



*First Principles
Of
The Islamic State*

S. ABUL A'LA MAUDUDI

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**FIRST PRINCIPLES
OF
THE ISLAMIC STATE**

**BY
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FOREWORD

THE movement for the adoption of Islamic Constitution was at its climax in the last quarter of 1952 when Maulana Maududi visited Karachi in November. He was invited by the President of the Karachi Bar Association to address a gathering of the lawyers and the intelligentsia of the metropolis. As it was a discussion forum, Maulana Maududi prefaced the discussion with a brief but comprehensive talk on the basic Principles of the Islamic State and the nature and contents of Islamic Constitution. This talk was given to enlist the support of the upper intelligentsia to the cause of the movement for the establishment of an Islamic State in Pakistan. It also possesses a historic significance, for it was given at Karachi at a time when the Basic Principles Committee Report was being finalised. The Report was going to be presented before the Constituent Assembly in November 1952, but at the last hour its presentation was postponed for one month and material changes were made in its text to incorporate some of the demands of the Islamic elements. A resume of the said talk is given in the following pages.

KHURSHID AHMAD

Karachi :

1st November, 1960

FIRST PRINCIPLES OF THE ISLAMIC STATE

We should, at the very outset, clearly understand the nature of the problem that confronts us. When we say that this country should have an Islamic Constitution, we do not mean that we possess a Constitution of the Islamic State in a written form and that the only thing that is required to be done is to enforce it. The core of the problem is that we want an unwritten constitution to be transformed into a written one.¹ What we term as Islamic Constitution is in reality an unwritten constitution. It is contained in certain specific sources, and it is from that we have to evolve a written constitution in keeping with the present-day requirements of our country.

An unwritten constitution is nothing unique or strange for the world. Indeed, up to the middle of the 18th century, the structures of Governments throughout the world rested on unwritten constitutions; and

1. All the implications of the term "written constitution" should be very clearly understood here. A "written constitution" means a document wherein all the basic principles of state organisation have been reduced to writing and which is accepted as the only authoritative document for this purpose. When a country does not possess a constitution written in the form of such a document, it is said to have an unwritten constitution, even though all the constitutional laws and practices which go to constitute the unwritten constitution of that country, may be present in black and white.

even today the British Government is functioning without a written constitution. Just as if the people of Britain choose to have a written constitution instead of an unwritten one, they will have to take recourse to the various sources of their unwritten constitution, to collect material therefrom and then codify it article-wise, similar is the course that we shall have to adopt for the codification of an Islamic Constitution.

I

SOURCES OF ISLAMIC CONSTITUTION

There are four sources of the unwritten Islamic Constitution :

1. The Qur'ān

It is the first and the primary source, containing as it does all the fundamental directives and instructions from God Himself. These directives and injunctions cover the entire gamut of man's existence. Herein are to be found not only directives relating to individual conduct but also principles regulating all the aspects of the social and cultural life of man. It has also been clearly shown therein as to why should Muslims endeavour to create and establish a State of their own.

2. The Sunnah

This is the second source. It shows the way in which the Holy Prophet (peace be on him) translated the ideology of Islam in the light of Qur'ānic guidance into practical shape, developed it into a positive social order and finally elevated it to a full-fledged Islamic State. These things we can know from the *Sunnah* and *Sunnah* alone. It will also guide us how to ascertain the precise sense, purport and meaning of the Qur'ānic directives. In other words, the *Sunnah*

is the practical application of the Qur'ānic principles to the various problems of life. Therefore it contains invaluable precedents and very important material relating to the Constitutional practices and conventions.

3. The Conventions of **Khilafat-e-Rāshidah**

These conventions constitute the third source of Islamic Constitution. How the Right-guided Caliphs managed the Islamic State after the passing away of the Holy Prophet (peace be on him) is preserved in the books of *Hadith*, History and Biography which are replete with glittering precedents of that golden era. It has been accepted in Islam from the very beginning that interpretations of the Qur'ān and the *Sunnah* having the unanimous approval of all the Companions (technically known as *Ijma*) and the decisions of the Caliphs relating to constitutional and judicial problems accepted by the Companions, are binding on all and for all times. In other words, such interpretations and such decisions must be accepted *in toto*, because the consensus of opinion of the Companions on any matter is tantamount to an authoritative exposition of the law. When there has been a difference of opinion among the Companions, that is a sufficient proof of the fact that two or even more interpretations are actually possible and any one of them can be preferred to the other on the basis of sound reasoning. But where there is a general consensus of opinion among them, that shows that one and only one interpretation or decision is the correct and authoritative one. The reason being that as the

Companions were the direct disciples of the Holy Prophet (peace be on him) and were trained by him personally, it is simply unthinkable that even all of them combined failed to grasp the real purport of the Prophet's teachings or could be unanimous in giving a decision against the real spirit of Islam.

4. The Rulings of Great Jurists

The rulings which comprise the fourth source, are the decisions of top-ranking jurists in regard to various constitutional problems of their times. They may not be conclusive on this subject, yet it cannot be gainsaid that they contain fundamentally the best guidance for proper understanding of the spirit and principles of Islamic Constitution.

These are the four sources of our constitution. Whenever we have to reduce the Constitution of an Islamic State into writing we shall have to collect relevant material from all of them, in the same way as the people of England, were they inclined to reduce their constitution into writing would have to refer to their Common Law, their constitutional conventions, various statutory provisions and infer a number of points from the judgments of their courts relating to constitutional problems.

