Chapter 1

The Shairah Guidelines on Islamic State

The Islamic state which was established at Madinah during the lifetime of Holy Prophet Muhammad (PBUH) and the state which followed during the times of the righteous caliphs were evolved on the basis of the guidelines which were available in the Quran and which were enunciated by the Holy Prophet himself. The Muslim political theorists refer to these states as Madinat al-fazilah or the ‘Ideal City State’.

We therefore, need to examine what exactly are the guidelines of the Quran and the Sunnah based upon which was constituted the first Islamic state. If we carefully examine the Quranic verses it became clear that the Quran wants to establish a state which is positive in its approach and not negative.\(^1\) The object of the state is to prevent people from exploiting each other, to save guard their liberty and to protect its subject from foreign aggression: it aims to evolve and develop a well balanced system of social justice which has been set forth by God in His Book.\(^2\) The main object is to eradicate all evils (\textit{munkar}) and to promote all types of virtues (\textit{maroof}) and the excellence mentioned in the Quran.\(^3\)

The Quran is basically a book of ethics but it provides guidance to humanity in all aspects of life, in fact basic directions

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\(^1\) Al-Quran. 57:25. See also 22:41.
\(^2\) 57:25. See also 4:105, 5:8, 16:90, 8:60.
\(^3\) 22:41.
from the day of birth till the day of death. Of the constitutional and administrative law only basic principles have been laid down in the Quran which were practically explained and implemented by the Prophet himself. Therefore, it can be said that it is a compendium which is complete in all respect, unlike the earlier revealed books which were meant for those people, those times, those ages and those societies. The Quran being the last revealed book, and Muhammad (PBUH) being the seal of prophethood, the book had to be complete in its guidance in all respects, not for believers alone but for the entire humanity at large. Again the book had to be such that it shall remain valid for all people, all societies and all times to come and keep revealing itself as per the requirements of the times, ages and societies, which in fact is the Ijaz of the Quran. That is why God has promised to protect this book Himself.

The Shariah comprises of two parts, i.e., permanent—which is unalterable and the other flexible—and which has the potential to meet the ever increasing requirements of the time and age. The first part deals with the laws derived from nusus of the Quran, which deals with: the prohibition of the alcoholic drinks, interest (Riba), gambling, adultery, fornication, theft, marriage, divorce and inheritance etc. The flexible part of Islamic law is the result of the application of Tawil, Qiyas, Istihsan, Istislah and Ijtihad—i.e., framing rules (i.e., Ijtihad) inconformity with the spirit of Shariah. The details have been left out for the Muslims to work out in

4 3:7.
5 15:9.
accordance with the Shariah. The Ummah needs to evolve the law as per the requirements of their country, time, age and society. Its detailed injunctions are such that they can always fulfil the needs of human society in every age and every society—provided, off course, the entire scheme of life is in operation.⁶

The premises of the political philosophy of the Quran is based on the fundamental concept of universe in which the God is the creator of this universe, including man. He is the Master, Ruler, Director and Administrator of His creation.⁷ Therefore, the sovereignty of this universe cannot rest with any except God. All attributes and powers of sovereignty rest solely in Him. On the basis of this concept of the universe, the Quran asserts that the real sovereign of mankind too is God. He is the only rightful authority in human affairs, just as in all affairs of creation. No one else, be he a human or a non-human, has any right to give order or decide matter independently.⁸

In physical sphere of the universe, the sovereignty of God is established by itself regardless of whether one is willing to submit to it or not, because the Quran repeatedly says,

“The Lord of the universe is indeed the Lord of man, and this position is fully recognised by him”.⁹

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⁸ A History of Muslim Philosophy, p. 192. Abu Hanifa’s views on Sovereignty are identical with the known views of Islam, namely, (1) The true sovereign is God (2) That the prophet is to be obeyed as God’s accredited vicegerent, (3) that the Shariah, i.e., the law of God and His prophet, is the supreme law to which all must submit without demur or reservation. See M.M. Sharif, A History of Muslim Philosophy, vol. I, page. 601.
⁹ 6:164. See also 7:54, 10:31, 94:4.
“God alone has the right to decide and order. Mankind should submit to none save Him. This is the only right course”.\textsuperscript{10}

