

ISLAMIC SELF-RULE: A CRITIQUE OF
ELITISM AND A CALL FOR COMMUNITY
GOVERNANCE

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Abstract

This study explores the concept of self-rule in Islam, contrasting it with historical legal frameworks such as Hammurabi's Code. It asserts that Islamic revelations empower the common people (Ummiyun) to discern right from wrong, emphasizing accountability and moral responsibility in the pursuit of justice. The text discusses the principles of self-determination, mutual consultation, and community governance as central to the Islamic social order, positing that true societal harmony stems from collective engagement and adherence to divine guidance. Key tenets of this order include self-control, remembrance of God, and active participation in social welfare, underlining the importance of resisting oppression and ensuring equitable justice. The work critiques elitism in governance and calls for a system where the consensus of the community (Ijma) shapes laws, free from autocratic rule. It further examines the evolution of governance structures, advocating for a parliamentary system as a contemporary embodiment of Islamic principles. Through this lens, the study elucidates the significance of maintaining a living, responsive Shariah that embodies the dynamic nature of Islamic teachings, stressing the role of the community in upholding justice and societal integrity.

Nearly twenty centuries before Christ, Hammurabi, the vicegerent of the heavenly deities on earth (it is engraved on tablets from Babylon and Elam) received from Shamash, the sun god, a code of 285 clauses and promulgated it in the lands. But an Hammurabi is impossible in Islam, because all the revelations are addressed to and placed in the hands of the Ummiyun, the common people. It is for them to exercise their sense of right and wrong in the *light* of the revelations and order their affairs accordingly. No believer can escape this responsibility. It lies in the cosmological structure of time, the time which flows in every human being that inexorably does it move towards accountability. No man and no nation can *avoid* or reverse its movement. Every 'here-now' transforms into hereafter with all accountability for it.

Endowment with the seed of distinction between good and evil, discrimination between right and wrong, own responsibility and accountability for every here-now are basic elements of the future-conscious human beings. What does it mean? All of it demands self-rule. The Islamic revolution means self-rule for every man. For societies, it means self-determination. Consequently, the blessed order unfolded by Islam has the following elements in terms of human conduct:

Whatever Ye are given of things but a passing comfort of life; and that which Allah has is better and more lasting for those who believe and put their trust in their Lord: And for those who shun the grave sins and shameless deeds, and when they are wrath even then forgive. And for those who answer the call of God and establish regular Salat (prayers) and for 'those whose affairs are a matter of consultation between them; and who spend (in good works) of what we have provided them (for sustenance). And those, when overthrow (revolt) is committed against them help one another. The recompense of an ill deed is an ill equal thereto. But whosoever pardoneth and maketh reconciliation, his reward is the affair of God. Lo! He loveth not the wrong-doers. The way of blame is against those who oppress mankind and with no right (raise their head) in revolt in the earth. For such is the painful doom (Q. 42:36-42).

The Touch Stone. All the elements of this blessed order are interdependent. But consultation between the people is its touch stone, because everything is to be decided by the people, the

believers in general. Mere consultations however lead to no goodness unless they are integrated with:

- Self-Control against grave sins and shameful deeds
- remembrance of God and regular prayers seeking His help for the right path.
- Readiness to spend and sacrifice the provisions of the world in their hand for fellow beings as the way of God,
- Mutual help against oppression and rebellious overthrow of the public order, and
- Recompose for the wrong done to whomsoever it may be.

It is this system, consisting of the general outlines as given in the above verses, which produces an environment in which a man has full facility to exercise his discrimination of right and wrong, that grow into a mighty tree and enable him reap the best of its fruits. The world is then a paradise; men live happily in its garden.

Consultations between the grave sinners are presided over by Iblis and increase sorrow and grief in the world. Consultations between those whose heart is not large enough to forgive one another plough injustices amongst them. And those who are incapable of boldly facing the groups which, are to overthrow the public order or commit excesses, must themselves suffer its fatal consequences. Those who are not good enough to give away out of the provisions of life, beyond their legitimate needs, consultations between them are but evil promptings, which ultimately ruin the entire society and as the society is ruined, they too are ruined.

The entire system which has the blessings of God showered on it is in the hands of common people, who preserve it as long as they stay away from sinful life and shameful deeds, have loving regard for their fellow-beings, are quick to line up against the rebellious forces of exploitations and oppression, themselves are above self-aggrandisement and amassing the decor of the world. Those who are always prepared to sacrifice what they have if necessary in the way of God, they alone can run the system. Trust in God and rejuvenation of this trust by seeking His guidance in constant regular prayers are pivotal to its maintenance and survival.

The prayers of the sinful men are mere waste. They do not pray in search of Divine help for self-discipline, but that for worldly gains. They return from their prayers as worse than before and are never able to answer the call of God. They are led astray more immersed in the pomp and show of the worldly life and its greeds.

God calls them to light and goodness. But their prayers and recitation of the Divine names become elements of an evil order that abounds with injustice and exploitation of man by man.

