

# The Concept of State in Islam

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The state in Islam is founded on certain principles which, according to the faith of a Muslim, are laid down in the Qur'an and *Sunnah* of the Holy Prophet. The first principle is that all authority in the universe vests in Allah, Who is the Omnipotent and Omnipresent Creator of the universe. Thus, according to a Muslim's faith Allah alone must be obeyed to the exclusion of all others, and obedience may be rendered to man only under Allah's command in the case of the Prophets whereunder rendering obedience is in fact to Allah and not to human beings. The second principle is that the law has already been laid down by Allah in the form of commands of what is good and what is evil, in the Qur'an, which is the pure word of Allah whereas *Sunnah* of the Holy Prophet is the authoritative exposition of the Qur'an. These commands have been sent in the form of revelation from time to time to the Prophets for the guidance of mankind, the last being the Holy Prophet Muhammad (Peace be upon him) through whom the faith had been completed and perfected in the Qur'an. Allah has already placed in the nature of man the knowledge of good and evil and has further clarified the distinction between good and evil in the Qur'an. Thus, the law of Allah, properly called, consists of *Awamar* and *Nawahil* (the positive and negative injunctions of the Qur'an) and it is on this basis that according to a Muslim's faith all legislation has already been made by Allah and every Muslim is enjoined to promote good and to suppress evil.

In the Qur'an no mode of life is prescribed for a politically and economically subjugated Muslim community. In Sura 4: Verse 59 the Muslims are commanded to obey Allah, to obey the Holy Prophet and those having authority over them, who are from amongst them. Consequently, a Muslim is to render obedience firstly to Allah, then to the Holy Prophet, lastly to those members of the Muslim community who command authority over him provided that they are acting only in execution of the commands of Allah and the Holy Prophet. So, it is evident that rendering obedience to those who command authority over

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the Muslim community is conditional. This obligation ceases if the above conditions are not fulfilled. It is further evident that the mode of life which a Muslim is commanded to follow can only be followed if he is a member of a politically and economically free community. Consequently, the Muslim community must strive for establishing a state wherever it is possible to establish a viable state.

A state which is managed and administered in accordance with Islamic law is technically called *Darul Islam* (country of peace). If a *Darul Islam* or an Islamic state is politically or economically subjugated by a non-Muslim power, it will be transformed into *Darul Harb* (country of war) and the Muslims shall be left with only two alternatives: Either to conduct *Jihad* (struggle) in order to regain their independent status or to migrate (*Hijrat*) to some Muslim country. Thus, the Muslim concept of patriotism is not solely based on an attachment with a particular land or territory, but is based on an attachment to the ideals and aspirations which have been realized or are being realized or may be realized through institutions established in such land or territory.

In theory, the Islamic state is Allah's State and the Muslims constitute Allah's Party (*Hizbullah*). It is based on a two-fold concept of happiness. It must cater for the realization of happiness for the Muslim community in this world as well as prepare it for realizing happiness in the hereafter. These objectives of an Islamic state necessitate that the Muslim community (*Hizbullah*) be founded on the principles of equality, solidarity and freedom.

Traditionally, the Muslim Jurists have emphasized three important features of an Islamic state which are: The Muslim community (*Milla*), the Islamic law (*Shariah*) and the Headship of the Muslim community (*Khalifa*). Since absolute authority or ultimate sovereignty vests in Allah, the Islamic state upholds the supremacy of Islamic law and further, since the Muslim community is to be governed in accordance with the Islamic law, it must have a directing Head to implement or execute the said law. Since the law has already been laid down by Allah in the Qur'an, the Head of the Islamic state is only an executive authority and has no inherent power to legislate. Wherever the law is clearly laid down in the Qur'an, he must implement or execute the same. But guided by the spirit of those laws and principles, he is authorized, in certain exceptional circumstances, to alter or temporarily suspend those laws or makes subordinate legislation. He shall appoint a Body of Advisers (*Shura*) which must be consulted in making such subordinate legislation or for other matters, but he is not bound by their advice.

The Head of the Muslim community is called *Khalifa* (the successor of the Holy Prophet) or *Imam*. The Judiciary (*Qada*) has the power to interpret the Islamic law and to adjudicate in accordance with the same. According to the Sunni view, as shall be explained later, the appointment of *Khalifa* is to be confirmed by the Muslim community (*Milla*) through its consent which is formally obtained by means of

*baiyat* (a symbolic way of rendering obedience). The *baiyat* is a contract in which two parties are involved. The Muslim community is to render obedience to the *Khalifa* in consideration of the *Khalifa's* promise to govern the Muslim community in accordance with Islamic law. If there arises any dispute between the parties, then according to the Qur'anic injunction laid down in Sura 4: Verse 59, the matter may be referred to the Judiciary for adjudication in accordance with the Book of Allah and *Sunnah* of the Holy Prophet and the judgment of the Court shall be binding on both the parties. If the dispute cannot be resolved through peaceful means, the Muslim community or any member thereof is entitled to rebel against the erring *Khalifa* or to replace him by another *Imam*.