“The right to rule belongs to God alone because He is the creator”.\textsuperscript{11}

“His rule is right and just, because He alone comprehends reality and none else in a position to give unerring guidance”.\textsuperscript{12}

“He unto whom belongeth sovereignty of the Heavens and the Earth. He had taken unto Himself no son, nor hath He any partners in the sovereignty. He had created every thing and hath meted out for measures”.\textsuperscript{13}

In the light of the above verses, unshakable obedience to God without an iota of doubt is due to Him and Him alone.\textsuperscript{14} His law must be supreme. Thus there is no scope to follow once own wishes or the wishes of the others. There is no scope to transgress the limit laid down by God in all human affairs.\textsuperscript{15} The Quran also asserts that all orders and decisions in contravention of the law of God are not only wrong and unlawful but also unjust and blasphemous. All such orders are anti Islamic and abiding by such order in the negation of the faith.\textsuperscript{16}

\textsuperscript{10} 3:154. See also 12:40, 42:10.
\textsuperscript{11} 7:54.
\textsuperscript{13} 25:2.
\textsuperscript{14} 7:3, 13:37, 16:36, 39:2, 11-12, 11:18.
\textsuperscript{15} 2:229, 58:4, 59:1.
\textsuperscript{16} 4:16, 5:44-46, 50.
Prophets according to the Quran are the only source of our knowing the law of God because they are the bearers of the revelation. They are divinely authorised to explain those commandments by their words (*Hadith*), deeds (*Sunnah*) and silent approval (*Taqrir*), in one word the traditions of the holy prophet Muhammad.\(^{17}\) The holy prophet transmitted the ideology of Islam in the light of the Quranic guidance into practice, developed it into a positive social order and finally elevated it to full-fledged Islamic state. In fact his sayings, actions, deeds and even silent approvals guide us, how to ascertain the precise sense, the purpose, and the meaning of the Quranic directives. Therefore, the *Sunnah* is nothing but the practical application of the holy Quran. The law revealed by God through His prophet, constitute the supreme law of the Islamic state, because the Quran says,

“And take what the Messenger gives you and abstain from what he forbids”.\(^{18}\)

“Follow the revelations sent unto you from your Lord and do not follow the (so called) guardians other than him”. \(^{19}\)

According to the Quran the commandments of God and the prophet of Islam constitute the supreme law. Imam Shafii said, there cannot be any contradiction between the Quran and the Hadith because Hadith is nothing but the practical explanation of the Quran. Imam Shafii further said if there exist any contradiction between the

\(^{17}\) 4:64-65, 80, 115, 59:7.
\(^{18}\) 59:7.
\(^{19}\) 7:3.
two, the very purpose of sending the prophet is lost. Applying the Quranic theory of *Nasikh* and *Mansukh*, i.e., abrogating and abrogated verses, Imam Shafii, says in case of any contradiction there would be another Hadith which would be identical to the basic spirit of the Quranic verse. 20 The obedience of God can only be done through the obedience of prophet.

“Whosoever followed me, followed God”. 21

The conduct of the prophet constitutes the best exemplification and interpretation of the Divine Guidance:

“Ye have indeed in the apostle of God a beautiful pattern (of conduct)”. 22

The right form of government for mankind is one in which the state relinquishes its claim of sovereignty in favour of God and after recognising the legal supremacy of God and His Prophet, accepts the position of caliphate (Vicegerency), because the Quran says, *Inni Jailun fil arzi khalifah*. 23 The vicegerency, however, cannot be right and lawful unless it is subservient to the command of God. 24 The power of a true caliphate do not vest in any individual nor any clan, class or community, but in those who believed and do good. The Quran says,

“And we have written in the psalms after the admonition: “Our righteous servants shall inherit the land”. 25

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22 33:21.
The caliphate or vicegerency belongs to all Muslims. It is not vested in a particular group, family or class.

“Allah has promised to those among you who believe and do work righteous deeds, that He will most surely make them His vicegerents in the earth and He made the like people before them His vicegerents”. 26

Every good Muslim is fit to hold the office of the caliph. It is in this respect, Islamic caliphate distinguishes itself from kingship, and oligarchy, and theocracy.27 It is different from modern democracy, while the modern democracy is based on the principles of popular sovereignty, in the Islamic caliphate the people willingly surrender their independence to the sovereignty of God. Hence in Islam there is popular vicegerency.

