

THE CONCEPT OF STATE IN ISLAM - A REASSESSMENT

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The Holy Prophet started preaching Islam in his ancestral home Mecca. But he had to migrate from Mecca to Medina because the Meccans were not willing to accept his faith and made it difficult for him to preach his religion. The Medinans, on the other hand, accepted him as the Messenger of God invited him to Medina, and with their help and support, he founded a city-state at Medina.

THE PROPHETIC ERA

In the person of the Holy Prophet, as Imām or Head of this new state, were combined a legislator (*mujtahid*), a statesman, an administrator, a judge, and a military commander. He also led the congregational prayers and was the supreme authority in matters connected with religion and Revealed Law. Therefore he had different capacities. Nevertheless, although he had the last word in political and military affairs, and as the Messenger of God (peace be upon him) was not obliged to consult others, he consulted his Companions in all matters other than those concerning revelation in accordance with the command addressed to him in the Qurʾān to the effect that he should consult them in affairs and when he had taken a decision, he should put his trust in God (sūrah 3: verse 159). The command to the Holy Prophet (peace be upon him) in this respect is for no other purpose except to emphasise the significance and importance on the Muslims of “consultation” (*shūrā*) in managing the affairs of the state, otherwise as has been pointed out above, the Holy Prophet (peace be upon him) did not require anyone’s advice. In his personal capacity he usually accepted the advice of others and did not impose his own decision. In sūrah 42: verse 38 it is laid down that the Muslims should conduct their affairs by mutual consultation. The verse is descriptive of the nature of the Muslim community that is expected to conduct all its worldly affairs by mutual consultation. The Holy Prophet (peace be upon him) is reported to have said: “Difference of opinion in my community is (the manifestation of Divine) Mercy”; and: “My community would never agree on an error”.¹

While interpreting the verses pertaining to “consultation” a very important question arises as to whether the body to be created for this purpose is a consultative body or an advisory body. According to the Practice (Sunnah) of the Holy Prophet who always consulted a body of eminent members of the Muslim community, namely his Companions, in the conduct of the affairs of the state, it was an advisory body, and the four Rightly Guided Caliphs subsequently followed this practice. The generally accepted principle is that the person in authority must consult others but he is not bound by the advice and can overrule it. However, as it will be seen later, the Khāwarij did not agree to it. According to them under the relevant Qur’ānic injunction a consultative body and not a single head of the state advised by the advisory body (which advice he could over-rule) was required to conduct the affairs of the Muslim community. They maintained that after the death of the Holy Prophet (peace be upon him) there was no obligation to render obedience to a Khalīfah or Imām as the Head of the State, because the Muslim community could govern itself by constituting a Consultative Assembly from amongst themselves. However if a need arose the Assembly could appoint a Head of the State for its own convenience. Be that as it may, the principle that those who command authority ought in all matters of importance consult the Muslims is undisputed.

In sūrah 4: verse 59 of the Qur’ān, each and every Muslim is enjoined to obey God, to obey the Holy Prophet (peace be upon him) and those having authority over Muslims, who are from amongst them. From this verse four principles of Islamic political ethics have been deduced. The first principle is that since all authority in the universe vests in God, who is the Omnipotent and Omnipresent Creator of the universe, He alone must be obeyed to the exclusion of all others. God has laid down law in the Qur’ān in the form of what is good and what is evil. These commands have been sent as revelation from time to time to the prophets for the guidance of mankind, the last being the Holy Prophet Muhammad (peace be upon him). God has already placed in the nature of man the knowledge of good and evil and has further clarified the distinction between good and evil in the Qur’ān. It is, ethically speaking, on this basis that every Muslim is commanded to promote good and to suppress evil.

The second principle is that obedience may be rendered to man, but only under God’s command, generally speaking, in the case of the prophets,

where rendering obedience is in fact to God and not to human beings. The Holy Prophet is to be obeyed because he was the last and the final one through whom the faith has been eventually perfected in the Qur'ān, which for a Muslim, is the pure word of God, whereas the Sunnah (Practice) of the Holy Prophet is the authoritative exposition of the Qur'ān.

In the course of the evolution of Muslim polity, the state through a special department called "*Āisbab*", considered it as its duty to forcibly impose on the people Islamic religio-moral obligations detailed in the Qur'ān and Sunnah, besides the strict enforcement of Islamic law pertaining to certain crimes (e.g., theft, adultery, drunkenness etc.) Through the department of Justice (*Qāṭā*). Thus the functions of the *MuĀtasib* (Religious Censor) included compelling the Muslims to do what was ethico-legally reputable or right (*ma'rūf*) and to detect, restrain and punish what was disreputable or wrong (*munkar*). But as is evident from Muslim history this practice was not consistently followed. As for the contemporary Muslim nation-states, the department of "*Āisbab*" has ceased to exist in the traditional form in almost all such states. Similarly the specific provisions of Islamic criminal law are not being enforced in all the Muslim nation-states.

The third principle is that obedience may be rendered after God and the Holy Prophet to those who command authority over the Muslims. Theoretically, this form of obedience is subject to their acting in execution of the commands of God and the Holy Prophet. But if they are not acting as is expected of them, then, according to the interpretation advanced by eminent Sunni jurists, they must still be obeyed as God alone can punish them. The fourth principle is that obedience can only be rendered to those who command authority over the Muslims who are from amongst them, in the sense that they are themselves members of the Muslim community. Obviously these leaders of the Muslim community have to be Muslims themselves as they are expected to act, at least in theory, in execution of the commands of God and the Holy Prophet, although they can further employ or delegate their powers to non-Muslims who should likewise be obeyed. Thus generally speaking, in the Qur'ān no mode of life is prescribed for a subjugated Muslim community. The mode of life which a Muslim is commanded to follow can only be followed if he is member of a politically free community. Consequently the Muslim community must strive for establishing a state of its own wherever it is possible to establish a viable

state. This is one of the constitutional principles, which can be deduced from the Sunnah of the Holy Prophet, who migrated from his ancestral home Mecca to found a separate state at Medina.

A state which is managed and administered in accordance with the laws of Islam is called *Dār al-Islām* (Abode of Peace). Its independence has to be preserved under all circumstances and therefore its first priority must be defence. But effective defence is only possible if equality is maintained among its citizens and they are all united to help one another in defending their common territory. This is also a constitutional principle deduced from the Sunnah of the Holy Prophet as is apparent from *Mithāq al-Madīnah*, the first written constitution of the world, which was promulgated by the Holy Prophet in the city-state of Medina.

This ancient document contains in all forty-seven articles. The first part, consisting of twenty-three articles, deals with the mutual relations, rights and duties of Muslims. It is under these articles that the Emigrants from Mecca (*Muhājirīn*) were united with the Helpers from Medina (*An-Āār*) in a fraternal bond of a Community of Faith, thus laying down the principle that according to Islam, nation-hood (*Millah* or *Ummah*) is to be founded on a common spiritual aspiration, rather than on common race, language and territory. The second part of the document, consisting of twenty four articles, is concerned with the relations of Muslims with the Jews and other non-Muslim inhabitants of Medina or the valley of Yathrib, and confirming them in their religion as well as possessions, enumerates their duties and rights. The interesting features of this part of the document are that non-Muslims are included “in” or “with” the Muslim Ummah, which implies that if nation-hood of Muslims is founded on a common spiritual aspiration, their unity with non-Muslim minorities in the state, is based on the defense of a common territory. The Muslims and non-Muslims, described as a “single community”, are to help one another against whoever wars or fights against the people of Yathrib for, as stated in the document: “among them there exists sincere friendship, honourable dealing and no treachery”. They are also expected to contribute or bear expenses equally so long as the war continues, and they are to collectively defend the valley of Yathrib which is described as:

“sacred for the people of this document”. It is also stated therein that whenever among the people of this document there occurs any serious dispute or quarrel: “it is to be referred to God and to Muhammad, the

Messenger of God (God bless and preserve him). God is the most scrupulous and truest Fulfiller of what is contained in this document”.²

It may be pointed out here that if a Muslim state (*Dār al-Islām*) is conquered or subjugated by a non-Muslim power, it will be transformed into an Abode of War (*Dār-al-Āarb*), and theoretically the Muslims therein shall be left with two alternatives: either to conduct militant struggle (*jihād*) in order to regain their independent status or to migrate (*hijrah*) to some Muslim country. It was to avoid this possibility that the Holy Prophet laid full emphasis on the defence of Medina. Hence it is evident that the Muslim concepts of patriotism and nationalism are not solely based on an attachment to a particular land or territory but these are founded on an attachment to the ideals and aspirations which have been realised or are being realised or may be realised through institutions established in such land or territory, and that land or territory is “sacred” only in this context.

The Holy Prophet had founded a confederal state as the non-Muslim tribes governed themselves in accordance with their own laws and were fully autonomous in their own regions. It was only in accordance with the terms of *Mīthāq al-Medinah* that they were one with the Muslim community. The Holy Prophet as the Head of the first Muslim state, was indeed concerned with the formation and maintenance of unity among the Muslim community (*Millah/Ummah*) and its governance in accordance with Islamic law (*Sharī'ah*). But, generally speaking, since the broad principles of law had already been laid down by God in the Qur'ān, the Holy Prophet as the chief executive authority, interpreted those laws and implemented them, thus laying down the constitutional principle that in the sphere of legislation, the Head of the State has to be a *Mujtahid* (one who himself exerts to interpret law) and not a *Muqallid* (one who follows interpretations of others). The basis of this principle is the Qur'ānic verse: “And to those who exert We show Our paths”. (sūrah 29: verse 69).

The principle is further illustrated in the light of a Tradition of the Holy Prophet. At the appointment of Ma'ādh as the governor of Yemen, the Holy Prophet is reported to have asked him as to how he would decide matters coming up before him. Ma'ādh replied: “I will judge matters according to the Book of God”. “But if the Book of God does not contain anything to guide you?” “Then I will act in accordance with the precedents of the Prophet of

God”. “But if the precedents also fail?” “Then I will exert to form my own opinion”.

From this principle one inference can clearly be drawn: that the worldly affairs (*Mu‘amalāt*), as distinguished from the religious obligations (*‘Ibādāt*), being subject to the law of change, such situations are bound to arise where the Qur’ān and the Sunnah may not provide sufficient guidance, and the Muslims would be expected to exert to advance their own solutions in interpreting Islamic law and implementing it in accordance with the needs or requirements of their respective times. In other words through “*Ijtihād*” a mechanism is provided within the polity in order to make the *Shari‘ah* mobile and to proceed along with the community rather than becoming static or lagging behind. The other inference which can be drawn is that the Judiciary (*Qatā‘*) is to be separated from the Executive. Because according to the Qur’ānic injunction laid down in sūrah 4: verse 59 if any dispute arises between the citizens or as against the state, the matter is to be referred to the Judiciary for adjudication in accordance with the Book of God and precedents of the Holy Prophet, and the judgement of the court is binding on the disputing parties.

Next in importance from the constitutional standpoint is the document called the Treaty of Al-‘Adaybiya, which was made between the Holy Prophet as Head of the State of Medina and Suhayl bin ‘Amr, the representative of the pagans of Mecca. The treaty was a pact of non-aggression for ten years between the Muslims and the Quraysh. Apart from the stipulations in the agreement, which were favourable to the long-term strategy of the Holy Prophet, it is interesting to note the manner in which the treaty was recorded. According to the version provided by the historians, the Holy Prophet asked ‘Alī to write the treaty with the opening: “In the name of Allah, the Beneficent, the Merciful”. But the representative of the Meccans objected asserting that the Quraysh would not approve of the words “the Beneficent, the Merciful”, and that the treaty should commence with the pagan invocation: “In Thy name, O Lord”. Thereupon the Holy Prophet directed ‘Alī to write the words as desired by the representative of the Meccans. Then the Holy Prophet told ‘Alī to write: “This is the treaty which Muhammad, the Messenger of God made with Suhayl bin ‘Amr....”. But Suhayl bin ‘Amr again interrupted and asking ‘Alī to withhold his pen, addressed the Holy Prophet thus: “If we had accepted you as the Messenger

of God, there would have been no war between us. Therefore, let only your name and parentage be written”. Accordingly under the direction of the Holy Prophet and despite the protests of Abū Bakr, “Umar and ‘Alī, ‘Alī reluctantly wrote: “This is the treaty which MuĀammad bin ‘Abdullāh made with Suhayl bin ‘Amr”.³

The contents of the treaty as well as the manner in which it was recorded indicate that it is an embodiment of the political sagacity, far-sightedness and pragmatic approach of the Holy Prophet as a statesman. According to Montgomery Watt, it was motivated by supreme importance of the Holy Prophet’s belief “in the message of the Qur’ān, his belief in the future of Islam as a religious and political system, and his unflinching devotion to the task to which, as he believed, God had called him”.⁴ The treaty raises some very important constitutional questions. These are: Was the act of forsaking his designation as the Prophet of God (despite having been so appointed by God), a sovereign act on the part of the Holy Prophet as the Head of the State, performed in the interest of the state or the community, and as such was neither repugnant to nor in conflict with the overall sovereignty of God or supremacy of His Law? The next question is: If the act was sovereign, then would it be correct to say that the overall sovereignty of God does not impose any restrictions on the sovereignty of the state or the Head of the State as legislator (*Mujtabid*) so long as the action taken, functions performed or laws of God interpreted are in the interest of the state or the community? In sūrah 38; verse 27 of the Qur’ān while appointing David as a “*Khalīfah*” (Vicegerent) in the land, God commanded unto him: “Verily We have made thee a *Khalīfah* in the land; then judge between men with truth, and follow not thy desires lest they cause thee to err from the Path of God.” It is therefore evident from this verse that God lays emphasis mainly on the adoption of a course of justice, honesty and truthfulness on the part of the Head of the State for this, generally speaking, leads to the Path of God; and not to allow his personal interest to influence his official conduct or decisions.

The traditional Fiqh (Islamic jurisprudence) acknowledges the powers of the Head of the State as legislator to suspend (*Ta’wīq*) a Qur’ānic rule of law, or to restrict (*Ta’Ādid*) or to expand (*Tamwīr*) its application if the conditions so demand or the interests of the state or the community so require. The exercise of these powers constitutes “sovereign act” (as distinguished from

Ijtihād) on the part of the Head of the State. If this is the position then the overall sovereignty of God or the supremacy of His Law does not interfere with or impose any limitations on the sovereignty of the state or the powers of the legislator (*Mujtabid*) to implement that interpretation of the Qur'ānic rule of law which suits the requirements of the state or the community. Therefore it may not be correct to assert that the state in Islam is not fully sovereign or that the legislator (*Mujtabid*) can only exercise his powers in a restricted manner.

Theoretically a Muslim state acknowledges the supremacy of God's Law, but as for its interpretation and implementation, the legislator's supremacy cannot be doubted when his act is sovereign or he exercises his power of discretion by accepting/advancing a specific interpretation with due regard to the interests of the state and the community. Besides that he is entirely free in the sphere of making "man-made" laws and implementing them in accordance with the requirements of the state or in order to benefit the community, so long as these laws are technically not considered repugnant to the injunctions of Islam, or the Qur'ān and Sunnah are indifferent towards them. A wider interpretation of the Qur'ānic doctrine of "necessity" (*Iḥṭirār*) is also available to the legislator where under what is forbidden (*Ārām*) becomes lawful (*Ālāl*). The advancement of the theory during 661 A.D. that the Caliphate and Prophethood must not be permitted to remain within the same family established that spirituality was not relevant for the administration of the state. On this basis there is some justification in the claim that the state in Islam is not a theocracy. If the elimination of spirituality had led to the emergence of the "power" state (*mulk*) in Islam, it was argued that it did not matter for a "power" state was perfectly competent to enforce the *Shari'ah*.

Every enlightened Muslim is aware that from 661 A. D. onwards the republic in Islam was transformed into a monarchy due to the apprehension, as it was claimed, of the breaking out of a civil war among the Muslims. A vital change had taken place in the foundational principle of Muslim polity, yet only passive or ineffective voices were raised by Sunni jurists against the new political order on the ground that it amounted to subversion of the political system evolved through the Practice (Sunnah) of the Rightly Guided Caliphs. On the basis of this precedent one can say that if there is a threat to the Muslim community of its destruction from within, and under that threat,

the persons in authority in the state completely alter the ideology of its traditional constitutional structure, they would be justified to do so under the *Shari'ah*.