Theoretically speaking in an Islamic state absolute authority does not rest with the Head of the state or with Parliament, nor are the people vested with ultimate sovereignty. Ultimate sovereignty or absolute authority only vests in Allah and the only principle operative in an Islamic state is the supremacy of Islamic law. Using modern terminology, therefore, the Islamic Constitution has only two important organs, the Executive and the Judiciary. The third organ i.e. the legislature is not an important feature for the reason that all legislation has already been made by Allah in the Qur'an which is only to be implemented or executed by the Head of the state who, in consultation with the Body of Advisers or otherwise, can make subordinate legislation by way of Ordinances.

There are two verses in the Qur'an with respect to consultation. In Sura 42: Verse 38, it is laid down that the Muslims conduct their affairs by mutual consultations and in Sura 3: Verse 159, the Holy Prophet is commanded to consult them in affairs and when he has taken a decision, he should put his trust in Allah. In the first verse, consultation is recommended and does not create an obligation. However, it is descriptive of the nature of the Muslim community which is expected to conduct all its affairs by mutual consultation. The second verse, which is addressed to the Holy Prophet, contains a command and the principle that those who command authority ought in all matters of importance consult the Muslims is undisputed.

The main distinction between an Islamic state and a secular state is that the Islamic state is governed in accordance with the laws of Allah as revealed in the Qur'an whereas a secular state is governed by the laws made through human reason. The other distinctions are: A modern secular state should have three features: It must be fully sovereign; it must be national; and it must have well-defined territories. When these three features exist a state can legitimately claim itself to be a sovereign state. However, an Islamic state, although sovereign from this accepted standpoint, is theoretically not fully sovereign because, according to the faith of Muslims, ultimate sovereignty vests only in Allah. Strictly speaking it is also not a national state, because Muslim community

(*Milla*) is a community of faith and consists of peoples who may belong to different tribes, races or nationalities and may speak different languages and be of different colors, but who share a common spiritual aspiration i.e. their faith in Islam and regard themselves as a nation on the basis of a common spiritual aspiration. However, if nationalism is to be considered in Western terms, then an Islamic state is a multi-national state. Thirdly, it is not a territorial state in the strict sense of the term, because it aims and aspires to become a universal state. Nevertheless, it is not a Utopia or an imaginary state and it has to be initially founded as a territorial state, although the territories are expected to expand. The Prophet of Islam migrated from his ancestral home Mecca and established the Islamic state at Medina by uniting the Immigrants and Helpers in fraternal bond of a community of faith. Thereafter, the territories of the Islamic state went on expanding.

In Sura 4: Verse 58, the Muslims are commanded by Allah to hand-over their trusts only to most competent persons. In other words, the Qur'an has ordained that only the most competent person/persons be appointed for running the Islamic state, though this is even logically the obligation of those who are expected to make such appointments. But the Qur'an itself does not lay down any specific method for the appointment of a *Khalifa*, i.e. the head of the Muslim community. This was quite natural because the Qur'an is concerned mainly with matters relating to right and wrong or good and evil and is not concerned with matters relating to planning (*Tadbir*). That the best person/persons ought to be appointed is a matter relating to right and wrong. But the question as to how the appointment is to be made or whether a particular process employed for determination of the best person will be successful or not, is a matter relating to efficiency and wisdom in the light of prevailing conditions. Similarly, no procedure has been prescribed for the deposition of the *Khalifa*. According to the Sunni view, the Holy Prophet did not nominate or appoint any successor after him nor did he lay down any rule or method for constituting or deposing his successor. These structures were to be evolved in the light of the good sense of the community as they were not meant to be permanent but were subject to the law of necessity in accordance with the requirements of the Muslim community from time to time. Consequently, the real object of Islam is to establish a community of faith governed by the *Shariah* and for its enforcement the Muslim community is at liberty to determine any mode of constitutional structure which suits its requirement.