The Quran lays down only broad based principles regarding different aspects of governance.

The judiciary must be impartial and independent:

“And when ye judge between man and man, that ye judge with justice”.28

The judiciary, according to Abu Yusuf must dispense justice, pure and undiluted. The judiciary should be independent and impartial because the holy prophet said,

“Give equitable punishment to the remote and the near and have no fear of reproach of the people in the enforcement of the limits set up by God”. 29

26 24:55.
28 4:58.
To punish one who is not guilty and to leave scot free who is guilty is unpardonable. There shall be no interference in the course of justice nor should any body’s recommendation, position or status shall count. The accused persons must be given a fair and regular trial and the witnesses shall be examined.\(^{30}\)

The judiciary shall remain free from every pressure and influence to adjudicate impartially. Islamic state is established for two main purposes, firstly to establish justice, equality in human affairs and secondly to harness the power and resources of the state for the welfare of the people and to eradicate all evils. The purpose of Islamic state is to enjoin the virtue and forbid the evil:

\begin{quote} 
\textit{(Muslims) are those if We give them power in the land, they establish the system of Salat and Zakat, enjoin the right and virtue and forbid wrong and evil}. \(^{31}\)
\end{quote}

All citizens, whether Muslim or non-Muslim must be guaranteed the following fundamental rights:

- Security of person\(^{32}\)
- Security of property\(^{33}\)
- Protection of honor\(^{34}\)
- Right of privacy\(^{35}\)
- The right to protect again injustice\(^{36}\)


\(^{31}\) 24:41.

\(^{32}\) 27:23.

\(^{33}\) 2:188, 4:29.

\(^{34}\) 49:11-12.

\(^{35}\) 24:27.

\(^{36}\) 4:148.
The right to enjoy what is good and forbid what is evil. This includes the right of criticism.\textsuperscript{37}

Freedom of association\textsuperscript{38}

Freedom of faith and consciousness and conscience\textsuperscript{39}

Protection against wrongfully hurting once religious susceptibility\textsuperscript{40}

Limiting the responsibility of every person only to his / her own deeds.\textsuperscript{41}

Security from action being taken against any one on false report about his / her crime.\textsuperscript{42}

The right of destitute and the needy to be provided with basic necessity of life by the state.\textsuperscript{43}

Equal treatment of all its subjects by the state without discrimination.\textsuperscript{44}

Islamic democracy is subservient to the Divine laws and exercises its authority in accordance with the injunctions of God and within limit prescribed by Him.\textsuperscript{45}

In Islamic state the status of the leader, \textit{Imam or Amir} or head of the administration is delegation of the trust by the people to him. In fact, the caliphate of the common people is concentration in him. \textit{Amir} will be selected on the basis of virtues. He is open to criticism.

\textsuperscript{37} 3:110, 5:78-79, 7:165.
\textsuperscript{38} 3:11.
\textsuperscript{39} 2:191, 256, 10:99.
\textsuperscript{40} 6:108, 29:46.
\textsuperscript{42} 4:58, 17:36, 39:6.
\textsuperscript{43} 51:19.
\textsuperscript{44} 28:4.
\textsuperscript{45} Khursheed Ahmed and Khurram Murad edt. \textit{The Islamic Way of Life}, New-Delhi, 2007, p. 31.
He must work by means of consultation (\textit{Shura}). The judiciary shall remain independent of the executive.\textsuperscript{46} The popular vicegerency or caliphate is to be translated into action through a consultative setup. The Quran says,

\begin{quote}
\textit{They manage their affairs by mutual consultations}.\textsuperscript{47}
\end{quote}

\textit{Shura} or consultation is an important pillar of Islamic way of life. \textit{Shura}, is regarded as a positive attribute of the Muslim. Therefore, the Quran enjoins the Muslims, to

\begin{quote}
\textit{Take counsel with them in the conduct of affairs}.\textsuperscript{48}
\end{quote}

