CHAPTER-3

POLITICAL INSTITUTION
Political institution deals with the authority, process of law formation and its implementation. Each society recognizes the importance of political institution. Ralf Dahrendorf just in contrast to Marxian analysis opines that polity is more important than the economy because changes in society can be brought through it. Here an effort is being made to analyse the political institution in Islam as it is regarded, by many thinkers, an important institution of social change than the economy.

There are many systems of governance. These can be classified, as Aristotle did, into three forms on the basis of the number of people governing.

**Monarchy:** - It represents that form of government, where the source of all political authority is to be found in a single supreme ruler. It is based on hereditary principle.

**Aristocracy:** - It represents that form of government where the source of power rests in a group of few, who were to be considered best men of the community.

**Democracy:** - Aristotle considers it a perverted form of government, the good form of it, according to him, is polity. But latter thinkers considered it the best form of government. It is defined by Abraham Lincoln to be a government of the people by the people and for the people.¹
The Islamic system of governance does not favour monarchy, aristocracy and modern democracy. Islamic system of governance is based on community governance which is a type of democracy. Although Islamic system resembles much with the modern democracies, such as elected representation, elected head of the state and equal opportunity for all to enter in to the political process of the country, but the thing that separates Islamic democracy from western democracy is the sovereignty.

Political scientists believe that “sovereignty is the most important constituent element of the state. As a matter of fact, we can not think of a state without sovereign power.”2 Sovereignty as defined by Burgess is original, absolute, unlimited power over the individual subject and over all associations of subject and it is underived and independent power to command and compel obedience”.3

In modern democracy sovereignty belongs to state. “The state, in its corporate capacity, was thus, endowed with all the attributes of sovereignty which the monarch previously possessed”.4 But in Islamic democratic system sovereignty belongs to Allah. The sovereignty differential affects the legislation. In a state where sovereignty resides in the hands of people, any law can be formulated there on the demand of people, but where sovereignty rests in the hands of Allah, no law can be formulated against the will of Allah whether it is a popular demand or choice of few.5
3.1 Sovereignty in Islamic Government

The Islamic concept of sovereignty is based on its concept of ownership of universe. Analysis of Qur’anic concept about ownership of universe shows that:

- Allah has created man and all other things are meant for him.
- Allah is the sustainer and manager of the universe.

The whole Qur’an speaks about the oneness of Allah and His glory and the very purpose of creating this universe. At many a places It says:

- “It is He who has created the heavens and earth in truth”.
- “Say, Allah is the creator of all things, He is the one, the irresistible”.
- “He, it is who created for you all that is on earth”.
- “To him belongs all that is on the heavens and all that is on the earth, and all that is between them, and all that is under the soil”
- “To him belongs whatever is in the heavens and the earth. All are obedient to him”.
- “Surely, His is the creation and commandment”.
- “He arranges (every) affair from the heavens to the earth”.

Islam says that Allah is the only authority that has all characteristics essential for sovereignty. He knows every thing. Each and every thing is under his authority either voluntarily or non-voluntarily. No one is there to
revise his orders. Allah is not answerable to anyone. These characteristics are prescribed in Qur'an as follows:

- "And he is the irresistible, above His slaves, and He is the all wise, well acquainted with all things".\(^\text{13}\)
- "All knower of the unseen and the seen, the most great, the most high"\(^\text{14}\)
- "He is Allah than whom there is none has the right to be worshiped but He the king, the Holy, the one free from all defects, the Giver of security, the watcher over His creatures, the All-Mighty, the compeller, the supreme".\(^\text{15}\)
- "Blessed is He in whose Hand is the dominion, and He is able to do all things".\(^\text{16}\)
- "While to him submitted all creatures in the heavens and the earth willingly or unwillingly".\(^\text{17}\)
- "For all power and honour belong to Allah".\(^\text{18}\)

Besides these, there are a large number of verses which talk about the characteristics of a sovereign, and stress that these are all present in the authority of All-Mighty Allah. According to Islam Allah is the Creator and Sustainer of universe and possesses all the qualities of a sovereign authority hence, sovereignty should belong to Him i.e. Allah. Many verses in Qur'an clearly proclaim that sovereignty is only for Allah. It says:

- "The command is for none but Allah"\(^\text{19}\)
- "Surely His is the creation and commandment"\(^\text{20}\)
“They said, “Have we any part in the affair?” Say you: indeed the affair belongs wholly to Allah.”

“Know you not that to Allah belongs the dominion of the heavens and the earth!”

“He is Allah than whom there is none has the right to be worshiped but He, the king, the Holy, the one free from all defects, the Giver of security, the watcher over His creatures, the All Mighty, the compeller, the supreme.”

“Whatsoever is in the heavens and the earth glorifies Allah, and He is the All-Mighty, All wise”.

3.2 Position of Human Beings

After accepting the sovereignty of Allah the basic question arises about the position of human beings upon earth. According to Islam one should surrender all his authority and will to the will of Allah, and accept that he is only a representative (kalifah) of Allah. Qur’an says:

“And when your Lord said to the angels: I am going to place caliph on earth”

“He it is who has made you caliphs in the earth”.