Some of the modern Muslim thinkers cynically state that Allah talks of kings in the Qur'an and, therefore, in the light of Qur'anic injunctions monarchy is an approved institution. The argument proceeds further on these lines and it is pointed out that the Prophet of Islam was the Prophet-King in the tradition of the earlier Prophet-Kings mentioned in the Qur'an. The argument finds support from the writings of Al-Farabi, who, influenced by Plato's theory of the Philosopher-King, evolved his

concept of the Prophet-Imam (King) and applied the same to the Prophet of Islam describing his period of *Imamate* in Medina as the ideal state (Al-Medinatul Fadila). In other words, according to Al-Farabi, the ideal Islamic state was established at Medina by the Prophet of Islam and so long as he remained its Prophet-Imam, the twofold concept of happiness was fully realized by the Muslim community. Apart from the idealistic or philosophical implications of this thesis, it may be categorically stated that in the Qur'an Allah talks of Kings who might have lived before the advent of Islam and although the institution of monarchy has not been specifically disapproved, the nature of the Muslims has been clearly described in Sura 42: Verse 38 when it is pointed out that Muslims are those who conduct their affairs by mutual consultation. One could say that in this verse consultation is merely recommended and does not create an obligation. But it must not be forgotten that the verse is descriptive of the nature of the Muslim community which according to Allah is expected to conduct all its affairs by mutual consultations. The second objection to this argument is that the Prophet of Islam never claimed himself to be a Prophet-King on the lines of the earlier tradition. He has not been appointed as such by Allah in the Qur'an as it had happened in the case of Prophet David, who was specifically appointed Allah's Successor on earth. Nevertheless, in the Qur'an there are numerous commands which have been addressed to the Holy Prophet including the command in Sura 3: Verse 159 i.e. "Consult them in affairs and when thou hast taken a decision put thy trust in Allah." The Islamic state was founded at Medina on the basis of a document of Constitutional nature commonly known as the Contract of Medina (Meesaq-i-Medina). According to the stipulations of this Contract, the contracting parties had agreed to run the Government with the Holy Prophet as the sole arbiter and as the apex of delegated sovereignty in the new state. The principles which can be deduced from the period of Imamate of the Holy Prophet are as follows: The Sovereignty of Allah and Supremacy of His Law, the uniting of the Immigrants and Helpers in a fraternal bond of community of faith, and the establishment of the Islamic state at Medina and its administration in accordance with the Islamic law. The Holy Prophet was the Head or Imam of the Muslim community but had no kingly prerogatives except that as the Chief Executive, his seal conferred legitimacy to state documents. Furthermore, since he had been so commanded, he consulted the eminent members of the Muslim community who happened to be his Companions in the management of the affairs of the Muslim community. The eminent members of the Muslim community or the Companions of the Holy Prophet have been described as those who had the authority to loose and bind (*Ahl-ul-Hal-Wal-Aqad*) and had apparently formed an informal senate.

However, as it has been stated earlier, according to the Sunni view, the Holy Prophet did not nominate or appoint any successor nor did he lay down any procedure or framework for constituting or deposing his

successor. Jalaluddin Suyuti on the authority of Hudayfah states that some of the Companions of the Holy Prophet asked him as to whether or not he would appoint a successor unto them. The Holy Prophet is stated to have replied that if he did appoint a successor over them and if they were to rebel against the successor appointed by him, the punishment would come upon them. Had he in fact appointed a successor or provided a specific mode, then that mode alone would have become the only way of appointing the head of state and a restrictive stipulation of this nature would have caused difficulty in the evolution of Islamic polity. Thus, the Holy Prophet by not appointing his successor or suggesting any specific mode had definitely acted in conformity with the spirit of Quranic injunctions on this point.

During the period of the first Four Rightly Guided Caliphs (632 AD to 661 AD) different methods were adopted for the appointment of the *Khalifa* and in all the cases the appointment was confirmed by the Muslim community through its consent which was formally obtained by means of *baiyat*. Generally speaking, the methods adopted during this period had a common feature i.e. the selection of the best man through initial election, nomination and election through an electoral college, in all cases followed by private *bayah*, subsequently the appointment being confirmed through a public *bayah*. The course adopted in all the cases was republican, although the majority principle, not specifically disapproved, had not been followed.