DIFFICULTIES

No doubt, all these four sources of Islamic Constitution exist in a written form. The Qur'ān is a written book. The *Sunnah* and the conventions of the Caliphs too are present in detail in the books on *Hadith* and the biographical literature of Islam. The rulings of all great Jurists of Islam are also obtainable in

authoritative publications. Nothing is missing, no part is vague or wanting ; and yet at the very outset of our quest of reducing this unwritten constitution into a written one a host of difficulties and obstructions confront us. Before proceeding further therefore, it is necessary that we should understand the true nature of these difficulties.

(a) Novelty of Terms

The first difficulty is linguistic. The Qur'anic terms relating to constitutional matters, as also those of *Hadith* and *Fiqh*, have long been out of use and have by now become incomprehensible even to the learned amongst us, let alone the commoners. Unfortunately, Islam has been a closed book, for all practical purposes, to most of us for a long time and, consequently, these terms are no longer in vogue. There are numerous words in the Qur'ān which we read and repeat every day without ever realising that they have some constitutional import. *Sultan, Mulk, Hukm, Amr, Walayat* etc., may be quoted by way of example. The exact constitutional purport of these terms is understood, if at all, by a few people. When translated into other languages, they become almost lifeless or even distorted. That is why, on hearing of the constitutional concepts and directives of the Qur'ān even fairly well-read people ask in wonder as to which verses of that book relate and refer to constitution.¹

1. A leading lawyer of Pakistan had even declared, in an article published in the *Daily Dawn*, Karachi, that the Qur'ān cannot give 'Constitution' and had challenged that no one can produce an article on the Constitution from the Qur'ān—*Editor*.

Their amazement or ignorance is not surprising, for, in the Qur'ān they find no chapter with 'Constitution' as its title.

(b) **Odd-Editing of the Ancient Juristic Literature**

The second difficulty arises from the unfamiliar method of compilation of our old literature. In the old juristic literature, the constitutional problems have not been reported under separate heads. On the contrary, the purely constitutional and the purely legal discussion are inextricably mixed up therein. Everyone knows that the consideration of constitutional problems, as a subject apart from the purely legal matters, is a recent innovation and the use of the very word 'constitution' in its current sense is comparatively modern. Problems called 'constitutional' have nevertheless been dealt with in detail by all eminent Muslim Jurists. But all their learned dissertations on this subject are to be found in the ordinary books of *Fiqh*, dispersed in different chapters and mixed up with other allied problems. For instance, one of these problems you will find dealt with in the chapter on 'Marriages', while another will be found in the chapter on 'Inheritance' and a third in the chapter on 'War', and a fourth in a chapter dealing with some other problems and so on and so forth. Likewise, one question may have been discussed alongwith the problems of 'Criminal Law' while another would probably be encountered in the treatise on 'Public Finance'. Besides this, the language and the terminology used therein are so different from the terms in vogue today that unless the student possesses sufficient erudition in various branches of

law and the problems arising therefrom, and is, in addition to that, a versatile scholar of Arabic (both modern and ancient), he can hardly discern where a problem of international law has been discussed cheek by jowl with a common law point, or where a problem of personal law has been dealt with in the course of discussions on constitutional law. The fact, however, remains that even in the early centuries of Islam, our best brains thought over these problems and have left behind them a legacy of valuable material relating to constitutional law and practices. To edit all this material properly, after reviewing, sifting and cataloguing it, and then to present it accurately to the world in modern terms, is the work of great diligence and elaborate research. And most of the Muslim scholars of the present generation, who have been for long content with the left-over of others, are hardly competent for this task. What is even more tragic, is that without knowing or trying to realise the true value of this great heritage, the present generation has developed a tendency to look down upon it.

(c) Defects of Our Educational System

The third difficulty is due to the defective system of our education. Under this system of education those who choose the theological branch of learning, generally keep themselves utterly ignorant of such modern subjects as Political Science, Economics, Constitutional Law and the problems arising therefrom. Consequently, even though they spend most of their time in learning and teaching the texts and interpretations of the Qur'ān and *Hadith* and the *Fiqh* they

do not possess even an elementary understanding and grasp of current political and constitutional problems enunciated in the simplest modern terminology, let alone making a deep and scholarly study of them. Thus they remain incapable of giving any lead to the people by regarding the modern political and constitutional problems in the light of their knowledge of Islam. Instead of approaching the fount of learning themselves, they await that these problems be enunciated and explained to them in the terminology that they understand.

The other class consists of those people who have acquired modern education and who are practically in full control of all branches of State organisation. This class, though quite familiar with most of the modern problems of life, actually know very little, if at all, of the glorious heritage of Islam. Most of them are unfamiliar with even the fundamental principles and the basic directives of Islam much less that they should possess any knowledge of their necessary details and other implications. Whatever they know of Islamic constitutional law or political science or jurisprudence, they acquire it through the medium of Western education and, consequently, all their knowledge of the Qur'ān and the *Sunnah* is not only exceedingly poor, sketchy and inadequate but also is indirect and sometimes third or even fourth-hand. And it is for this reason that even such of them as sincerely and genuinely long for a renaissance of Islam are hardly capable of affording guidance to others. They search for a verdict of the Qur'ān on all modern problems

only in the language which they can understand. This is indeed a very great difficulty and is perhaps the biggest one amongst those which are hindering the framing of a truly Islamic Constitution.

(d) Ignorance Run Amuck

The fourth stumbling block in our way to Islamic system of life is the claim of some people wielding influence to give rulings without requisite knowledge of Islam. And the tragedy of the matter is that this tendency is assuming alarming proportions with the passage of time. The slogan of these people is that Islam does not recognise priesthood and therefore the '*Mulla*' cannot be the sole interpreter of Islam. Everybody has an equal right to interpret the directives of the Qur'ān and to draw inferences therefrom. There is no reason, they say, why a *Mulla's* word should be taken as being more weighty than that of a layman. Thus speak those who are conversant neither with the language of the Qur'ān and the *Sunnah* nor possess any insight in Islamic traditions. None of them has seriously devoted even a day of his life to the study of Islam and its vast literature. Instead of honestly realising their weaknesses and deficiencies and making an effort to remove them they deny the very need for acquiring knowledge and insist that they should be given a free hand to interpret Islam as they like.