The concept of caliphate, according to Qur’an, is that all powers and authorities that men have in this world are given by Allah, and these
powers can be used only where Allah authorizes them to, that is why man is not sovereign, but His caliph. Qur’an says:

➢ “And remember that He made you caliph after the people of Nuh” \(^\text{27}\)
➢ “And remember when He made you caliph after Aad” \(^\text{28}\)
➢ “It may be that your lord will destroy your enemy and make you caliph on the earth” \(^\text{29}\)

### 3.3 Democracy in Islam

The authority, in the caliphate system of Islam, does not reside in any group, family or individual, like Monarchy or Aristocracy, but in the community which has accepted the sovereignty of Allah. Each Muslim is responsible and has rights and duties towards caliphate system.

The community caliphate can be carried out only in a democratic way. Qur’an used the term 'Shoora' (mutual consultation) for it. Qur’an stressed a lot on it and said:

➢ “And those who answer the call of their Lord, and perform Salah (prayer), and do their affairs by mutual consultation…” \(^\text{30}\)
➢ “And consult them in the affairs.” \(^\text{31}\)

Maulana Maudoodi has done an in depth analysis of these verses and has highlighted the importance of social aspect of mutual consultation and has written that, it is an important pillar of Islamic life. Dealing social
matters without mutual consultation is not only bad but it is against the will of Allah. Islam has stressed on it because of three following factors.

To decide a matter individually which involves two or more persons implies exploitation. It is nearer to justice that all those party to the matter are given a chance to express their opinions. If the matter belongs to a huge population, then the chance should be given through their reliable representatives.

Selfishness and superiority complex make a man monopolistic. Both are equally bad. A real Muslim can never be selfish and can never feel himself superior so will never impose himself upon others.

Taking decisions about a common matter is not an easy task. Any one who is Allah fearing and believes that he will be answerable before Allah, can never dare to take decisions independently. A responsible person will try to involve all the people to whom the matter belongs, either directly or indirectly, so decisions can be taken in an appropriate way and the responsibility can be shared by all.32

This system of mutual consultation is not recommended only at governmental level, but it is an essential part of society at all levels.33 Here are some sayings of Prophet\textsuperscript{PBH} that support the mutual consultation. Ali asked Prophet\textsuperscript{PBH} that what we should do if we come across of any problem, about which we do not find any direction in Qur'an, and in your sayings? Prophet\textsuperscript{PBH} said "assemble the good men of my Ummah and do
mutual consultation among them and do not judge any matter by the opinion of any single man”\textsuperscript{34}

The second caliph Umer says:” You are not prohibited to kill any one who invites to his own leadership or to the leadership of any other without mutual consultation of Muslims”.\textsuperscript{35} At another place he says: No caliphate without mutual consultation’\textsuperscript{36}

Islam says that mutual consultation is an essential task directly or indirectly. Of course, at family level and village level, direct consultation is possible but at state level it is not possible. So an indirect process is needed. The term that is used for Islamic democracy is ‘Shooraiet’.

### 3.4 Relation between the Individual and the State (Rights and Duties)

The relationship between state and individual is complementary. It is a general belief that state should guarantee to its citizens security, fundamental rights and basic human rights. A man without rights is a slave. All doctrines of freedom assume the existence of rights. Laski has said “state is known by the rights that it maintains.”\textsuperscript{37}

Besides rights, duties are also equally important. Duties are the obligations of citizens towards state. What is a right in regard to one's self is a duty in regard to others. These are two sides of the same thing.
3.4.1 Fundamental Rights

Islam has also given fundamental rights to its citizens. These are as follows:

3.4.1.1 Right to Life: - Islam gives importance to the life to all citizens. No one can be deprived of his or her life without any legitimate legal cause. Qur’an says:

➢ “And those who invoke not any other Allah along with Allah, nor kill such life as Allah has forbidden, except for just cause.”

➢ “And do not kill any one which Allah has forbidden, except for a just cause”.

3.4.1.2 Right to Religion: - Islam guarantees the freedom of religion to practice and profess. It is against any sort of conversion by force. Qur’an says:

➢ “there is no compulsion in religion”.

➢ “And had your Lord willed, those on earth would have believed, all of them together. So will you then compel man kind, until they become believers”?

➢ “And Fitna is worse than killing”.

Allama Jarir writes that 'Fitna' denotes conversion by force.

Another important point is that, beyond right to religion, Islam does not allow even to criticize or abuse any religion. Qur’an says:
> “and insult not those who they worship besides Allah, lest they
insult Allah wrong fully without knowledge”.

> “And argue not with the people of the scriptures unless it be in that
is better”.

3.4.1.3 Freedom of Association: - Islam grants freedom for all
associations that are for social and moral developments. It does not allow
any association which causes disturbances. Qur’an says: “Let there arise
out of you a group of people inviting to all that is good, enjoining Al-
Maruf (i.e. Islamic monotheism and all that Islam orders) and forbidding
Al-Munkar (i.e. Polytheism and all that Islam has forbidden) and it is they
who are the successful. And be not as those who divided and differentiated
among themselves after the clear proofs had come to them”.

3.4.1.4 Freedom of Speech and Expression: - Islam directs its followers
to let the good prevail over the evil. Maudoodi says that it includes right to
criticize, speech and expression. Qur’an says:

> “those among the children of Israel, who disbelieved were cursed by
the tongue of David and Jesus, son of Mary. That was because they
disobeyed and were ever transgressing beyond bounds. They used
not to forbid one another from the wrong, evil-doing, which they
committed, vile indeed was what they used to do”.