Thus to ignore this Quranic concept is nothing less than illiteracy and denial to accept the path shown by God. The question then arises as to why Islam attaches so much importance to \textit{Shura}. It must be borne in mind that in matters where more than one individual is involved, decision based on individual opinion is not only incorrect but harmful, therefore, in joint affairs individual opinion is not permissible. All such person who matter shall be consulted and if there number is large at least their representatives should be involved in the debate and discussion. An individual tries to prevail only when he is keen to drive some benefit out of it or thinks very high of himself and consider other individuals as inferior. Both the qualities are mean and therefore, cannot be a part of Muslim life. It is a big responsibility to decide matters in which many are involved. God fearing men will not take any decision

\textsuperscript{46} Mawdudi, \textit{Political Theory of Islam}, p. 36.
\textsuperscript{47} 42:38.
\textsuperscript{48} 3:159.
because he realises that he is answerable to almighty God. If we pounder over these points we would realise that *Shura* is an important component of Islamic polity.\(^{49}\)

In the ethical and moral lessons which the Quran impart, *Shura* is a compulsory part of Islamic ethics. The Islamic way of life demands that any aspects of life whether it relates to wife and husband, family, tribe or society, it shall be decided through consultations. It is said that regarding the consultative set up the holy prophet said,

“*I said O! messenger of Allah! What should we do if after your demise we are confronted with a problem about which we neither find any thing in the Quran nor have any thing from you. He replied, get together the obedient (to God and His laws) people from amongst my followers and place the matter before them for consultation. Do not make decision on the opinion of a single person*”.\(^{50}\)

Regarding collective opinion Hazrat Umar reports,

“*That prophet has said, each one of you is a guardian and will be question about his wards*”.\(^{51}\)

In case if participation of all the people is not possible, then through a *majlis* or a consultative body the matter must be decided. If the matter relates to a nation, the caliph/\(amir\) must be appointed after


\(^{50}\) Hadith, *Majmu’ al-Zawaid*, vol. I, p. 178. See also *Kanzul ummal*, vol. 5, p. 112.

\(^{51}\) *Miskhat*, vol. II, *Kitab al-imara wal qaza*. Hadith No. 3514. See also *Bukhari* and *Muslim*.
consultation among the people of that nation or through a consultative body which represents the different sections of the society.⁵²

The amir, shall be elected through bai‘th and he administer the state only through consultation through trusted persons of the community and shall remain in seat until he enjoys the confidence of his people. No one, how good he may be shall aspire to be the caliph/amir. The affairs of the government should not be assigned to those who aspire for it, because the Holy Prophet said,

“By God we do not assign the affairs of our government to any one who aspires for it or is greedy in respect of it”.⁵³

No one shall impose himself as the amir or leader and aspire to run the government through tyranny or force the people to elect person in the representative bodies who are his men, and who will support him in his decisions, acts and deeds. Such a desire can emanate only from a person whose intentions are bad and who wants to keep the spirit of ‘conduct their affairs by mutual consents’, only apparently alive but kill the true spirit of this Quranic injunction.

The nature of the above mentioned Quranic verse demands,

i. In collective matters, people should have the freedom of expression. They should be kept fully informed of the decisions in different affairs. In case they notice any defect,

⁵² Regarding the issue of caliphate the views of Imam Abu Hanifa are unambiguous. He said a caliph should be chosen after consultation and in conference with the voice who are entitled to give their opinion (Ahl al-rayy). The famous reply of Imam Abu Hanifa to caliph Mansur at Peril of loosing his life would suffice to his stand regarding the appointment to the caliphal office. See A History of Muslim Philosophy, vol. I, pp. 682-683.
they should be free to revert the decision, they must have full freedom to protest and in case the decision is not reverted they must be able to remove the amir or the leader.

ii. People must select the leader out of their free will and not due to force, on payment or by means of any fraud.

iii. To guide the leader the members of the consultative bodies shall be those who enjoys the trust of the people and not those who are keen to be elected through their might, money or by any such means which shakes the trust of the people who have elected them.

iv. The members of the consultative bodies must express their views freely based on their knowledge, honesty and not due to any threat or greed.

v. Any decision of the consultative body shall be through a unanimous opinion of the body or at least through a majority opinion.

