Chapter VI

Functions of Shura: A Comparison
with Modern Executives
There are no specific limits to the scope of the Shura or the matters which ought to be placed before it for consultation in the Quran and the Sunnah.\(^1\) The injunctions in the holy Quran relating to the Shura indicate that this body can deal with all affairs of the Muslim community and every aspect of its life. Thus it may be said that all public affairs of the Muslim Ummah can, rather should be, the subject of consultations. However, there are two limitations on the scope of the Shura. The first is that it cannot take decisions on issues regarding which injunctions exist in the Quran or in the Sunnah, except when its purpose is only to interpret the injunctions or to enforce them. Obviously, this could happen only in the period subsequent to that of the Prophet (SAAW), for during his time the Prophet (SAAW) himself was the authority for their interpretation and enforcement.

The second condition is that when an issue is referred to Shura, it is precluded from reaching a decision contradicting a legislative injunction in the holy Quran or in the Sunnah.\(^2\) In the event of there being a such a contradiction, following the opinion of the Shura is prohibited.\(^3\)

It is more compatible with the Islamic method of legislation to exclude certain matters from the purview of the Shura. Daily administrative matters which occupy the executive and administrative branches of a state, due to their nature and need for quick decisions, cannot be brought before Shura except when they are related to important issues or to problems which affect entire personnel in these branches.\(^4\)
The principle of "Consultation among themselves" underlying the creation of Majlis al-Shura naturally includes the Amir for, having been elected by the community as head of the state, he must be regarded as its foremost representative in all matters pertaining to community affairs. More than this by virtue of his being the focal point of all Amir in an Islamic polity, the Amir cannot merely be an ordinary member of the Majlis, but must be its leader, duty bound to guide its activities and to preside - either personally or through a nominee - over its deliberations. This stipulation, implies that in a state, which is subject to the authority of a Divine Law, there can be no radical separation of the legislative and executive wings of the government. This constitutes a most important Islamic contribution to political theory.

Scholars assert that the head of the state and its Majlis al-Shura performs both legislative and executive functions. In modern democracies, a sharply drawn separation of powers between the legislature and the executive is considered to be the only effective safeguard against a possible abuse of authority by the executive. This western principle of government has certain merits. According to it, the legislature controls the functioning of executive and thus prevents it from exercising its powers in an irresponsible manner. However, equally undoubtedly, a government as a whole - including both its executive and legislative aspects - is more often than not greatly hampered by this radical separation of functions, and is thus obviously at a disadvantage compared with an autocratic government. Islam is as uncompromisingly opposed to autocracy as any of the western democratic polities could conceivably be,
but in this matter Islam follows a middle way, avoiding the disadvantages of either of these systems and securing to the Muslim community the advantages of both. By integrating the executive and the legislative wings of the government through the instrumentality of the Amir it is possible to overcome this duality of power, which, western countries so often places the executive and the legislature in opposition to one another, in modern democracies and, at times, makes parliamentary government unwieldy or even ineffectual. But this gain in efficiency in an Islamic state is not achieved at the cost of relinquishing the principle of popular control over the activities of the government. Indeed, any possible tendency toward autocracy on the part of the executive is checked at the very outset by the principle on which the Shura functions, which ensures that transaction of all governmental activities, executive as well as legislative, must be an outcome of consultation among the accredited representatives of the community.

In logical pursuance of this principle of interdependence, one may conclude that the decision arrived at by Majlis al-Shura through a majority vote are not of a merely advisory character—to be accepted or rejected by the executive at its discretion—but are legally binding on it.

As has been discussed in the previous chapters, during the period of the Four Caliphs the Arab society had preserved its tribal structure to a large extent and the leaders of the tribe and clans possessed the right to speak and act on behalf of their respective groups. Had the Caliphs insisted on elections, those very chieftains would have been elected. Hence, none of the Guided Caliphs saw any reason for changing the method by which
the Majlis came into being. Nowadays clan leadership has lost its erstwhile importance. Consequently there is no longer any way of ascertaining the opinion of the community except by means of a popular vote.

This applies not only to the method by which the Majlis is to come into being, but also to the terms of reference under which it would work and the position which it would occupy a modern Islamic state.

One may conclude from the history of the periods of the Prophet (SAAW) and the Four Guided Caliphs that there was total collaboration between the executive and the legislature. However, Islamic chronicles indicate that the legislature cannot overrule the Amir. He is not bound to seek prior consent of the Shura in day to day administration. In this connection scholars refer to the verse of the Holy Quran.

