CHAPTER 1

HISTORICAL PERSPECTIVE

"A Lawyer without History or literature is a machine, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."

Scott Guy Mannering
All together, by the rope
Which Allah (stitches out
For you). And be not divided
Among your selves,…”

Again:

وَلَا تَكُونُوا كَالَّذِينَ قَرَفُوا وَأُخْلِفُوا مِنْ بَعْدِ مَا جَآءَهُمُ الْبَيُّنَةُ وَأَوْلَادُكُمْ لِهِمْ عَذَاءٌ عَظِيمٌ

“Be not like those
Who are divided
Amongst them selves
And fall into disputations
After receiving
Clear signs:…”

After keeping the foundation stone of *Imarat* Allah commands-

يَتَأْلِمُ الَّذِينَ عَامَّنُوا أَطْيَبُوا اللَّهَ وَأَطْيَبُوا الرَّسُولَ وَأَوَّلَ الْأُمَّةِ مِنْكُمْ

فَإِنْ تَتَنَزَّلُ عَلَىٰ مَنْ يَقُولُوْهُ إِلَى اللَّهِ وَالَّذِينَ يَعْلَمُونَ أَنَّهُمْ نُؤْمِنُنَّ بِلَلَّهِ

وَالْيَوْمِ آخَرِ ذَلِكَ حَيْرَةٌ وَأَحْسَنَ تَأْوِيلاً

“O, Ye who believe
Obey Allah, and obey the Messenger,
And those charged
With authority among you”.

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2 Ibid S3A105
3 “If you differ in any thing
Among yourselves, refer it
To Allah and his Messenger,
If you do believe in Allah
And the last day:
That is best, and most suitable
In this verse Allah commands to follow the Ameer, which is not possible without the institution of Imarat. Thus the establishment is inevitable as far as the institution of Imarat is concerned.

3. THE TRADITIONS (HADITH) AND INSTITUTION OF IMARAT:

In Tradition (Hadith), a catena of cases are there where the Prophet(SAW) has told in express words about the institution of Imarat. One companion of the Prophet (SAW) said, “O Prophet (SAW) my father is an old man; he is the chief of the people living at the water. He has requested you to appoint me as chief after him.” He replied: “The office of a chief is necessary and people must have chiefs…”

From this Hadith we can deduce that Imarat is essential for Muslim community. Again:

“One who follows Ameer follows me (the Prophet) and one who disobeys the Ameer, defies my order (of the prophet)”.

Again:

“Muslims are under duty to hear and follow the Ameer unless he order for sin”

For final determination.”
(The Holy Quran S4A59)

But there is limitation in the obedience. In a Tradition (Hadith) it is said that no obedience of any human being is permissible in the defiance of Allah (creator). In this ayat it has been guided that in case of difference one must refer the matter to the original and primary sources of Islamic law.

4 Prof. Ahmad Hasan ‘Sunan Abu Daud’ (Delhi: Kitab Bhavan, 1985) Vol. II p. 825
5 Bukhari(Arabic)(Delhi: K.K.Rashidia, 1375AH)II,1057
“One must not spend either a day or a night but with Ameer if it is possible to choose one.”

Again:

“Where there are three persons in a journey, they must choose one as an Ameer amongst themselves.”

The Hadith quoted by Ahmad bin Hambal (Rah) may also be cited where it is said—

“It is not permitted for the persons, residing on any part of the earth, where their number is three but they choose one as Ameer amongst themselves.”

The above Ahadith make the matter clear about the institution of Imarat. Now no body can take the plea of majority-minority problem. At one place apostle of Allah has told—

‘The Ameer is shield and in his shadow expedition is led. It is he who provide the protection’. In this Hadith the important things are told to be finished by the head. Where the head (Ameer) is not available the fighting battle should be avoided because of lack of leadership and command it may result into defeat. Jame Ibne Abdul Bir reports the saying

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6 Ibid. It is also reported by Ahmad bin Hambal that Prophet said "I order for five things which Allah has commanded-1)To be united. 2)To hear the Ameer. 3)To follow the Ameer. 4)To be ready for migration. 5)To make jehad.