They are, indeed, of those persons who associate partners to God as they have made their carnal desires equal to God and take them as their Lord. Then they start to take other gods. There is no end to it. Privileged classes and men are in sweep of their lands and set their ways as their lords. They are not then but believers only in name.

The social system of the believers in final terms is the system of those who seek the pleasure of God and are not after the glory of the world. All of them are responsible and accountable for it. Therefore, their system has no place for the so-called representatives of God. No theocracy to embody a role of the vicar of 'God and no overlordship of the privileged in its functioning haunts and hangs over its horizons.

Islam calls all humanity to join it. In deed, the system outlines the Shariah of Islam. Shariah means a path. When people shun their false gods and start on the right path, the light of the glorious Quran and the Sunna (Traditions) of the Prophet (s.a.v) are with them and they see everything in that light to work out by their mutual consultation their permissions, prohibitions, ordinances and imperatives as need arises.

There are no prestigious classes. All the believers are on equal footing and all of them are individually and jointly answerable for its good and evil, right and wrong before history and before God.

Thus the provisions of the Shariah, known as the Shariah of Islam are living and contemporary laws, unlike the code of Hammurabi, now in archives, waiting some potentate for its promulgation. The Shariah is an ever-fresh thing and not a reproduction of past things. Yet caprice and arbitrarism cannot vitiate it for it keeps its organic union with the Divine revelations and the traditions of the Prophet of God, and as such is controlled by the purposes of Islam.

All consultations between the people must promote the purposes for which the Messenger of God was raised in mankind and people must follow him.

Those who follow the Messenger, the Ummi Prophet, whom they find mentioned in the Torah (Deuteronomy) and in the Injil (Gospel) with them, for he enjoins on them which is right and forbids them that

which is wrong, makes lawful for them all good things and makes unlawful for them only the polluted ones, he releases them from their heavy burden and removes yokes which are upon them. So then those believe in him, and honour him and help him and follow the light which is sent down with him, they are the successful (Q. 7: 157).

All the consultations between people must carry forward the sixfold aims cited above namely (i) enjoining the right, (2) forbidding the wrong, (3) making licit good things, (4). declaring illicit evil ones, (5) delivering the people from their heavy burdens of different origin and (6) removing the yoke of bondage to others upon them.

The very institution of consultation between them as foundation of the public order in Islam is removal of yoke from the neck of the people and abolishes in one stroke all sorts of tall claims by different high ups to dictate the people in the name of representing God or on the basis of their superior position in wealth and power. Thus Self-rule and self-determination for all is at the nucleus core of the religious consciousness of Islam.

In theocratic religions which often flourished in the multigod civilizations, ecclesiastical organizations raised their head and proclaimed God as the king of dominions and themselves became the vicar of the Unseen for exposition of the Divine Will unto the people. The *doctrine* of the Divine *sovereignty* over the state and people was their foundation.

Judea in the second century B.C. was charmed to emulate those theocracies in its attempt for the glorious revival of the religion and loved to plant a high powered priestly council to stipulate its laws and ordinances. It was all an external show, set up against the nature and logic of the real Time which holds every man responsible and accountable for all that happens.

Judea failed to revive its religion and was destroyed.

Several Muslim societies followed its steps and were likewise destroyed.

Islam never can emulate their model. It has its own approach. It means the era of common man and rejection of Elitism as the principle of social organization in mankind.

Errorlessness

There is no Umma beyond the people of Islam on Earth who have been religiously obligated to extend so splendid a position to

the consensus of the community as to enshrine it along with the Book of God and the Sunnah of the Prophet in the holy sanctuary of Isma (errorlessness) and concede it the sceptre of the supreme arbitrator over the deliberations of the Ulema, intellectuals, and statesmen for the determination of the Shariah of Islam. .

Despite his unique prerogative as the divinely appointed teacher and guide unto mankind, the Messenger of God himself was enjoined to “consult them (the members of the Umma) in affairs. And when thou hath resolveth, then put thy trust in God (Q 3.158).”

There can be no doubt that whatever the Messenger. of God is enjoined to observe, no one else can dispense with. The religious values commanded by Ijma (consensus) are not different in character from those that are attached to the words of God and the Sayings of the Prophet. It is God who determines the values as follows:

And whosoever branches off from the Messenger after guidance has become clear to him, and whosoever adopts a course (of action) which differs from that the believer's. We turn him toward that, he himself hath turneth and (thus) push him unto Hell. (Q4: 115).

In the above revelations, God has particularised two supreme regulative norms for the conduct of the believers: (1) the Sunnah of the Prophet and (2) the course of action adopted by the believers. Those who deviate from the one or the other adopt a course of which Fire is the end. It is in this way that the course set by the believers just like the Sunnah of the Prophet has pleasure of God attached to it.

In other words, the consensus of the people is free from error in religious sense. He who violates its judgments, orders and prescribed values, notwithstanding his stature in piety or wisdom, is liable to Divine wrath and punishment.

The so-called very high priestly councils or conventions of the so-called intellectuals of the Ummah are not extended those religious values. Their decisions are not given Divine protection from error, nor is compliance with them is joined with Divine reward, nor is violation thereof decreed with Divine punishment. There is no religious value which supports them for holding that high position. Thus, breft of the nature of a religious ordinance, their conclusions and judgments are no part of Islam and cannot set the course of its Shariah on their own.

