

# ISLAM AND THE PROTOTYPES OF MUSLIM CIVILIZATION

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## ABSTRACT

There is no ambiguity in it that Islam in substance is a culture of sacrifice for abiding interests. All different cultures and groups, the cultures of avarice and self-interest are mortgaged to desires and are meant for disintegration and disunion. They produce an Umma divided within itself and self-defeating in its purpose. The basic law of the culture of Shahadat revealed in several verses of the Book is that no soul is burdened with its obligation more than that of its own capacity. The law is for all time and for all situations. In other words, no man is under compulsion to make such sacrifices of his means and energy that puts his own survival at stake. Beyond the provisions of reasonable survival as determined in view of the general lot of mankind, everything is part of Shahadat. The timely interest has to be governed by the abiding interest under the Law of Wages: This is the cornerstone of the culture of Islam. The Culture of those who are with God for all time, and prove it by rendering their Shahadat to it on all occasions, for them are all the good promises of the Destiny. Mankind is sure to meet them, if faithful to it. Unfolding a number of commendable features, the Muslim Civilization made some very valuable contributions to the progress of Mankind. But most striking point about it is that at no stage of its evolution could it nurture an urge for human rights. No mass uprisings and agitations for higher values adorned the pages of its history. The idea of individual's freedom which would have eventually led to the idea of collective self-determinism and legislation was quite alien to the game of power, often savage, in its wide expanses.

Before we embark on our discussion in continuation of the principle of fiduciary delegation for mounting over the difficulties of direct reference to the people in large societies for management and administration of public institutions and framing or amending their operational laws and rules, we have to take pause for some very relevant observations about Islam and its approach to human problems and the Muslim civilization as it flourished in history and disengaging ourselves in these times.

Genuine return to Islam can never mean in the Muslim world a reversal of the wheel of time, reliving a romantic past or a comeback of some inflexible shape of things, for there are no archetypes in Islam. And approach to it in terms of fixed roles and structures is against its spirit and temperament.

Consequently, it has never proved rewarding to have looked for the system of economy, constitution of government and form of social structure in the Divine message and revelations of the glorious Quran, and for that very reason in the earlier holy scriptures.

Occasional efforts, directed towards tracing the blueprints of its systems for all times and peoples are just reflections of our own epoch that rattles with ideologies. The ideological mode of thinking has taken in its grip not only secular intellectualism, but also a large chunk of religious scholasticism of this age. But Islam is not an ideology and is not amenable to the tools of ideological representations.

Every model / form takes for granted a static life to be remodeled or reformed according to it. But mankind moves from point to point. Society expands, changes and grows in the course of time. Therefore, it cannot remain confined to some given moulds for a long time. Its growth is stunted or it must break through the ramparts of its containment, go wild under the trauma of its problems and is uprooted by unmanageable developments. However, there are other possibilities too. It may reshape itself by overthrowing its outmoded form. But the new shape it adopts is also unenduring. It must modify or perish in the long run.

Being true to the nature of life and its dynamics, Islam has never counselled a model for the solution of human problems: a shape of political authority, a design of economic process, an image of the roles of men and women in human groups, fixed categories of vertical and horizontal cross sections of the pyramid of social arrangements.

In the same vein, it has never encouraged or tried to cultivate imitation as the keynote of its message. What it has asked the believers is to follow; follow the straight path. Imitating and following are poles apart.

The vision of a path is akin to that of the human situation. Man is in travel from birth to death. Groups and nations are also in passage from ages to ages. It is obvious that the future is blank insofar as it has no dots, lines or directions of its own. Before stepping into it, a path has to be worked out and laid down. And all of it requires a critical foresight. Imitator (of a model) is useless in this regard. A follower of the straight path having open heart, open eyes, open ear and using his faculties with insight is one who braves the future by keeping himself at the right course.

Those of the lot who labour under the impression that the path is already given out reduce it to a static form. They are attracted to this illusive perception, recreate it in their lives and get themselves fixed at a point of time in the belief that they are treading the straight path.

Islam does not want duplicating machines. Its demand is for those servants who are to exercise self-initiative and creativity as part of their nature. God, most high, does not want chattel-slave (Q.16:75). He draws a comparison between two sorts of men. There is one who is dumb (unable to speak, i.e. stupid) and is totally dependent on his master. Withersoever he is sent, he brings no good. There is another, who as sent establishes justice and is on a straight path (Q.16:76).

A tactless servant at the most can copy a given image or retrace a model. He is unworthy of doing justice to the cause of the master and follow the right course to fulfill it. It requires an intelligent agent with drive and creative approach to serve his lord. This divine exposition of the whole matter together with different portents in the Holy Quran determines the meanings of 'we hear and we obey (Samína wa Atána) in Islam. It does not mean blind reproduction, but intelligent following.

