

## Implementation of the *Sharī'ah* (Divine Law)

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(Tr. Asif Iftikhar)

Some people believe that democracy is a concept alien to Islam. The ideal way of setting up an Islamic government in our times is the one that the Taliban adopted for Mullāh 'Umar's government in Afghanistan. The constitution, the parliament, and elections are nothing but modern day shams. For its implementation, Islam does not depend on any of these mechanisms. Whatever interpretations have been accepted in the Ḥanafī law<sup>1</sup> are final and authoritative. The opinions of its jurists have all been compiled in matters related to individual as well as collective affairs. According to these people, these opinions and verdicts are based on the Qur'ān, the *Sunnah* (the Prophet's teachings), *Ijmā'* (consensus), and *Qiyās* (analogy) and are contained in the manuals of *Fiqh* (Islamic law) and in the *fatāwā* (verdicts) of "qualified" Muslim jurists. These laws and verdicts must be implemented. And this implementation does not require the approval of any parliament. The *modus operandi* recommended by people with these views is that all institutions of the government be under the judiciary and the judiciary itself be under the control of the '*ulamā*' (religious scholars) as it is the '*ulamā*' who are the experts in the understanding and interpretation of the *Sharī'ah* (Divine law). These people hold that the last 1200 years of Muslim tradition stands in support of their view. In their opinion, after the appointment of Imām Abū Yūsuf as the *Qādī al-quḍāt* (chief justice) of the Abbasid sultanate, the same *modus operandi* was adopted everywhere for the implementation of Islam. It was the Western colonialism that put an

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1. Islamic law as understood, interpreted and applied in one of the major Sunni schools of thought. The Ḥanafī school is named after the Iraqi legal expert Abū Ḥanīfah (d. 767).

end to this tradition. Now, the Muslims are independent; therefore, this approach to running the affairs of the state in accordance with the *Sharī'ah* must also be restored.

I can say with full confidence on the basis of my study of Islam that this viewpoint is not acceptable to the Qur'ān. It prescribes democracy as the basis for running the affairs of the State. The Qur'ān (42:38) says: *amruhum shūrā baynahum* (the affairs of the Muslims are run on the basis of their consultation). 'Umar (may Allah be pleased with him) said: "Whosoever pledges allegiance to anyone without the collective consent of the Muslims presents himself for the death sentence."<sup>2</sup> It is true that, in Muslim history, monarchy and dictatorship have often been accepted forms of government. Some people also believe that the head of government should be an appointee of God Himself. However, the principle the Qur'ān spells out is very clear. What this principle entails in terms of its nature and foundation has been explained very aptly by a well-known Muslim scholar of our times, Mawlānā Abū al-A'lā Mawdūdī. He says:

First of all, people whose interests and rights are directly affected by collective decisions should have the absolute right to express their opinions. They should be fully informed of how their matters are being dealt with, and they should be granted the full right to criticize those in charge of their matters for any mistakes or flaws. They should also have the right to change their leaders if they do not see any effectiveness in the efforts for their reform. Making people conform to collective decisions by stifling their voice, shackling their hands and keeping them in the dark is downright dishonesty, which no intellectually honest person can consider as compliance with the directive of *amruhum shūrā baynahum*.

The second thing that needs to be understood is that the appointment of the person responsible for the collective affairs of the Muslims should be with the free will of people. Support gained through coercion, intimidation, jobbery, bribery, deception or misrepresentation does not reflect free will. The rightful leader of the people is not someone who attains this

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2. Bukhārī, No: 6442.

position by hook or by crook, but someone whom they choose of their own accord.

The third point is that representatives of people involved in consultation with the head of the state should be appointed on the basis of the genuine trust of people. Obviously, those who have attained this position on the basis of coercion, bribes, lies and deception can never be deemed as worthy of this trust.

The fourth point pertains to freedom of expression for people's representatives to present their opinions correctly and honestly in accordance with their understanding and conscience. If this aspect is missing and the representatives are bound by any fear, greed or group affiliation, the consequence will be dishonesty and betrayal rather than conformity to the principle of *amruhum shūrā baynahum*.

Finally, the unanimous or majority verdict of the consultative body should be accepted. The reason for this principle is that, if any person or group is given the authority to violate the collective decision, the whole process of consultation becomes meaningless. The Almighty Allah does not say: "In their matters, the Muslims are consulted." Instead, He says: "Their matters are based on their consultation." Compliance with this directive does not take effect by mere consultation. Compliance here requires that, in the consultation, whatever is decided by unanimous or majority verdict become binding."<sup>3</sup>

This extract clearly shows that, for the interpretation and application of even a religious directive pertaining to the state affairs, it is consultation that should be the procedure. Experts of Islamic sciences may proffer their opinions. It is their right to express their viewpoints, but their opinions become legally binding on people only when the majority of the elected representatives of people accept them. In the present-day state, the institution of the parliament is constituted for this very purpose. It is the right of the people to disagree with

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3. Abū al-A'lā Mawdūdī, *Tafhīm al-Qur'ān*, vol. 4, (Lahore: Maktabah-i ta'mīr-i insāniyyat, 1972), 509-510.

decisions of the parliament and to express their viewpoints to rectify its mistakes. However, no one has the right to violate the laws enacted by the parliament or to defy the system. Neither the *'ulamā* nor the judiciary is superior to the parliament. Each institution has the obligation to comply with the parliamentary decisions even if it has differences of opinion with it.

If this status of the parliament is accepted, the discussion on an “Islamic state” vis-à-vis a “secular state” also becomes irrelevant. Discussions as these were relevant in situations of autocracy and dictatorship. Now, the objective of our efforts should be a purely democratic state. Once this state is truly formed, Islam will manifest itself in the system in proportion to the degree of people’s commitment to this faith. This is the natural way. Any deviation from it will lead only to hypocrisy, which we have been witnessing for the past half-century in Pakistan.

The real task of the *'ulamā* and reformers is to prepare the minds of the people for Islam through education and communication. They should call people to this message with sagacity and decency; they should face their questions and queries; they should cogently resolve people’s intellectual issues and explain to them not only the *Sharī'ah* but also the Divine wisdom in its directives. For example, they should be ready to explain what the relationship of the *Sharī'ah* is with the collective affairs of society, what the foundations of its directives are, and why the modern mind is impeded in understanding the wisdom of the Divine law. They should adopt such means and modes of communication as would bring out the wisdom and the meaningfulness of the *Sharī'ah* so that people are able to understand the underlying objectives clearly and become willing to accept these laws with heart, mind and soul. The responsibility that the Qur’ān lays upon the religious scholars is that of calling people to Islam and exhorting them to follow its directives (*da'wat-o indhār*) – they have not been given the role of keepers of morals and, therefore, have no right to use groups of their followers to enforce their conceptions and interpretations of the *Sharī'ah* on people in their society through the force of guns. Not even the state itself has been permitted by Islam to use the force of law to coerce people into fulfilling any obligation of purely religious nature except the mandatory prayer and alms (*al-Ṣalāh and al-Zakāh*). The Qur’ān is very clear in this matter: regardless of what the adherents to Islam are responsible for in the Hereafter, the

State cannot hold them responsible in religion beyond these imperatives. Beyond them, appeal, exhortation, education and training are the means that may be adopted to make the efforts for reformation of people. If some of the religious scholars are fond of politics as well, they can join political parties to become part of the parliament where they can play their role in legislation in accordance with the parliamentary norms and procedures.

*(Translated by Asif Iftikhar, Fellow, al-Mawrid, Lahore)*

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