The domain of Ijma (consensus) is completely exhausted in setting the course of action for the believers, their society and its culture. All other fields are beyond its domain. Their problems and issues transcend its authority. For instance, the problems of mathematics, propositions of physics, chemical equations and all theoretical sciences are free from the dictates of Ijma.

Thus, only the practical problems, which are regulated by the consideration of right and wrong, good and evil forming the sphere of the Practical Reason (or Mind) are governed by the norm of the consensus of the Umma. The products of the Practical Reason are moral, economic, political and social solutions, their negative and positive values.

The theorists and scientists are at liberty to follow their pursuits. Ijma cannot dictate their views and probes. The Muslim society so far as it is on the right path does not interfere with its theoreticians and philosophers. Its consensus is never a party to the theological; metaphysical issues. Every one may have his own individual opinion.

When a Plato, satisfied with himself as the most excellent of the Umma (Afdal AI Umma) appears on the scene and refuses to submit himself to the practical Reason as embodied in the consensus of the people, but on the other hand forces the Umma to submit before his judgment, the common man is desecrated against the scheme of God .

The whole story of Iblis and Adam begins to repeat in the social space. Pretensions of knowledge, height and excellence are the structural elements of the complex Iblis is made of, and those very elements are in resurrection in all the show of elitism whether it begins to glow in Ulema and scholars or the so-called enlightened groups of intelligentsia. As they conspire to cow down the common man and impose their judgment on the Umma, and as those judgments are not protected from error according to Islam, every element and institution of the society, its culture and systems slowly or rapidly move into an Iblisi order in which they play the role of the Shaitan (the obstinate rebel of God):

Lowered them (the men) the Shaitan and ousted them from where they were (Q.2:36).

Elitism throws a spell on the common folks, sketches before them an utopia, shakes off their self-possession and takes them away. Not conscious of their place and position, when the people are entrapped in the elitist words and *promises*, much time passes

not and they find themselves in barren social tracks, hot winds blowing with dust-storms or cold winds freezing them to the point of death. Grief, sorrow and frustration grow thickly in the hanging gardens of their cultural institutions.

Knowledge and learning have a very high place in Islam. Acquisition of knowledge has been described as a duty for every believing man and woman by the Prophet of God. But Islam eliminates all chances of the elitist position to the learned men by envisaging a dynamic relationship between the Ulema or leaders of opinion and the consensus of the people.

The Ulema may exercise their practical reason in accordance with the regulative norms of the Quran and Sunnah. But what their practical reason produces is not valid in itself as a proposition of the Shariah, because they are not the final authority to impose their constructs on the people.

They must submit all of what they have constructed to the authority of Ijma. It does not mean a referendum. It means that it is now the people's turn to take the construct for mutual consultation and discussion. They are required to exercise their own practical reason in accepting, rejecting or modifying it. What the commoners decide unanimously or predominantly is the law of Islam free from error at that time. It is the course of the believers set by the believers that the learned ones are also bound to follow.

Before the stamp of Ijma and validation by it as an ordinance of the Shariah, the scholarly constructs containing prohibitions and permissions, duties and obligations may be admirable pieces of literature, gems of high water mark, but what they lack is religious (Shariah) protection from error and the pleasure of God in following them. Therefore, no obligation of obedience. is attached to them and as such they are not part of the code of Islam.

The celebrated scholars of the early history of Islam produced admirable volumes on the Shariah, but they did not believe that their works were binding on the people.

The 'Muwatta' of Imam Malik b. Anas is one of the most outstanding works on the ordinances of the Shariah. But when At Mansur Abbasi approached the Imam with the suggestion of promulgating the 'Muwatta' by his power and authority in the dominion of Islam, the latter did not allow it.

The leading idea in Imam Malik's refusal was that it was Ijma and not the wielder of power that could bind the Umma and its other scholars to the series of Ahkam compiled in a fiqhi work.

Abu Hanifa, another Imam of very great merits also produced a huge volume of Shariah constructs in collaboration with other scholars and his own noted pupils, but he did not have the slightest idea of getting it imposed by the pressure of power.

Abrogation

The Consensus of a generation is a *hujja* (final proof of the right and wrong) for it. This rule means that a thing which was right before, may become wrong under it or *vice versa*. Several questions arise in this connection. Can a Consensus (Ijma) radically transform the values of a people? Can it limit or expand itself to any point? Can it come to an end and abolish its own necessity?

Answers to those vital questions for the Muslim Umma depend on the logic of change in Islam. Prophethood came to finality and abolished its own necessity, Consensus by its very nature can not come to the point of its own completion and abolish itself. The reason is not very hard to grasp. An Ijma of a generation can not bind the coming generations.

According to the teachings of the Holy Quran, treading on the footprints of the fathers is no demonstration of truth at all. In fact this kind of demonstration is a hall-mark of the unbelieving folks, especially of their privileged and affluent classes.