However, intelligence does not grow in vacuum. Every way of life grows its own intelligence. Those people who are committed to the right course and do demonstrate this commitment by their righteous life develop the Furqān (Discerning capacity of the right and wrong, correct and incorrect course) and are bestowed with the Mizan (Balance which keeps away from excesses). But those who take refuge in a 'form' are deprived of both the Furqan and the Mizan. And those who lead a riotous life, their intelligence has a distorted 'furqan' and their balance has disproportionate scales.

Even Divine guidance and its revelations are of no avail to them. They are misled further by the holy scriptures. Misled by the Divine words are those, "who break the covenant of Allah after ratifying it, and sever that which Allah ordered to be joined and (who) make mischief in the earth. Those are they who are the losers (2:27)." God the Merciful "does not withdraw from a people or change the goodness, He has given to them, unless they first change (to bad) that which is in their hearts (8:53)." What they lose then is Furqān, i.e. the power of discernment between right and wrong and with it their grip on the mizan which saves them from excesses is also over.

For downpour of furqān on them, people must listen to the Divine words and act accordingly:

O, ye who believe! betray not Allah and His messenger, nor knowingly betray your trusts. And know that your possessions and your children are a test (fitna) and that with Allah is immense reward. O, ye who believe! if you keep your duty to Allah, He will give you Furqan (discrimination between right and wrong) and will rid you of your evil thoughts and deeds, and will forgive. Allah is of infinite bounty (Q:8.27-29).

### **Who is Witness**

Deen primarily means wages of works, one has to receive: At human plane, it is transfiguration of the universal law of cause and effect that permeates everywhere in creation. Islam in itself as a term means surrender to God with all of one's own self. Most reassuring disclosure of Islam to man is that God is above all the chains of cause and effect. Surrender to God means to be with God, an existential revolution which bestows controlling power over all works and their wages and opens door to the Straight Path, the path of right works and right wages, by self-control against evil works and evil wages.

When it is said that Islam is a Deen that covers all aspects of life, what it means is that it shows how the law of works and wages

functions in every thing that has the mark of man. Consequently, no manifestation of man and his group structure drops out from its sight. As a Deen, it is comprised of the knowledge of works and wages in every field, and therefore inevitably shows in clear terms the Straight Path man has to follow in all situations: Man after all is a traveller, and nothing else, with all the Implications of this position.

The pertinent truth most relevant to him is that the law of wages in its working is an irresistible fulfillment. Never is it in human power to stop or slow it down. Time and its dynamics is also subservient to its rule until all the individuals and communities are paid back as they deserve. This is the Destiny, everyone has to meet; everyman and every group.

Islam raises no false hopes, it is all realism. Good hopes are concomitants of good works. There is no message for evil, but what it deserves. False hopes are byproduct of the evil itself that proves deceptive in the end. This is a clear indication for mankind and to those who commit evil.

Do they suppose that we shall make them as those who believe and do good works, the same in life and death. Bad is their judgment! And Allah has created the heavens and the earth with truth and (i.e. so that) every soul may be repaid what it hath earned. And they will not be wronged (Q. 46: 2-22).

Indeed every human conscience would be inclined to approve of this declaration of the glorious Quran. It is that Realism on which Islam proposes to order individuals and nations. In this regard, most startling revelations of Islam as Deen are those that rule out personal rise and success surviving as such without group survival and salvation. No solo flight is possible. People march to their destiny in groups, in troops (Q.39: 71-74). All contemporaneous men in a society form a cohort. The cohorts may be enlarged to the whole of humanity. Their 'Present' is common. Consequently, their march and their destiny is also common.

All of them are in their way to God in groups, in troops under the regime of the law of wages. Consequently, every one of them has on his back his own burden with added to it an additional burden of his group as well. Therefore, there is no personal success in the ultimate nature of things. The disgrace of additional burden contagiously erodes it from within. All are doomed, save those who have spent their life as witnesses over the people (shuhada 'ala-I-nās).

A man who notices some disgrace around in his cohort (society/group) and is unmoved by it, is one who is of unsure faith

and collaborates with it. He is not worthy of the honour of a witness, as disqualified by his own inaction.

In Divine eye, witnesses (Shuhada) are those spirited souls who not only realize the disgrace people are sunk in, but also are restless to apply their means and lives for delivering them from it. They are Shāhid (witness) and Shaheed (outstanding witness). Either the one who declares to have surrendered oneself to God is a Shaheed, or atleast a Shāhid. Or he is not the required man.

In the Divine plan for human order, the Muslim is a dignified title not easy to win. In Reality (which actually matters in the creation of heavens and earth), it is reserved for those who participate in Shāhadat (witnessing) as that the Messengers are Shuhada over them and they, in turn, are Shuhada over the people (Ala-I-nas. Q:22:78).