"And when you have decided upon a course of action, place your trust in Allah",(7) which has been interpreted to mean that although the Amir is bound by the temporal legislation enacted by the Majlis and by its decisions on major questions of policy, the manner in which he translates these decisions and directives into action is left to the discretion of the executive over which he presides. Though the Majlis is empowered to frame the temporal laws on the basis of which a country is to be governed, to formulate major policies to be pursued, and, in general, to supervise the activities of the government, it is not entitled to interfere with the day to day working of the executive.(8)

It is generally agreed that the Amir must possess executive powers to the fullest extent. An office of head of state shorn of real powers and reduced to a mere figure-head is obviously
redundant according to the Quranic injunction which enjoins in the Muslims' to be obedient to the Ulu al-amr (those who hold authority), which is a corollary of their obedience to Allah and His Prophet (SAAW). (9)

However, even if full executive powers are conceded to the Amir the question remains as to whether those powers (and functions resulting from them) are to be vested in him alone, as is, for instance, the case with the President of United States, or whether he should exercise them in partnership, as it were, with a cabinet of ministers representing major parties in the Majlis al-Shura, their tenure being dependent on this body's vote of confidence. There exists no explicit pronouncement, in the Shariah in either of these matters. Nevertheless, from the wordings of many authentic traditions it appears that the Prophet (SAAW) envisaged the concentration of all executive responsibilities in the hands of one person as being most suitable for Islamic polity. Here are some of these traditions:

1. "He who obeys Allah; and he who disobeys me, disobeys Allah; and he who obeys the amir, obeys me, and he who disobeys the amir, disobeys me. Behold, the leader (al-Imam) is but a shield from behind which the people fight and by which they protect themselves." (10)

2. "Verily, each of you is a shepherd, and each of you is responsible for his flock. (Thus) the leader (Imam) who is placed over the people is a shepherd responsible for his flock." (11)

3. "He who has pledged allegiance to an Imam giving him his hand and the fruit of his heart, shall obey him if he can
(i.e. as long as he is not ordered to commit a sin), and if another person tries to usurp the Imam's rights, smite that other person's neck." (12)

These and similar sayings of the Prophet (SAAW) are entirely in keeping with his more general command that whenever a group of Muslims is engaged in any work of common interest, one man should be chosen from among them as Imam to lead the others. (13) Nevertheless, one might argue that even a government on the European parliamentary pattern a council of ministers deriving its mandates from the people and directly responsible to the legislature and ultimately to the people would not necessarily be against the principle of one man leadership of an Islamic state, where the cabinet is headed by the Amir, who combines in his person the twin functions of head of the state and of Prime Minister. Commonsense, however, says that such an arrangement would render the position of the Amir highly anomalous. On the one hand, he is supposed to be head of the executive in his own right, by virtue of a popular election, on the other he has to share his executive responsibilities with a group of ministers individually responsible to the legislature. Thus it would be the parties represented in the Shura, and not the Amir, who would be the ultimate fount of all executive power in the state. Apart from the fact that such an arrangement would militate against the Islamic concept of leadership, it would inevitably result in the government policy being always dependent on a compromise or, rather, on an unending series of compromises between various, sometimes conflicting, party programmes, and never being able to attain that single-mindedness and inner continuity so essential for an Islamic state. (14)
The principle of compromise between opposing party programmes may be necessary (and sometimes even morally justifiable) in communities which are not animated by any definite ideology and are, therefore, bound to subordinate all political decisions to the people's changing views as to what may be the right course of action under the given circumstances. But it is certainly out of place in an ideological Islamic state, in which the concepts of 'right' and 'wrong' have definite connotations and cannot possibly be made dependent on mere expediency. In such a state, both legislative and administrative policies must at all times be expressive of the ideology on which the community has agreed beforehand, and this can never come about if the government is obliged to subordinate its day to day activity to considerations of fluctuating party politics. This, of course, does not preclude the existence of parties in an Islamic legislature. If freedom of opinion and criticism is recognised as the citizens' inherent right, the people must be accorded the freedom to group together for the purpose of propagating certain sets of views as to what would be the policy of the state on this or that question, provided these views do not run counter to the ideology on which the state is based, the parties thus constituted must have the right to argue put forward their respective viewpoint, within and outside the Majlis-e-Shura. However, this freedom to form parties and to propagate their programmes should not be allowed interfere with the administration of the government.

