for its development*”⁹.

If we draw our profound attention to the above discussion, it would be clear that the term “**politics**” was used by the people in early social system as a decision-making process concerning all sphere of human activities. However, nowadays it is used and demarcated only to state affairs.

1.2. Politics in view of Islamic political thinkers

Dr Yousuf Al-Qardawi says: in ancient times the word “**Politics**” was used in two meanings-

Firstly, in usual meaning, it is to conduct the public affairs concerning either to state or religion in accordance with *al shari’a* (Islamic law), which is known to us as *kilafath* (Representation).

⁴ **Al Siyasah Al Shari’yyah**: Dr Yousuf Al Qardawi, ed 1st, Saudi Institute, P 29, 1998.
Sahih al Bukhari, Hadith no3197.

⁶ **Political Science**: Garfield Gettel, P 4, ed 6th, India, World Press Privet L M T, 1961.

⁷ **Political Theory**: R C .Agarwal, P.534, ed 2nd, S Chand Company L M T, 2002.

⁸ **Political theory**: R C Agarwal, P 535.

⁹ **Political Theory**: R C Agarwal, P 3.

Secondly, in special meaning which appertains both to the subjective opinions of the leader or the laws which are pronounced and issued by the leader in an effort to discard any unexpected happening, degeneration, or turpitude.

It is mentioned in “**Lisaanul ‘Arab al Muheet**¹⁰”, that the word “**Siyasah**” is derived from “**Saasah- Yasus**”, meaning to be in charge of something to provide remedy for something.

So, a person is in charge of animals, keeps them in a comfortable place looks after them and makes them competent he is said in Arabic “**Yasus al Daabbah**”. From this point it is clear that politics means to be in charge of something for leading the people to the right way.

In Islam, politics is used in several senses¹¹:

A. (1) in usual sense, it appertains the management of public affairs, both material and spiritual life according to the law of *Shari’ah*. It is also known as vicegerency that is substitute to the sentry duty of the Prophet Muhammad (PBUH).

(2) In Special meaning, it specifies the policies taken by the leader.

B. According to “**Al Bayan**”, Islamic politics is a science, by which Islamic state affairs are managed and spiritual affairs are conducted¹².

1.2.1. Fundamental Elements of Islamic Political System

Islamic politics is based on three fundamental elements¹³ **Tawhid** (Unity of Allah) **Risalat** (Prophethood) and **khilafah** (vicegerency). Without comprehensive understanding of these three fundamental elements, it is too refractory to comprehend the other imperative aspects of Islamic polity. Hence, a brief exposition of these three momentous elements is given bellow-

Tawhid literally means to make something one. Technically it means to believe in the oneness of Allah, to realize it and maintain it in every action of a man. To maintain tawhid in our political life we must believe that Allah is the only Creator, Sustainer and Master of the universe and all that exist in it irrespective of whether they are organic or inorganic. The sovereignty of this universe belongs only to Him and He alone has the right to command and forbid. Worship and obedience are due to Him alone, none can deserve sharing in it anyway. Life is in all its forms, our physical organs and faculties; none of them has been created by us. These have been bestowed to us by Allah (SW). Therefore, we have no right to determine the aim and purpose of our existence or to set the limits of our authority. No one else is entitled to make law. These principles of the unity of Allah totally negate the concept of the legal and political independence of human beings, individually or collectively. No individual, family, class or race can set himself or herself above Allah. Allah alone is the Ruler and His commandments are the laws.

The Risalat is the media through which we get the laws of Allah. We are provided two things from this source; the Book of Allah (Al Quran) and the tradition of the Prophet (Sunnah). The

10 **Lisaanul ‘Arab Al Muheet**: Muhammad ibn ‘Ali al Ma’ruf (acquainted with Abul Fadl Jamal Uddin Ibn Manzur., Beirut, Darul lisanil Arab al Muheet. P 2, P 239. And it is mentioned by Dr Ibrahim Shalabi in “Ilm Al Siyasah”, p 62.

12 **Al Siyasah al Shari’yyah**: Dr Yousuf al Qardawi, P 32.

12 **Al Bayan**: Muhammad bin Shakir Al sharif, P 22, number 198, February /march 2004

13 **Nizam Al Hayat fi Al Islam**: Abul A’la Al Maududi, P 21, published by Mu’assasa al Risalah, Beirut, 1980.

former is the Book wherein Allah has delivered His laws to us. The latter is **Sunnah** wherein the authoritative exposition and exemplifications of the divine Book are offered by the Prophet (PBUH) through his words, deeds and silent approval as he is the vicegerent of Allah,

The *khilafah* means vicegerency. Its lexicological meaning is representation. In accordance with Islam, man is representative of Allah on the earth. That is to say, by virtue of the power delegated to him by Allah, he is required to exercise his Allah-given authority in this world within the limits prescribed by Allah. So, a *khalifa* is one who exercise the delegated power. He has no absolute power. In this context, an example can be given. Suppose that you have an estate and someone has been appointed by you to administer as your representative. Then undoubtedly you would see the consolidation to these four conditions.

Firstly, the real ownership of the estate remains vested on you and not in the administrator.

Secondly, he administers your property only in accordance with your instructions.

Thirdly, he exercises his authority within the limits prescribed by you.

Fourthly, in the administration of the trust he executes your will and not his own.

These four conditions are so inherent in the concept of representation that if any representative fails to observe them, he will rightly be blamed for breaking the covenant, which was implied in the concept of representation. This is exactly what Islam means when it affirms that man is the vicegerent of Allah on earth. Hence, these four conditions are also involved in the concept of *Khilafah*.

In accordance with these views, we may say that Islamic political system which based on what Allah sent through His Messenger and what the Messenger put forward module for us by implementing the law and providing necessary details so as we may lead a happy, progressive and peaceful life.

1.2.2. BASIC PRINCIPLES OF ISLAMIC POLITICAL SYSTEM

Religion and politics are one and the same in Islam. They are intertwined. We already know that Islam is a complete system of life and politics is very much a part of our collective life. Just as Islam teaches us how to say *Salah*, observe *Sawm*, pay *Zakah* and undertake Hajj, it also teaches us how to run a state, form a government, elect councilors and members of parliament, make treaties and conduct business and commerce. The Islamic Political System is based on the following main principles:

SOVEREIGNTY OF ALLAH

Sovereignty means the source of power. In Islam, Allah is the source of all powers and laws. (3:154, 12:40, 25:2, 67:1) It is Allah who knows what is good and what is bad for His servants. His say is final. All human being unitedly cannot change His law. The Qur'an says, "As for the thief – male and female, chop off their hands. It is the reward of their own actions and exemplary punishment from Allah. Allah is mighty, wise." (5:37). According to Islam, this order is unchangeable by any parliament or any government which claims itself to be Islamic. (5:44, 2:229). There are many more laws in the Qur'an concerning our life and those laws must be put into practice by an Islamic state for the greater good of human beings.

KHILAFAH OF MANKIND (Vicegerency of man)

Man is the vicegerent or agent or representative of Allah on earth. (25:55). Allah is the sovereign and man is His representative. Man should do as Allah commands him to do. But he has a choice to either obey or disobey Allah and because of this freedom of choice, he will be tested on the Day of Judgment. In the political sense, *Khilafah* means that human beings would implement the will of Allah on earth as His deputy or agent. As Allah's agent, human beings will carry out the will of Allah on His behalf as a trust (*Amanah*) *Khilafah* is a trust. An agent is always expected to behave, as his master wants to behave. (2:30).

LEGISLATION BY SHURA (Consultation)

Islam teaches us to run a government, to make legislation and decisions by the process of *Shura*. *Shura* means to take decision by consultation and participation. (3:159, 42:48). This is an important part of the Islamic political system. There is no scope of dictatorship or despotism in Islam. The Qur'an and the Sunnah will be the basis of legislation in Islam.

ACCOUNTABILITY OF GOVERNMENT

The Islamic political system makes the ruler and the government responsible firstly to Allah and then to people. The ruler and the government are elected by the people to exercise powers on their behalf. We must remember here that both the ruler and the ruled are *the Khalifah* of Allah and the ruler shall have to work for the welfare of the people according to the Qur'an and Sunnah. A ruler is a servant of the people of Islam. Both the ruler and the ruled will appear before Allah and account for their actions on the Day of Judgment. The responsibility of the ruler is heavier than the ruled. Any ordinary citizen of an Islamic state has the right to ask any question on any matter to the ruler and the government.

INDEPENDENCE OF JUDICIARY

In the Islamic political system, the Judiciary is independent of the Executive. The Head of the state or any government minister could be called to the court if necessary. They would be treated no differently from other citizens. The Qur'an has many injunctions about justice. One of the main functions of the Islamic state is ensure to all citizens (4:58, 4:135, and 5:8). The ruler and the government have no right to interfere in the system of justice.

EQUALITY BEFORE LAW:

The Islamic political System ensures equality of all citizens before law. It does not recognize any discrimination on the basis of language, color, territory, sex, or descent. Islam recognizes the preference of one over the other only on the basis of *Taqwa* (piety or fear of God). One who fears Allah most is the noblest in Islam. (49:13)

CONCLUSION

The context and situation of politics may change from time to time and from place to place, however the basic principles of it will never be changed. Of course, Islam does not give every detail for a changeable part of our life and politics is one of them.

1.2.3. The distinction between Conventional and Islamic Political Systems

In a conventional political system, the man-made laws rule the people whereas, in the Islamic political system, the people are ruled by the laws of Allah (SW).

In the conventional political system, sovereignty belongs to the people, while in the Islamic political system, sovereignty belongs to Allah.

In conventional system, the people make Law; whereas; in Islamic system, the law-giver is Allah.

In conventional system, there is class division; some of them are the rulers and the others are subjects. But in the Islamic system, the absolute ruler is Allah and all people are His vicegerents alike in their respective fields.

In a conventional system, the laws are changeable in the passage of time and demand, but Islamic laws are unchangeable. The Islamic laws are equal for all mankind but the conventional laws are contrary.

Today, the whole world is subject to man-made laws. Man, who is limited in his knowledge, prone to errors and subject to prejudice and greed. As a result, the rules that govern the world reflect these aspects of man's character to the oppression of the weak, injustice, and corruption.

People in one part of the world are allowed to starve, while in another, surplus produce is burnt or dumped in the sea. We are subject to taxes we do not want and cannot afford to pay.

The Islamic system is the only one, which gives a way out of these problems. Instead of being subject to man-made laws, where one person is made to bow before another, our lives and society are governed by the law of Allah (SWT) the Supreme, where everyone is considered as a vicegerent of Allah.

So, Islam is a moderate system, it neither takes away individual freedom nor allows the people to enjoy the limitless freedom. In the word of *Khalifah* Abdul Hakim, "Islam has definitely equalitarian trends but it does not believe in leveling down all differences by force. Let people think freely, believe freely act freely; create wealth, if they can, freely but legitimately. But evidently, the free actions of individuals will create differences in achievements and materials gains. If society in general or any portion of it is not suffering from dire misery and paralyzing poverty. Let there be a gradation of wealth honestly earned and innocently enjoyed. But it is the duty of society to make an attempt to eradicate indigence"

Chapter 02

Shariah and constitution

Objectives of this chapter

The main objective of this chapter is to provide students the knowledge about *shariah* as Islamic law and constitution as a basic document of a state

There are some specific objectives for this chapter. These are-

- To describe meaning and sources of *shariah*
- To discuss the differences between *shariah* and man-made law
- To provide an idea about constitution generally and Islamic constitution specially
- To discuss the main features of an Islamic constitution

Chapter 02	SHARI'AH & CONSTITUTION
	Meaning of <i>Shariah</i> , its sources, differences between shariah and man-made laws, human action under viewpoint of Islamic <i>shari'ah</i> ,

2.1.1. Meaning of *Shariah*

Shariah is an Arabic word, originated from the word '*shara'a*' which literally means to endorse law, to make something permissible or allowed. Pre-Islamic Arab used to use the word *Sharia'h* to mean water hole, drinking place, approach to watering place or straight way to drinking place.

Terminologically *Shariah* is the path leading to Allah, shown by Allah and His Messenger to mankind. In another words, *Sharia* is the moral and social guidance derived from the commands and actions portrayed within Islamic sacred texts (Savile 2015).

Islamic law is based on *Shariah*. Regarding the source and role of *Shariah* Allah Ta'ala says,

Then (O prophet) we put you on *Sharia'h* (the right way of religion) Therefore follow it and do not follow the desire of those who do not know

Sharia'h in the sense of ordinance and making of law, Allah Ta'ala says,

The same law (Al din) He has ordained for you as that which He ordained on Nuh that which we have sent be inspiration to you and that which we ordained on Ibrahim, Musa and Isa. Therefore, establish the Din and do not ...

Shariah is the path leading to Allah, shown by Allah and His Messenger to mankind. In Islam, Allah, being the only Sovereign, has the right to ordain a path for the guidance of mankind.

2.1.2. Sources of *Sharia'h*

Sharia'h the Islamic law consists of several sources, such as- primary or fundamental sources and secondary sources. Primary sources consist of two things that is al-Quran and al-Hadith and the secondary sources are mainly two, such as Ijma and Qiyas. There are some additional secondary sources of shariah. These are *Istihsan*, *Istishab*, *Masalih al Mursalah*, *Adat* and *Uruf* etc.

The word *Shariah* had little value before Islam. Islam accepts the term and considers it as the Islamic law. It is law because it is a combination of the above sources otherwise it is simply an Arabic word nothing else. Since these sources made the *Shari'ah* worthwhile therefore a brief discussion on them is to be placed as following.

Primary sources

1. Al Qur'an

Al Qur'an is the first and primary or fundamental source of Islamic *Shari'ah*. Qur'an literally means reading, recitation. In addition to the term al Qur'an it has many other names. Al Qur'an is the latest book sent by Allah Ta'ala to the last and final Messenger Muhammad (Sln). Through arch angel Jibrel (AS). It is for the guidance of mankind. It is pure and free from any doubt. It

means, there is no doubt about its authenticity that it came from Allah Ta'ala, sent to Muhammad (SIm).

2. Sunnah

Sunnah refers to the practical life activities of prophet (sm). *Sunnah* means a system or path or an example. In the Islamic sense this term implies Prophet Mohammad's speeches, action/deeds, decisions and approvals. *Hadith* means saying. This term is a singular form, generally used by the Muslims writers for the collection of the traditions (*Sunnah*) of Prophet Muhammad (SM). *Sunnah* is the second source after the *Qur'an* upon which the legislation of Islam rests.

Secondary Sources

The secondary sources of *shariah* are divided into main and additional secondary sources. The main secondary sources are the holy Qur'an and Sunnah. There are some additional sources of *shariah*. These are - *Istihsan*, *Istishab*, *Masalih al Mursalah*, *urf wa al-adath* etc.

1. Ijma'

In simple term, *Ijma'* means unanimous decision of the scholars that is legal experts on an arisen situation whose solution is not available, neither in the Qur'an nor in the Hadith. For example, validity of test tube baby. Solution of such a critical issue is not the job of one man or some people- but it is the job of entire Muslim Ummah. The expert of the Muslim Ummah would sit together and do their best to come up with the solution. Their collective and unanimous decision on a particular case either positive or negative, would be considered as *Ijma'* or consensus. Once consensus is made on a particular issue it would be considered a law to be followed.

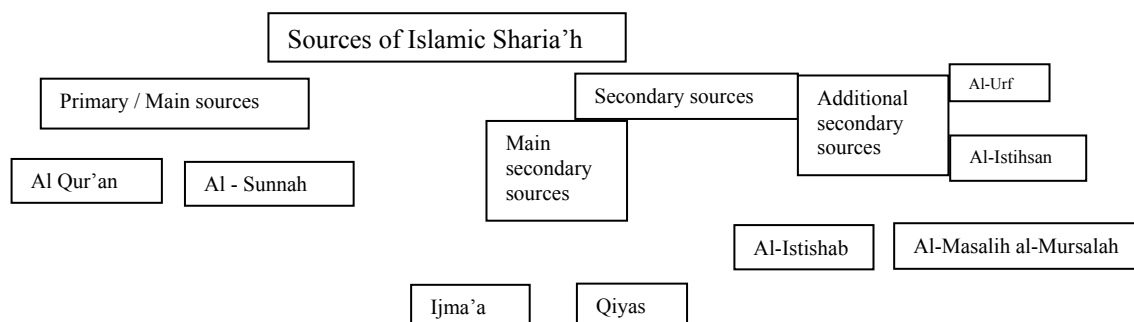
2. Qiyas

The word *qiyas* originated from the Arabic word *qais* which means measuring or ascertaining of length, weight, or quality of something. It also means comparison, similarity between two things, analogical deduction, and similitude.

"Technically *qiyas* is the extension of *shari'ah* value from an original case to a new case, because the latter has some effective cause as the former. The original case is regulated by a given text and *qiyas* seeks to extend some textual ruling to the new case".¹⁴ For example punishment of drinking of wine by eighty lashes which is based on the punishment of calumny that is also eighty lashes.