Shāhadat is all action. It is participation with God in his plan to cleanse the world of evil (ignorance, worship of desires, excesses, diseases, poverty, vanities, etc.) to establish real fraternity in mankind and restore its travel on the Straight path. It is meant to grow and flourish, gain momentum, attract people with a formidable impetus. As mass action, it produces its own culture and public order and in itself is preserved by rendering incessant Shāhadat for it.

All those who are in its massive push are charged with the desire to be at the forefront of those who ward off evil. Thus each one competes with others in a blessed competition to set examples by offering more and more sacrifices of wealth, time and energy (Q.25:74). This racing increases their mutual affection and brotherhood, closes their ranks, and grows those shining patterns and conventions in their interaction that form a glorious and abiding culture which identifies the proper meanings of the basic institutions of social order i.e. of property, of human rights, of contracts and pledges, etc. conforming with the basic requirements of mankind.

There is no ambiguity in it that Islam in substance is a culture of sacrifice for abiding interests. It is all Shāhadat. Those who help God (in His mission), God helps them. There should be no doubt in the Divine declaration. “Lo, verily I shall be victorious, I and My messengers. Lo! Allah is strong, Almighty” (Q.98:20). All different cultures and groups, the cultures of avarice and self-interest are mortgaged to desires and are meant for disintegration and disunion. They produce an Umma divided within itself and self-defeating in its purpose.

The basic law of the culture of Shahadat revealed in several verses of the Book is that no soul is burdened with its obligation more than that of its own capacity. The law is for all time and for all situations. In other words, no man is under compulsion to make such sacrifices of his means and energy that puts his own survival at stake. Beyond the provisions of reasonable survival as determined in view of the general lot of mankind, everything is part of Shahadat. The timely interest has to be governed by the abiding interest under the Law of Wages: This is the cornerstone of the culture of Islam. The Culture of those who are with God for all time, and prove it by rendering their Shahadat to it on all occasions, for them are all the good promises of the Destiny. Mankind is sure to meet them, if faithful to it.

### **The Moors of Legalism**

Unfolding a number of commendable features, the Muslim Civilization made some very valuable contributions to the progress of Mankind. But most striking point about it is that at no stage of its evolution could it nurture an urge for human rights. No mass uprisings and agitations for higher values adorned the pages of its history. The idea of individual's freedom which would have eventually led to the idea of collective self-determinism and legislation was quite alien to the game of power, often savage, in its wide expanses. Were it ever heard in the circles of its Ulema and Scholars, it produced no striving in their heart for contemplating on it down to our own times.

The reason might be that the ruling idea in the substrates of the Muslim civilization was responsibility of man. In itself the idea of responsibility is more immense in imports and implications than the idea of man's freedom (from the burden of Divine or superimposed laws) forming the bases of the Christian and later Modern western civilization. It would have unveiled values after values replenishing and revitalizing Muslim communities and nations with the march of time, but for the overwhelming legalism which dulled their genius.

It is common sense that Law is compulsion. And no compulsion can reason itself out on its own account. It has to refer to life beyond itself for its justification. But when the Law breaks down into different fragments each one with a nucleus of its own surrounded by its positive and negative effects the vital relationship of law with Life is snapped. Replacing the vital law, swarm of self-contained commands occupy the field, that may detain life but cannot sustain



it. It is this phenomenon, which we may designate as Legalism. It assaulted the nerves of Muslim civilization and made it inert.

The idea of Responsibility of man forming hard core of the consciousness of Islam about human affairs became dwarfed, frozen and neutralized in the chilly winds of legalism blowing the entire course of the Muslim history. Ever since the third and the fourth centuries Hijra (coinciding with the consolidation and erosion of the Abbasid Empire in the East, the Fatmid Kingdom in Egypt and North Africa, and the Amvi rule in Andalusia), the lofty notion of man's responsibility inherent in the Faith was bogged down to and equated with the earthly idea of punishment with the breach of a (particular) Law, and thereby was completely emaciated of further and deeper meanings that must have informed the throbbing of its heart. As human responsibility shrank to the narrow points of particular command with particular effects, no value in itself could catch the imagination of the believers in the green house of Legalism. All that was taking roots, growing strong and shaping the collective patterns of the Muslim World was a violent antithesis of Islam, a complete simulation of the grand style of un-Islam. A few crucial observations may suffice to underline and expose the general tone and main thrust of this civilization as a massive anti-Islam flux.

### **Discriminatory Order**

A new sort of religion not unlike that of the ancient Judaism with its pre-ponderingly racial (or blew blood) orientation was subduing and replacing the Universal religion of Islam. It held very despising attitude about its masses, and more so about the native inhabitants of its Vast empire particularly in the East. The *Adab al-Qazi* literature (Manuals for the guidance and discipline of the magistrates and judges) advised mild punishments for the sons of gentry (perhaps excluding Hudud ordinances) and stern measures against those of the common folks. Very strong suggestions were made in those guide books to ignore or take very lightly the witnessing of the man of street against the respectable gentry.

