CONCLUSIONS AND SUGGESTIONS

"It is possible to cut diamond by leaf of roses but it is impossible that idiots be convinced by reasoned arguments"
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As the topic shows, the study incorporates three things:

(I) Development of Muslim Personal Law,

(II) Imarate Sharia, and the

(III) Contribution of Imarate Sharia

For the sake of convenience some important questions\(^1\) were raised. Chapter 1 dealt first among those i.e. whether an Imarat is needed for Muslims to lead the Islamic life? For this, several verses of Holy Quran were quoted. On basis thereof the conclusion is drawn that in the Quran much stress has been laid upon this. Besides this even the Traditions of Prophet Mohammad (SAW) are also to the same effect. The religious scholars have written much about the establishment of Imarat. Right from the companions of the Prophet (SAW) down to the 20th century every important religious scholar has decreed to establish it. Not only these but the study incorporates the historical development of the institution. The Indian history is witness that during the British regime several strong movements emerged to establish

\(^1\) 1) Is an Imarat needed for Muslims to lead the Islamic life? 2) Is Imarate Sharia a fit case to be cited as an example of Imarat? 3) Has Imarate Sharia done enormous works in developing, strengthening and implementing the Muslim Personal Law? 4) Are there provisions of alternative settlement in India? 5) Is Court fee charged in the Indian legal system excessive? 6) Has Imarate Sharia provided the alternative remedy? 7) Is the alternative, provided by Imarat, effective, less time consuming and upto the satisfaction of the persons concerned? 8) Is the institution of Quza necessary to dissolve the marriage? 9) Is the future of Imarate Sharia bright in India?
Khilafat, which was dissolved by the British Government in Turkey. Upon which Allama Iqbal the great poet, philosopher and eminent Islamic scholar, consoled Muslims:

"Hazaron saal nargis apne be noori pe roti hai,
Bahut mushkil se hota hai chaman main didawar paida.
Agar Osmanion pe kohe gham toota to kya gham hai,
Key khoone sad hazar anjum se hoti hai sehar paida".

Not only Islamic scholars but the Britishers have also recognized that this institution is inevitable for Muslims. For this the view of W.W. Hunter is incorporated in the study and after detail discussion it is established that Imarat is really a need for Muslims. The questionnaire\(^2\), filled up by Islamic scholars also shows that Muslims are unanimous over this. Thus it can be said that the first question is positively proved. The 2nd question was that 'Is Imarate Sharia a fit case to be cited as an example of Imarat?' For this the qualifications of Ameer described in religious books were discussed. Simultaneously, the qualifications laid down for Ameer in Imarate Sharia, under sections six to ten were analysed and compared. At the same time Ulema were also consulted through the questionnaire and opinionnaire methods. In this way it is concluded that opinion of Ulema is divided. 50% of them are of the view that Imarate Sharia is a fit case to be cited as an example. However, some minor deviations are seen in the constitution of Imarat as compared to the original source book of Islam regarding qualifications of Ameer.

\(^2\) For detail please see chapter 8 supra and appendix.
Chapter 2\textsuperscript{nd} dealt with the question of alternative system in India. After discussion it is found that it is existed theoretically as well as practically. It seems that persons are fed up with the Regular Courts and preferred the alternatives in India and abroad. The number of cases has been referred in this chapter that Allahabad High Court has held to exhaust the alternative remedy rather than exercising its writ jurisdictions given in Article 226. Thus this question is positively replied.

Chapters 3\textsuperscript{rd}-6\textsuperscript{th} along with Chapter 9\textsuperscript{th} dealt the third question, 'has Imarate Sharia done enormous works in developing and consolidating the Muslim Personal Law? It can be said that it has taken some bold steps especially in the matter of dissolution of marriage. However it has tried to establish several times that it is a Hanafi organisation, which is not appreciable. In most of the cases, it does not refer the original sources for which the \textit{Ulema} and advocates are much critics. Wherever the books are referred, the Arabic text is written in the judgments. It is influenced by local traditions also due to which the term like dower debt is used. In \textit{Bidai} form of divorce, its practice is not according to the Holy Quran and \textit{Hadith}\textsuperscript{3}. But where it has got the support of other \textit{Hanafi Alim}, it has tried to establish the \textit{Sharia} view e.g. in the matter of dissolution of marriage the book \textit{Hilatun Najiza} of Ashraf Ali Thanvi\textsuperscript{4} has supported the dissolution of marriage, on the request of wife. So it has adopted the liberal view of dissolution. But at so many places it has tried to show that where-ever there is provision of Hanafi Law that should prevail. Thus we reach at the conclusion that Imarat has done

\textsuperscript{3} As analysed by Maulana Abdul Moid (Medina University)

\textsuperscript{4} Ashraf Ali Thanvi, \textit{Hilatun Najiza} (Deoband:K.K.Azizia,1355AH)
some work to develop and consolidate the Personal Law but the provisions of Schools of thought are more sacred to it. However no decision has been made which is beyond the original sources or contrary to the views of four Imams (*Aimaee Arba*). However the rule of separation of power is not strictly followed by it. Some times the Qazi has deviated from the rules of Quza and issued the decree like *Mufti*. However *Fatawa Imarate Sharia* differentiates between two.