On the death of the Holy Prophet Muslims in Medina gathered in the form of distinct political groups e.g. Ansar, Mohajirin and Banu Hashim. The groups had their respective leaders. Ansar were led by Saad Ibn Ubaida, the Mohajirin supported Abubakr and Umar whereas Banu Hashim were solidly behind Ali. Ibn Ishaq in his *Biography of the Holy Prophet*, written within 70 years of his death, gives an accurate picture of the election of the first Caliph, namely, Abubakr. The claim of the Ansar for power was based on the ground that they constituted the bulk of the armed forces of Islam and they even suggested as the alternative the divisibility of delegated sovereignty. The Mohajirin stood for the unity of the Muslim community opposing separatist tendencies and advanced their claim on the ground that Arabs as a whole will only accept leadership from the tribe of Quraysh. The claim of Banu Hashim was based on their connection with the family of the Holy Prophet. The groups with the exception of Banu Hashim gathered in the hall of Banu Saada and the debate that ensued there was entirely political. Eventually, Umar proposed the name of Abubakr as the Head of State when he asked to extend his hand and Abubakr, a candidate for succession, accepting such nomination held out his hand. Thereafter, the Mohajirin as well as Ansar present there swore allegiance to him by way of *baiyat*. Subsequently, this private *bayah* was followed by the public *bayah*. It may be pointed out that in support of their respective claims the Ansar and Mohajirin neither employed any Quranic Injunction nor any

direction of the Holy Prophet. The discussion took place in the form of a Conference in order to maintain a dialogue for political consensus to be realized through mutual consultation.

In the case of the second Caliph, namely, Umar, he was nominated by Abubakr. The nomination had no legal precedence and, therefore, it was merely a recommendation. However, since the Muslim community had reposed confidence in Abubakr, his recommendation was accepted through the subsequent referendum when the nomination of Umar was put to public at large and it was confirmed by *Baiyat-i-Aam*.

Reacting to the socio-political conditions prevailing at the time Umar, before his death, constituted an electoral college of the probable candidates in order to select one from amongst them for being put up as the sole candidate for succession. Thus, a council of six was formed consisting of Ali, Uthman, Abdur Rahman, Saad, Zubair and Talha. He also appointed his own son Abdullah to give a casting vote in case there was an equal division, but Abdullah was specifically excluded from standing as a candidate for the succession. The Council through a process of elimination deputed Abdur Rahman to make a recommendation as to who out of Ali and Uthman should be the sole candidate. Abdur Rahman is stated to have consulted as many people as he could in Medina including women as well as students and those who had come from outside or happened to be present in Medina as wayfarers. A majority of them expressed their view in favor of Uthman. Abdur Rahman even questioned Ali and Uthman about the manner in which they would conduct themselves if any of them was selected as the successor. Eventually, Abdur Rahman supported Uthman and finally he was selected as the sole candidate. Later, the rest of the Muslim community swore allegiance to him.

On the assassination of Uthman the people of Medina gathered in the house of Ali and requested him to become the successor. The uncle of the Holy Prophet, namely Abbas supported him as the sole candidate. Ali refused to accept a private *bayah* and insisted that if the Muslim community wanted to swear allegiance to him as the *Khalifa*, it should be openly done in the *Masjid-i-Nabvi*. This was accordingly done.

Thus, it is evident that during the period of the first Four Rightly Guided Caliphs the Head of state could only be appointed with the consent of the Muslim community. Women were not excluded from registering their consent and according to some Jurists a woman is perfectly competent to stand as a candidate for the succession. It may be further pointed out that during this period the hereditary rule was specifically excluded in the case of succession. Previously there was only one prerogative of the *Khalifa* i.e. all the state documents were expected to bear his seal. In the turbulent days of Ali a second prerogative was introduced and that was if the *Khalifa* himself was not leading the congregational prayers, then the Imam mentioned his name in the *Khutba* and prayed for him.

In the historical process of transformation from 661 AD to 1258 AD,

the interaction of numerous forces and events led to changes in the Caliphate in substance as well as form. Muawiyah was proclaimed *Khalifa* in 661 AD. Jurists like Shah Wali Ullah regard his method of appointment as appointment through usurpation (*Istela*), because according to him it had been obtained through force and coercion. Nevertheless, Shah Wali Ullah considers it as one of the legitimate or legally acknowledged methods for appointment. Four years before his death, Muawiyah nominated his son Yazid as his successor and Oath of allegiance was secured for him in spite of the protests of the Jurists who maintained that it was illegal to swear allegiance to two persons at one and the same time. Muawiyah nominated his own son as the succeeding *Khalifa*, because, as he himself explained to the people, if he had nominated anyone outside his own family or if he had appointed a Council as Umar had done, or if he had left the matter to be decided by the community, it would have led to a civil war in Islam. His reasoning was that the precedent of nominating the succeeding *Khalifa* already existed. Consequently, Marwan, his Governor of Medina, said to the people: "Verily the Commander of the faithful hath seen it fit to appoint his son Yazid as the successor over ye according to the institutions of Abubakr and Umar." Abdur Rahman Ibn Abubakr interrupted: "Rather according to the institutions of Khusrau and Caesar, for, Abubakr and Umar did not do so for their children, nor for anyone of the people of their house." The prompt reply came from Marwan: "There was no legal bar for Abubakr and Umar to nominate their children or anyone of the people of their house if they had found them competent. But in the present case the Commander of the faithful is nominating his son Yazid as successor over ye because he had found him fit and competent."