Finally the Sermons on the Mount 'Arafāt (*Khuṭbah al-Widā'*) delivered by the Holy Prophet during the Pilgrimage of Farewell in the tenth year of the Hijrah, have also to be considered for deducing an extremely important constitutional principle as these amounted to an illustration of human rights from the Islamic viewpoint. It was for the first time in the history of mankind that in the light of the Qur'ānic injunctions some of the human rights were enumerated and guaranteed by the Holy Prophet. Thus life and property were made inviolable, drawing of "*riba'*" (usury) on money loaned was prohibited, vendetta as practiced in pagan days was to be left unavenged, no Arab was to have any privilege over non-Arab except that based on piety, Muslims were to consider themselves as brethren and it was not lawful for a Muslim to take from the belongings of his brother except that which he parted with willingly, the rights of the spouses were protected etc.

It may be pointed out at this stage that foundations of the Secretariat of the Chief executive authority were laid by the Holy Prophet himself. Scribes were appointed who drew up the state documents, and the only privilege which the Holy Prophet had as Head of the State was that his seal conferred legitimacy to all official documents.

To sum up, some of the important constitutional principles that can be derived from the Sunnah (Practice) of the Holy Prophet are:

First; that the ultimate sovereignty vests in God. But the vesting of overall sovereignty in God or supremacy of His Law does not in any sense mean that the state has restricted sovereignty or is not fully sovereign in conducting its worldly affairs (*Mu'āmalāt*) particularly when a supra-legal action taken by the Head of the State is in the interest of the community or the state.

Second; that since the Muslims are expected to be governed under their own specific legal system called the *Shari'ah* in all spiritual and temporal matters, they must aspire to establish a state of their own wherever it is possible to create a viable state.

Third; that the nation-hood of Muslims is to be founded on a common

spiritual aspiration and that commonness of race, language and territory is a secondary consideration.

Fourth; that the non-Muslim citizens of the state (not of conquered territories who were considered as “protected people”) are to be confirmed in their religion and possessions. Their national unity with the Muslims is to be based on sincere friendship, honourable dealing, mutual respect and the defence of common territory.

Fifth; that the Muslims and non-Muslims are jointly/collectively expected to defend the territories of the state, and to bear expenses of the same.

Sixth; that to frame and implement a written constitution for the state and to strictly adhere to its terms is a Sunnah (Practice) of the Holy Prophet.

Seventh; that the grant of a constitution is not the task of a single individual but a collective act of the representatives of the federating tribes who are voluntary signatories of the socio-political contract. The constitution not being sacrosanct has no spiritual or religious significance but essentially a contract.

Eighth; that through the peaceful co-existence of different religions, races and communities the ideal of human unity (*al-Ummah al-Wāʿidah*) is to be realised.

Ninth; that the importance of “consultation” (*shūrā*) in conducting the worldly affairs of the state has to be emphasised, although the Head of the State is not bound by any advice.

Tenth; that respecting interpretation of the *Shariʿah* and its implementation, the Chief executive authority in the state is expected to act as a “*Mujtahid*” rather than a “*Muqallid*”. Thus “*Ijtihad*” by the law-maker is a continuous and unending process.

Eleventh; that the Executive is to implement, execute and enforce the *Shariʿah* as interpreted by the Chief executive authority, and the Chief executive authority while making laws is expected to have a pragmatic approach, to act with political sagacity, and far-sightedness so far as the interests of the state and citizens are concerned.

Twelfth; that human rights as enumerated in the Qurʿān and the Sunnah

(Practice) of the Holy Prophet have to be guaranteed and enforced in the state.

Thirteenth, that “*Zakāt*” or other similar taxes imposed through Islamic welfare laws be meticulously collected by the state officials and disbursed among the needy citizens under the supervision of the state.

Fourteenth; that the Judiciary (*Qaiā*) is to be separated from the Executive so that it can decide matters before it independently and without being influenced by the Executive.

Fifteenth; that the Muslims’ primary obligation is that they should, after God and the Holy Prophet, render obedience to those who command authority from amongst them so that order is maintained in the state.

The era of the Holy Prophet as Head of the city-state of Medina has always been considered as a model in the sense that a Muslim state had been founded and was being managed and governed by the Prophet- Imām himself. This dispensation was unique in the history of Muslims and was never to be repeated. Philosophically speaking, it was an ideal or a perfect state in the sense that the Ruler was in direct communion with God. The Holy Prophet was Head of the State in the tradition of the earlier Semitic prophet-kings mentioned in the Qur’ān. But although the foundations of the state had been laid and it was being headed by the Prophet- Imām, the state itself was in the process of becoming or developing and was therefore endeavouring to realise the objectives for which it had been created. In other words, on the spiritual or religious side (*‘Ibādāt*) Islam had been perfected, but on the mundane or worldly side (*Mu‘āmalāt*) the state in Islam was not a finished product, as the community was to keep on developing under a legal order. This development was to be accomplished through a continuous process of “*Jihād*”.

THE RESULT OF DEMOCRATIZATION

The Holy Prophet died in 632 A.D. and the question of a successor (*Khalīfah*) arose on his death because, pragmatically speaking, a young socio-political organism like the early Muslim state required a directing head. Therefore originally the “*Khalīfah*” as an institution came into being because the conditions had so demanded. The possibility cannot be ruled out that it came into being on the basis of Consensus of the Companions (*Ijmā*) in

response to the demand of times.

Did the Holy Prophet nominate or appoint any successor? Some of the Sunni jurists argue that since the Holy Prophet, shortly before his death, had directed Abū Bakr to lead the congregational prayers, this indicated that he desired Abū Bakr to be appointed as his successor. On the other hand according to the Shī'ite jurists, he had appointed 'Alī as his successor. In this connection reliance is placed on a Tradition whereunder the Holy Prophet is reported to have said that those who consider him as their "Mawlā" (master/leader), they should also regard 'Alī as their Mawlā". However, Jalāl al-dīn SuyyūḌī on the authority of Aūdāyfah has pointed out that some of the Companions of the Holy Prophet asked him as to whether or not he would appoint a successor unto them. The Holy Prophet is reported to have replied that if he did appoint such a successor over them and that if they were to rebel against the successor appointed by him, then punishment could come upon them. He also states on the authority of Imām Bukhārī, Imām Muslim, Beyhaqī, and Imām AÁmad that Caliphs 'Umar and 'Alī had confirmed before their deaths that the Holy Prophet did not appoint any successor.⁵

It is evident that had the Holy Prophet in fact nominated a successor or prescribed a specific method for such appointment, then that mode alone would have become the only way of appointing the Head of the State, and a restrictive stipulation of this nature would have caused difficulty in the further evolution of Muslim polity. Therefore the Holy Prophet by not appointing his successor or suggesting any specific mode or laying down any framework for constituting or deposing such a successor, had acted in conformity with the Qur'ān which is silent on this issue. It may further be pointed out that the political system in Islam is one of such matters that falls in the category of "*Mu'āmalāt*" (worldly affairs) which being evolutionary are subject to the law of change. Therefore the political system in itself has no spiritual or religious significance.

In sūrah 4: verse 58 Muslims are commanded by God to hand over their trusts to competent persons. In other words the Qur'ān has ordained that only competent person/persons be appointed for managing the affairs of the Muslim community, though this is even logically the obligation of those who are expected to make such appointments. The Qur'ān is mainly concerned with matters relating to right and wrong or good and evil, and is not

concerned with matters relating to planning (*tadbīr*). That the best person or persons are to be appointed is a matter relating to right and wrong. But the question as to how the appointment is to be made or whether a particular process employed for determination of the best person will succeed or not, involves planning and is a matter relating to efficiency and wisdom in the light of prevailing conditions. Therefore the silence of the Holy Prophet in the matters of nomination or appointment of any successor after him or laying down any rule for constituting or deposing the successor, was deliberate because such structures were to be evolved in the light of the good sense of the community. These were not meant to be permanent but were subject to the changing requirements of the Muslim community from time to time. Thus the real object of Islam is to establish a Community of Faith governed under the *Shari'ah*. Although for the continuous interpretation and enforcement of the *Shari'ah* the establishment of a state or a political system is necessary, the Muslim community is at liberty to determine any mode of constitutional structure which suits its requirements.

The word “*Khalīfah*” is derived from “*Khalafa*” (*k.h.l.f*) which means to succeed, to be followed or to leave behind. That is the reason why some Muslim jurists argue that *Khalīfah* can only be that of the Holy Prophet who was mortal, as only mortals leave successors behind. However, the term “*Khalīfah*” also occurs in the Qur’ān, although there is no indication which directly connects it with the political implications of the term i.e., the Head of the State in Islam. In sūrah 38: verse 27 God appointed David as a “*Khalīfah*” in his land. In sūrah 6: verse 166 it is stated: “It is He (God) who has made you “*Khulafā'*” (plural of *Khalīfah*) on the Earth, and He raises some of you above others by (various) grades in order that He may test you by His gifts”. But in the Qur’ānic sense probably the word is to be interpreted as man being vicegerent of God.

The word “*Imām*” also occurs in the Qur’ān and implies a leader in a general or comprehensive sense i.e., leader of the believers or of the infidels. God’s prophets are sometime addressed as *Imām* s in the Qur’ān; at other times the term appears to mean an example, a model, or a revealed book.

Respecting the practice of the Holy Prophet in this context, the chroniclers record that whenever he left Medina for some duration of time, he appointed a deputy to look into the affairs of the town in his absence.⁶ But although the appointment of a deputy was the practice of the Holy

Prophet, he did not appoint a successor on his death. Nevertheless there is a Tradition attributed to the Holy Prophet in which he is reported to have said:” Leaders shall be from the Quraysh”.⁷ Dr. Àamīdullah remarks that the context of this direction is not known as the Sunnah (Practice) of the Holy Prophet himself does not seem to confirm the obligatory character of this qualification. He points out that the Holy Prophet left Medina at least twenty five times for one reason or the other. On all such occasions he nominated a successor in Medina, yet it was not the same person that he chose always for carrying on the interim government. Among these successors (called *Khalīfah*) were Medinans, Qurayshites, Kinanites and others; there was even a blind person.⁸

During the period of the four Rightly Guided Caliphs (632 to 661 AD) different modes were adopted for the appointment of the Head of the State and in all the cases the appointment was confirmed by the Muslim community through its consent which was formally obtained by means of “*bay‘ah*”. Generally speaking, the methods adopted during this period had a common feature i.e., the selection of the best person through initial election, nomination, or election through an Electoral College, in most cases followed by a private *bay‘ah*, and subsequently the appointment being confirmed through a public *bay‘ah*. The course adopted in all the cases was democratic, and the majority principle, although not specifically disapproved, was not followed, as the need did not arise.

Ibn IsÀāq in his biography of the Holy Prophet, provides an accurate account as to how the first successor of the Holy Prophet, namely Abū Bakr, was elected. He states that on the death of the Holy Prophet, three distinct political groups were formed among the Muslims of Medina, namely, Muhājirīn (Immigrants), AnÀār (Helpers) and Banū Hāshim (the supporters of the family of the Holy Prophet). The Muhājirīn were led by Abū Bakr and ‘Umar, the AnÀār supported Sa‘d bin ‘Ubaydah, whereas Banū Hāshim were solidly behind ‘Alī.

While ‘Alī and other members of the family of the Holy Prophet were busy in making arrangements for his funeral (according to *ñabari*⁹, the Holy Prophet was buried on the day after his death), news arrived that the AnÀār were assembling in the Hall of Banū Sā‘adah in order to elect Sa‘d bin ‘Ubaydah as the Head of the State. On hearing this ‘Umar and Abū Bakr along with some other Muhājirīn rushed to attend the proceedings.

The claim of the AnĀār for power was advanced on the ground that they constituted the bulk of the armed forces of Islam and they even suggested divisibility of the government in the alternative. Proposals like joint rule with two Caliphs operating simultaneously or alternate succession, one from the Muhājirīn and the other from the AnĀār, were considered.¹⁰ The Muhājirīn opposed such suggestions, stood for the unity of the Muslim community and advanced their claim on the ground that the Arabs as a whole would only accept leadership from the tribe of Quraysh. Although ‘Alī did not attend this session, the claim of Banū Hāshim was based on their close connections with the family of the Holy Prophet. A political debate took place between the groups assembled in the Hall of Banū Sā‘adah. Eventually, ‘Umar proposed the name of Abū Bakr as the Head of the State when he asked him to extend his hand and Abū Bakr, a candidate for succession, accepting such recommendation held out his hand. Thereafter following ‘Umar, the Muhājirīn as well as the AnĀār who were present there swore allegiance to him by way of *bay‘ah*. Subsequently, this private *bay‘ah* was followed by a public *bay‘ah*.¹¹ Thus he was accepted as *Khalīfah* by the Muhājirīn and the AnĀār. (According to ṅabari¹², ‘Alī and other members of Banū Hāshim swore allegiance to Caliph Abū Bakr sometime after his public *bay‘ah*).

Caliph Abū Bakr’s speech, after the multitude had sworn allegiance to him, is significant. He proclaimed: “ I am not the best among you; I need all your advice and all your help. If I do well, support me; if I mistake, counsel me. To tell truth to a person commissioned to rule is faithful allegiance; to conceal it is treason. In my sight, the powerful and the weak are alike; and to both I wish to render justice. As I obey God and His Prophet, obey me: if I neglect the laws of God and the Prophet, I have no more right to your obedience”¹³

The second *Khalīfah* namely ‘Umar, was nominated by Caliph Abū Bakr. But since nomination had no legal precedent, it was merely a recommendation. However, the Muslim community reposed confidence in Caliph Abū Bakr; therefore his recommendation was accepted through the subsequent referendum when the nomination of ‘Umar was put to public at large and it was confirmed by a general *bay‘ah*.

Caliph ‘Umar was assassinated. But before his death, he constituted an Electoral College of the probable candidates in order to select one from

amongst them for being put up as the sole candidate for succession. A council of six was formed consisting of ‘Alī, Uthmān, ‘Abdur Ra‘Āmān, Sa‘d, Zubayr and ṅalĀah. (Qā‘i Sulaimān ManĀūrpūri in his *Ra‘Āmatu ‘l-lil-‘jlamīn*, vol. 2 p. 105 states that the name of the sister of the father of the Holy Prophet, Umm Āakīm BayĀa’ was also included in the Electoral College). Caliph ‘Umar appointed his own son ‘Abdullah to give a casting vote in case there was an equal division, but ‘Abdullah was specifically excluded from standing as a candidate for succession. The council through a process of elimination deputed ‘Abdur Ra‘Āmān to make a recommendation as to who out of ‘Alī and Uthmān should be the sole candidate. ‘Abdur Ra‘Āmān is said to have consulted as many people as he could in Medina including women as well as students and those who had come from outside or happened to be present in Medina as way-farers and majority of them expressed their view in favour of Uthmān. Then ‘Abdur Ra‘Āmān even questioned ‘Alī and Uthmān about the manner in which they would conduct themselves if any of them was selected as the successor. Eventually ‘Abdur Ra‘Āmān supported Uthmān and finally Uthmān was selected as the sole candidate. Later the rest of the Muslim community swore allegiance to him in the form of a public *bay‘ah*.

Caliph Uthmān’s era developed its own complications when the Muslim settlers in Egypt, Kufa and Basra complained against the administrators appointed by him. They alleged that their grievances were not redressed, they demonstrated and turned into insurgents, demanding resignation of Caliph Uthmān from his office. There was no garrison deputed in Medina for the protection of the Caliph. Army assistance from outside was sought, but it did not arrive in time. The insurgents stormed the house of Caliph Uthmān and brutally murdered the old Caliph.¹⁴

After the assassination of Caliph Uthmān some eminent members of the Muslim community in Medina gathered in front of the house of ‘Alī and requested him to agree to become the *Khalīfah*. The uncle of the Holy Prophet ‘Abbās supported him as the sole candidate. But ‘Alī refused to accept a private *bay‘ah* and insisted that if the Muslim community wanted to swear allegiance to him as the Head of the State, it should be openly done in the Mosque of the Holy Prophet. This was accordingly done.¹⁵

The times of Caliph ‘Alī were even more turbulent than those of Caliph Uthmān. First, Mu‘āwiyah refrained from swearing allegiance to him; and second, Zubayr and ṅalĀah, two eminent Companions of the Holy Prophet,

left Medina for Mecca in order to persuade ‘y’ishah, the Holy Prophet’s very respected widow, to join them for demanding “Qi’ā’ā” of Caliph Uthmān’s murder from Caliph ‘Alī. Their reasoning was that the culprits were identified and therefore action should be taken against them. The problem as explained by ñabarī¹⁶ was that there were conflicting opinions regarding this matter and even the then living Companions of the Holy Prophet were divided. It was therefore not easy for Caliph ‘Alī to punish the alleged culprits. Caliph ‘Alī while summing up the situation could not help lamenting that the conditions which prevailed in his times were identical to those of the days of “Ignorance”.¹⁷

The issue resulted into the Battles of the Camel (*Jamal*) and of *Siffīn* in which many Muslims lost their lives at the hands of one another including the Companions of the Holy Prophet. According to ñabarī ten thousand Muslims were killed on both sides in the Battle of the Camel alone.¹⁸ After the unsuccessful arbitration between Caliph ‘Alī and Mu‘āwiyah, some of the supporters of Caliph ‘Alī who had earlier insisted on him to submit to arbitration, now turned against him maintaining that when he had already been elected as *Khalīfah* by the people of Medina then he should not have conceded to refer this decided matter to arbitration. They formed a separate group of their own called “Ahl al-Sunnah wa ’l-‘Adl” (Khawāraj) and rebelled against Caliph ‘Alī. Just as Caliph ‘Alī was waging war against Mu‘āwiyah, he had also to fight against the Khawāraj. Eventually Caliph ‘Alī was assassinated by a Khārijite while he was proceeding to offer prayers in the mosque at Kufa.