In view of all this, it would seem that a 'Presidential' system of government would correspond more closely to the requirements of an Islamic polity than a 'parliamentary' one.
As a matter of fact, the very term Wazir (minister) which the Prophet (SAWW) has used connotes a person who helps the head of the state to bear his burden. The Prophet (SAWW) says:

"If Allah means well with the Amir, He provides for him a trustworthy assistant (Wazir) to remind him whenever he forgets, and to help him whenever he remembers. And if Allah does not mean it well with him, He provides for him a bad assistant, who does not remind him whenever he forgets and does not help him whenever he remembers."

The Quranic injunction 'amruba shura baynahum' makes the transaction of all major governmental business directly dependent on consultation. The Shura is required to give its verdict on all important policy issues as well as evolve temporal laws under which the country is to be governed. But in practice the matter is not so simple.

Scholars of political science are aware of the fact that it is not the legislative assembly but the executive branches of government that 'make' most laws in a modern state. As a rule, any major item of legislation entails a great deal of expert preparation and research, a thorough knowledge of social and economic issues involved, and, finally, considerable legal acumen in the formulation of the laws that are to be enacted. It is obvious that such an accumulation of expert knowledge and technical ability cannot be expected of an assembly of persons elected on the basis of a wide suffrage; for the electorate is,
naturally, concerned only with the individual merits of the candidates, and is not in a position to assess each candidate's technical qualifications for law-making. Moreover, the parliament, comprising a comparatively large number of representatives, would not be capable of studying preparing and drafting any elaborate legislation. Consequently the work of research, preparation and drafting new laws becomes, in modern states, the responsibility of the executive. It is in the executive departments of government that most of the major legislative bills are expertly prepared by civil servants who have been trained specially for this purpose, and are only then placed before the legislative assembly for discussion, possible amendment and final adoption. Such a procedure might be entirely satisfactory from the Islamic point of view so far as popular consent is concerned, for no legislative measure can become law unless and until it has been thoroughly discussed in the Shura. However, popular consent alone does not constitute the beginning and the end of all Islamic requirements with regard to legislation: the principle of Shura categorically demands that all governmental activity should be a direct outcome of consultation. But such a practice would hamper the executive at every step, thus destroying its freedom of action. This would not be a problem in an Islamic Shura comprising technical experts. As has been discussed in Chapter IV, there should be a quota, fixed for the experts in Shariah in modern law technically experienced persons from all fields, as well as those who are familiar with law-making technicalities in the Shura. These persons would be nominated or selected by the Shura itself. In this body the principle of consultation would be followed.
In all modern parliaments special committees are instituted to deal with particular problems of government. It is before these committees that the executive has to justify its policies. However, the approval or disapproval of a parliamentary committee is usually on ex post facto verdict on the policies of the executive. In Islamic Shura no such problem is likely to arise because the legislative and executive powers are in one hand. The head of the state, and through him the Shura, is solely responsible for all legislative and executive functions to the people.

In view of all this, it would appear that a presidential system of government would correspond more closely to the necessities of Islamic state than a parliamentary form in which the executive powers are shared by a cabinet jointly responsible to the legislature. Modern parliament and Islamic Shura differ from each other in following respects:

1. In modern parliamentary systems the executive is divided into two parts - real and nominal (a Prime Minister being head of the government and the Monarch or President acting as head of state). Usually the monarch occupies his throne by hereditary title whereas a president is elected by the parliament. It does not mean that the Head of state fills a purely formal or decorative office. Constitutional monarchs still have important prerogatives.

In Islamic Shura system, on the contrary, there is no division of executive at all. All the powers are vested in the caliph or head of state and through him in the Shura. Any conception of nominal head of state is non-existent here. The
head of the state has to be selected or elected by the consent of the people and he is only responsible to the people.

2. It is in the very nature of the parliamentary system that there are two distinct offices and that the head of the government is appointed by the head of the state. Though the head of the state is bound by the outcome of parliamentary elections and must appoint head of the party which is a clearly victor. But this in the situation only where one party or a stable coalition has obtained an absolute majority of seats. But in many parliamentary democracies, especially those which have a multi-party system, it is possible that no party gets absolute majority. In such cases, in selecting the Prime Minister who can best obtain a working majority the patronage of the head of the state may tilt the balance in favour of the leader of a particular party.

