CHAPTER - IV

Shura : Election and Organization
The Quran\(^{(1)}\) states clearly that in all political and religious matters regarding which no guidance can be obtained from the revelations of Allah or Sunnah of the Prophet should be settled by the Amir after holding consultations with Ahl al hall wa al-aqd (people at the helm of affairs). However, the question arises as to who are the people to be consulted according to the Quran - all the Sahabah or a specific group of people or a few experienced persons? To answer this question a detailed study of the system of the Shura during the Prophethood of Muhammad (SAAW) and in the period of the Four Guided Caliphs has to be undertaken, since none of the authentic traditions provides any guidance in this respect\(^{(2)}\).

As far as the Prophet (SAAW) himself is concerned, he consulted all the Sahabah concerning matters of general interest. On the issue of the sharing of booty obtained from Havazin, he tried to elicit the opinion not merely of the eminent Sahabah but of all the participants in the battle. On the occasion of the Battle of Uhud, he sought the advice of all the Sahabah. He talked to the Ansar and the Muhajirs both about the Battle of Badr, who, together comprised the Ummah. It is true that he consulted only Saad bin Ubadah and Saad bin Muaz on the peace pact with the Ghiffan tribe.

A similar practice was followed by the Guided Caliphs. Caliph Abu Bakr discussed the issues of wars against Rome and Persia with all the Muslims, while his successor deemed it necessary to consult all the Sahabah on the selection of governors, distribution of lands of conquered territories and delegation of
the powers of the Caliphate. After the death of Umar, Abdur Rahman bin Auf sought the opinion of all the Muslims, including women, before deciding whether to nominate Uthman or Ali as Caliph.

During the Caliphate of Umar, there was a Shura of the eminent Sahabah apart from that of the general body of Muslims in which every Muslim could participate and give his opinion without any let or hindrance. Muslims of conquered territories were consulted in the matter of running their administration.

Details of the system of the Shura that prevailed during the Prophethood of Muhammad (SAAW) and the period of the Four Guided Caliphs show that during these periods the Shura comprised the eminent Sahabah who represented the entire body of Muslims and enjoyed their full confidence. In the beginning the Shura comprised the early adherents of Islam while after Hijrah (migration of Muhammad (SAAW) and his followers from Makkah to Madinah), the Ansar were included in it.

During the period of the Guided Caliphs, two important elements were added to the Shura. The first of these consisted of those who had performed glorious services in the propagation of Islam and in the field of administration while the second new element included those who were recognised by the people as well-versed in Fiqh (Muslim Jurisprudence) and as scholarly persons endowed with insight. These people were consulted in the day-to-day affairs of the state while the opinion of all the Muslims was elicited on matter concerning the entire Ummah.

Hence there were three categories of Shura during the period of the Guided Caliphs:
1. The **Shura** of experienced people and experts in various fields who were consulted on purely administrative and technical issues.

2. The **Shura** of the representatives of Muslims and eminent Sahabah whose advice was sought in general matters related to Shariah. These were the people who constituted what was known as the real **Shura**.

3. The **Shura** of the common people of the Ummah eliciting whose opinion was deemed necessary in administrative matters of common interest like the appointment of officers and governors, declaration of war etc. (3)

The question arises as to what the manner of the selection of the members of the **Shura** during the Prophethood of Muhammad (SAAW) and the period of the Guided Caliphs was; whether they were elected by the people or were nominated by the Prophet (SAAW) or the Caliph himself. The truth is that during this period members of the **Shura** were neither elected according to modern terminology nor were they nominated. Such persons emerged naturally from amongst the Ummah. Maulana Syed Abul Ala Maududi rightly says: (4)

Islam rose in Makkah as a movement. It is the common characteristic of a movement that those who are the first to come forward to respond to its call become the mainstay and advisers of its leader. Hence those who were the first adherents of the Muslim faith were naturally deemed to be the comrades and advisers of the Prophet (SAAW) whom he consulted in every matter in which he had not received any command from Allah directly.
Thus, as new people started being added to this movement and its conflict with forces opposed to it was intensified, there emerged those who achieved prominence among the Ummah due to their services, sacrifices, insight and wisdom. They were selected not through voting but as a result of their experience and ordeals, which is a more correct and natural process of selection. After this came the incident of Hijrah. This followed the fact that about one and a half year earlier some influential people of Madinah had embraced Islam and due to their influence the religion had reached every single home in the tribes of Aus and Khazraj. It was on their invitation that the Prophet (SAAW) and other Muhajirs left their homes and shifted to Madinah where the Islamic movement assumed the form of a political system and that of a state. So it was only natural that those under whose influence Islam had spread and went on to spreading assumed the leadership of the local population in the new social and political system and it is because of this status of theirs that in the Shura of Prophet Muhammad (SAAW) a third element (that of the Ansar) was included, alongside the early adherents of the faith and tested and tried Muhajirs. These people were also selected through the natural process of selection and were such trustworthy persons of the Muslim tribes that had elections been held according to the modern methods, even then it is these people who would have been elected. Thus in the society of Madinah two kinds of people started becoming prominent. First, there were those who had rendered meritorious service for eight to ten years in political, military and proselitizing campaigns so that people started looking up to them on every important issue. In the second category there were people who achieved eminence due to
their understanding of and insight into the *fighi* (religio-legal) aspects of the Quran so that as regards their knowledge in religious matters they were considered next only to the Prophet (SAAW). And even the Prophet (SAAW) had awarded the certificate of reliability to them by asking people to learn about the Quran from such and such person and to resort to such and such person to resolve such and such problem. These two elements also went on being included in the *Shura* through the method of natural selection and no voting was required for their inclusion in the *Shura*. Even if voting had taken place there was none except for these persons who would have been favoured with election by the Muslims. In such a situation there was no need for a formal election. According to Mohammad Asad, the Arab society had not been able to emancipate itself from tribal ways of life, though Islam had eradicated distinctions between tribes and clans to a great extent and had unified the people with the ties of faith in Islamic universalism. However, he adds, in spite of this, the society was not entirely bereft of the remnants of tribalism, and heads of tribes and clans had full authority to represent their people. He avers that even if general elections would have been held, the same people would have been elected, in which situation, he says there was no need for such elections.\(^5\)

Maulana Amin Ahsan Islahi considers members of the *Shura* during the period of the Prophet (SAAW) and of the Guided Caliphs as persons who were reliable and worthy of being resorted to. According to him, even though these men of affairs were not elected as representatives of the community in the modern political sense since the present day method of election had not been known at that time, they were the trusted representatives...
of their respective groups. He adds that one proof of their
enjoying the trust of people of their respective groups was that
they were resorted to in dealing with the problem faced by the
groups. He says that some members of the Shura occupied an
eminent position among the Muslims owing their insight into
religion, like Abu Bakr and Umar who were recognised leaders
of the Muhajira and were unexampled in their religious insight
and political sagacity while Saad bin Muaz and Saad bin Ubada
were leaders of the Aus and Khazraj tribes, Uthman, Abdur Rahman
bin Auf, and Ali were leaders of Bani Umayyah, Bani Zuhra and
Bani Hashim respectively and Maaz bin Jabal, Ubai bin Kaab and
Zaid bin Thabit were experts in the learning of the Quran and
the Fiqh.

The first objection that has been made regarding the
above mentioned thinking is that the Quran does not make it
clear as to who ought to be members of Shura. The edict regarding
consultations is couched in such general terms that it embraces
the entire Ummah. The Quran does not deal in detail with
constitutional and legal matters or general public affairs.
This shows that Muslims have been left free to evolve their own
system of Shura according to changing conditions and demands
of the time and to lay down the qualities and merits they deem
necessary for the memberships of the Shura.

It is true that the Quran has not laid down the principles
or the framework of the Shura, but Sunnah, has supplemented and
elucidated the Holy Quran in this respect and has given it a
concrete practical shape. The Prophet (SAAW) has not only
specified the qualities and merits needed for the membership of
the Shura but has also put before his followers an example of the manner of their selection, which can be implemented in spite of changes in the social and cultural ethos. According to the Sunnah members of the Shura ought to be true representatives of the people, they should enjoy full confidence of the Ummah and liked by it. Confidence reposed by the Ummah in them may be due to their skill in dealing with religious and political affairs or because of services rendered by them in Jihad or by virtue of their moral qualities, intellectual achievements or because of earning fame for insight into Fiqh. In short, only those persons could be members of the Shura who had won the trust and confidence of the people.