> “We rescued those who forbade evil, but we seized those who did
wrong”.
“You are the best of peoples ever raised up for mankind you enjoins virtues and forbid evils, and you believe in Allah.”

3.4.1.5 **Right to Private Life:** - Islam advocates for privacy which is a right of every individual. It is a sin to meddle in any body's personal matter. Qur'an says: “You who believe! Avoid much suspicion, indeed some suspicions are sins. And spy not, neither backbite one another. Would one of you like to eat the flesh of his dead brother?”

Maudoodi writes that it is not a task of a Muslim to find the weaknesses of others. Reading someone’s private letters, eavesdropping, spying on others to know what is private and personal, are extremely immoral.

At another place Qur’an says, “O you who believe! Enter not houses other than your own! Until you have asked permission and greeted those in them”. This verse undoubtedly protects the privacy of people.

3.4.1.6 **Right to Minimum Amenities of Life:** - It is the duty of government to collect Zakah throughout the country and to distribute it among the needy people of the state in order to provide them basic necessities of life. Qur’an says. “And in their properties there was the right of beggar, and the poor.”
3.4.2 Duties of People towards Government

Islam also talks about the duties of the people towards the state as it has talked about the rights they are entitled to from state. These may be called fundamental duties.

People must follow the government. Qur’an says: “Obey Allah and obey Messenger and those of you who are in authority”.55

The laws, explanations of the laws or any other instruction issued by government, must be followed.

The citizens in an Islamic state are not allowed to create disturbances. They must be loyal to the government. Qur’an says: “The recompense of those who wage war against Allah and his Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the hereafter”.56

Fighting with Allah and his Prophetpbhp is actually the war against the system established by Islam.57 At another place Qur’an says: “and do not mischief on the earth after it has been set in order”58

They should cooperate in all the progressive steps of government. It is a symptom of a healthy state. Qur’an says: “Help you one another in Al-Birr and Al-Taqwa (virtue, righteousness and piety) but do not help one another in sin and transgression”.59
The last but the most important duty of people towards their government is protecting its integrity by all means. Qur’an says:

➢ “What is the matter with you, that when you are asked to march forth in the cause of Allah, you cling heavily to the earth? Are you pleased with the life of this world rather than Hereafter”? 

➢ “If you march not forth, He will punish you with a painful torment and will replace you by another people”.

➢ “March forth whether you are light, or heavy, strive hard with your wealth and your lives in the cause of Allah”.

3.5 Features of the Constitution

Each constitution has certain characteristics. Islamic constitution can also be characterised as follows:

3.5.1 Written Constitution: - The constitution of Islam is “Holy Qur’an” Qur’an was revealed upon Prophet Muhammad⁵ᴷ which has been preserved and is in written form. Several people were appointed to write Qur’an during the days of Prophet⁵ᴷ. Among those are Abu Bak'r, Umer, Usman, Ali, Sharjul bin Hassan Kindi and others.⁶³ Qur’an is still in its original form. Qur’an says about it, “Nay! This is a glorious Qur’an inscribed in the preserved table”.⁶⁴ “and surely we will guard it”.⁶⁵

3.5.2 Supremacy of Law: - As mentioned earlier no amendment can be made in the laws given by Allah. Even the punishments prescribed by
Allah cannot be replaced. Qur’an says: “let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the last day”. Maudoodi, while explaining the verse, writes that the punishments prescribed in Islam cannot be replaced.

The pleading of any order which is against the spirit of Islamic law is prohibited. Qur’an says: “and that they will not disobey you in any Maruf (Islamic monotheism and all that which Islam orders)

Prophet(PB) says: “A Muslim has to listen to and obey (the orders of his ruler) whether he likes it or not as long as his orders involve not one in disobedience (to Allah) but if an act of disobedience (to Allah) is imposed one should not listen to it or obey it”.

3.5.3 Rule of Law: - All the citizens in Islam are equal before law. There is no discrimination and the same law is applicable to all; from the lower stratum of the society to the head of the country. Allah addressing His Prophet(PB) says in Qur’an. “(but say…) and I am commanded to do justice among you”.

Prophet(PB) himself has asserted that even he is no exception to the Islamic law. He says: “The people before you were destroyed because they used to inflict the legal punishments on the poor and forgive the rich. By him in whose hand my soul is if Fatima (daughter of Muhammad.) did that (i.e. stole) I would cut off her hands”.

3.5.4 Equality between Muslims: - All the Muslims have equal rights
and equal opportunities in this system, irrespective of their race, colour and clan. In this system no group or clan or family can achieve special status.\textsuperscript{73}

Qur'an says:

\begin{itemize}
\item "The believers are nothing else than brothers"\textsuperscript{74}
\item "O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah is that who is pious".\textsuperscript{75}
\end{itemize}

