Chapter 5

Maulana Mawdudi’s Views on the Executive, the Legislature and the Judiciary

In the preceding chapters we have discussed the concept of God, His sovereignty, vicegerency of man and the supremacy of Shariah commandments which are the basic ingredients of an Islamic state as explained by Maulana Mawdudi. The question which we need to discuss here is what is the scope of an Islamic state? What activities will it perform? And what are its limitations? According to Mawdudi the state is a vicegerent of God and accepts His de-jure sovereignty, its scope and activities are restricted within the limits laid down by God. Therefore, there is no scope to infringe or over step them. The Quran therefore, says,

“These are the limits ordained by God; so do not transgress them.

If any do transgress the limits ordained by God, such persons are the unjust”.¹

According to Mawdudi the important components of the Islamic state are the executive, the legislature and the judiciary. It is a known fact that during the times of Prophet Muhammad and the righteous caliphs these offices did not function as separate bodies of the state, however, they worked independently. Mawdudi writes that all aspects of Islamic state are subservient to the Quran and the

¹ 2:229. See also 2: 187, 4:13, 65:1.
Sunnah, including the executive, the legislature and the judiciary. He quotes the following Quranic verse to substantiate his argument.

“O you who believe, obey Allah and obey His Messenger and those from among yourselves who hold authority; then if there is any dispute between you concerning any matter, refer it to Allah and His Messenger, if you (really) believe in Allah and the Last Day. This is the best course (in itself) and better as regards the result”.  

Mawdudi, writes that this verse is the corner stone of the entire religious, social and political structure of Islam and the very clause of the constitution of the Islamic state. This verse elucidate five constitutional points which are

1) That Allah and His Messenger must be given priority to every other obedience.

2) That obedience to those who are in authority is subject to the obedience to Allah and His Messenger.

3) That the Head of the state must be from amongst the believers.

\[2 \text{ 4:59.}\]
4) That it is possible for the people to differ with the government and its rules.

5) That in case of dispute the final authority to decide between them is the Law of Allah and His Messenger.³

It is therefore, essential to discuss what are the powers and the functions of the different organs of the state and their respective fields of action. The members of the parliament, i.e., the Ahle- hal wal aqd will elect the head of the state and will assists and guide the Amir. All adult men and women who are the citizens of an Islamic state who are entitle to vote to elect the Amir.⁴ The Amir can remain in his office till he enjoys the confidence of the people, and will resign when he loses their confidence.

Maulana Mawdudi, writes that after the election of the head of the state, the important issue is the election of the consultative assembly or the parliament (Majlis-i Shura). Mawdudi writes it is wrongly inferred that during the period of the righteous caliphs, the members of the consultative body were not elected through an organised election, therefore, there is no place for election in Islam.⁵ Mawdudi explains that this is a wrong assumption. The holy prophet himself invariably consulted his senior companions in such matters when definite injunctions were not available in the Quran. Even

⁴ Islami Riyasat, p. 328.
before his migration to Madina two kinds of people had become the members of the consultative body, i.e., his early associates and those who subsequently became prominent due to their sacrifices, insight and ability. Then the immigrants, early converts to Islam from Madina and his senior companions constitute the body called Ahl-i hal wal aqd, who were entitle to take collective decisions in all important matters which related to the Muslim ummah.⁶

It can, therefore, be inferred that prophet Muhammad himself and the righteous caliphs consulted only those persons who enjoyed the confidence of the masses and not those who were hand picked persons. Two more questions, writes Mawdudi, need to be answered. The first relates to the composition of the Ahl-i hal wal aqd from the people of Madina only and the second relates to the general election. He explains that Islamic state was not a mere national state, it was an ideological state in which ethically and morally sound individual participated to create an ideal state. Therefore, the load center of all devotion was the individual who had initiated and then perfected the revolution. Regarding the general election, he writes that in those prevailing conditions, holding general election in an area extending from Afghanistan to North Africa was practically impossible. After having explained the election of the righteous caliphs, the consultative nature of the Islamic state, Mawdudi informs that by no means in Islam there is any provision to derail the process of general election for the members of the parliament which in fact constitute the consultative body of the Islamic state.⁷