It is often said that while the Prophet (PBUH) asked all the Muslims to advice him, the people whom he actually consulted were the selected Sahabah who were considered by him capable of giving sound advice. These Sahabah have been referred to in historical records as Ahl al hall wa al-agd. (8)

Every person was not worthy of being consulted and hence all Muslims were not included in the Shura. This state of affairs is confirmed by the historical fact that in the matter of the selection of the Caliph, Abu Bakr consulted with the prominent Companions of Madinah. This makes clear that Muslims who were not present in Madinah played no role in the selection of Umar as Caliph, nor were they consulted in the matter. So it would be wrong to say that Ahl al hall wa al-agd comprised the entire body of Muslims.

In view of the above, it is clear that there were the following four bases of the composition of the Shura.
1. The Shura did not include all the Muslims. However, its members were the natural representatives of the Ummah. They enjoyed the trust and confidence of the common people and were popular among them. These selected people who represented the common Muslims in the Shura were consulted as it was not possible or practicable to consult all the Muslims on every issue. Hence, their leaders and elders were called for consultations whenever necessary. And since these members of the Shura expressed the feelings of their respective communities, tribes and clans and represented them in every way it may said that the advice rendered by them truly reflected the will of the Ummah.

2. History records that in matters of general and those of all — embracing nature, consultation was undertaken not merely with the representatives and leaders of various groups but every Muslim was given the right to express his opinion and to take part in the discussion. A glaring example of this is the issue of the prisoners of Havazin in which matter, after renouncing his own claim, the Prophet (SAAW) did not rest satisfied with seeking the advice of the eminent people of the Ummah but placed the matter before all the Muslims so as to remove all possible apprehensions. In the same way, every Muslim had the right to express his preference in the matter of the selection of a Caliph through the institution of (Bayah) the oath of allegiance. Abdur Rahman bin Auf even asked travellers coming to Madinah from outside whom they wanted to be the Caliph. (10)

3. Muslims living outside Madinah conveyed their choice of the Caliph through their representatives since it was not
possible to elicit the views of every Muslim in view of great distances and inadequate means of transport and communication. Hence, consultations in the matter had to be confined to people living in the capital. Madinah was the capital of the Caliphate and opinions expressed and decisions taken there were taken as those of the whole body of Ummah. In this context Maulana Abul Ala Maududi says that the Islamic state was not a national one, since it had come into existence after the propagation of an ideology there had revolutionised the thinking and ethics of the people, as in result of which a new society was created which was based on new social and ethical principles, which, in its turn, resulted in the establishment of a new kind of state which was based on these principles. He adds that in such a state the person who had initiated the revolution naturally became the most trusted one, and after him people reposed their faith in those who were the mainstay of the initiator of the revolution and their leadership was a natural one since none else could be the repository of the trust of the people. In the opinion of Maulana Maududi, it was because of this that, in spite of there being complete freedom of criticism from no corner of Arabia did any voice arise asking why only the people of Madinah had monopolised the management of the affairs of the state. He adds that in the conditions prevailing in that period it was simply impossible to hold general elections in the whole of the Islamic state which stretched from Afghanistan to North Africa and it was also not possible for members of the Shura to assemble from distant lands for participating in its usual and extraordinary sessions.(11)
However, Shaikh Mohammad Abu Zuhra writes that people of conquered countries were consulted in running the administration of their respective territories, \( ^{12} \) while Dr. Ibrahim Ahmad al-Adawi says that during the rule of the Guided Caliphs, all tribal leaders who came to Madinah participated in the meetings of the Shura. \( ^{13} \)

4. In view of the above it may be averred that when the Prophet (SAAW) said, "O my people come and advise me" his words were not addressed to some particular Sahabah but to all Muslims. And, the issues mentioned above were not of a technical nature, requiring particular expertise and experience nor were the people called upon to give arguments for or against a proposition, but there was a kind of referendum on these issues which was conducted to elicit the opinion and the will of the general body of Muslims. It is also true that in certain matters the Prophet (SAAW) consulted some particular Sahabah though, as mentioned above, he is reported to have said, "O my people, come and advise me." Shaikh Mohammad Abu Zuhra has written that during the reign of Caliph Umar every Muslim, without any exception, could participate in the meetings of the Shura. \( ^{14} \) Almustashar Ali Ali Mansoor has reached the conclusion that during the period of the Prophet (SAAW) and the Guided Caliphs the category of people consulted depended upon the issues in hand. If these were of a general nature all the Muslims were consulted and decisions were taken in accordance with the views of the majority, and in case this was not possible it was deemed necessary to elicit the opinion of Ahl al-hall wa al-saqd who would have been the representatives of the people or members...
of parliament in a modern democracy. (15)

Another point that has been raised in this connection is that during the period of the Prophet (SAAW) and that of the Guided Caliphs there was no legislative body in the modern sense of the term, having a specified number of members who fulfilled specific conditions, with special qualities and experience expertise. According to those who hold this opinion, those who comprised the Shura during the early period of Islam did not constitute a specific assembly but were merely the Sahabah or members of some families or their friends and that there were some prominent Sahabah and those whose opinions carried weight whose judgements were preferred to those of others. (16)

The fact, however, is that during this period there was a specific group of eminent Sahabah who were commonly known as members of the Shura. The existence of the Shura during the period of the Prophet (SAAW) and the Guided Caliphs does not mean that there was a legislative assembly in the modern sense of the term with members having specific qualities and experience. (17) It does not matter whether or not such a selected group of people was called an assembly since its members were popular representatives of the community, enjoying a high social standing whose opinion was elicited on important issues. So it would be wrong to assert that they comprised members or friends of the family of the Caliph, since they owed their position due to not their family relationship or friendship but to their merits, capacities and distinguished services to the Ummah.

Nominations to the Shura were not left to the likes or dislikes of the Caliph. In the period of the Guided Caliphs
the Shura was an institution through which Ahl al-hall wa al-aqd of the state played a decision making role. Nothing was stated in black and white regarding the composition of the Shura but both the rulers and the ruled knew what it was. In this connection Maulana Abul Ala Maududi says that Ahl al-hall wa al-aqd of the state in the period were a number of specific persons who had been occupying such a position from earlier times and were people who had the right to take decisions in matters concerning the Ummah, and so according to him, there is no ground for thinking that the Caliph could call any one at any time for advice and that no one knew who Ahl al-hall wa al-aqd (the people managing the affairs of the state) or members of the Shura were who enjoyed the right to take decisions on issues concerning the community. After studying the composition and manner of the selection of the Shura in the period of the Prophet (SAAW) and of the Four Rightly Guided Caliphs it is worthwhile turning to the vast and rich literature of Fiqh in order to examine the opinions of different Fiqhaha (experts in Islamic Jurisprudence) on this important subject.

The Quran mentions the expression Ulul amr in several places while in the Fiqh literature there exist expressions like Ahl al-Shura, Ahl al-hall wa al-aqd, Ahl al-ijtihad and Ahl al-ikhtiar. The question arises whether these five expressions cannot mean the same thing or whether there is any difference in their meanings. The expression Ahl al-Shura was well-known and commonly used during the period of the Prophethood of Mohammad (SAAW) and that of the Guided Caliphs.
The expression became even better known during the Caliphate of Umar since he gave a definite shape to the Shura. After the period of the Guided Caliphs the term was replaced by Ahl al-hall wa al-aqd, Ahl al-ijtihad and Ahl al-ikhtiar. It can not be said with any definiteness when and by whom this expression Ahl al-hall wa al-aqd was first used.\(^{(20)}\)

In this context the first work is Abul Hasan al Mawardi's al-Ahkam al-Sultaniyah (450 A.H.). From the utterances of this author, researchers have come to the conclusion that Ahl al-ikhtiar who performed the function of the selection and appointment of the Caliph were also the Ahl al-hall wa al-aqd.\(^{(21)}\) In this respect, Mawardi follows his contemporary Qazi Abu Yala and adds that Ahl al-ikhtiar were also called Ahl al-ijtihad.\(^{(22)}\)

Later, in the seventh century A.H., Imam Navavi, the Shafite faqih said that the Ahl al-hall wa al-aqd who elected the Caliph comprised the Ulama, the tribal heads and representatives of the common people who had the requisite qualifications of a witness in a court of law, namely, that they should be Muslims, free, who bear the shafiah obligations, and articulate etc.\(^{(23)}\)

In his book entitled Usool al-Din Imam Baghdadi equates Ahl al-ikhtiar with Ahl al-ijtihad,\(^{(24)}\) while the Hanafite Faqih say that once the nobles have taken their oath of allegiance for a person, his Caliphate is confirmed.\(^{(25)}\)

From the above paragraphs it can be concluded that there is no difference in the meaning of terms Ahl al-hall wa al-aqd, Ahl al-ijtihad and Ahl al-ikhtiar and that these terms
may be used interchangeably. However, the question that remains unanswered is what these terms denote as regards the composition of the Shura. For example, Dr. Abdul Munim Al Bahi asks what Imam Navavi means by the term Rusa, whether it refers to a particular group or to all the leaders of the representatives of people, and what the expression 'representatives of the people' means, whether it refers to the wealthy and influential people or prominent individuals who represented the common people. (26)

Shaikh Ahmad al Fazili asks what Imam Navavi means by the word Ulama and to which Ilm (field of learning) it refers to, the Ilm that helps one to identify a person who deserves to be an Imam or Caliph or one which produces in a person the capacity for ijtihad or a person who has the knowledge of the rules of Shariah without being capable of doing ijtihad. (27) So, he asks, why Imam Baghdadi says that the Ahl al-hall wa al-agd are the Ahl al-ijtihad. He further asks if Baghdadi refers to the Imams who have attained the status of Mujtahids or to those who had special expertise for selecting a suitable Caliph from among a number of candidates for the position.