Some manuals even pronounced that man from the market (bazar) were not qualified enough to depose sound evidence. A market was a place where beside the merchants a large number of humble men earned their livelihood by performing various kinds of auxiliary services. In this civilization, those multitudes beyond the traders and big shopkeepers, were not treated as "whole men" to give proper evidence.

Totally pre-occupied with particular chunks of Law, the Scholars and Ulema failed to perceive the serious cracks that the norms in operations, having their pleasure as *Abkam-al-Sharia*, were causing to the structure of their Belief itself. An Ummah with startlingly modified belief system and distorted mental frame was in growth in this civilization which had very little in common with the Faith and norms that had emerged with Islam at its start.

It may not be out of place to mention that despite the emergence of discriminations on hereditary lines, their influence was not strong enough in the Ummah and its vast territories beyond the capital cities, the seats of power. It was still possible in the fourth, fifth and sixth centuries for a *Jassas* (lime-mixture maker), a *Naqsbband* (printer of fabrics), a *Ghazali* (rope weaver) to have entered a school of learning, earn fame for his scholarship and attain the most celebrated position as a jurist, head of an order, or an Imam al Fiqh. It was difficult, yet man of humble origin could join civil administration and rise to the office of a Wāli of some region. Although, military ranks were not widely open, still one of the commoners had some chance to rise to the position of Commander of an army.

But with every century socio-Legal blood-line ordering and stratification got reinforcement and spread contagiously in the entire body of the Millat-i-Islam.

The post-Tartarian Muslim Civilization reaped the sourest crops of those seeds of discrimination. Islam as a religion and as a message of deliverance from all sorts of inhuman treatment and burden, was overwhelmed by its stony structure. Racialism or blood-line segregation of the Ummah in various castes reached that height as had never been attained by Judea and Aphraim (Israel) in the antiquity.

Alienation from Islam is highlighted more glaringly in the religion of this civilization in its ordering of mankind in the scale of dignity. The *Fatawi Alamgiri* a compendium of encyclopedic measure compiling the legal judgments of the Hanafite School as evolved by its jurists over centuries upto the eleventh century Hijra (Seventeenth Century A.D.) stipulates a scale of dignity and status and segregates the Ummah into various blocks on vertical line. Its stipulations are in utter disregard of the Divine Command: ‘O, You people, we created you from a man and a woman, and made you (by multiplication) nations and tribes just) for (your) introduction (recognition). Indeed, of more dignity amongst you (than others) is who is more fearful (Q.49: 13). It obviously means that men live in tribes, clans,

subclans, etc. and are recognized by that but in the eyes of God and near to Him are only those who are high in the scale of virtues.

The jurists ignored this Divine Command which provides unmistakable and unshakable foundation to the universal brotherhood of mankind and makes them equals to one another in all public life and order. How could they dare to do this? This issue may be taken up later. What they did is of importance. Perhaps, they squared the Sharia with the material conditions of their time and with the outlook shaped by different pressurizing movements in the entire body of the congregation of Islam.

Accordingly, the *Fatami* laid down the following rules to be followed by all and sundry. A Quraish is higher in status and dignity than a non-Quraish. A settled Arab (living in townships and villages) is higher in scale of status and dignity than a bedouin (desert Arab).

An Arab (whether a settled one or a bedouin) is higher in the scale of dignity and status than an *Ajmi* (non-Arab);

An old Muslim family is higher in rank ordering than a relatively new family in the fold of Islam.

A man's actual rating on the scale was a function of his ancestry coupled with his family profession in this rankridden Ummah based on hereditary principle in all walks of life as the supreme norm of its socio-political matrix, more particularly in its post-Tartarian civilization.

Son of a Qadi was in his right to succeed his father (of course some minimum qualifications were also required). Thus, there arose Qadi dynasties. Like wise, the institution of mufti (jurist-consult) also grew into a hereditary privilege. And nearly all positions surrounding the religious sciences and learning. Doors for common folks were hardly open. Above the elementary right of enabling one to read and recite the Glorious Quran, that could not be refused, none but the son of an 'Âlim would find entrance into the precincts of higher learning. Thus a class of hereditary 'Levites' appeared and got themselves permanently entrenched in the entire spread of the Muslim civilization from the Nile to the Indus and beyond.

It was not uncommon that an outstanding religious doctor, by his guts and influence, founded a Dar ul 'Ulum. i.e. a Campus of higher religious instructions, but he could not be succeeded by one the gems of first water mark from amongst his own pupils. Only one of his sons (often his eldest one) would put on his mentle as the rector and principal 'Âlim of this university, irrespective of his caliber and

standing as a religious scholar. Knowledge and learning, critical thought with fresh understanding or approach to new problems grossly declined to miserable level in this way.