Prophet\textsuperscript{PBH} made the point more clear by saying that:

\begin{itemize}
\item "Indeed, Allah does not see your faces and your wealth, but He sees to your hearts and deeds"\textsuperscript{76}
\item "All Muslims are brothers; no one has any superiority except by piety"\textsuperscript{77}
\item "O man kind, your cherisher is only one, no superiority to Arabs above non Arabs and vice versa, and no superiority to red above blacks and vice versa but by piety".\textsuperscript{78}
\item "Who witnessed, that no Allah except Allah, accepted our Qibla, pray like us, eat our slaughtered, he is Muslim. He has all rights and obligations of Muslims".\textsuperscript{79}
\item "All Muslim blood is equal, they are one against other, even the lowest man of the society can take the responsibility on behalf of them".\textsuperscript{80}
\end{itemize}
Of course, Islam differentiates between Muslims and Zimmis (non-Muslims under Islamic regime). But it gives all civil rights to them as equal to Muslims. Zimmis are deprived only from political rights/participation, because in an ideological government only those persons can share political powers who believe in that ideology. Qur'an says: “O you who believe! Take not as your Bitanah (advisors consultant, protectors, helpers etc.) those outside your religion, since they will not fail to do their best to corrupt you”. Zimmis will have to pay taxes (Jiziya) instead of Zakah (religious tax paid by Muslims). Prophet says: “Jiziya is not for Muslims”.  

3.5.5 Decentralization of Power: - Executive, legislature and judiciary are independent organs in an Islamic government like others. They function independently from each other within their scope of work. But all of them individually and collectively are bound to follow the laws of Allah.  

3.5.6 Government is Answerable to People: - It is also one of the fundamental features of Islamic constitution that the government remains answerable to its people. This feature is based on the concept that the Islamic government is just a trustee of the people it rules and all the powers and wealth under it are in fact entrusted by Allah. They should not breach the trust. Qur’an says: “Verily, Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice”.  

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Prophet[^1] also says: “surely everyone of you is a guardian and is responsible for his charges: The Imam (ruler) of the people is guardian and is responsible for his subjects”[^2].

### 3.6 External Policy of Islam

External policy is one of the most important aspects of any political system. It shapes the relations among international community. Islamic constitution provides directions regarding foreign policy of its government. The following points are highlighted here as under:

- Bilateral or multilateral agreements must be adhered. In case of a need to breakout of the agreement, it is necessary to inform the parties involved beforehand. Qur’an says in this regard:
  - “And fulfil covenant, verily the covenant, will be questioned about”[^3]
  - “And fulfil the covenant of Allah, when you have covenanted and break not the oaths after you have confirmed them”[^4].
  - “So long as they are true to you, stand you true to them”[^5].
  - “Except those of the Mushrikeen with whom you have a treaty, and who have not subsequently failed you in ought, nor have supported anyone against you. So fulfil their treaty to them to the end of their term”[^6].
“Verily those who believed, and emigrated and strove hard and fought with their property and their lives in the cause of Allah as well as those who gave asylum and help- these are allies to one another. And as to those who believed but did not emigrate, you owe no duty of protection to them until they emigrate, but if they seek your help in religion, it is your duty to help them except against a people with whom you have a treaty mutual alliances and Allah is the all-seer of what you do”.

This verse denotes that political relations of Muslims are within the boundaries of a nation. Muslims of two separate countries do not have any political obligation with each other. But Muslims all over the world are bound by a religious Brotherhood. So that if someone somewhere is under threat or being exploited or his/her rights violated and is asking help from an Islamic government, it becomes the duty of that government to help them out within the limits of international laws, and with the mutual agreement of the government where help is needed.

An Islamic government should be honest in International Affairs. Qur'an says:

> “and let not the enmity and hatred of others make you avoid justice.

Be just: that is near to piety”

> “And make not your oath a means of deception among yourselves”.

Maintaining the sanctity of international boundaries of neutral countries is also an important direction of its foreign policy. Qur’an says:
"But if they turn back, take them and kill them wherever you find them, and take neither protector/friends nor helpers from them. Except those who join a group, between you and whom there is a treaty".\textsuperscript{96}

Qur'an also discusses the importance of compromise. It says: "But if they incline to peace, you also incline to it, and trust in Allah. Verily, He is the All-Hearer, the all-knower. And if they intend to deceive you, then verily, Allah is All sufficient for you".\textsuperscript{97}

External policy of an Islamic nation should be bold and practical in nature. It should not chose the path of confrontation if the opposite party is ready to negotiate and compromise.\textsuperscript{98}

The Nation should have friendly relations with neutral nations. Qur'an says: "Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity".\textsuperscript{99}

At another place it says: "Is there any reward for good other than good?"\textsuperscript{100}

\textbf{3.7 Governmental Organs}

Any government has three basic organs, which are known as the organs of the government. These are Legislature, Executive and Judiciary. Legislature enacts the general rules of society in the form of law. Executive ensures that the laws of the state are duly obeyed by all and there is no
infringement, and the judiciary determines that the justice is done to all concerned.

But the legislature occupies a superior place. In fact, the primary and the most important function of the state is legislation. The executive and judiciary have no meaning without legislature.\textsuperscript{101}

\subsection*{3.7.1 Legislature}

Islam used the term ‘Shoora’ for its legislature. Shoora is an elected group of representatives of the people. Qur’an used the term ‘Uool-ul-Am’r’ for these representatives.