From this brief survey it is evident that during the period of the Rightly Guided Caliphs, different modes were adopted for the appointment of the Head of the State. These modes were neither mentioned in the Qur’ān nor recommended by the Sunnah (Practice) of the Holy Prophet. It may further be added that at no stage the parties involved used the Qur’ān and the Tradition in support of their individual political claims. The modes adopted were founded purely on the Sunnah (Practice) of the Rightly Guided Caliphs. The candidate for the Caliphate was selected through an initial election by a restricted number of eminent persons, or by nomination, or through a small electoral college, and thereafter, the approval of the general public was obtained in the form of an acquiescence and by way of *bay’ah*. Women were not debarred from registering their consent. Furthermore, the hereditary rule,

although known to the Arabs, was specifically excluded in the case of succession.

The Head of the State was considered successor of the Holy Prophet (*Khalīfah*), the interpreter and promulgator of Islamic law (Imām/Mujtahid), the leader of the congregational prayers, the defender of the religion of Islam, the guardian of the Muslim community, the judge, the moral censor (*Mu'āṭib*), the administrator, the statesman, and the military commander (*Amīr al-Mu'minīn*).

It has already been mentioned that in the times of the Holy Prophet there was only one acknowledged privilege of the Head of the State i.e., all the state documents were expected to bear his seal. The seal of the Holy Prophet was used by the succeeding Caliphs until the times of Caliph Uthmān, when it fell into a well and was lost. However an identical seal was got prepared and was used for the same purpose. During the period of the Rightly Guided Caliphs, particularly in the turbulent days of Caliph 'Alī, the fourth *Khalīfah*, a second privilege was introduced and that was if the Head of the State himself was not leading the congregational prayers, then the leader of the public worship mentioned his name in the Sermon (*Khuṭbah*) and prayed for him.

It may be useful at this stage to briefly consider some of the views about the institution of Caliphate, advanced during this period. The Shī'ites restrict the *Khilāfah* exclusively to the House of 'Alī. They reject the formula of election and hold that the leadership of Muslim community is an issue of such vital importance that the Holy Prophet could have not died without appointing someone as the Imām. They maintain that the Holy Prophet had no male issue to succeed him; therefore, he appointed his son-in-law 'Alī as Imām, and his descendants are to hold the office of Imāmate as of right. The Shī'ites consider the appointment of the Caliphs who preceded 'Alī as illegal and regard Caliph 'Alī as the first Imām. According to this view each Imām (the descendant of Caliph 'Alī and Fāṭimah, the Holy Prophet's daughter) possesses super-human powers and is in constant touch with God. Thus the nature of Imām's authority is spiritual in essence.

The Khārijite (the term denotes "one who leaves his home among the unbelievers for God's sake"; it also implies secession (i.e. Khurūj from the Muslim community) theory is the extreme opposite to that of the Shī'ites.

The Khārijites represent the left wing of Muslim political opinion and in modern terminology may be considered as strict social democrats. They require only moral qualifications in a *Khalīfah*, and restrict his authority by retaining the right to depose him if he is found unfit to hold his office. The Khārijites maintain that the *Khalīfah* should be appointed with the agreement of the entire Muslim community. Accordingly they reject the doctrine of the restriction of the *Khilāfah* to the House of ‘Alī, or to the tribe of Quraysh. They insist on a free election, and hold that even a non-Arab or a slave is eligible for the office of the *Khilāfah* provided that he is a Muslim of upright character and takes the responsibility of performing the duties assigned to his office. Some of them maintain that even a woman could be appointed *Khalīfah*, the others among them reject the doctrine of the necessity of *Khalīfah*’s appointment, and argue that since it is nowhere specifically mentioned by God (i.e., it is only recommended but not obligatory), the Muslim community could rule itself by constituting a legitimate Consultative Assembly and at the same time, fulfil their religious obligations. Nevertheless, if the conditions so demanded, a *Khalīfah* could be elected.¹⁹

During this period the Executive was properly consolidated. Caliph ‘Umar, in particular, encouraged the establishment of different departments of Central Secretariat in the form of *Dimāns* on the Persian model. In these departments secretaries and clerks were employed in order to assist the Chief executive authority in managing the affairs of the state. The department of moral censorship (*‘Aisbah*) was also organised to enforce the Rights of God (*‘Auqūq Allāh*), the Rights of Human Beings (*‘Auqūq al-‘ibād*), and the Rights which were common to both God and Human Beings (*‘Auqūq bayn Allāh wa’l-‘ibād*). Broadly speaking, the Rights of God were the holding of congregational prayers, the observance of fasts in the month of Ramaīān, the payment of Zakāh etc. The wrongs that infringed the Rights of Human Beings included unlawful transactions, usury, false and defective scales, weights and measures, non-payment of debt etc. The Rights which were common to both God and Human Beings were violated when, for instance, a divorced woman or a widow remarried without observing *Iddah* (a period of time to ascertain pregnancy); or when the leader of public worship lengthened the prayers unnecessarily so that the weak and old failed to stand it or people were hindered or delayed from performing other jobs; or when a judge made the people wait before holding his court etc.

It is interesting to note that besides *Āuqūq al-ʿibād* as briefly defined above, “Human Rights” as we understand them today, were clearly laid down in the Qurʾān and the Practice (Sunnah) of the Holy Prophet. The citizens were familiar with them and these were meticulously enforced during this phase of the seventh century republican Muslim State. Following are the basic human rights which can be directly traced from the Qurʾān and the Sunnah (Practice) of the Holy Prophet:

1. **Equality of all citizens before law as well as equality of status and opportunity.** ”O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and spread from these two many men and women”. (sūrah 4: verse 1).”Lo! Pharaoh exalted himself in the earth and divided its people into castes. A group among them he oppressed, killing their sons and sparing their women. Lo! He was of those who work corruption”. (sūrah 28: verse 4).
2. **Freedom of religion.** “There is no compulsion in the matter of religion”. (sūrah 2: verse 256).”And if thy Lord had pleased, all those who are in the earth would have believed all of them. Wilt thou (Muhammad) then force men till they are believers?” (sūrah 10: verse 100). “Had God willed, idolaters had not been idolatrous. We have not set thee (Muhammad) as a keeper over them, nor art thou responsible for them”. (sūrah 6: verse 108).”For each of you We have appointed a law and a way. And if God had willed He would have made you one (religious) community. But (He hath willed it otherwise) that He may put you to the test in what He has given you. So compete with one another in good works. Unto God will ye be brought back, and He will inform you about that wherein ye differed.” (sūrah 5: verse 48). “If God had not raised a group (Muslims) to ward off the others from aggression, churches, synagogues, oratories and mosques where God is worshipped most, would have been destroyed”. (sūrah 22: verse 40). “Unto you your religion and unto me my religion”. (sūrah 109: verse 6).
3. **Right to life.** “And slay not the life which God hath forbidden save for justice”. (sūrah 17: verse 33).
4. **Right to property.** “And eat not up your property among

yourselves in vanity, nor seek by it to gain the hearing of the judges that ye may knowingly devour a portion of the property of others wrongfully”. (sūrah 2: verse 188).

5. **No one is to suffer from the wrongs of another.** “Each soul earneth on its own account, nor doth any laden bear another’s load”. (sūrah 6: verse 165).”That no laden one shall bear the burden of another”. (sūrah 53: verse 38).
6. **Freedom of person.** Inferred from the practice of the Holy Prophet, by Imām KhaḌḌābī and Imām Abū Yūsuf: A Tradition is reported by Abū Dā’ūd to the effect that some persons were arrested on suspicion in Medina in the times of the Holy Prophet. A Companion inquired as to why and on what grounds had these persons been arrested. The Holy Prophet maintained silence while the question was repeated twice, thus giving an opportunity to the prosecutor, who was present there, to explain the position. When the question was put for the third time and it again failed to elicit a reply from the prosecutor, the Holy Prophet ordered that those persons should be released. On the basis of this Tradition Imām KhaḌḌābī argues in his *Ma’ālim al-Sunan* that Islam recognises only two kinds of detention: (a) under the orders of the court, and (b) for the purposes of investigation. There is no other ground on which a person could be deprived of his freedom. Imām Abū Yūsuf maintains in his *Kitāb al-Khirāj*, on the authority of the same Tradition that no one can be imprisoned on false or unproved charges. Caliph ‘Umar is quoted in Imām Mālik’s *MuwaḌḌa* as having said that in Islam no one can be imprisoned without due course of justice.
7. **Freedom of opinion.** “God loveth not the utterance of harsh speech save by one who hath been wronged”. (sūrah 4: verse 148). “Those of the children of Israel who went astray were cursed by the tongue of David, and of Jesus son of Mary. That was because they rebelled and used to transgress”. “They restrained not one another from the wickedness they did. Verily evil was that they used to do”. (sūrah 5: verses 78-79).”And when they forgot that whereof they had been reminded. We rescued those who forbade wrong, and visited those who did wrong with dreadful punishment because they were

- evil-livers”. (sūrah 7: verse 165). “You are the best community that hath been raised up for mankind. Ye enjoin right and forbid wrong”. (sūrah 3: verse 110).
8. **Freedom of movement.** “It is He Who has made the earth manageable for you, so travel ye through its tracts and enjoy of the sustenance which He furnishes; but unto Him is the Resurrection”. (sūrah 67: verse 15).
 9. **Freedom of association.** “And let there be formed of you a community inviting to good, urging what is reputable and restraining from what is disreputable”. (sūrah 3: verse 104).
 10. **Right of privacy.** “It is not proper that ye enter houses through the backs thereof...So enter houses by the doors thereof”. (sūrah 2: verse 189) “O ye who believe! Enter not houses other than your own without first announcing your presence and invoking peace (salām) upon the folk thereof. That is better for you, that ye may be heedful”. “And if you find no one therein, still enter not until permission hath been given. And if it be said unto you: Go away again, then go away, for it is purer for you. God knoweth what ye do”. (sūrah 24: verses 27-28).”And spy not, neither backbite one another. Would one of you love to eat the flesh of his dead brother? Ye abhor that so abhor the other!” (sūrah 49: verse 12).
 11. **Right to secure basic necessities of life.** “And let not those who hoard up that which God has bestowed upon them of His bounty think that it is better for them. Nay, it is worst for them. That which they hoard will be their halter on the Day of Resurrection”. (sūrah 3: verse 180). “And in the wealth of the haves there is due share of the have-nots”. (sūrah 51: verse 19).
 12. **Right to reputation.** “Neither defame one another, nor insult one another by nicknames. Bad is the name of lewdness after faith”. “O ye who believe! Shun much suspicion; for lo! some suspicion is a crime”. (sūrah 49: verses 11-12). “And those who malign believing men and believing women undeservedly, they bear the guilt of slander and manifest sin”. (sūrah 33: verse 58).
 13. **Right to a hearing.** Inferred from the Sunnah (Practice) of the

Holy Prophet who, sending ‘Alī to the Yemen gave him the following direction: “You are not to take decision unless you have heard the second party in the same way as you have heard the first”.

14. Right to decision in accordance with proper judicial procedure.

“O ye who believe! if an evil-liver bring you news, verify it, lest you smite some folk in ignorance and afterward repent of what ye did”.(sūrah 49: verse 6). “O man, follow not that whereof thou hast no knowledge”. (sūrah 17: verse 36). “Lo! God commandeth you that ye restore deposits to their owners, and, if ye judge between mankind, that ye judge justly”. (sūrah 4: verse 58).

The extent to which the citizens were aware of human rights laid down in the Qur’ān, can be cited by an example. It is stated that one night Caliph ‘Umar, while crossing a street in Medina, heard the sound of debauchery of a drunkard coming from inside a house. Losing his temper, he attempted to enter the house. But no one answered his knock or opened the door. Still annoyed, he climbed on the roof, and from it shouted down to the owner in his courtyard thus: “Why are you breaking the law by permitting such an abusive drunkard in your house”? The owner replied: “No Muslim has the right to speak like that to another Muslim. May be I have committed one violation, but see how many you have committed. For instance: (1) spying, despite God’s command - “Thou shalt not spy” (sūrah 49: verse 12); (2) breaking and entering - you came in over the roof, despite God’s order: “Enter houses by the door” (sūrah 2: verse 189); (3) entering without the owner’s permission - in defiance of God’s command, “Enter no house without the owner’s permission” (sūrah 24: verse 28); (4) omitting the Salaam - though God orders, “Enter not houses without first announcing your presence and invoking peace (salām) on those within” (sūrah 24: verse 27). Feeling embarrassed, Caliph ‘Umar said: “All right, I forgive your violation of Law”. The owner of the house retorted: “That is your fifth violation. You claim to be the executor of Islam’s commandments, then how can you say that you forgive what God has condemned as a crime”?

Everyone was free to express his own opinion concerning the execution of Islamic injunctions about human rights and even the Caliph was accountable for his conduct and actions. Sometimes the attitude of the citizens towards the Caliph was uncouth and aggressive, and at other times it was improper and insulting; nevertheless it was tolerated. On numerous

occasions Caliph ‘Umar had to face such situations and to provide explanations. Caliph Uthmān was eventually assassinated since he could not satisfy his critics. On one occasion Caliph ‘Alī was delivering Sermon (Khuḍbah) in the Mosque of Kufa when some Khārījites interrupted him with insulting language. The companions of Caliph ‘Alī urged him to punish them or at least to expel them from the Mosque. But Caliph ‘Alī declined to take such action on the ground that the Muslims’ right of freedom of speech must not be imperilled.²⁰

Although the Caliph could over-rule the advice of the Council (*Shūra*), during this period, it played a very vital part in the management of the affairs of the state. According to Shiblī, whenever an important matter came up, the Council was summoned and no decision was taken without consultation. Some decisions were taken on the basis of majority opinion. The members of the Council were mainly from the two major political groups namely, the Muhājirīn and the AnḤār. In the times of Caliph ‘Umar, the matter of not treating land in the conquered territories of Iraq and Syria as “*Ghanimah*” (spoils of war) but considering it as state land (according to the text of the Qur’ān one fifth of the said land should have been trusted for the welfare of the public and the rest was to be distributed among the soldiers), the fixation of salaries of the members of the armed forces and other personnel, the appointment of governors and tax-collectors, the matters involving trade relations with other countries etc., were disposed of according to the advice of the Council. Caliph ‘Umar is reported to have said that without “*Shūra*” (consultation) there could be no *Khilāfah*.²¹

As interpreter and promulgator (Mujtahid/ Imām) of Islamic law, Caliph ‘Umar is considered as the founder of the Science of the Secrets of Religion (‘Ilm al-Asrār al-Dīn). In his view all *Sharī* (religio-legal) ordinances were based on rational considerations, although it was generally held that Reason had nothing to do with Islamic injunctions. Caliph ‘Alī also belonged to the same school of thought and made significant contribution to the science of interpreting Revelation in the light of Reason during his times. According to Shiblī, Caliph ‘Umar was the first to encourage the development of “independent inquiry” (*Qiyās*) for formulating a legal opinion. Before him in the times of Caliph Abū Bakr, legal decisions were taken either in the light of the Qur’ān, or in accordance with the precedents set by the Holy Prophet, or on the basis of Consensus of the Companions (*Ijmā*).²²

Caliph ‘Umar had even been criticised for introducing innovation (*bid‘ah*) in the course of his interpretation of Islamic law. But his explanation always was that innovation was of two kinds namely, “reprehensible innovation” (*bid‘ah al-sayyi‘ah*) and “commendable innovation” (*bid‘ah al-‘Asanah*). In other words, in his approach, he, not only adhered to the text of the Qur’ānic injunctions but at the same time attempted to reach the spirit underlying them.²³

Two examples of the *Ijtihād* of Caliph ‘Umar may be cited in order to show as to how he approached and resolved some of the problems of Islamic law. During an year of famine in Medina, he suspended the Qur’ānic penalty (*‘Áadd*) of cutting of hands of thieves for the reason that if he, as the Head of the State, could not provide basic necessities of life to the citizen, he had no right to impose this Qur’ānic punishment. He exercised this power under the doctrine of necessity (*iġĈirār*) as laid down in sūrah 2: verse 173, sūrah 5: verse 3, sūrah 6: verse 120, and sūrah 16: verse 115 of the Qur’ān which transforms that what is forbidden (*‘Áarām*) into lawful (*‘Áalāl*) under certain conditions of compulsion. In sūrah 16: verse 106, a believer under compulsion or if forced by necessity, has been permitted even to the extent of a verbal denial of his belief or making a sacrilegious utterance in order to save his skin. There are also some Traditions of the Holy Prophet which support these Qur’ānic verses. For instance, he is reported to have said that harm or damage to the community must be avoided at all costs. On one occasion in the course of war he prohibited the cutting of hand of an established thief.