Evidently, if this kind of ignorance is allowed to have its way in any one department of collective life, there would be no end to mischief. Somebody would stand up tomorrow and say that there being no "lawyer-hood" in Islam, everybody has an equal right

to pronounce authoritative verdicts on points of law, even though he knows nothing about it. Then another person may stand up and say that there being no 'Engineer-hood' in Islam, therefore he has as much a right to meddle with the Engineering problems of the country as a qualified engineer. This may be followed by a third one's assertion that there being no 'Physician-hood' in Islam, therefore everybody has an equal right to prescribe for the sick, no matter if it means having more people inside the graveyards than out of them !

I am really surprised to find even some well-read and otherwise intelligent people giving vent to such like childish ideas. Do they presume that the whole nation consists merely of ignoramuses and would applaud all such senseless assertions ? No doubt, Islam does not recognise priesthood as a class. But, have the protagonists of this slogan ever tried to understand what it implies ? It only means that Islam neither recognises the Jewish and Brahmanic principle of giving the monopoly of religious knowledge and spiritual work to a particular privileged race or tribe, nor does it uphold the Christian doctrine of the separation of the secular and the religious into two watertight compartments. Nobody can, therefore, claim in Islam to enjoy spiritual monopoly, and the "*Mulla*" or the "*Alim*" is not a titular head claiming any inherent and exclusive rights of interpreting religious laws and doctrines. On the contrary, just as anybody may become a judge or a lawyer or a doctor by properly qualifying for these professions, similarly whosoever

devotes his time and energy to the study of the Qur'ān and the *Sunnah* and becomes well-versed in Islamic learning is entitled to speak as an expert in matters pertaining to Islam.

If there is any sense and meaning in the assertion that there is no priesthood in Islam, it is only what has been stated above. It does not and cannot mean that Islam licenses everybody to start pronouncing authoritatively regarding the Qur'ān and its directives and instructions, without trying to have any insight in it. Indeed, if an empty claim to be an authority on matters secular is not acceptable anywhere, how can it be so in religious matters which pertain not only to the most important aspects of our life in this world but also to our *Iman* and the life after death ?

This fourth difficulty in our path has become the most real difficulty for the moment. For, in the case of the first three, we can hope to remove them by dint of hard work and honest labour. In fact, we have already removed them to some extent. But the solution to this last one is not so easy to find, more so because it is being wilfully used as a hurdle by those who happen to hold the reins of power one way or the other.

II

FUNDAMENTAL PROBLEMS OF POLITICAL THOUGHT

I will now discuss the fundamental problems of constitution and try to present before you briefly what guidance is available to us in this behalf from the original sources of Islam. This will help you to judge for yourselves whether Islam gives any guidance to us in the field of constitution or not and whether that guidance is merely of a recommendatory character or of a mandatory nature—so fundamentally mandatory that we cannot overlook or by-pass it, if we claim to be and wish to remain Muslims. In order to finish the discussion within the time at my disposal I propose to confine myself to the following nine basic points of an Islamic Constitution :

(1) Who is the Sovereign ? Any king or body of people ? Any class, clan or the whole nation ? Or God Almighty Himself ?

(2) What are the functions and scope of an Islamic State ? To what extent can it command allegiance from its citizens and where and when the State will lose this right ?

(3) What are the powers and functions of the various organs of this State, *i.e.*, the Executive, the Judiciary and the Legislature ? What are the rights, duties and limitations of each, and

what are their relations *inter se* ?

(4) What is the real purpose of the State ? That is, what are the objectives that it will strive to achieve and what are the fundamentals of its overall policy ?

(5) How is the government of this state to be constituted ?

(6) What will be the qualifications of persons considered eligible for running the government of this State ?

(7) What will be the conditions of its citizenship and how will a person acquire and lose this right ?

(8) What will be the fundamental rights of its citizens ? and

(9) What will be the basic obligations of its citizens towards the State ?

These questions are the key-points of political theory, and a constitution is expected to provide clear-cut answers to them.¹ We must, therefore, try to find out Islam's answer to these questions.

1. Some of the authorities on Constitutional Law have defined it as under :

••“Constitutional Law, as the term is used in England, appears to include all rules which directly or indirectly affect the distribution or exercise of the sovereign power in the State. Hence it includes (among the other things) all rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other, or which determine the mode in which the sovereign power, or the members thereof, exercise their authority. Its rules prescribe the order of succes-

(Contd. on p. 15)

(Contd. from p. 14)

sion to the throne, regulate the prerogatives of the chief magistrate, determine the form of the legislature and its mode of election. These rules also deal with Ministers, with their responsibility, with their spheres of action, define the territory over which the sovereignty of the State extends and settle who are to be deemed subjects or citizens.”—A. V. Dicey, *Introduction to the Study of the Constitution*, London, 1941 (9th edition), p. 23.

**“The objects of a constitution, in short, are to limit the arbitrary action of the government, to guarantee the rights to the governed, and to define the operation of the sovereign power.—” C. F. Strong, *Modern Political Constitution*, London, p. 10.

**“The constitution of a State is the system of laws, customs and conventions which define the composition and powers of organs of the State and regulate the relations of the various state organs to one another and to the private citizen”.—Hood Phillips, *The Constitutional Law of Great Britain and the Commonwealth*, London, 1957 (2nd edition), p. 5.

**“The term Constitution signifies the arrangement and distribution of the sovereign power in the community, or the form of the government.”—George Cornewall Lewis, *Use and Abuse of Political Terms*, p. 20.—Editor.

