

"You shall rule among them in accordance with GOD's revelations to you and beware lest they divert you from some ,Do not follow their wishes then know that GOD ,of GOD's revelations to you. If they turn away many people are ,wills to punish them for some of their sins. Indeed wicked" (The Holy Qur'an, Chapter 5, Verse 49)

LAW

LAW MAKING IN ISLAM



The sources of Islamic jurisprudence are of two kinds.

The first is drawn directly from the primary sources of the Qur'an and the Prophet's Traditions.

The other is secondary and includes Ijma or unanimous agreement of jurists by analogy drawn from precedent.

The study of these sources was the subject of a special science called Ilm Al-Usul.

It gave rise to what is called ijtihaad, i.e. the effort or endeavour to interpret legal sources and to discover proper solutions for religious and legal cases. Ijtihaad was thus an important factor in Islamic legal history,

in adapting rules to the need of civilisation, and was one of the causes of the florescence of Islamic jurisprudence in the Abbasside period.

In the 13th century when required Islamic laws were studied and collected the jurists agreed upon the closing of the door of ijihad. As a result, new interpretations were prohibited, and consequently unconsidered and slavish imitation became general.

The schools of thought (law) are generally classed together as Ahle-Fiqh. In Muslim eyes they are all equally valid and their decisions equally sacred.

Prophet's Traditions too play an important role in law-making after Qur'anic Laws.



QUR'AN : AS THE ONLY SOURCE OF LAW



In Islam obedience is essentially and basically due only to the Laws of Allah as embodied in the Qur'an.



'Shall I (Muhammad) seek other than Allah as a source of law, when He has revealed you this book fully detailed? Those who received the scripture recognize that it has been revealed from your Lord, truthfully.

You shall not harbor any doubt "



(The Holy Qur'an, Chapter 6, Verse 114)



"Those who do not rule in accordance with God's revelations are the

unjust 



(The Holy Qur'an, Chapter 5, Verse 45)

Obedience to Divine Laws is not a thing belonging to the individual person in the sense that one might, of his own, consult the Qur'an, interpret it for himself and act according to his individual interpretation.

The obedience has to be disciplined and orderly under an organized system (called 'State' in present-day terminology) controlled by a central authority, the first central authority being Prophet

 *"Who ever obeys the messenger is obeying God".* 

(The Holy Qur'an, Chapter 4, Verse 80)

 *You shall rule among them in accordance with GOD's revelations to you and beware lest they divert you from some ,Do not follow their wishes then know that GOD ,of GOD's revelations to you. If they turn away many people are ,wills to punish them for some of their sins. Indeed wicked* 

(The Holy Qur'an, Chapter 5, Verse 49)

Baring a few exceptions, the Qur'an enunciates generally fundamental principles without touching on subsidiary laws. About these fundamental principles or permanent values the Qur'an says:

 *Perfected is the Word of thy Sustainer in truth and justice. There is*

nothing that can change His Words[...] 

(The Holy Qur'an, Chapter 6, Verse 115)



 *And We have set thee (O Muhammad) on a clear road of commandment; so follow it, and follow not the whims of those who know*

not. 

(The Holy Qur'an, Chapter 45, Verse 18)

While he lived, the Prophet determined subsidiary laws in consultation with the Ummat. The question is as to what was to be done after his demise.

The Qur'an answers the question by saying:

 *'Muhammad is no more than a messenger like the messengers before him. Should he die or get killed would you turn back on your heels?'* 

(The Holy Qur'an, Chapter 3, Verse 144)



It follows that the process of framing laws within the framework of Qur'anic principles, was not to discontinue after the death of the Prophet .

Had the institution of Khilafat on the pattern set by the Prophet continued, the process of legislation evolved by it would have continued to develop normally, making the law of Shariat a happy blending .



The Qur'an has not offered a code of life for a particular period of history only. The Qur'an has been preserved by Allah so as to provide mankind with a code for practical living from age to age and from place to place. On the basis of Qur'anic principles an organization (Islamic State) was set up. A similar organization can be set up again now. But a change-over from the present to an ideal Islamic State cannot be brought about overnight. The organization will, by stages, proceed towards its ultimate goal by normal process of evolution, ridding itself of initial short-comings at every step.