Thus the principle deduced is that in a state of necessity (*iġĈirār*) unlawful can become lawful, or necessity makes permissible acts otherwise prohibited. In such a situation a Qur’ānic fixed penalty can be suspended. The later Muslim jurists, however, highlighted numerous dimensions of the concept of “necessity” and held that under such circumstances a Qur’ānic rule, besides being suspended (*Ta‘wīq*), can also be restricted in application (*Ta‘Ádid*) or extended (*Tawsī‘*) as the conditions require. Eventually the Qur’ānic doctrine, apparently of individual necessity, was developed further and applied with full force to the doctrine of collective or state necessity, and in the wider interest of public order or for the prevention of chaos, even usurpation (*istilā’/tagballub*) was acceptable to Imām Abū ‘Ānīfah, Imām Ghazzālī and other eminent Sunni jurists so long as the usurper (*Imām al-*

mutaḡhallib) did not interfere in the orderly running of the government, permitted people to perform their religious obligations, and if possible, himself observed the limits of God.²⁴

The other example is of a famous problem of Islamic law of inheritance that arose in the case called *al-Āimāriyah*. In *al-Āimāriyah* the position was that a woman had died leaving behind a husband, a mother, two brothers from a former husband of her mother (uterine brothers), and her full brothers and sisters. In an identical case, Caliph Abū Bakr had given one half to the husband, one sixth to the mother, one third to the two brothers from her mother's former husband, and as the inheritance was distributed completely among the Qur'ānic heirs, nothing was left as residue to be given to the full brothers and sisters of the deceased; therefore, they were excluded. When a similar case came before Caliph 'Umar for adjudication, he, in the first instance, decided the matter in accordance with the precedent set by Caliph Abū Bakr. But when the same situation arose in a subsequent case, one of the full brothers pleaded before him saying: "O Commander of the Faithful! Grant that our father was an ass (*Āimār*), still we had emerged from the same womb and shared a common mother. Therefore why should we be deprived?" Upon this Caliph 'Umar ruled that the full brothers and sisters should participate equally in the one third given to the uterine brothers of the deceased. The first decision of Caliph 'Umar may be based on justice (*'adh*) strictly in accordance with the Qur'ānic law of inheritance, but his second decision which altered the shares fixed by the Qur'ān for the uterine brothers, was based on something more than justice, i.e. equity (*Al-Qisṣ/iĀsān*), as God loves the equitable (sūrah 49: verse 9).²⁵

Shiblī states that in the times of Caliph 'Umar the entry of non-Muslims was not banned in Mecca and Medina, and that they could stay in the holy cities for as long as they liked.²⁶ Stipends were fixed also for poor non-Muslims from the "*Ādaqāt/zakāt*" fund. One can cite numerous examples of the existence of religious tolerance in those times. For instance, on one occasion it was brought to the notice of Caliph 'Umar that some Muslims in Syria had forcibly occupied a piece of land belonging to a Jew and constructed a mosque thereon. Under his orders the mosque was demolished and the land was restored to the Jew. This piece of land, generally known as the "Jew's House" (*bayt al-Yahūdī*) still exists in Syria.

Caliph 'Umar also kept an eye on the popular and renowned generals of

the Muslim armed forces, which consisted of different nationalities including Jews, Greeks, Byzantians, Persians and even Jāts of Sind, besides Arabs and other converts to Islam.²⁷ He reduced the rank of two eminent generals namely Khālīd bin Walīd in Syria, and Muthannā Shaybānī in Iraq, to ordinary soldiers on account of their insubordination and in order to establish the supremacy of the central executive authority.²⁸

Caliph ‘Alī had been a prominent member of the Council (*Shūra*) during the preceding three administrations, and during his own Caliphate, he not only strengthened this institution, but usually acted under its advice and guidance. It was in accordance with the advice of the Council and his army officers that he desisted from destroying Mu‘āwiyah’s men in the Battle of Siffin when they played the trick of tying copies of the Qur’ān to their lances and seeking quarter, although he wanted to pursue them and finish the rebellion completely. Again it was on the advice of the Council that he agreed to refer the dispute between him and Mu‘āwiyah to arbitration.

Despite the fact that his times were difficult, Caliph ‘Alī made significant contribution to the sphere of Islamic law and jurisprudence. He was, like his three predecessors, *Mujtahid* in regard to the interpretation of law. Although the Judiciary had been separated from the Executive, there were instances of the poor citizens’ sufferings at the hands of important state officials and the courts failed to provide adequate relief to them due to the influence of such officials. In order to redress their wrongs, Caliph ‘Alī founded a powerful new central court called “*Naiar al-Muialim*” (Reviewer of Wrongs), and himself sat in it as the first “*Naiar*” (Reviewer). In short Caliph ‘Alī as well as Caliph ‘Umar as *Mujtahids* courageously interpreted and promulgated Islamic law, enforced Human Rights, and took care that the independence of the Judiciary was maintained.

Caliph ‘Alī was very democratic, humane and lenient. According to Ameer ‘Alī, had he possessed the stern character of Caliph ‘Umar’s he would have been more successful in governing an unruly people like the Arabs. “But his forbearance and magnanimity were misunderstood, and his humanity and love of truth was turned by his enemies to their own advantage”.²⁹

During the period of the Rightly Guided Caliphs, generally speaking, the constitutional principles deduced from the Sunnah (Practice) of the Holy

Prophet were followed. But the most significant constitutional principle added to Muslim polity through the Sunnah of the Rightly Guided Caliphs was the multiplicity of methods of appointment of the Head of the State (*Khalifah*). The principle in essence was that the appointment must be made with the approval of the Muslim community, and the concept of hereditary succession was specifically excluded. The adoption of different modes of appointment, indicated that any mode could be adopted to suit the prevailing conditions so long as it was democratic, efficient and based on wisdom. However it was not generally realised that owing to the expansion of Islamic territories it had become necessary to obtain the approval of the entire Muslim community settled in numerous big cities other than Medina (the Capital). If this modification had been made in the basic principle of appointment, the objection of Mu'āwiyah respecting Caliph 'Alī's election might have not been raised.

It is abundantly clear that the real emphasis of Islam is on the establishment of a Community of Faith being governed exclusively by the *Shari'ah*. But the republican political order introduced as a political system in the state under the Sunnah (Practice) of the Rightly Guided Caliphs had no spiritual or religious significance. It had its importance only because it followed immediately after the death of the Holy Prophet and was evolved by his closest Companions. However, it collapsed owing to numerous reasons. Some of these are:

- First, the republican political system contained in itself the possibility of its transformation into a hereditary/dynastic monarchy.
- Second, the *Khalifah* was presumably appointed for life, but no legal methodology was evolved for his impeachment or deposition in case such a need arose.
- Third, as the ancient tribal rivalries disseminated suspicion and hatred, the differences of opinion among the various political groups took the form of militant confrontation and the struggle for power led to a civil war.
- Fourth, three out of the four Rightly Guided Caliphs namely 'Umar, Uthmān and 'Alī were assassinated. Caliphs 'Umar and 'Alī were murdered in the mosque - an exposed place for any popularly

elected Muslim Head of the State, making him extremely vulnerable, particularly when no arrangements had been made for his security. There was neither any garrison present in Medina nor guards had been deputed for the protection of the house and person of Caliph Uthmān. Caliph ‘Alī was assassinated in accordance with a well-planned conspiracy of the Khawārij, the political group which adopted terrorist methods for accomplishing their objectives.

It is a generally accepted principle that great men make history. The four Rightly Guided Caliphs, who laid down the foundations of republican Islam, were certainly the greatest men Islam has produced after the Holy Prophet. But great men make history only if they have the support and co-operation of the people united behind them. The efforts of the Rightly Guided Caliphs for the permanent democratisation of Islam failed, not because of any lapse on their part, but owing to the failure of the Muslim peoples of those times to realise that democracy had its own discipline. If they had understood this political message, very ably projected by the Rightly Guided Caliphs, the “*shūra*” could have developed into a representative institution and the process of “*Ijtihād*” might have been initiated in the form of law-making through “*Ijmā*” (Consensus of the Community). But the Muslims divided themselves into numerous intolerant and fanatical religio-political groups and under the general policy of “if you are not with us you are against us” these groups actually fought against and ruthlessly slaughtered one another. Ameer ‘Alī rightly observes that with Caliph ‘Alī ended the republic of Islam, and he closes the chapter of his book with a quotation of Oelsner to the following effect: “Thus vanished the popular regime, which had for its basis a patriarchal simplicity, never again to appear among any Mussulman nation”.³⁰

THE SUBVERSION OF POLITICAL MESSAGE

In the historical process of transformation from 661 AD to 1258 AD, and then from 1261 AD to 1517 AD, the interaction of numerous forces and events led to changes in the Caliphate in substance as well as form. Mu‘āwiyah was proclaimed *Khalīfah* in 661 AD, and four years before his death he nominated his son Yazīd as his Successor (Walī al-‘Ahd). The oath of allegiance was secured for Yazīd despite the protests of some jurists who maintained that it was illegal to swear allegiance to two persons at one and the same time. Mu‘āwiyah nominated his own son as the succeeding Caliph, because, as he himself explained, that if he had nominated anyone outside his

own family, or if he had appointed an electoral council as Caliph ‘Umar had done, or if he had left the matter to be decided by the Muslim community, it would have led to a civil war among Muslims. His reasoning was that the precedent of nominating the succeeding *Khalīfah* already existed. Accordingly ħ, his Governor of Medina, said to the people: “Verily the Commander of the Faithful hath seen it fit to appoint his son Yazīd as the successor over ye according to the institutions of Abū Bakr and ‘Umar”. ‘Abdur Ra‘mān bin Abū Bakr interrupted: “Rather according to the institutions of Khusro and Caesar, for Abū Bakr and ‘Umar did not do so for their children, nor for anyone of the people of their house”. The prompt reply came from Marwān: “There was no legal bar for Abū Bakr and ‘Umar to nominate their children or anyone of the people of their house if they had found them competent. But in the present case the Commander of the Faithful is nominating his son Yazīd as successor over ye because he had found him fit and competent”.³¹

Thus the republican political system evolved had the seed which could transform it into a hereditary or dynastic monarchy. The example so set was followed throughout the later history of Islam. The reigning Caliph nominated one of his sons or kinsmen as his successor and the oath of allegiance was secured for him. During the ‘Abbasid rule double nominations were often made, the two successors to hold the office of *Khalīfah* one after the other. This arrangement frequently led to wars of succession. The *Millah/Ummah* was made to accept monarchy because first, the events of Muslim history brought home that the instability engendered by the republican order may eventually lead to the destruction of the Muslim community; and second, the Qur’ān was not averse or opposed to the institution of monarchy as some of the earlier prophets mentioned in the Qur’ān were also kings. As a result the original political message, reflected in the teachings of the Holy Prophet and the Sunnah (Practice) of the Rightly Guided Caliphs was quietly discarded, the citizens were reduced to subjects and the republican order was replaced by an autocratic monarchy.

The later jurists and historians regard the Umayyads as usurpers or kings by right of power and Caliphs only in name. It was during this period that more emphasis was laid on sceptre and seal. The Umayyads ruled as an Arab aristocracy at Damascus instead of Medina, and the Caliph had come to acquire kingly prerogatives. Besides the two earlier privileges, namely the Seal (*khatm*), and the Sermon (*khutbah*), three more were introduced by

Mu‘āwiyah himself on apparently valid grounds. For instance, the Throne (*Sarrī*) was introduced for the reason that Mu‘āwiyah was too fat and when he sat on the floor like the rest of the Arabs in accordance with the Arab custom, two persons were required to assist him to stand up. But if he were to sit on a higher place like a chair or a throne, then he could get up without anyone’s help. A Confined Part (*Maq-Āurāh*) in the mosque for the exclusive use of Mu‘āwiyah was introduced for security reasons, as an unsuccessful assassination attempt had been made on him by a Khārijite while he was offering prayers in the mosque. Finally, although the Muslim coinage (*Sikkah*) was struck since the times of Caliph ‘Umar, the Umayyad caliph’s name was carved on the coinage as a prerogative of the reigning monarch. Then Arabic was made the court language, and the earlier simplicity gradually gave way to luxury and splendour.

The executive and judicial institutions of Islam were also effected along with the vital transformation of the political order. In other words the political change led to the development of these institutions in such a manner that it should not come into conflict with the order established by the Umayyads. During this period, particularly after the tragedy of Karbala, disillusioned by the political conditions, the best minds in the world of Islam turned to mysticism (Sufism) or to the other-worldliness. There developed a school of determinist philosophy advocated by the Murji’ites who maintained that only that happens in this world what is willed by God. The Umayyads supported this school and encouraged its development because it helped in the dissemination of the viewpoint that the tragedy of Karbala or whatever happened there had actually been willed by God.

The Battle of Zab (750 AD) brought about the replacement of the Umayyad rule by the ‘Abbasid rule, and the passing of the Caliphate from the second to the third phase of its development as an institution. It may be noted that under the Umayyad rule (661-750) the unity of the Muslim world had remained a political reality. But within six years of the accession of Abū ‘l-‘Abbās al-Saffā‘, who was acknowledged as *Khalīfah* in 749 AD, the unity of the Caliphate was shattered by the establishment of an independent Umayyad kingdom in Spain. The founder of this kingdom was ‘Abdur Ra‘mān I, a descendant of Marwān II, the last Umayyad Caliph defeated at the Battle of Zab. However the Umayyads in Spain did not assume the title “*Khalīfah*” but adopted the title “Amir”.³²

Under the ‘Abbasids the capital was moved from Damascus to Baghdad, and the Caliphate was further transformed into a monarchy on the Persian model through the introduction of such institutions as the “*Wazārah*” etc. Meanwhile the Amirs (hereditary Governors) of the dominions of Islam, who were kept in check by the Umayyads, came to acquire enormous power under the ‘Abbasids as the centre gradually showed signs of weakness. The Amirs secured deeds of investiture from the Caliph, and were completely independent in their own dominions. Some of them paid tribute to the Caliph while the others did not, but most of them fought against one another.

During the tenth and eleventh centuries the world of Islam was divided into a number of petty principalities and a state of constant warfare prevailed among the Amirs.³³ North Africa was completely cut off first by the establishment of the Adrisid dynasty at Fez (in 785 AD), then the Aghlabite dynasty (in 801 A.D.)³⁴, and finally the FāḤimid dynasty (in 909 AD). The FāḤimids (tracing their descent from Caliph ‘Alī and FāḤimah) occupied Egypt and gradually built up an empire extending over the territories of North Africa and including Syria, Yemen and even the Hedjaz.

The position of the ‘Abbasid Caliph at Baghdad during the tenth and eleventh centuries was very weak. The Buwayhid troops had entered Baghdad (in 946 AD), and the administration of the seat of the Caliphate had passed into the hands of the Buwayhid Amir. (The Buwayhid dynasty which held sway over Baghdad was a Shī‘ite dynasty). The name of the Amir appeared with that of the Caliph on the coinage, and was mentioned with that of the Caliph in the *KhuḤbah*. The Caliph could not issue the patent of sovereignty to anyone without the consent of the Amir. The function of the Caliph was only to bestow titles or honours. Nevertheless in theory he was considered as the religious as well as the temporal head of the Muslim community, and orders were issued in his name.