Answering the questions raised by himself, Dr. Al Bahi says that if by the term Ahl al-hall wa al-agd Imam Navavi refers to a specific group of nobles, it means that the Shura comprised this particular group and people dealing with political and social affairs were not eligible to be its members. Such an interpretation of the words of Al-Qalansi,
the teacher of Shaikh Baghdadi, has not been given by any other authority nor has any other Faqiḥ supported it. And if Baghdadi has equated *Ahl al-hall wa al-aqd* with *Ahl al-ijtiḥad*, the matter has become more complicated, instead of being made clear. (28) Similarly, Faqihs of the Hanafite school have not clarified what they mean by *Ashraaf*. (29) However, Imam Mawardi and Qazi Abu Yala have said that members of the *Shura* should fulfill the following three conditions: (30)

1. **Adalah**, abstinence from cardinal sins and avoidance of minor ones.

2. **Ilm**, learning, which should enable him to identify those deserving the Caliphate and to be aware of the qualities and qualifications needed by a Caliph. This means that, according to these Faqiḥs, members of the *Shura* need not possess requisite scholarship to be able to do *Ijtihad*.

3. **Sagacity** and insight to select the best person for Caliphate.

Though the above-mentioned stipulations are rather general, they can, to a certain degree, help in selecting those who are eligible to be members of the *Shura*, whether they are found among the *Ulama* or those concerned with political affairs or among the common Muslims.

The following conclusions may be drawn from the above discussion:

1. Political thinkers mean the same thing by the terms *Ahl al-shura*, *Ahl al-hall wa al-aqd*, *Ahl al-ikhtiar* and *Ahl al-ijtiḥad*. 
2. According to scholars of the Sharia, the term Ahl al-hall wa al-aqd refers to leaders of the people and respectable persons who were experienced and were well-known for their grasp of political affairs and had earned the confidence and goodwill of the people.

3. Experts in the principles of Islamic jurisprudence and political thinkers give two different interpretations of the term Ahl al-hall wa al-aqd. While the latter consider knowledge of social and political conditions all that was necessary to entitle a person to the membership of the Shura, since, according to them, this was enough to enable him to make the correct choice of a Caliph, in the opinion of the former Ulama, it was essential for a member of the Shura to be capable of doing Ijtihad, since any person who is unable to do so, did not deserve to join the ranks of the Ahl al-hall wa al-aqd. (31)

The next question that arises is what was meant by expression Ulul amr. This term occurs in two verses of the Quran:

"O ye who believe! Obey Allah and obey the Prophet and those charged with authority among you. If ye differ in any thing among yourselves, refer it to Allah and His Apostle, if ye do believe in Allah and the Last Day: that is best and most suitable for final determination." (32)

"When there comes to them some matter touching (public) safety or fear, they divulge it. If they had only referred it to the Apostle, or to those charged with authority among them,
the proper investigators would have tested it from them (direct).”\(^{(33)}\)

Allama Zarakhshari says that the term \textit{Ulul amr} refers to righteous people. According to another authority the expression means army commanders, while still another authority suggests that it refers to the \textit{Ulama}.\(^{(34)}\) Commenting on second of the two verses cited above, he says that the expression \textit{Ulul amr} refers to eminent companions of the Prophet (SAAW), experienced persons or army commanders.\(^{(35)}\)

Ibn Kathir has cited traditions of the Prophet (SAAW) in his commentary on the first of the two verses from which it appears that the term \textit{Ulul amr} means \textit{Amirs} of righteousness and justice.\(^{(36)}\) He has also cited the words of Ibn Abbas and a group of the followers of the \textit{Sahabah} to the effect that in these verses \textit{Ulul amr} refers to the \textit{Ulama}.\(^{(37)}\) Ibn Kathir has indicated his preference for the opinion that the verses refer in general terms to both the \textit{Umara} and the \textit{Ulama}. Allama Tabrisi has cited a number of exegesis of the first of the two above-mentioned verses. According to one of these the term \textit{Ulul amr} means the \textit{Umara} while a second one says that it refers to the \textit{Ulama} since this was the category of people who were resorted to instead of officials and governors in resolving controversial issues. According to a third exegesis the expression cannotes the \textit{Imams} who were the descendants of the Prophet (SAAW). The author interprets the second of the verses cited above by saying that the term \textit{Ulul amr} used in it refers to the innocent \textit{Imams},\(^{(39)}\) and he has cited another authority according to which the expression...
means army commanders and governors, while, he says, still another exegete says that the term connotes the scholars and the Fiqih who were the companions of the Prophet (SAAW).

Imam Raazi (40) says that the term Ulul amr means Ahl al-hall wa al-agd but he has not made it clear as to whether Ahl al-hall wa al-agd comprised the Ulama of Shariah or those of Usool (principles of jurisprudence). One is not sure whether Imam Razi is here referring to the Ulama who were the Mujtahids of Shariah or those who had the privilege to select the Imam, who, it is well-known, were not necessarily those who were capable of doing ijtihad, or whether Razi refers to the entire Ummah by the term.

Dr. Mohammad Ziauddin Al-Rees prefers the first of the above interpretations of the words of Imam Raazi, according to which it was essential for those comprising the Ulul amr to be Mujtahids. (41)

Syed Mohammad Rashid Raza writes that Imam Nishapuri preferred the last of the above interpretations of Ulul amr by Imam Raazi who had written that since this verse could not be applied to all the categories, it was clear that the entire Ummah could be deemed to be innocent and hence Ulul amr comprised those over whose choice there was unanimity among the Ummah. (42) According to Ibn Taimiyah the term Ulul amr refers to the Umara and the Ulama. (43) Sheikh Mohammad Abduh says that after thinking for a long time he has reached the conclusion that Ulul amr means the institution of Ahl al-hall wa al-agd which includes the Umara, the officials, the Ulama
and the army commanders and includes all those tribal heads and leaders who were resorted to in dealing with matters of general welfare and essential services. Their decision was bound to be obeyed if all those reached a consensus on any matter. In this way Mohammad Abduh has extended the circle of Ahl al-hall wa al-agd and does not confine it merely to the Ulama.

Mohammad Abduh concludes by saying, "In my age Ulul amr means eminent Ulama, army leaders, Judges, big traders and farmers, those concerned with matters of general welfare, directors of institutions and business establishments, leaders of political parties, those well-versed in the Book of Allah, physicians and lawyers in whom the Ummah had trust and to whom it resorted to in resolving issues which confronted it."(44)

In the pronouncement of his cited above, Mohammad Abduh has not included officials among the Ulul amr. This appears to be his final opinion on the issue.

The chief disciple of Mohammad Abduh, Syed Rashid Raza has elucidated the above-mentioned pronouncement of his by saying that the term Ulul amr refers to those Ahl al-hall wa al-agd who represent the power and authority of the Ummah. (45) Citing his teacher Mohammad Abduh in his Tafseer al Manar, Rashid Raza says that the term Ahl al-Zikr refers to Ulul amr, that is, scholars and thinkers concerned with the interests and welfare of the Ummah. (46) The author expresses himself in agreement with this. He writes that by Ulul amr was meant
thinkers and respectable people who were aware of the interests of the Ummah and ways of protecting these interests and whose opinions were appreciated by the Ummah. Rashid Raza adds that Ahl al-shura are Ahl al-nall wa al-aqd (people at the helm of affairs) who elect the Caliph and who are considered among other communities as representatives of the people.