III

ISLAMIC CONCEPT OF SOVEREIGNTY

Let us start with the first question as to who enjoys the right to sovereignty in an Islamic State. The Qur'ān furnishes an unequivocal reply to this question. It says that sovereignty, in all its aspects, is only for God. He alone is the Creator and the real Ruler of this universe. Therefore to Him belongs the sole right of being the Sovereign over all this creation. To understand this point fully, we would be well advised to first grasp the exact purport of the word 'Sovereignty' itself.

The Meaning of Sovereignty

In the terminology of Modern Political Science, this word is used in the sense of absolute overlordship or complete suzerainty. If a person or a group of persons or an institution is to be Sovereign, it would mean that the word of that person, group or institution is law. A Sovereign has the undisputed right to impose his orders on all subjects of the State and the subjects are under an absolute obligation to obey them, be it willingly or unwillingly. No outside agency, excepting his own will, imposes any limitations or restrictions on his power to rule. No subject has any absolute right against him or in contravention of his orders. Whatever rights anybody enjoys

emanate from him and whatever rights he withdraws become extinct forthwith. It is a universal legal axiom that every right in law comes into existence only because the Law-Giver desires it to be so. If, therefore, the Law-Giver withdraws it, its very existence is obliterated and it cannot be demanded thereafter. Laws come into existence by dint of the will of the Sovereign and place all subjects of the State under an obligation to obey them ; but no law binds the Sovereign himself. In other words, he is the absolute authority, which means that, in relation to his orders, questions of good and evil and right and wrong cannot and should not arise at all. Whatever he does, is just and nobody can question his conduct or his orders and their enforcement. His behaviour is the creation of right and wrong and none can question it. It is thus inescapable that the Sovereign should be accepted as being absolutely above all aberrations and errors, even though he may not actually be so.

Such is the nature and meaning of the concept of sovereignty as enunciated by the modern 'lawyers and jurists.'¹ Nothing short of this can be termed as

1. 'Sovereignty', is derived from the Latin word *superanus* which means supreme. The definitions of the term are varied but "It always signifies a highest governmental and legal authority of some sort." (Francis W. Coker, "Sovereignty", *Encyclopaedia of Social Sciences*, Vol. 14, p. 265). Jean Bodin who first developed the concept in modern political thought defined it as "*Summa in civis ac subditos legibusque soluto potestates*", i.e., the supreme power of the State over citizens and subjects, unrestrained by law. Grotius defined it as "the supreme political

sovereignty. This sovereignty, however, remains a mere legal supposition so long as some active paramount capable of enforcing it is not available. In the language of Political Science, therefore, legal sovereignty without political sovereignty has no practical existence. Political sovereignty thus naturally means ownership of the authority of enforcing legal sovereignty.

The questions that now arise are : Does such sovereignty really exist within the bounds of humanity ? If so, where ? And who can be construed and

(Contd. from p. 17)

power in him whose acts are not subject to any other and whose will cannot be overridden". Blackstone conceives it to be "the supreme, irresistible, absolute, uncontrolled authority in which the *jura summi imperii* reside" : Jullinck defines it as that "Characteristic by virtue of which it cannot be legally bound except by its own will, or limited by any other power than itself." Burges characterises it as "original, absolute unlimited power over the individual subject and over all associations of subjects." He calls it "the underived and independent power to command and compel obedience." The attributes and characteristics of sovereignty are said to be permanence, exclusiveness, all-comprehensiveness, indivisibility and absoluteness. See Edward McChesney Sait (Ed.), *Masters of Political Thought*, Vol. II. London, 1949 ; James Wilford Garner, *Political Science and Government*, American Book Co. & World Press (Private) Ltd., Calcutta, 1958 ; Bryce, "The Nature of Sovereignty", *Studies in Jurisprudence and History*, Vol. II, 1901 ; Harold J. Laski, *The Problem of Sovereignty*, London, 1917, and *Grammar of Politics*, London (for a critique of the concept of absolute sovereignty) ; Mattern, *History of the Theory of Sovereignty since Rousseau*, London 1910 ; Mahajan and Sethi, *Recent Political Thought*, Dehli, 1956, and Jacques Martin, "The Concept of Sovereignty" : *Man and the State*, Chicago, 1957.—Editor.

treated as being invested with it ?

Is there any monarchical system where the monarch possesses all these attributes of sovereignty today, or has ever possessed them in the past, or can be expected to possess them in the future ? We may take the case of any of the most powerful monarchs and analyse the myth of his sovereignty only to find that all the authority enjoyed by him was in practice always limited by a number of external factors which were beyond his control.

If not in monarchy, can we name any democracy which might be regarded as being fully sovereign in the real sense of the term ? Here again the reply must be in the negative. For it will be found on close analysis that, behind all the parade of absolute power, there are a number of factors variously qualifying and restraining it and which are beyond the control of the so called "sovereignty."¹

It is exactly for this reason that whenever the experts of Political Science, imbued with this ideo-

1. "But in the political sphere, and with respect to men or agencies, in charge of guiding people towards their earthly destinies, there is no valid use of Sovereignty.....If the State is accountable and subject to the supervision, how can it be sovereign ? What can possibly be the concept of a sovereignty liable to supervision and accountable ? Clearly, the State is not sovereign. Nor are the people. Nor do they exercise a power without accountability.....the power they exercise, either by mass reflexes and extra-legal means or through regular channels of a truly democratic society is in no way a power without accountability,"—Jacques Martin, *Man and the State*, Chicago, 1957, pp. 50-53.—*Editor*.

logical sense of sovereignty, have endeavoured to locate the possessor of such sovereignty in human society, they have invariably failed. For they can find nobody of the size whom this cap would fit—that is, nobody from amongst the human beings. Even in the entire gamut of creation, there is no creature who can rightly claim to possess all the attributes of sovereignty. The Qur'ān stresses this very truth when it says repeatedly that sovereignty belongs to God and God alone. He is Omnipotent, *i.e.* He can do whatever He likes ;¹ He has to refer to none and to render account to none ;² He is the source and fount of all authority ;³ He is the only one whose authority and power nothing can limit or restrain :⁴ and He alone is above all aberration and error.⁵

Secondly, even if we close our eyes to this truth and invest somebody other than God with this sovereign status, would it really become a human being to be so invested that his mere word should be law, that there should be no right in contravention of or in contradiction to his will, that he should have to be implicitly and explicitly obeyed, and that no question of right or wrong, virtue or vice, should be possible to be raised in respect of his words or wishes.