The ‘Abbasid Caliphate was not acknowledged in North Africa. This was the empire of the FāḤimids who regarded themselves as Imām s. When the Holy Cities passed into the hands of the FāḤimid, ‘Abdur Ra‘mān III, the Umayyad ruler of Spain adopted the title “*Khalīfah*” and was acknowledged as such in his own dominions. So in the tenth century three separate, independent and antagonistic Caliphates were established in the world of Islam (i.e., Cordoba, Cairo and Baghdad). Although the Umayyad

power was declining in Spain by 1037 (the Muslims were finally expelled from Spain in 1610), and the Fāḩimid empire was recovered for the ‘Abbasids by Salah ĪalāĀ al-Dīn in 1171, the ‘Abbasid Caliphate survived in Baghdad until 1258.

Between the tenth and eleventh centuries the Baghdad Caliphate was at its lowest ebb. The Buwayhids controlled the administration of the capital, and the rise of numerous dynasties (e.g., the nāhirid, the Īaffārid, the Sāmānid etc.), or the breaking up of Eastern Islam into a number of independent political units, had reduced the Caliphate to a constitutional fiction. However, as shall be discussed later, it was during this period of weakness and impotence that a systematic exposition of Islamic constitutional theory was advanced by Abū Ī-Āasan ‘Alī bin MuĀammad al-Māwardī (991-1058 AD). Unlike Al-Bīrūnī (973-1048 AD) who recorded that the Caliphate had ceased to command authority over temporal affairs and had been reduced to merely a religious office³⁵, Al-Māwardī ignored the dependent position of the Caliphate. His account of the state in Islam, like the other Sunni jurists of different Schools of Fiqh (jurisprudence), is far removed from the conditions that actually prevailed.

Since the importance of the Caliphate was reduced by the establishment of independent dynasties in the territories of Islam, Al-Māwardī insisted that those who had usurped the authority of the Caliph must secure the deed of investiture from him so that their rule could be validated as legal and constitutional. But the struggle for political supremacy between the Caliph and the politically independent Amirs continued and ultimately resulted in the development of “Sultanate” in Islam.

The word “*sulḩān*” occurs in the Qur’ān and means authority, spiritual or magical power (i.e., good or evil power) etc. In the literature of Traditions the term appears to imply ‘the power of God’ or ‘the governmental power’. In the early history of Islam “*sulḩān*” meant the temporal power of the *Khalīfab*. However under the ‘Abbasids when Spain and North Africa were lost to the Baghdad Caliphate, the Umayyad rulers of Spain were sometime addressed as “*Ibn Sulḩān*” (on the ground that they were the descendants of the Umayyad Caliphs of Damascus). Among the ‘Abbasids Caliph Mā’mūn is reported to have been addressed as the “*Sulḩān* of God”.

Under the later ‘Abbasids when the rise of independent dynasties led to

the curtailment or usurpation of the Caliph's temporal power, the term "sultan" came to imply 'the secular ruler/sovereign' in contrast to the Caliph who remained, at least in theory, the supreme religio-political head of the Muslim community. Nevertheless when the Buwayhids dominated Baghdad, they received from the Caliph such titles as the Amir al-'Umar a, *SulḤān al-Damlab*, *Shāh*, *Shāhān i shāh*, *Malik* etc., and the precedent of "sultan" being given as a title by the Caliph had not been set. The independent sovereigns received the patent of sovereignty from the Caliph, under the advice of the Buwayhid Amir, for religious or political considerations, and they kept up the semblance of the unity of the Caliphate by mentioning the name of the Caliph in the *KhuḤbah* or by putting it on the coinage; but within their own dominions they were completely independent. In other words the Sultanate had been established, though it had not reached the stage of complete emancipation from the Caliphate. It existed as an authority devoid of legal sanction and its use in official documents, correspondence, or on coinage had not yet become common.

The Caliph stripped of his temporal power retained such religious prerogatives as the appointment of the *Qāḥs* (judges), and the Imām s of the mosques. He symbolised the unity of Islam, and was unaffected by the rise and fall of dynasties.

The Buwayhids were superseded by the Ghaznavids, and yet the title "*SulḤān*", although in use, remained without legal sanction. However when the Seljuqid forces entered Baghdad and the influence of the Ghaznavids came to an end, the title "*SulḤān*" received official confirmation. űughral Beg received this title from the Caliph in 1055 AD³⁶, and it appeared on his coinage. Thus it can be assumed that it was not before the eleventh century that the Sultanate came to acquire a completely independent place for itself and stood side by side with the Caliphate. The Sultan became the sole possessor of the temporal power of the Caliph. His power depended on the sword and could not be set aside by any means other than the sword. Consequently the confirmation of the SulḤān by the Caliph meant no more than the acknowledgement of an already established authority. Yet the Sultanate could not displace the Caliphate owing to the religious implications of the institution, the influence of the tradition, and the respect that the 'Abbasids commanded in the eyes of the Sunni Muslims.

The moralists (writers on political morality) of the eleventh, twelfth and

thirteenth centuries either found a place for the Sultanate within the Caliphate, or justified the existence of the Sultanate in its own right. For instance, according to Nūāmī i 'Arūū it was difficult for the Caliph to manage the affairs of the vast dominions of Islam singly, therefore it was necessary that he should have deputies who ruled over different territories of Islam³⁷. Nūām al-Mulk (1017-1091 AD) does not appear to support the idea that the Caliphate was the source of the temporal authority of the Sultan. In his opinion the Sultanate was a divinely ordained institution and that therefore the Sultan should rule according to the *Shari'ah*. Nūām al-Mulk accepted the Caliphate only as a religious institution and regarded the *Qāḥs* (judges) as the deputies/representatives of the Caliph.³⁸

The Caliph's acknowledgement of the Sultan led to the establishment of a dual government at Baghdad which was bound to result in a conflict between the authority of the Sultan and that of the Caliph. The Caliph had occupied a dependent position, but when the wars of succession broke out among the rival Seljuqid claimants, the Caliph re-asserted his independence and Caliph Muktafi managed to re-establish his temporal power at least in Baghdad and the surrounding territories to the exclusion of the Seljuquids. But since the Caliph had delegated his temporal power to the Sultan of his own free will, the Sultan re-asserted his claim to temporal power. In the later half of the twelfth century the renewal of the deed of investiture to individual rulers from the Caliph fell into disuse, and the supporters of the Sultanate contended that it was beneath the dignity of the Caliph to control temporal affairs. In this connection Barthold quotes an Atabeg of the last of the Seljuqid Sultans as having said that the Caliph in the capacity of the Imām should occupy himself with the performance of prayers (*Namāz*) and religious leadership as it was the foundation of the Faith and the best of deeds. As regards temporal affairs, these should be delegated to the Sultan.³⁹

On the decline of the Seljuquids when the Khwarazm Shahs claimed the privileges formerly enjoyed by the Seljuqid Sultans, a new series of struggle started between them and the Caliph. The Khwarazm Shahs were Shi'ite and they never approached the Caliph for the confirmation of their Sultanate, the power of which depended originally on their military strength. The Ghorids too, although a Sunni dynasty and on good terms with the Caliph, assumed the title "Sultan" before they were acknowledged as such by the Caliph.

The Khwarazm Shahs claimed Baghdad as their territory; they insisted

on being acknowledged as Sultans, and their name being mentioned with that of the Caliph in the *Khuṣṣab* in Baghdad. Mu'ammad bin Takash aspired to the restoration of the Universal Sultanate in his favour and accordingly carved on his seal the words: "The shadow of God on Earth". He secured a Decision (*Fatwā*) from the Shī'ite jurists of his dominion to depose the Caliph and marched towards Baghdad, but failed to capture it. Thus the stage had arrived that the Sultan could retaliate by omitting the name of the Caliph from the *Khuṣṣab* in his dominion if the Caliph was not willing to permit the Sultan's name to be mentioned in the *Khuṣṣab* in Baghdad. Moreover while the Caliph could not depose the Sultan, the Sultan could depose the Caliph by securing a Decision (*Fatwā*) from the jurists.⁴⁰

The conflict for political supremacy between the Sultanate and the Caliphate (which at that stage of the history of Islam was also a Shī'ah-Sunni conflict) eventually resulted in the collective ruin of Muslims. In the middle of the thirteenth century the Mongols not only inflicted a severe defeat on the Khwarazm Shah but also sacked Baghdad (1258 AD). Caliph Musta'Am was mercilessly put to death, and for the three years that followed (1258 to 1261 AD) the Muslim world remained without a *Khalīfah*.

On its revival in Cairo in 1261 AD, the 'Abbasid Caliphate came under the protection of the Mamlūk Sultans of Egypt, and was completely transformed into a religious office. According to Barthold, Sultan Baybars worked for its revival so that it could give a show of legitimacy to the Mamlūk rule in Egypt; and that the aim of the Sunni jurists like Zuhri and Jalāl al-Dīn SuyūḌī, who supported the Cairo Caliphate, was to extol the Egyptian Sultanate as the only legally valid Sultanate.⁴¹ Thus the Caliph became part of the Sultan's train, and bestowed deeds of investiture on those rulers whom the Sultan approved. He had nothing to do with temporal affairs. Although such practices as mentioning the Caliph's name in the *Khuṣṣab* and striking it on the coinage had ceased, the Caliph was still regarded as the sole authority for validating the rule of the Sultans, and the fiction that sovereignty without the confirmation of the Caliph remained illegal according to the *Shari'ah* was kept up by the Sunni jurists of the fourteenth and fifteenth centuries. It was maintained by them that the 'Abbasid Caliph at Cairo was the successor of the Holy Prophet, and that a Sultan who possessed no deed of investiture from the Caliph was not authorised to appoint *Qāṭis* (judges) according to Islamic law; if he did so, all

the marriage contracts in his dominion became invalid.⁴² The jurists of Mecca (like QuḤb al-Dīn), however, were of the opinion that the Caliphate had ceased to exist in 1258 AD, and that it had since been substituted by the Sultanate.

The Mongol rulers having embraced Islam during the fourteenth and fifteenth centuries adopted the title “Sultan” (or “ʿI-Khān”). They did not acknowledge the Cairo Caliphate, because their ancestors had fought against the ‘Abbasids, and also, they were not on good terms with the Mamlūk Sultans.⁴³ In this background a new religious motivation was devised for the Sultanate in Eastern Islam. The Sultanate came to be regarded as founded on “Power” (*Dhu Shawʿkab*) and derived its strength ‘through the Grace of God’. According to this theory, only the first four Rightly Guided Caliphs were the real successors of the Holy Prophet and under the *Shariʿah*, were the proper Caliphs; but the Umayyads as well as the ‘Abbasids were Caliphs ‘by Right of Power’ (*Dhu Shawʿkab*). Furthermore since God was the source of all power, any Sultan could claim himself as *Khalifah* (i.e. the Successor of God). Shāh Rukh, the son of Tīmūr, proclaimed himself as *Khalifah* in the fifteenth century probably on these grounds.

In this way the Caliphate merged into the Sultanate, and the practice of mentioning the names of the Rightly Guided Caliphs with that of the ruling Sultan in the *KhuḤbah* as well as the striking of the names of the Rightly Guided Caliphs with that of the ruling Sultan on the coinage became common from the fifteenth century onwards in Eastern Islam.⁴⁴

In 1517 AD the Ottoman Sultan Salim I conquered Egypt and annexed it into the Ottoman Empire. It is reported that Caliph Mutawakkil III was taken to Istanbul (Constantinople) where he transferred the office of the Caliphate to SulḤān Salīm I.

During the course of roughly nine hundred years (632-1517 AD) the Caliphate, initially a republican institution (632-661 AD), was transformed into a hereditary/dynastic monarchy and which once included the Sultanate as its part (632-1055 AD), first emancipated the Sultanate which came to occupy a rival position against the Caliphate (1055-1258 AD), then it came under the protection of the Sultanate (1261-1517 AD), and eventually was absorbed into the Sultanate (1517 AD).

The claim of the Ottoman Sultans to the Caliphate rested on the

following grounds: (a) By Right of Power (*Dbu Shawkab*); (b) Nomination (on the basis of the same argument which was advanced at the appointment of Yazīd as the successor of Mu‘āwiyah), and election (by a limited number of high officials forming an electoral college in accordance with the precedent set at the time of the election of Caliph Uthmān); and finally (c) The Guardianship of the Holy Cities. In respect of the last ground, Barthold is of the view that although the Umayyad rulers of Spain did not adopt the title of “*Khalīfah*” because the Holy Cities were under the control of the ‘Abbasid Caliphate, no eminent jurist has regarded the possession of the Holy Cities as a necessary condition for holding the office of the Caliphate.⁴⁵

The Ottomans did not belong to the tribe of Quraysh. They were not Arabs but Turks. Accordingly the jurists of the sixteenth and seventeenth centuries (following Ibn Khaldūn and Abū Bakr Bāqillānī) did not attach any importance to the Qurayshite lineage as a qualification for holding the office of the Caliphate. It was under the rule of the Ottoman Sultan-Caliph that the office of the Sheikh-al-Islam gradually developed and the department of religion was separated from the other departments of the state. The Ottoman Caliphate was acknowledged throughout the Ottoman Empire. The Shī‘ite Iran and Mughal India however, did not recognise the Ottoman Caliphate owing to religious and dynastic rivalries.

The Ottoman Caliphate declined during the eighteenth and nineteenth centuries due to its autocratic nature and inflexibility to adopt itself to the requirements of the changing times. Owing to the consistent emphasis of the Ulema and jurists over the past numerous centuries on remaining loyal to the rulers after God and the Holy Prophet, the Muslim masses (Sunnis in particular) had been conditioned to accept tyranny in order to avoid anarchy, and as a result, had submitted to absolute autocracy, or suffered under the despotic regime of one Sultan after the other. Throughout this period, with a few rare exceptions, the ruling elite appears to have remained above the law and if the *Shari‘ah* was strictly enforced, it was to control or subdue the poor masses who had been reduced from citizens to subjects. Eventually the Arab subjects of the Ottoman Sultan-Caliph were attracted to the puritanic Wahhābī movement which asserted by violence the supremacy of Islamic law. On the other hand, the impact of the West let loose such forces as individual freedom, nationalism, patriotism, secularism, constitutionalism and radicalism in the world of Islam. The Ottoman Sultanate, Caliphate as well as

the office of Sheikh-al-Islam were finally abolished by the Turkish nationalists under the leadership of Mustafa Kemal in 1923/1924 and Turkey as a “nation-state” was declared a secular republic.

THE OPINIONS OF JURISTS, MORALISTS AND PHILOSOPHERS

On the subject of Islamic constitutional theory, political ethics and philosophy, literature started appearing in the world of Islam, generally speaking, from the ninth century onwards. The writings can be broadly divided into three categories: (a) of jurists, (b) moralists, and (c) philosophers.

JURISTS

The first and the most eminent among the jurists who wrote on this subject is Al-Māwardī (991-1031 AD). His famous treatise titled “*AĀkām al-SulṬāniyyah*” (The Ordinances of Government) was written in order to impress upon the Buwayhid Amirs the significance and importance of the ‘Abbasid Caliph as the supreme spiritual as well as temporal authority. It is interesting to note that from this period onwards, in the history of Islam, the role of the Sunni jurists had been to bridge the gulf between the ideal and the real, or theory and practice, by attempting to provide an Islamic rationale to every change in order to maintain the continuity of the Islamic character of the community.

Al-Māwardī maintains that the establishment of the Caliphate/ Imām ate is a religious obligation for the Muslims, because its main object is the defence of the Faith and the preservation of order in the world through the implementation of Revealed Law. In support of his argument he quotes that verse of the Qur’ān in which David was appointed *Khalīfah* on Earth by God (sūrah 38: verse 27). He is of the view that a secular state is based on the principles derived through human reasoning, and therefore it promotes only the material advancement of its citizens. But since the Caliphate is based on Revealed Law, it promotes the material as well as the spiritual advancement of the people.⁴⁶

Al-Māwardī divides the community that appoints the Caliph into three groups. In the first group come the candidates for the Caliphate. A candidate for the Caliphate apart from being an adult Muslim of upright character, must be of Qurayshite lineage, physically and mentally sound, possesses

courage and determination, is well-versed in the arts of war, is just, knowledgeable, and able to make independent decisions or pass judgements as a Mujtahid.