Maulana Abul Ala Maududi says that the expression Ulul amr refers to those who are capable of managing matters of common interest and those who have the power of deduction, that is, the ability to probe the reality of matters placed before them and to decide how to deal with the issues in hand in the light of the Quran and the Sunnah. In other words, according to Maulana Maududi, two things are essential for those comprising the Ulul amr, namely participation in the affairs of the state and being Ahl al-zikr, that is, ability to form correct opinion on matters in hand in the light of the Book of Allah and the Sunnah of the Prophet.

Dr. Wahmood Payyaz writes that according to verse 59 of Surah al-Nisa, the term Ulul amr means the officials but verse 83 of the Surah contradicts this interpretation because in this verse the expression Ulul amr is mentioned alongside the Prophet as authorities that were to be obeyed by the faithful and hence it could not refer to mere officials of the state. Now the question arises as to who those persons were that comprised the Ulul amr. The Quran indicates that these persons were the Sahabah, the scholars, experienced
people and experts whose opinion was generally accepted. It is these people who are referred to by the Ulama as Ahl al-hall wa al-agd. Hence both the verses from Surah Nisa cited above refer to these groups since in both of them the same expression, Ulul amr has been used. Shaikh Abdul Wahab Khallaf says that Ulul amr comprises both officials of the state as well as the Ulama. While Shaikh Mohammad Abu Zuhr avers that according to the Tabein (followers of the Sahabah) the term refers only to the Ulama.

Shaikh Mahmood Shaltoot dismisses the entire controversy over the question by saying that Ulul amr means people with insight who have a perfect skill in contemplating issues placed before them and are well-known for their ability to comprehend the demands of expediency and the interests of the Ummah. He adds that problems of the Ummah are multi-dimensional, including as those of armed forces and defence, of law and order, of justice, finance and treasury as well as foreign affairs. Thus he says, there is a wide variety of dimensions and departments in everyone of which there are some individuals who are renowned for their farsightedness, maturity of thought and great services. He avers that it is these persons that constitute the Ulul amr and it is these people who are Ahl al ijmaa, consensus among them is decisive and compliance with this consensus is binding on the Ummah. Hence the term Ulul amr does not refer only to the Umara or officials of the state however high their status is, nor is it confined to the Fiqih and the Mujtahids since
their understanding does not generally transcend scholarship of the Quran, the Sunnah and the literature and they are usually not much conversant with affairs like those of war and peace, agriculture, trade, industry and politics, administration and management. Hence their position is like that of other Ulama. Then there are some who are skilled in a particular field, who are Ulul amr in their respective areas. They lay down the principles and rules and regulations in their respective spheres regarding matters on which the Quran does not contain any injunction or details. (53)

Zaafir al Qasmi cites Dr. Mohammad Saeed Ramazan Al Booti to the effect that the Ulul amr are those who are known as Mujtahids, a term by which the Fiqh and the Ulama usool al-fiqh mean Ahl al-hall wa al-aqd. (54) He adds that there are two main prerogatives of the Ahl al-hall wa al-aqd. First, their oath of allegiance to the person who is in their opinion, suitable for being a Caliph confirms his selection to the post. Then the Ahl al-hall wa al-aqd can do Ijtihad for taking decisions and making laws and their judgement has the status of Lima. (55) This means that, according to Dr. Ramazan, the term Ulul amr stands for Ahl al-hall wa al-aqd as far as the Ulama usool al-fiqh are concerned. Since they are required to have the ability to do Ijtihad, it is they who comprise the Shura too.

Such norms for the selection of the members of the Shura were followed during the period of the Four Guided Caliphs. These principles were difficult to follow later when Caliphate
was transformed into kingship and those who wielded state power distanced themselves from the common people of the Ummah. This also resulted in the Fiqhi and the Ulama started becoming isolated from the government and its affairs. As a result, books written on the issue of Caliphate and in the discussions that took place on the question of the qualifications of Ahl al-hall wa al-aqd were watered down and it was no longer considered essential for people at the helm of affairs to possess learning that could enable them to do ijtihad. The Ulama concerned with the politics of the Shariah deemed it sufficient for a Caliph to be a just, wise and farsighted Muslim having experience in the political and governmental affairs. Things went so far that even those who used the term Ahl al-ijtihad for those at the helm of affairs used the word ijtihad to mean insight and farsightedness in the affairs of the government. This was the logical outcome of changing conditions.

This was the reason why the connotation of the term Ahl al-hall wa al-aqd according to the Ulama of Usool al-fiqh was different from that of the Ulama of Shariah. The sense of this term became much broader and more comprehensive and all-embracing, and the chiefs, the Ulama and representatives of different classes were included in the Shura.

From the above discussion it may be concluded that according to both the verses from the Quran cited above the term Ulul amr means Ahl al shura or Ahl al-hall wa al-aqd and that officials of state and the Amira are not included in the Shura. These verses connote that a decision arrived at
by a majority of the members of the Shura is binding on the Ummah, and consensus among its members is final, compliance with which is essential for removing differences and ending disputes.

The following arguments can also be advanced in support of the Tafsir (interpretation) of the verses cited above; (56)

1. According to verse 59 of Surah Nisa obedience of the Amir is only proper when it is established that their judgement is just and that reasons advanced in support of their stand are based on the Quran and the Sunnah. This means that these arguments would not go beyond the Quran or the Sunnah and would not yield any new advantage. But if obedience to Ulul amr means obligation to comply with decisions arrived at by consensus among the members of the Shura it would result in a new conclusion since it is often possible that there is consensus in the Shura on an issue which is not mentioned in the Quran or the Sunnah.

2. If in the verses cited above the term Ulul amr is construed to mean the Amir it would be necessary to add the stipulation to this that obedience to the Amir would be proper only if they are in the right. However, if a decision is that arrived at by consensus in the Shura or by a majority of its members, no such stipulation would be necessary since decisions of the Shura would be binding in every case.

3. Compliance or non-compliance with the actions and decisions of the Amir and the Caliph would depend upon the
Fatwas (verdicts) of the Ulama who would decide whether or not they accord with the Shariah. This shows that the Ulama have the status of Ulul amr and hence it is much better to apply the term Ulul amr to the Ulama.

4. The Quran uses the expression Ulul amr as a plural noun which shows that it does refer not to the reigning sovereign but to members of the Shura. It would not be proper to use this plural noun for the Caliphs as there would be only one Caliph at a time.

5. Basically both the verses cited above are addressed to the Muslim contemporaries of the Prophet (SAAW) and since no one could be an Amir or ruler during the life time of the Prophet (SAAW), the expression Ulul amr obviously refers to the Muhajirs and the Ansar and prominent Sahabah whose opinion carried weight as they were the people whom the Prophet (SAAW) himself consulted.

6. The Quran itself provides the interpretation of its verses. When one reads verse 59 of Surah Nisa in the light of its interpretation in verse 83 of the same Surah it becomes clear that the term Ulul amr refers to those who are consulted for solving problem relating to political, administrative, legislative and sociological affairs and it is these people who are deemed to be members of the Shura.

From the above discussion it may be concluded that the expression Ulul amr stands for Ahl al-hall wa al-agd who are also members of the Shura. In this context Shaikh Ahmad Haridi says that the Ulul amr are persons belonging to the Ummah who
are thinkers and leaders of public opinion who devote their minds to all aspects of life including those who reflect deeply on various matters and are proficient in different skills whom the Ummah recognises and whose services in the realm of thought and scholarship and the results produced by their thinking are well-known to the entire community, which looks upon them as responsible persons, and whom the common people respect and trust. (59)

From the above discussion on the selection of members of the Shura in the period of the Prophet (SAWW) and of Four Caliphs and on the real meaning of the Quranic verses cited above and the actual people these verses are addressed to, the question arises that if the Islamic system of Shura is implemented in the present day who would be its members and which classes of the people would be entitled to be elected to it. A majority of those who have given thought to this issue and have dealt with the Islamic system of Shura are of the opinion that as compared with the composition of modern parliaments those comprising the Islamic Shura would be eminent Muslim Ulama masters of different skills, experts and experienced people, leaders of the army and of political parties.

In societies which have not attained sufficient progress in culture and civilization to be able to take recourse to elections to ascertain as to which individuals enjoy the confidence of the common people, their leaders, and eminent persons represent their respective areas through a natural method of selection. In this way, scholars, faqih, and individual
with insight are in the seat of power and they are popular among the common people who happily accept the ascendancy of such elite in the institutions of the state as well as in the society. This obviates the need for a formal election, since certain people emerge as representatives of the masses in a natural manner as a result of their deeds, services and capabilities so that even if formal elections are held it is these individuals who would be elected. In such a situation it is the leaders of the community, eminent personalities and scholars who would represent the common people in the Shura. However, a society which has advanced from its simple and natural state and has entered the phase of political and social progress, in which urban population has increased greatly, the geographical limits of which have been fixed, election have become indispensable to gain the acceptability and confidence of the people. As far as experts in different fields, skilled and experienced persons and scholars are concerned, in such a society they do not represent the people. Such individuals can only occupy the status of advisers in their respective fields of expertise. The basis of distinction between these two groups is the issue of representation.