Decadence was the main feature all round in this civilization. Umara (the orders of high military commanders) also descended from the houses of those senior commanders of the legions, that had accompanied the royal dynasty and its founder for supremacy over a dominion. Their competent and incompetent sons and grandsons etc. occupied all the levels of main command. The armies suffered from anachronism.

Nawabs (the first order civil administrators, governors, deputy governors, etc.) were also from old families and their progenies attached to the throne from the beginning.

A humble subject, beyond their ranks, was allowed to join the armed forces as a horseman or as a foot soldier. He could expect rise on his brilliant performance upto the command of a hundred strength and not more. Sons of better classes than the menials, having developed expertise in reading and writing could enter as a clerk (munshi) in a local set up. It was very rare that they rose any further.

Beyond the institutions of religious instructions, which turned out 'ulama' there were institutions (Madarrasah) of secular disciplines teaching medicine, metaphysics, chemistry, physics, mathematics, and other branches of learning. Those who completed their education through them were called *Hukama* (doctors). Their usual family calling was practicing as a physician.

A physician must come from a physician family or from the family of an 'Âlim. None with a different antecedent was allowed entry into the centres/academies of higher learning that produced physicians, mathematicians, chemists, etc.

In this socio-cultural atmosphere, everyone was dutybound to confine himself and be satisfied with his family craft and skill and its station in the entire manifold of social pyramid allotted to him by his birth.

It may not be irrelevant to recall that the lands which came under the sway of Islam in its early two centuries from the Atlantic shore to the Indus saw massive conversion of their population to its way of life. But the great Indian Peninsula beyond the Indus was subdued by the rulers and hordes from the Transoxania in the seventh and eighth centuries Hijra with a different tale. What they represented

was not Islam but a civilization of its own hues, prejudices and pride, scale of honour and status. Consequently, the Indian masses did find no appeal in the religion professed by those new conquerors. They had been already suffering from a rigid caste system ever since their past. To the rulers from the North, all those castes and moulds dividing the Indian Society on vertical line looked very much natural. Whether the Supreme One was worshipped with images or without images (as the Muslim do) was just an insignificant question, immaterial to lives of the masses in India. There was flexibility for both kinds of worship in their tradition. The new rulers had a despising look on them for their own position was well guarded in their own shariah code as being older Muslims as compared with any non-Muslim of India converted to Islam. A Muslim even from the highest castes (a Brahmin or a Rajput) would always be of inferior position status and dignity to them.

It was in this environ, that different elements of the Quraish lineage made their bid in this vast land, and carved out a splendid niche for themselves and their dependents as Ashraf for all mankind at the top of every caste and origin. They quite conveniently established themselves as 'gateway' to God for the common folks of this Ummah. The Turkish rulers, Sultans of India, accommodated them sometime uneasily and often happily (as Spiritual Kings) and granted big pieces of land to their shrines. It also happened that saints (true sages) of the Muslim world came to these newly conquered regions of India to serve reform and teach Islam to its people. Their sterling character and cosmopolitan dealings changed and converted a large chunk of people to their religion. But it is also a very sad story that their sons, if not sons, grandsons took full advantage of the hereditarily determined socio-political matrix as prevalent, reinforced by the largesse of the rulers of their time, got themselves entrenched in the land as spiritual dynasties, The commoners, semi literate Nawabs and Umaras, ignorant and mentally enslaved artisans, menials etc. attached themselves to their 'houses' as if to the 'kiths and kins' of God that must be appeased to save themselves from all trials and tribulations. The 'houses' spiritual dynasties continued from generation to generation and even up to this age. Masses were reduced to shadows as a law working in the dynamics of this civilization. No art, no knowledge, no science and no industry could grow or progress, not even the religious and moral sciences, law and jurisprudence in this socio-political conglomerate of deadly stakes.

The entire civilization from the eleventh, twelfth centuries of Hijra was but a stagnant pool with its suffocating hydraulic and climatology. Individual goodness or generousities of some of the gentries or nobles produced only passing, local, tiny bubbles in this inertia ridden human mass.

Islam pays very high regard to reference to the people. But what this reference implies is 'free man'. It was this species the free man that was fastly declining in this pool of human miseries. The masses craftsmen and those working in the soil *were* declared *Kamies* with the most down trodden status. They had to be dependent on their patrons and masters. Most of the land was not their own, because most of the cultivable land with property rights was transferred to the shrines or to the Nawab and Umara families. A reference to people in this mass of multitudes was and is an Utopian dream.