Additional secondary sources

Some of the additional secondary sources of Islamic law are – (1) *Istihsan* or equity (2) *Masalih al Murslah* or public interest (3) *Istishab* or presumption of continuity and (4) *Urf wa al Adah* or custom and local practice. Based on that, sometime Islamic law accepts the custom or practice of the people provided that such practice does not contradict the *Sharia'h*. Moreover, some time for public benefit, Islamic law suspends the original ruling for time being. The following chart will indicate the clear idea about these sources



14 Dr. Islam, A.B.M Mahbubul, *Islamic Constitution: Qur'anic and Sunnatic perspective*, p48.

So *Shari'ah* (the Islamic Law) is the combination of *al-Qur'an*, *al-Sunnah*, *al-Ijam'a*, *al-Qiyas* and other additional secondary sources. It also includes practice of the *khulafa ar Rashidun* - subsequent rightly guided caliphs in their handling of state affairs.

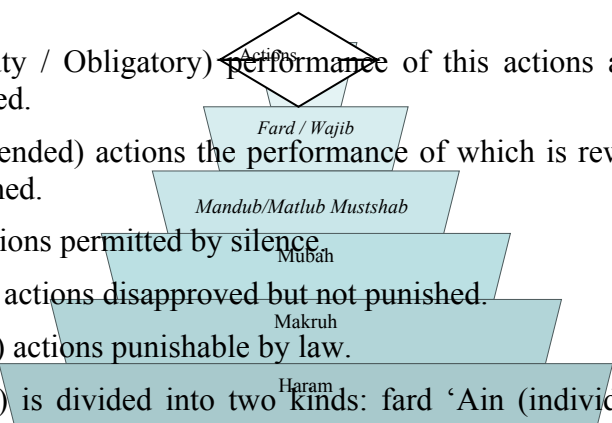
2.1.3. Difference between *Shari'ah* and Man-made Law

Man-made laws differ from *Shari'ah* in a number of significant ways, like-

1. Men make laws when they feel the need; these laws start from a few and then grow in number over the years. On the other hand, the Islamic law is complete, perfect and includes all aspects of human life.
2. Man-made laws are not permanent; they can be changed according to the time and circumstances. For example, in a particular country at a particular time, drinking alcohol may be banned; but this can be changed when public pressure grows. The American government wants ban alcoholic drinks but removed the ban after a time because it could not be applied. On the other hand, *Sharia'h* is permanent for all people all the time. It does not change with time and conditions. For example, drinking wine and gambling are not allowed under Islamic law. And no one can change this; it is a law that is valid for all times and for all places.
3. Man does not have knowledge of the future. Hence, man-made laws cannot stand the test of time. On the other hand, Allah is All-knowing and All-powerful. He is the most Wise and His laws are the best and the complete.
4. Man is a created being. His laws are the creation of the created. And Allah is the creator and His laws are for the men, His creations.
5. Man-made laws may be suitable for the particular nation or country. They cannot be universal. On the other hand, Allah's laws are for all nations, all countries and for all times. They are universal.
6. Man-made laws suit their own needs. Suppose, members of parliament want to decrease the rate of tax on the rich, they would do so, even if the majority of the people suffered and there was high unemployment in the country. On the other hand, Allah is above all needs. He is not dependent on anything, so His laws are for the good of all people and not for a few selfish people.

2.1.4. Human Actions in the view point of Islamic *Shari'ah*

Islamic law divides all human activities into five categories. They are –

- 
1. Fard / Wajib: (Duty / Obligatory) performance of this actions are rewarded and their omission is punished.
 2. Mandub: (recommended) actions the performance of which is rewarded but omission of which is not punished.
 3. Mubah: (silent) actions permitted by silence.
 4. Makruh: (disliked) actions disapproved but not punished.
 5. Haram: (forbidden) actions punishable by law.
- Then the fard (obligatory) is divided into two kinds: fard 'Ain (individual obligation of each Muslim) and fard kifayah (collective obligation of Muslim Ummah).

We may also divide all human activities into two groups:

- a) Ma'rufat (virtues).
- b) Munkarat (evils).

Then the Ma'rufat are classified into the following three categories:

- 1) fard/wajib (mandatory or obligatory)
- 2) Mustshab / Mandub/ Matlub (recommendatory/ likely/expected).
- 3) Mubah (permissible).

And the Munkarat are classified into two categories:

- 1) Haram (absolutely prohibited)
- 2) Makruh (simple disliked)

Human action under Qur'anic Injunctions as the first source of *Shari'ah*:

Just before we said that the *Shari'ah* has rules for every aspect of life. But for every action of human being, Islamic *Shari'ah* has its ruling. In a minute division, human actions under the Qur'anic Injunctions are classified into three categories.

- Firstly ***Al-Ahkam Al-I'tiqadiyah*** (Faith and beliefs) - ruling related with faith and beliefs of a man, i.e., belief in the Unity of Allah, belief in the Angels of Allah, in the books of Allah, in the Messengers of Allah and belief in the life after death.
- Secondly ***al-Ahkam al khuluqiyah*** (Ethics and Moralities) that a man should be adorned with some good qualities and be devoid of some immoralities, and
- Thirdly ***al-'Amaliyat*** (Activities) that brought out from a man of his sayings, doings, making any treaties or agreements with other etc.

This '*Amaliyat*, according to its nature, is also categorized into two parts.

1. First one is ***Ahkamul Ibadat*** (religious observance) like *Salat, Sawm, Zakah, Hazz*, Vows and others through which a man may make relation with his Creator to whom he is destined to return.
2. Second one is called ***al-Ahkamul Mu'amalat*** (Dealings and Behaviors) like contracts or agreements, behavioral tendencies, crimes and penalties etc. through which a man relates with other man individually or collectively and through which his relation with all that exists in this whole world other than Allah is determined. In Islamic terminology it is said ***Ahkamul Mu'malat*** but in our modern age this *Ahkamul Mu'amalat* are classified into various classification. These are as follow
 1. *Ahkamul Ahwal Ash shakhsiyah* or personal Law
 2. *al-Ahkam al-Madaniyah* or civil law
 3. *al-Ahkam al-Janeyah* or criminal law
 4. *Ahkamul mura'fat* or law of defense
 5. *al-Ahkam al-Dasturiyah* or constitutional law
 6. *al-Ahkam al-Dawliyah* or international law
 7. *al-Ahkam al-iqtisadiyah wa al-Maliyah* or business and commercial law

It may be pointed out that the Holy Qur'an, as the first source of Islamic *Shari'ah*, has given detailed instructions only for first two categories (*Al-Ahkam Al-I'tiqadiyah* and *al-Ahkam al khuluqiyah*) and of third category (*Al-'Amaliyat*) for *Ibadat* has also laws in the Qur'an in details.

Now regarding *Mu'amalh*, as almost everything of it except some of *Ahkamul Ahwalul al-Shakhsiyah*, being subordinate to change and development of society, the holy Qur'an has laid down only border lines and basic principles according to which new laws on the basis of main sources of *Shari'ah* be brought up.

As for (*Ahkamul Ahwalul al-Shakhsiyah*) personal law- like marriage, divorce or inheritance etc., due to ignorance and emotion people may fall prey to wrong decision, Allah (SWT) has mercifully given the detailed instructions, and nothing is left here for men without implementation the instruction of Allah (SWT).

Through this long discussion of human action under Qur'anic Instructions, what we are to express that for identifying Islamic Ideological State, we should search for the broad principals and basic rules of the Qur'an, and observe how was it implemented and practiced in the life of the Prophet (Sam) and in the period of four rightly guided *Khulafa* and later. It may suit here to get an idea about the philosophy of State and politics in Islam.

	ISLAMIC CONSTITUTION: MEANING OF CONSTITUTION, DEFINITION OF ISLAMIC CONSTITUTION, CONTENTS, SOURCES AND MAIN FEATURES OF AN ISLAMIC CONSTITUTION
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2.2.1. MEANING OF CONSTITUTION

Introduction:

A state is run by a group of people. This is called a government. A government cannot run a state according to their whim and caprice. There has to be certain rules and principles on the basis and under the authority of which a government can run the state.

Definition of constitution:

The set of principles which are applied for the administration of a state (Executive legislative and judiciary) is called the constitution. It is also called the government wheel of a state without which anarchy would result in the administration of a state.

According to C. F. strong: "A constitution may be said to be a collection of principles according to which the power of the government, the rights of the governed and the relations between the two are adjusted."

According to Thomas Palne, government without constitution is a power without right. According to Aristotle, constitution is the way of life that the state has chosen for itself.

What is Islamic constitution

Islamic concept of constitution may be defined as:

"A set of rules given by Allah, His Messenger and practices of the immediate successors of the Prophet (SAAS) according to which the power, rights and obligations of the ruler and the citizens and the relations of both (ruler and ruled) can be determined."

It can also be further defined as:

“Islamic constitution is a codification of some relevant portions of revealed laws and practices of the rightly guided caliphs that determine and dictate the matters relating to state and citizen thereof.”

Scope or contents of Islamic constitution

Scope means the topics or subject matters that a constitution deals with. The strength of the scope depends on the size of a constitution. The constitution of Bangladesh is consisted of 153 Articles with eleven parts. The contents of a constitution of all democratic and secular countries are almost the same. Since contents cover the state principle, rights of the citizen, pattern of the government etc. therefore, an Islamic constitution also adopted them, as the subject matters are almost the same. It is to be noted that, Islamic constitution and constitutional government is far earlier than the present form of secular constitution and constitutional government. Islamic constitution took its shape and practice right from the time of Prophet Muhammad (SIm). in the year 622 AD, which was year of his formation of state of Medina as well under his able leadership.

Basis or Sources of Islamic constitution

Every discipline has its own basis and basis means the main principles or sources. The basis of Islamic constitution is *Shariah* the Islamic law. It means that a constitution to be Islamic must be based on Islamic law. Islamic law is based on *Shariah*. Regarding the source and role of *Shariah* Allah Ta'ala says,

Then (O prophet) we put you on *Shari'ah* (the right way of religion) Therefore follow it and do not follow the desire of those who do not know .

Shari'ah in the sense of ordinance and making of law, Allah Ta'ala says,

The same law (Al din) He has ordained for you as that which He ordained on Nuh that which we have sent be inspiration to you and that which we ordained on Ibrahim, Musa and Isa. Therefore, establish the Din and do not ...

2.2.2. Some special features of an Islamic constitution:

There are several special features of an Islamic constitution. Such as:

1. Supremacy of *Shari'ah*

Shariah- the Islamic law- shall have the supreme position in an Islamic Constitution. Islamic law shall be observed and practiced in all branches of life with due honor and respect. In other words, every citizen under Islamic constitutional government shall abide by the Islamic law which does not discriminate between man and man, between religion and nations.

Regarding observance of *Shari'ah* the commands of the Allah the Lawgiver are as follows:

(45:18) (ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ)

O' prophet! We put you in *Shariah* (the right way of religion/ Islamic monotheism). Therefore, follow it and do not follow the desire of those who do not know.”

So, if there is any contradiction of social rule with the Qur'anic or Sunnatic law, it (Islamic constitution) will certainly prefer the Islamic shari'ah, even if the majority of the people support the social rules.

2. Administration through consultation:

The administration of the country under an Islamic constitution shall be done through mutual discussion and consultation. It means, there shall be no autocratic / dictatorial system or one man show to do whatever he likes or in whatever way he thinks fit to be followed in administering the state. But there must be a system of consultation in all branches of administration.

Regarding consultation Allah, the Almighty commands His prophet (sm) :

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ (38)

“True believers are those who hearken to their Lord and establish regular prayer, who conduct their affairs by mutual consultation, who spend out of what We bestow on them for sustenance.”

These are the characteristics of those people of belief who avoid committing of crime and shameful deeds and those who are forgiving others even when they are angry, as mentioned in the previous ayah of the same Surah.

Administration by consultation means democratic system of government that opposes autocracy. This is the paramount principle of Islamic of Islamic system of government.

3. All wealth belonged to Allah

A state under Islamic constitution believes that the only owner of the wealth is Allah. He is the self-sufficient Master whom all creatures need. He neither eats nor drinks. Therefore, He does not use the wealth, but it is for the use of His creatures. The citizen has proportional right to share over it. None is allowed to grasp it illegally and such a person should not be given shelter by any one.

The Almighty Allah declared about His ownership in a lot of *Ayats* in the Holy Qur'an. Such as:

وَلِلَّهِ مُلْكُ السَّمَوَاتِ وَالْأَرْضِ وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ (189)

“And to Allah belong the dominion of the heavens and earth and Allah has power over all things.” (3:189)

Therefore, a citizen is not the actual owner of his wealth; but he is the trustee of the wealth of his Lord. Even he is not owner of his body. That is why it is prohibited to commit suicide. Thus, he must spend everything belonging to him according to his Lord's will.

4. Citizen shares their property for the wellbeing of their fellow human being

There are two types of wealth that are possessed by the citizen, such as wealth through investment and wealth through mining. In both cases, the citizen, individually and collectively, is the owner of those properties. Economic prosperity of the state can be realized through mutual sharing of this property. In other words, the citizen must assist the government in paying all types taxes that are due for the wellbeing of the state. Assistance of the citizen to the state is termed as the assistance in the way of Allah. As He says:

هَٰئِنتُمْ هَٰؤُلَاءِ تُدْعَوْنَ لِتُنفِقُوا فِي سَبِيلِ اللَّهِ فَمِنْكُمْ مَنْ يَبْخُلُ وَمَنْ يَبْخُلْ فَإِنَّمَا يَخْشَىٰ لِنَفْسِهِ وَاللَّهُ الْغَنِيُّ وَأَنْتُمُ الْفُقَرَاءُ وَإِنْ تَتَوَلَّوْا يَسْتَبْدِلْ قَوْمًا غَيْرَكُمْ ثُمَّ لَا يَكُونُوا أَمْثَالَكُمْ (38)

“Behold, you are those invited to spend (your wealth) in the way of Allah. But among you are those who are niggardly. But anyone who is miser are so at the expense of their own soul. Allah is free of wants and it is you who are needy. If you turn back (do not share your wealth) He will substitute in your stead another people. Then they will not be like you.”

Based on this Qur'anic law, the remaining & changing of leadership is made a prerequisite on the sharing of the wealth of rich with the state as well as the poor. This is the main way of financial solvency and means of purification of soul of the citizen of that state.

5. It acts as mouthpiece of government

Islamic constitution shall act like a mouthpiece of government. Every citizen may understand his duties as well as his rights by reading it at a glance. There is no need to go to the executive or legislative or judiciary or police officer, but he alone is enough to judge himself. The Qur'an states in this regard:

وَكُلَّ إِنْسَانٍ أَلْزَمْنَاهُ طَائِرَهُ فِي عُنُقِهِ وَنُخْرِجُ لَهُ يَوْمَ الْقِيَامَةِ كِتَابًا يَلْقَاهُ مَشْهُورًا (13)

“And We have fastened every man's deed to his neck, and on the Day of Resurrection, We shall bring out for him a book which he will find wide open. (It will be said to him): Read your book. You yourself are sufficient as a reckoner against you this Day.” (Sura al-Isra, 17:13-14)

A government under Islamic constitution will play a prime and vital role for upholding the right and dignity of oppressed people of the world. Even, who opposes Allah and His Messenger and Islamic constitutional government, this government does not owe any obligation towards them. As Allah (Swt). ordains:

يَا أَيُّهَا الرَّسُولُ لَا يَحْزُنْكَ الَّذِينَ يُسَارِعُونَ فِي الْكُفْرِ مِنَ الَّذِينَ قَالُوا آمَنَّا بِأَقْوَامِهِمْ وَلَمْ تُؤْمِنْ قُلُوبُهُمْ وَمِنَ الَّذِينَ هَادُوا سَمَّاعُونَ لِلْكَذِبِ سَمَّاعُونَ لِقَوْمٍ آخَرِينَ لَمْ يَأْتُوكَ يُحَرِّفُونَ الْكَلِمَ مِنْ بَعْدِ مَوَاضِعِهِ يَقُولُونَ إِنْ أُوتِيتُمْ هَذَا فَخُذُوهُ وَإِنْ لَمْ تُؤْتَوْهُ فَاحْذَرُوا وَمَنْ يُرِدِ اللَّهُ فِتْنَتَهُ فَلَنْ تَمْلِكَ لَهُ مِنَ اللَّهِ شَيْئًا أُولَئِكَ الَّذِينَ لَمْ يُرِدِ اللَّهُ أَنْ يُطَهِّرْ قُلُوبَهُمْ لَهُمْ فِي الدُّنْيَا خِزْيٌ وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ (41) سَمَّاعُونَ لِلْكَذِبِ أَكَّالُونَ لِلسُّخْتِ فَإِنْ جَاءُوكَ فَاحْكُم بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ وَإِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَضُرُّوكَ شَيْئًا وَإِنْ حَكَمْتَ فَاحْكُم بَيْنَهُم بِالْقِسْطِ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ (42) وَكَيْفَ يُحْكُمُونَكَ وَعِنْدَهُمُ التَّوْرَةُ فِيهَا حُكْمُ اللَّهِ ثُمَّ يَتَوَلَّوْنَ مِنْ بَعْدِ ذَلِكَ وَمَا أُولَئِكَ بِالْمُؤْمِنِينَ (43)

“O Messenger! Let not grieve you who race each other into unbelief... (41) Are fond of listening of falsehood, of devouring anything forbidden. If they come to you, it is up to you either to judge or not to judge. If you decline to judge they cannot hurt you in the least. If you judge in equity between them. For Allah loves those who judge in equity. (42) (Sura Maida, 5:41-43)

6. Role of Public media is for the interest of Muslim and Islam:

All organs of the government shall act to produce good citizen free from committing of sinful act. It shall be the responsibility of a government under Islamic Constitution to help the citizen work for good life here and hereafter.