8 Ibid. p. 52
9 Ibid. p. 57
10 Where there is no Imarat there is high chance of chaos, disorder and mismanagement, as no body is there to lead them. So the abolition of Imarat also creates the law and order problem rather than to make the Muslim masses enslaved or ruled.
of Caliph Umar (Raz) that there cannot be an Islamic life without collective life. There cannot be collective life without head (Ameer). He further says that it is also a fact that the foundation of Imarat is laid on obedience. Meaning there-by that in order to be a true Muslim or in order to lead an Islamic life, one is to establish the institution of Imarat. This thing is clearer by another Hadith\textsuperscript{11}, which says that the Muslims are ordered for five things which are commanded by Allah. Ist collective lives, 2nd hearing of commandment, 3rd follow the commandment 4th renunciation of worldly things for immigration, 5\textsuperscript{th} fighting for the sake of Allah. The Muslim who is just one span away from collective life removes the necklace of Islam from his neck. One who destroys the collective life by any means his shelter will be hell. Sahaba, asked “O Apostle of Allah if he keeps fast, performs Salat then?” Replied the apostle that inspite of his performance of Salat and keeping fast and he being considered by the people as Muslim.

In this Hadith an important aspect of Imarat is explained. Naturally one cannot follow the command in the absence of a commander or leader i.e. Ameer. So the Imarat is inevitable.

4.RELIGIOUS ELDERS AND INSTITUTION OF IMARAT:

Caliph Umar (Raz) says –

“There can not be an Islamic life without collective life. There cannot be a collective life without the institution of Imarat. And this is a fact that the foundation of Imarat is laid on obedience\textsuperscript{12}.”

\textsuperscript{11} Rehmani p 7.

\textsuperscript{12} Ibid. p. 51
It is said that Umar (Raz) was the most knowledgeable person of his time. It is he who suggested for Azan and veil for women. At many places Almighty Allah has appreciated his suggestions and verses were revealed in concurrence of his opinion. One must know that Prophet (SAW) himself told that if there was chance of continuity of Prophet hood (which is not possible) it was Umar(Raz) who would have.

Ali (Raz) the 4th Caliph saythat guidance is not possible without Ameer. It is immaterial whether he is righteous or astray. Allama Tahavi says that where there is no Muslim governance the Muslims become under obligation to choose one of them as an Ameer.

Bahuraiq a famous book of Hanafi School also contains the similar view. Raddul Mukhtar contains the view that Ameer is necessary either through election by Muslims or nominated by the non-Muslim head of the state.

Allama Ibne Taimia in Akhtiyarat writes that apostle of Allah has made it necessary to select a person as Ameer even for journey. This order is a guideline for every type of gathering as well as residential areas. Thus to choose one of them as Ameer is essential.

Allama Ibne Hajar Asqalani says, when any territory is left by Ameer due to its remoteness or the defiance of the orders of Ameer, the residents are under obligation to select any one of them as Ameer. If they fail to do so there will be irreparable damage.

13 Ibid. p. 51
14 Ibid. p. 65
15 Ibid. pp. 71-78
Allama Lakhmi Maliki says\(^\text{17}\) that people are duty bound to select one from amongst themselves as *Ameer* because it is included in enjoining what is right and forbidding what is wrong.

Allama Abul Hasan Asbahi Shafeyee also has the similar view. Shah Abdul Aziz and Abdul Hai of Lucknow have also issued the similar *fatwas* about the *Imarat*.

Thus it can be, said that the scholars are unanimous on this point that there must be an *Ameer* which is a part of Islamic tenets. This view exists from the very beginning. Till now no scholar has dissented from this opinion, that is enough to prove its necessity.

This is also clear that the *Ameer* will be chosen from the people having influence and knowledge (*Ahlul Hul Wal Aqd*)

Qazi Jamaluddin bin Zaheer was of the opinion that the place where no *Ameer* is functioning it is the responsibility of the knowledgeable and religious persons (*Ahlul Hul Wal Aqd*) to appoint one as *Ameer*\(^\text{18}\).

For institution of *Imarat* there is a *Hadith* of Abdullah Ibne Umar(Raz) that when there are three persons they are to choose one as *Ameer*. *Masnade Buzzar* (a famouns *Hadith* book) reports the sayings of Caliph Umar(Raz) that in journey where there are three persons they must choose one of them as *Ameer*. *Tibrani* also reports from Abdullah bin Masood about its necessity. Abu Daud quotes its inevitability from Abu Sayeed and Abu Huraira. When this *Imarat* is necessary in the journey and at all those places where the number is three, then for the persons residing

\(^{16}\) Ibid. p. 78  
\(^{17}\) Ibid. p. 79
either in the villages or in the cities are duty bound to select any body as Ameer.