The example thus set was followed throughout the later history of Islam. The reigning *Khalifa* nominated one of his sons or kinsmen as his successor and the oath of allegiance was secured for him. During the Abbasid rule double nominations were also made i.e. two successors to hold the office, one after the other, and this arrangement frequently led to wars of succession. Kingly prerogatives were introduced. Besides the earlier two prerogatives, namely, *Katham* (seal) and *Khutba* (sermon), three more were introduced by Muawiyah himself. These were (*sarir* (throne), the right of the *Khalifa* to sit at a higher place; *Maqsura*, the right of the *Khalifa* to have a confined part in the mosque for his exclusive use; and finally *Sikka*, the right of the *Khalifa* to have his name carved on the coinage struck in the country. Arabic was made the Court language and the early simplicity gradually gave way to luxury and splendor.

The only reason advanced for the transformation of a republican or democratic form of Government into a hereditary or dynastic monarchy was the likelihood of disintegration of the Muslim community through a perpetual civil strife. Thereafter, the role of the Muslim Jurists had throughout been to bridge the gulf between the ideal and the real or

theory and practice by attempting to provide an Islamic rationale to every change in order to maintain the continuity of the Islamic character of the Community. Therefore, if the period of the Rightly Guided Caliphs had provided an ideal Islamic polity, the development of later constitutional thought represented the rational justification of the formal and substantial departure from the ideal under the pressure of circumstances. It is interesting to note that from this period onwards, according to Sunni Jurists, replacement of a *Khalifa* by another through force, coercion or usurpation (*Istela*) was considered as a legitimate method of change of Government. It may be pointed out at this stage that according to some Sunni Jurists like Shah Wali Ullah, methods for constituting a *Khalifa* or *Imam* are restricted only to those adopted during the times of the Rightly Guided Caliphs or through usurpation (*Istela*). The modernist Muslim position is that the adaptation of different methods could not be considered to have any restrictive significance. But on the contrary it was indicative of a liberal and flexible approach i.e. to adopt a method which is convenient for realizing the objectives of the community at a particular time. According to Al-Mawardi, the rule of a usurping Amir is legitimate if he governs the state in accordance with the Islamic law probably under the doctrine of necessity as propounded by Al-Ghazali that the tyranny of a usurping Amir was preferable to chaos. Some Jurists are of the view that since the source of strength of a usurping Amir is his own power (*Dhu Shawka*), he does not require the consent of the Muslim community. However, the others think that he too requires approval of the Muslim community in addition to governing the state in accordance with the Islamic law.

So long as the Muslim world remained one and united, theoretically it was managed and administered by a universal Caliphate even though it had been transformed into a hereditary or dynastic monarchy. There has been an instance in the history of Islam of the establishment of more than one Caliphate at the same time in Baghdad, Cairo and Cordova. But even during that period two of the additional Caliphates in Cairo and Cordova eventually disappeared and only one in Baghdad survived. On the sack of Baghdad by the Mongols when Abbasid Caliph was put to death in 1258 AD there was for a period of three years (1258-61 AD) no Caliph in the world of Islam. In the later period of Islamic history when numerous rulers managed to acquire power or controlled specific territories in the world of Islam and the universal Caliphate only existed in name, these rulers did not adopt the title of Caliph or *Imam* but remained content to call themselves Amirs, Sultans and Padshahs.

The modern revival of Islam commenced from the 18th Century onwards when gradually numerous independent or semi-independent Muslim national states emerged in the world of Islam. In some of them hereditary or dynastic monarchy was the order of the day and in the others legislative assemblies were constituted. Thus, when Islam entered modern history, the question arose that since the universal

Caliphate had become a thing of the past, could different Muslim national communities manage their affairs by themselves? In other words, could the powers and obligations of a *Khalifa* or *Imam* be shared by a Body of Persons as the elected representatives of the Muslim community in a particular Muslim national state.