Even to most of the religious scholars / 'Ulema and chains of their spiritual orders flourishing as 'houses' and dynasties, all these clumsy rank and status distributions on horizontal and vertical lines formed warp and weft of the societal configuration and appeared as part of Shariah. The miracle of Shariatization was enacted by only one device. *The consensus of the Ulama and the wielders of the Affairs of the Ummah.*

The governing Law of Islam for all time is *consensus of the Community*. This civilization pegged down the consensus of the community to the consensus of the authorities in power and in this way its whole set of discriminatory mischief, a blot on humanity and Islam, was Shariatized. The legal norm on which it operated was its own fabrication. *Custom/Convention in practice is as good as a Nass from the glorious Quran.*

It was this civilization which easily collapsed before the onslaught of the western expansionism. It could not stretch muscles to kick back the unholy overtures and advances of the Mercantile colonialism gradually developed into a new kind of imperialism on the strength of its Industrial revolution for in itself the former was chronically suffering from mental aberrations, self-cheating convictions and hallucinating social perceptions out of tune with modern times.

The legacy of this civilization is very strong on our own nerves. We are still living in its deadly moulds and patterns. Its graceless values circulate in our blood and forms the categories of our thought. We cannot think of sociopolitical and economic rights of the believers (and nonbelievers) as individuals in their own right

corresponding to the responsibilities, each one owes to others and the Society in general, with the force of our own conviction or Iman (belief/creed). Therefore we cannot Islamize any thing, nor can we democratize our souls. No surprise, consensus of the community, translated as public referendum in Muslim countries from East to West, always proves a hoax let loose on the people by their ruling syndicates.

The self-righteous ruling coteries having seized power in most of the Muslim countries are made of such a stuff that they put the whole document of the constitutional law as drafted on their own liking to the public referendum for endorsement. Usually they claim to have received more than eighty, ninety percent turn out of its result in their favour. The despoiled creatures spread over the land mass of their dominions enjoy no further political rights in their regimes. This kind of referendum does not form 'Ijma of the community' as conceived of in the religious consciousness of Islam or satisfy the basic norm of 'Consultation between them (the believers)' serving as the hard core of public order for its genuine issues at hand as per the Glorious Quran. It is also a stark reality that the people living in the vast country side beyond the metropolitan cities are under several kinds of burdens with varieties of thorny socio-economic conditions that permit them not to express their true will in any kind of such a referendum. In all those countries which in the Quranic assessment are comprised of those that have been made weak (*Mustad'afin*) and that those who have made themselves exalted (*Mustakbirin*), the latter one having monopolized all the wealth and power leaving only a fractional margin to the former, all referenda prove a farce. Woe to those who claim their authority on those spurious basis!!

Now, let it be granted that socio-economic conditions are such that the masses are not handicapped in exercising their will, nevertheless structural limitations of a referendum come in their way and drastically curtail their scope of expressing what they approve of and to what extent.

The referent i.e. the matter under reference must be in substance very general, simple involving no delicate intricacies, and without reservation must be answerable in terms of yes or no immediately. A big constitutional document with several sections, chapters, clauses and subclauses, attached schedules and protocols can never be thrust in the very narrow and sharply edged 'either/or' of a referendum. None can answer about its whole body in terms of 'yes' or 'no' inspite of one's best efforts. Therefore equating referendum

with the consensus of the Community is quite untenable and unacceptable proposition, adopted by the unholy ruling Junta of the countries, suffering from several kinds of inequalities plaguing them, the so-called citizens.

On the assumption that people are free and can exercise their will without fear according to their conscience, a constitutional document and laws relating to the day to day functions of the state may be drawn by their fiduciary delegates/agents or *wukala* forming an assembly of the entire community living in a country.

In the eye of the Shariah of Islam the very fact that the entire population cannot meet or sit to draw up a constitution and frame administrative laws, notwithstanding the most advanced means of communication and travel, forms the genuine ground in the form of a most grave *haraj* (obstruction) that must be overcome for the conduct of state business and socio-economic cum political system of a country. The institution of fiduciary delegation to *Wukala* (Singular a *Wakeel*) for performing the job provides practical solution of the problem.

A *Wakeel* is one who looks after the intents and interests of his ward, who is the real *Mukallaf* (responsible person) in this regard. What it means is that his fiduciary agent or *Wakeel* is primarily appointed to project his views and wishes. Then when the fiduciary delegates of a community assemble together, each one is bound to project the intents of his electing wards in the mutual deliberations and interactions of their sessions, and abridge their differences and systematize their proposals, then they may draft alternate constitutional provisions in respect of the basic laws of the state. In this respect they have to keep living and ongoing rapport with their wards. In a most coveted situation, and ideal conditions (as in the Western democracies) these alternate drafts are required to be put to the genuine *Mukallifin*, i.e. the real individuals, members of the community, for a consensus. In a state raised on the basis of Islam, the real *mukallafin* (responsible ones) can never abdicate their rights and responsibilities in this regard. But however all this elaborate procedure is limited to basic laws from which all secondary laws stem.