Islamic texts do not talk about any process of their election. So it can be based upon any procedure that can preserve democratic values of Islam and its spirit.\textsuperscript{102} A letter of Hazrat Ali shows the spirit of election. He writes “The community plights its fealty to me that had plighted its fealty to Abu Bak’r, Usman and Omer on the same things. It is not necessary to select who was present and to reject who was absent. The consultation is for all Muhajireen and Ansar. If they unanimously agree on a person as a leader, the unanimous decision will be binding on all and those who disagree and resist or show resentment must be forced to follow the majority decision “.\textsuperscript{103}
The election of these Uool-ul-Am’r should be based on the system of Adult Franchise. They should be elected from their respective constituencies.¹⁰⁴

Every citizen of the nation should not be elected as representative in Shoora. Like all other constitutions, Islam also talks about certain qualifications for the membership of Islamic legislature or Shoora. These are as follows;

Only a Muslim can become a Shoora member. Qur’an says:

➢ “O you who believe! Take not as your Bitanah (advisors, consultants, protections, helper, friends etc.) those outside your religion”.¹⁰⁵

➢ “Do you think that you shall be left alone while Allah has not yet tested those among you who have striven hard and fought and have not taken Walija (helpers, advisors, consultants form disbelievers etc) besides Allah and his Messenger, and the believers?”¹⁰⁶

➢ “O, you who believe! Obey Allah and obey the Messenger and those of you (Muslims) who are in authority.”¹⁰⁷

This criteria is essential because the responsibility for the establishment of any ideology can not be given to a person who does not believe in that ideology.¹⁰⁸

He must be honest, Allah fearing and should bear a good moral character. Qur’an says:
“And (remember) when the lord of Ibrahim tried him with commands, which he fulfilled. He said “verily, I am going to make you a leader of mankind, (Ibrahim) said and of my offspring, (Allah) said, My covenant includes not Zalimon (Polytheists and wrong doers)”.

“Shall we treat those who believe and do righteous good deeds, as those who associate partners in worship with Allah and commit crimes on earth? Or shall we treat the pious as the criminals, disbelievers, wicked etc”.

“And follow not the commands of Al-Musrifin (i.e. their chiefs, leaders who were polytheists, criminals and sinners) who make mischief in land, and reform not”.

“Verily the most honourable of you with Allah is that who has Al-Taqwa (Pious)”. He must not be ignorant, but erudite, wise, and should posses the ability to understand matters. Qur’an says:

“And give not unto the foolish your property which Allah has made a means of support for you”.

“He said verily, Allah has chosen him above you and has increased him abundantly in knowledge and stature”.

“We made his kingdom strong and gave him Al-Hikmah (ProphetPbh Hood etc.) and sound judgment in speech and decision”.

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Joseph said: “set me over the storehouses of the land, I will indeed guard them with full knowledge”

“If only they had referred it to the Messenger or to those charged with authority among them, the proper investigators would have understood it from them”

“Say: Are those who know equal to those who know not”.

He must be trustworthy in private as well as in public affairs. Qur'an says: “Verily! Allah commands that you should render back the trusts to those, to whom they are due”.

The fore mentioned qualifications must be kept into consideration while electing the members of Shoora (Legislature).

3.7.1.1 Legislation: In an Islamic government Shoora is not an independent and sovereign body. This body can not frame or amend laws, given by Allah regarding any matter. Qur'an says: “And whatsoever you differ, the decision thereof is with Allah.”

This body is bound to follow all the laws given by Allah in the form of Qur'an and Hadith. Qur'an says: “It is not for a believer, man or woman, when Allah and his Messenger have decreed a matter that they should have any option in their decision”.

This body has right to explain these laws and can frame ordinary rules to bring original laws into practice. There may come up situations and problems where Qur'an and Hadith do not provide direct guidance. In such a situation legislature can frame laws keeping the original spirit of Islam
Qur'an says “O you who believe obey Allah and obey the Messenger and those of you who are in authority, if you differ in any thing amongst yourselves, refer it to believe in Allah and in the last day”.

3.7.2 Executive

The second organ of government is the executive. This term is used to designate all those officers of the government who implement the law. The executive includes all officials, high and low, the head of the state, his principal advisers and ministers as well as the whole body of subordinate officials through whom the laws are administered.

3.7.2.1 Head of the State: - Islam used the term Khalifa (Caliph) for the head of the state. Caliph is the elected supreme authority and representative of the country. He is the head of the executive as well as head of the government. He is equally important in the process of law formation as well as in its implementation. Every governmental task is carried out in the name of caliph. He has rights to appoint governors, secretaries of various departments and other officials in order to carry on the governance of the country. He is bound to consult the Shoora in matters of national importance, (the elected members) but is independent to decide on his own if he feels it to be the right course.

Qur’an has prescribed qualifications for caliph:
He must be polite and gentle in nature. Qur'an says: "And by the mercy of Allah, you dealt with them gently. And had you been sever and harsh-hearted, they would have broken away from about you; so pass over (their faults) and ask (Allah's) forgiveness for them; and consult them in the affairs".\textsuperscript{127} At other place "And those who avoid the greater sins and Al-Fawahish (illegal sexual intercourse etc.) and when they are angry, they forgive".\textsuperscript{128}

He must not be arrogant. Qur'an says: "And walk not on the earth with conceit and arrogance. Verily you can neither rend nor penetrate the earth, nor can you attain a stature like the mountains in height".\textsuperscript{129}

The verse is applicable at personal as well as institutional level. And it was due to the verses like these that the leaders of the Medina government never felt proud and never showed arrogance even in war like situations.\textsuperscript{130}