That is why all branches of government shall be committed for the development of education, culture, public relations like radio, television, newspaper, internet, CD, video, Audio etc.

Throughout the history of mankind Allah *Ta'ala* kept on sending law for this end only. As He says:

إِنَّا أَنْزَلْنَا التَّوْرَةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا وَالرَّبَّانِيُّونَ وَالْأَحْبَارُ بِمَا اسْتُحْفِظُوا مِنْ كِتَابِ اللَّهِ وَكَانُوا عَلَيْهِ شُهَدَاءَ فَلَا تَخْشَوُا النَّاسَ وَاحْشَوُا اللَّهَ وَآخِشُوا وَلَا تَسْتَرْوُا بِآيَاتِي ثَمَنًا قَلِيلًا وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ (44)

“It was We who revealed the law (to Musa) therein was guidance and light. By its standard have been judged the Jews, by the Prophets who bowed (to Islam) to the wills of Allah, by the Rabbis and Doctors of law. For them was the protection of the book of Allah and they were witness there to. Therefore, fear not men but fear Me (Allah) and sell not My sign for miserable price. If anyone fails to judge by the law of Allah that He revealed, they are (no better) than unbelievers.”

Based on that a government under Islamic constitution is under obligation to act in accordance with al-Quran and al-Sunnah that guarantee the right and obligation of the people.

7. The Government is savior of distress and oppressed people:

The government shall be responsible to rescue and provide the opportunity to the distress and wealth less people so as to make a balance society. As regards the assistance of oppressed people the law of Allah (Swt.) is as follows.

وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أُهْلُهَا وَاجْعَلْ لَنَا مِنْ لَدُنْكَ وَلِيًّا وَاجْعَلْ لَنَا مِنْ لَدُنْكَ نَصِيرًا (75)

“And why should you not fight in the course of Allah and of those who being weak, are ill-treated and oppressed? Men, women and children who cry saying, our Lord! rescue us from this town whose people are oppressors; and raise for us from You one who will protect and raise for us from you a ruler who will help us.” (sura al-Nisa, 4:75)

Base on this ayah, it is the responsibility of a ruler under Islamic Constitution to assist the oppressed and less fortunate people. Helping less fortunate one and upgrading their position as to the position of fortunate one is the responsibility of an Islamic government. Moreover, helping concept of oppressed by reason automatically disburse the concept of oppression which (the former) is the prime objective of *Shariah* as well.

8. Government is duty bound to produce basic needs

The Government is duty bound to guarantee the basic demands of its citizen. It is to protect the basic rights of the citizen and also the right of Allah. Food, housing, education, healthcare, cultural and social safety are some of the basic, needs of a citizen. It is the duty of the government to provide them, if possible, free of cost.

An Islamic state must bring all productive resources into use, including unemployed man-power; unused land, water resources and minerals. Islamic government is the first to guarantee basic rights to its citizen. There are some Qur'anic and Sunnatic provisions in support of these rights, such as: (6) وَمَا مِنْ دَابَّةٍ فِي الْأَرْضِ إِلَّا عَلَى اللَّهِ رِزْقُهَا وَيَعْلَمُ مُسْتَقَرَّهَا وَمُسْتَوْدَعَهَا كُلٌّ فِي كِتَابٍ مُبِينٍ -)

“And no moving (living) creature is there on earth but its provision is due from Allah. And He knows its dwelling place and its deposit (in the uterus, grave) all is in a clear book (Al-lauh al Mahfuz- the book of Decrees with Allah). (Sura Hud, 11:6)

The messenger of Allah was commanded to levy tax on the property of wealthy men in the form of Zakat, *Sadqah* etc. As regards this Allah Ta'ala says:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلَّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ (103)

“Take sadqa (Zakat/alms) from their wealth in order to purify them and sanctify them with it, and invoke Allah for them. Verily! Your invocations are a source of security for them; and Allah is All-Hearer, Al-Knower.”

For the proper distribution of Zakat the names and numbers of recipients are described very clearly in various *Ayats* of the Holy Qur'an. So, government is bound to supply all the basic requirements of a citizen.

9. The government is guardian for building of good character:

Character is the most precious thing in human life. Because, good character is the way to paradise and bad character is the way to hell. As the Messenger of Allah says:

“Abu Hurairah reported that the Messenger of Allah (SAAS) was asked about a thing which would lead most of the people go to paradise. The prophet (SAAS) said it is the fear of Allah and good character. He was again asked about a thing which would lead most of the people go to hell. He said, it is mouth (taking bad thing) and private part (committing zina).”

The objective of statehood is to make its citizen good and efficient both in mundane and spiritual aspects. No methods for this end can be effective without having of good character. It is only the good character that guarantees the building of good citizen, As the Messenger of Allah says:

“Abdullah Ibn Amar ibn Al'As (RA) says, the Messenger of Allah neither spoke indecently nor he listen to any indecent talking. He used to say that the best among you are those whose character is good.”

Building of character is so important that it can not be denied and ignored. With regard to this importance the Messenger of Allah Swt. Says:

“Anas (RA) reported that the Messenger of Allah says: “Indeed I have been sent (appointed as prophet) in order to perfect the good character.”

Therefore, it cannot be ignored since perfection of the character of the citizen was sole function of the prophet. It means that if character of a person is good all of his action will follow the suit.

10. It produces Allah fearing and hereafter faced citizen

A person who fears Allah is the best citizen because one who fears Allah, he shall be a self-motivated in performing his official and religious duties. An Allah-fearing person believes that all of his actions are being monitored by Allah and his angels for 24 hours. Therefore, his commission of good will be rewarded and commission of bad will be punished. Such a citizen can only assure of not doing any bad deed like commission of obscene act, taking more and giving less in business, hatching conspiracy against man or government etc. even though there is no policeman or intelligent branch present there in front of him.

Allah fearing citizens are blessed by Allah Swt. As He says,

“Alif Lam Mim: This is the book. There is no doubt in it. It is the guide for muttaqi Allah fearing people.”

Allah fearing is not only beneficial for the hereafter but it is beneficial for the advancement of material power as well. As Allah Ta’ala says,

“And for those who fear Allah, He ever prepares a way out and provides sustenance for him from the source he never could imagine (think of it).”

Life in the hereafter is the real and everlasting life compared with the life of this world. Plenty of Qur’anic ayat on this regard are available. For example, Allah Ta’ala says,

“Say (O prophet) short is the enjoyment of this world. The hereafter is best for those who fear Allah (do good deed). They will never be dealt with unjustly in the very least.”

Allah Ta’ala further says,

“O you who believe! What is the matter with you that when you are asked to go forth in the cause of Allah (to act for Islam) you cling heavily to the earth? Do you prefer the life of this world to the hereafter? But little is the comfort of this life as compared with hereafter.”

Since the life of the hereafter is the best and everlasting one, a government under Islamic Constitution would, therefore, make each and every plan of it which benefits its citizen both here and hereafter.

Chapter 03

State and Government

Objectives of this chapter

The main objective of this chapter is to provide the students the basic concepts about state and government

There are some specific objectives for this chapter. These are-

- To describe the concept of the state and government
- To discuss the relation between state and government
- To provide basic knowledge about three organs of the government

Chapter 03	STATEHOOD AND ISLAMIC STATE (KHILAFAH): IDENTITY OF AN ISLAMIC STATE, PHILOSOPHY AND NECESSITY OF ISLAMIC STATE, PURPOSE OF ISLAMIC STATE, BASIC PRINCIPLES OF ISLAMIC STATE, MODERN NATIONAL STATE AND ISLAMIC IDEOLOGICAL STATE: A COMPRISION, BASIC ORGANS OF STAE GOVERNMENT IN VIEW POINT OF ISLAM
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3.1.1. Introduction to a State

According to the modern scholars, the state is a concept of political science and a moral reality which exists where a number of populations living in a definite territory are unified under a government which, in internal matters, is the organ for expressing its sovereignty and, in external matters, is independent of other government.

In this regard Dr Mustafa Kamal says¹⁵: "State is a territory where a group of well-organized people live having sovereignty".

Dr Abdul Karim Zaidan says that "whatever the definition is given, the state must have certain elements as follows¹⁶;

- (1) Well- organized population
- (2) Under a universal system.
- (3) Living in a definite territory.
- (4) Having sovereignty.
- (5) Being free from any external influence.

However, Islamic state is neither like the conventional state, nor it is one which is ruled by Muslims rather it must satisfy the demand of Islamic *Shari'ah* first. So, we may identify the fundamental elements of an Islamic State as follows:

- (1) Administration according to the revelation (*Al-hukm bi ma anjala Allaha*): It is, no doubt, a distinguishing element for an Islamic State. Allah (swt) says in this regard: {So judge among them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you}. (sura al-Maidah: 48)
- (2) Well-organized population (*al-ra'iyah/al sha'b*): This well-organized population is the second important element on whom the law of Allah be implemented. Laws of the state are executed. According to citizenship rule of Islam they are divided into two types – Muslims who have belief in the state ideology and non-Muslims who are not believers in the state ideology.
- (3) A definite territory (*al-Dar/ al-Eqlim*): this definite territory surrounded by border line is that where the population stay and laws of the state are executed. It is in relation to Islamic Ideology of two types – Islamic (Darul Islam), where Islamic *Shari'ah* is practiced, and non-Islamic (Darul Kufr), where Islamic *Shari'ah* is denied and rejected.

¹⁵ Dr. ZAIDAN, ABDUL KARIM, (2002) *Islami Rastra Bebesta* , translated by Maulana Abdur Rahim, E 9 , Dhaka , Adhunic Prokashoni. , P13.

¹⁶ Dr. ZAIDAN, ABDUL KARIM , (2002) *Islami Rastra Bebesta*, P 13.

- (4) Responsible authority (*Ulul amr*): This responsible authority is termed in Islamic Political Science as '*Khalifah*', '*Amirul Mu'minin*' or '*Imam*'. These refer to the head of the government. The title '*Khalifah*' once again resumed with ascension of Abu Bakr Siddiq as the first head of the state of Madina. He is better known as Khalifa Abu Bakr, followed by Umar b. Khattab, Osman b. Affan and Ali bin Abi Talib. Abubakr ® claimed himself to be the Khalifatu Ar Rasul or successor of the Prophet (SAAS) (Khalifatu Rasulillah) and then Umar ® being in-charge of *Khilafah* was known as *khalifatu Khalifati rasulillah*, and then Usman ® used for him directly '*Khalifah*'. The word '*Amirul Mu'minin*' was used by Umar and Ali ® was known with '*Al-Imam*' for the first time in the history of *khilafah*. It may be pointed out that in whatever form the word is used for the post of *Khalifah* - '*Amirul Mu'minin*, Imam, President or Prime-minister' it is actually Vicegerency of Allah for the establishment of '*al-Din al-Islam*' on the method of the Prophet (Sm).

3.1.2. Topic: Identity of an Islamic State

Introduction: The Islamic system of state, established by the prophet (PBH), existed from 623CE in Medina. The state of Medina was neither monarchic nor republican, ruled on the policy of the majority. This state was based neither on tribalism nor on nationalism rather on humanism and Islamic monotheism. It was really an Ideological state and the ideology was Islam only.

The Islamic system of state, established by the Prophet Mohammad (PBUH) and followed by his immediate successors, existed from the time of the establishment of Islam around 1440 years ago. After the rightly guided Khalifs, the state turned into somewhat monarchic but was not derailed totally from its ideology and basic principles of Islam. At last, with the end of the Ottoman regime the Islamic state (*Khilafah*) was completely destroyed by Mustafa Kamal in 1924CE. The capital city of the *Khilafah* at the time of its demise was Istanbul¹⁷. There is reason to believe that if this kind of state is established again the whole humanity will get their much-needed peace and happiness returned.

Philosophy of Islamic State

From time immemorial, numerous ideologies have come into existence; however, there is no concordance with one another, because one doctrine comes into being challenged by other ideologies. This is because those who are the originators of these doctrines, their belief, thoughts, feelings and nature are totally differed from one another. Aftermath, the people are experiencing dire consequences because of the man-made ideologies.

The one and only remedy for these complex circumstances is to believe that there is none to be worshiped, not a single one whose order may be abided by in the cosmos but Allah. Who created the whole world and everything in it, He alone is the Master, Sustainer and All Powerful. He knows everything seen or unseen. There is no loyalty in His deeds and thus His is the absolute right of giving directions and interdictions. And His system is undoubtedly far away from defect and blame. Human being is the servant of Allah. He has no right to make any doctrine or ideology; rather it is Allah alone who created him and made him subject to His will.

17. DR. AL QARDAWI, YOUSUF, *Fiqh al Dawla*, P14.

Therefore, he has no duty in this world but to pay servitude to Allah and to put his orders into effect. His life in this world is meaningless and can never be successful unless he turns to be a pure servant of Allah following His universal system in all aspects of life.

If we think over the creations of Allah, we can see that the whole world follows His universal system. Even in a human being, his body function is obedient to this universal system.

Since, the whole world and everything in it, living or non-living follows His universal system because, this is the kingdom of Allah alone. So, we may define this universal system as His political system and the whole world is His State.

Among all the creatures to this universe the man is a creature of strange nature, wherein no other creature shares them. That they are bestowed with **freedom of will** for accepting the truth or rejecting it, and that they have been **entrusted with the office of the Vicegerency** or *khilafah* due to which whatever in this world are subdued to them, they can use them according to their wish and need. In this regard Allah (Swt) sent His messengers with clear guidance in order that His absolute kingdom may be established in the universe and the people abide by His laws willingly.

Therefore, the Islamic political system is unique one. It cannot resemble a federal, democratic, republican, monarchic or dictatorial system and the like at all. This system is far reaching and addresses all spheres of human activities from the smallest to the biggest. This considers people under its authority as its members, whether they are Muslim or non-Muslims. All have their rights guaranteed by Islam.

Necessity of Islamic State: The Muslim *Ummah* has come to realize that the solution to their problems rests on creating the Islamic state. Nevertheless, The Islamic State is not a desire that one aims to satisfy, but an obligation that Allah (SWT) has decreed on Muslims and commanded them to execute.

Besides, Islam is a comprehensive way of life, which necessitates the existence of the State to implement the *Shari'ah* at individual and social level comprehensively. Individuals can abide by some rules of Islam related to the prayer, fasting, and Hajj. The other rules of Islam that organize the various political, social, economic, and international relationships require the existence of the state with the authority to organize the myriad of relationships to mobilize the *Ummah* towards propagating Islam.

Therefore, Muslims must establish the Islamic State, for Islam would not have an influential presence without it, and their country would not become an Islamic homeland unless it is ruled by the Islamic principles.

Sovereignty and Vicegerency:

Sovereignty is considered to be a very important political concept. It is supposed to be the most essential quality of a state. The organized people of a territory are recognized as a state only when they enjoy sovereign authority. If the territory is governed by any authority from outside, it cannot be called a state even if it is a vast territory with a huge population organized under a strong Government.

"The belief in the Unity and Sovereignty of Allah is the foundation of social and moral system propounded by the Prophets. It is the very starting-point of the Islamic political philosophy. The basic principle of Islam is that human being must, individually and collectively, surrender on God all rights on overlordship, legislation and exercising of authority over others. No one should be allowed to pass orders or make comments in his own right and no one ought to accept the obligation to carry out such command and obey such orders. None is entitled to make laws on his own authority and none is obliged to abide by them. These rights vest in Allah alone. 18

"The authority rests with none but Allah. He commands you not to surrender to any one save Him. This is the right way (of life)." (Al-Qur'an 12:40)

"They ask: 'have we also got some authority'? Say; 'all authority belongs to Allah alone' ". (3:154)

According to this theory, sovereignty belongs to Allah. He alone is the lawgiver. No man, even if he be a prophet, has the right to order others in his own right to do or not to do certain things. The Prophet himself is subject to Allah's commands.

"I do not follow anything except what is revealed to me." (6:50)

"They are the people unto whom We gave the Scripture and Command and Prophethood." (6:90)

"The Qur'anic concept of sovereignty is simple. God is the Creator of the universe. He is its real Sustainer and Ruler. It is His Will that prevails in the cosmos all around. As all creation is His, His command should also be established and obeyed in man's society. He is the real Sovereign and His Will should reign supreme as the Law." 19

3.1.2 The purpose of an Islamic State

The holy Qur'an clearly states that the aim and purpose of an Islamic state is **the establishment, maintenance and development of those virtues that the Creator wishes human life to be enriched by and the prevention and eradication of those evils in human life, which He finds objectionable.** (To establish the virtues and prevent the evils)

The Islamic state has some specific objects and purposes. These objects are defined in the holy Qur'an as follows:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنْفَعٌ لِلنَّاسِ وَلِيَعْلَمَ اللَّهُ مَنْ يَنْصُرُهُ وَرُسُلَهُ بِالْغَيْبِ إِنَّ اللَّهَ قَوِيٌّ عَزِيزٌ (25)

"Indeed, we have sent our messengers with clear Proofs, and revealed with them the scripture and the Balance (Justice) that mankind may keep up justice. And we brought forth iron wherein is mighty power (in matters of war), as well as many benefits for mankind, that Allah may test who it is that will help Him (His religion) and His messengers in the unseen. Verily, Allah is all-Strong, all-Mighty.