Whoever actually enjoys these attributes, whether an individual or an institution or a people, the question will inevitably be asked : What justification is there for the investment of those powers and for that

1. *Al-Qur'ān*, XI : 107.

2. *Ibid.*, XXI : 23.

3. *Ibid.*, XXIII : 88.

4. *Ibid.*

5. *Ibid.*, LIX : 23-24.

sovereign authority? The most that can be said in reply to this would be that a general consensus of opinion justifies such a course. But, are we prepared to accept such a contention? Suppose a person willingly auctions himself. Does the purchaser really become his owner? If it is not so, we may well ask: How can then mere acceptance by the people of such an investment justify this alleged sovereign status? The Qur'ān unravels this knot by declaring that no creature has the right to impose his will or words on other creatures and that this is a right exclusively reserved for God Himself and is inherent in Him by reason of His being the Creator. It says:

“Verily, His is the Creation and His is the Law.”¹

This is such a rational and convincing position that none can reasonably contest it, and surely not those who accept God as the Creator of the universe.

The third point which automatically arises is that if we invest some human agency with this super-human mantle of sovereignty, overlooking the inherent shortcomings, would it be of any service or advantage to humanity? No human being, whether invested with this status individually or collectively, can easily digest such a huge dose of sovereignty wherein he has unlimited powers to enforce his will over large numbers of people. Such authority, whenever and wherever invested in a human agency, has invariably resulted in injustice and maladministration of the most contagious type.

1. *Al-Qur'ān*, VII : 54.

Evil is inherent in the nature of such a system and whenever humanity has adopted it, evil has inescapably raised its head. For, he who is really not sovereign, has no right to be sovereign, whenever made so artificially, cannot but use his powers unjustly. This is exactly what the Qur'ān enunciates in these words :

“And those who do not make their decisions in accordance with that revealed by Allāh, are (in fact) the unjust.”¹

God's *de jure* Sovereignty

That is why it has been definitely laid down in Islam that *de jure* sovereignty also belongs to Allāh Whose *de facto* sovereignty is inherent and manifest in the the working of the entire universe and Who enjoys exclusively the sovereign prerogative over all creation. The Qur'ān repeatedly stresses it with an increasing emphasis. At one place it says :

“The Command is for none but God : He hath commanded that ye obey none but Him : that is the right path.”²

At another place it enjoins :

“Follow the revelation sent unto you from your Lord, and do not follow the (so-called) guardians other than Him.”³

At a third place, any deviation from this position of acceptance of his *de jure* sovereignty has been

1. *Al-Qur'ān*, V : 45.

2. *Ibid.*, XII : 40.

3. *Ibid.*, VII : 3.

described as plain and unadulterated *Kufr* (i.e., disbelief).

“And those who do not make their decisions in accordance with that revealed by Allāh, are (in fact) the disbelievers.”¹

These injunctions clearly show that the acceptance and admission of the *de jure* sovereignty of God is *Islam* and its denial is *Kufr*.

The Role of the Prophets

The Prophets alone are the true agencies through whom the directives and the commands of the Almighty are communicated to mankind. That is why it is ordained in Islam that the Prophets must be obeyed implicitly and without any ‘ifs’ and ‘buts’. You will note in the Qur’ān that whosoever has claimed to have come from God as His Messenger, has unequivocally proclaimed : “Fear God and obey me.”² The Qur’ān enunciates this as definite principle in these words :

“Each and every Messenger who was sent by Us was sent for the sole purpose that he should be obeyed under the sanction of Allāh.”³

And again :

“He who obeys the Messenger obeys God.”⁴

The stress on this fact is so definite that the Qur’ān refuses to recognise him as a Muslim who declines to accept the Prophet as the final adjudicat-

1. *Al-Qur’ān*, V : 44.

2. *Ibid.*, XXVI : 108, 126, 144, 163, 179.

3. *Ibid.*, IV : 64.

4. *Ibid.*, IV : 80.

ing authority. Thus it says :

“Nay, O Muhammad ! by the Lord, they will not be believers until they accept you as the final arbiter in all their disputes and submit to your decision whole-heartedly without any heartache.”¹

Again, the Qur’ān prescribes thus :

“It is not for a believing man or a believing woman to have a say in any affair when it has been decided by Allāh and His Messenger : and whoever disobeys Allāh and His Messenger, he goes astray manifestly.”²

Viewed against this background, there is no room to doubt the premise that in Islam *de jure* sovereignty exclusively and solely belongs to God and under His ægis to His Prophet (peace be on him). As a matter of fact the Prophet (peace be on him) is the physical manifestation of God’s *de jure* sovereignty on earth and His mouthpiece for this purpose.

The Position of the State

After this interpretation of the basic constitutional problem of sovereignty, the only question that remains to be answered is as to who enjoys the political sovereignty in this set-up ? Unhesitatingly the reply would be that political sovereignty too, as a matter of fact, belongs to God and God alone. Whatever human agency is constituted to enforce the political system of Islam in a State, will not possess real sovereignty in the legal and political sense of the term,

1. *Al-Qur’ān*, IV : 65.