After the break-up of the Ottoman empire and the abolition of the Caliphate in Constantinople (Istanbul) in 1924, Turkey was the first country in the world of Islam to advance the reasoning to the effect that the power of the *Khalifa* or *Imam* could be vested in a Body of Persons in the form of an elected assembly. This was the viewpoint of the *Khawaraj* in the earlier history of Islam who had held that it was not obligatory on the Muslim community to appoint a *Khalifa*, but the Muslims could manage their affairs themselves by mutual consultation as recommended by the Qur'an. Views were also expressed to the effect that in modern Muslim national states elected assemblies could constitute *Ijma* or *Shura* of the Muslim community and make subordinate legislation on the basis of *Ijtihad* or interpret the Islamic law in accordance with the changing needs and requirements of the Muslim community in the light of the principles laid down in the Qur'an and *Sunnah*. In any case, no voice was raised against the transformation which took place in Turkey and in due course even in other Muslim countries where legislative assemblies were formed, the establishment of the same has not been considered repugnant to the injunctions of Islam.

Be that as it may, a Muslim national state does not become an Islamic state unless and until it adopts the characteristic features of the same which still remain unalterable. The democratic method which has been adopted by some of the Muslim countries due to the influence of Western ideas is admittedly not a perfect method. An Islamic state is expected to be run by the best members of the community and the democratic method, although adopted by Western countries in order to achieve the same objective, ordinarily does not ensure the election of the best, because a really suitable or competent candidate may be defeated by an unsuitable or incompetent candidate only for the reason that he has obtained more votes or more heads had been counted in his favor. Similarly, a vote is no substitute for *baiyat*, because *baiyat* is a bilateral contract whereas a vote does not have the implications of a contract like *baiyat*. Furthermore, according to the *Sunnah* of the Holy Prophet, who-soever offers himself as a candidate for any office abuses his position of trust (*Khain*) and must be ignored. If this rule is usually adopted for the selection, for instance, of a judge, then why should it not be adopted for the election of a so-called legislator. Again, there is no obligation to follow the majority principle as the right as such of majority is not recognized in Islam. The supporters of this viewpoint also argue that since Muslims constitute Allah's Party (*Hizbullah*), the multi-party system has no place in an Islamic state as it is repugnant to the Qur'an and *Sunnah*. It is also pointed out that some Sunni schools of law do not

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Be that as it may, a Muslim national state does not become an Islamic state unless and until it adopts the characteristic features of the same which still remain unalterable. The democratic method which has been adopted by some of the Muslim countries due to the influence of Western ideas is admittedly not a perfect method. An Islamic state is expected to be run by the best members of the community and the democratic method, although adopted by Western countries in order to achieve the same objective, ordinarily does not ensure the election of the best, because a really suitable or competent candidate may be defeated by an unsuitable or incompetent candidate only for the reason that he has obtained more votes or more heads had been counted in his favor. Similarly, a vote is no substitute for *baiyat*, because *baiyat* is a bilateral contract whereas a vote does not have the implications of a contract like *baiyat*. Furthermore, according to the *Sunnah* of the Holy Prophet, who-soever offers himself as a candidate for any office abuses his position of trust (*Khain*) and must be ignored. If this rule is usually adopted for the selection, for instance, of a judge, then why should it not be adopted for the election of a so-called legislator. Again, there is no obligation to follow the majority principle as the right as such of majority is not recognized in Islam. The supporters of this viewpoint also argue that since Muslims constitute Allah's Party (*Hizbullah*), the multi-party system has no place in an Islamic state as it is repugnant to the Qur'an and *Sunnah*. It is also pointed out that some Sunni schools of law do not

acknowledge *Ijma* as a source for the evolution of Islamic law. According to them, *Shura* is merely a Body of Advisers or experts which must be appointed by the *Khalifa* or *Imam* through selection or nomination and not election for the purpose of consultation.