In the second group are placed the eminent members of the community who have acquired the authority “to bind and loose” and possess the right of electing the Caliph. Then follows the third group that consists of the masses of Islam who should swear allegiance when the Caliph had been elected by the eminent few.⁴⁷

Al-Māwardī regards both the election of the Caliph by the eminent members of the community or the nomination of the Caliph by the preceding Caliph as perfectly valid methods of appointment. According to him the reigning Caliph could appoint his son or kinsman as successor during his lifetime or even make more than one nomination at one and the same time.⁴⁸

Al-Māwardī was obviously rationalising the actual historical situation. In other words he was trying to justify the changes in the earlier republican methods of constituting the Caliph to suit the conditions of later times. The reigning Caliph usually nominated his son or kinsman as his successor during his life-time, and the leading Amirs, the eminent state officials etc., who were in most cases created by the Caliph himself, gave their approval. This approval after nomination constituted the election of the succeeding Caliph. Thus although the Caliphate had been transformed into a hereditary/dynastic monarchy, the fiction that the Caliph held his office on the basis of the established practice of the Rightly Guided Caliphs (i.e., nomination as well as election) was maintained.

It is strange that Al-Māwardī attempts to find support for his argument by citing examples from the early history of Islam. Caliph Abū Bakr was elected by the people who were not the creation or instruments of the preceding Caliph and his nomination of Caliph ‘Umar was merely a recommendation which was accepted by the Muslim community. As for Caliph Uthmān’s appointment it was election by the Electoral College and not a designation. Similarly Caliph ‘Alī was popularly elected. In any case, these examples have been used by Al-Māwardī as precedents to legalise the hereditary/dynastic transfer of the office of the Caliphate within the ‘Abbasid family, whose employee he was. He even justifies three successive

designations on the basis of the precedent that when Hārūn al-Rashīd made a threefold designation of his sons as his possible successors, the jurists considered it as valid on the ground that on one occasion the Holy Prophet had made a successive designation of generals in the battle-field. According to Al-Māwardī, such a method of designation can be adopted in the public interest (*Al-Ma'ālī' al-jymmah*). But he does not seem to realise that the example of successive designation in the battle-field may not be applicable because on the death of a Caliph when one of his heirs has succeeded him, the new Caliph, being the supreme authority, is entitled to designate his own successor and is not bound by the designation made by his predecessor.

According to Al-Māwardī, the duties of the Caliph are, that he should guard the religion of Islam and suppress the growth of heresy; that he should interpret Islamic law as *Mujtahid* and promulgate it; that he should keep armies on the frontiers in order to defend Islamic territories from aggression by an enemy; that he should champion the cause of Islam either by offering Islam to the non-Muslims of the adjoining countries or by waging war against them until they accepted the status of protected people; that he should execute and preserve justice; that he should implement a sound financial system; that he should appoint only competent ministers, governors, tax-collectors, judges and other state officials and fix their salaries from the state treasury; and lastly, that he should supervise all the departments of the state.

As it is apparent the duties of the Caliph were spiritual as well as temporal in nature, clearly indicating the unity of religion and politics, or church and state. Thus the model of state advanced by Al-Māwardī was based on an amalgam of religious and secular aspects of life of the Muslim community. But whether such a situation existed in reality, was a different matter.

Finally, Al-Māwardī speculates on the conditions under which the office of the Caliph can be forfeited. These are, when he fails to interpret the Faith correctly, becomes physically or mentally unfit, is arrested or overpowered or restrictions are imposed on his movements. But he, at the same time argues that if the Caliph was under the influence of a powerful Amir, so long as the Amir ruled according to the *Shari'ah*, the need of either releasing or deposing the Caliph should not arise.⁴⁹ Obviously the existing political conditions were responsible for this thesis of Al-Māwardī.

At this stage, in the light of the exposition provided by Al-Māwardī, the legislative, executive and judicial aspects of his version of the state of his times can be briefly examined:

Theoretically speaking no one is empowered to legislate in a Muslim state, for God as the only true Law-giver has laid down His laws in the Qur'ān. These laws however, are in the form of broad principles which require interpretation in the light of the Tradition (Ādīth), the Consensus of the community (*Ijmā'*), and the use of Analogical Reasoning (*Qiyās*). There was also a very large field of legislation of such laws which were not repugnant to the injunctions of Islam (i.e., the Qur'ān and Sunnah), and in respect of those laws legislation had always been made by the Muslim rulers in the form of royal ordinances (*Farmān*).

The jurists interpreted those Qur'ānic rules of law which were seemingly obscure, or on the interpretation of which the preceding authorities disagreed. They did not object to the implementation of those man-made laws towards which the Qur'ān and Sunnah were indifferent. The Caliph as monarch was technically only an agent through whom the *Shari'ah* could be implemented. But sometimes he legislated even in this field on the basis of his sovereign act. He also had the power to appoint jurists and to authorise them to give decisions or legal rulings (*Fatāwā*) in matters concerning legislation, either by choosing the interpretation of a particular school which suited his needs, or by suppressing the decisions (*Fatāwā*) of the jurists on the ground that they were inexpedient or against public interest, or by authorising only a few individual jurists to give decisions who agreed with him. This arrangement suited the interests of the autocratic and absolute monarchy that had emerged from the early republic. Thus the authority to interpret the *Shari'ah* was usually granted to individual jurists who were the creation of the Caliph himself, and the formation of an assembly composed of various sections of the jurists (*Ijmā'*) was discouraged lest it became strong enough to restrict or curtail the arbitrary power of the sovereign.

In the light of Al-Māwardī's exposition, theoretically the state in Islam was a unitary form of government, highly centralised under a single supreme head, who was the Chief executive authority. The Caliph in that capacity appointed the ministers (*Wazīrs*), governors (Amirs), judges (*Qāḍīs*), tax collectors (*jimils*) etc., and supervised all the departments (*Divāns*) of the state.

The office of the” *Wazīr*” (Minister) was introduced during the reign of the ‘Abbasids, when the Caliphate came under the influence of the Persian ideas of sovereignty. There existed no precedent for the establishment of this office. But justifying the appointment, Al-Māwardī advances the argument that the word “*Wazīr*” is derived from “*w.z.r.*” which means “load” i.e., the *Wazīr* shares the load of the sovereign’s responsibilities. According to him, the jurists had already sanctioned the appointment of one or more *Wazīrs* by the sovereign. He further argues that in the Qur’ān Prophet Moses is stated to have asked God about the appointment of a *Wazīr* (sharer of burden) from his family (i.e., Aaron, his brother). He also maintains that the Holy Prophet consulted his Companions who shared the burden of his temporal responsibilities. *Ibn Khaldūn* likewise justifies the existence of this office on the ground that Abū Bakr was the *Wazīr* of the Holy Prophet, ‘Umar was the *Wazīr* of Caliph Abū Bakr, and Uthmān as well as ‘Alī were the *Wazīrs* of Caliph ‘Umar.⁵⁰

It is interesting to note how the Qur’ān and Sunnah were used by the subsequent jurists in support of any change that took place in the Muslim polity. It has already been noted that in order to emphasise the importance of the office of Caliph on the headstrong Amirs and Sultans, Al-Māwardī advanced the argument that the establishment of the Caliphate was a religious obligation and God had set a precedent in the by appointing David as the Caliph on Earth. But the institution of the Caliphate was not regarded as divinely ordained in the times of the Rightly Guided Caliphs. Similarly no precedent existed for the appointment of a *Wazīr* or *Wazīrs*. Nevertheless Al-Māwardī took pains in providing justification for this office through the Qur’ān and Sunnah. This clearly establishes that jurists of every age could adjust the interpretation of the *Shari’ah* in accordance with the needs and requirements of their times.

Al-Māwardī discusses three kinds of Governorship (*Amārat*) appointed or acknowledged by the Caliph. These are Governorship with General Powers (*Al-amārah al-‘ammah*), Governorship with Specific Powers (*Al-amārah al-khāṢṢah*), and Governorship by Usurpation (*Al-amārah al-istilā*). The Governorship with general powers was like sovereignty, and with specific powers amounted to command over a specific department.

The Governorship by usurpation came into being when a Muslim usurper occupied Muslim territory by force of arms (either by defeating the

armies of the Caliph or by dethroning the reigning Amir). In such circumstances the Caliph had no choice but to confirm the usurping Amir in his dominion. Therefore, Al-Māwardī, under the doctrine of necessity, introduces the concept that the confirmation should not be declined if the usurping Amir gives the undertaking that he would rule in accordance with the *Sharī'ah* and maintain the unity of the Muslim community (*Ummah/Millah*) by owing allegiance to the Caliph. The usurping Amirs on the other hand, solicited the confirmation of the Caliph because it gave an air of legitimacy to their rule. Some of them paid tribute to the Caliph, others did not.

The practice of appointing Amirs (governors) for outlying provinces is very old in Islam. The Holy Prophet appointed such Amirs, similarly the Rightly Guided Caliphs as well as the Umayyads appointed Amirs and kept a strict watch over their activities. However under the Umayyads the practice of hereditary governorship had been introduced and was maintained by the 'Abbasids. Consequently on the death of an Amir, the Caliph formally confirmed his son or kinsman who succeeded him. But the Governorship by usurpation that transformed the unity of the Muslim world into a loose confederation and virtually made the Caliph impotent, was a much later development. It had no precedent in the early history of Islam. Al-Māwardī included it in his interpretation of the State in Islam⁵¹ because his aim was, as it has already been pointed out, to impress upon the usurping Amirs the importance of the 'Abbasid Caliphate which had lost its prestige.

Dealing with the executive responsibilities of the Caliph, Al-Māwardī also talks about the Judiciary (*Qāṭā'*) which had always been regarded as one of the most important organs (*wāṭīfah*) of the state. As the Muslim Empire expanded four major courts with varying jurisdiction came into existence. These were the Court of the Reviewer of Wrongs (*Nāiir al-Maālim*), the Court of the *Qāṭī* with criminal/civil jurisdiction, the Court of the Moral Censor (*Mu'āṭasib*), and the Court of the Police Magistrate (*Īā'ib al-ShurṬah*). According to Al-Māwardī it was the exclusive responsibility of the Caliph to appoint the *Qāṭī* at all levels, although he himself should preside over the *Maālim* Court.

In the light of Al-Māwardī's exposition the state in Islam was a monarchy, restricted to the members particularly of the house of 'Abbas and generally of the tribe of Quraysh. The Caliph as the supreme head of the

state was (at least theoretically) empowered to appoint or dismiss his agents at will, and if sovereignty existed within the world of Islam it could only exist with the sanction of the Caliph, otherwise it was illegal.

The executive and judicial institutions that had been evolved during the course of centuries were maintained with some modifications and the administrative system of numerous independent dynasties that held sway over different territories of Islam was modelled on them.

Briefly the peculiarities of the state in Islam as set out in Al-Māwardī's exposition are: That the object of the state was to achieve the well-being of the Muslims not only in this world but also in the Hereafter; that the state stood for the unity of the Muslim community and the oneness of the Muslim world, therefore there should be appointed a single Caliph and if the Muslim world were to be fragmented into a number of independent political units, these units should exist only with the sanction of the Caliph; that the state drew a line between Muslims and non-Muslims; that only those taxes which had been recommended in the Qur'ān could be levied in the state; that usury was forbidden; that the Muslim subjects were to be governed under the civil law of Islam but Muslim and non-Muslim subjects came under the criminal law of Islam; and finally, that the state in Islam had a special department called Hisba (religious censorship) to enforce the religious discipline of Islam on its Muslim subjects.

Generally speaking, Al-Māwardī's model was followed by the later jurists, and as the condition of the Caliph at Baghdad deteriorated further, more adjustments or rather compromises were made in order to cope with the political reality. For instance, in the times of Al-Ghazzālī (1058 AD - 1111 AD) the Caliph was completely dominated by the Seljuq Sultan. Therefore Al-Ghazzālī, like Al-Māwardī, advanced the argument that the establishment of the institution of Caliphate was a religious obligation for the Muslims under the *Shari'ah*, and not merely a rational necessity. He argued that after the death of the Holy Prophet the Caliphate was acknowledged as an indispensable institution according to the Consensus of the Community (*Ijma'*).⁵² Therefore the appointment of a Caliph was imperative for the maintenance of a proper religio-political order, which could only be established by an Imām to whom obedience must be rendered. This line of reasoning was adopted to emphasise the legitimacy of the 'Abbasid Caliph Al-Mustāhar on the Seljuq Sultan who wielded effective power, and also on

the adherents of the BāḤiniyyah sect who acknowledged his FāḤimid rival at Cairo as the legitimate Imām.

It is interesting to note that while repeating the qualifications of a Caliph as enumerated by Al-Māwardī, Al-Ghazzālī modified some of them to suit the case of Caliph Al-Mustihār. For instance, the ability to wage war (*Jihād*) was no more considered an important qualification when force and prowess (*ShawḤah*) for waging war was possessed by the “loyal” Sultan, who could use it in place of the Caliph. Similarly the duty of the administration of the state could be delegated to the competent and conscientious Sultan as sharer of the Caliph’s burden. Even the deficiency of Knowledge (*Ilm*) or the lack of ability of *Ijtihād* on the part of the Caliph was to be ignored, as the Caliph could rely on the Ulema (Islamic scholars) who might be consulted and their advice followed. In other words Al-Ghazzālī held the view that the Caliph should be a *Muqallid* and depend on *Taqlid* (following the legal opinions of the Ulema) rather than trying to be a Mujtahid himself if he was incapable of *Ijtihād*.⁵³

Being conscious of the political situation that the Caliph was merely a ruler in name whereas the real authority vested in the Seljuq Sultan, Al-Ghazzālī had no hesitation in maintaining that the Caliph should delegate authority to the one who was wielder of effective power (*ShawḤah*) and who swore allegiance to him. Al-Ghazzālī wanted the Caliph to lead a religious life and always to seek guidance from the Ulema. The Caliph was entitled to the obedience and loyalty of all the eminent personalities of the empire by virtue of his religious conviction (i.e., Sunni Islam).

During the times of Al-Ghazzālī the ‘Abbasid Caliphate had become so weak and impotent that at times the Sultan appointed or designated the new Caliph. Consequently on the grounds of existing practice as well as the designation having been made by the one who was backed by military force, Al-Ghazzālī acknowledged this new method of the Caliph’s appointment as valid under the *Shari‘ah*. According to Al-Ghazzālī so long as the wielder of effective power i.e., the Sultan, acknowledged or swore allegiance to the Caliph, his government was lawful according to the *Shari‘ah*. The principle on which Al-Ghazzālī seems to have based his thesis is that tyranny of a cruel Sultan should be accepted, but chaos and lawlessness must be avoided at all costs. The main argument of Al-Ghazzālī is that since an attempt to get rid of a tyrannous Sultan, who had the support of the army, was likely to lead to

confusion and disorder, such an attempt must not be made in order to safeguard the welfare of the state and the Muslim community. Without citing the Qurʾān (sūrah 4; verse 59), but placing reliance on some Traditions, he insists that besides the Caliph obedience must also be rendered to such Amirs and Sultans who were usurpers of political power.⁵⁴

In the thirteenth and fourteenth centuries, there are the views of two very eminent jurists namely, Ibn Jamāʿah (1241 AD -1333 AD) and Ibn Taymiyya (1263 AD -1328 AD) on this subject which may also be examined. In the writings of Ibn Jamāʿah one notices the same principle in operation as in the writings of Al-Ghazzālī i.e. that tyranny to be considered preferable to anarchy. In other words, bad rule should be accepted in order to avoid disorder. Since the times of the Rightly Guided Caliphs the established interpretation of sūrah 4; verse 59 was that the obedience to the Caliph as Head of the State was qualified and depended on his following the laws laid down by God and the Holy Prophet, and that if his actions were in conflict with the *Shariʿah*, he was liable to be deposed. But in the light of political reality, this interpretation was forsaken by jurists like Ibn Jamāʿah. He held that every constituted authority must be obeyed and the constituted authority included a usurper who was in effective control of the administration of the state and who, for his own convenience, had sworn allegiance to the figurehead Caliph.