2. *Ibid.*, XXXIII : 36.

because not only that it does not possess *de jure* sovereignty but also that its powers are limited and circumscribed by a supreme law which it can neither alter nor interfere with. The true position of this agency has been described by the Qur'ān itself. The term used by the Qur'ān for this agency is "*Khilafat*" which means that such an agency is not sovereign in itself but is the vicegerent of the *de jure* and the *de facto* sovereign, viz., God Almighty.

The Doctrine of Democratic Khilafat

By the word 'vicegerency' your mind should not turn towards the Divine Right of Kings, or to Papal authority. According to the Qur'ān, the vicegerency of God is not the exclusive birthright of any individual or clan or class of people ; it is the collective right of all those who accept and admit God's absolute sovereignty over themselves and adopt the Divine Code, conveyed through the Prophet, as *the law* above all laws and regulations. It says :

"Allāh has promised such of you as have become believers and done good deeds that He will most surely make them His vicegerents in the earth."¹

The concept of life makes the Islamic *Khilafat* a democracy, which in essence and fundamentals is the antithesis of the Theocratic, the Monarchical and the Papal forms of government, as also of the present-day Western Secular Democracy. For, according to the modern Western concepts, democracy is that philo-

1. *Al-Qur'ān*, XXIV : 55.

shopy of political organisation in which it is presumed that the people possess absolute sovereignty. On the other hand, what we Muslims call democracy is a system wherein the people enjoy only the right of *Khilafat* or vicegerency of God Who alone is the Sovereign. In Western Secular Democracy, the government is established or changed by the exercise of the will of the common voters. Our democracy also envisages the same ; but the difference lies in the fact that whereas in the Western system of democratic State enjoys the right of absolute authority, in our democracy the *Khilafat* is bound to keep within the limits prescribed by the Divine Code.

IV

THE STATE : ITS ORGANS AND ACTIVITIES

The foregoing discussion over the Islamic concept of *Khilafat* automatically brings us to the question : What is the scope of activities of an Islamic State and the nature of limitations imposed thereon ? And the answer is that as this State is a vicegerent of God and accepts His *de jure* sovereignty, the scope of its activities will naturally be restricted within the limits ordained by the Almighty Himself. This means that the State can act only within the framework of these limitations and is not empowered to infringe or overstep them. This is not only an inference deduced from the acceptance of God's sovereignty but the Qur'ān emphasises it directly also and warns repeatedly in clear words :

“These are the limits ordained by God ; so do not transgress them.

If any do transgress the limits ordained by God, such persons are the unjust.”¹

The positive and comprehensive principle which the Qur'ān lays down in this respect is :

“O you who believe, obey Allāh and obey His Messenger and those from among yourselves who hold authority ; then if there is any dispute

1. *Al-Qur'ān*, II : 229.

between you concerning any matter, refer it to Allāh and His Messenger, if you (really) believe in Allāh and the Last Day. This is the best course (in itself) and better as regards the result.”¹

According to the above injunction, obedience to the State is subject to the obedience to God and His Prophet and not independent of it; which clearly means that on insisting to violate the commands of God and the limitations prescribed by the Prophet (peace be on him), the State loses the right of claiming obedience from the people. This very truth has been explained by the Prophet in these words :

“There is no obedience for him who disobeys God.”²

“There is no obedience to any creature if it involves disobedience to the Creator.”³

The other principle which follows from the above injunction of the Qur’ān is that whatever dispute and difference of opinion may arise in the Muslim Society, be it between individuals or groups, or between the people and the State, or amongst the various organs and departments of the State, it should be referred to that Fundamental Law which God and His Prophet have given to us. Thus the very nature of this principle demands that there should be an institution in the State which should undertake to adjudicate in strict accordance with the Book of God and the *Sunnah* of the Prophet.

1. *Al-Qur’ān*, IV : 59.

2. Tibrani.

3. *Sharh al-Sunnah* : Mishkat No. 3515.

Legislature, Executive and the Judiciary

Now we come to the fourth question : What are the powers and functions of the various organs of the State and what are their respective fields of action ? Let us discuss this in a little detail.

Function of the Legislature

The Legislature is what in the old terminology of *Fiqh* was known as the "Body which resolves and prescribes" (*Ahl al-hal wa'al-'aqd*). It is quite clear that a State established on the basis of God's *de jure* sovereignty, cannot legislate in contravention of the Qur'ān and the *Sunnah* even if the consensus of opinion of its people demands it. I have just related the Qur'ānic injunction which lays down that where Allāh and His Prophet have given a ruling in a matter, no Muslim has any right to decide it on the basis of his own opinion¹ and that those who do not decide in accordance with the Divine Code, are Unbelievers.² It automatically follows from these injunctions, that it is beyond the purview of any legislature of an Islamic State to legislate in contravention of the Directives of God and His Prophet, and all such pieces of legislation, even though approved by the Legislature would *ipso facto* be considered *ultra vires* of the Constitution.

One may pertinently ask here that if this is the State of affairs in an Islamic polity, what is the function and scope of a Legislature in the Islamic State ?

1. *Al-Qur'ān*, XXXIII : 36.

2. *Ibid.*, V : 44.