It has been established above that during the period of the Prophet (SAAW) and that of the Guided Caliphs members of the Shura really represented the people since they were the representatives of their respective communities and groups. They had the right to represent the people because of their learning and understanding of the Quran and the Sunnah, ability
sincerity and experience and sacrifices in the cause of Islam and leadership of their tribes. It is true that at that time there were no formal elections in the modern sense of the term but in reality members of the Shura in the early years of Islam were the trusted and popular representatives of the people and were selected through the natural process of selection that prevailed at the time. This natural system of selection no longer exists in the present age, replaced as it has been with the process of formal election, so that the parliaments of today perform the functions that Shura performed in the early period of Islam.

Maulana Abul Ala Maududi says that the conclusion that may be logically derived from a study of the period of the Guided Caliphs and even the practice of the Prophet (SAWW) is that the Amir ought not to consult every one or arbitrarily selected individuals but those who enjoy the trust of the common Musalmans, in whose sincerity, good intentions and abilities people have faith and whose participation in the decision making process guarantees that these decisions would be implemented with the heartfelt cooperation of the people. Maulana Maududi adds that as far as the question of how to determine as to which individuals enjoy the trust of the people, the answer is that conditions in this respect are different from those that prevailed during the early years of Islam. Hence, according to him in the conditions and exigencies of the present age all such possible and desirable measures can be adopted which can determine as to who are the individuals that enjoy
the trust and confidence of the masses. The election process of today is one such method provided that those dirty tactics are not employed in elections which have made a mockery of democracy in the present age. (60)

QUALIFICATIONS FOR THE MEMBERSHIP OF THE SHURA

According to the tradition of the Prophet (SAAW) a person whose advice is to be sought must be honest. (61)

Abul Hasan Ali Mawardi (62) says that three qualities are essential in a member of the Shura: They should be just, conversant with the affairs of the state, wise and farsighted, while according to Imam Navavi, they should fulfill the conditions necessary for being a witness, that is, they should be Mualims, free adherents of the Shariah and not charged with any misdeed. (63) It has been stated above that every member of the Shura ought to enjoy the confidence of the Ummah and should be acceptable to it.

According to a Hadith, the Prophet (SAAW) once said that if a person gives some advice to his brother about something knowing that the welfare of his brother lies in rendering some other advice, he is guilty of breach of trust. (64) There is another Hadith to the effect that when Allah intends to do good to Amir, He bestows on him a righteous vizier who reminds him of his neglect and once he is reminded of it, helps him and when Allah does not wish for the welfare of Amir, He gives him a wicked vizier who does not remind him of his neglect and does not help him even when he remembers what he has neglected. (65) Umar asks people to seek the advice of Allah-fearing persons
in matters of religion. (65)

According to the above tradition and sayings it is incumbent upon a person whose advice is sought to tell what he considers to be the correct course of action. Once this idea is firmly entrenched in the mind of an adviser, he cannot give any misleading or wrong advice to anyone.

Honesty of an adviser also demands that he should not express his agreement for every step of the Amir or Caliph, irrespective of whether it is right or wrong. On the contrary, he ought to express his disapproval of the wrong decisions of the Amir with sincerity.

Prophet Mohammad (SAAW), once said to Kaab bin Ajra "May Allah save you from the mischief of the reign of foolish Amirs." To the question of Kaab as to what he meant by the expression 'reign of foolish Amirs', the Prophet (SAAW) replied:

"After me, the reins of power will come in the hands of people who will not follow my practices and will not tread the straight path shown by me. A person who expresses himself in agreement with their wrong practices and participates in perpetrating cruelty will have nothing to do with me, nor would be able to be present by my side at the Cistern (tank) on the Day of Judgement. But a person who does not corroborate their wrong pronouncements and does not support them in their tyrannical attitude will be associated with me and I will be associated with him. He will be able to come to my cistern on the Day of Judgement." (67)
Maulana Maududi has described two categories of qualifications for Caliphate and membership of the Shura. The first of these are legal in nature which the election commission examines before deciding whether or not a person is eligible for the post, while the second one relates to qualities which the common people keep in mind while selecting, nominating or voting for a person.

According to him, there are four legal conditions for membership of the Shura:

1. Being a Muslim
2. Being a Male
3. Being wise and mature
4. Being a citizen of Dar ul Islam

The above four qualifications entitle a person to be a Caliph also.

Maulana Maududi says that other qualifications that electors seek in persons in order to select them and vote for them ought to be enshrined in the spirit of the entire body of the constitution of state, adding that the success of a constitution depends upon ability to create awareness among the common people so that they elect such persons only who have the qualities that accord with the spirit of the constitution. For elucidating this other category of qualifications, Maulana Maududi bases himself on the following sources:

Allah doth command you to render back your trusts to those to whom they are due

And
"Verily the most honoured of you in the sight of Allah is he who is the most righteous of you."(70)

And

"He (the Prophet) said: Allah hath chosen him above you, and hath gifted him abundantly with knowledge and bodily prowess."(71)

And

"Nor obey any whose heart We have permitted to neglect the remembrance of Us, one who follows his own desires, whose case has gone beyond all bounds."(72)

And

A person who respects innovators (in religious affairs) is a participant in the dismantling of Islam."(73)

And

By Allah, we do not appoint any person to a post of our government who has applied for it or craves it."(74)

And

According to us, the most dishonest person amongst you is one who himself desires to have a post."(75)

Maulana Amin Ahsan Islahi has refuted the assertion of those who opine that the Shura would comprise exclusively the Ulama and the Fiqih. According to him there are two stipulations for the membership of the Shura—being a leader
of Muslims and having a deep understanding of the affairs of the state and political insight. He says that the accounts of the early Islamic period also show that only those persons were invited to the Shura who were the trusted leaders of the people and those who had insight in religious and worldly affairs. In this respect there was no discrimination between the old and the young. In his work Kitab al Tafseer, Sura al Aaraf Bukhari cites Ibn Abbas to the effect that consultative assemblies of Caliph Umar comprised learned people, both old and young. Caliph Abu Bakr called leaders and representatives of the Muslims. (76)

Adnan Ali Raza Nahvi considers three kinds of qualifications essential for membership of the Shura. The first of these, which he looks upon as basic qualities are faith and piety, learning, ability and capability which are indispensable in a member of the Shura. The second kind of qualities considered by him necessary in a member of the Shura are subsidiary ones, among which he lays especial emphasis on natural, human and moral qualities which should be taken into account only when a person has the basic qualities. The third kind of qualities needed by a person to be able to join the Shura are those of industry, perseverance for which a competitive spirit, experience skill, and judicious analysis have been greatly emphasised by him. According to him these qualities gradually mature and are perfected with age and shouldering of responsibilities but every member of the Shura is required to have their germs from the very beginning. (77)
In the opinion of Maulana Hamidul Ansari Ghazi every citizen of an Islamic state is entitled to be member of the Shura who follows the natural laws of Islam, is bestowed with average degree of learning and wisdom, is a well-wisher of the social system, and is indifferent to personal consideration of personal benefits and gains. In short, he should be trustworthy and ought to have sufficient power of thinking to be able to render sound advice. (78)

From the above discussion it appears that the Ulama and the researchers are of the opinion that officials of the state are entitled to be members of the Shura. However, in this context, Dr. Mahmood Fayyaz has raised a pertinent point which ought to be dealt with. He asks how some other person can rule in the presence of the Prophet (SAAW). He adds that the term Ulul amr has been used in the Quran as a plural, in which case it cannot mean anything other than members of the Shura. Shaikh Mohammad Abduh and Syed Mohammad Rashid Raza, too, have said the same thing.

In the light of the above discussion, qualities and qualifications required for being a member of the Shura may be summed up as follows:

1. He ought to follow the tenets of Islam and should have a high moral character.
2. He should have a perfect knowledge of the affairs of the state.
3. He ought to have the power of deduction side by side with knowledge of the Islamic Shariah to be able to understand the issues with which he is confronted and
MODE OF SELECTION

The mode of determining who should constitute the Shura is a controversial and fairly complicated issue. Many contemporary researchers consider formal election as the best method, while according to others a natural and gradual mode of selection is the most effective one. There are still others who opine nomination too as a proper device, and, in certain situations a desirable one, while some Ulama and intellectuals suggest a combination of the methods of formal election and nomination. All these schools of thought advance arguments based on the Shariah and history in support of their respective contentions, examination of which is necessary to arrive at the correct point of view with regard to the proper mode of selection of members of the Shura.