"(Muslims are) those who, if We give them power in the land, establish the system of *Salat* (worship) and *Zakat* (poor due) and enjoin virtue and forbid evil" (22:41)

18 Mawdudi, Syeed Abul A'la, The Islamic Law and Constitution. P136 and 137.

19 Mawdudi, Syeed Abul A'la, The Islamic Law and Constitution. P166

With this regard, the Holy Prophet (Sm) said: “Allah brings to an end through the state what he does not eradicate with the Qur’an.” (Tafsir ibn kasir- LSI, 47)

From the above statement we may say that the Islamic state has four objectives or purposes. Such as:

1. **Establishing *Salat*** (prayer) so as to ensure that people pray and get chance to perform their prayer at the fixed time in each and every sphere of the state and non-praying is made a punishable offense;
2. **To establish the institution of *Zakat***- so that all those who are required to pay *Zakat*, pay it to the government’s *Zakat* fund and to ensure that due recipients of it get it through government’s arrangement.
3. **To enjoin what is good and virtuous** – so that the government encourages the citizens for all kinds of good deeds.
4. **To shun and forbid what is bad and evil** – so that the evildoers get punishments for such actions that are not recommended by Islam.

Therefore, the administrations of Islamic state make the Holy Qur’an the law of their country in the spheres of life.

The state **is responsible for the welfare** of all its citizens- Muslims and Non-Muslims. **It must guarantee the basic necessities** to all citizens. **All citizens of the Islamic state shall enjoy** freedom of belief, thought, conscience and speech. **Every citizen shall be free to develop** his potential, **improve his capacity** earn and possess. **A citizen shall enjoy** the right to support or oppose any government policy which he thinks right or wrong. The Islamic state is duty bound to implement the laws of the Qur’an and the Sunnah. The Qur’an strongly denounced those who do not decide their matters by Allah’s revelations. (5:42-50)

The Islamic State shall ensure a fair distribution of wealth. Islam does not believe in equal distribution as it is against the law of creation. An Islamic state is based on the model of the prophet Muhammad’s (PBUH) state in Madinah while a Muslim state is the one which has a majority Muslim population and some Islamic features.-

3.1.3. Basic principles of Islamic State

Islam wants to fashion our entire life according to the principles of individual and social behavior revealed by Allah and practiced by His prophet Muhammad (SM). The Qur'an declares:

"O you who believe! Obey Allah and obey the Messenger [Muhammad (SM)], and those who are in authority. If differ anything amongst yourselves, refer it to Allah and His Messenger, if you believe in Allah and in the Last Day. This is better and more suitable for final determination. (*Sura An-Nisa*, 4:59)

This *Ayah* discloses the five basic principles of an Islamic state. These are:

1. Allah (SWT) is the sovereign lawgiver Who must be obeyed without any question.
2. Prophet Muhammad (SM) is also to be obeyed unconditionally as he is Allah's Vicegerent.

3. All other legal authorities will be obeyed conditionally; so long as they obey Allah and the Prophet. None can be obeyed in violation of the clear commands of Allah and His Prophet (SM)
4. Dispute is allowed with all other authorities except Allah and His Messenger.
For example - Government and people are two parties. In case of any dispute between them the matter must be referred to Allah (the Qur'an) and to His Messenger (in his presence) or to the Sunnah of the Prophet (in his absence).
5. There must be a recognized body (Judiciary) to pronounce verdict according to the holy Qur'an and the Sunnah. And this body must enjoy complete independence to give judgment even against the government if necessary.²⁰

In other words, the state is treated to be an Islamic state that possesses the following features:

- A. No person, class or group, not even the entire population can claim sovereignty. Allah alone is the real sovereign; all other are merely His subjects.
- B. Allah is the real law giver and the authority of absolute legislation vests in Him. Nobody can modify a law which Allah has laid down, nor he can desire to effect or change in Allah's Divine laws.
- C. The government of such a state will be entitled as a political agency to enforce the laws of Allah among the people of its territory. ²¹

Modern National State and Islamic Ideological State: a comparison

Guiding Criteria	Modern State	Islamic State
Character	Secular, Democratic or National	Ideological, Democratic and welfare state
Basis	Sovereignty of people, Secularism, and capitalism	Unity of Allah, <i>Risalat</i> and Khilafat
Supremacy	Supremacy of people is claimed as sovereign authority	Belief in the sovereignty of Allah and supremacy of Islamic <i>Shari'ah</i>
Relation between state and religion	Separation of state from religion or freedom from religion completely	Religion and state are same and intertwined.
Source of law	Parliament, verdict or ordinance	Al-Qur'an, Al-Sunnah, Ijma' and Qiyas
Vote	Regarded as right of people	Regarded as trust and right as well
Accountability	Government is accountable to people	the government is accountable firstly to Allah and then to people
Power of legislation	May legislate whatever they wish in	Legislation must be within the

²⁰ BHUYAN, MOHAMMAD SHAFIUL ALAM, (2007) *The Government and Politics in Islam*: Dhaka: Noor Publications, P69.

²¹ KHAN, Md. ANSAR ALI (2006) *Legal System of Islam*, Dhaka: Kamiub Prokashan Limited, P45.

	any time.	limits prescribed by the <i>Shari'ah</i> .
Judiciary	Not completely free from executive	Completely Independent
Economic System	Controlled by some powerful capitalists	Based on System of Zakah and on fare distribution
Administrative principle	Domination of capitalism anarchism	For belief in accountability in the day of judgment
Individual Liberty	Individual liberty is said to be recognized but in a socialist state it is not recognized, religious freedom is not tolerated at all.	Right to freedom of association, assembly and speech are highly entertained.
Rule of law	Malpractice of power and injustice	Equality before law and justice

Conclusion

From the above discussion it may be said that the modern national states have got much development in its structure, formation and in external beauties. This historical development is natural. Islam can never oppose it. But the main point of distinction lies in belief and thinking. The belief in the Unity and Sovereignty of Allah is the foundation of social and moral system propounded by the prophets. It is the very starting point of the Islamic political philosophy. The basic principle of Islam is that human beings must, individually and collectively, surrender to Allah. The Prophet of Islam established a model of religio-socio-politico-economic society where Qur'anic laws were implemented. The duty of an Islamic state is to establish *Salah*, *Zakah* and promote the right and forbid the wrong. (22:41). the state is responsible for the welfare of all its citizens- Muslims and Non-Muslims. It must guarantee the basic necessities of all citizens. All citizens of the Islamic state shall enjoy freedom of belief, thought, conscience and speech. Every citizen shall be free to develop his potential, improve his capacity, earn wealth and won such wealth within the limits set by the Qur'an and the Sunnah. A citizen shall enjoy the right to support or oppose any government policy which he thinks right or wrong.

This Islamic state is duty bound to implement the laws of the Qur'an and the Sunnah. The Qur'an strongly denounces those who do not decide their matters by Allah's revelations. (5:42-50)

In Fine, it may be concluded that Islamic Ideological State is not a religious state which is opposed by secularism in its long war between Religion and Science. It is actually a full-fledged ideal welfare State, not for Muslim alone but for the whole humanity at large. This is not a mythological story. But history bears the witness that most uncivilized people of Arabia within a generation miraculously elevated themselves to the position of harbingers of a great civilization. This is an undeniable fact of history.

Chapter 03	GOVERNMENT & POLITICS: AN OVERALL IDEA
	GOVERNMENT: WHAT IS GOVERNMENT? WHAT DO GOVERNMENTS DO? DIFFERENT TYPES OF GOVERNMENT, MORE THAN ONE GOVERNMENT, HOW DID GOVERNMENT DEVELOP? RELATIONSHIP BETWEEN STATE AND GOVERNMENT

3.2.1. Government

The word government refers to the people in charge of a country, a state, or a city. The people in charge have a system for *governing* (ruling). This system for governing is also referred to as a government.

Main Function

The basic function of a government is to provide stability. It does so by maintaining order within a country and by protecting the country's borders from outside attack. Governments make laws and enforce laws to protect people's rights. They organize a country's military defenses, and they make agreements with other countries to keep peace.

Governments also provide many services, such as schools, parks, sewage systems, and streets and highways. They print money and make coins. They generally regulate, or control, activities such as trade and transportation. Government regulations may also protect people against faulty products, unclean water and air, and other dangers.

Types of Government

People have developed several different types of government over the course of history. Based on controlling authority a type of it is monarchy. In this type of government, one person is the monarch, usually a king or queen, or an emperor or empress. When a monarch dies, power passes to one of the monarch's children or, if there are no children, to another family member. In the past, monarchs were completely in charge of their countries. They chose all other officials. Today, most monarchs have much less power. The United Kingdom, for example, has a monarch with very limited powers.

A second type of government based on controlling authority is the republic. In a republic, the people elect (choose) the rulers and top officials. These rulers and officials do not hold power for life. They are elected for a specific period of time. After that time is up, the group chooses another ruler. Most democracies, like the United States, are also republics. In a democratic republic, the people have rights that no ruler may cut off. The people can also replace their rulers.

Republics can turn into dictatorships. In a dictatorship, one person—the dictator—has total power. Dictators can usually do whatever they want. Everyone must obey a dictator. In some dictatorships, a small group rules, rather than one individual. In a military dictatorship, the ruling officials are military officers. Some dictatorships call themselves republics.

More than one government

According to territorial power distribution some countries have federal system and others have Unitary system. In a federal system, power is shared between a central government and smaller government units. In the United States, for example, there is a federal, or central, government for the entire country. In addition, each of the 50 states has its own government.

In some matters, the state governments have final say. In other matters the federal government rules. Each state, for example, sets its own speed limits. Only the federal government, however, can mint money or declare war. In a unitary system a single entity in which the central government is ultimately supreme. Such as Bangladesh has only one government.

History of development of the government

In earliest times, people lived in small groups. Everyone knew everyone. Not much government was needed. As human communities grew larger, governments began to form. Priests and warriors headed the first governments. The top ruler was often seen as a god. Ancient Egypt had such a government. Around 500CE, small city-states formed in Greece. In these city-states, citizens made group decisions together. Each citizen had a voice. Later, the Romans created a new kind of republic. They elected officials to represent them. These officials governed the people. A set of laws governed the officials.

The Islamic system of state, established by the prophet (SAAS), existed from 623CE in Medina. The state of Medina was neither monarchic (one person is the monarch, usually a king or queen, or an emperor or empress) nor republican, ruled on the policy of the majority. This state was based neither on tribalism nor on nationalism rather on humanism and Islamic monotheism. It was really an Ideological state and the ideology was Islam only²².

The Islamic system of state, established by the Prophet Mohammad (PBUH) and followed by his immediate successors, existed from the time of the establishment of Islam 1440 years ago. After the rightly guided *Khalifas*, the state turned into somewhat monarchic but was not derailed totally from its ideology and basic principles of Islam. At last, with the end of the Ottoman regime the Islamic state (*Khilafah*) was completely destroyed by Mustafa Kamal in 1924CE. The capital city of the *Khilafah* at the time of its demise was Istanbul. There is reason to believe that if this kind of state is established again the whole humanity will get their much-needed peace and happiness returned.

Present true national governments took shape around the 15th century. Each government ruled a territory surrounded by a border. Its laws had to be obeyed by everyone living within those borders. These nations all started out as monarchies. Their governments merely kept order, punished crimes, fought off invaders, and made war. No one expected more from the government. Over time, many monarchies turned into democratic republics. In today's democracies, most citizens believe the government has duties as well as powers. They expect the government to provide services. They expect it to help solve problems such as poverty.²³

3.2.2. Relationship between state and government

The state is the basic organization determining the distribution of power in a given geographic area. The government is the mechanism that allows and controls its day-to-day operations. Government is an essential element of state. But the terms, state and government, are often used as identical terms. The following are differences between state and government.

1. The Government is only an Element of State:

Government is an important element of state. The collective will of state is expressed and put into practice through government. The government has the main role in achieving the goal of the state. Therefore, **the government is described as the 'brain of state'**.

²² Hoque, M. R. Identity of an Islamic Ideological State: An Analytical Study, IIUC Studies...

²³ Microsoft ® Encarta ® 2007. © 1993-2006 Microsoft Corporation. All rights reserved.

2. The Government is an Agency of State:

Like other organizations, the government is an agency of state. All people living in a state come under its jurisdiction, but only some people constitute the government. Only a small number of people make laws, implement laws and exercise executive and judicial powers.

3. State is Natural, Government is not natural:

The state is a natural institution. From the beginning of social life, there has been state in different forms. The state is omnipresent, but history is silent about how exactly it came into existence. On the other hand, government is man-made, and the rise and fall of governments has been part of history.

4. State is Invisible and Abstract, but Government is visible and concrete:

The State is abstract and vague while the government is concrete and visible. We know that there is state in existence, but we cannot see it. The Government is a definite group of persons who run the affairs of state.

5. Original Powers vs. Delegated Powers:

The power of state is absolute and original while that of government is limited and delegated. State is the principal; government is only its agent. The state is sovereign while government enjoys those powers which are delegated to it by state.

The government symbolizes the power of state, but it is always subordinate and loyal to state. As MacIver has said: "Government is the agent which cannot be sovereign; the state is the principal, its master to which the agent most ultimately bows. The powers of state are absolute and original; those of government are limited and delegated.

6. Form and Nature:

All states, big or small, have common elements and properties. A state has mainly four elements, namely, population, territory, government and sovereignty. But the form of government and the mode of its formation may differ from state to state.

There are monarchies, aristocracies, democracies and dictatorship. Democracies are either presidential or parliamentary.

7. Stability:

The state is more or less permanent; government is temporary. States cease to exist through conquest or annexation. But they are far more durable than governments which may change through periodical elections or through revolutions.

Changes in the personnel and even in the form of government do not affect the existence of the state. The people or party who control the governmental machinery may be changed quite often without affecting the stability of the state.

People may revolt against an inefficient or dishonest government, but they would not revolt against the state.

8. Membership:

All people living in a state accept its membership. Their children also accept its membership. But it is not obligatory for people to accept the membership of government. The state is more or less permanent; government is temporary. States cease to exist through conquest or annexation. But they are far more durable than governments which may change through periodical elections or through revolutions.

Changes in the personnel and even in the form of government do not affect the existence of the state. The people or party who control the governmental machinery may be changed quite often without affecting the stability of the state.

Government is an agency to carry out the will of the state and fulfill its purposes. People have the right to revolt against or criticize the government but they have no rights against the state. If they go against the state, it will amount to going against them. Government may commit mistakes or blunders and for its lapses people may criticize it.

3.2.3. Basic Organs of a State in view point of Islam.

The state may be termed as a political system which functions as the whole of the social system with its set boundaries, goals, processes etc. Thus, the state as a political system consists of many sub-systems and these sub-systems may be treated as its organs. The main organs or sub-systems are: a) the executive b) the legislative and c) the Judiciary.

Chapter 05	THE EXECUTIVE: CONCEPT, FUNCTIONS OF THE EXECUTIVE, QUALITY OF THE HEAD OF THE STATE, SOME DISQUALIFICATION OF WOMAN TO BE HEAD OF THE STATE, HOW TO SELECT THE HEAD OF THE STATE, SOVEREIGNTY AND VICEGERENCY, REAL POSITION OF MAN IN THE LIGHT OF ISLAM.
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3.2.3.1. The Executive

Generally executive refers to **the ruling class of a state**. The term executive may be used in two senses. In its wider sense it means all government officials except those acting in legislative and judicial capacity. But in its narrow sense, the term refers only to the chief executive or head of the state, the head of the government, his ministers and advisers.

The Qur'anic term for executive is '*ulil amr*' which means authority. Obedience to *ulil amr* is made obligatory for the Muslims after the obedience of Allah & His Messenger. As it is said,

(يا أيها الذين آمنوا أطيعوا الله و أطيعوا الرسول و أولي الأمر منكم ، النساء 4:59)

“O you who believe! Obey Allah and obey the Messenger of Allah and those charged with authority among you” (Sura Al Nisa 4:59)

Four basic things are mentioned in this *ayah*. These are as underneath.

1. Obedience of Allah
2. Obedience of the Messenger of Allah
3. **Obedience of those who are made authority or responsible to carry out some kind of responsibilities and**
4. They should be among you – means among the Muslims.

The term 'responsible' (*ulul Amr*) is very wide with several connotations. For example, he is, in the case of an organization, the party leader, in the case of judiciary he is the chief justice, in the case of parliament he is the leader of the house, in the case of army he is the chief staff of army, in the case of business he is the business leader, in the case of sports he is the team leader and in the case of educational institute he is the principle or vice-chancellor and in the case of a family he is the father as the head of the family. In the case of a state, he is the chief executive of the state or government. In all those cases command of the *ulil amr* is to be obeyed so long as such command is in accordance with the *Shari'ah*. However, obedience of *ulil amr* is conditional unlike the obedience of Allah and His Messenger.

Moreover, when the term refers to the Head of the state or government of an Islamic state, he must be a Muslim based on the Qur'anic word *Ulil Amri Minkum*. But a non-Muslim can be appointed in other portfolios of the government like Minister, Ambassador, and Secretaries etc.

Such was the practice of the Prophet (SM). He sent Amr ibn al Darimi, a non-Muslim, as an Ambassador to Negus, the king of Ethiopia on behalf of the Prophet (SM). Umar bin Khattab appointed a Greek Christian as his chief accountant. 24

As regards the selection of right and qualified person to the right place al Qur'an commands,

(إن الله يأمركم أن تؤدوا الأمانات إلى أهلها) النساء 4:58

“Allah *Ta'ala* commands you to render back your trust to those to whom it is due. (Sura Al Nisa 4:58)

The head of an Islamic state elected by the people would be supreme leader of the people. The holy Prophet (SM) enjoyed the same status in the Islamic state of Madina. After his death, all the rightly guided caliphs maintained the position.