In a Muslim society, basic laws are those which include the charter of human rights, the self evident *nusus* (Divine ordinances) regarding different important subjects of the public life. All legislative provisions in their respect need the real *Mukallifin* to endorse them. This is a very sensitive and big topic which can be



death with separately. The basic point is that the people (believers and others) cannot shun their responsibilities about those fundamental matters and shift them to their representatives for legislating as per their own personal judgments, for no admissible haraj (obstruction) as on our assumptions (of proper and desirable conditions of the people) stand in the way of their performing it directly.

### **Secondary Laws**

The same elaborate procedures cannot be adopted for secondary laws which are in fact administrative decrees whose guidelines are determined by the basic laws. They are frequently altered. It will be very cumbersome if the people are given trouble to go to mass referendum time and again. The Sharia does not want to overburden the real mukallifin (bearer of responsibilities).

Therefore, there is no Shari'i obstacle if secondary laws and administrative decrees are allowed to the delegates of the people and their assembly. In that context they will function as full fiduciary agents of the nation empowered to take decisions.

In that capacity the assembly will be 'the administrators of affairs (Ūlul Amr)' of the people and the Divine Ordinance, "Obey God; obey the Messenger and the administrators of affairs from amongst you (Q.3:59), "will apply to it. This Divine injunction makes it obligatory on the Umma to hand over the power of administration of affairs to some agents, and thus sets a limit on the real agents, the people who are the true mukallifin and ask them to obey the former.

Another ground rule which governs the body politic of Islam is as follows:

A thing which is consequent upon a condition is proved (established) by the presence of that condition. (Jalal Al Dīn Sayuti, *Al Ashbah 'Wa Al Nazair*. P.59).

This ground rule as applied to the problem of consensus means that if a society is so small that its real agents can decide the matters directly by their consensus, it will be illicit for them to adopt indirect course and institute fiduciary delegation for the purpose. No Shari'i cause exists for them to do so. Therefore, their own will to do so does not give legitimacy to their fiduciary delegation.

But since even a small community needs administration of its affairs, it can institute fiduciary delegation of administrative powers to a small assembly or to a committee or even to an individual.

## **Substitution**

The central ground rule in the matters of the fiduciary delegation and shaping it in a particular way is as follows:

A representative (*Zahir/Majaz*) is allowable when the real (thing) is inaccessible (Taqi Amini, Urdu Lahore edition of his work, P.429; **Taudih** on the margin of *Talwih*, p. 54).

When the real thing is unattainable, its substitute is permissible. But it does not permit a substitute of the substitute. And all substitutes just cease to exist for Sharia when the real is not difficult to attain.

This basic rule operates in the representation of the people also. If a first degree representation is easily realizable, and the grand assembly of their representatives may be elected by the people directly without a physical hindrance of importance as the only permissible ground in Sharia against it, then a second degree representation or a third degree representation is inadmissible in an Islamic state.

## **Untenable**

Since **Ijma** (consensus) of the real agents is the proper institution of Islam, its substitution by a representation is not the *prima facie* state of affairs of public order. Then, when it is modified by a permissible Shari'i obstruction, the modification must be as much close to the real as possible.

A pyramid of tiers, intervening between the people and those supreme fiduciary agents who exercise the power of decision on public matters is untenable in Islam. The above ground rule of the Sharia makes it self-evident that if the people can choose their **wukala** (fiduciary agents) directly and thus can establish a first hand representation for **Ijma** in the form of their milli or national assembly, no **haraj** (obstruction) exists as a condition for the Sharia to recognize several tiers as intermediary orders in the constitution of an Islamic state.

The plea that the people themselves somehow or other allowed it does not make it legitimate and removes its prohibition. It has happened in several countries that the usurpers of power for perpetuating themselves put the people to elect their grass-root representatives. If the voters are say 10 million, they are asked to elect ten thousand basic members. The latter are spread throughout the villages and settlements. Then these ten thousand are made to

elect say one thousand secondary level representatives. Then these one thousand important men throughout the nation are asked to elect one hundred members of the grand national assembly usually to stamp the decisions of the usurpers.

Since there is no difficulty or obstruction which can be recognized by Sharia this kind of tiers for the representation of the consensus of the people has no existence in the code of Islam and as such it becomes an illicit part of a state, if the latter is raised on the basis of Islam. It is unwise as well as futile.

It is unwise as well as futile to resurrect the jurists and Kadis of the Middle Ages, who were forced to perform their duties and exercise their juridical options in the blind alleys of the oriental despotism to have a bearing on the methodological and institutional problems of the Muslim nations of this age.