Those who advocate formal elections as the best method of constituting the Shura argue that the Quranic injunction on the subject demands that the entire Ummah should participate in the selection of its members, so that the body enjoys the trust and confidence of the community and the cooperation of the community is ensured in the implementation of its decisions. But what about the mode of the election of the Shura? Should it be left to the consensus and Ijtihad of every age, since there is no Quranic pronouncement regarding it, nor is there any authentic precedent relating to it pertaining to the period of the Guided Caliphs. What was really practiced was that the Shura was elected with the will and consent of the entire Ummah. It is wrong to say that the Guided Caliphs did not know the
method of election. The fact is that it is incumbent on every community to institute the Shura system in accordance with the prevailing conditions and contingencies. The procedure adopted in a particular period is not binding on the people of another period conditions and problems of which are entirely different. If one examines the components, temperament and spirit of the Islamic system of Shura, the unescapable conclusion that he would arrive at would be that the way in which the Guided Caliphs implemented it was in conformity with the conditions that prevailed during the period. They followed a natural system of the selection of the Shura in such a manner that had general election been held in the present sense of the term none other than those selected by the Guided Caliphs would have emerged successful in these elections.

Another argument that the above-mentioned scholars advance in support of their contention that election is the method of constituting the Shura is that in the present complex and highly developed social system there is no device other than that of holding general elections to determine the collective opinion of the community and to establish the system of Shura. In their opinion this is the only method by which respective merits of the contending candidates can be correctly assessed. Controverting those who favour the system of nomination to the Shura rather than election, these learned people say apart from the fact that Amira cannot on their own select persons who would be better and more suitable than those selected by the common people, it is most dangerous
to give the ruler, however just and pious he may be, the right to select his successor. They aver that just as Allah has enjoined upon the faithful to conduct the affairs of the Ummah with mutual consultation, the establishment and composition of the Shura, too, ought to be done in such a manner that its members are elected by the people through a process of collective consultation. (81)

In this respect the stand of Maulana Maududi is absolutely clear. He is of the view that the method by which the opinion of the common people could be determined during the early period of Islam can no longer be applied in the present day, nor are there the same obstacles in the path of knowing the will of the people as there were in that period. So, he says, all those possible and desirable devices can be employed to determine as to which persons enjoy the trust and confidence of the people, keeping in mind the prevailing conditions and the needs of the present day, provided that those dirty tricks are not used in these elections which have made a mockery of democracy. (82)

Maulana Ameen Ahsan Islahi holds a similar view. He says that during the early years of Islam, since all those whose opinions carried weight were concentrated at one place, leadership of communities and tribes was determined by the demands of the prevailing social system. Moreover, he says, the territory of the Islamic state was also not very extensive and hence the system of Shura in it was most simple and elementary. Maulana Islahi says that at the present time
conditions are very different and so modern method of general elections may be used with some essential reforms to constitute the Shura, and necessary laws can be adopted to determine the relationship between the Shura and ruler. He adds that doing so will not be against the injunctions of Islam. (83)

Another manner of constituting the Shura is the gradual and natural mode of election. This means that outstanding individuals automatically emerge in a society because of their merit and qualities. Qualifications required for people who would comprise the Shura would depend on the nature of the prevailing social system and people who gradually assume prominence would have these qualifications. In the capitalist system, gradual emergence of and respect and status enjoyed by an individual would depend upon his ability to make money and to multiply it several times. On the other hand, in a society of wicked people, those who are able to create mischief and disturbance would gradually become leaders of mischief makers. And in a religious and pious society individuals would automatically become prominent on the basis of complete adherence to their faith, and their piety, and idealism, their ethical values and responsible behaviour would go on leaving their imprint on the society and their acceptability and popularity would gradually increase.

Authors holding the above-mentioned opinion have based their arguments, in especial, on the following authorities:

"Verily, the most honoured of you in the sight of Allah is (he who is) the most righteous of you." (84)

And
"Allah will raise up to (suitable) ranks (and degrees), those of you who believe and who have been granted the knowledge." (85)

Umar bin Khattab says: "Acquire the knowledge of understanding of the faith before you get leadership (of the Ummah)."

There is a famous saying "Your rulers have the standard of character according to that of you people."

According to the above-mentioned scholars Islam has given due consideration to this law of gradual evolution of society. There are many instances in the history of Islam of slaves and persons from the lower strata of society becoming ministers, rich and wealthy people and Ulama. It is this law which plays a crucial role in determining who would be the people at the helm of affairs and the Caliph, since these slaves and persons from the lower strata have automatically achieved prominence due to their high qualities and noble character and have occupied the highest positions.

The centre of this gradual social evolution is the mosque of the locality in which Ahl al-hall wa al-agd (people at the helm of affairs), Ahl al-ra' (those whose opinions carried weight), people with insight and the managing committee gather and discuss the problems of the locality. This assembly also looks after the needs and requirements of the area under its jurisdiction and people living there resort to it when
faced with some difficulty. Thus mosque is the nucleus of a unit of such a natural mode of activity. The assembly of *Ahl al-hall wa al-aqd* (the people at the helm of the affairs) of a *Jama Masjid* is a larger unit comprising all the smaller units in a town. In this central mosque people of the whole town gather once a month where their problems are discussed from the pulpit and *Ahl al-hall wa al-aqd* (people at the helm of affairs) meet and tackle social and political matters. The *Imam* of this *Jama Masjid* is the ruler of the town who is the leader of the people in religious as well as political affairs. In this way, the ruler of the place has an assembly of people at the helm of affairs at his disposal all the time to hold consultation with. Similarly the Caliph, who leads the prayers in the *Jama Masjid* of the capital has the benefit of the advice of the ministers, the *Ulama* and representatives of different classes of people around him who are experienced persons, endowed with insight and skill and who are well-known and popular throughout the country. It is this naturally evolved assembly of the *Shura* which gives sound advice to the Caliph of the time. \(^{(86)}\)

This natural system of selection of the *Shura* was prevalent in the early years of Islam and, as a result of this system, able and deserving individuals achieved prominence and were appointed to high positions and comprised the *Ahl al-hall wa al-aqd* or the *Shura*. But now the number of problems has increased vastly, modern society suffers from different kinds of intricacies and progress in the fields of
Science and technology has made the society so complex that it is not possible to bring it back to its natural state. So the old methods are no longer valid. It is only in societies which are still simple and have not yet been affected by modern culture that the old system can be established.

There are some scholars who regard nomination as a better form of selecting members of the Shura. In their opinion election under a democratic set up are replete with deficiencies and evil practices and hence they are not capable of constituting the Shura in a proper manner. They are of the view that the Caliph or head of state should himself select people on the basis of their superiority over others as regard their abilities, experience and power of drawing right conclusions and in giving correct and sound advice on matter which they confront. (87)

These learned people and intellectuals are right when they recount a number of defects in the democratic process of election; but the system of nomination is likely to be accompanied by many more defects. It is beyond the capacity of a Caliph to select good and suitable individuals and those enjoying the trust and confidence of the common people without holding a general election. Moreover, there is no guarantee of justice and rightfulness in making nominations to the Shura, since, however pious and devout a Caliph may be, as compared with the judgement of the common people that of a single individual will be more likely to be faulty. In view of the importance of the Shura and its role in implementing the sound
principles of the Islamic state, its composition cannot be left to the judgement of a single person.

Some scholars have suggested that certain stipulations and qualifications may be laid down for the candidates for the membership of Shura before elections take place. That is to say, a person who obtains a degree and is recognised as a scholar in one of the fields of learning like Shariah, medicine, engineering, technology, agriculture, economics etc. which enables him to do Ijtihad and draw logical conclusions, may be regarded as a Mujtahid, provided he fulfils other conditions for doing Ijtihad. According to these scholars, the number of people achieving the level of Ijtihad and capacity for logical deduction will go on increasing with the passage of time and the number of members of a legislative assembly is usually small to obviate difficulties in the conduct of discussions and exchanges of opinion. They say when such a stage is reached general elections may be held for electing members of the Shura from among these Mujtahids so as to ensure that those who are elected possess expertise, experience and deductive skill in different areas of learning. In this way, these scholars claim, through a general election both representatives of the people and experts in different fields will be present in the Shura. This process of election is not a unique or a rare one in modern democracies, since such a system is in force in a number of countries where elections are held in two stages, as a result of which experts get representation in the legislature and welfare of the
common people is also ensured. Certain countries have prescribed some educational qualifications and financial standing for enrolment of people as voters while some other constitutions provide for sponsorship, that is, every candidate, has to be sponsored by a specified number of voters while there are still other constitutions, according to which candidates have to be nominated not by individuals but by institutions. If the above-mentioned method is adopted, it would incorporate both a modern a democratic process of election as well as basic features of the Islamic system of the selection of the Shura.(88)

However, the system of election stated above has been generally criticised very severely. Ability to read and write and to have some educational qualifications ought not to be prescribed as conditions for being a voter and a candidate respectively. All the democratic states of today have rejected such a system. It is generally thought that acquiring skill and expertise in certain fields of learning and arts and ability to render sound advice in the affairs of the state are two different things and there is no essential correlation between the two.