Nay, for they say only: Lo! We found our fathers following an Umma, and we are guided by their foot-prints (Q.43:220).

They stick to the ways, patterns, traditions and customs of their forefathers under the idea of preserving their high values and religion and thus preserving their natural culture. The Muslim Umma cannot live on this kind of sentimentalism. Every generation is free to accept or modify the past Ijma on its own responsibility.

But modification or change of Ijma does not mean a riot. It follows the universal law of Islam, the same law which worked in the Divine revelations from Adam to Mohammad (peace be on them). The historical sense and its intense feeling is a fundamental aspect of the Faith in Islam. The Divine revelations since the very beginning had been a progressive series with a peculiar law of history:

Such of Our revelations as We abrogate or cause to be forgotten. We bring (in place) one better or the like thereof (Q.2: 106).

The world at large, heavens and earth, follow this law or not, we are not sure in our knowledge of it. There may or may not be the law of progressive succession in the universe. But one thing is quite clear to a believer that the Guidance or Divine Teaching follows the law of progressive replacement. It is technically known as the logic of abrogation (*tansikh*).

The unique internal structure of abrogation has been revealed by the Holy Quran as follows:

And unto thee have We revealed the Book with the truth, confirming whatever book was before it and a preserver of it (Q.5:48).

Thus the abrogating process, of necessity, implies confirmation of the truth it abrogates, and thus in itself is a preserver of and guardian over it. Abrogation (*tansikh*) in Islam thus does not mean uprooting or weeding out. It obligatorily implies protection and conservation of the past truth and its imperative as part of its structure. The Quran is, therefore, appellationed as the Preserver (*Al Mohimin*) which means that the truths of all the past revelations and their laws are protected in and preserved by it. We may denote this property by 'accumulation'.

The logic of abrogation functions by accumulating the essential contents, the abrogated (*mansukh*) truth contained in its fold; and its unique contribution is increment upon it. *Khalifa* Abdul Hakim explained the principle of *Nasikh* and *Mansukh* underlying Divine Revelations as that the abrogator (*nasikh*) is at least like the one, abrogated' by it. But in most cases it is better than the latter and witnesses an addition of some new excellence to it. Thus in its texture the abrogator represents a better and expanded embodiment of the abrogated entity, whether a law or a truth. In other words, accumulation and increment are logical aspects of the process of abrogation which operates in the Divine revelation. This author is inspired by this explanation to generalize the principle to the evolution of the Shariah as follows:

The same law of abrogation operates in the evolution of the codes of life from the Divine revelations in the form of fresh probes (*ijitihad*) and consequent consensus. It aims at a more effective or more efficient carrying forward of the truths, the earlier forms (constructs or injunctions) possessed.

A deeper insight indicates that abrogation is, indeed, the basic law and vital principle of the living phenomenon. Seed is abrogated in sapling; the sapling is abrogated in a fully grown tree. Infancy is abrogated in childhood; childhood in boyhood and the latter in adolescence. Revelations are also like them. This is the teaching of Islam.

A mere change may be useless or harmful. Abrogation is that kind of change which retains the past achievements and at the same time deepens and enlarges them by further gain. It is in this way that the tractus of Noah was abrogated by the Sahifa (writing) of Ibrahim; the Sahifa by the Torah of Musa; the Torah partly by the Injil of Isa. And all the books are abrogated by the Holy Quran. The abrogation means that all of them are protected and enhanced to completion in it. This is what *Khalifa* Abdul Hakim explained me as regard with the glorious Quran appulated as al Mohimin (Q.5:48). He was my teacher (d. 1959). Refer his work *The Prophet and His Message*, pp 327 f, Lahore 1987).

The law of abrogation not only works in the succession of prophets and in the Divine teachings sent through them but also in the group of revelations, a particular prophet is endowed with. The Muslims are to appreciate the wide permeation of this law in the Holy Quran. And it is how it should be. If growth is the property of life, then as a living phenomenon the Divine revelations have to manifest the law of abrogation; hence the abrogated Ayat (signs / verses) and the abrogating Ayat in the Holy Quran.

Jalal Al Din Sayuti states that the principle of abrogation mainly permeates those verses of the Quran in which prohibitions, permissions and obligations are revealed. In other words, as a principle, abrogation lies at the root of Shariah which defines the licit, illicit, apprehensible, preferable and commendable for human conduct in Islam. Their ensamble is denoted as Shariah.

The Shariah is thus a living system. Accumulation and growth are its innate properties. It assimilates the abrogated law in its advancement, causes an increment upon it and thus moves on. This expansion or growth is the generic law of the Shariah of Islam ever since the first revelation to the Prophet of God until the last members of humanity who understand and act on the law given to them. As logic of the living truths, abrogation consequently can not remain confined to the Quran alone. It must pervade the Sunnah of Islam, and must animate the evolution of Ijtihad and Ijma also.

Permeation of abrogation in the living phenomena does not mean a linear evolution, It fulfils itself in a variety of forms which can not be covered by the concept of linearity. Consequently, the idea of abrogation has more vastness in its scope than the idea of evolution for determining the changes and forms informing the living realities. An effort is abrogated by its goal and comes to stop at it. A proof abrogates the claim it establishes. A demonstration is the abrogator of its thesis.