Functions of the Executive:

The functions of the Executive depend on the nature of the government. In an Islamic state, the functions of the Executive, in brief, are as follows.²⁵

1. To manage all sorts of activities for the attainment of the purposes of the state
2. To protect the country from the foreign aggression
3. To maintain the foreign relations
4. To perform the financial functions
5. To maintain law and order and run the administration
6. To establish and maintain the publication and broadcasting department and communicate the local and global news to the citizens fairly and impartially
7. To appoint *Hisbah* (ombudsman) for supervising the activities of all the branches of government

So, the Executive of a state is responsible for all the affairs of the state and its citizens

Indispensable qualities of leadership (Quality of the head of the state)

From Islamic *Sharia'h* view point, the question of qualifications of office-bearers is very important. In fact, this alone can guarantee the proper functioning of the Islamic state. As regards the eligibility **for membership of the *Shura* or for the post of the Head of the state**, the Qur'an and Sunnah have given clear guidance. Such as:

1. **He must be a Muslim male:** The Khalifah must be Muslim, because Islam is only way of life that covers all aspects of human life. And he is responsible for bringing all directions and interdictions of Islam into application. So, he must have belief in Allah and His revealed guidance. Furthermore, non-Muslim has no right to be a Khalifa of Islamic state. In this respect Allah says: “*Never Allah will grant disbeliever to rule over the Muslim*²⁶”. (An Nisah 41). Hence the Khalifah must have Iman and be a practicing Muslim.

The head of the Islamic state must be a Muslim male. Because the ayah:

24 Dr. MAHBUBUL ISLAM, A. B.M., (2002), *Islamic Constitution: Qur'anic & Sunnatic perspective*., Dhaka: Professors Publication, P 121.

25 KHAN, Md. ANSAR ALI (2006) *Legal System of Islam*, Dhaka: Kamiub Prokashan Limited. P.65

26 **English Translation of the Meaning and Commentary:** Dr Taqi ud Din and Dr Muhammad Muhsin Khan.

4:59(يا أيها الذين آمنوا أطيعوا الله و أطيعوا الرسول و أولي الأمر منكم ، النساء

- Obedience of Allah
- Obedience of the Messenger of Allah
- Obedience of those who were made authority or responsible to carry out some kinds of responsibilities and
- They (authority / executive /head of the state) should be among you means among the Muslims; because the ayah began with addressing them (يا ايها الذين آمنوا) and among the male; because the pronoun used here (و أولي الأمر منكم) is of masculine gender.

The following Qur'anic Ayah can also be referred to in support of man's leadership. The Almighty Allah declared, "Men are the protectors (leaders) and maintainers of women, because Allah has given them more (strength) than the other and because they (men) support them from there means (income). Therefore, the righteous women are devoutly obedient (to Allah and to their husbands). They guard in the husband's absence what Allah orders them to guard (their chastity and their husband's property)." (Sura al Nisa 4:34)

A head of the state should be male. Because woman is not allowed by the Islam to be a head of the state. Concerning it, Allah says: *"woman, a creature that is brought up in adornments and who in dispute cannot make herself clear"* (Surah Al Zukhruf : 18)

In addition to that, the Sunnatic law also prohibits the post of *ulil amr* (head of the state) for the female. The prophet of Islam said: "A nation shall not progress (succeed) who appoint their woman to rule the nation."

Since it is obligatory upon a head of the state to apply Islamic laws in state, he must be jurisprudent in the Qur'an and the Sunnah.

2. **He will be physically sound and trustworthy:** the executive must be physically fit, of sound mind and trustworthy. The Qur'an says:

إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

"Truly the best of men for you to employ is the man who is strong and trustworthy."

Regarding physical fitness the Messenger of Allah says: (A strong believer is better than the believer who is weak in physical strength). This physical strength is very much essential for the head of the state, because he is the commander-in-chief of army as well. He is also the chief Imam of the central Mosque of his state. A sick and weak man can never be Imam and commander-in-chief of armed forces of a nation.

In an Islamic constitution, Amana or trustworthiness is an important quality of the head of the state. This is one of the attributes of Iman and the violation of trustworthiness is one of the sign of hypocrisy which is dangerous than disbelief. The Prophet of Islam says: "A person has no Iman if he cannot keep his trust (Amana) and a person has no religion if he can not keep his promise.

3. **He will bear an unblemished Character:** It is noted that the sole function of the Prophet (SM) was to perfect the character of the people. As he says: "Indeed I have been sent to complete the perfecting the good character." Almighty Allah declared about His Prophet's character.

وَإِنَّكَ لَعَلَىٰ خُلُقٍ عَظِيمٍ (4)

“And you are on an exalted standard of character”

Allah, the Exalted, wants all Muslims, more particularly the head of the Muslim community to be free from a blemish dual character and to be a model for their followers. That is why He sent His Messenger as a model and ordered us to follow him. He must be sane by birth because, if he is misbegotten, he may be affected by this character.

4. **He will acquire enough knowledge about Islamic *Shariah*:** The knowledge about Islamic *Sharia'h* is an essential requirement for the head of the state. With regard to this the messenger of Allah says: “Imam (leader) will be the one who is the most excellent in the knowledge of Al-Qur'an. If all are equal in this field then the one who is the most excellent in the knowledge of al-Sunnah. If all are equal in this field then the one who is most advanced in migration. If all are equal in this case then who is senior in age. No Muslim should practice his *imamat* (leadership) in the place of another Muslim who is famous and prominent in this area and no Muslim should sit-down on the chair / bed of a house of another Muslim without his permission.”

The traditionists are of the view that this Hadith is applicable to the Imam for prayer, despite the fact that the word prayer (*salah*) is not mentioned in this Hadith. Some other experts of Hadith including *mawlana* Abdur Rahim wrote that either Imam of prayer or Imam of the state, whatever it may be, these qualifications are applicable for him. As regard knowledge of the head of the state Allah says: “Allah has chosen him (*Talut*) above you as He gifted him abundantly with knowledge and physical strength. And Allah gives power whoever He likes.

5. **He will be dedicated for the rules of Islam:** The head of the state shall be devoted to Islam knowledgeable in *Sharia'h* of Islamic law and familiar with the rules of al-Qur'an and al-Sunnah. An executive must be a practicing Muslim. There must be uniformity between his knowledge and action (*I'lm* and *Amal*). Because *Ilm* without *Amal* makes a man like a donkey who carries the precious books without having benefit of the contents of it. The Qur'an says:

مَثَلُ الَّذِينَ حُمِّلُوا التَّوْرَةَ ثُمَّ لَمْ يَحْمِلُوهَا كَمَثَلِ الْحِمَارِ يَحْمِلُ أَسْفَارًا بِئْسَ مَثَلُ الْقَوْمِ الَّذِينَ كَذَّبُوا بِآيَاتِ اللَّهِ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ (5)

The likeness of those who were entrusted with the *Taurah* (i.e. to obey its commandments and to practice its laws), but who subsequently failed in those obligation, is as the likeness of a donkey which carries huge burdens of books (but understand nothing from them). How bad is the example of people who deny the *Ayat* of Allah! And Allah guides not the people who are *Zalimun*”.

If the executive himself is loose in performing Islamic laws, he never can implement it among the citizens nor can punish them for committing crime or sinful activities.

The head of the state can ask the people by saying that they can follow him so long as he follows Allah and His Messenger.

6. **He will be of sufficient age of a complete man:** In Islam a man will not be accountable for his deeds before being adult. After being adult there are also differences in the responsibilities as regards their post and position. The responsibilities of the head of the state with his citizens are similar to the responsibilities of a Prophet with his followers. That is why (most provably) the external qualities required for a Prophet are also required for the head of an Islamic state.

The head of the state is appointed as a decision maker of his nation in various aspect of their life. And a decision maker like him should be able to combine his emotion and sense of

humor. So, he must be sensible when taking decision. And a man before attaining 40 years of age will not be able to do this combination properly.

A head of the state must not to be a slave, because the slave has no power and right to perform duty as head of state.

7. **He must not have any greed for the post:** The position of head of the state under Islamic constitution is the position of heavy responsibility and accountability to the electorals as well as to the Almighty Allah. therefore, a greedy man cannot offer himself for that accountability knowingly. there are some sunnatic provisions on this regard: “Abu Musa al-Ash’ari (r) reported that, I and two other persons from the family of my uncle told the messenger of Allah that, O prophet! Allah favored you with heavy power and responsibility. Therefore, appoint me in one of such responsibility. The prophet replied, by Allah, I do not appoint someone in these positions who asks and desire for it.”

In another Hadith reported by Abdur Rahman ibn Samarra [®] that the messenger of Allah told him: **“do not ask for the position of Imam of the headship of the state. Because, if you get it by asking then you will be handover to it (for accountability). If you get it without asking of it then the assistance of Allah will come for you.”**

Therefore, taking of such a heavy accountability in ones on head by asking for it is to be considered a great foolishness. If he is elected or selected by the people for the said post then he will be given assistance by the people in his responsibility. If citizens do good deed and keep away from committing crime or sinful activities then not only the relevant citizen but the Imam (head of the state) will be rewarded for all the good deeds that the citizens perform.

8. **He must be the most Allah-fearing man:** A person who fears Allah is the best citizen of a state. And the best citizen is more perfect to be leader among them. Because, one who fears Allah will be self-motivated in performing his personal, social, official and religious duties.

Life in the hereafter is the real and everlasting life compared with the life of this world. That is why the government would formulate plans which benefit its citizen both here and hereafter. The government should take all appropriate measures to convert the people into Allah-fearing citizens. And it is quite impossible for the head of the state if he himself is not a most Allah fearing man. Allah, the Almighty, says: “Verily, the most honorable person to Allah among you is he who (has a Taqwa) fears Him most. [the pious and a righteous person who fear Allah much (abstain from all kinds of sins and evil deeds which he has forbidden) and love Allah much (perform all kinds of good deeds which he has ordained)]”.

9. **Able to run the state affairs to the point:** It is undoubtedly true that a head of the state must be a qualified leader, for history witness that many nations were much more affected by success and failure of leadership. So, the Prophet (PBUH) said, who will be leader he must have three qualities, these are as follows:

(1) God-fearing, keeps him away from committing offense (disobeying Allah).

(2) For his forbearance he is able to contain rages.

(3) For his quality leadership, his adherents or followers become as his son²⁸ (obedient as his son)

These qualities not only keep him away from all sorts of offenses but also prevents him disloyalties, mischief, telling a lying, frankness, and all types of suppression, oppression as well.

On this context Allah (SW) says, “Obey not him whose heart we have made heedless of our remembrance. And who follows his own lusts, whose affairs have been lost²⁹”. (Surah Al Kahaf: 28)

So, he should have these qualities.

Some disqualification of woman for being head of the state

1. Woman is unfit to lead prayer (*Salah*)
2. Attending in congregational prayer (*Jama'ah*) is not obligatory for women.
3. Even if she is present in the *Jum'ah*, she has to be in the back.
4. She passes monthly menstruation period regularly, which prevents her from entering into mosque, even touching the Qur'an is not permissible for her during that period.
5. *Salatul Jum'a* (Friday prayer) is not obligatory on her.
6. She is not permitted to go with funeral procession and participate in funeral prayer (*salatul Janazah*).
7. She is not permitted to go to tour (*Safr*) with other than her *muhrim* (the person not permitted to marry her like father, brother etc).
8. Physically and mentally, she is not as strong and capable as a man is in handling rough and difficult situations.

How to select the head of the state

The Qur'an and Hadith have not expressly mentioned how a Head would be elected or selected, but we may get a clear Idea of the right path to choose a head of the state if we look to the period of the prophet (SM) and his rightly guided caliphs.

The prophet (SM) was directly appointed by Allah (SWT) and his four rightly guided caliphs were elected in different four ways. These are:

1. The first Caliph Abu Bakr ® was elected through proposal and support.
2. The second Caliph Umar ® was elected through selection. The proposal of his headship was presented to the *Majlish al Shura al-Khas* and then to the *Majlish al Shura al-A'm*. And the proposal approved by both *Majlish*.
3. The third Caliph Uthman ® was selected by another process. Just before the death of Caliph Umar ®, he appointed six members electoral board and directed the board to elect any of them as Caliph. Three of them declined their name from the race or Caliphship. The electoral board finally proposed the name of Uthman ® unanimously and presented the nomination before the general mass who approved the nomination without any reservation.
4. And the fourth Caliph Ali ® was selected by the intellectuals of the nation. Upon the tragic death of Uthman ®, the citizen approached Ali ® to be the Caliph but he did not accept the proposal and said: it is not the matter of the general mass but it is the matter of all level of intellectual (Ahl al Hall wa al Aqd). He further said: it is not such matter that you can decide but it is the matter of those who participated in the battle of Badr. Whoever is approved by them he can be the Caliph. Let us assemble together and decide the case.

²⁹ English Translation of the Meaning and Commentary: Dr Taqi ud Din and Dr Muhammad Muhsin Khan.

So, the selection to the executive or the head of the state may be done by any of these processes.

Chapter 06	THE LAGISLATIVE: SHURA, PARLIAMENT AS A LAW MAKING BODY, DIFFERENCE BETWEEN PARLIMENT AND MAJLISH E SHURA, FUNCTIONS OF MEMBER OF MAJLISH E SHURA
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The Legislative

It is the law-making body of a state. One of the functions of legislature is to consult with other experts in the relevant field in making law. As Allah (swt) says,

(فاعف عنهم و استغفر لهم و شاورهم في الأمر فإذا عزمت فتوكل على الله). (ال عمران 3:159)

(O' Prophet) "Pass over (their faults) and ask for Allah's forgiveness for them and consult in affairs with them, then when you have taken a decision (based on consultation) put trust in Allah." (Sura Al Imran 3:159)

With regard to this, the *Sunnah* of the Messenger of Allah is as follows.

"Ali b. Abi Talib (RA) reported that, I asked the Messenger of Allah, how do we run our affairs in case of not tracing their solution in al-Qur'an and al-Sunnah? The Prophet said, "It is to be done by calling pious people and by their collective opinion but not by the opinion of a single man".³⁰

Legislation in an Islamic state should be within the limits prescribed by the *Shari'ah*. The injunctions of Allah and His Prophet are to be accepted and obeyed and no legislative body can alter or modify them or make any new laws, which are contrary to their spirit³¹.

Great scope would still be available for legislation on questions not covered by any specific injunctions of the *Shari'ah*, and the consultative body or legislature is free to legislate in regard to these matters.

In this respect Mawlan Abdur Rahim states that there is no function of legislating in its true sense as in conventional political system, but searching, codifying of the injunctions of Allah (SW) in the light of the *Sunnah* of Prophet Muhammad (PBUH) as well perusing the way and occasions to imply these injunctions.³²

Hence there are four aspects of bringing the injunctions of Allah (SWT) into application. These are as follows.

1. Making laws, this function is for Almighty Allah alone.
2. Searching, codifying and seeking way to imply the injunctions, it is for the Shura.
3. Executing the laws, the executive body is duty bound for this.

³⁰ this Hadith is quoted in "Tafsir Ruhul M'a'ani in explaining of suara al shura (42:38)

³¹ Maulana ABDUR RAHIM, (2000) Al Qur'ane Rastra o Sorker , P157

³² Maulana ABDUR RAHIM, (2000) Al Qur'ane Rastra o Sorker, P157-158.

4. On the basis of the Islamic laws, solving the conflicts and contradictions among the people and criminal punishment, it is duty bound of the judiciary.

Shura or Consultation for legislation

The term 'Shura' is derived from *shour* means consultation in order to arrive at a collective decision. The word 'Shura' is used in the holy Qur'an to denote a decision-making process among the people. Regarding this Allah says, "They conduct their affairs by mutual consultation³³ " (Sura al Shura 38)

So, Shura or consultation in the Islamic political system is so central and fundamental that without it the whole political process is rendered null and void and of no effect. It is as such that even the Prophet (SM) with his special position and direct access to Allah did consult his companions.

Because, he was commanded by Allah as saying, "and consult them in the affairs. Then when you have taken decision, put your trust in Allah, certainly Allah loves those who put their trust in Allah³⁴". (Al-Imran 159)

It is clear to us that 'Shura' is indispensable for the Islamic state. It composed of the learned and sagacious men who are elected by the people.

In this respect Allah enjoins, "Ask of those who know scripture if you know not". (Surah Ambia: 7). Hence the body of the Shura must be learned and sagacious and Allah fearing in all spheres of life³⁵

Besides, it is an honor for them that they are asked of all sorts of Islamic laws because they are appointed for delivering Islamic laws regardless whether it is concerning to collective or state affairs³⁶.

In addition to this, since the Qur'an and the Sunnah are two main sources of Islamic laws, the body of the *Shura* must be able to do *Ijtihad*. Otherwise, it would be quite impossible for them to perform their duty precisely.

Parliament and *Majlis e Shura*: a comparative discussion.

Parliament: The law-making body

Parliament is called Legislative Assembly or Law-making body. Islamic terminology for the same is *Majlis al Shaura* or consultative Assembly. However, the concept of parliament and *Majlis al-Shura* is not the same exactly. It is because though both parliament and *Majlis al Shura* is the hallmark of democracy, but democracy in Islam and non-Islam is not the same in its conceptual and practical aspects. Under Islamic constitutional government the name of parliament can be remained as it is but the activities of the said parliament will absolutely be different than the present parliament under west Minister Style of democracy.