In the Shura system of Islam, there is no room for a head of the state who has little say in the day to day political affair and who is merely supposed to receive ambassadors and decorate ceremonial occasions. Islamic system, does not allow expenses incurred in such decorative office. Secondly, a one-man rule is preferable and more close to the spirit of Islamic polity, the head of the government must be elected by the people and should have the faith and trust of the public and this is possible through only a countrywide general election.

3. An interesting feature of parliamentary democracies is its process of law making. Everyone knows that the work of research, preparation, and drafting of new legislation is the responsibility of the executive. It is the executive wing of the
government whose experts prepare most of the legislative bills and thus only in exceptional instances the elected assembly is associated with the current activities of the executive in a way that would fully correspond to the injunction of Shura. In the Shura system all administrative policies and legislative enactments must be decided on consultation with the chosen representatives of people from beginning to end, while in a parliamentary system conflict between the cabinet and the elected members of the legislative is a common phenomenon. This is against the very spirit of Islamic Shura.

4. A distinctive characteristic of parliamentary democracies is that when the head of the government becomes dissatisfied with his assembly, he asks for its dissolution by the head of the state. In the pre-parliamentary monarchies of Europe the monarch could, if was dissatisfied with his assembly, dissolve one or more Houses in the hope of securing a more pliable group of representatives after a fresh election. Today when the executive is divided, it is still the head of state who dissolves the parliament, but he does so only on the request of the head of the government.

In the Shura system the head of the state has no power to dissolve the assembly. The members of the Shura may be removed from their offices not by the head of state, but, by the people who have elected them provided (i) they have lost the confidence and trust of the people (ii) they are going against the clear-cut teachings of Islam (iii) and they are no more loyal to the state.

5. One important feature of the parliamentary system is the process of the election of the head of the state. In many countries
the monarch is the head of state who occupies his throne by hereditary title, while in other countries the head of state is the president who is elected by the legislature.

In the Islamic political system, neither hereditary posts are justified nor can the president be chosen without the consent of the people. He must be appointed through a general election directly or indirectly. The Four Guided Caliphs occupied their posts after public allegiance was ascertained in their favour. Some of them, of course, were nominated by the outgoing caliph, but they were declared as head of state only after general allegiance in their favour was ascertained.

6. A parliamentary government, though directly responsible to the legislature, is only indirectly responsible to the electorate. The government as a whole is not directly elected by the voters but is appointed indirectly from amongst the representatives whom they elect to the Assembly. It is true that members of the government, like other members of legislature must be elected. However, they do so not as members of the government but as candidates for the legislature in the ordinary way. The responsibility for transforming them, once they are elected, into Ministers, rests with the Prime Minister alone, and while the monarch selects the Prime Minister.

In the Shura system, the Executive is dependent on a popular vote or consent and the caliph or President in the political system, is elected by the whole body of electors. He owes his position not, as in parliamentary government, to the Assembly. Between two general elections and after that too, he can speak to the voters and masses directly, not indirectly through an assembly as is the case with the parliamentary system. In
Shura system, the electorate, therefore bears a double responsibility. The Voters elect representatives from their constituency to the Shura and also elect the caliph or the President as both head of the Executive and Head of the state.

In view of differences between the parliamentary democracies and Shura discussed above, it may be concluded that the Islamic system of Shura is distinct from the parliamentary system. Nevertheless there are a few similarities between these two systems. For example, in both the systems, (legislature in a parliamentary and Shura in the Islamic system) is the focus of power in the state. The fusion of executive and legislative powers in both the systems is responsible for the overriding ascendancy of legislature in the political order. It is the stage on which the drama of politics is played out. It is the focus of nation's ideas. It is the school where future political leaders are trained. In both the systems, the legislature is the focal point of the nation's political interest, and the centre of the political system.

In both the systems, legislature or Shura as a whole has a status that is superior to that of the executive. This superiority is strictly a governmental notion affecting relations between the two branches of the government. It is compatible with the belief that in a very real sense it is the electorate which is ultimately supreme (In Islamic Shura, however, this supremacy, is subordinated to that of the Shariah).