Hani Ahmad Fardiri suggests the following system of election which is similar to that mentioned above:

1. The ruler or the Caliph should appoint an apex panel of persons who, in his opinion, has the ability to do Ijtihad and to draw logical conclusions, provided that the ruler or Caliph is himself a Mu'tahid. Failing this, he should seek the advice and cooperation of a person who has the status of a
Mujtahid in nominating people to the panel.

2. The above-mentioned panel should conduct interviews with those who claim to have the ability to do Ijtihad and then decide who among them are really capable of doing so.

3. Those who are considered by the apex panel able to do Ijtihad may contest election for membership of the Shura from constituencies delimited by the ruler. These elections should be conducted by secret ballot so that the common people may select those among the Mujtahids who, in their opinion, are more sober and have a greater awareness of their problems and interests.

4. The Majlis Ijtihad or Shura should comprise those who are elected through the above-mentioned process of election.

5. This Majlis Ijtihad should deliberate the other issues of organisation and establishment. (89)

The procedure suggested above is somewhat similar to the earlier one, since in this mode of election, too, the right to select the members of the panel eligible for being elected to the Shura is vested in the Caliph and may be objected to on the same ground as that of the earlier viewpoint that vesting the right of nominating members to the panel in a single person would lead to dissensions and disturbances and that it is difficult to meet the demands of justice in selecting persons who are deemed capable of doing Ijtihad and drawing logical conclusions from amongst millions of people, howsoever piously and justly the Caliph may try to do so.
An analysis of the viewpoints mentioned above leads one to the conclusion that in the present age general election is the best way of constituting the Shura since this would ensure that the best and most excellent persons having high moral character are elected who enjoy the trust and confidence of the people and are popular among them and also to make sure that the common people cooperate with the Shura in implementing its decisions.

However, one problem that arises in following the above-mentioned procedure is that while those elected to the Shura under the system would enjoy the trust and confidence of the common people, it is not likely to result in the election of skilled or learned and scholarly people and those who are experts in different fields with wide experience since such persons would not be able to employ methods designed to seek popularity among the common people because of the indispensable demands of their respective fields of learning and expertise and their scholarly temperament. Thus, the Shura would be deprived of their services and representation. Researchers have suggested a number of ways of solving this problem to raise the standard of the Shura as well as to overcome the deficiency of the system of general elections like the institution of a second chamber and nomination of experts and learned people to the Shura.

But it should not be forgotten that such suggestions do not provide a radical solution of the problem. Weaknesses of the democratic system can only be removed by engendering
political awareness, better use of mass media, and creating a more sound public opinion. Furthermore, the Islamic system of the Shura can only be implemented in an Islamic ethos, an ethos in which everyone has faith in the cardinal principles of the unity of Allah, the Prophet of Islam and the Day of Judgement, is endowed with the qualities of piety and righteousness, in an atmosphere in which the spirit of cooperation pervades and where there is complete freedom of criticism and accountability side by side with the spirit of obedience to the ruler and sense of responsibility, an environment in which officials and responsible state functionaries have the feeling of the good and welfare of the people in their hearts, and are endowed with the high qualities, good intentions, wide learning and extensive experience.

It is in such an ambience that a truly Islamic Shura can function and can bless the world with its beneficient fruits. This is the reason why Islam lays stress first of all on moral rectitude and pays great attention to internal reforms rather than external ones. Only purity of faith and thought and sound character and action can make an Islamic state successful. If these things are overlooked, a lot of misunderstanding is created and the correct image of Islam is obliterated from the mind. (90)

Dr. Qutb Mohammad Tabeelah says that the deficiencies of the democratic system of elections can be gradually removed in the light of experiments and right conclusions drawn from these experiments, provided that there is freedom of criticism
and questioning. He adds that, such an atmosphere of freedom and liberty does not disqualify a candidate who misuses this freedom while conducting his election campaign, ensnaring the masses in the web of pleasant and illusory dreams and employing modes and resources that wholly violate the teachings of Islam. Hence, in his opinion, side by side with the purity of aims and objectives, that of the methods and resources is also essential. (91)

Suggestions about benefiting from the experience of experts in different fields can only be implemented if the masses are keen on the enforcement of the Shariah, are anxious to remove unislamic practices and elements from the modern democratic systems and the constitution of the state expressly mentions that Shariah is the real source of legislation. It is necessary to have a detailed discussion on these suggestions in this light.

One of the suggestions relating to this is that the number of the members of the legislative assembly may be increased by amending the constitution so that the assembly comprises members directly elected by the people as well as a fairly large number of skilled people and experts in different fields nominated either by the elected members of the assembly or the government so that the legislative assembly has the benefit of the opinions of members who enjoy the faith and confidence of the common people as well as that of those who have special skills and expertise. In this way the Quranic injunction enjoining obedience to the Ulul amr would also be
implemented.\(^{(92)}\) Such a process of election-cum-nomination would bridge the gap between the old and the modern systems. It would be possible to benefit from the civilizational progress made in modern times and the goal of the formation of a Quranic Shura system would also be achieved.\(^{(93)}\)

The above-mentioned suggestion is similar to that of the Ulama as well as the intellectuals in recent times. For example, when Fiqh and experts in Islamic Sharīʿah could not get elected to the Egyptian parliament, a number of learned people suggested that a specified number of Fiqh be nominated so that the opinions of experts in Sharīʿah are taken into consideration in the process of decision-making by the parliament.\(^{(94)}\) Allama Yusuf al-Qarzawi has also made a similar proposal. According to him, presence of people with ability to do Ijtihād and draw logical conclusion in a legislative assembly is essential so that they keep an eye on the legislation under discussion and decide whether they are violative of the Sharīʿah or in accordance with it.\(^{(95)}\)

The greatest weakness in the above-mentioned suggestion is that the nomination of experts and those well-versed in Sharīʿah by the government would militate against the confidence of the people in the legislative assembly since this would not be done with the consent of the Ummah and it is possible that in nominating of these persons the government is guilty of nepotism and favouritism, which would defeat the very purpose of such nominations.

Another weakness in the above-mentioned suggestion is that if decisions arrived at by legislative assembly by a
majority are deemed by the Shariah scholars and experts to be against the Shariah it would lead to mutual opposition and this would endanger the very spirit of democracy. It could also mean decision being taken by the majority while the opinions of the Shariah scholar being considered merely as recommendations.

Still another suggestion in this context has been made by Zakaria al Bari. He proposes the following procedure, based on the principle of Ijma (consensus among the faithful), which is also practicable:

1. Conditions of eligibility of Muitahids and Ahl al-Zikr for membership of the Shura are to be laid down by the Caliph but it should be kept in mind that only those pious and religious persons are selected who have the ability to do Ijtihad and to draw logical conclusions. In his opinion, in the initial stage no other method is feasible. It is this apex Majlis al-Ijtihad according to him, which should examine and evaluate the eligibility of candidates for the membership of the Shura.

2. Apart from the Muitahids there should also be advisers who are experts and learned in every field of knowledge and activity and experienced people who can be consulted whenever necessary to follow the Quranic injunction to the effect that when knowledge is lacking the Ahl al-zikr should be consulted.

3. It is the responsibility of every Islamic state, with the cooperation of other states, if possible, to remove the obstacles to Islamic solidarity.
4. In case of difference of opinion the majority should prevail as majority opinion is nearer to the rightful decisions.

5. It is the responsibility of the government to implement the will of the majority on all issues of collective interest so as to make it part of the law of the state. It is not practicable to use the method of *lima* to find out the injunction of the *Shariah*, as enunciated by the *Ulama*. The best way of doing this would be to employ the method of collective legislation by the *Ahl al-hall wa al-sagl*.