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⁶ Islamic Law and Constitution, pp. 236-238.
⁷ Islamic Law and Constitution, pp. 238-239. See also Khilaf -wo Mulukiyat, p. 344, Islami Riyasat, pp. 343-344, Mawdudi says that there is no hard and fast rules in the Quran and the Sunnah for the method of election. Therefore, the present method of election is permissible provided it shall be free from all corrupt and immoral practices.
Maulana Mawdudi raises yet another question which is what shall be the form and nature of government of an Islamic state? He writes that if we carefully examine the conventions of the caliphs we will notice that the Amir was the only person to whom obedience and loyalty are enjoined upon the people, because the people have reposed their confidence in him. The status of the Amir, therefore, is entirely different from that of the status of the British monarch, or the French president, the British prime minister or the American president. The Amir of the Islamic state is not only the president but also the prime minister and personally attend the parliament itself and presides over all its sitting. Takes parts in all discussions and was responsible not only for his own acts and opinions but for all the decisions of his government. In his parliament there is neither any specific government party nor any specific opposition party, because the whole parliament was his party as long as he remain steadfast to the Shariah. But if he deviated from it, not only he but his whole party turned into an opposition, because each member of the parliament enjoyed full freedom to vote against him. Therefore, the Amir and the members of parliament had to work in complete cooperation and harmony and the question of any body resigning in protest never arose at all.  

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The *Amir* or the caliph was not only answerable to the parliament but also to all the people for all his public, private and personal conduct. The general proclamation of the *Amir* of the Islamic state was

“Assists me when I act rightly; but if I go wrong put me on the right path. Obey me as long as I remain loyal to Allah and His prophet; but if I disobey Allah and His prophet, then none is under the slightest obligation to accord obedience to me”.  

The Islamic form of government cannot be identified with any modern form of government, because the Islamic state stands in the fullest accord with the ideology of Islam. It is, therefore, our ideal too. According to Mawdudi this can be achieved only when the society has been already developed in accordance with the revolutionary teachings of Islam. 

In an Islamic state every citizen has the right to criticize the head of the state and the government. The executive is required to nominate governors, magistrates, commander in chief of the army and ministers to the various department of the Islamic state. It was the duty of the *Amir* to create suitable condition for the implementation of the sovereign law.

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According to Mawdudi the person who is to elected as the head of the state must posses the qualities to shoulder the responsibilities, therefore, the Quran says,

“Allah command you to deliver trust to those worthy of them”.\(^\text{12}\)

In an Islamic state, the *Amir* must be a man of high character. The head of the state according to Mawdudi must be a believer and a male member. He must be God fearing, virtuous, honest, trustworthy, educated, wise and intellectually fit to administer the state. He shall not be unjust licentious, forgetful God or transgressor of divine limits. He should not desire for or remain eager to acquire any post.\(^\text{13}\)

In an Islamic state the election of the head depends entirely on the will of the general public and no one has the right to impose himself. No clan or no class has the monopoly to this office. The election must take place with the free will of the Muslim masses without any coercion or force. According to Mawdudi Islam does not lay any restrictions on the mechanism in the selection of the head of the state. It only insists that a method must be designed to determine as to who enjoy the confidence of the masses.\(^\text{14}\)

Mawdudi insists the power of the executive shall be within the limits of the law of God and his prophet. No order can be issued nor

\(^{12}\) 4:58.


\(^{14}\) *Islamic Law and Constitution*. All eminent scholars are unanimous of the opinion that the only proper and permissible method is that of election in which the will of the Muslim masses should expressed itself freely.
any policy put into practice which is beyond the supreme law. It is the duty of the executive to use all legitimate resources and create an Islamic environment to implement the commandments of the God and to create a just and balance society. A society which cares for the poor, the needy and the destitute.  

Legislature in an Islamic state has to frame the rules and regulation to implement the existing *nas* injunctions enshrined in the Quran and the Hadith. The legislature has no power to amend, to alter, to cancel or to bring any new law when the *nas* injunction exists. However, the legislature is fully competent to decide which interpretation to be taken into account when alternative decisions exists.  

For this purpose it is necessary that the members of the legislature shall be scholars of high merit, who posses insight into the rules and regulations of giving preference to one decision over the others. In fact they shall be legists of high rank who posses all the requisite qualifications essentially required of a jurists.  