The reply is that in spite of this limitation the Legislature in an Islamic State has a number of functions to perform :

- (i) Where the explicit directives of God and His Prophet are available, although the legislature cannot alter or amend them, yet the legislature alone will be competent to enact them in the shape of sections, devise relevant definitions and details and make rules and regulations for the purpose of enforcing them.
- (ii) Where the directives of the Qur'ān and the *Sunnah* are capable of more than one interpretation, the legislature would decide which of these interpretations should be placed on the Statute Book. To this end, it is indispensable that the legislature should consist of a body of such learned men who have the ability and the capacity to interpret Qur'ānic injunctions and who, in giving decisions, would not take liberties with the spirit or the letter of the *Shari'ah*. (This point really falls under the purview of Elections). Fundamentally, it will have to be accepted that for the purposes of legislation, a legislature has the authority to accord preference to one or the other of the various interpretations and to enact the one preferred by it into law, provided of course, that it is only an interpretation and not a perversion and camouflaged deviation from the law.

- (iii) Wherever there is no explicit provision in the Qur'ān or *Sunnah*, the function of the legislature would be to enact laws relating to the same, of course, always keeping in view the general spirit of Islam, and where previously enacted laws are present in the books of *Fiqh* to adopt any one of them.
- (iv) Wherever and in whatever matters even basic guidance is not available from the Qur'ān, or the *Sunnah*, on the conventions of the Righteous Caliphs, it would be taken to mean that God has left us free to legislate on those points according to our best lights. In such cases, therefore, the legislature can formulate laws without restriction, provided such legislation is not in contravention of the letter and the spirit of the *Shari'ah*—the principle herein being that whatever has not been disallowed is allowed.

We have deduced these four functions from the Qur'ān, the *Sunnah*, the usages of *Khilafat-i-Rashidah* and the opinions and rulings of eminent jurists of Islam. If need be, I can quote their sources but I think that whatsoever has grasped fully the fundamental principles of the Islamic State, can also realise by mere commonsense that in a State of this character, these should constitute the functions of the legislature.

Function of the Executive

We now come to the Executive. In an Islamic State, the real purpose of the Executive is to enforce

the directives of God conveyed through the Qur'ān and the *Sunnah* and to bring about a society ready to accept and adopt these directives for practical application in its life. It is this characteristic of the Executive of Muslim State which distinguished it from the executive of a non-Muslim State. The words *Ulul-Amr* and *Umara'* have been used for the Executive in the Qur'ān and the *Hadith* respectively, which enjoin obedience to it on the condition that it obeys God and His Prophet (peace be on him) and avoids the path of sin and transgression.

The Qur'ān is explicit in this connection when it says :

“And obey not a person whose heart We have permitted to become unmindful of Our remembrance, one who is following the dictates of his own desires and his case is that in which due limits are transgressed.”¹

And again :

“Obey not those who overstep the limits (We have set) and create trouble on the earth, and have no tendency to reform themselves.”²

The Holy Prophet has also repeatedly stressed it very clearly and emphatically. He says :

(i) “Even if a defaced slave is made your *Amir*, listen to him and obey him as long as he leads you in accordance with the Book of God.”³

1. *Al-Qur'ān*, XVIII : 28.

2. *Ibid.*, XXVI : 151-2.

3. Muslim, *al-Sahih*.

- (ii) "Obedience is obligatory on every Muslim, whether he likes the command or not, unless, he is ordered to commit sin,—in which case the obligation lapses automatically."¹
- (iii) "There is no obedience in an act of sin. Obedience is obligatory only in virtue."²
- (iv) "Whosoever innovates anything contrary to the spirit of this order of Ours, is everlastingly cursed."³
- (v) "Whosoever honours and reveres an innovator, helps in bringing down the edifice of Islam."⁴

No doubt can exist, after these clear directives, as to the exact nature of the functional limits of the executive and the administrative powers in Islam.

Function of the Judiciary

The scope of the judiciary (which in the terminology of Islamic Jurisprudence is called *Qada*) also becomes well prescribed by the acceptance of the *de jure* sovereignty of God Almighty. When Islam established its State in accordance with its eternal principles, the Prophet himself was the first judge of that State, and he performed that function in strict accordance with the Law of God. Those who succeeded him, had no alternative but to base their decisions on the Law of God as transmitted to them through the Prophet.

In the Qur'ān one full section of the fifth chapter,

1. *Muttafiq Alaih*, i.e., Both the authentic books of *Hadith*, Bukhari and Muslim, quote it.—*Editor*.

2. *Ibid.* 3. *Ibid.* 4. Al-Baihaqi, *Sho'ab al-Iman*.

Al-Ma'idah, deals specifically with this very subject.¹ There the narration begins with the history of Israel, going next to the Christians, and finally refers to the Muslims. We have been told that God revealed the *Torah* to Moses, after which all the Israelite Prophets and the Jewish Rabbis followed it as the Code of Law in all their affairs, settling the disputes of the people in accordance with it.² Afterwards came Jesus with a fresh Revelation, and the *Qur'ān* tells us that his followers too were ordained to decide their affairs in accordance with that revelation. Then comes the reference to the Holy Prophet Muhammad (peace be on him). Addressing him directly God Almighty says :

“So judge between them by that which Allāh hath revealed, and follow not their desires away from the truth that has come unto thee.”³

The discourse finally ends with these words :

“Is it the judgment of the time of Ignorance that they are seeking ? Who is better than Allāh for judgment for a people who have certainly (in their belief) ?”⁴

During the course of this peroration, it has been stated with emphasis that those who do not adjudicate in accordance with the Divine Code, are unbelievers and they are unjust and rebels.

1. *Al-Qur'ān*, V : 44-50.

2. One finds the following reference in the Old Testament : “If they speak not according to this word, it is because there is no light in them” (*Isiah*, 8 : 20) and “cursed be that confirmeth not all the words of this law to do them.” (*Deuteronomy* : The Fifth Book of Moses, 27 : 26)—*Editor*.

3. *Al-Qur'ān*, V : 48.

4. *Ibid.*, V : 50.