Those aspects of life represent some change and modification but can not be illustrated by the linear evolution. In all of them the abrogator (*nasikh*) contains, preserves and protects the truth or essence which was given in the abrogated and equips it with an elaboration which was not part of it earlier. The new element added to it fortifies its actual fulfillment.

To sum up, throughout all of the forms of abrogation certain fundamental norms are unfolded as its elements which decidedly distinguish it from other kinds of processes, changes and modifications. Conservation of all the abrogated content and growth of a fresh core upon it are criteria of its being true to its nature.

The Ijma of the Umma is also an exemplifier of those norms. When a fresh Ijma changes the past Ijma, it does not make the latter dead, but gives new life to it, makes the value inherent in it more effective and expands its purposiveness to accord with the current problems of life.

Thus every fresh Ijma is an abrogator (*nasikh*) which serves as a protector of the abrogated ordinance. In its constitution, it must confirm what the abrogated value or injunction contained and strengthen it by its new devices as part of the living law.

The constitution of public order is also under the same law. Abrogation works in its problems and arrangements.

Khilafat

The Righteous Khulafa (Khulafa Rashidun) are light unto the Muslim people and their governments. Abu Bakr, Umar, Uthman, and Ali (God be pleased with them) are indeed models for Muslims rulers and administrators. But it does not mean that *Khilafat* is the principal form of government for a Muslim state.

Khilafat is neither a theory, nor a creed, but' is an abstraction from the following facts. After passing away of the Prophet, the

question was who to take his place and fill his position as the Leader of the Congregation of Islam for the purposes of conducting its public affairs.

It was a concrete question on which depended the future of the Muslim society and the security of its dominions. With general consent, Abu Bakr filled that place and was known as the *Khalifa* (successor) of the Prophet. After Abu Bakr, that place went to Umar who was then known as the successor to the successor of the Prophet. Likewise when Uthman was inducted into that position, he was known as the successor to the successor to the successor of the Prophet.

By dropping the long chain of succession the title could be abridged, and it was abridged. Thus the simple term of the *Khalifa* (the successor) entered into the vocabulary of Islam. The chain of succession vanished and self-appointed rulers succeeded it.

In the course of time, the congregation of Islam grew into many nations. The Muslim nations of today do not face the same problem the companions of the Prophet were beset with. They are not required to fill the place of the Prophet and his successors. They have their own problems of administration and conduct of their affairs.

The newly emerging free Muslim nations live, not unlike the Latin nations of the South, under the constant threat of overthrow from within. Coup after coup makes a mess of their constitutional order. Those who seize authority proclaim to have come to save the people from disorder. And some of them even claim to have come to give an Islamic order to the people.

They visualise themselves as the supreme God-sent leaders of the people and declare in so many words that the believers must have a leader to whom all of their obedience is due as the righteous form of constitution in Islam.

The neo-Islamists who in the past collaborated with the Ottoman Sultans join them and add that this kind of arrangement is the closest thing to the Righteous *Khilafat*, and it suits the genius of the Muslim people.

That the Muslims have been ruled throughout their history, excepting the early period, by autocrats and sultans does not indicate their genius and does not mean that they are required to be ruled by self-appointed or selected leaders and dictators in the future.

The Holy Quran condemns those whose sole argument is that we do it because our fathers have done it. Man must overcome the shortcomings of his history to follow the right path. This is what the genius of a people means in the teachings of the Prophet and in Islam:

So set thy purpose for religion (Din) as a man by nature upright---the nature (framed) of Allah's creation. That is the right religion (Din), but most men know not (Q.30:30).

There is no ground to believe that the Righteous Khulafa were dictators, or represented a dictatorial form of government. The scope of government during their days was very small. Things are absolutely different now. Moreover, no Nas (directive revelation) of the Quran prescribes this form of government. All the great historians, traditionalists (Muhadithūn) and jurists agree to this point that the *Khilafat* had its origin in the Consensus of the Companions.

For the sake of convenience, reference may be made to Abd Al Qahir Al Baghdadi (d.429/1037), *Usul Al Dill*, section XIII;; Ibn Abi Yala Al Fara (d. 456/1063), *Abkam Al Sultaniya*, chapter I; Abu Yasr Mohammad al Bazdavi (d.493/1099) *Usul al Din*, pp. 178), Hasan bin al Mohammad al Mawardi (d.450/1058), *Abkam al Sultaniya*, chapter 1.

Different schools of the sharia were unanimous on the point that it was the Ijma of the Companions which founded the *Khilafat* after the passing away of the Prophet. There is no doubt that the Ijma of the companions was drawn in the light of the teachings of the Quran and meant a particularization and interpretation of the revelation of God and the Sunnah of the Prophet. But present generations are not committed to follow their Ijma.

What Abu Ishaq al Shatibi (d.790/1388) said in respect of the opinions of the Companions is theoretically incontestable. No body really can challenge the view that God did not send anyone beside the Prophet whose following was obligatory on the believers. But there is a further delicate point.