5. HISTORICAL DEVELOPMENT AND INSTITUTION OF IMARAT:

There is clear-cut commandment of Allah to follow the instruction of Ameer. The Hadith also contains the sayings of the Prophet (SAW) and his companions regarding the importance of Ameer. So Muslims treat the institution of Imarat as the most important institution. That is why the election of Ameer was made soon after the death of Prophet (SAW). Although the dead body of the Prophet (SAW) was not kept in the grave the institution of Imarat was filled-up and Abu Bakar was elected as first Caliph. For the first time this institution was without its head and that is when Caliph Mustarshid was captured by Masood Saljuqui in 529 AH. Ibne Kaseer says that when Caliph Mustarshid was captured people of Baghdad were shocked. Public entered to the mosque and even broken the pulpit. Persons were not bothered for holding congregations in Mosque and expressed their resentment by making violent protests against the capture of their Ameer. Women were seen without scarf. The other areas followed the similar path of Baghdad. On this Malik Sanjar, the uncle of King Masood advised him to reinstate the Caliph and the Caliph was reinstated. It seems that the situation of civil war was there due to absence of Ameer.

19 Ibid. p. 80
20 Supra note 3
21 Supra notes 5–10
In India the 1st move in this direction was made in the time of Syed Ahmad Shaheed. After much consultation on 11th January 1827 Syed Ahmad Shaheed was declared as *Ameer*. But his martyrdom in 1831 made the Muslims to think about *Ameer*. The country was ruled by Britishers. The Mughal Emperor Shah Alam 2nd was attacked by Lord Lake and was forced to made a treaty –

“Shah Alam’s jurisdiction will be up to Delhi and the rest of the country will be governed by Britishers. From now the Muslims will be protected by East India Company only”.

Having seen the developments, Shah Abdul Aziz issued religious decree (fatwa) about the institution of *Imarat*. He said

"When the governance of an area falls in the hands of non Muslims, the Muslims, became under obligation to elect any body as an *Ameer* amongst themselves. If there is any nominee made by the non Muslim King, he will be incharge of the tasks assigned to the *Ameer*. Where there is no nominee, Muslims have to elect any body who is the most righteous, who will be the incharge of *Juma* prayer, *nikah* of teenagers having no guardians, protection of the property of orphans, distribution of shares of inheritors who are fighting for their shares and all of those will be made without making any interference in the political affairs of the country”.

Shah Abdul Aziz further said –

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^{21} Miftahi p. 17  
^{22} Ibid. p. 31  
^{23} Ibid. p. 36  
^{24} Ibid.
“Delhi is no more governed by Muslims. Christians are dominating over here and they destroy the mosques. No body is free for visiting Delhi and the nearby places, without the permission of the Christians. The Government of the Christians is continued from Delhi to Calcutta. The India is just like Bani Yarbaa, which was a non-Muslim country, in the Caliphate of Abu Bakar, where the performance of Idain and Juma etc was continued.”

_Raddul Mukhtar_ also contains the similar decree. So one can imagine that how the religious personalities were anxious at non establishment of the institution of _Imarat_. Any way it is said that in 1803 when the Britishers took the governance in their hands they promised to give full protection to Muslim law. Muslims were said to be free to refer their cases to the Qazis. But after 1857 Muslims were massacred and were deprived of their rights in every field like social, commercial etc. But the most important deprivation was the abolition of Quza system. There was no way to follow _Sharia_ principle in those days. W.W. Hunter comments as follows.

“One charge yet remains. The Mohammedans complain that not only has our system extruded them from the legal profession but also that by an act of the legislature, we have deprived them of the one essential functionary for the fulfillment of their domestic and religious law. Under Mohammedan Government, the Qazi unites many of the functions of a criminal, a civil and an accelestastical judge. It was to him that we chiefly

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25 Ibid
trusted to carry on the administration of justice when we first took charge of the country. Indeed so indispensable is the Qazi to the Mohammadan domestic and religious code, that the law decided that India would continue a Country of Islam so long as the Qazis were maintained and become a country of the Enemy the moment they were abolished." 

Thus the continuance of the Quza system can change the entire nature of the State. The civil servant of Her Majesty of Bengal further says.