The arguments which are advanced in favor of the democratic method are as follows: If the powers and obligations of a *Khalifa* or *Imam* are to be shared by the community in a particular Muslim national state, it is necessary to create a Body of Persons to constitute *Ijma* or *Shura* which should conduct the affairs of the Muslim community through mutual consultation and such Body cannot be constituted except through the elected representatives of the Muslim community. Although the majority principle was not followed during the historical experiment of the Rightly Guided Caliphs, its adaptation has neither been specifically forbidden nor disapproved by the Qur'an and *Sunnah*. Admittedly, the Qur'an and *Sunnah* insist on sovereignty of Allah and the enforcement of His Laws, but the evolution of the method for the realization of these objectives is left to the good sense of the Muslim community in accordance with its requirements from time to time. As the real object of Islam is to establish a community of faith governed by *Shariah*, the Muslim community is free to evolve any suitable method for the enforcement of Islamic law. The principle that a person who offers himself as a candidate for any office abuses his position of trust and, therefore, must be ignored cannot be made applicable universally, for, if all suitable and competent persons are to refrain from offering themselves as candidates, then the Muslim community not being aware of their presence may be compelled to select mediocrities for appointment to positions of trust. Furthermore, strictly speaking a vote may not be a bilateral covenant like *baiyat*, but it certainly is an indication of selection of a candidate among others, on the basis of his suitability or competency in the eyes of the electors in order to represent them only for a fixed period of time. In case he does not prove himself to be suitable or competent, he can be rejected at the next election. The establishment of a legislature is also necessary, because subordinate legislation, which is not repugnant to the Qur'an and *Sunnah*, is a very wide field due to the changing needs and requirements of the modern Muslim community. The successful working of the democratic method really depends on a conscientious electorate which is aware of its rights and obligations under the Islamic law. It is likely to fail where the electorate is gullible. Therefore, it is necessary to educate and train the Muslim community in order to make it conscious of its rights and obligations under the Islamic law, for, only through education and training it would be in a position to elect the best members of the community. It is also argued that although the Muslim community is Allah's Party (*Hizbullah*), the formation of groups among Muslims for promoting good and suppressing evil is recommended by the Qur'an and *Sunnah*. Soon after the death of the Holy Prophet when three distinct

political groups emerged from the Muslim community, namely, Ansar, Mohajirin and Banu Hashim, and still later during the Caliphate of Ali when two more political groups were formed, namely, *Shian-i-Ali* and *Khawaraj*, no objection was raised. Therefore, political parties can be permitted to function in a Muslim national state provided that they adhere to the Islamic Ideology and operate strictly within its framework. However, in order to ascertain the will of the Muslim community, measures can be adopted to determine clearly as to which candidate obtains overwhelming (and not merely bare) majority of votes in his favor. It is further argued that the democratic method must be adopted because there is no other appropriate substitute for the time being which would yield better results as required by Islamic standards.

The conflict in the viewpoints regarding Western and Islamic forms of democracy creates a problem which is being faced by some Muslim national states at present and it is probably due to this reason that there are occasional instances of political breakdown leading to the establishment of military dictatorship.

However, as it has been pointed out, the fundamental principles on which an Islamic state is founded continue to remain the same. A Muslim national state cannot claim itself to be an Islamic state unless and until its constitution strictly adheres to the principles of ultimate sovereignty vesting in Allah and the supremacy of Islamic law. But it must be clearly understood that an Islamic state is not a theocracy.

Islam does not recognize the distinction between 'spiritual' and 'secular', and it is incumbent on every Muslim to constantly endeavor to realize spiritual values while performing his temporal obligations. In this sense the Islamic state, in the modern context, assimilates the qualities of an ideal secular state. In the positive sense a secular state ought to guarantee religious freedom to every citizen and endeavor to promote the material advancement and welfare of all its citizens without distinction of religion or race. This is also one of the numerous duties of an Islamic state which at the same time must protect the places of worship and culture of citizens who adhere to faiths other than Islam under the Qur'anic injunction laid down in Sura 22: Verse 40 to the effect: "If Allah had not raised a group (i.e. Muslims) to ward off the others from aggression, churches, synagogues, oratories and mosques, where Allah is worshipped most, would have been destroyed." Since the faiths of religious minorities are to be protected, they can adopt any measure of self-protection including the claim for separate electorates or representation in the form of a fixed quota of seats in the assembly.

In modern times there are numerous concepts of human rights based on different ideologies. The capitalist democracies have evolved the concept of inalienable rights of man laying emphasis on political and civil rights of an individual; whereas the Marxist countries have evolved the concept of peoples' rights laying emphasis particularly on economic rights of a group. There is also a concept of welfare rights advanced by