The above-mentioned proposal shows that the author wishes to give the power of legislation to the *Mejlis Mujtahidin* instead of the parliament. But such a proposal would mean loss of confidence in legislation on the part of masses as it would deprive the community of Muslims of its share in state affairs, while the injunction of the Quran is that the will of the people should prevail both in the election of the Caliph as well as in managing the affairs of the state.

Another great defect in the above-mentioned proposal is that a *Shura* comprising experts in various fields and those with the ability to do *Ijtihad* and draw logical conclusions would not be able to tackle political issues in a proper manner. This is so since temperament of those involved in research and specialisation would militate against their taking interest in coming to groups with the problems faced by the common people. During the early years of Islam there were *Faqih* who were experts in religious learning and also took interest in understanding and solving the problems of the common people.
However, this is not possible in the present time. Earlier, the social system was most simple, more natural and free from the pollutions of the present age. Progress in the fields of culture and civilization has made the modern society most complex and complicated. Every field of learning today has a number of branches and every one of these branches has been subdivided into hundreds of branches. Interest in research and specialization is creating new and ever new problem. According to scholars, those who wish to obtain high academic degrees and devote their entire lives to this objective, find themselves more and more estranged from social and collective affairs due to these conditions, as well to their temperament. Hence it would be wrong to think that specialists in different fields have a greater ability to solve the problems of the people than others.

A third proposal that is put forward in this connection is that by a combination of the modern democratic system of elections and that of the Islamic system which ensures the advantages gained from the modern thinking and ideologies side by side with maintaining its Islamic spirit. In the opinion of the advocates of such a point of view it should be indispensable for a Mujtahid of the present age to have been educated upto a specified level; and since providing facilities for education is the responsibility of the state in modern times, evidence of a particular kind may be specified by the state as essential in order that a person may be deemed to be a Mujtahid. They add that it should be ensured that only such person should be
declared eligible for membership of the Shura who possesses all of such qualifications and that incompetent persons should be kept out of the Shura. A consultative assembly should be constituted having people possessing such qualifications and all legislations ought to be placed before this assembly before being enacted so as to examine their compatibility with the Shari'ah. Such a procedure does not go against any of the modern democratic constitutions. Since elected assemblies have the right to consult experts and specialists so as to make up the deficiency in the list of its elected members because of the defeat of candidate with expertise and specializations. This is the reason why modern governments institute committees of experts in different fields.

Those who support the above suggestion say that by following such a procedure the process of evolution and progress would continue since, according to them, Shari'ah only enunciates basic precepts and principles, leaving the working out of details and subsidiary issues to man so that there is a lot of scope for detailed legislation in the interest of the welfare of the common people. 

The above-mentioned suggestion is understandable. However, membership of the Shura cannot be confined to Mujtahids of the Shari'ah. This is because problems have become so complicated and life of the common people has become so complex that it is not possible to deny the need of the counsel of experts in other fields. Every problem that one confronts has a number of dimensions - religious, social, economic,
psychological etc. and to take all these aspects of an issue into account, opinions of skilled and experienced people from every field of knowledge and activity is necessary.

Another suggestion relating to benefiting from the experience and expertise of experts is that since religious consciousness is on the increase among the common Muslims and there is a growing demand on their part to remodel social, communal and political institutions in the light of the Shariah and yearning for Islamisation of the aspects of the government is increasing, it is necessary that the constitution of an Islamic state should have the basic clause so the effect that Islamic Shariah is the fountain-head of all legislation. This is essential since till now constitutions of Muslim countries simply declare that Islam is its state religion. Addition of the above-mentioned clause to the constitution of an Islamic state would result in comprehensive guarantees for maintaining its Islamic character and would also ensure that the legislative assembly would not adopt a law which is repugnant to Islam. This would lead to a search for new procedures of legislation and ways would be found for the observance of Islamic Shariah without demolishing the existing political and social structure of the country and a gradual process of change would be evolved to avoid problem arising out of introducing amendments to the existing constitution and deletions from it and conditions of the country would change with the employment of a suitable strategy and sagacity along with faith. In the opinion of those who propose
such a scheme, decisions of the Shura, which would be instituted in an Islamic state as a supplement to the elected parliament, would be binding and final. They make the following suggestions with regard to this Shura:

1. This assembly will comprise individuals who are equipped with high academic qualifications and armed with long period of specialised experience in their respective fields, like religion, law, economics, sociology and psychology. Experts in everyone of these areas will be nominated to this assembly. This will be separate body, apart from the parliament.

2. The task of this assembly will be to examine and assess the rightfulness and suitability of all issues placed before it by the parliament.

3. Decisions of this assembly would be arrived at by a majority of votes.

4. These decisions of the Majlis al-shura will be binding on the parliament which will not have the authority to reject them since the constitution of the country will already have provided that Islamic Shariah is the fountain-head of the laws of the land. So the parliament, too, will be bound by it. If the parliament adopts a piece of legislation which goes against the spirit of such a clause of the constitution, it would be placed before the Supreme Court which would place the matter before the Majlis al-shura, the decision of which will constitute the law of the land. Even if the decisions of the Majlis al-shura are not deemed to be binding and final and are merely considered recommendatory, the legislative assembly will have to abide by
them, since even the parliament has no right to violate
the basic policy of the state.

5. Laws in force at the present time which are violative
of the spirit of the Shariah can be declared Ultra vires
without causing harm to the welfare of the people. Decisions
regarding such laws taken by the Majlis al-shura in the light
of the Quran and the Sunnah will be enacted and enforced by
the parliament.

Scholars consider the above-mentioned proposal
practicable as well as in consonance with the Islamic Shariah. It
also accords with the demands of modern times. This proposal
entails the institution of a Majlis al-shura of the common
people which will come into existence through a general election
and a special Majlis al-shura which will have experts, scholars,
specialists and Ulama al-shariah which will be nominated by
the Caliph and will represent all the different fields of
learning and skill. The task of the second Majlis will be to
examine and evaluate the decisions of the Majlis al-shura of
the common people in the light of the Islamic Shariah and its
decisions will be decisive and final. Thus there will be a
bi-cameral Shura which will enjoy the trust and confidence of
the common people and will also benefit from the learning,
research and experience of specialists, scholars and skilled
and experienced persons as well as Ulama al-shariah.

2. The traditions that indicate that the persons with whom consultation was meant in the Quranic verse "Shawirhum" were Abu Bakr and Umar, were cited already. But this verse, as elaborated already, can not be confined to these two companions. Instead, the Prophet had consulted with other companions too and sometimes with the entire Muslims living in Madinah or participating in any battle.


10. Abdul Azim Mansoor has quoted in his article 'Itebarat al-Zaman wa al-Makan fi Shariah al-Islam' Majallah Minbar al-Islam, Vol. XI, No. 32, Nov. 1974 from al-Bidayah wa al-Nihayah that in the case of selection of Caliph, Abdur Rahman b. Auf was so sensitive and responsible that he used to ask to the ladies in the houses, the students in the schools and to traders coming from the outside of Madinah to whom they deemed to be deserving to be Caliph.


19. See for example, Surah al-Nisa: 59, 3.


25. Al-Fazili, Ahmad, *Nizam al-Hukm fi al-Islam* (Muhazarat), Al-Dirasat al-Ulya, Qism al-Siyasah al-Shariyah, Kulliyah al-Shariyah wa al-Qanoon, Jamea Al-Azhar, p. 90. From this legal decree of Hanafite school it is clear that the terms *Ulul amr* and *ahl al-shura* cannot be the nobles and dignitaries of the Ummah.


37. Ibid, p. 518.


47. Ibid, p. 203.
51. Khallef, Abdul Wahhab, IIm Usool al-Figh wa Khulasah al-Tashree al-Islami, Cairo, 1956, p. 15.
55. Ibid,
59. Quoted from Dr. Mahmood Hilmi, Mizan al-Hukm al-Islami Mugarinan bi al-Muzum al-Muwasirah, Dar al-Fikr al-Arabi,


65. Ibid, Bāb Ittekhaz al-Vazir.


69. The Quran, 4 : 58.


71. The Quran, 2 : 247.


81. Ibid, p. 50.

82. Maududi, Abul Ala, Islami Riyasat, op. cit., p. 344.


85. The Quran, 58:11.


90. For the study of foundations and prerequisites of Islamic shura in detail, see, Nahvi, Adnan Ali Raza, Malameh al-Shura fi al-Dawah al-Islamiyah, op. cit., pp. 79-190.


92. As discussed already, the Quranic injunction enjoining obedience to the 'Ulul amr' requires the formation of shura comprising of Ulama, experts of various fields and politicians. Because the word 'Ulul amr' necessarily includes these groups.