"During the past seven years, a great and constantly increasing section of the Mohammadan community have been deprived of the functionary necessary for the celebration of marriages and other important ceremonies of their domestic code. The evil did not tell as first so severely as after-wards, for the old Qazi remained; it was only on the death or retirement of one of them that the law took effect by having abolished the machinery for filling his place. The subject early attracted the attention of the present Viceroy, but no absolutely conclusive evidence could be obtained until in 1870 when the Madras High Court took up and decided the question. Mr. Justice Collett’s decision leaves no doubt that Qazis can only be appointed by the ruling Power, that in defaul± of such appointment the Muhammadans are powerless to elect one of themselves; and that the Act of 1864 has deprived their community of the most important offices of their law."

Thus the situation of those days is clear by the ‘Fatwa’ of Abdul Aziz and comment of Hunter. It seems that Muslims were anxious about

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28 Ibid.
29 Ibid. (M. Abu Bakar V. M G Husain)
Ameer. The religious personalities who could not dare to do anything in the reign of Muslim Kings fully exploited the issue of abolition of Quza system. So after the consultation, the Ulema chose Syed Ahmad Shaheed as Ameer.

After the martyrdom of Syed Ahmad Shaheed Mr. Wilayat Ali Sadiq puri was elected as Ameer, who also died in 1852 and succeeded in Amarat by his brother Inayat Ali. But the laters were unable to effectively run the institution of Imarat to which Ali Mian says that after Syed Ahmad Shaheed these institutions were not more than historical facts

There was fighting between Britishers and Indians. The religious leaders (Ulema) were active participants of the fighting. So they chose Haji Imdad Ullah, Mahajir Makki as Ameer. A writer says—

"These (Ulema) reached Imdadullah and submitted, “It is difficult to fight without head. Since you are religious head, you are requested to look after our worldly affairs also. Being Ameerul Mumenin you decide our litigation. Haji could not reject the offer made by scholars and Ulema including Rasheed Ahmad and Qasim Nanotvi. Husain Ahmad Madani says that Qasim Nanotvi was assigned the task to lead the army and Rasheed Ahmad Gangohi was made chief Qazi

After the mutiny of 1857 Britishers were fully empowered as they captured the Delhi and thus the chief nominal head of India was sacked. As the mutiny was unsuccessful, Haji Imdadullah was forced to

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30 Infra note - 45
31 Miftahi, 'Imarat Sharia' p. 21
32 Tazkiratur Rasheed Vol. II P 74.
33 Naqshe Hayat p. 42
leave India. Rashid Ahmad was arrested and kept in Jail. He was penalized for six months jail.

After this Shaikhul Hadith Mahmudul Hasan was assigned this responsibility (d. 1920). Although he was not declared as Ameer, the Ulema treated him as Ameer. He was also arrested and was sent to Malta.

It is said that there was propagation of nationalism all over the world. Persons were thinking about the territorial demarcations. So Ulema were anxious due to this also lest there should be demarcation of territory in the community. Perhaps it was this thinking of Ulema which compelled Allama Iqbal to write.

"CHIN O ARAB HAMARA, HIDUSTAN HAMARA
MUSLIM HAIN HUM WATAN HAI, SARA JAHAN HAMARA."

It is clear that Ulema were much anxious about Imara^ which was founded at least in Bihar in the direct care of Maulana Azad as it is clear from the fact that the first meeting was held in the presidentship of Maulana Azad. A.M. Sajjad met Azad during the period of his internment in Ranchi Jail and he was also convinced about the need of an Ameer. A.M. Sajjad transformed this idea into practical shape in the Bihar province.

A.M. Sajjad- "Born in Pehnasa, a village in the Nalanda area. Sajjad had been to various madarsas in Bihar and to Deoband for a while, before joining the Madarsa Anwarul Uloom at Gaya as head mudarris (teacher). It was in Gaya that he called a meeting of the Ulema

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34 But Maulana Azad was thinking to be himself the Imam of India. (The Indian Economic and Social History Review 34, Vol. 1 (1997) p 2). But it does not corroborate by the evidence and seems as his opinion.

35 Ibid.
(theologians) in June 1918, which founded the *Anjuman Ulemae Bihar*. Soon after this, Sajjad toured throughout India, emphasising the need for an all-India organisation of the *Ulema*.”

Papiya Ghosh a columnist of Indian Institute of Advanced Studies writes:

“A month later the Bihar (*Jamiat Ulemae Hind* (JUH) met in Patna on 25-26 June 1921 and in the presence of Maulana Azad decided on Shah Badruddin of the Chistia Sabireya Silsila (order) and of the Mujibia Khanqah, Phulwari, as the provincial *Ameer*. Given his reluctance to leave his hospice, Sajjad was appointed his deputy, *Naib Ameer*, to see the actual organisation of the *Imarat Sharia*’.