What Ibn Jamāʿah added to the methods regarding the appointment of a Caliph was: the legitimisation of self-appointed Imām through forceful seizure. It has already been noted that Al-Ghazzālī went a step further than Al-Māwardī in including the designation/appointment of a Caliph by the Sultan as one of the methods for appointing a new Caliph. But Ibn Jamāʿah went even further by permitting a usurper of the supreme authority to appoint himself as the Imām. According to Ibn Jamāʿah, obedience to authority was an absolute religious obligation on the Muslim community under sūrah 4; verse 59 of the Qurʾān, as it was identical with obedience to God and to the Holy Prophet. Therefore self-appointment by a military commander to the office of Imām was lawful under the *Shariʿah* and obedience should be rendered to such a ruler in order to maintain the unity of the Muslim community. Not only that, Ibn Jamāʿah expects the Muslim community to render obedience even to the subsequent usurper who defeated the earlier one and after deposing him, became the effective Imām

himself.⁵⁵

Al-Māwardī, Al-Ghazzālī, and Ibn Jamā'ah, all of them belonged to the Shāfi'ī school, and as it has been demonstrated, they, during their respective eras, went on compromising the *Shari'ah* interpretation with the deteriorating political reality, until the wheel had turned full circle and the delegation of all the powers and functions of the Caliph to the Sultan or to any usurper was completely legalised under the *Shari'ah*. In other words these eminent jurists of Sunni Islam clearly laid down that the *Shari'ah* is capable of numerous interpretations and it is perfectly legal to make the *Shari'ah* adjust to any set of prevalent circumstances.

The voice of Ibn Taymiyya (1263 AD -1328 AD), an eminent Ānbalī jurist, strikes a somewhat different note. Disillusioned with the attitude of the conventional jurists towards the state in Islam, he claimed the freedom of *Ijtihād* and went back to the basic sources i.e., the Qur'ān and Sunnah in order to make a fresh start. He did not concern himself with the Caliphate. He even denied the necessity of this institution. He was mainly concerned with the supremacy of the *Shari'ah* and as to how the Muslim community (the rulers as well as the ruled) could regulate their lives by it. He did indeed lay emphasis on the close connection between the Imām and the Muslim community, but "Imām" according to him was any wielder of effective authority, irrespective of the fact as to whether he had acquired it legally or illegally.

While interpreting sūrah 4; verse 59, he advanced the argument that only those orders of the wielder of authority should be obeyed which were in conformity with the Qur'ān and Sunnah. But it is interesting to note that although he absolved the Muslim community from obeying those orders which were in conflict with the Qur'ān and Sunnah, he refrained from preaching rebellion owing to his fear of anarchy or disorder in the state.

He expected the wielder of power and his agents to act in accordance with the *Shari'ah*, and if the Head of the State was unfamiliar with it, then like Al-Ghazzālī, Ibn Taymiyya advocated that he should seek the guidance of the Ulema. In other words, Ibn Taymiyya too was of the view that the quality of being a *Mujtahid* was not essential in the Head of the State and that he should practice *Taqlid*. Thus Ibn Taymiyya and Al-Ghazali desired that the influence of the Ulema in the governance of the state should increase as they both

believed that the Ulema were the real successors of the Holy Prophet after the end of the era of the Rightly Guided Caliphs.

Ibn Taymiyya did not attach any importance to the struggle for power between the Caliph and the Sultan. He accepted the political situation as it existed in his times. His main concern was restoration of the Rule of the *Shari'ah* in the state so that the Muslims, for their collective survival as a community, could lead their lives in accordance with an authoritative and strictly enforced law.⁵⁶ Thus he stood for a puritanical or rather an idealistic *Shari'ah* -government, and spent his entire life struggling for the implementation of his ideals. But since his interpretation of the *Shari'ah* was narrow, rigid, inflexible and unsuited to the prevailing political conditions, it was, generally speaking, ignored.

MORALISTS

The Moralists were a group of writers of books on political ethics. These books were in the form of counsel for kings (also called *Adab*, *Akhlāq*, or Mirror literature). These moralists were neither concerned with Islamic constitutional theories as propounded by the jurists nor were they interested in the political thought of the philosophers. They isolated the Caliph and preached that he should devote himself completely to religious matters e.g., offering prayers, observing fast, defending Faith, punishing heretics etc. As for the Sultan, he was to be considered as the real sovereign over his realm and the citizens, although theoretically constituting the Muslim Ummah, were his subjects. The teachings of these writers were based mainly on political considerations. They did not bother to raise or answer the question as to whether a king held his office legitimately or illegitimately. They accepted the political reality as it existed and at the same time they tried to present the model of an Excellent King (*Malik al-Fā'il*) or a Just Sultan (*Malik al-'ādil*). In order to realise their objective they imitated the style and methodology of the Persian writers of pre-Islamic times. This literature is obviously the product of an age when the Caliphate had gradually given way to the Sultanate.

Although the moralists projected the universal concept of ethics, they remained, generally speaking, attached to the *Shari'ah*. They were mainly concerned with the visualisation, in an already established absolute monarchy, of an ideal political order based on universal ethical values like

justice and equity, the importance of which is also acknowledged by the *Shari'ah*. Therefore they freely used the examples and anecdotes of the former infidel (*kaafir*) kings in order to establish how virtuous they were as models. Their works were usually in the form of guides to be read by the Sultans or Maliks - some of whom, although able to read and write, were in many respects tyrants or savages with little respect for ethical or human values. Advice could only be tendered to them through the adoption of the art of flattery, about the qualities and duties required in a ruler, his servants and functionaries, or his relations with his subjects and as to how best to manage the affairs of state.

Some of the famous authors of such works are Ibn al-Muqaffā (*Kitāb al-Adab al-Iqbir*), Jāhiz (*Kitāb al-Tāj* and *Kitāb Istihqāq al-Imāmah*), Kaykā'ūs (*Qābūs Nāmā*), Nū'ām al-Mulk (*Siyāsat Nāmā*), and Al-Ghazzālī (*Na'ā'at al-Mulūk*).

Ibn al-Muqaffā (724 AD -757 AD), following the tradition of the earlier Sunni jurists, expects the Caliph/ruler to be a *Mujtabid* and to practice *Ijtihād* while implementing the *Shari'ah*. Jāhiz on the other hand, refers to numerous manners, customs and anecdotes of ancient Persian kings, and in his *Kitāb Istihqāq al-Imāmah* maintains that the *Shari'ah* changes with the changing times whereas the ruler and the government are permanent requirements. Kaykā'ūs as a ruling prince, wrote his book (compiled in 1082 AD) based on his own experiences, for the guidance of his son. In his view the ruler must be a practicing Muslim, wise, just, truthful and in effective control of his kingdom. Nū'ām al-Mulk (1018 AD-1092 AD) had served as Chief Minister of two Seljuq Sultans namely, Alp Arslān and Malik Shāh. He, like Kaykā'ūs, also enumerates the essential requirements in a Muslim king and expects him to conduct himself as an absolute monarch but within the boundaries of the *Shari'ah*. Since he lays emphasis on justice, Nū'ām al-Mulk wants the ruler to pay special attention to the establishment of a pious and unapproachable judiciary. He advises against women having any influence in the court, is against employing non-Muslims on key posts particularly when educated Muslims were unemployed, and finally desires that the ruler must maintain an intelligence service in order to know as to what was happening in the kingdom although spying has been specifically disapproved by the Qur'an.

Al-Ghazzālī, who is essentially a religious thinker, discusses in his book (compiled in 1111 AD) as to what spiritual beliefs a Muslim ruler must hold

and on what ethical principles he should act. He was making an effort to reconcile his ideals with the existing political reality, but his attempt made him land into numerous inconsistencies. For instance, according to his conviction the Caliphate is an indispensable institution on the basis of a generally accepted Consensus of the Community (*Ijma'*), and its establishment is imperative for the maintenance of a proper religio-political order. But in *Na'Az'at al-Muluk* he preaches that kings are appointed by God who sends them to protect men from one another just as He sent prophets to guide men aright. Therefore he has no hesitation in maintaining that the Sultan is God's shadow on earth. He argues: "To dispute with kings is improper, and to hate them is wrong; for God on high has commanded: Obey God and obey the Prophet and those among you who hold authority - which means obey God and the prophets and your princes. Everybody to whom God has given religion must therefore love and obey kings".⁵⁷

It is interesting to note that when Caliph 'Umar was called the "Caliph of God", he refused to accept this title for the reason that in the Qur'an God had specifically called David as His Successor (*Khalifah*) on Earth. However with the passage of time a stage had arrived when a theologian of the stature of Al-Ghazzali would regard every king having been appointed by God to protect mankind and therefore he had to be considered as "God's Shadow on Earth".

Again Al-Ghazzali who attaches so much importance to the established 'Abbasid Caliphate, does not care to refer even to the theoretically accepted terms of contractual relationship (*bay'ah*) between the Caliph and the Muslims. He avoids discussing the main problem whether the Sultan should or should not obey the Caliph. On the contrary he wants the Sultan to fulfil the functions of the ancient Persian or Sasanid kings besides following the practice of the old caliphs. But for the subjects, Al-Ghazzali considers that abject obedience to the ruler is a form of worship of God.

To sum up, although the moralists attempted to keep the absolute monarchy within the confines of the *Shari'ah*, in reality their counsel, as men of affairs, was based on political expediency, and this is the only criterion with which the entire mirror literature can be judged.

PHILOSOPHERS.

Generally speaking the Muslim thinkers endeavoured to interpret Islam

in the light of Greek philosophy. Therefore their political thought was greatly influenced by the teachings of Plato and Aristotle. They agreed with Plato that Law was the only real foundation of a state. Accordingly they maintained that if a state was based exclusively on the *Shari'ah* and upheld its supremacy, it was truly "Islamic". On the other hand, if in a state the *Shari'ah* was not enforced or it was made to compete with man-made laws, then it would not be an Islamic state but a state founded on "Power" (*Mulk*). They also believed that the deeper meanings of the *Shari'ah* could only be understood through philosophy.

It may be useful to discuss here the views of at least three Muslim philosophers, namely Al-Fārābī (868 AD -950 AD), Ibn Sīnā (980 AD -1037 AD), and Ibn Rushd (1126 AD -1198 AD), before making an assessment of the ideas of Ibn Khaldūn (1332 AD -1406 AD), who can neither be considered as a jurist, nor a moralist, nor a philosopher, but who as a political scientist with his empirical approach, forms a category of his own.⁵⁸

Al-Fārābī has been generally accepted as the first Muslim political thinker. Although his thought was influenced by the ideas of Plato and Aristotle, he made his own interesting additions to them. Al-Fārābī, like his Greek masters, was concerned with the question as to what was the ultimate aim of man and his conclusion like them was "to achieve happiness". But according to him, complete "happiness" could only be achieved by man if he led his life in accordance with the dictates of the *Shari'ah*. Next, man in isolation could not attain "Happiness" or "Perfection". He had to form a political association with other men for realising these ideals. Therefore the establishment of a state was necessary for man could only achieve "happiness" in a community through helping one another. So in his view the ideal state was that which provided facilities to its citizens for realising the two-fold concept of "happiness" as envisaged by Islam i.e., well being in this world and preparation for achieving happiness in the hereafter.

According to Al-Fārābī, the ideal state was ideal only if it was governed initially by the Prophet-Lawgiver-Philosopher-Imām. In other words the perfect state was the one which was ruled by the Holy Prophet himself as Imām, as he was in direct communion with God, Whose Law was revealed upon him, and he had the capability of understanding its deeper meanings as a philosopher. This theory of Al-Fārābī can only be understood if we accept his views respecting "Prophecy". He further believed that those who lived in

the state of Medina ruled by the Holy Prophet attained happiness and excellence or realised their true destiny. Since the Holy Prophet was the “Ultimate Interpreter of Law” (*Imām al-Muḥṭlaq*), he was the ideal ruler of the “Ideal State” (*Al-Madīnah al-Fāūlah*).

Since it was virtually impossible to realise the ideal or perfect state in the absence of the Prophetic-Lawgiver- Imām, Al-Fārābī enumerates different types of imperfect states which were contrary to his concept of a perfect state. Some of these imperfect states have been picked up from the writings of Plato, but the other varieties are the product of his own speculation. These states include: One concentrating only on providing basic necessities (*al-ūarūriyāt*); Vile/Despicable state (*al-Shawah*); Tyrannical state (*al-Tagballub*); Democratic state (*al-Jamā‘iyyah*); Rouge/Hypocritical state (*al-Fāsiqah*); Failed state (*al-Mubaddalah*); Erroneous state (*al-ḡallah*) etc. However, he regards all imperfect states as “*Jābiliyyah*” (absence of wisdom/knowledge to follow the right path), and therefore the inhabitants of such states could never achieve authentic “happiness”.

According to Al-Fārābī, all imperfect states emerge out of a false perception of religion or due to corrupt convictions. But it is interesting to note that he regards “democratic” state (*Madīnah al-Jamā‘iyyah*) closest to his perception of the ideal or perfect state. Perhaps he had in his mind the republican era of the Rightly Guided Caliphs which immediately followed the ideal leadership of the Prophet-Imām. But again when he maintains that it is from a democratic state that most of the “*Jābiliyyah*” states emerge, one cannot help deducing that at the back of his mind was the transformation of the republican order into an absolute monarchy of different forms. Obviously Al-Fārābī had a very deep perception of Islamic history, and in the course of the evolution of his political thought, whatever be the nature of the influence of Greek philosophy, he kept an eye on the historical experience of the Muslim community.

In Ibn Sīnā’s political philosophy one notices the amalgamation of three elements i.e., the Greek ideas, the improvements made thereon by Al-Fārābī, and the orthodox theories of the Caliphate as advanced by the jurists. Ibn Sīnā, like Al-Fārābī and the Greek thinkers, believes that the ultimate object of man is to realise “happiness”. He is also convinced that a state founded on the *Sharī‘ah* revealed to the Prophetic-Lawgiver was superior to the one founded on “Power” (*Mulk*).

As for the institution of Caliphate, Ibn Sīnā holds the opinion that the Caliph, who is expected to be well-versed in the *Shari'ah*, must be obeyed because he is the successor of the Prophetic-Lawgiver. He describes the same qualifications and duties of the Caliph as enumerated by the jurists. However he adds that the Caliph should be elected by the Muslim community, and if the electors made a wrong choice, then they would cease to be Muslims and become *Kāfirs* (unbelievers).

There takes place a major departure on the part of Ibn Sīnā from the jurists when he advances the view that the usurper (*mutaghalib*) must be fought against and if possible put to death. He maintains that those citizens who, despite having means, decline to act in this manner, must be punished. According to Ibn Sīnā the act of slaying a usurper is most pleasing to God. In this respect Ibn Sīnā's position is rather unique. But unfortunately there is an inconsistency in his thought. He argues that if a weak and incompetent Caliph is replaced by a strong and intelligent rebel, then the citizens should acknowledge the claim of the rebel if he was otherwise fit to hold the office. Evidently Ibn Sīnā is prepared to alter his earlier rigid stand in favour of an authority based on power plus intelligence. What he is trying to drive at is that a powerful and intelligent but less virtuous usurper should be preferred to a weak and incompetent but pious Caliph.

Ibn Sīnā also draws a line between religious obligations (*Tbādāt*) and worldly affairs (*Mu'āmalāt*). He contends that it is necessary to perform religious obligations (*Tbādāt*) because these are of general benefit to each member of the Muslim community. But he emphasises that the Imām must be primarily concerned with the worldly affairs (*Mu'āmalāt*) of the citizens. He should regulate the inter-human relations through such legislation that protects life, property and transactions of the citizens. In this connection Ibn Sīnā recommends that the *Shari'ah* should be enforced and its opponents should be eliminated from the state. According to Ibn Sīnā the two-fold concept of "happiness" i.e., the well being of man in this world and to prepare him for realising bliss in the hereafter, is guaranteed by adherence to the *Shari'ah*.

In Ibn Rushd one comes across the same idea again that man cannot attain "happiness" or perfection in isolation. He must establish a political relationship with others, as he cannot survive without a state. Furthermore since a just state has to be based on Law, the ideal state is the one that is

founded on the Divinely Revealed Law, and that it is only in such a state that man can realise authentic “happiness” or highest perfection. The constitution of the ideal state is the *Shari‘ah*, and since the philosopher alone has the capability of understanding its hidden meanings and interpreting it, he has to play a very important role in the politics of the ideal state. It is interesting to note that although Ibn Rushd himself was a theologian as well as a jurist of the Mālikī school who held office as *Qāḍī* of Cordoba, he considered the philosophers as more competent than the theologians (Ulema) as well as the jurists to understand and interpret the *Shari‘ah*.

Ibn Rushd maintains that with the end of the era of the Rightly Guided Caliphs, the state in Islam ceased to be the ideal state and was transformed into a “*Mulk*” (Power State). Thereafter from “*Mulk*” different forms of imperfect states had been emerging in the history of Islam. In his view the *Shari‘ah* is perfectly capable of providing an opportunity for the establishment of the ideal state. But the weaknesses in human character always lead to the creation of imperfections in the states. Hence it has become virtually impossible to realise the ideal of a state based purely on the *Shari‘ah*.