There is no doubt that the Islamic Shura system differs from the parliamentary democracies in its spirit and structure. In most respects the two systems stand on opposite poles. But
it will not be correct to say that the Shura system is a true copy of the presidential form of government, and that there is no sharp distinction between the two. The fact is that the two systems, irrespective of some of their similarities, differ on certain crucial points:

1. In contrast to the Islamic Shura in which authority is exercised by a collective institution, the presidential government tends to be centred round an individual. There is a famous story relating to Abraham Lincoln's meeting with his cabinet. He put a proposal before it and then took a vote in which he alone supported his suggestion. He then remarked: "Noes 7, Ayes 1, The Ayes have it." His cabinet did not consist of members of the Congress nor could they introduce any bills in the Congress. The American President is not bound to act upon the advice of his cabinet and can override it even if its advice is unanimous.

   In the Shura system, members of the cabinet are compulsorily members of legislature too. The caliph or President acts in the consultation of the cabinet and the legislature. He is bound to act according to the advice of the majority of the members of the Shura.

2. The American President enjoys vote power over the bills passed by the Congress. It is a negative power of the President to prevent the Congress from encroaching upon the executive authority. No bill passed by it can become law without the signatures of the President. The President is given ten days to reject or approve a bill or resolution passed by both the Houses. If he signs the bill it becomes law immediately. If he does not take any action on it, it becomes law automatically
at the expiry of ten days (sunday and holidays excepted) even without the signature of the President, provided the Congress is in session. The President can veto a bill (within ten days) and send it back to the Congress for reconsideration. Then the Congress is authorised to pass the bill again with a two-thirds majority. The president cannot exercise his veto power for the second time. Sometimes the veto of the President can become absolute also. If the President does not take any action on the bill and before the expiry of ten days the Congress adjourns, the bill is killed. In the closing days of the session the Congress passes many bills and sends them to the President who kills many of them simply by pocketing them. President Roosevelt of U.S.A. nullified 631 bills passed by the Congress (371 by vetoing and 230 by pocketing them).

In the Shura system of Islam, the President/Amir is bound to consult with the Shura on important policy matters, and act accordingly. He enjoys no veto power over the bills passed by the Shura. As discussed earlier, according to some researchers, Abu Bakr used veto power against the opinions of the companions regarding the war against the apostates, for despatching Usama army. They cite the instance of Umar too who used this power in regard the distribution of land after the conquest of Iraq. But, as stated above in detail, the cases were not understood properly.

3. Though the American President wields legislative powers when he signs or vetoes bills sent to him by Congress or when he sends a message to the Congress and calls the attention of the Congress towards the affairs of the state, yet the presidential system is based on principle of the 'separation of powers'
with checks and balances, which was popular in the eighteenth century and was advocated by two eminent writers in particular, namely John Locke and Montesquieu. John Locke, writing at the end of the seventeenth century, suggested that the long conflict between British Monarch and the Houses of Parliament would best be resolved by the separation of the King as Executive from the two Houses as legislature, each body having its own sphere. In 1721, Montesquieu a French writer, pronounced himself in favour of the separation of the executive, legislative and judicial powers. In the American Presidential system a clear distinction is drawn between the three branches of the polity. All the legislative powers are vested in the Congress while the President, who is the head of the Executive, is neither related nor responsible to the legislature.

In the Shura system of Islam, there is no separation of legislative and executive powers. In this system all the powers are coordinated. The head of state takes active part in the adopting of all legislative measures. He may discuss, initiate, persuade and argue on any matter with the Shura, as the Four Guided Caliphs did. Likewise, the Shura shares in executive authority when it discusses policy matters and ratifies treaties and confirms appointments. In this system, the term 'separation of powers' is irrelevant.

4. In the Islamic Shura, the same persons may belong to both the executive and legislative branches of government, while it is obligatory in presidential system for the personnel of the two branches to be separate. Neither the President nor his colleagues may sit in the legislature. In the Islamic Shura system, members of cabinet may be members of the legislature.
also. There is no convention or law whereby the members of the assembly are not eligible for office in the administration and vice-versa.

In spite of these differences, both the systems (Shura and presidential) have certain common features:

1. In both the systems the executive is not divided and the head of the state is elected by the people. An undivided executive obviously requires that there is no delineation of the respective functions of head of state and the government. It is a feature of both the systems that both the head of the executive and the assembly are selected by the people.

2. In both the systems, the Executive is bound to abide by the constitution. He may not be dependent on the legislative Assembly for his political survival but he is very much dependent on its good-will for the furtherance of state policies. The budget, foreign policy programmes, senior appointments—all require its acquiescence. If there is no agreement, the assembly may decide to take no action. However, it cannot remove the head of the state.