The inception of *Anjuman Ulemae Bihar* is important in this sense also that it is founded prior to the *Jamiate Ulemae Hind* and *Khelafat Committee*.

After the foundation of the *Anjuman*, A.M. Sajjad visited the leading religious personalities. He talked in detail with Qayamuddin Mohammad Abdul Bari of Farangi Mahal, Lucknow, popularly known as Abdul Bari Farangi Mahli. A meeting of *Ulema* was called in Delhi. A.M. Sajjad delivered a lecture which resulted into the foundation of *Jamiate Ulemae Hind* (JUH). Ahmad Sayeed of Delhi, the Ist Nazim of JUH writes:

“In this way Maulana Sajjad was successful in making the *Ulema* aware about *Imarat* and unity. Soon after this, there was discussion about *Khilafat Committee* all over India. The need of *Imam* of Muslims was felt and a religious decree was published by the signature of leading *Ulema*.

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36 Ibid. p. 3
including A.M. Sajjad. He repeatedly stressed about establishment of Imarate Sharia all over India."

In 1921 there was meeting of JUB at Darbhanga in which it was decided that there will be an Ameer, who shall be well versed in religious affairs, whose order will be binding upon Muslims. A reception committee was founded which decided that A.K. Azad should be the president of the conference where the process of election of Ameer was to be completed. For its success A.M. Sajjad dispatched a letter to the Ulema of Bihar. He wrote, 'every body having religious knowledge know that in case of subjugation of Muslim governance, Muslims are under obligation to establish Imarat. So that they can lead the religious life. After 150 years, Muslims are unable to do this work due to differences and unawareness. The result of this is very hazardous as they are leading the life of ignorance inspite of their righteousness. This conception must be over thrown. Every person has considered the individual act of piousness as a way of success. It is a renunciation of world(rahbaniyat). It is not proper to say that Ameer will be chosen only when he will be like Caliph Umar(Raz).

He further wrote that it is useless to talk about petty differences among Muslims. It is from the beginning but it never caused to leave the obligatory things. It is also not true that the powers of Ameer will be unlimited and he will force the people to follow his way. Ameer will be having limited rights i.e.

1. He will implement only those things, which have been decided unanimously by the Ulema.

38 Ibid p. 56
2. He will not have concern with petty matters of difference amongst Muslims. He may not forbid to talk about difference of opinion of Ulema in religious matters. However he will not allow the quarrel among Muslims.

3. The orders issued by the Ameer will not be binding upon each and every Muslim. If any body reaches upon different conclusion than what the Ameer has ordered he will not be bound to follow Ameer.

The qualification of Ameere Shariat will be as follow:

1. The Ameer must be practical Muslim having Islamic Knowledge. He should have capability to issue religious decree. He must be counted with leading religious personalities and having a considerable support of Muslims.

2. He must be fore-sighted, and unhesitant in telling truth. Worldly things must not influence him.

3. He must be able to give advice in challenging matters of present time. He must not be careless and egoistic.

The letter shows that there was general wish to establish Imarat. But due to differences amongst Muslims, it was not possible. A.M. Sajjad by his letter won the confidence of Ulema and the meeting was held in the president ship of A.K. Azad who delivered his two hours lecture. After that Mohammad Badruddin was chosen as Ameer and A.M. Sajjad as Vice Ameer. The 1st statement of Ameere Shariat also shows the differences of Ulema and the need of the Imarat.

Ibid. pp. 70 -74
In his first speech as Ameer Mohammad Badruddin said:

"Each and every one should know that in this age of uncertainty the most important thing which we have been given is establishment of Imarat. If you consider its importance and resolve to follow Ameer, all of your problems will be solved in a while. Muslims as a whole should know the purpose of Imarat. To serve and to protect Islam and to establish the honour of religion it is a must, which is not possible without unity. So I shall issue such orders, which will concern Muslims as a whole and will not be against any denomination of Islam.

Today I accept the Challenges of the added responsibilities. It will be my obligation to oust every pain of Muslims."

"Mohammad Badruddin"

20.10.1339 A.H.

But the question arises as to what will be the qualification of Ameer. It may be described in the following head.