The consultative body is also required to work in the limits laid down by the Shairah, because the Quran says,

“In case of any conflict amongst you, refer it to Allah and His messenger”.\(^{54}\)

The authority shall be entrusted in the hands of those who are pious and efficient because the Quran says,

“Verily Allah commands you to make over trust to those who are trust worthy”.\(^{55}\)

\(^{54}\) 4:59.

\(^{55}\) 4:58.
“Verily the most respectable of you in the sight of Allah is one who most God fearing”. 56

Discussing the theory of *khuruj* Imam Abu Hanifa writes, the caliphate of an unjust incumbent is basically wrong and insupportable and deserved to be overthrown: the people not only have the right, but it is their duty to rise in rebellion against it. He further said that such a rebellion was not only allowed but obligatory, provided, however, if promised to replace the tyrant or transgressor by a just, virtuous, and not fizzle out in mere loss of lives and powers. 57

A caliph is not only answerable to God but also to the public. Abu Yusuf writes, that Muslims have an unquestionable right to criticise their rulers and that such criticism contributes to the good of the people and the state. Enjoining the right and forbidding the wrong is an inalienable right and a duty and its negligence in a community is an equivalent to inviting the wrath of God upon its head. 58

According to Abu Yusuf the caliph is not only required to establish the rights of God and enforce the limits prescribed by Him: to determine correctly the rights of other right holders and ensure their enjoyments of these rights: to revive the convention of virtuous rulers: check injustice and redress the grievances of the people and to make only lawful exaction from the people and expand them in lawful ways. 59

56 49:13.
Citing the duties of a Muslim citizen, Abu Yusuf writes, they have to obey the ruler, not to commit acts of disobedience and nor lift arms against them.\textsuperscript{60}

Regarding the rights of the non-Muslim subjects living in a Islamic state, following three principles are quoted on the authority of the second caliph Umar:

i) Whatever agreement is made with them has to be faithfully absorbed.

ii) The responsibility of the defence of the state does not lie in them but on Muslims alone.

iii) They should not be burdened with excessive (\textit{Jiziah}) poll-tax and land revenue.

It is also said that the poor, the blind, the old, the recluse, workers at the house worship, women and children are exempted from poll-tax: cattle of non-Muslims: none is allowed to restore to beating or inflecting other physical tortures on them for exacting the capitation.\textsuperscript{61}

Abu Yusuf disallowed the feudal system of settlement in which the government, appoints a person to collect the revenue from the farmers, because that person can exact from the farmers whatever he likes. He condemns it as the most tyrannous system that is bound to ruin the country and insists, it must be shunned at any cost. He also called it unlawful for a government to appropriate some body’s land and bestow it upon another, because a caliph is not authorised to dispossess any person, Muslim or non-Muslim, of any thing belongs to him unless a proved or valid right against him in law.\textsuperscript{62}

\textsuperscript{60} \textit{A History of Muslim Philosophy}, vol. I, p. 698.
\textsuperscript{61} \textit{A History of Muslim Philosophy}, vol. I, p. 700.
\textsuperscript{62} \textit{A History of Muslim Philosophy}, vol. I, pp. 700-701.
It is unlawful on the part of the caliph to appoint tyrant and corrupt people to the office of the state if he did so he will surely share the retribution for the wrong that they do. Caliph must appoint honest, righteous and God fearing people to the state services. Abu Yusuf further writes that the government must satisfy itself with regard to their moral characters and keep a watch on them through the department of intelligence. In case they tend to be corrupt or become cruel or cunning they shall be called to account. 63

Caliph must listen to the grievances of the people personally. He must see to it that injustice must not prevail. Must hold open courts once in a month, where every grieved person be allowed to represent his grievance. 64

According to Muslim theorists, people who are in authority must be obeyed because the holy prophet said,

“A Muslim must listen to and obey the ruler whether he approved of what is ordered or abhors it. Provided he is not ordered or abhors it. Provided he is not ordered to commit sins. In that case he should neither listen nor obey”. 65

65 Miskhat, vol. II, Hadith No. 3492, Kitab al-imara wal qaza. See also Bukhari and Muslim.