In case if no answer is available in the existing law the legislature is required to frame the new laws within the limits laid down by the *Shariah*. The only condition shall be that the new decisions shall not be contradiction with the spirit of the Quran and the *Sunnah*.  

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16 *Islami Riyasat*, pp. 323-324. In Islamic State Legislature is not free, but has to abide by the Quran and the *Sunnah*. In the matters where clear cut injunctions are available, the legislature can not make any law or suggest any amendment. According to Mawdudi, it is not compulsory that *Amir* should be *Qurashite*. In case of controversy, referendum can be made. *Amir* should not be allowed to interfere in the judicial matters. He should not be given power to suspend the constitution and Vito power should not be given to the govt.. He should not be given extra privileges; he should be equal in the eyes of court. *Rasail wo Masalat*, vol. 1,76-83, *Islami Riyasat* pp. 331-332, 543-544  
17 For the requisite qualifications of a *Mujtahid*. See *Tafhimat*, vol. III, pp. 11-12.  
18 *Islami Riyasat*, pp. 323-324.
legists can do Ijtihad on new issues\textsuperscript{19} by taking guidance from the Quran and the Hadith, the decisions from the times of the righteous caliphs and the judgement of the Mujtahidun of the earlier age.\textsuperscript{20} Mawdudi writes that all through the medieval period Ijtihad by legists has enriched the Islamic law. Only during the last century the door of Ijtihad have remain closed but he writes that the Ijtihad is the most important instrument to meet the challenges of all ages, times and societies. It is the fundamental duty of the judiciary to decide the matters of the people as per the laws of God. That is what the holy prophet did. Therefore, those who hold the judicial positions must step into his footstep. The Quran says,

\begin{quote}
O David, We have made you the vicegerent in the earth, so rule among the people with just and don’t follow your lust.\textsuperscript{21}

Surely Allah enjoins justice, \textsuperscript{22}

And when you judge between people, judge with justice\textsuperscript{23}

(O Messenger!) We have revealed to you this Book with Truth so that you may judge between the people in accordance with what Allah has shown you. \textsuperscript{24}
\end{quote}

\textsuperscript{19} 29:69. 4:83.
\textsuperscript{20} Islami Riyasat, pp. 323-324.
\textsuperscript{21} 38:26.
\textsuperscript{22} 16:90.
\textsuperscript{23} 4:58.
\textsuperscript{24} 4:105.
Those who do not judge as per the law of God are Kafirs (unbeliever)….., Zalim (wrong doer) ….. and Fasiq (Transgressors).

The Judiciary shall remain free of any pressures or interference of the Executive. The Court shall have the Supremacy of Law. The duty of the judiciary is to give verdict in case of litigations between the people, government and its officials. The judgments shall be based upon truth and justice. It is the duty of the executive to implement the judgments. The head of the state and the common man are all equal in the eyes of Divine law. There will be no discrimination on the basis of position, power or privilege.

Mawdudi, writes that it is the fundamental duty of the court to verify the judgement before pronouncement, to check whether it is in consonance with the basic spirit of the Quran and the Hadith and Ijma or not. The Qazis were required to make independent judgement with great honesty, integrity and fear of God.

After discussing briefly the role of the executive, legislature and the judiciary, it is important to find out what exactly is the relation of these three important pillars of the government. Though there are no Quranic injunctions available to this effect but the conventions of the righteous caliphs shows that the head of the state himself use to hold the charge of all these offices. But if we carefully examine the functions of these offices it is evident that all the three

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25 Islami Riyasat, p. 327. See also 5:42-50.
functioned independently of each other and none overlapped or interfered with the functioning of the other. As Islamic history evolved over the years, this unique character of the Islamic state slowly disappeared.\textsuperscript{26}

The caliph used to appoint the \textit{Qazi} (judge), but had no right to interfere in their functioning and decisions. The caliph himself was treated on par with the common man by the judiciary. None was exempted from disposing before the judge, not even the caliph. It can be concluded that though there were no independent offices of the executive, legislature and the judiciary, yet the caliph took into confident the \textit{Ahl-i Hal wal Aqd} depended fully on the advice of the \textit{Shura} but had no powers to veto the decisions taken by these three important offices.

\textsuperscript{26} \textit{Islami Riyasat}, pp. 328-329.
Part-III
Maulana Mawdudi & Partition