(1) QUALIFICATIONS OF Ameer:

It is said that Ameer is not dictator. It is believed that he is servant and deputy (naib) of the Supreme Authority. Ibne Taimia says that there are two requirements of deputy-ship (wilayat/niabat). One is strength and other is trust. The strength is necessary so that the Ameer can get the orders implemented. With knowledge he will be fearful to the Almighty

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40 Ibid. pp. 80 – 81
Allah and in this way he can not misuse the commandment of Allah. This thing is taken from the Holy Quran which says-

".. truly the best of man
for thee to employ is
The (man) who is
strong and trustee"

However the office of the Ameer is the highest employment. The strength in the above mentioned verse does not mean the means of strength. It means the strength of will and determination. Because in case of means of strength, Prophet Musa (AS) was not in possession of that. However

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41 Rehman 'Maslae Imarat p. 20
42 S 28 A 26 Holly Quran
43
the strength includes physical strength, which is clearer from the story of Jalut\textsuperscript{44}. In the case of Talut, Allah (SWT) has described that Talut was

Looking about
In a state of fear.
He prayed “O my Lord!
Save me from people
Given to wrong doing” (A 21)
\textsuperscript{44}Allah in sura 2 describes this as –

\begin{quote}
أَلَمْ تَرَ إِلَى الْمَلَأِ مِنْ بَيْنِ إِسْرَائِيلِ مِنْ بَعْضِ مَوْسِئٍ إِذْ قَالَ فِيْهَا لَذِيْنِ لَهُمْ أَبْعَثْتُ لَنَا مَلِكًا تَقَدِّمِلَ، فِي سَبِيلِ اللَّهِ قَالَ الَّذِيْنِ إِذْ كَانُوا يَكْبِرُونَ فِي سَبِيلِ اللَّهِ أَلََا تَقَدِّمُوا قَالَوْا وَمَا لَنَا أَلَا نَقِنُوْلُ قَالَ قَالُوا أَخْرِجْنَاهَا مِن
dِينَانِهَا وَأَيْتَابْنَا فَلَمَا كَبِرَ في سَبِيلِ اللَّهِ قَالُوا إِنَّمَا يَقِنُوْنَهَا مِنْ اللَّهِ وَاللَّهُ عَلِيْمٌ بِالْطُّلُبِينَ وَقَالَ لَهُمْ ذَيْبِهِمْ إِنَّ اللَّهَ قدْ بَعَثَ لَكُمْ مَلِكًا

\end{quote}

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وَقَالَ لَهُمْ ذَيْبِهِمْ إِنَّ اللَّهَ قدْ بَعَثَ لَكُمْ مَلِكًا مَلِكًا قَالُوا أَيْنَ يَكُونُ لَهُ

\end{quote}

\begin{quote}
أَلِمْلُكُ عَلَيْنَا وَنَخْنُ أَحِقُّ بالْمَلَأِ مِنْهُ وَلَمْ يَذْوَى سَعَةً مِنْ أَلِمْلُكُ قَالَ إِنَّ اللَّهَ أُضْطَفَنَهُ عَلِيْمًا وَزَادَةً، بَشَرُّهُ فِي الْعَلِيمِ وَالْجَهْشِ وَاللَّهُ ذَيْبِ مَلِكُهُ مَلِكًا

\end{quote}

\textsuperscript{*} Has thou not turned
\textit{The vision to the chiefs}
of the children of Israel
After the time of Moses
They said to a Prophet
appointed as *Ameer* because he was possessing the knowledge, determination and bodily strength. In this case the Almighty Allah has negated that the worldly things are important in the case of *Imarat*. For *Ameer* it is one of the requirement of Holy Quran that he should be soft and kind hearted\(^45\). In *Hadith* there is no clear cut guidance about the

\[(that was among them:
"Appoint for us
A king, that we
May fight in the cause of Allah".
He said; " Is it not possible,
If you were commanded
To fight, that ye will not fight?
They said "How could we refuse
To fight in the cause of Allah
Seeing that we were turned
Out of our homes and our families?"
But when they were commanded
To fight, they turned back.
Except a small band amongst them.
But Allah has full knowledge
Of those who do wrong.
Their Prophet said to them;
"Allah hath appointed
Talut as King over you,"
They said: "How can he
Exercise authority over us
When we are better fitted than he
To exercise authority,
And he is not even gifted.
With wealth in abundance?"
He said Allah hath chosen
Him above you,
And hath gived him abundantly
With knowledge and bodily Prowess:
Allah Grantheth His authority
To whom He pleaseth;
Allah is All embrassing
And He Knoweth all things." (Holy Quran)S 2 A 246, 247

Thus the bodily strength is also an added qualification which may also be seen in *sura* 2 verse 247

\(^{45}\)
qualification of *Ameer*. The sayings of the Prophet (SAW) that *Ameer* will be from amongst Quresh was only a prediction because his saying that “unless they (Quresh) will do such and such” makes it clear. However, Hasan Basari(Rah) says\(^4^6\) that there are three qualifications for *Ameer*.