3. In both the systems the head of the state is not empowered to dissolve the legislature, and, therefore, the former is not in a position to coerce the latter. In the United States, President Eisenhower declined for some time to take issue in 1954 with Senator McCarthy on the grounds that a Senator's conduct was primarily the responsibility of the Senate, not of the Executive. In 1957, after the suicide of the Canadian Ambassador to Egypt, the President was unable to assure the Canadian people that congressional committees would in future
exercise more discretion since he was not responsible for the
behaviour of the Senate.

After the battle of Uhud in which the Prophet Muhammad
(SAW) fought against the Makkah pagans outside Madinah against
his own will and the Muslims were defeated, no action was taken
to dissolve the assembly. Instead, the Quran asked him to
continue the process of consultation with it.

Some scholars view that a presidential system of
government, especially the one practiced in the United States,
corresponds closely to the requirements of the Islamic polity.

But the French system of presidential government would be perhaps,
more close to Islamic Shura than the American one. After a
thorough study of both the presidential systems, one may reach
the conclusion that the constitution of Fifth Republic in France
is a mixture of parliamentary and presidential system of
government and is, therefore closer to spirit of Islam. The
following are some of the common features of the French and the
Islamic political systems.

The French President is not as powerful as his counter
part in America. Though he is vested with enormous powers by
the constitution, still he is to perform many functions on the
advice of the Council of Ministers. It is the Council of
Ministers that appoints the Councillors of the state, the Grand
Chancellor of the Legion of Honour, Ambassadors and Envoys Extra
ordinary, Master Councillors of the Audit office, prefects,
representatives of the government in the overseas territories,
general officers, Rectors of academic institutions and directors
of Central Administrations. The Council exercises some authority
in the financial sphere too. Moreover, though there does not exist
any close relationship between the Council of Ministers and the legislature, the Council is responsible to the legislature for all its actions and policies. It is clearly written in the constitution that "The Premier, after deliberation by the Council of Ministers, may pledge the responsibility of the government to the National Assembly with regard to the programme the government, or with regard to a declaration of general policy, as the case may be. The National Assembly may question the responsibility of the government by the vote of a motion of censure."(19)

Members of the French National Assembly can influence the working of ministers by asking them questions and by criticising their performance. In case the National Assembly passes a vote of no-confidence against the Council of Ministers, they have to resign.(20) These are some of the features that show that the French President has less powers than the American one and since the former has to consult the Council in many matters he has some influence upon legislature too. In the Shura system of Islam, the President/Amir is head of state and head of Government both, but he is bound to act according to the decisions of the Shura in all the policy matters and the legislature plays a vital role in the political system.

In the Shura system, the President or Caliph has the power to conduct referendum on any executive or legislative problem for which there is no guidance in the Quran or the Sunnah, by-passing the Majlis al-Shura. The case of the captives of Hawazin during the period of the Prophet may be cited as an example here. In this case, the Prophet of Islam consulted his companions in general and when they could not reach any
unanimous decision, the Prophet said, "We do not know who is ready to withdraw and who is not." Then he called the representatives of the people and it was decided to release the prisoners. Scholars are of the opinion that consultation by the Prophet with the masses in this case provides justification for referendum if the situation requires it.

The manner of the selection of Uthman as Caliph has already been cited. In this case, Abdul Rahman b. Awf who was authorised to select the caliph, took the advice of every Muslim living in Madinah. He went from door to door and consulted even with women and also with traders coming from outside Madinah. Some writers have cited this instance in support of holding referendum.

This power is vested in the President of France also. He has the power to conduct referendum over the propriety or otherwise of the bills. The constitution of Fifth Republic specially provides that holding of referendum is a personal privilege of the President and this does not need even the counter-signature of Prime-Minister. It is entirely upto the President to elicit or refuse to elicit the opinion of the common people over a bill or a treaty through a referendum. Bills over which referendum may be conducted include those relating to the organization of public authorities, seeking approval of a community agreement or proposing to authorize the ratification of a treaty, which without being contrary to the Constitution would affect the functioning of institutions.

Article II of the French Constitution which contains these provisions categorically enjoins that the President, at the suggestion of the government during parliamentary sessions or on a joint motion of the National Assembly and the Senate may submit for referendum all measures enumerated above. But, on all three
occasions when the provisions of this Article were invoked, the initiative invariably came from the President and not from the Government or Parliament. The President invoked this Article in 1962 and claimed that it empowered him to submit directly to the people amendments to the constitution, ignoring the procedure prescribed in Article 89.