It must be borne in mind that the right to introduce changes belongs to the Islamic State and not to individuals whatever their mental development may be. Individuals can only initiate changes in the thought process but the effective action depends on the co-operation of whole society.



Proper fiqh, taken from the pages of the Qur'an and put into actual practice by the force of the belief of those who run Islamic society politically, is the main remedy for reviving Islam.

 *"You shall hold fast to the rope of GOD and do not be ,all of you ,
divided"* 

(The Holy Qur'an, Chapter 3, Verse 103)

 *"Let there be a community of you who invite to what is good, advocate
righteousness
and forbid evil. These are the winners"* 

(The Holy Qur'an, Chapter 3, Verse 104)

 *Whoever does a righteous work receives the reward for ten, and the one who commits a sin is requited for only one. No one suffers the slightest injustice"* 

(The Holy Qur'an, Chapter 6, Verse 160)



APPLICATION OF QUR'ANIC LAW IN MODERN TIMES



The point that must be emphasized is that the modern Shari'at laws are basically laws derived from the Hadeeth literature. The Qur'an has very little part to play in it. In fact, the laws made with reference to the Qur'an, in some cases, are used without proper research of the Arabic text or the context in which they are used.



A good example is the punishment for theft. The law used in other cases, such as the stoning to death for adultery, has its origin in the Hadeeths and has nothing to do with the Qur'an. (We will look for Qur'anic punishment for the said crimes later) .

The sad irony is that many people, including the Taliban in Afghanistan, think that this law comes from the Qur'an. In reality, the Taliban are ignorant of the Qur'an and their teaching comes from the Hadeeths, and this is why they practice such a barbarous law.





THE ISLAMIC STATE



 *He it is who has sent His messenger with the guidance and the concrete, constructive and purposeful way of life (deen-il-haqq) that he may cause it to prevail over other ways of life, however much those who ascribe partners to Allah are averse.* 

(The Holy Qur'an, Chapter 61, Verse 9)

Islam is described as deen-il-haqq, but what does it mean? The Qur'an clarifies the word haqq by means of a similitude:

 *He sends water from the sky, and the brooks flow according to their respective measures and the flood bears along a swelling foam. And from the metals which they melt in the fire, seeking to cast ornaments and necessaries, arises a scum like unto it. Thus, Allah coins the similitude of the truth (haqq) and the false (batil). Then, as for the foam, it passes away as scum upon the banks, while that which is beneficial to mankind, it remains in the earth. Thus Allah coins the similitudes.* 

(The Holy Qur'an, Chapter 13, Verse 17)



ISLAM : THE NATURAL RELIGION FOR MANKIND



Hence, Islam – the deen-il-haqq – is the true way of life which is beneficial to mankind, that is, it is the way of life for which human beings are best suited.





Surely the way of life (deen) acceptable to Allah is Islam[...]





(The Holy Qur'an, Chapter 3, Verse 19)

The role of the Qur'an as the source of the deen-il-haqq is clarified by the Qur'an itself:



 *Alif. Lam. Ra. (This is) a Scripture which We have revealed unto thee (Muhammad) that thereby thou mayest bring forth mankind from darkness into light by the permission of their Sustainer (Rabb), unto the path of the Mighty, the Owner of Praise.* 

(The Holy Qur'an, Chapter 14, Verse 1)



 *Seek they other than the Deen of Allah when unto Him submits whatsoever is in the heavens and the earth, willingly or unwillingly, and unto Him they will be returned?* 

(The Holy Qur'an, Chapter 3, Verse 83)

The Qur'an informs us that no way of life other than the deen-il-haqq is acceptable to Allah:



 *Those whom you serve beside Him are but names which you have named, you and your fathers. Allah has revealed no sanction for them. The decision rests with Allah only, Who has commanded you that you serve none but Him. This is the right way of life (deen), but most men know not.* 

(The Holy Qur'an, Chapter 12, Verse 40)

 *And whoso seeketh any way of life (deen) other than Islam, never will it be accepted of him, and he will be a loser in the Hereafter.* 

(The Holy Qur'an, Chapter 3, Verse 85)

Why? It is so, because all other ways of life are detrimental to mankind. The system of life which is deen-il-haqq will supersede all other systems:

 *Fain would they put out the light of Allah with their mouths, but Allah will perfect His light, however much the disbelievers are averse.* 

(The Holy Qur'an, Chapter 61, Verse 8)





ALLAH DO NOT HELP UNLESS YOU START





It should be noted that, to be regarded as an Islamic State, the State must be founded on Allah's Deen or Deen-il-haqq. This will involve both ideological and practical principles.