He must be punctual in Salah (prayer) and consistent in Zakah (religious tax). Qur'an says: "And to David we gave Salomon. How excellent slave! Verily he was ever oft returning to repentance (to us)."\textsuperscript{131} Further at another place "Those who, if we give them power in the land, (they) order compulsory for Iqamat-us-Salah (prayer) (i.e. to perform the five compulsory congregational Salah (prayer)/Prayer) to pay the Zakah (religious tax)".\textsuperscript{132}

The most important criterion to hold any position in general and the position of caliphate in particular is that he must not himself be in desire of...
the post. Qur'an says: "That home of the hereafter, we shall assign to those who rebel not against the truth with pride and oppression in the land nor do mischief by committing crimes".133

Prophet's sayings support the position in which He says: "we do not assign the authority of ruling to those who ask for it or to those who are keen to have it".134 "The great usurper in my eyes is he who is in desire of that (post)"135 and "We do not appoint any one on work who is in desire of it".136

Prophet said, "O Abdurrahman bin Samra! Do not ask for leadership, If it is given to you on your demand you will be responsible to Allah, if it is three given to you without your desire, Allah will help you in discharging your duties".137

3.7.2.2 Election of Caliph: - It is the responsibility of Shoora to propose the most suitable man according to the above mentioned qualifications. The decision of the Shoora then will be backed by a referendum. If the people do not accept the proposed name, then the Shoora (legislature) will revise its decision and will propose another name.138 After the appointment of the caliph every one must have to follow him.

If we go back to the history of Islamic governance, we will find that governors, advisers, secretaries, writer, assistants, jurists and different other officers were appointed in different departments of the state directly through caliph to execute the laws and to administer the society.
Islamic state was divided into various sub-states. The head of the state was caliph and the heads of the sub-states were governors, appointed directly by caliph. They were given salaries and they were also given rights to appoint their subordinate officers in different departments, in order to maintain administration and for other tasks.\textsuperscript{139}

Since Qur'an and Hadith are almost silent about the process of recruitment of these officers. The system which prevailed at that time was based on the delegation of powers from the office of the caliph. Now the society is very large and it is not possible easily to appoint right persons for the right job, so the process of the recruitment of officers, their legal boundaries, their tenure and all other things related to them, should be decided by the legislature of the country according to need of the time.

\textbf{3.7.3 Judiciary}

Judiciary, the third organ of the governmental machinery administers the justice. The judiciary is the guardian of the rights of citizens and protects these from individual as well as public encroachment. If there is no adequate provision for the administration of the justice, the liberty of the people will be jeopardized for there will be no definite process which should ascertain and decide rights, punish criminals and protect the innocent from injury and usurpation.\textsuperscript{140}
Islamic political system developed an independent model of judiciary. Independent in the sense that it can bring any one, even caliph, in the courts.\textsuperscript{141}

Prophet\textsuperscript{PBUH}, during his days, was chief justice, and used to appoint judges. These judges either they were appointed for capital or for other sub-states, were independent in their respective areas, and were considered local officers. Only Prophet\textsuperscript{PBUH} had right to direct them, to revise their judgments and even to cancel it. If any party in any case is not satisfied with the decision of a (lower) court, the case was brought to the highest court of the Prophet\textsuperscript{PBUH}.\textsuperscript{142}

Like executive, the recruitment of judicial officers was based on delegation of power through direct appointment. There were no institutionalized provisions to recruit them. Prophet\textsuperscript{PBUH} at that time, being the chief justice of the state, used to appoint judges and Governors. Governors being the head of the sub-states, were given power to appoint judicial officers in their respective sub-states.\textsuperscript{143}

As mentioned earlier, in the case of executive, it is hard to maintain the same appointment procedure as it was prevalent, so the legislature should frame provisions for the recruitment of these judicial officers.
3.8 References

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2- Ibid, p.129

3- Ibid, p.130

4- Ibid, p.131

5- Maudoodi, Abul Al'a, *Khilafat-o-Mulookiat*, Markazi Maktaba Islami, New Delhi, 1974, p.36

6- Qura'n, Anam, 73

7- Qura'n, Raa'd, 16, 16

8- Qura'n, Baqrah, 29

9- Qura'n, Taha, 6

10- Qura'n, Rum, 26

11- Qura'n, Araf, 54

12- Qura'n, Sajdah, 587

13- Qura'n, Anam, 18

14- Qura'n, Raa'd, 9

15- Qura'n, Hashr, 23

16- Qura'n, Mulk, 1

17- Qura'n, Al-Imran, 83

18- Qura'n, Yunus, 65

19- Qura'n, Yusuf, 40

20- Qura'n, Araf, 54

21- Qura'n, Al-Imran, 154

22- Qura'n, Maidah, 40

23- Qura'n, Hashr, 23

24- Qura'n, Hadid, 1
واذا قال ربک للملکة این جاعلی فی الأرض خلیفة، ۳۰

۲۶- الکذب کیا سبب یک ماکر یکی تان یکی

۲۷- و اذکر یا ذکر یا ذکر كلیه من بعد قوم نوح

۲۸- و اذکر واذکر جعلی کلیه من بعد قوم عاد

۲۹- عصی ریکم ان ثعلب عدو کیم ویستحفیم فی الأرض فینظر کیف تعلمنا، ۱۲۹

۳۰- والذین استحباب集聚هم واقامویالصلوة وامیره شوری بیسهم، ۳۸

۳۱- وشاورهم فی الامیر، ۱۵۹

۳۲- مودودی، ابی علی، Tafhim-ul-Quran، مارکزی مکتبا اسلامی، نیو دلیل، جلد ۴، صفحه ۵۰۹