Though democracy, both as a concept and a system, goes back to ancient times in the western history, thought and philosophy and is a natural extension of the materialistic philosophy that regards man as a physical entity whose value is measured in pragmatic terms, based on his usefulness to the state and society and hence it cannot be compared with the Islamic system of Shura. Though there are some apparent similarities between the western democracies and the overall spirit of the Shura, the former has certain un-Islamic elements that would completely distort the true image of Islam if the two are found to be completely similar. Although the Shura aims at choosing proper leadership, establishing checks and controls over the rulers and arriving at decisions to be accepted, appreciated and supported by the people, it is not the same thing as democracy. By definition, the Shura derives from a philosophical perception which is essentially different from that of democracy. This difference lies in the notion of justice as a concrete fact of existence which man arrives at through his own nature and divine revelation, and which he endeavours to attain irrespective of his personal desires and interests. (26)

However, for the sake of a correct understanding sometimes comparison is necessary and here one has to speak in the language
of others to clarify matters. It can, therefore, be concluded that the Shura system is closer to the Presidential system of the Fifth Republic of France than to other Western democratic polities.
FOOT-NOTES

1. The Quran, 3:159.


3. Ibid, see for details: Abu Zahrah, Shaikh Muhammad, Al-Madahib al-Siyasivah al-Islamiyah, pp. 37, 38.


5. In support of this, it is pertinent to quote the second Caliph of Islam who put before members of his advisory committee both legislative and executive issues. For legislative cases one may see the problems put before them such as those of punishment for drinking and the disposition of the land conquered in Iraq during his rule, while for executive affairs his appointments of provincial governors, his consultation about problems of military organization land revenue, provincial and national administration and like matters.


7. The Quran, 3:159.


13. Most of the authentic traditions to this effect have been quoted and analysed by Muhammad bin Ali al-shawkani in his classical work *Nayl al-Awtar*, Cairo, 1344 A.H., Vol. IX, pp. 157-158.


16. Parliamentary system means, here, the British one because it is the British system which has provided an example for a great many other countries. But this is not to imply that the British parliamentary system should be taken as the model and that others are, deviations from the norm. See for detail, Douglas V. Verney, *Analysis of Political Systems*, Routledge and Kegan Paul Ltd., London, 1959, pp. 17-56.

Dr. Verney has made an interesting comparative study of parliamentary and presidential systems. According to him, the parliamentary system can best be understood on following grounds:

i) The assembly becomes a parliament.

ii) The executive is divided into two parts.

iii) The head of state appoints the head of government.

iv) The head of government appoints the ministry.
v) The ministry or government is a collective body.
vi) Ministers are usually members of the parliament.

vii) The government is politically responsible to the assembly.

viii) The head of government may advise the head of state to dissolve the parliament.

ix) The parliament as a whole is supreme over its constituent parts, government and assembly, neither of which may dominate the other.

x) The government as a whole is only indirectly responsible to the electorate.

xi) The parliament is the focus of power in the political system.

The author has given eleven features of presidential system, too, for the sake of comparison:

i) The assembly remains an assembly only.

ii) The executive is not divided but is a president elected by the people for a definite term at the time of assembly elections.

iii) The head of the government is head of state.

iv) The president appoints heads of departments, who are his subordinates.

v) The president is sole executive.

vi) Members of the assembly are not eligible for office in the administration and vice versa.

vii) The executive is responsible to the constitution.

viii) The president cannot dissolve or coerce the assembly.

ix) The assembly is ultimately supreme over the other branches of the government and there is no fusion of
the executive and legislative branches as in a parliament.

x) The executive is directly responsible to the electorate.

xi) There is no focus of power in the political system.

17. Though some scholars assert that the term 'separation of powers' is an inadequate and misleading description of the theory underlying presidential government, yet the term is commonly used in all the books of constitutional discourses. According to scholars presidential and parliamentary governments do differ over the separation not of powers but of institutions and persons. See for detail, Apter, B. David and Eckstein, Harry, (editors), Comparative Politics, Princeton, N. Jersey, 1963, pp. 184-85.

18. Asad, Muhammad, op. cit., pp. 61, 62.


20. Article 50,