A prominent Muslim thinker and poet-philosopher Mohammad Iqbal (d.1938A.D.) expresses his views thus:

I think it is necessary in this connection to discriminate between a decision relating to a question of fact and the one relating to a question of law.

In the former case, as for instance, when the question arose whether the two small Surahs known as mauzatain (the last two Surahs of the Book) formed part of the Quran or not, the Companions unanimously decided that they did, and thus we are bound by their decision, obviously because the Companions alone were in a position to know the fact.

In the latter case, the question is one of interpretation only, and I venture to think on the authority of Karkhi, that latter generations are not bound by the decision of the Companions. Says Karkhi,

The Sunnah of the Companions is binding in matters which cannot be cleared by Qiays, but it is not so in matters which can be established by Qiyas.

Ali bin Nabardavi also held permissible to go beyond the Sunnah of the Companions (*Reconstruction of the Religious Thought in Islam*, p.173).

It may be pointed out in explanation of Karkhi's position that there are matters of the Shari' law which are not open to legal reasoning or analogical argument. The methods of bodily purification, the licit and illicit in food, etc. are set by the Sunnah of the Companions as particularisation, demonstration, and exemplification of the revelations of God and the Sunnah of the Prophet for ever. No one can exceed them. And obviously these are matters of law and not matters of facts.

Iqbal's own position seems to assign only communicative position to the first generation of Islam and it is injurious to the Shariah. Concretely speaking, it does not accord with the evolutionary view of Islam. The view that in the matters in which legal reasoning may be applied, one may go beyond the Sunnah or the Consensus of the Companions is obviously sound, but with an internal discipline.

However, this view cannot lead to the extreme position of Najm Al Din al Tufi' (d. 716/1316). Masliha which has various shades of meaning from expediency, prudence to the general interest and harmony was made by him the ground of all those matters which were open to reasoning. And those matters were related to the public problems and issues as distinguished from the matters of quite private obligations and prayers (i.e. personal obligation).

He said:

God has guided us to the ways of knowing the masliha, and we can also know them by way of habit. In contrast, our efforts to know the

masliha inherent in the Nusus (the Quranic imperatives and the dictates of the Sunnah) are tainted with uncertainty. Then why should we seek an uncertain masliha in preference to the masliha which is quite certain? Moreover, we seek masliha in muamalat (affairs and dealings of men) only. The Ibadat (prayers) are laid down by God and the messenger. Thus, all that is known in respect of their modality, quantity, timings, and place is only known from the Law-Giver (i.e. God). But the problems of the rights of the Mukallafin (the bearers of responsibility) are different. The ordinances about them are based on Shari'i politics and Masliha (expediency or general interest). And other reasons are only means to this real purpose of the politics of the Mukallafin (*Risala Al Masalih, Al-Manar*, Vol. IX, p. 779).

It is quite clear that according to AI Tufi, Masliha (expediency or public interest) overrides not only the consensus of the Companions but also the firm nusus of AI Quran. This is an untenable position as definition of the public interest against the teachings of the Quran and Sunnah is, however, impossible in Islam. Yet the Muslims cannot live by repeating the past patterns and practices. A paradox! The answer lies in abrogation as the basic law of Islam. The abrogator must contain the essential elements of the abrogated law and the values it projected in the past.

Khilafat was the early institution of Islam and it can not be exempted from the law of abrogation. For the purposes of our time, it is abrogated in the evolution of a parliamentary system of government sufficiently grown enough to serve the purposes of large societies and nations. Nothing of the *Khilafat* is contradicted in it, but every essential truth part of the *Khilafat* attains a natural embodiment and growth in its environment. The permanent values handed down by the *Khilafat-i-Rashida* to all the generations of Islam are as follows:

1. There are no self-appointed rulers in Islam.
2. Those who proclaim such rulers and those who are proclaimed as rulers, both sides are liable to be beheaded by the believers (Umar's Declaration in Ibn Ishaq's Sirah, last chapter).
3. The rulers are mere executives in charge of affairs and cannot give laws.
4. The laws are given by the consensus, which results from the (free) discussions and mutual consultations of the people.

All conditions necessary for fulfilling the above obligations are preserved and enhanced by the parliamentary system of

government. Hence the system is abrogator of the *Khilafat i Rashida* for complex and large nations of our time.

Justice

Defective system of justice corrupts even an otherwise good system of government. None is above law and justice in Islam. There is no authority which is not subjected to judicial review in the public order of Islam.

But the regimes that have false roots can only perpetuate themselves by brute manoeuvring of force. As they cannot face justice, they are forced to abridge the powers of the courts of law and are forced by their evil promptings to keep themselves above law and make their deeds and declarations above all questions and probes.

They are the oppressors, and the enemies of God and men, and a blot on civilization, even though they might have come to power by popular vote.

Those who cooperate with such regimes, strengthen them as hands of the Devil and spread oppression on the earth. They are indeed quite nearer to infidelity than to belief as they have already broken their covenant with their Lord:

Remember the grace of God upon you and His covenant by which He bound you when ye said: We hear and obey; and keep your duty to God. Lo! God knoweth what is in (the breasts of) men. O'ye who believe! Be steadfast witness for God in equity and let not hatred of any people seduce you that ye deal not justly. Deal justly, that is nearer to your duty. Observe your duty to God. Lo ! God is informed what you do (Q.5:8).