some countries which do not adhere to capitalist or Marxist ideologies. The Islamic concept of human rights is based on its own ideology. Its peculiar feature is that it conceives broadly two categories of rights: Of Allah (*Haququllah*) and men (*Haququl Ibad*). The Islamic state, therefore, guarantees the rights of Allah as well as of men. The rights of men which can be directly traced from the Qur'an and *Sunnah* are of life, individual freedom, equality before law and prohibition against impermissible discretion, justice, fair trial, protection against abuse of power, against torture, of honor and reputation, asylum, equality of status and of opportunity, freedom of thought, expression, belief, faith, worship, association, assembly, movement, trade, business or profession, to hold and dispose of property, protection of minorities, to participate in the conduct and management of public affairs, status and dignity of workers, social security, founding a family and related matters, of married women, education, or privacy etc. subject to Islamic law and morality. During the times of the Rightly Guided Caliphs since everyone studied the Qur'an, he had a thorough grasp of his rights. This can be illustrated by an example. Islam allows no interference or intrusion into the personal or family affairs of anyone. Spying is forbidden except in the sole case when in the times of war a person spying is investigating someone about whom there is a suspicion that he was serving the enemy. But in normal times even if there be a strong probability that something wrong was going on in a man's house, no warrant could be issued to anyone to enter the house or to spy on the man. It is stated that one night while crossing a street of Medina the second Caliph Umar heard the sound of debauchery coming from inside a house. He lost his temper and tried to enter the house, but no one answered his knock at the door. He climbed upon the roof and from it shouted down to the owner who was present in his lawn: "Why are you breaking the law and allowing such a debauch in your 'house'." The man replied: "No Muslim has the right to speak to another in that manner. Maybe I have committed a wrong but think how many wrongs have you committed. For instance: (i) Spying—despite God's command 'thou shalt not spy'; (ii) breaking and entering—you came in over the roof despite the command of God 'enter house by the door'; (iii) entering without owner's permission—in defiance of God's command 'enter no house without the owner's permission': (iv) omitting the Salaam—though God has commanded 'enter no house without indicating that you are a friend and calling peace (Salaam) on those within'." Umar felt very embarrassed and withdrew saying "Well I forgive your wrong." The owner retorted: "That is your fifth infringement, for, you claim to be an executor of Islamic law, then how can you say that you forgive what Allah has condemned as a wrong."

This anecdote clearly illustrates how each and every Muslim citizen of the early Islamic state was conscious of his rights. For guaranteeing the rights of men the Islamic state must ensure the complete independence of the Judiciary as this is the only way for upholding the supremacy of

rule of Islamic law.

The legislature in an Islamic state has a restricted power of legislation, for, technically speaking, its authority is delegated and can be exercised only within the limits prescribed by the Qur'an and *Sunnah*. Therefore, it must enjoin that what is considered by the Qur'an as 'maruf' (universally acknowledged moral values). According to some Jurists in exceptional cases a Qur'anic injunction can be temporarily suspended on the precedence of Umar suspending the punishment (Hudd) of cutting off hand of a thief in the times of famine in Medina. Similarly, permission granted by the Qur'an to a Muslim for marrying more than one wife can be temporarily suspended or withdrawn if it socially leads to adverse results. However, generally speaking, there can possibly be three spheres of its legislative activity in a Muslim national state: (i) To enforce laws which have specifically been laid down in the Qur'an and *Sunnah*; (ii) to bring all the existing laws in conformity with the Qur'an and *Sunnah*; and (iii) to make laws as subordinate legislation which are not repugnant to the Qur'an and *Sunnah*.

The establishment of such a legislature through the means of election requires firstly an electorate which is aware of its rights and obligations under the Islamic law; secondly to elect representatives on either non-party basis or through only such political parties which adhere to the Islamic ideology and are in a position to put up candidates who are familiar with the legislative limits prescribed by the Qur'an and *Sunnah*; and thirdly, adaptation of measures which should clearly determine as to which candidate has the overwhelming support of the voters.

A modern Muslim legislative assembly, at least for the present, must consist mostly of members who possess no knowledge of the subtleties of Islamic law. Therefore, they are likely to make errors in their interpretation of Islamic law. Ideally speaking, if an elected legislative assembly is to be formed in an Islamic state, it should consist of lawyers who are qualified in Islamic law as well as modern jurisprudence and this objective can be realized through the accomplishment of a reform in the present system of legal education in Muslim countries by extending its sphere so as to combine the study of Islamic law with an intelligent study of modern jurisprudence.

For the interim period two constitutional devices have been adopted by some Muslim national states in order to reduce the possibilities of erroneous interpretation of Islamic law in a modern Muslim legislative assembly. These are: Making provision within the assembly of a separate committee of Ulema having power to supervise the legislative activity of the assembly and constituting a Body of Ulema outside the assembly as an Advisory Council having authority to advise the assembly on any question referred to the Council about a proposed legislation as to whether it is or is not repugnant to the injunctions of Islam.

According to some modern Muslim Jurists, a presidential form of democracy is closer to the Islamic concept of state whereas the others are

of the view that it would make little difference whether the form of democracy is presidential or parliamentary. The main point is that sovereignty of Allah is to be acknowledged through upholding the supremacy of Islamic law. So far as the enforcement of Islamic law is concerned, the Muslim community is at liberty to evolve any mode of constitutional structure which suits its requirement on the basis of the principle of "mutual consultation."