Basic differences between parliament and *Majlis al Shura*

33 Dr. AL-HILALI, MUHAMMAD TAQI UDDIN, (1419A.H) *The Noble Qur'an: English Translation of the Meaning and Commentary*.

34 Dr. AL-HILALI, MUHAMMAD TAQI UDDIN, (1419A.H) *The Noble Qur'an: English Translation of the Meaning and Commentary*.

35 Dr. AL-HILALI, MUHAMMAD TAQI UDDIN, (1419A.H) *The Noble Qur'an: English Translation of the Meaning and Commentary*.

36 Ahmad, Mumtaz, *State Politics and Islam*, P88.

Under Islamic Democratic System Majlis al Shura (MS) is	Under Western Secular System Parliament is
1. In Islam source of state ideology or state philosophy and all types of Law, Ordinance, Injunctions are considered the <i>Shari'ah</i> or Law of Allah nothing else.	1. In secular system, it has not state religion. None is accountable for religiousness. Its state ideology is man-made philosophies which is contrary to Islamic Shariah.
2. Allah is the Sovereign Authority under this system and Muhammad (SM) is the true and real representative of Sovereign Allah and role model in all fields of life. Establishment of the Sovereignty of Allah is positive law or prime task of the Shura.	2. Sovereignty under this system is not belonged to Allah, but it varies from time and place. Such as sovereignty in secular democracy is either parliament or state or constitution or people or representative of the people or natural law etc. place of Allah and role of Allah is totally absent under this system.
3. Legal jurisdiction of Islamic constitution is not limited in geographical limitation but it has extra territorial jurisdiction too. It means, it would work for the interest of all people in all places of the world irrespective of Muslim and non-Muslim.	3. Legal jurisdiction of secular parliament is limited within the state that it is meant for. It is because, it believes in geographical and linguistic nationalism and states sovereignty.
4. The people or citizens under this system are the vicegerent or representative of Allah. Absolute power or right of the people cannot extend to or submerge the role or applicability of Shariah. Under this system citizen will have the chance to be real slave as well as vicegerent of Allah or peace-loving citizen in its real sense.	4. Either right or wrong, people are the lawmaker under this system. The concept of vicegerent or representative of Allah or rightful claimant of establishment of law of Allah by the citizen is totally absent under this system. The power is vested in the majority that is more than 50% of the total number of the seat in the parliament can challenge and change any previous decision of the parliament.
5. Under this system the rule of <i>Shari'ah</i> the Islamic law will be established everywhere. At the same time the rule of man over man will be eradicated (If such rule is found to be contrary to Shariah).	5. In this system, initiation and development of ideology of the people or a state ideology brain and opinion of the secular oriented leaders. The rule of man over man takes its firm grips through so called majority opinion. As such, it makes a man slave to man instead of being the slave of Allah Ta'ala.
6. Under this system Consultative Assembly (Majlis al Shura (M.S.)) will be the trustee institute of the people. The prime objective of the M.S is the representation of Shari'ah. It means of the M.S will work for the development of law of Allah not for self aggrandizement.	6. Under this system the parliament is not a trusted institute but it is sovereign, free from the dictation of Allah and His Messenger. Its members are not concerned whether or not their own made law goes against Allah or law of Allah.
7. Members of this Majlis primarily answerable to Allah and secondly to the nation as a whole for their responsibility imposed on them.	7. The member of parliament under secular system is answerable, instead of Allah to Prime Minister or President or

	Parliament or Constitution. Very seldom they are answerable to the citizen in general. In some cases they are answerable to their respective electoral and it is again to get the support of the people for the next election.
8. The member of the Majlis must be well equipped with Islamic knowledge together with the knowledge of contemporary world and they must be of good character and true Muslim in their private and public life.	8. Character and Islamic knowledge of the law maker is out of question under this system rather wealth and mussel power is the criterion to some extent. In practice the guarantee of victory is cheating, vote rigging and deception.
9. Under this Islamic system making of application or expression of self willingness to become a member of Majlis al Shura is a sign of disqualification. However, it is the party or Amir of each Islamic party which would select and nominate the person to be a member of Shura, and then under present system the party would ask its selected members to go to the election commissioner and apply through standard form for standing in the election.	9. Under this secular system an individual apply to the party and some time applications are wanted from the party. Whoever is in the good book of party chief party stalwart man, whoever can manage him by whatever means he can only secure his candidanship for parliamentary election. The question of morality has no place here. It is to be need that there are two qualities are need for a person to be a law maker in Bangladesh that (a) a citizen of Bangladesh and 25 years of age. See Article 66 (n) of the constitution of Bangladesh.
10. Expression of opinion by any member of the Majlis which is to be found contrary to Shariah such is backbiting slandering etc shall be considered a punishable offence.	10. Under this system member of parliament is given immunity by which whatever they do in the parliament unless some actions are immuned from any charge. This is the reason; the parliament becomes the place for hatred and malicious talking. This immunity is provided by Article 78 of the constitution of Bangladesh.
11. Under Islamic system the member's prime duty is to explain the law initiated in the Qur'an and Hadith and contribute for making new law which is not covered by the Qur'an, Hadith, Ijma and Qiyas.	11. Under contemporary system the prime duty of the member of parliament is to pay loyalty to the existing secular law of the country and to contribute for further making and development of that law without making consideration whether such law is pro or against the law of Allah or not.

Though concept and function of the parliament and *Majlis al Shura* is almost the same but Dr. Reaz prefers the term *Majlis al Shura* to be used in Islamic constitution and by Islamic state. Because, to him Majlis is the Islamic term used by the Qur'an and Sunnah while the term parliament is used by one some of them perhaps do not believe in Allah. Though both give

almost the same meaning yet he justifies the using of the Qur'anic and Sunnatic terms by referring to the following Qur'anic Ayah as Allah (swt) Says:

“O you! Who believe! Do not say to the prophet (words of ambiguous import) but say (words of respect)”

The word parliament and *Shura* both give the same meaning. But since, the first one is used by disbelievers as their own word and term; therefore, an Islamic constitution should maintain the term *Shura* instead of parliament as this is used by al Qur'an.

Functions of member of Majlis al Shura

Different legal experts suggest different functions of the member of the Majlis. According to a proposed constitution the functions of the members of *Majlis al Shura* of a state run by an Islamic constitution are as follows:

- 1) It is to act for the augmentation and upgradation of honor, dignity and development of *Shari'ah* the Islamic law, for the area in places which are not covered by the Qur'an, Sunnah, *Ijma'a* and *Qiyas* and said law must not contradict the law of Allah and His Messenger. It is to be noted that, Allah is the Lawmaker in Islam. But man can do it only because of necessity if that issue in question is not covered by the revealed laws.
- 2) It is to examine, scrutinize and pass the bill presented by the government or by the Majlis itself. It is even to derecognize the bill proposed by the above bodies if the bill is not inconformity with *Shari'ah*. It is also to examine the existing laws whether or not these are in line with *Shari'ah*. If there is a Council of Scholars ('*Ulama* Council) then it is to approve or disapprove the recommendation of the Shura if it is referred to the Council.
- 3) It is to approve the budget of the government or semi government run by the government fund as well as the audit report of the government. The Majlis shall possess a right of withholding of its approval if it finds the said budget and audit is defective and it does not fulfill the criterion of Shariah. Such as if it proposes to produce wine by a Muslim company for the consumption of Muslim.
4. It is to investigate legal institutes and various department of government and approve the said investigation report prepared by relevant authorities. It is also to review the plan and philosophy of relevant Minister and Ministry by questioning or summoning them if it is needed.
5. It is to approve or reject the declaration of government about war and peace. In absence of the approval of Shura the government cannot implement its plan. In other word s, the cabinet is responsible and answerable to the Majlis for its acts.
6. It is to approve all types of agreements relating to inter and international treaty and other commitment of the government. None of such act gets legal recognition until the approval or authorization of Majlis is taken thereto.
7. It is to express the opinion in the session of the Majlis compulsorily. However, the members can enjoy the immunity for expressing their opinion so long as it does not go against revealed laws and against the interest of the country and its people. But action can be taken against a member if his statement constitutes slander, back biting and other obscene word. It is to be noted that Osman b Affan took action against Abu Dhar Gihifari because of his exciting words against the government, despite the fact that both were friend of each other. It is to be noted further that opposing of the decision of Majlis is to be considered as offence in the eyes of law. Because Allah Ta'ala says,

“Once you decide something through consultation then stick to it.”

According to Syed Mawdudi, there are some functions of the members of the Majlis. Such as:

1. **To explain the difficult terms of Islam:** The legislative assemblies under Islamic Constitution are not allowed to amend/correct or reject any part of the Qur'an and Sunnah. Even if there were any need or abrogation, it has already been done by its maker Allah (SWT) and His Messenger. But the *Majlis* can make explanation of some very difficult term of Qur'an and Sunnah which carries wide meaning and so far no explanation of this term was made by any one.
2. **Adoption of new law:** the *Majlis* should attempt to make new law in the cases which are not covered by *Shari'ah*. That is in a situation where there is no definite text of the Qur'an and Sunnah of *Ijma'* and *Qiyas* to solve the problem. Before proceeding towards a new law to address the new issue, the *Majlis* should look into the works of the previous legal experts. If it is found therein then it could be followed. otherwise they would try to adopt a new law in the new issue like; Airbus hijacking, test tube baby, donation of human organs before and after the death of donors etc.
3. **To explain the difficult part of law:** in the case of one meaning or more than one application of a Qur'anic text, the *Majlis* will explain the real meaning of the relevant text. it is also to assist the government in codifying the appropriate portion of law based on the Qur'anic text.
4. **To undertake research for application of law:** The *Majlis* should take necessary attempt to implement the law of constitution. They should therefore undertake research to find out the proper ways to application of law.
5. **To examine, scrutinize and pass the bills:** It is also their duty to examine, to scrutinize and to pass the bills presented by the government, subject to conformity with Islamic *Sharia'h*.
6. **To approve the budget of the state:** Another duty of the *Majlis* is to approve the budget of the government for its various sectors in every financial year.

Therefore, a member of *Majlis* must be qualified enough with the knowledge of *Sharia'h*. He should be a practicing Muslim and of sound mind and of good character as well. In addition, a woman may also be the member of *Majlis* if she has the required qualities and qualifications as required by law.

Constitutional deduction

- ~~There shall be a Majlis al Shura Al A'm (Parliament) and Majlis al Shura al Khas (senate) in the Republic of ...~~
- ~~The member of the Majlis can be elected by the Electoral College consisting of the representatives of the people Such as representative of village and word (in powra shaba)~~
- ~~The duration of the Majlis shall not be more them five years.~~
- ~~The functions of the members of Majlis al Shura (MMS) is to explain the law of Islam, to make law in the cases which are not covered by Shari'ah to pass the bill if it meets the requirement of Shari'ah.~~
- ~~The person to be the member of Majlis must be qualified with the knowledge of Shariah be a practicing Muslim and of the age of maturity, of sound mind and of good character and was not convicted in the court of law and not to be defaulter of huge amount of loan with and bank a or with any individual.~~

There is another Hadith on the some nature such as:

The prophet (Slm) also says as reported by Abu Hurairah (RA) that whoever hides a secret of a person Allah Ta'ala will hide his secrets in the Day of Judgment.

Chapter 07	THE JUDICIARY: PHILOSOPHY OF ISLAMIC JUDICIARY, MEANING OF JUDICIARY AND ADMINISTRATION OF JUSTICE, NATURE OF JUDICIARY BEFORE ISLAM AND UNDER PROPHETIC RULE, PRINCIPLE OF ISLAMIC JUDICIARY, PURPOSE OF ADMINISTRATION OF JUSTICE, QUALIFICATION OF JUDGES AND TYPES OF PUNISHMENT.
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The Judiciary

Introduction: Justice in its true sense can only be materialized through judiciary. Therefore, it is very important. Because, how good the legislative and executive are it cannot be seen in its optimistic pace without the proper and effective role of judiciary.

The aim of sending the messengers of Allah with clear signs and sending the scriptures down with them is that the people would uphold justice. If men were able to achieve justice through their intellect there would have no need for the revelation. Emphasizing on judiciary Allah says,

“But no, by your Lord, they can have no faith until they make you judge in all disputes between them and find in themselves no resistance against your decisions and accept with full submission³⁷” (An Nisa65).

This duty, to establish an Islamic judiciary is not only to the messengers but also to all believers.

The judiciary is **the organ which administers impartial judgment according to the law of the country**

Definition of administration of justice

The Qur'anic term '*Qada*' which means administration of justice. It also indicates that is to give an order and judgment. It is a system where the act of deciding or passing decisions on something is rooted in.

- Defining judiciary Maulana Abdur Rahim mentions, Judiciary is an institution, which settles all sorts of disputes and disagreements of litigates³⁸.
- It is referred to in Qamus al Muhit, to settle the disputes among the people with the *Shri'ah*.
- Allama Saraksi says, "Judiciary is to judge among the people hearing the litigants and knowing the true happening and apple of discord"³⁹.

In this sense there are numerous verses in the Qur'an, for example, “But when comes the commandment of Allah, the matter will be decided with truth and the followers of falsehood will then be lost⁴⁰” (40:78).

“It is not for a believer, man or woman, when Allah and his messenger have decreed a matter that they should have any option in their decision⁴¹” (al Ahzab 36).

³⁷ Dr. AL-HILALI, MUHAMMAD TAQI UDDIN, (1419A.H) *The Noble Qur'an: English Translation of the Meaning and Commentary*.

³⁸ Maulana ABDUR RAHIM, (2000) *Al Qur'ane Rastra o Sorker*, P220.

³⁹ Maulana ABDUR RAHIM, (2000) *Al Qur'ane Rastra o Sorker*, P220.

⁴⁰ Dr. AL-HILALI, MUHAMMAD TAQI UDDIN, (1419A.H) *The Noble Qur'an: English Translation of the Meaning and Commentary*.

⁴¹ Dr. AL-HILALI, MUHAMMAD TAQI UDDIN, (1419A.H) *The Noble Qur'an: English Translation of the Meaning and Commentary*.

“And for every Ummah there is a messenger. When their messenger comes the matter will be judged between them with justice and they will not be wronged⁴²” (younus 47).

From above Qur’anic expression it is clear that **judiciary is a system of divine laws through which all sorts of disputes and disagreements are settled and all kinds of injustices are uprooted.**

The judicial system is not new in Islam rather it was established fourteen centuries ago by the Prophet Muhammad (PBUH) where justice and truth was perpetuated.

So, there is no room of doubt that there could be any injustice in an Islamic state. When and wherever in any part of the world Islamic system was established, the people simply not only witnessed but also enjoyed the peace, safety and justice that were never witnessed in any other system in the world.

Nature of Judiciary before Islam:

According to Al-Ashram, the nature of judiciary before Islam was as follows:

- There was no written law or code at all. The social customs and natural rules were the measurement for all decisions.
- None was bound to abide by the verdict, nor was there any acceptable standard of carrying out the verdict of the court. As such, the winners had to jump on the losers together with their supporters. By nature the Arabs used to side with the cause of the victims. Therefore, it was easy to get the attackers. And the decision of the court was not more than a moral advice.
- There was no concept of independent judiciary, as the tribal head himself was the lawmaker and the chief justice, his word was the law and his decision was the final decision.

Nature of Judiciary under Prophetic Rule

There were several features of the Judiciary under the Prophetic period of the new Islamic state of *Madina*. These are as follow:

- **The Qur’an and the Sunnah were the primary sources of Judiciary** in place of custom and tribalism that was practiced before Islam. As regards the authority of them Allah says, *“But no, by your Lord, they can have no faith until they make you judge in all disputes between them and find in themselves no resistance against your decisions and accept with full submission⁴³”*
- **Acceptance and execution of the decision of the Prophet (SAA) was made very much compulsory and obligatory**; rather it was a vital part of Iman for both of them (a claimant, plaintiff and defendant)
- **The Prophet was made the chief Justice in the place of tribal head.** He Prophet (SAA) was the head in all important organs of his government namely executive, legislative, judiciary and culture. It was only for him because Qur’an was being revealed for proper judgment of each and every case and all the organs of the state were dependant on

⁴² Dr. AL-HILALI, MUHAMMAD TAQI UDDIN, (1419A.H) *The Noble Qur'an: English Translation of the Meaning and Commentary*.

⁴³ Dr. AL-HILALI, MUHAMMAD TAQI UDDIN, (1419A.H) *The Noble Qur'an: English Translation of the Meaning and Commentary*.

Qur'anic revelations. However, the first caliph Abu bakr (R) separated the judiciary from the control of executive and appointed Omar bin Khattab (r) as the chief justice of the state.

Qualification of judges:

The judges must have some fundamental qualities, like:

- To have profound knowledge of the Qur'an and the Sunnah
- To have belief in Allah and His Messenger and what he came with.
- To lead his personal life in accordance with the Islamic Shariah.

If these qualities do not exist together a judge will be like a blind man bearing a lamp in his hand. Neither he can benefit from it nor have others. Besides he is not safe from stumbling and the lamp either be broken or extinguished. Hence, the judges must meet these conditions.