Ideological transformation is necessary because:



 *[...]Allah never changes the condition of a nation until they first change what is within themselves[...]* 

(The Holy Qur'an, Chapter 8, Verse 53 and 13:11 too)



As thought needs action, so ideology will need practical manifestation.
Note the following verses:

 *Do men imagine that they will be left (at ease) because they say, 'We believe', and will not be tested with affliction? Lo! We tested those who were before you. Thus Allah knoweth those who are sincere, and knoweth those who feign.* 

(The Holy Qur'an, Chapter 29, Verses 2-3)

 *Or deemed ye that ye would enter Paradise while Allah knoweth not those of you who really strive, nor knoweth those (of you) who are steadfast?* 

(The Holy Qur'an, Chapter 3, Verse 142)

 *Or think ye that ye will enter Paradise while yet there hath not come unto you the like of (that which came to) those who passed away before you? Affliction and adversity befell them, they were shaken as with earthquake, till the messenger (of Allah) and those who believed along with him said: When cometh Allah's help? Now surely Allah's help is nigh.* 

(The Holy Qur'an, Chapter 2, Verse 214)



ALLAH HAS PROMISED SUCCESS



Thus, if people are really sincere and steadfast then success is bound to come with Allah's help. In fact, the guarantee of success is given by Allah Himself:

Allah hath promised such of you as believe and do good works that He will surely make them to succeed in the earth as He caused those who were before them to succeed; and He will surely establish for them their deen which He hath approved for them: and that He will change their state, from the fear in which they lived, to one of security and peace.

(The Holy Qur'an, Chapter 24, Verse 55)

Lo! Those who believe and do good works, their Sustainer guideth them by their faith[...]



(The Holy Qur'an, Chapter 10, Verse 9)

Allah has bought from the believers their lives and their wealth in return for paradise[...]


(The Holy Qur'an, Chapter 9, Verse 111)



However, there is also a warning:

 [...] *If you turn away, He will exchange you for some other people, and they will not be like you.* 

(The Holy Qur'an, Chapter 47, Verse 38)

 *We destroyed the generations before you when they did wrong; and their messengers (from Allah) came unto them with clear proofs (of His Sovereignty) but they would not believe. Thus do we reward the guilty folk.*

(The Holy Qur'an, Chapter 10, Verse 13)



Every state, in order to function properly, needs a constitution which defines the structure and powers of the state and the rights and duties of its citizens. The constitution can be defined either in a written document

or based on traditions and practices in accordance with which the government is organised. However, any constitution needs to be flexible in order to take account of the progress of the society.

As far as the Islamic State is concerned, the constitution must be based on Qur'anic principles and guidelines, and no part of the constitution should be contrary to the fundamental principles of the Qur'an.

The constitution must be decided by the community through a process of consultation, and the manner in which this consultation should be carried out should also be decided by the community. The judiciary, which must be independent of the executive, should decide on matters where there is a violation of the constitution in private or public life.

We now outline the six main concepts upon which the constitution of an Islamic State must be based:

ONE

Sovereignty in an Islamic State belongs only to Allah. Subservience, therefore, is due to Allah alone.



I created the jinn and the humankind only that they might serve



Me.



(The Holy Qur'an, Chapter 51, Verse 56)



Allah has said, 'Take not for subservience two authorities; for He is

One. 

(The Holy Qur'an, Chapter 16, Verse 51)


 *It is not permitted for any human being unto whom Allah has given the Book and wisdom and the Divine Message that he should afterwards*
have said unto mankind, 'Be subservient to me instead of Allah.' 

(The Holy Qur'an, Chapter 3, Verse 79)

TWO

The sovereignty in practice shall be that of the Qur'an, which means that the government shall be obedient to the laws based on the fundamental principles of the Qur'an.

 *Perfected is the Word of thy Sustainer in truth and justice.*

There is nothing that can change His Words[...] 