۳۳- Ibid، صفحه ۵۰۹

۳۴- Al-Adloosi، ابی فاضل شهاب الدین، Tafseer Roohul Maani، Idar-e-Attabiyatul Muniriya، دمیشقه، جلد ۲۵، صفحه ۴۲

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۳۷- Kapur، op.cit، صفحه ۱۶۱

۳۸- Qura'n، Furqan، ۶۸، واذکر کیا سبب یک ماکر یکی تان یکی فی الیم اس یکی

۳۹- Qura'n، Bani Israil، ۳۳، ولا تقتل النفس النین خالص الله البالحق

۴۰- Qura'n، Baqrah، ۲۵۶، ولا آراءه فی الدين

۴۱- Qura'n، Yunus، ۹۹، ولما شاهد ریکم لآسان من فی الارض کلهم جمعا افافت تكرار الناس حتی

۴۲- Qura'n، Baqrah، ۱۹۱، الفتنة اشد من القتل

۴۳- quoted in، Maudoodi، Khilafat-o-Mulookiat، op.cit، صفحه ۴۷

۴۴- Qura'n، Anam، ۱۰۸، ولا تسبیب الدین یک دخول من دون الله فیسبو الله عدوی بیس علم

۴۵- Qura'n، Ankabut، ۴۶، ولا تحادثوا اهل الكتاب الباشی ای احسن

۴۶- Qura'n， Al-Imran، ۱۰۴، ۱۰۵، ولمنکم ایمیا یک دخول إلى البیور وبیورون بالمعروف وینظر وبینه عن

۴۷- Maudoodi، Khilafat-o-Mulookiat، op.cit، صفحه ۴۶

۴۸- Qura'n، Maidah، ۷۸، ۷۹، لعن الدین کفروا من بین اسرائیل علی لسان داود وعیسی ابن مريم
أولاً، إنهم الذين يشعرون بالوسوء، وآمنوا الذين ظلوا، 165

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وتؤمنون بالله

إياها الذين احتجوا كثيراً من الأهل إن بعض الأهل أمتها ولا تحصنوا ولا يغنيها بعضكم بعضًا.

12

مادودي، Tafhim-Ul-Quran، op.cit.، Vol.5، pp.88،89.

بِئلاها الذين أمنوا لا تدخلوا بيوتًا غرب بيوتكم حتى تستأنسوا وتسلموا على أهلها 27

ذلkiem خير لكم لعلكم تذكرون

وفي اموالهم حق للسائل والمحرر، 19

اطيعوا الله واطيعوا رسوله أولى الأمر منكم، 59

بأن جزء من الذين يحاربون الله ورسوله ويسعون في الأرض فساداً أن يقتلون أو 33

تقطع أيديهم وارجلهم من خلاف اتفقون في الأ Петр ذلك له حري في الدنيا وله في الآخرة عذاب عظيم

مادودي، Tafhim-ul-Quran، op.cit.، Vol.1، p.65

لا تفسدوا في الأرض بعد اصلاحها، 85

تعاونوا على البر والتقوى ولا تعاونوا على الآثام والعدو، 2

 hoodie الدين إلى الأرض ارضهم بالحبوه الدنيا من الآخرة

إذا قبل لحكم انفرزوا في سبيل الله اشقتم إلى الأرض، 38

لا تفرو وأعدكم عذابًا أبدًا وبست لقومًا غزيفكس، 39

انفرزوا احتفاً وثقالًا و جاهدوا باموالكم ونفسكم في سبيل الله، 41

و هؤلاء هم الذين كنتم تعملون

سيديكي، ياسين ماءزه، Tarikh Tahzib-e-Islami، Foundation for Education and Developmnet، New Delhi، 1994، Vol.1، p.175

بل هو قرآن محجود في لوح محفوظ، 21،22

وإن له لحافظون، 9

ولا تأخذكم لهما رأفة إن كنت تومنون بالله والأي يوم الآخر، 2

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ولا بصيقتكم في معروف، 12

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70- Maudoodi, *Khilafat-o-Mulookiat*, op.cit., p.63
71- Qura'n, Shoora, 15
72- Sahih Bukhari, Kitab-ul-Hudood.
73- Maudoodi, *Khilafat-o-Mulookiat*, op.cit., p.4
74- Qura'n, Hujrat, 10

انما المومون انوهاء 10

75- Qura'n, Hujrat, 13

یا ابیها الناس اننا خلفنا کم من ذکر و ائث و جعلنا کم شعوبا و قبائل لتعارفوا 13

آن اکرمکم ان لله الاقامک

77- Ibid, Vol.4, p.217
78- Al-Adloosi, op.cit., Vol.26, p.8
79- Sahih Bukhari, Kitab-us-Salat

82- Qura'n, Al-Imran, 118

یا ابیها الذين آمنوا لا تخذوا بطاعة من دونكم

83- As-Sajistani, op.cit., Kitab-ul-Imarah
84- Maudoodi, *Khilafat-o-Mulookiat*, op.cit., p.42
85- Ibid, p.66
86- Nisa,58