Ibn Rushd considers the Caliph as identical to Plato’s philosopher-king. But he does not agree with Al-Fārābī that the ideal ruler could only be the Prophet- Imām, and that real “happiness” was only achieved by those citizens who lived in the ideal state governed by the Prophetic-Lawgiver-Imām. Since he believed in the extinction of prophecy after the death of the Holy Prophet, he argued that the ideal state which existed during the times of the Holy Prophet could not be recreated. However the imperfect states could endeavour to come as close to that ideal as possible.

Ibn Khaldūn⁵⁹ draws a line between the state founded exclusively on the *Shari‘ah* (*siyāsah dīniyyah*) and the state founded on rational laws (*siyāsah ‘aqliyyah*). His view of history is mainly based on his concept of “*‘A‘ābiyyah*” which means: a group’s (or dynasty’s) claim to rule based on eminence acquired through collective achievement, strength of will, and striking power. According to this theory, so long as the “*‘A‘ābiyyah*” of a group (e.g., the tribe of Quraysh) or a dynasty (e.g., the Seljuq) does not show signs of decline, it retains its power over the state. But with its fall, the group or dynasty is eliminated and some other group or dynasty with a fresh “*‘A‘ābiyyah*” takes over.

In Ibn Khaldūn's times most of the existing Muslim states were power-states which in his terminology were "states based on man-made laws". He argues that the Holy Prophet was the Lawgiver- Imām who knitted the Muslim community together under the *Shari'ah*, the supremacy of which was acknowledged throughout the era of the Rightly Guided Caliphs. But thereafter owing to the decline of religious motivation, the Caliphate was transformed into *Mulk* (power-state) which was governed mainly through the laws formulated by human reason (*siyāsah 'aqliyyah*) although it was claimed that their original source was the *Shari'ah*.

Ibn Khaldūn also discussed the significance and importance of the Caliphate as a religio-political institution, and in this respect he agreed with Al-Māwardī that the Caliph should protect the religion of Islam and administer the state. But in his times the Caliphate had only survived as a purely religious institution at Cairo and the Caliph had long ceased to have any say in the administrative or political matters.

However, as a pragmatist, Ibn Khaldūn was convinced that even *Mulk* (power-state) through its man-made laws could work for the welfare of its citizens, although he recommended that *Mulk* should not break its links with the *Shari'ah* as *Mulk* had originally emerged from the Caliphate. Thus while acknowledging the *Shari'ah*'s theoretical importance, Ibn Khaldūn accepted the state as it was and held that a "mixed" state which was administered partly in accordance with the *Shari'ah* and partly with the "'aqliyyah" (man-made) laws could serve its citizens. In other words even a Muslim state administered exclusively through laws formulated by human reason could work for the well being of its citizens. This position is different from that of the jurists and philosophers who laid emphasis on maintaining the purity of the *Shari'ah* in the state.

CONCLUSION

In the light of what has been discussed above, it is evident that what makes a Muslim state "Islamic" is not its constitution or the political system it adopts, but the implementation of those laws which are derived exclusively from the *Shari'ah*. Islam is indifferent to or unconcerned with the political order so long as the wielder of power (legitimate or illegitimate) maintains the supremacy of the *Shari'ah* in the state. Mīthāq al-Madīnah and the republican political systems introduced by the Rightly Guided Caliphs, had no spiritual

or religious significance but were social contracts of different varieties. However, some jurists like Shāh Walī Ullāh include political system also as part of the *Shari'ah* and maintain that under the *Shari'ah* only three modes have been approved whereby the Caliphate (Head of the State) can be constituted and these are: election, nomination, and usurpation.⁶⁰ The conventional Fiqh grants legitimacy even to usurpation as one of the modes but with the condition that the usurper undertakes to enforce the *Shari'ah*. Therefore according to a majority of the jurists, moralists and philosophers the real Islamic state is only that which is administered under the pure *Shari'ah* laws, and if in a Muslim state the *Shari'ah* laws are made to compete or stand side by side with the man-made laws (or it is administered exclusively under the man-made laws), then it is not an Islamic state, but would be categorised as power-state (*Mulk*). According to this criterion, only the state governed by the Prophetic-Lawgiver-Imām and subsequently by the Rightly Guided Caliphs (who were themselves *Mujtahids*) was truly Islamic. Thereafter the state in Islam was transformed into different forms of “*Mulk*” (Power-state as opposed to Islamic state), brought into being through hereditary/dynastic succession, coercion or conquest or through any other lawful or unlawful means, and the claim was advanced that a power-state was perfectly competent to enforce the *Shari'ah*. Most of the power states in the Muslims world had been governed by “Mixed” laws (i.e., some *Shari'ah* laws and other man-made laws). Man-made laws were usually enforced through a royal decree or ordinance (*Farmān*), and possibly as sovereign acts on the part of the wielder of power.

Another important feature which should be noted is that the jurists while maintaining the supremacy of the *Shari'ah*, interpreted it, particularly in respect of the worldly matters (*Mu'āmalāt*), through the mechanism of “*Ijtihād*”, in accordance with the needs and requirements of the changing times. They kept the *Shari'ah* mobile by providing various innovative interpretations and did not permit it to become static. The *Shari'ah* continued to remain one but its numerous interpretations led to the formation of different schools of Fiqh in the Muslim world.

During the republican phase of the Rightly Guided Caliphs, “*bay'ah*” had meant a contract between every individual citizen and a candidate for the office of the Caliphate the candidate when appointed Caliph shall govern in accordance with the laws of the *Shari'ah*.

The Muslim succeeded in building a great empire and a magnificent civilisation. But the cultural, philosophic and scientific progress achieved through centuries of labour was arrested due to the growth of irrational orthodoxy and fanaticism. While Arabic literature on philosophy and empirical sciences was being translated into Latin and Europe was moving out of the dark ages to an age of enlightenment, Muslims were burning their books of knowledge in the cross-roads of Cordoba and Baghdad. Their civilisation collapsed also owing to the sectarian differences between the Shī'ite and the Sunni when both Khawarzm and Baghdad were destroyed at the hands of the Mongols. Muhammad Iqbal has correctly observed:

“I consider it a great loss that the progress of Islam as a conquering Faith stultified the growth of those germs of an economic and democratic organisation of society which I find scattered up and down the pages of the Qur'ān and the Tradition of the Prophet.”⁶¹

The modern Muslim, effected and stimulated by the new Western ideas like individual freedom, nationalism, patriotism, secularism, constitutionalism, humanism, social justice etc. disseminated in the Muslim world, is determined to reinterpret and rediscover the dynamic, progressive and forward-looking spirit of Islam. However the question that arises in his mind is as to whether the writings of the jurists and philosophers of the past can provide any guidance to the Muslims of today in the community to realise the humanistic, socialistic or egalitarian ideals of Islam.

According to Al-Fārābī the adoption of democracy (*al-madīnah al-Jamā'iyyah*) as a political system in a state can equip it with such qualities that would bring it closest to his concept of the ideal or perfect state, provided it does not degenerate into autocracy or despotism. On the other hand, Ibn Khaldūn in his “*Muqaddamah*”, while acknowledging the theoretical supremacy of the *Shari'ah*, preaches that a Muslim power-state, administered under “mixed” laws (or even exclusively under man-made laws), can work for the betterment of its citizens because all man-made laws which are enforced for the betterment of its citizens because all man-made laws which are enforced for the well being of the citizens are of have to be derived from the fountain-head of the *Shari'ah*.

This implies that there is no distinction between the spiritual and the secular in Islam, because all man-made laws implemented in the state with

the intention to benefit the community should be deemed to emerge from the *Shari'ah* or, to put it in another way, the *Shari'ah* would not or could not be opposed to them. It is interesting to note that almost five centuries after Ibn Khaldūn, Muhammad Iqbal arrived at the same conclusion when he proclaimed:

“The Ultimate Reality, according to the Qur’ān, is spiritual, and its life consists in its temporal activity. The spirit finds its opportunities in the natural, the material, and the secular. All that is secular is therefore sacred in the roots of its being”.⁶²

Notes and References

1. These Traditions are well known and quoted by many scholars. For instance see *The Caliphate* by T.W. Arnold p. 184 etc.
2. For English translation of Mīthāq al-Madīnah (The Constitution of Medina) see, Montgomery Watt, *Muhammad at Medina*, 1962 Ed. pp. 221-225.
3. Ibn IsĀq’s *Sīrat Rasūl Allāh* trans. as *The Life of Muhammad* by A. Guillaume 9th Pak. Ed. 1990 pp. 504-507; *ñāriḳh i ñabari* vol. 1 (*Sīrat al-Nabi*) Urdu trans. Nafis Academy Karachi 1967 Ed. Pp. 335-339.
4. *Muhammad at Medina*, op.cit. Pp. 51-52.
5. SuyyūÇī’s *Tāriḳh al-Khulafā’* Urdu trans. by Shabbīr AĀmad AnĀārī Pp. 9,10.
6. *Kitāb al-Tanbīh wa ‘l-Asbrāf* by Al -Mas‘ūdī Pp. 235-36 etc.
7. *The Caliphate* by T.W. Arnold Pp. 45-50.
8. *Introduction to Islam*, Pp. 110,111.
9. *ñabari*’s source of information is Waqadī. See *ñāriḳh i ñabari* vol. 1 (*Sīrat al-Nabi*) vol. 1 Urdu trans. p.527.
10. *Introduction to Islam*, p. 111.
11. Ibn IsĀq’s *Sīrat Rasūl Allāh* trans. as *The Life of Muhammad* by A. Guillaume 9th Pak. Ed. 1990 pp. 504-507; *ñāriḳh i ñabari* vol. 1 (*Sīrat al-Nabi*) Urdu trans. Nafis Academy Karachi 1967 Ed. Pp. 529-535

12. *ñāriḳḳh i ñābarī*, vol. 1 p.535.
13. Ameer ‘Alī’s *A Short History of the Saracens* 1951 Ed. pp. 21,22; Also see *ñāriḳḳh i ñābarī*, vol. 1 p. 579; Ibn Is‘āq’s *Sirat Rasūl Allāh* p. 687.
14. *ñāriḳḳh i ñābarī*, collected vols. 2&3 Urdu trans. 1977 Ed. pp. 439, 441-479, 505.
15. *Ibid.*, vol. 3 p. 27; *The Orient under the Caliphs* p. 19.
16. *ñāriḳḳh i ñābarī*, vol. 3 pp. 39,40.
17. *Ibid.*, p. 40.
18. *Ibid.*, p.199.
19. *Kitāb al-Kāmil* of al-Mubarrad ed. by W. Wright (Chapter on Khawāraj) pp. 527-600; Ibn Khaldūn’s *Muqaddamah* pp. 196-202; *Sociology of Islam* by R. Levy vol. 1 pp. 301-304; *The Caliphate* by T.W. Arnold pp. 148-189; *A Literary History of the Arabs* by R. A. Nicholson, pp. 207-220; *The Development of Muslim Theology* etc. by D. B. Macdonald pp. 7-63.
20. *A Muslim Commentary on the Universal Declaration of Human Rights* by SulḒān ‘Aussain Tābindeh (*Nai‘ar Madhhabī be I‘lāniya ‘Anqūq al-Bashar*) English trans. F.J. Goulding 1970 Ed. pp. 31,32.
21. Shiblī’s *Fārūq i A‘iam*, pp. 254-256.
22. *Ibid.*, pp. 448-450, 478,479.
23. *Quami Digest Fārūq i A‘iam* Number, March, 1983 Article Dr. M. ‘Aamīdullah p. 28.
24. For an interesting discussion on this aspect of the Qur’ānic concept of “Necessity” see Begum Nusrat Bhutto vs. Chief of Army Staff etc. 1977 P.L.D. Supreme Court pp. 724-727.
25. *A Digest of Mubammadan Law* by Neil B.E. Baillie 1957 Ed. pp. 733,734.
26. *Fārūq i A‘iam*, op. cit. pp. 395,396, 518.
27. *Ibid.*, pp. 345,346.
28. *Ibid.*, pp.179,181.

29. *A Short History of the Saracens*, p.52.
30. *Ibid.*, p.54.
31. SuyyūÇī's *Tārīkh al-Khulafā'* Urdu trans. by Shabbīr AÁmad AnÄāri p.224; English trans. by S.H. Jarrett pp. 197,199-209.
32. *Muhammadan Dynasties* by S. Lane-Pool p.20.
33. *The Damascus Chronicle of the Crusades* trans. by H. A. R. Gibb pp. 22,23,34.
34. *Muhammadan Dynasties*, p. 36.
35. Al-Bīrūnī's *Chronology of Ancient Nations* trans. by E. Sachau, pp. 129,131.
36. R. Levy, *A Baghdad Chronicle*, p. 188.
37. *Chabār Maqālah*, trans. by E.G. Browne p. 11.
38. *Siyāsat Nāmā*, pp. 5,42,43.
39. Barthold's *Turkistan Down to the Mongol Invasion* trans. by H. A. R. Gibb, pp. 346,347.
40. *Ibid.*, pp. 373-375.
41. Barthold's "Studien uber Kalif und Sultan", trans. by C. H. Becker. *Der Islam*, 1916. pp. 352, 364-374.
42. Barthold's *Musalaman Culture*, trans. by S. Suharwardy p. 69.
43. *A Literary History of Persia* by E.G. Browne, vol. 3, pp.40-61.
44. Barthold's "Studien uber Kalif und Sultan", pp. 353,374-386.
45. *Ibid.*, pp. 352,354-355.
46. *AÁkām al-SulÇāniyyah*, pp. 3; also see Ibn Khaldūn's *Muqqaddamah*, p. 190,191.
47. *AÁkām al-SulÇāniyyah*, p. 4,5.
48. *Ibid.*, pp. 12,13,18; also see *Muqqaddamah*, pp. 210-218.
49. *AÁkām al-SulÇāniyyah*, p. 23-32.
50. *Muqqaddamah*, p. 237.

51. *AĀkām al-Sulḥāniyyah*, pp. 47-57; also see Von Kremer's *History of Islamic Civilisation*, English trans. pp. 242-261.
52. *Kitāb al-Iqtī'ād fī 'l-I'tiqād*, pp. 95,96.
53. *Kitāb al-Mustaġharī*, pp. 83,92.
54. *LĀyā al-'Ulūm al-Dīn* vol. 2 p. 124; *The Sunni Theory of the Caliphate* by H. A. R. Gibb (Archive Oriental vol. 3 9948) pp. 401-410; "Al-Ghazzālī's Theory of Islamic Government" *The Muslim World*, July 1955, pp. 229-241.
55. *TaĀrīr al-AĀkām fī-Tadbīr abl al-Islām* ed. and trans. by Kofler in *Islamica* vol. VI pp. 349-414 and Vol. VII pp. 1-64.
56. *Kitāb al-Siyāsah al-Shar'yyah*, pp. 40,56,63,169,170.
57. *NaĀi'āt al-Mulūk* (Counsel for Kings) English trans. by F. R. C. Bagley ed. 1964, pp. 45,46. English trans. of Kābūs Nāmā and Siyāsat Nāmā can also be examined.
58. For a detailed study three works of Al-Fārābī can be consulted namely, *al-Madīna al-Fā'ilah*, *Kitāb Siyāsah Madaniyyah*, and *Kitāb TaĀĀl al-Sa'ādah*. For a further study of Ibn Sīnā's political thought the last two chapters of his *Kitāb al-Shifā* are recommended. As for Ibn Rushd, his relevant works are *TaĀāfah al-TaĀāfah*, *FaĀl al-Miqāl*, *ḥamimah*, and *Manābij*. For this portion of my study I have also relied upon Rosenthal's *Political Thought in Medieval Islam* pp. 122-157, 175-209; *Studies of Muslim Political Thought and Administration* by H. K. Sherwani pub. Sh. Muhammad Ashraf, pp. 58-86, 135-167, 168-184, 185-203; and M. Āamīdullah's *Introduction to Islam*, pp. 105-119.
59. Ibn Khaldūn's *Muqqaddamah* is now available in Urdu translation as well as English translation by Erwin I. J. Rosenthal.
60. *Āujjat Ullāh al-Bāligah* Urdu trans. by Maulana Abdur Rahim, 1962 Ed., vol. 2, p. 607.
61. *Thoughts and Reflections of Iqbal*, ed. by S. A. Wahid p. 100.
62. *The Reconstruction of Religious Thought in Islam*, IAP, 1989, p. 123.