(The Holy Qur'an, Chapter 6, Verse 115)

 *[...]Those who do not judge by what Allah has revealed are*
disbelievers. 



(The Holy Qur'an, Chapter 5, Verse 44)

 [...]Those who do not judge by what Allah has revealed are wrong-
doers. 



(The Holy Qur'an, Chapter 5, Verse 47)

 Shall I seek other than Allah for judge when it is He who has revealed
unto you (this) Book, fully explained? [..] 

(The Holy Qur'an, Chapter 6, Verse 114)

 If you obeyed most of those on earth they would mislead you far from
Allah's way. They follow nothing but an opinion, they do but guess. 

(The Holy Qur'an, Chapter 6, Verse 116)

 And We have set thee (O Muhammad) on a clear road of
commandment; so follow it, and follow not the whims of those who know
not. 



(The Holy Qur'an, Chapter 45, Verse 18)

THREE



The Islamic State has no place for any sectarian division. Thus, a truly Islamic state should declare that if anyone who calls himself a Muslim and at the same time calls himself Sunni or Shia, or specifies any sect with regard to his belief, then as far as the State is concerned he or she is a non-believer and shall be regarded in law as such. It does not, of course, follow that he or she will be punished on that basis since no one can be compelled to believe one way or the other.

 *There is no compulsion in deen[...]* 



(The Holy Qur'an, Chapter 2, Verse 256)

 *Those who divide themselves into sects have nothing to do with you. Their case will go to Allah, Who then will tell them what they used to*
do. 

(The Holy Qur'an, Chapter 6, Verse 159)

 *Turning unto Him (only); and be careful of your duty unto Him, and establish worship, and be not of those who ascribe partners (unto Him); like those who divide their deen into sects; each sect rejoicing with what*
they have done. 



(The Holy Qur'an, Chapter 30, Verses 31-32)

 *And hold fast, all of you together, to the cable of Allah, and do not
separate [...]* 

(The Holy Qur'an, Chapter 3, Verse 103)

A true Islamic State was certainly formed during the time of the Prophet and the four Khalifs and lasted for about thirty years. It was then changed to kingship by later Khalifs a course which, in effect, was one of the many causes of its demise.



In such a state believers not only do good but also exhort one another to truth and duty:

 *Save those who believe and do good works, and exhort one another to
truth and exhort one another to endurance.* 

(The Holy Qur'an, Chapter 103, Verse 3)

 *[...]but help ye one another unto righteousness and pious duty[...]* 



(The Holy Qur'an, Chapter 5, Verse 2)

 *And there may spring from you a nation who invite to goodness, and enjoin right conduct and forbid indecency. Such are they who are successful.* 

(The Holy Qur'an, Chapter 3, Verse 104)

FOUR



The Islamic State should be 'democracy by consultation' – allowing room for progress and flexibility. Indeed, the Qur'an warns against seeking the regulation of everything by Divine command. For instance, it gives no specifics about the form of government, rather, it leaves considerable room for the development of laws and practices as long as the Fundamental Principles are not violated.

 *O ye who believe! Ask not of things which, if it were made known unto you, would trouble you; but if ye ask about them in the light of the Qur'an then they will become obvious to you. Allah has left them out, for Allah is Forgiving, Clement.* 

(The Holy Qur'an, Chapter 5, Verse 101)



 *[...]Who conduct their affairs by mutual consultation[...]* 

(The Holy Qur'an, Chapter 42, Verse 38)



 [...]and consult them in the conduct of their affairs. And when thou art resolved, then put thy trust in Allah. Lo! Allah loveth those who put their trust (in Him) 

(The Holy Qur'an, Chapter 3, Verse 159)

The differences can be resolved by taking the Qur'an as the foundation of the Islamic State.

 Mankind was one single nation, and Allah sent messengers with glad tidings and warnings and with them He sent the Book in truth, to judge between people and in matters wherein they differed. But the people of the Book, after clear signs came to them, did not differ among themselves, except through hatred of one another. Allah (by his grace) guided the believers to the truth, concerning that wherein they differed. For Allah guides whom He wills, unto a straight path. 

(The Holy Qur'an, Chapter 2, Verse 213)

 And in whatsoever ye differ, the verdict therein belongeth to Allah. Such is my Sustainer, in Whom I put my trust, and unto Whom I turn. 