The wielders of power who deny the courts to have jurisdiction over them and their declarations are followers of their lust and deprive the people of their right to justice against them. The believers are under the categorical command to refuse to obey them:

And obey not whose heart we have made heedless of Our remembrance, who followeth his own lust and whose case has been abandoned (Q.18:29).

The anti-God regimes which deny law and justice should be starved to death by non-cooperation. This is the principal technique of Islam for mass action to emancipate the Muslim lands from their internal rebels who without right seize power and perpetrate injustice on the people by taking their own wishes' as

their lords and ultimate measures of the social order. The believers, as their public obligation, cannot forget that they have already bartered away their life to God for very good things:

Lo ! Allah hath bought from the believers their lives and their wealth because the gardens will be theirs; they shall fight in the way of Allah and shall slay and shall be slain. It is a promise which is binding on Him in the Torah and the Gospel and the Quran. Who else fulfilleth his covenant better than Allah? Rejoice then in your bargain that ye have made, for that is the supreme triumph. (Triumphant are) those who turn repentant (to Allah), those who serve (Him), those who fast, those who bow down, those who fall prostrate, those who enjoin the right and who forbid the wrong and those who keep the limits of Allah - and give glad tidings to believers (Q.9: 111-12).

No public order in terms of Islam can be established without the provision of supreme adjudication which can test the claims, orders and decrees of the rulers in compliance with the Divine Command; "Allah commandeth you that ye return trusts to the deservings thereof, and if ye judge between mankind, that ye judge justly (4: 58)." The interaction of the Companions established the institution of supreme arbitration accordingly in 37 A.H.

The Muslims of today cannot go against their tradition. They can only improve upon it to be faithful to Islam in fulfillment of the above command.

The principles of constitutional adjudication laid down by the Companions in the charter of the Arbitration are light and rules to all the supreme constitutional courts in Islam. They should be discussed, thrashed out and incorporated in the present constitutional orders of the free Muslim nations. All the unrighteous regimes which came after the Khulafa AI Rashideen did two things:

They over-worked the differences of the Companions that emerged during 35 A.H. to 40 A.H. for serving their own ulterior ends and played down the set up of the Tribunal which the Companions had brought forth by their interaction, because the institution like that was antithetical to the continuity of their own unrighteous rule. The jurists attached to their unholy regimes tried to ignore, rather deplore it. The second thing they did was that they kept all justice under their thumb. Constitutional petitions were never made or heard in their history.

In modern states the judges appointed by, the government hear cases, the constitutional cases of extraordinary importance. It is not

unusual that some of the judges are retired and fresh judges are brought during the cases. This abuse of government authority in the appointment of judges when a government itself is a party to ,a delicate issue is an incurable part of the constitutional history of many modern nations.

Sometimes it may happen that if a constitutional decision goes against a government, it takes steps to nullify its effects and waits until a new bench is constituted after the tenure of the present judges is over. The government fills up the positions with jurists who share its views. Then it gets the decision reversed.

According to the Muslim constitutionalism, supreme constitutional adjudication presupposes judges who are not appointed by the government. The interaction of the Companions constituted the supreme tribunal. by nomination of the judges or arbitrators in equal number from and by both of the parties to the constitutional dispute.

The Tribunal was constituted in 37 A.H. when nearly two years of mutual discussions and talks and even skirmishes could not lead to a solution.. The document constituting it is given by Baladhuri but may be read in Taha Husain's *Fitnah Al Kubra*. What it contains as the ijma of the companions from the Shari'i point of view has its own character:

The supreme adjudication in Islam repudiates and discredits the postulates of the modern state. Its entire set-up in Islam is materially and existentially independent of the government. All the officers, garrisons, commanders, governors, parties and citizens are directly under the pledge to uphold its awards leading to the solution of constitutional disputes of fundamental importance.

In other words, the supreme court in Islam is a very high institution, rather an ultimate institution. Its judges cannot be appointed by the government, nor its judgment depends for its implementation on the will of the Executive. Every citizen, every officer, every unit, civil or military is charged with its implementation. The Companions willed it as such.

The Muslims of today can get rid of their internal riddles by creating their supreme adjudication by following the unanimous agreement of the Companions as light to themselves and improving upon it in the light of historical experience. This is how abrogation works in Islam.

Judicial order comprises courts of various levels and kinds spread all over a country. But if it does not converge in a Supreme Arbitration or Constitutional Court, it has no worth in Islam, because it lacks the machinery which examines the law itself so that the unlawful is not delivered and made part of the legal norms of the nation.

The judicial order is only complete when all of its levels and kinds are related to the Supreme Arbitration. Its function is not to make law, but is to declare law in concrete cases which come before it. This power of examining the law, therefore, is inseparable power inherent in judicial order.

The idea of legalised illegality is foreign to Islam.