In addition to the above mentioned fundamental qualifications the judges are to have also some other qualities, like:

- Maturity in age; that a minor who has still not attained the age of maturity cannot be a Qadi.
- Strength of memory and genius.
- Soundness of wisdom and conscience.
- Authenticity of justness and fairness.
- Purity of birth.
- To be male; though a woman may also be appointed as Qadi in those cases wherein her evidence is admissible.
- To be a Muslim; that a non-Muslim is not eligible for holding the office of *Qadi*.
- Away from anger, hunger and over excitement during the time of trial and judgment.
- And should never get tired at litigant's lengthy arguments; but they must exhibit patience, perseverance in scanning the details in examining points and sifting fact from fictions.

Since Islam laid down utmost importance on justice and it is dependant on the judges, they should have capability and maturity of judgment and should meet the above mentioned conditions.

Types of punishment

According to the provisions of the Qur'an and Hadith, there are three types of punishment, such as:

- **Hadd:** *Hadd* means fixed penalties. This is the form of punishment which is prescribed by the Qur'an and cannot be reduced or modified by the human agency. It denotes specific punishment for specific offences like *zina* (adultery), *saraka* (theft), *sharab* (wine drinking), *qazaf* (defamation/ calumny) and *riddah* (apostasy).

Its object is to deter and warn people, from the commission of such actions which are penalized by Hadd. It is inflicted in the same manner both on the Muslims and non-Muslims.

- ***Qisas and Diya:*** *Qisas* means retaliation and *Diya* means blood money. *Qisas* means, in principle, life for life and limb for limb. It is applied to cases of willful killing and certain types of grave wounding or maiming which are characterized as offences against human body. It is regarded as the personal right of the victim or his next of kin, to inflict on his victim. Under *Qisas* the relatives or successors of murdered person can exercise the *Qisas*.

Qisas becomes *Diya* when the next kin of the victim is satisfied with money as compensation for the price of blood. This cannot be reduced or modified either by *Qazi* or the government. In cases where *Qisas* is available, it could be exchanged with *Diya* or blood money.

- ***Tazir:*** *Tazir* is another form of punishment which means prohibition and it is applicable to all crimes which are not classified under *Hadd*. It is a discretionary punishment; in all cases for which *Hadd* have not been fixed. Under special circumstances, *Tazir* is being substituted even for *Hadd*. All new offences known to the Muslim law in the progress of its development were dealt under the general head '*Tazir*'. In short, the doctrine of *Tazir* gives wide scope to the judge in inflicting punishment.

The entire system of the Islamic Criminal law (which is called al-ahkam as-Sultaniah) is based on the holy Qur'an and the Sunnah. The Qur'anic and Sunnatic law goes against any anti-social activities and helps to implement justice in all sectors of a state. Therefore, we may say beyond any doubt that the legal system of Islam can solve all the problems in human society.

Principle of Islamic Judiciary

The fundamental principles of Islamic judiciary are that

- It is not placed under the control of the executive.
- It derives its authority directly from the *Shari'ah* and is answerable to Allah.

The judges will obviously be appointed by the Government but, once appointed, will have to administer justice impartially according to the law of Allah. All the organs and functionaries of the Government should come within their jurisdiction. Even the highest executive authority of the Government will be liable to appear in a court of law as a plaintiff or defendant⁴⁴.

Purpose or aim of administration of justice

Purpose or objectives of *Qada* or administrations of justice are as follows⁴⁵:

- a. To protect the weak and punish the wrong doers in the society according to the rules revealed by Allah to His Prophet (SM).
- b. To do justice with a view to the establishment of peace on the earth, concord among humanity, advancement of society and safeguard of social as well as human interest.
- c. While doing justice, to be witness of Allah (SWT).
- d. To pass judgment freely and fairly even though it goes against close relative like parents, children or it goes against one's own self and against rich or poor.

⁴⁴ Maulana ABDUR RAHIM, (2000) *Al Qur'ane Rastra o Sorker*, P225.

⁴⁵ KHAN, Md. ANSAR ALI (2006) *Legal System of Islam*, Dhaka: Kamiub Prokashan Limited, . P82.

- e. To discharge the duties of *khilafah* as imposed by Allah (SWT).

Chapter 04

Citizen, Citizenship, Conventional Political System and Islam

Objective of this chapter

The main objective of this chapter is to provide students the knowledge about criterion of a citizen and citizenship as well as the distinguishing characteristics of traditional political systems and Islamic political system

There are some specific objectives for this chapter. These are-

- To describe meaning and conditions of citizenship
- To make the students conscious about their duties and responsibilities towards their state and government
- To enable them to differentiate between conventional political systems and Islamic Political system

Chapter 04	CITIZENSHIP: CITIZEN AND CITIZENSHIP IN THE LIGHT OF ISLAM, TYPES AND NATURE OF CITIZENSHIP, SOME COMMON RIGHTS OF CITIZENS, A BRIEF DISCUSSION ON HUMAN RIGHTS AND FUNDAMENTAL RIGHTS – RIGHT TO FOOD, SHELTER, CLOTH, HEALTHCARE AND EDUCATION.
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5. Citizen and Citizenship

Introduction

Since the state is organized and the government is established for the welfare of the citizen, it becomes essential that we should know the meaning of the citizen. Citizenship is an important birth right. Citizenship is given by a state. A nation has no state, has no citizenship right. Once there is state then citizenship automatically comes in.

Definition of citizen:

The word citizen literally means resident of a city who enjoys certain privileges of such residence. The word is derived from the Latin word 'civics. By a citizen, we mean a member of a state who enjoys all rights and privileges granted by it and also discharges his duties and obligations towards the state and other associations within it.

In short, we may say that a person will be treated to be citizen of a state, when he fulfills the following conditions:

- Member of the state.
- Enjoys social and political rights.
- Sentiment of devotion to the state.

Conditions for citizenship in an Islamic state

The Islamic state is an ideological state, it confines its citizenship to only those persons who live on its territory or migrate to it. This is borne out by the following verse of the Qur'an:

“Those who believed and migrated and fought for the cause of Allah with their property and persons as well as those accepted the asylum and helped (the Migrants). They all are the friends and protectors of one another. As to those who believed but did not migrate, you (the Prophet) owe no duty to them until they migrate (from their home land to Islamic state.)” (8:72)

From the above ayah, it is clear to us that Islamic state is not politically responsible for the protection and guardianship of those Muslims who live outside its territory.

Types and nature of citizenship

As the Islamic state is an ideological state since it is a system of both thought and conduct and aims at creating a state on the basis of its ideology, it prescribes two types of citizenship. These are:

1. *Muslim* (those who believe in Islam as the complete code of life) and
2. *Dhimmi* or protected people (those who do not believe in Islam but they are loyal to the state law. Their life, dignity and property are protected by the state).

As regards belief as the criterion of *citizenship*, Allah Ta'ala says:

“Those who believed and migrated and fought for the cause of Allah with their property and persons as well as those accepted the asylum and helped (the Migrants). They all are the friends and protectors of one another. As to those who believed but did not migrate, you (the Prophet) owe no duty to them until they migrate (from their home land to Islamic state.)” (8:72)

In explaining this ayah `` Syed Mawdudi wrote that the word *walayah* is a constitutional word which extends relationship between Muslim and ruler. According to it the Muslims who are to be bounded by *walayah* are to be either inhabitants of Islamic state or immigrants. The Muslims outside the Islamic State will have relationship of brotherhood and not the relationship of *walayah*.

The same is the case with tourists visiting Islamic state. The word *walayah* is very comprehensive term in politics. It means the relationship of help, succour, protection, support, friendship, guardianship and the like between the citizens and state and the citizen themselves.

Based on this ayah citizenship right is deserved only for those Muslims who either born in or exiled in an Islamic state. The government of an Islamic state is not a direct guardian of Muslims residing in non-Islamic state. The Messenger of Allah also says:

“I owe no responsibility for the protection of any Muslim who resides among the Mushriks.” However, this principle does not exclude of having brotherly relationship with those Muslim.

Muslim having the citizenship rights by birth and by immigrations Muslims have this important and absolute right, because Islamic constitutional state is an ideological state and Muslim only believe in this ideology and take burden to run it in accordance with Islamic principles. On this point Islamic court and Islamic state alone enforces its laws and obliges them to carry out all its religious, moral, cultural and political directives. It imposes with all obligations and requires every sacrifice for the defense of its territory. It also gives them right to choose the head of the state and members of legislative assembly. In exchange it entitles them to be appointed to the key posts, so that the basic policy of this ideological state remains with strict principles of Shariah.

***Dhimmi* (Protected people)**

It refers to the non-Muslim citizens of an Islamic state who have affirmed to remain loyal and obedient to it. The *Dhimmi* can be born one as well as migrant one. Islam confers the guarantee of protection of life, limb, property, religion, culture, honor and dignity. In all civil matter they enjoy same rights as Muslims do. They are eligible for all kinds of employment except for key post. They are exempted from taking part of the defense of the state.

Some Common Rights of the Citizens

There are some basic rights that Islamic constitution guarantees to its citizen, both *Muslim* and *Dhimmi*. Islam has also laid down certain rights for the non-Muslims who are living within the boundaries of the Islamic state. Those rights are:

1. **Right to Free Movement:** Every citizen is entitled to move around the country freely. As regards free movement, Allah (SWT) says: “It is He Who has made the earth manageable for you. So, travel you through its tracts and enjoy the sustenance, which, He furnishes for you to enjoy, and unto Him is final return”.
2. **Protection of life and Property:** It is a duty of the state to safeguard the life, dignity, honor and property of a citizen either he is a Muslim or a *Dhimmi*. The Messenger of Allah declared it in his farewell address: ‘O people! I warn you that your lives, your property and your honor are as sacred to one another as this sacred day, as this sacred month and this sacred city.’
3. **Participation in the Politics and Government:** Islam entitles each and every adult and sane person among its citizens to participate in politics and government. One man cannot form a government and a state. it needs an active participation of the people. Therefore, cooperation is required from every citizen. As Allah (SWT) says: “Co-operation with one

another for virtue and piety and do not co-operate with one another for sin and transgression. Fear Allah; for Allah is strict in punishment”.

4. **Observance of Personal Law:** Muslim citizens under Islamic constitutional government will be governed by the law of Islam; whether it is private or public law. And Non-Muslim citizens are entitled to apply their personal law or customary law in their private matters. They have the option to apply their personal law as well as Islamic law in civil matter but such option cannot be applied in criminal matter, such as stealing, robbery, adultery, cheating, breaking of agreement, etc.
5. **Observance of Own Religion:** Islamic constitution permits each and every religious man to follow his religious belief. They will be at liberty to perform their religious ceremonies in the ways they like. While Islamic law encourages people of other faiths to be converted to Islam but strictly prohibits any kind of compulsion in this respect. The holy Qur'an states: "There is no compulsion in religion" and "For you your religion and for me mine". And to Muslims Allah (SWT) commands: "O you who believe! Enter into Islam (observe Islam) wholeheartedly, and follow not the footsteps of the evil one".
6. **Participation of Trade and Profession:** The opportunity of trade and profession is open for both Muslim and Non-Muslims citizens. A Non-Muslim citizen has right to sell and buy necessary commodities. He has right to enjoy all kinds of business and transaction. He can also enjoy all kinds of occupation and livelihood. In Islam, both classes of citizens enjoy such rights equally.

By clear declaration, Islam makes an opportunity to each religious community to follow its own religion or own customs. But if anybody declares himself to be a Muslim, he must follow the rules of Islam accordingly. That is why Islamic law encourages the people of other faiths to be converted to Islam, but strictly prohibits the Muslims from abandoning Islam.

Duties of citizens

In Islam, the implication of rights and duties is very important and it bears special significance. There are certain rights of the state upon its citizens. Among these-

1. The first is that of obedience. The Prophet (SAAS) says:

“The state shall have to be heard and shall have to be obeyed in adversity and in prosperity, and whether it is pleasant or unpleasant to do so.” – Bukhari and Muslim.

We may say in other words, the order of the state, be it palatable or unpalatable easy or hard, shall have to be obeyed under all circumstance, subject to satisfaction of Allah.

2. Second obligation is that they should be for the state and work for its welfare. In the Qur'an and Sunnah, the term 'Nush' has been used for this purpose which means loyalty and allegiance. A citizen of an Islamic state should truly and faithfully and with his heart work for the good, prosperity and betterment for the state.

3. Third obligation is cooperation, which is obligatory on the citizens of the Islamic state. Every citizen shall have to co-operate whole-heartedly with the government and to make sacrifices of life and property for it so much so that if any danger threatens the state, he who will fully refrain from making a sacrifice to his life and property for warring of that danger has been called a hypocrite in the Qur'an.

Topic: Human Rights and Fundamental Rights

Human rights are those rights of all citizens of a state which are so basic, just, straight, upright, virtuous, appropriate, suitable, most convenient, favorable and satisfactory. Human rights are the rights which men possess by virtue of their birth. These rights may also be called fundamental rights. These rights are not dependent upon the will of any human mind rather it is the absolute prerogative of Almighty Allah. The rights that a person is entitled to enjoy throughout his life are called basic or fundamental rights and these rights are recognized or enforced by the state. So to say, the same right under international law is treated to be human rights.

As human rights or fundamental rights Islamic law guarantees the following rights.

1. Right to life
2. Right to have five basic needs
3. Right to be free from persecution
4. Right to equality and equity
5. Right to privacy
6. Right to justice
7. Right to freedom of religion and conscience
8. Right to freedom of association, assembly and speech.
9. Right to valid marriage
10. Right to lead crime free-life
11. Right to lead pollution free-life

In Islam, human life, body, honor, chastity etc. are precious things. Since, they are inviolable. Nobody has the right to kill or injure others illegally or without the sanction of *Sharia* 'h. In Islam killing is justified in the following cases.

1. Intentional murder as way of revenge to be ordered by the court.
2. Killing in the just and lawful Warfield.
3. Killing for the offence of treason against the Islamic state.
4. Killing of a married adulterer and adulteress
5. Killing of apostate who leaves the religion of Allah, and
6. Killing of highway robbers.

A short discussion on five basic needs

Right to food, shelter cloth healthcare and education

These five rights above are known very well to the people, particularly the political in Asian sub-continent. Quite often they quote these rights and demand the government to ensure these rights to the citizen as fundamental rights. Sometimes the politicians give their promise to the electoral that, if they are voted into power they would fulfill the right to food, shelter, cloth, health and education of each and every citizen. It is good, at least the citizen know that they have some rights. However, these are not the only rights. There are many more as we have discussed and going to discuss. Since these five rights are very much well known. Therefore, for the sake of orderly discussion we brought them together to save the time and space. Islam is the first to guarantee these rights. There are some Qur'anic and Sunnatic provisions in support of these rights, such as:

Right to food and shelter

Every citizen has the right to have and share the food and the government is responsible for equitable distribution of wealth given by Allah (Swt) As regards the source of food, Allah Ta'ala says:

“There is no moving creature on earth but its sustenance depends on Allah. He knows the time and place of its definite abode and its temporary deposit. All is in a clear record.”

Everything is belonged to Allah Ta'ala but Allah entitles the ownership of wealth to man. The rich are under obligation to share their wealth with the poor. As Allah Swt. says,

“And there is a right of the poor and deprived people in the wealth of rich and affluent people.”

As Allah Ta'ala further says:

“There is a recognized right of the poor and destitute in the wealth of those (who are rich).”

The Messenger of Allah is commanded to tax on the property of wealthy men in the form zakat etc. As Allah commands:

“Of their goods take alms so as to purify them and sanctify them”

For proper distribution the name and number of recipients are also depicted very clearly. As Allah (Swt) commands:

“The true righteousness is to spend of your substance out of love for Him (Allah) for your kin, for orphans for the needy for the wayfarer for those who ask and for the ransom of slaves be steadfast in prayer and practice regular charity.

Sharing of once wealth with the others is conditioned with Iman. In other words, none can be a believer unless he spends his wealth for Allah and for others causes as prescribed by Allah and His Messenger. As He says:

“This is the book wherein no doubt in it. It is a guide for those who fear Allah. who believe in unseen who establish prayer and who spend from the sustenance given them by Allah.”

The following ayah can be cited for the right to shelter or housing Allah Ta'ala says:

“There are therein (enough provisions) for you neither to go hungry nor to suffer from thirsts not from sun's heat.”

The wideness of the earth considers as shelter to all As Allah Swt, says:

“He is Allah who made the earth your couch and heavens your canopy and sent down rain from the heavens and brought forth there with fruits for your sustenance.”

Based on the above Qur'anic ayah, it is to be deduced that Allah Ta'ala created men and Jin by arranging first their sustenance and shelters. However, due to non-application of the law of Allah and mismanagement, a group of people are controlling entire wealth of the world as well as a nation. As a result, most of the people are deprived of wealth and shelter. Islamic concept of proper and equitable distribution of wealth guaranteed the right to food and shelter in the past and it is able to do the same now and for the future under the government of an Islamic constitution follows Islamic social and economic justice. Islamic guarantee of food and shelter not only address the human being but it also addresses to all living creature under Islamic administration. That was the reason whereby Omer b. Kahattb, the caliph of Islamic world from Madina, said that he would be held responsible for the death of a dog died even the bank of Forat River in Iraq out of hunger. Forat is referred to mean the area far from capital or it also to mean any part of Islamic caliphate. It is on obligation of a rich man to help his close relative first if be accepted by Allah Ta'ala.

Pleasure and aiding Allah & His Messenger, such are indeed the sincere one.