I. He must not be follower of his carnal desires.

II. He must not be fearful of the people.

III. He must not be involved in bribery.

He has taken this inference from the verses of the Holy Quran.\(^4^7\) Caliph Umar bin Abdul Aziz(Rah) says\(^4^8\) that *Ameer* must be possessing five qualities.

*Fi sara rahmatan ilallah* kantu faqatul qalib ilanqawo min hoolel fa'afuf unthum wa'a'stablir unthum wa sha'wor thum fi al'ammar fa'ada urumt fittu koll alahin alallah yub'almutwo'alin

"It is part of the Mercy of Allah
That thou dost deal
Gently with them
Wert thou severe or harsh hearted
They would have broken away
From about thee...."(Holy Quran S 3 A 159)


\(^4^7\) O Daud ! We did indeed
Make thee a vice gerent
On earth: So judge thou
Between man in
Truth (and justice):
Nor follow thou the lust
(of thy heart), for it will
Mislead thee form the right Path

\(^4^8\) Supra note- 5
I. He must have capacity to infer the conclusion especially about the matters brought before him.

II. He must not be short tempered.

III. He must be free from allegations.

IV. He must be firm on the basic principles

V. He must contain the scholarly thrust.

In short it may be said that there are two types of qualifications of Ameer.

I. Essential

II. Desirable

I. ESSENTIAL QUALIFICATIONS

There are three essential qualifications

(I). He must be Muslim

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50 'O ye who believe! Obey Allah and obey the Messenger And those charged with authority among you'. 'The Holy Quran S 4 A 59) the expression 'O ye who believe' and 'among you' means it is clear that he must be Muslim.

51. 

ALK-RJ~ALQOUMON ALA AL~IS~SAI, BUMA FASAL ALLAH B~US~HUM AL~IN B~US~H.

"Men are protector (Qawwam) and maintainers of women"; (Holy Quran S 4 A 34) (Qawwam: One who stand firm in another's business protects his interests and looks after his affairs). Since Allah kept some qualities in men to look after the affairs which women do not, the women are having some other qualities which men do not have. So Allah guides the men to consult women in
(II). He must be male

(III). He must be judicial and sagacious

Apart from this, there are certain desirable qualifications, i.e.

(I). He must be just

(II). He must be righteous

the affairs of household. Apart from this Bukhari contains a Hadith that the nation cannot get success who have chosen a women as their head.

"To those weak of understanding
Give not your property
Which Allah has assigned
To you to manage." (The Holy Quran S 4 A 5). S.A.A Maududi has mentioned the fourth qualification relying upon chapter VIII verse 72 of the Holy Quran that Ameer must be resident of Islamic State or neutral/secular State but this inference is in contradiction with Hadith of the prophet that there are three Muslim they should choose one of them as Ameer. See Islamic Reyasat 1991 p 347.

"Allah doth command you to send back your Trust to those whom they are due; and when ye judge between the people that ye judge with justice: verily how excellent is the teaching which He gives you!" (The Holy Quran S 4 A 58).

Thus in this verse justice is taught by Allah which is also the means to judge the ability & quality of the Ameer.
(III). Abundance of knowledge and bodily prowess

(IV). He must be remembering Allah

"The most honoured of you in the sight of Allah is (He who is) the most Righteous of you." (Abdullah Yususf Ali “The Holy Quran S 49 A13) Since Imarat is an honourable post and one who is dishonoured in the sight of Allah cannot be Ameer.

Their Prophet said to them; “Allah hath appointed Talut as king over you,” They said : “How can he Exercise authority over us when we are better fitted than he to exercise authority. And he is not ever gifted. With wealth and abundance?” He said Allah hath chosen him above you, and hath gifted him Abundantly with knowledge and bodily prowess.” (The Holy Quran S 2A 247) Thus the reason of appointment of Talut as head, was the knowledge and the bodily prowess also see supra note 42 A 49.