**Chapter 7**th talks about the charges of the court in the name of court fee. It is found that the collection of court fee is not only enough to meet out the court expenses but that is also a good source of income. As it has been discussed in chapter 2, it is really a matter of shame that the colonial lords who did not bothered to charge even to provide justice to the wronged, this system is still continued in a welfare state like ours. Several persons have suggested several measures to eradicate it. Even the Britishers opposed the court fee system but being followed by our welfare state, which seems erroneous. In this way it can be said that this question is also replied positively.

The question, has Imarate Sharia provided an effective, less time consuming and up to the satisfactions of the Muslim masses? The answer is yes. The Additional District Judge, Godda, writes in a judgment that a woman is ready to be hanged instead of defying the orders of the Qazi of Imarate Sharia. It shows as to how sacred the judgment of the Qazi is believed. It is this, which has made the Imarat effective otherwise it has got no agency to get its decisions implemented. About time the chart of the cases in chapter 2 shows that one case is decided in the Shariat Court in an average of 211 days.
while the average of the cases of Patna High Court is 3069 days. Thus the
time taken by Imarate sharia for one case is 14.542 times less than Patna High
Court.

The question 'Is the institution of Quza necessary for dissolution of
marriage'? The answer as has been given in chapter 7th is yes. Thus this
question is also positively answered. Chapter 7th also deals with the question,
'has Imarat provided the alternative remedy? The answer is supported by a
case5 where the Qazi dissolve the marriage and the matter was brought before
the Court where the woman, whose marriage was dissolved stated that after
the decision of Qazi she can't join her husband ,defying the order of Qazi,
even if she is hanged.

Thus it is clear that the Imarat has provided the alternative remedy
and according to the District Judge Godda, Bihar, it is the highest authority in
the matter of matrimonial matters and of divorce and dissolution.

Chapter 8th deals with the question, 'whether the future of Imarate
Sharia is bright? The answer is not without condition. If it follows the
principles of unity, sacrifice and service as it has been doing till now really its
future is bright. But the moment it indulges itself in the four walls of
different schools of thought, territorial boundaries and derogatory remarks for
the followers of primary sources its future will be dark.

After the discussion I would like to suggest the following things,
which may be treated as evux of the study.

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5 See chapter 2 supra.
SUGGESTIONS:

1. The establishment of *Imarat* should be expanded to all India level. For this (for *Imarat*) a movement is needed.

2. *Imarate Sharia* should unite the Muslims of Bihar under its banner. The parallel *Imarats* for Ahle Hadith and Baraelvis are not in accordance with Islamic principles of *Imarat*.

3. It should be above the different schools of thoughts. It should develop its own principles, in the light of the Holy Quran and Traditions of the Prophet (SAW).

4. The concept of dower debt should not be encouraged. It should be in conformity with the Islamic principles of dower.

5. The practice of *talaqul bidat* should be banned. The triple divorce must be treated one if made in the same sitting, as there was practice in the times of the Prophet (SAW) and Caliph Abu Baker (Raz). *Imarate Sharia* should actively support the causes of Personal Law esp. in developing and strengthening it as AIMPLB is to discuss on 29.10 2000, how to avoid *bidai* divorce.

6. The dower must be paid in relation to its purchasing power at the time of its fixation. There should be consensus amongst *Ulema* that the fixation of dower is in terms of its purchasing value rather than its face value.

7. In deciding the cases, the Quza wing of *Imarate Sharia* must mention the verses of the Holy Quran and authentic Traditions. If there are...
contradictory Traditions (as some Ulema say that there are) then there should be mention as to why any Tradition is preferred.

8. In mentioning the scholar's book the Urdu translation and explanation must be incorporated in the judgment along with the primary sources of Islamic law.

9. In deciding the issues the reference of previous cases may be made so that a unanimity be maintained.

10. The cases must be published preferably in Hindi and English also so that the Courts may also use it.

11. The Government should consider Imarate Sharia as an alternative forum under D.M.M. Act 1939 and Shariat Application Act 1937. Its decision be implemented and be recognised at par with the High Court. However the appeal may be made in the High Court for review.

12. The Imarat must review the syllabies of its educational board. That must not be in contrary to the institution of Imarat.