Enjoyment of financial facility is deserved only for the citizen or son of the soil, but by giving away of this right to both migrants and local Madnitas, it is established that citizenship can be possessed both by born as well as by migrating people to Islamic land As Allah Ta'ala says:

“But those who before them had homes (in Madina) and had adopted the faith show their affection such as came to them for refuge and entertain no desire in their hearts for things given to the (latter). But give them preference over themselves even though poverty was their own lot and those saved from the covetousness of their own souls they are the ones that achieve prosperity.”

Chapter 09	SHORT NOTES ON CONVENTIONAL POLITICAL SYSTEM AND ISLAMIC SYSTEM OF KHILAFAH: CAPITALISM, SOCIALISM, DEMOCRACY, DISTINCTION BETWEEN CONVENTIONAL AND ISLAMIC POLITICAL SYSTEM
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Khalifah & Khilafat

Khalifah means a successor or representative *khilafat* means succession or representation. In Islamic constitutional law and political science khalifah refers to the head of the government and *khilafat* refers to statehood. The title once again resumed with ascension of Abu Bakar Siddiq as the first head of state of Madina. He is better known as khalifah Abu Bakar, followed by Omar b. khattab Osman b Affan and Ali bin Abu Talib. They themselves claimed to be the khalifah or successor of the Prophet (SIm.) khalifaturrasul and Prophet Muhammad (SIm) is the kahlifatullah the khalif of Allah. The khaliphs are simply representative of Allah for the establishment of al-Din the way of life on the method of the prophet (SIm).

Is a Khalifah Sovereign?

Once the prophet himself is not a sovereign then the question of sovereignty for his successors is immaterial. Here is the statement of at last two caliphs so as to find out what they said about their own position whether sovereign or and ordinary man.

Abu Bakar al siddiq: is sovereign?

Following the death of the prophet Muhammad (SIm) Abu Bakar (RA) was crowned as his successor in the year 632 A.D. He gave his inaugural speech before the Electoral College as well as to the general masses in his address he said:

“ O people! I was power to rule over you but I am not better than you. Therefore guide me if I am not in the right path, set me right if I do any wrong.”

Position of man in Islam:

Man is the best creature of Allah. He is a slave of Allah, at the same time the representative of Allah on earth to establish the wishes of his Creator Allah Ta'ala. As regards his best fashion Allah Ta'ala says:

“We have indeed created man in the best of moulds then we abase him the lowest of the low.

Regarding his highest and dignitary position Allah Ta'ala says,

“Remember when your Lord said to the angel that, indeed I am going to create My representative (khalifah) on earth.”

This ayah refers to the creation of Adam A.S. the first and on earth. Though the angels raised question of creation of man, but Allah did it. It is to empower man with his Vicegerency to rule the earth in accordance with the wishes or law of Allah.”

“ It is Allah who made you caliphas on earth.”

As regards khilafah of man in the sense of political authority Allah Ta’ala says,

“O (prophet) Dawud! We did indeed make you vicegerent (kahlifah) on earth. Therefore, judge between man in truth and justice and follow not the lust of your heart.”

With the same fact and same concept Allah Ta’ala says:

“Allah has promised to those among you who believe (in the articles of Imam) and work righteous deeds, that He will of a sure, grant them khilafat (the inheritance of power) in the earth as He granted it to those before them.”

As regard the functions of such vicegerent the ruler, Allah Ta’ala says:

“They are those (true believers) who if We establish them in the land establish regular and establish (institute of Zakat) enjoining what is right and forbidding what is wrong. With Allah rests the end of all decisions of affairs”.

Based on these Qur’anic provisions, it became very clear that the position and nature of man is enough to deduce that man is not the principal. Because he is an agent or a vicegerent. Whose vicegerent, is he? Answer is Allah’s vicegerent. Hence, Allah is the principal and man is His representative on earth to establish His wishes. As such, a representative of a principal cannot claim to be the principal- hence sovereign. If so, it will be considered as an act of disobedience and treason. Therefore, the question of man’s sovereignty is out of question. Whoever believes and practices the sovereignty of man in the sense of law-making authority, in disobedience of Allah Ta’ala. They commit an act of treason a punishable offence. If the term does not contradict the sovereignty of Allah and does not share with His sovereignty then it may be tolerated reluctantly. However, the term sovereignty of the people, “all power of the Republic belongs to the people” should be avoided even though the framers of the constitution do not want to snatch the sovereignty of Allah. If they intend to deprive Allah from His sovereignty and want to make themselves sovereign that is all powerful then it is not only bad but anti-Islamic too and subjected to the capital punishment under Islamic constitutional government.

Classification of Conventional Political Systems

There are numerous ideologies that have come into existence giving outstanding slogans for establishing human equality, like capitalism, socialism, secularism, democracy, and the like.

Some of the thinkers of these systems believe that if a free-market economy is established human equality could be established. Some of them believe that if private ownership is abolished and all the property is owned by the state, and individual freedom is taken away human equality could be established. Some of them hold that if religious belief is uprooted human equality could be established. Some of them believe that if individual absolute freedom is established human equality is established.

However, all of their thoughts turned into a fiasco, because of being their thinking imperfect and partial. So, without a brief exposition and comparative study, we would not have a comprehensive understanding of these systems. Hence, I shall try my best to deal with on them categorically.

1. Capitalism

The capitalist system is antique. It evolves through a number of stages. According to the Holy Qur'an, the chief originator of this system was Qourun.

In this regard, Allah says:

“Verily Quorun was Muse’s people but he behaved arrogantly towards them. And we gave him of the treasures that of which keys would have been a burden to a body of strong men. Remember when his people said to him. Do not exult, verily Allah likes not those exult. (Surah al Qasas: 77).

However, it reached its decisive point in the 19th century and still exists in almost all of the countries around the globe.

The term capitalism was first introduced by Karl Marx in the 19th century while he was refuting this system by pointing out that this turns the inhabitants into two antagonistic and conflicting classes; one is an upper class (owner of the property) and the other is the lower class, the laborer; they must sell their ability to work in return for wages. The former, being the dominant class, always exploits the latter.

Capitalism is an economic system in which individuals own industries and business firms, carry on production, control the distribution and exchange of goods and services through a complex and hostile competing system in markets. In another word, in a capitalist system, few people own the means of producing and distributing goods (the land, factory and technology, transport, and so on). While the majority of the people sell their ability to work for wages are called the working class.

The founder of modern capitalism is the Scottish philosopher Adam Smith, who developed essential economic principles of this system.

In short, the main theme of the capitalist system is that everybody can possess property under absolute control. There is no room for others to meddle in it. He is absolutely free to use his property wherever he intends and he can earn money on production, and exchanging goods according to his will. It is not incumbent on him to spend money or property for the sake of other people in the society or state when they desperately need it.

In this system, the motive for producing goods and services is to sell them for profit, not for satisfying people's needs. In this system, competitive thinking always is assimilated in getting profit as much as they can afford.

So, most of the thinkers hold that it is inhuman. The class division and profit motive of capitalism that is at the root of the most of the world's problems today, from starvation to war, and to alienation and crime. Every aspect of our lives is subordinated to the worst excess of the drive to make a profit. In this system, our real needs will only ever come a poor second to the requirements of profit. Because, it emanates from selfish thought.

2. SOCIALISM

The Socialist system is alternative to capitalism. The originator of scientific socialism is Karl Marx. In his view, that man's actions at all time are dominated by economic motives, which determine the nature of social and political organization.

There is also a constant exploitation and struggle between economic class and that class secures economic power and controls the state to protect and advance its own interest in the capitalist system. Therefore, it can never be accepted.

So, he advocates that individual ownership should be taken away and the country's land, transport, natural resources, chief industries and so on should be owned and controlled by the state as well as every individual should be a worker and have equal wages then they should not have right to produce goods and consume them according to their will.

According to the view of William Sumner "Socialism is any device or doctrine whose aim is to save individuals from any of the difficulties or hardship of the struggle for the existence and the competition of life by the intervention of the state"

Although communism solved some of the problems of capitalism at the cost of immense human suffering, the remedy was only partial. Dictatorship, repression, deprivation of individual freedoms, constant fear of imprisonment, torture and execution for the dissidents, loss of economic vigor due to absence of individual initiative and motivation, the debasement of man's dignity these are some of the outcomes of the socialist solution.

Besides, in socialist system, no religion descends from heaven nor it is practiced in an ethereal or ideal environment. Every religion emerges in a given society with its values, its ethos, customs and traditions and from the time immemorial; morality and religion are applied by the influential people of the society as their hand tool.

If we think profoundly over the socialist world, its true outlook would be seen throughout history. For example, the national socialist (Nazi) holocaust in Germany where millions of people were

murdered just because they were religious and the Union of Soviet Socialist Republics millions of people were murdered just because they were moral.

Whenever and wherever socialists assumed power in a country of the world they were not only buried with failures to present a correct world outlook and to formulate an ideology capable of solving the diverse problems of human society but on the contrary, they put a wall around the country to keep the people from escaping.

Then they made the entire country like jail and made everyone slave. Live examples are the Berlin Wall, the Iron Curtain, and the Great Wall of China. This is rooted in their materialist worldview and their inadequate understanding of man's nature. They have in their mind the equality of the human stomach and not the unity and dignity of the human spirit. Life must not be identified with economics but with a sense of human dignity rooted in divinity.

3. Secularism

From etymological point of view, the term secularism derives from the Latin expression “secularism” and its lexicological meaning is worldly, temporal (opposite to eternal).

According to the given definition in Webster’s dictionary:

- (1) Secular spirit or tendency especially a system of political or social philosophy that rejects all forms of religious faith and worship.
- (2) The view that public education and other matters of civil policy should be conducted without the introduction of religious elements.

Furthermore, according to the meaning of the word “secularism”, we found many a host of interconnected definitions; it belongs to worldly things or things that are not regarded as religious and spiritual

According to the “Fiqh Al Dawlah fi al Islam “It is Latin word, which got existed from Aristotelian’s philosophy who holds that Allah, the Creator has no relation to this universe? Neither he knows anything of it nor he concocts of its any matter and only spiritual affairs for Allah and Kaiser only for Kaiser. Summing up of Aristotle’s view that Allah has no introduction to the worldly affairs

Now, we should turn our attention to a brief history of secularism, because, devoid of it, having a comprehensive understanding would be refractory. The secularist doctrine is the upshot of two hundred years of struggle between church and state. Roman Empire ruled vast areas of Europe in the name of God where the church was the source of authority. However, their ruling system was not concorded with divine guidance. In the disguise of Christianity Pops and Bishops imposed their unscientific beliefs of laws of nature and of the material world.

And it was the beginning stage of modern science. (Commence of 15th century) when scientists were paging away with the science and undertaking research on various fields of science.

Whenever there any of the innovations or discoveries was contradictory to the church the scientists were immediately punished by the ruling ecclesiasts.

As the days getting elapsed the situation was progressing towards hard going between religion and its rebellious or disloyal people. In course of such fighting, there was a conciliatory movement formed headed by Martin Luther. Both warring sides reached to the settlement that religious functions no more in the state except the elected figure of it shall take oath before the church.

This is a brief history of secularism through which it comes into existence. In this respect, it is worth mentioning that the conflict and wars were on progress during the time of adulteration of Christian religion.

So, on this pretext, we should not erect the wall between religion and worldly affairs because religion is part and parcel of our lives. And Allah creates the whole world and everything in it.

Human being is his best creation; he did not leave him at random rather he provided the man with all that he needs for the progress and growth of life to fulfill his material needs.

He has endowed the world with all kind of materials and substances, which man can harness to his uses to cater to his spiritual, cultural, and social requirements. He needs His revealed guidance that constitutes Islam.

Life is unity. It cannot be divided into watertight compartments. The function of religion is to direct the affairs of life. Therefore, its domain is life entirely and not any specific aspect of it.

This is why it not only gives an outlook on life and reality but also lays down the basic principles on which man's relationship to his own self, to other men and society, Allah, the Creator is to be reared.

Despite the true outlook of the secularist doctrine appeared crystal clear many Muslims are loyal to this ideology.

In the Muslim world, first secularist state was established by Kamal Atatürk in Turkey where he not only imposed ban on Islamic dress but also dispensed the law of Shari'ah including the law of marriage, divorce and inheritance.

If we think over secularist countries around the world the true view would appear before us that the secularists have been opposed to religion, human ideology, and his common interest they left no stone unturned to shatter the religious dogmas as well as the Shari'ah.

Because if the religious beliefs can be up rooted, and Shari'ah can be controlled the way could be easy to turn some Muslim countries to secularization. Consequently, the nation would be constrained on Subservient under the pretense that the European countries are developed.

But the question arises that are they truly developed in every sphere of life? In fact there is no peace and safety in their social and state life even in the family life rather there are dictatorship, oppression, genocide, hijacking and snatching, are regular phenomenon?

Because where there is no sound seed there is no hope for having a good output. Hence, there is no expectation in secular doctrine to provide peace and safety owing to absent of Allah given guidance.

4. DEMOCRACY

Lexicological meaning:

The term democracy is derived from the Latin word “demo” and “Crazy”

The former means the people or population. The latter means power or rule. It is a system of government by the whole people of a country.

According to the view of R C Agarwal the term democracy is originated from the Greek word “Demos” and “Cratos” denotes people and power. Democracy thus means the power of the people. It is a form of government in which people rule over them.

Definition of democracy:

(1) Democracy is defined by Abraham Lincoln, “It is the government of the people, by the people and for the people”.

(2) According to Gettel: “Democracy is that form of government in which the mass of the population possesses the power to share on the exercise of sovereign power”.

(3) Some thinkers view that Democracy is a perverted form of government.

(4) Dr. Yousuf al Qaradawi is of the view that it is natural democracy; however, it is far away from the conventional definition of democracy. He says it is a form in which the mass of the people chose either their governor or the system by which they are run and the government is accountable to the people. And the governor will not implement any sort of ideology or system they refuse rather they have the right to dismiss him when he deviates from the right way.

A brief history of democracy:

During the Homeric period, tribal chiefs ruled the Greek city-states. In course of time, their powers were dismissed and passed into hand of oligarchs who absolutely controlled the council and magistracies of the city however, their term also not very long, because of their selfishness and oppressiveness.

The general people rebelled against them. Then a democratic constitution was set up in the fifth century CE, which is regarded as the first democratic state in history. It is known as direct democracy, in which the citizen could take active part in state affairs. In accordance with their constitution, they would be in session several times in a year (it is called fourteenth times) so as to discuss every imperative task. Then decisions and laws were made.

In this process, a dictator or tyrant frequently arose but it was removed when the people realize their strength. In the democratic process, each citizen could take active part in holding public office and in deciding public matters. Besides, there political and civil rights were widespread.

While a large part of the population of the city-state was composed of slaves, women, and workers who had no right to take part in both political and official affairs.

Thus, each city of the Greek developed in intense patriotic life absorbing the energies of the citizens and identifying their life with that of the city. However, Factions within the city were foreshadowing political parties, which seemed to be an inevitable accompaniment of democracy that created internal dissension and weakened the cities.

In spite of this democracy adapted to the city-state, it was affected only a small area of the Greek. In addition to this its perfection intensified jealousy among the cities and one city viewed other as their enemies. This is the brief history of democracy.

Fundamental Negative Impacts of Democracy

The main thing that makes democracy wrong is that, it does not seek out what is the best for the citizens, but simply does what so-called majority of the citizen wants.

If the so-called majority wants cigarettes given to babies, cigarettes are given to babies, without regard to the harm they cause.

If the majority does not want morality in schools, morality is taken out of the schools. This is not good. Democracy does not request for the ordinance of God who of course, knows what is best for mankind. Democracy acts from the selfish whims of depraved man and since man is depraved, only junk comes from democracy.

Furthermore, if we draw our attention to the background of democracy, its true outlook would be clear that democracy first flourished in the Greek city-state reaching its fullest expression in ancient Athens.

There the citizens as members of assembly participated directly in the making of their laws. However, they were small in number, because the majority of the inhabitants were slaves, servants, women, and children. Aftermath, they were not allowed to have citizenship. So, there is no majority in a democratic system

The distinction between Conventional and Islamic Political Systems

In a conventional political system, the man-made laws rule the people whereas, in the Islamic political system, the people are ruled by the laws of Allah (SW).

Today, the whole world is subject to man-made laws. Man, who is limited in his knowledge, prone to errors and subject to prejudice and greed? As a result of this, the rules that govern the world reflect these aspects of man's character to the oppression of the weak, injustice, and corruption.

People in one part of the world are allowed to starve, while in another, surplus produce is burnt or dumped in the sea. We are subject to taxes we do not want and cannot afford to pay.

The Islamic system is the only one, which gives a way out of these problems. Instead of being subject to man-made laws, where one person is made to bow before another, our lives and society are governed by the law of Allah (SWT) the Supreme, where everyone is considered as a vicegerent of Allah.

So, Islam is a moderate system, it neither takes away individual freedom nor allows the people to enjoy the limitless freedom. In the word of *Khalifah* Abdul Hakim, "Islam has definitely equalitarian trends but it does not believe in leveling down all differences by force. Let people think freely, believe freely act freely; create wealth, if they can, freely but legitimately. But evidently, the free actions of individuals will create differences in achievements and materials gains. If society in general or any portion of it is not suffering from dire misery and paralyzing poverty. Let there be a gradation of wealth honestly earned and innocently enjoyed. But it is the duty of society to make an attempt to eradicate indigence"

Savile, Amy Elizabeth. 2015. "Moral Panic and 'One [Secular] Law for All': Exploring the 'Ontario Sharia Debate'." UNIVERSITY OF NEW BRUNSWICK.