Therefore, no court in Islam can legalise an illegality, for it always has to declare the proper law. Whenever courts start to legalise an illegality or put their seal of approval on acts of unlawful authorities, they exceed their limits and in themselves they degenerate and serve as the main spring of an illegitimate and immoral 'order', let loose on the people. Then there is no end to distortion of truths. Every day piles up injustice. If there is a genuine situation which merits condonation, these are the people and nobody else to do it.

There are newly emerging states in which the courts are invested with the authority by the regimes controlling them to review the programmes and manifestos of different parties and allow them to survive or give them death sentence at their discretion.

When the judges, even of a supreme court, sit down to examine the action schemes and manifestos of the political parties, they do not remain judges, but reduce themselves to a handful of common men and voters in a community of millions, all alike. Their views and judgments are not then worthier than their number vis a vis their nation.

A handful of men or voters have no right to exercise the rights and powers of all the men and voters. If they think that their judgments are the declarations of court, they commit excesses and are contributors to the regime of Fasad (disorder) in the people.

No court in Islam can encroach upon this of the people's power which inherently belong to them and not to courts, even to supreme arbitration.

The Supreme Arbitration of 37 AH. established with its terms by Consensus of the Companions, forms the necessary precedent for the judicial order in an Islamic state. It can be further improved but can not be contradicted by any state which is raised on the basis of Islam.

The courts are not to exercise political rights and powers of the people. The Supreme Arbitrators appointed by the Companions were not asked to do it, nor did the charter handed down to them empowered them to do that. They were only asked to declare the law for the constitutional dispute put before them.

In the charter was outlined the basic model of the constitutional adjudication of Islam. The supreme courts of the Islamic republics can not undo it in their constitution without grafting a rejection of Islam in their body.

Appointments

So far as the appointments of Arbitrators or Supreme Constitutional judges was concerned, it was easy in 37 A.H. to let the parties in dispute nominate them in equal number, because the bipolarization of the Umma and its very obvious representation in the form of two parties and camps was very clear beyond any doubt. It is very rare in history.

Therefore, a more suitable method to abrogate it must be adopted. One thing which is absolutely ruled out by this precedent is government appointments to the seat of Supreme Arbitration.

Government appointments to the positions of supreme adjudication suit a modern or Kelsenian state in which all the courts are organs of the state, and the state is the government in power for the time being. The Umma of Islam which is under the covenant to uphold the Mizan (balance of justice) in its fold can not allow this method to have a grip on its public order.

By establishing a supreme court, independent of government, the Muslim constitutionalism returns to its own spirit.

In the context of our time, the institution of Supreme Arbitration should be pressed to its logical perfection so far as it is humanly possible. It should also be free from the influences of the political parties and other interest. It may be developed into a clear system by some method as that the Supreme Arbitrators are chosen through an electoral collage consisting of the Fuqha, jurists, and practicing experts in law. Only these groups know well who are the

genuinely competent jurists of integrity that can be appointed to the Supreme Arbitration.

Or it may so happen that the proposed electoral college present a list of Arbitrators and refer it to the general suffrage who may be allowed to return a third of their number to the position of Supreme constitutional judges of the nation for a fixed tenure of time. Thus, the appointment will have nothing to do with the government and other political groups. Other more congenial options are also open. They must be duly worked out.

Practically, every organ of the society will have to be an organ of its execution. This is what the document of the Supreme Arbitration (Tehkim) laid down in 37 A.H. meant for solving its constitutional disputes and thwarting the growth of anarchy in Islam.

The theory of modern state according to which the courts are its organs makes the judges government servants. Thus the judiciary has grown into a profession. It gives rise to careerism, which is prepared to serve a Bokasa* and when the latter is overrun by his adversaries, it is charmed to serve under the new masters, applies their decrees in its judicial process and optimistically look forward in the direction of next change and new masters.

The career judges staffing the benches of supreme courts soon develop their own ratiocinations and professional ethics. The latter enter as legal norms into the constitutional destinies of nations. In Islam such norms are termed as 'plausible discourse through guile (Ref. 62: 113). They say: The municipal courts (courts in national jurisdiction) have always to enforce the laws of the *de facto* government as it is. Such a government which can enact law, can appoint judges and can enforce the execution of law. If a judge believes that a situation has arisen which in all conscience compels him to exercise the sacred right of revolution or Counter-revolution, he should leave the bench and not seek to use his position on it to further his revolutionary or counter-revolutionary purposes.

The moralisation goes even further: The more unsettled the times and the greater the tendency towards the disintegration of established institutions, the more important it is that the court should proceed with the vital task of maintaining law and order and by so doing act as a stabilizing force within the community. This objective can only be achieved if the acts of the government of the time are presumed to have the force of law.

These views brilliantly pleaded by the Rhodesian judges are destructive of public order. They do not represent the law, but only professional stakes of the carrierists, which to them look like fundamental legal norms. They can not be allowed to determine the destiny of an Islamic State and turn it into a sort *of Mulukiyah*.

***Note:** Bosaka was a Chief in a Central African state who came to power by overthrowing its government in the seventies of the twentieth century.