Hasan, I. Mohammad Al Mawardi (d.450 A.H) was not alone who wrote in the fifth century Hijra on the Code of Power (Ihkam al Sultaniya). There were others. Abdul Qadir Al Baghdadi (d.429 A.H), Abu Yala (d.456 A.H) and Abu Yaser Al Bazdawi (d.493 A.H.) were outstanding figures to codify the phenomenon of power with a purpose to help the community.

All of them found it impossible to reform the composition of power. Consequently, they pleaded to the believers to accommodate with it; and under its duress, they tried to preserve as much rule of law as was beyond the sensitive zone of the hegemony of power.

Their efforts to keep unmolested the Ordinance of the Sharia in civil disputes of routine nature around property and merchandise, matrimonial affairs, inheritance and criminal proceedings in view of the structure of power is highlighted in some quarters by the doctrine of necessity working as a natural element in the body politic and legal order of Islam.

It is not out of place to recall how the Muslim communities and their learned scholars exerted themselves to preserve the sharia, at least to the extent of some personal laws not being in conflict with the new paramount authorities when their lands were devoured by the Western Imperialism

Functioning under duress may condone the functioning agent for a time but it can never condone the order of duress itself, and also those who are responsible for its perpetuation. This crucial point is quite self-evident from the 'Code of Power' literature of the fifth and

subsequent centuries of Islam. A glance at it suffices to clarify the point.

### **Legacy**

As a legacy of the early period of Islam, the Muslim dominions in the fifth century Hijra were supposed to be under the political authority of an *Imam* (known as *Khalifa*) of the Muslims. Under this supposition, all the *amirs* (governors and rulers) had to be appointees of the *Imam*. But, in reality ambitious chiefs and houses used to emerge and rise to power grabbing different parts of the Muslim dominions.

In order to preserve the fiction of the unity of the Muslim World, the jurists of the Code advised the *Imam*' to condone the violation of his authority by the usurpers of power and recognize them, as his appointed rulers/governors of those territories. This advice was forwarded, under the principle "A dire want (*al darura*) permits the unclean or bad thing (*al Mahzura*)."

Otherwise the situation would deteriorate to grave disorder; the arrogant usurpers of power would try to topple the Imam himself. Therefore, it was sound that the Imam recognize them as Sultan(embodiment of power) by his own pleasure in the territories grabbed by them.

This mode of argumentation by Al Mawardi, Abi Yala, and other learned judges was not meant to wash the sin from the face of the self-proclaimed rulers who seized power (Sultaniya) in Muslim territories over and above the authority of the Imam. All the force of argument was directed to condone the act of the Imam in recognizing them as valid administrators of the affairs of the Muslims in the lands in their control.

In theory (*sharia*), no unqualified person could be appointed to the office of the territorial ruler. The learned discourses took up this problem. It was plain that in case of usurpation of power, this condition of proper qualification could not be observed. The *Imam* could not remove the usurper.

In this century (14th/century Hijra), no sovereign people would like to live under such compulsions or would hail to act on those advices. And no ruler should feel happy, to secure a recognition and reputation of an irredeemable evil to be accommodated with, as a part of the natural *sharia* of Islam.

The purpose of the law of *Darura* (dire want) is quite different from that of the Law of Necessity which receives its most romantic expression in the famous dictum - all is right in love and war. The law of *Darura* (dire want) condones the 'indecent' act of the one engulfed by the want. The doctrine of Necessity accords legitimacy and wholesomeness to that situation in itself and validates its continuation.

### **Basic Norm**

The *sharia* of Islam cannot be morally indifferent. Its main purpose is to end the social chaos caused by opportunism and egotism, and rationalised by different doctrines of nihilism. Its basic norm is that no one is going to bear the burden of anyone else (*La Taziru Waziratan Wizra Ukbra*). Consequently all share the burden of all of the society. This basic norm is at the nucleus of the concept of *Darura*.

When survival is at stake, the doctrine gives allowance to unpleasant or indecent measures. But to whom does it give the power to choose the unclean when the clean (*Tayyib*) is not available? When a person is engulfed in it, the concept of *Darura* gives this right to the person. "But when the society is 'engulfed, it gives right to all of the society. The basic norm *La Taziru Waziratan Wizra Ukbra* (no one is going to 'bear the burden' of anyone else) is enforced and not suppressed by it, because it is the precondition of all sharia validation.

If it is suppressed the *Sharia* disappears from the society, and the *Darura* becomes the law of necessity, a criterion for the justification of all sorts of exploitation breeding all kinds of evil on earth. Since there is no difficulty or obstruction which can be recognized by the *Sharia*, this kind of tiers for the representations of the consensus of the people cannot exist in the code of Islam and as such, it becomes an illicit part of a state, if the latter is raised on the basis of Islam.