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(V). He must not be follower of his own desires

(VI). He must not be extremist

(VII). He must be soft hearted

(2). COMPARATIVE STUDY:

The constitution of Imarate Sharia Bihar and Orisa was enacted in 1940 to 50 but was only adopted in 1996. Sections 6 to 9 deal with the Ameer and his position, while section 10 describes his qualifications, which are as under

I. He must be a Muslim

II. He must be practical and religious scholar. i.e. he must have considerable knowledge of the book of Allah (Quran) and Traditions of the Prophet (SAW) (Hadith). He must be a jurist of eminence and must have great say in the matters relating to book of Allah and the Sunnat of the Mohammad (SAW) and follow the things practically

III. He must be well acquainted with the Indian politics and politics of

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"... nor obey any whose head we have permitted to neglect the remembrance of us. One who follows his own Desires, and his affairs become All excess" (Holy Quran S 18 A 28)

57 Ibid.

58 Ibid.

59 The Holy Quran S 2 A 247 also supra notes 42 and 53

60 It was adopted by the Constituent Committee (Majlise Shura) on 22nd September 1996. It contains 46 sections.

61 The word ‘AWASAF’ has been used in the Constitution of Imarate Sharia, which means qualities.

62 Section 6 of the Constitution of Imarat

63 Ibid. S 10 (1)
Islamic world and possibly having practical experience in the said field

IV. He must have sway over majority of the members of Muslim community

V. He must be unhesitant in telling truth, unfearful and firm over the decisions

Thus the essential qualifications of Ameer are mentioned in the constitution of Imarat. The desirable qualification of Ameer is not mentioned in the constitution of Imarat Sharia (Bihar & Orissa). The 2nd qualification is not incorporated in the said constitution. The 3rd qualification of knowledge is incorporated in the constitution of Imarat but the bodily prowess is not mentioned there. The fourth, fifth, sixth and seventh desirable qualifications are not mentioned in this constitution. However the Imarat has evolved its own desirable qualifications especially sub sections two, three and five. Now the question arises whether the Muslims of Bihar fulfilled their obligations in this field? If the Hadith says that where there are three Muslims they should select one as Ameer. There is no any territorial boundation. If it is so why Orissa & Bengal is included in that? If it is inferred upon Bani Yarbuca or Muslims residing in non-Muslim state the whole India should be incorporated in this institution. Still there is demand of this institution at all India level. The

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64 Ibid. S 10(2)
65 Ibid. S 10(3)
66 Ibid. S. 10(4)
67 Supra notes 48-50
68 S 6, (10) of the Constitution of Imarat
69 See supra notes 51-57
70 See supra notes 54-57
well-known Scholar of Islam and former head of the Muslim Personal Law Board, late Syed Abul Hasan Ali Nadwi has also written about the need of the institution\(^{72}\). If the religious scholars of Bihar, Orissa, Bengal and even Deoband, Barely and Salfia are not worried about this, certainly the action of Ulema regarding the institution of Imarat will lead the Muslim masses to think that this institution is not necessary in India. And if it is necessary persons having religious knowledge will be treated defaulters by those having practical experience. A catena of books have been published by Imarate Sharia but none of the books except Masala Imarat Aur Hindustan (written in Urdu) is published regarding Imarat in India. Although the present Ameer Maulana Nizamuddin, when he was vice Ameer of Imarate Sharia had written that there was scheme of all India Imarat, which was delayed due to illness of Maulana Mehmoodul Hasan\(^{73}\). He had not commented as to why that could not be established till now. It may be that in case of Ameer at all India level, the local effect of the ahlul hawl wal aqd will be lesser and the Ameer of Bihar will be appointed by Chief Ameer. This fear could have made them inactive in the establishment of Imarat. If it is so it is against the spirit of Islam. In this way we reach at the conclusion that in Imarate Sharia the qualification is not strictly in accordance with the desirable qualification of Ameer and the institution of Imarat which is necessary institution for Islamic life is treated as part and partial of Islamic life by Imarate Sharia even then its workers are not so active in establishing an institution of Imarat at all India level.

\(^{71}\) Section 10 of the Constitution of Imarat. Also see supra notes 82-84
\(^{72}\) Miftahi pp. 9-32
\(^{73}\) Datoor Imarate Sharia (or the Constitution of Imarate Sharia) p. 4