ان الله يامركم ان بوذوا الامانات الى اهلها واذا حكمتم بين الناس ان تحكموا بالعدل

87- Sahih Bukhari, Kitab-ul-Ahkam
88- Qura'n, Bani Israel, 34

واوفوا بالعهد ان العهد كان مستولا

89- Qura'n, Nahl, 91

واوفوا بعهد الله اذا عاهدتم ولانقضوا الامان بعد توكيدها

90- Qura'n, Tauba, 7

فما استقاموا لكم فاستقمو لهم

91- Qura'n, Tauba, 4

یظهر عليكم احدها فاتموا الامهن عهدكم الى منتمهم

92- Qura'n, Anfal, 72

ان الذين آمنوا وهاجروا واجدوا باموالهم وانفسهم في سبيل الله والذين یؤوونصرؤوا اولئك بعضهم اولياء بعض والذين آمنوا ولم بهاجروا مالكم وولایتهم من شيء حتى بهاجروا

استنصحكم في الدين فعليكم النصر الااعلى قوم نكم وبينهم ميثاق والله بما تعملون بصیر

93- Maudoodi, *Tafhim-Ul-Qura'n*, op.cit., Vol.2, pp.161,162
ولا يحرمنكم شان قوم على إلا اعدلوا اعدلوا هو أقرب للتقوى، البقرة، 8

ولا تتخذوا إيمانكم دعاء بينكم، النحل، 94

فان تولوا فخذواهم واقتنواهم حيث وجدتموه وان تتخذوا منهم ولا يلوارا، النافع، 89, 90

نصيرلله الذين يصلون إلى قوم بينكم وبينهم ميثاق

وان جنحوا للسلم فاجتنب لهاو تحل على الله أنه هو السميع العليم، وان، الحديقة، 61, 62

بهدعوك فان حسب الله هو الذي ابتك بنصره والمؤمنين


لا يهلك الله من الذين لم يقاتلوكم في الدين ولم يخرجواكم من دياركم ان تبروا وتقبضوا اليهم ان الله يحب المتقين

بمساء الاحسان الا الاحسن

Kapur, op.cit., p.32

Maudoodi, *Khilafat-o-Mulookiat*, op.cit., p.42


يا ابيها الذين آمنوا لا تتخذوا بطانة من دونكم، آل عمران، 118

ام حسبتم ان تتركوا ولما يعلم الله الذين جاهدوا منكم ولم يتخذوا من دون الله ولا رسوله ولا المؤمنين وليحة

يا ابيها الذين آمنوا اطعوا الله واطعوا الرسول والايمان منكم، آل عمران، 59

Maudoodi, *Khilafat-o-Mulookiat*, op.cit., p.37

اذتبتلي ابراهيم ربه بكمالات فاتهمه قال اني جاعلك لنناس اماما قال ومن، البقرة، 124

ذريتي لا يبال عهدي الظلومين

الله نجعل الذين آمنوا وعملوا الصالحات كالمتفقين في الأرض ام تجعل المتفقين كالفاحر

Qura'n, Baqrah, 248

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Qura'n, Baqrah, 247

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Qura'n, Saad, 20

المتفقين كالفاحر

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قال ان الله اصحفه عليه وزاده بسطة في العلم والحسن، البقرة، 247

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116- Qura'n, Yusuf, 55, 
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117- Qura'n, Nisa, 83, 
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118- Qura'n, Zumar,9, 
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119- Qura'n, Nisa, 58, 
ان الله يامركم ان تتدوا الامانات الى اهلها,
120- Maudoodi, *Tafhim-Ul-Quran*, op.cit., Vol.4, p.510
121 - Qura'n, Shoora, 10, 
واما انفجعتم فيه من شئ فحكمه الى الله,
122- Qura'n, Ahzab,36, 
فما كان لهم عومن ولا مومنة اذا قضى الله ورسوله امران, ان يكون لهم الخير بناءً,
123- Maudoodi, *Khilafat-o-Mulookiat*, op.cit., p.43
124- Qura'n, Nisa, 59, 
با اياذا السببين اذاتهمعتم في شيء نودع الى الله والرسول ان كتم تومون بالله,
125- Kapur, op.cit., p.59.
126- Siddiqi, Yaseen Mazhar, op.cit., Vol.1, p.172
127- Qura'n, Al-Imran, 159, 
فبما رحمة من الله لنت لهم ولوكنت فظا غليط القلب لانفوض من,
128- Qura'n, Shoora, 37, 
الذين يجتنبون كثير الامن والمناهش اذا ما غضبواهم يغضبون,
129- Qura'n,Bani Israil,37, 
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131- Qura'n, Saad, 30, 
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132- Qura'n, Hajj, 41, 
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133- Qura'n, Qasas, 83, 
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134- Sahih Muslim, Kitab-ul-Imarah
135 - Al-Sajistani, op.cit., Kitab-ul-Imarah
136- Almuttaqi, op.cit., Vol.6, Hadith no.206
137- Ibid, Vol.6, Hadith no.69
138- Ghulam Mohd, op.cit., p.31
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140- Kapur, op.cit., p.492
141- Sarwat Sawlat, *Millat-e-Islamia ki Mukhtasar Tarikh*, Markazi Maktaba
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143- Ibid, p.343