(The Holy Qur'an, Chapter 42, Verse 10)


The Qur'an does not provide instructions as to the form of government in an Islamic State. In the initial stages it is to be based on what is best and

beneficial for the people. The eventual aim is to remove all barriers of a nationalist state so that freedom of movement of the individual be unrestricted, the eventual aim being to unite mankind.

In the West the feeling that democracy works better in a multi-party system is in reality a myth, as the politics involved in getting into power are based on promises which are never fulfilled in practice, once the party who wins the election by making such promises comes to power. Morality has no place in today's politics. Justice favours only those who have the wealth and the power, whereas in a truly Islamic state any immoral or corrupt person would be weeded out, irrespective of his position in the party.



FIVE

The decision-makers and the administrators of an Islamic State should possess high standard of conduct and character. The Qur'an specifies some good attributes about individuals belonging to a Muslim community: for example, momineen, saliheen, and muttaqeen.



 *The believers (momineen) are those only who believe in Allah and His messenger and afterward doubt not, but strive with their wealth and their lives for the cause of Allah. Such are the sincere.*





(The Holy Qur'an, Chapter 4, Verse 15)

 *And as for those who believe and do good works, We verily shall make them enter in among the righteous (saliheen).* 

(The Holy Qur'an, Chapter 29, Verse 9)

 *It is not righteousness that ye turn faces to the East and the West; but righteous is he who believeth in Allah and the Last Day and the angels and the Scripture and the prophets; and giveth his wealth, for the love of Him, to kinsfolk and to orphans and the needy and the wayfarer and those who ask, and to set slaves free; and observeth proper worship and invests in zakat. And those who keep their treaty when they make one and are patient in tribulation and adversity and time of stress. Such are they who are sincere. Such are the Allah-fearing (muttaqeen).* 

(The Holy Qur'an, Chapter 2, Verse 117)

 *[...]the most honoured of you in the sight of Allah is (he who is) the most righteous amongst you[...]* 



(The Holy Qur'an, Chapter 49, Verse 13)

The Qur'an accepts the differences in personal qualities of Muslims on the basis of their commitment to the cause of Islam, but fundamental good qualities will be the pre-requisite for anyone to be entrusted with the running of an Islamic State. However, this in no way compromises one's right to equal treatment. Equality means that the privileges of wealth, birth, class, colour or race are abolished by law, and discrimination in any shape or form is strictly prohibited. Similarly, there should be absolutely no bars on non-Muslims participating in any public office or government service. The allocation of such posts should be according to the appropriate personal qualities.

SIX

Administration of justice: Justice is the key to the functioning of an Islamic State. The Qur'an contains strict standards of equality and administration of justice, the independence and integrity of judges, and the duty of witnesses to come forward to bear true witness without any favour or partiality. See section 13.5 and also the chapter Islam and Human Rights which follows this.

The verse below gives a comprehensive idea on the standards of justice:

 *O ye who believe! Be ye staunch in justice, witnesses for Allah, even though it be against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor man, for Allah is nearer to both (than ye are). So follow not passion lest ye lapse (from truth) and if ye lapse or fall away, then lo! Allah is ever informed of what ye do.* 

(The Holy Qur'an, Chapter 4, Verse 135)

Justice has to be provided free of charge by the State irrespective of a person's position in society and the law should not make any distinction between Muslims and non-Muslims. In fact, the non-Muslims in an Islamic State should have all the rights which the Qur'an declares as basic human rights, and their life, property, honour and places of worship must be protected.

References:

1. Islamic State -- First Principles: Notes from Lecture and an unpublished article, by Syed Mustafa Ali.

2. Quranocracy, by Dr S.A. Wadud. Khalid Publishers P.O.Box 4109, Lahore - 54600,
Pakistan.

summarised from p. 42-68.

Muhammad Marmaduke Pickthall in his 1927 Lecture on 'Tolerance in Islam,' Madras, India.

"In the eyes of history, religious toleration is the highest evidence of culture in a people....It was not until the Western nations broke away from their religious law that they became more tolerant, and it was only when the Muslims fell away from their religious law that they declined in tolerance and other evidences of the highest culture. Before the coming of Islam it (tolerance) had never been preached as an essential part of religion..."



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