After this, it need hardly be stressed that the Courts of Law in an Islamic State are established for the purpose of enforcing the Divine Code and not to violate it as they are doing at present in almost all the Muslim States.

Relations among the Different Organs of the State

The only question that now remains to be discussed about the various organs of the State is : In what form are these organs of the Islamic State—the legislature, the executive and the judiciary—related to one another ? There are no clear-cut instructions on this point. But the conventions of the Prophet's period and of the period of the Righteous Caliphate afford us all the necessary guidance. From these conventions we learn that the Head of an Islamic State is, as such, the supreme head of all these different organs. The Prophet enjoyed the same status and this position was maintained by all the Righteous Caliphs.

But under the Head of the State the three organs functioned separately and independently of one another. The body called "*Ahl al-hal wa'al-'aqd*" whose function it was to advise the Head of the State in matters of law, administration and State-policy was a separate entity. Then there were the executive officers who had no say in judicial matters which were dealt separately and independently by the Judges (*Qadis*).

In all important matters of the State, such as formulating a policy or giving a ruling in some intricate administrative or legal problems, the Caliphs invariably consulted the *Ahl al-hal wa'al-'aqd* and as

soon as the requisite measure of agreement was reached, the work of this body was over.

Executive officers worked directly under the Caliphs. They appointed them to carry out the administration under their direct supervision and guidance.

The *Qadis* were also directly appointed by them. But the Caliphs could not ordinarily terminate their services nor influence their decisions, so much so that if in their personal capacity or in their capacity as the executive head, anybody brought a suit against the Caliphs, they had to appear and plead their cases before the *Qadi* like any commoner.

We fail to encounter even a single instance where the same person was simultaneously a *Qadi* and a Collector of the same area ; or where any Collector or Governor or even the Head of the State interfered with a judicial decision. Nobody, not even any of the most important dignitaries of the State, was exempt from appearing, before the *Qadi* for pleading in his own civil or criminal case.

We can amend or alter the details of this set-up according to our existing requirements. But the fundamental principles we will have to keep intact. For instance, we can reconsider the powers of the Head of the State and alter them as much as necessary. It is evident that at present we can hardly expect to have a Head of the State of the same moral calibre and spiritual standard as the Righteous Caliphs. We can, therefore, consider and restrict his administrative powers in order to safeguard against dictatorial tendencies. We may also restrain him from hearing

and deciding cases, so that he may have no opportunity to obstruct the course of justice.¹

Likewise we may make some other changes, also in this set-up, as for instance :

(1) We may make fresh rules and regulations to suit our present needs for the election of the Head of the State and may also enact bye-laws for conducting the business of the legislature.

(2) We may specify and fix the powers and the status of the various courts.

Two questions may be asked at this stage. Firstly, whether there is room in Islam for the Judiciary to reject or to restrict the powers of the legislature in respect of enacting laws in contravention of the Qur'an

1. On this point, a listener asked as to what was the source and authority for this opinion. The speaker replied that he derived support for this argument from the fact that during the period of the Righteous Caliphs, the Executive and the Judiciary were entirely separate and even in the person of the Head of the State these two branches of the Government were amalgamated not by virtue of any explicit injunction of the Qur'an or the *Sunnah* but by reason of people's absolute faith in the integrity, honesty and devotion to God and His Prophet of these persons and because of the assurance that they would never permit so much faith in the Caliphs that they positively wanted them to be the "courts of last appeal" in order to be sure that even if justice was denied to them elsewhere, it would ultimately be available to them from there. If we have no longer amongst us personalities worthy of such reliance and faith, we certainly are not compelled by any injunction of the Qur'an and the *Sunnah* to keep the two important positions of the Chief Justice and the Highest Executive amalgamated in the person of the Head of the State.

and the *Sunnah*. I know of no specific ruling on this question, but the convention established during the reign of the Righteous Caliphs go to show that the Judiciary did not enjoy or exercise such powers at that time. At least, there is no instance of any *Qadi* taking such an action. But here again the reason, in my opinion, is that the members of the legislature at that time had very deep and true insight in the Qur'ān and the *Sunnah* and almost all the Caliphs too were the most reliable persons in all respects. Under them, therefore, there was no real danger of any such legislation taking place which was contrary to the spirit of the Qur'ān and the *Sunnah*. Even today, if we could ensure that no legislature will enact in contravention of the spirit of the Qur'ān and the *Sunnah*, the Judiciary need not have the authority to reject the decisions of the legislature. But if it cannot be so, then the only satisfactory course would be to give the Judiciary powers to declare void and *ultra vires* of the constitution all laws and legislations enacted in contravention of the Qur'ān and the *Sunnah*.¹

The other question that may be asked is : What, in Islam, is the correct position of the legislature ? Is it only an advisory body for the Head of the State, whose advice could be accepted or rejected by him at his discretion, or, is the Head of the State bound to accept their unanimous or majority recommendations ? In this respect, the Qur'ān prescribes thus :

1. This stand has also been endorsed by all the leading *'Ulama* of Pakistan. See Appendix II, *Islamic Law and Constitution* by the same author.—*Editor*.

“They manage their affairs by mutual consultation.”¹

Addressing the Prophet as the Head of the State, the Qur’ān ordains thus :

“Consult them in the conduct of affairs. And when thou art resolved, then put trust in Allāh.”²

These two verses make consultation compulsory and also direct the Head of the State that when, after mutual consultations, a decision has been taken by him, he should enforce it with determination, having full faith in God. However, even this does not furnish a clear reply to our query, and I have been unable to discover any definite ruling on this point in the books of *Hadith* either. It is the conventions of the Caliphs and the judgments of the eminent Jurists of Islam that finally guide us to the conclusion that the *de facto* responsibility for all administration rests with the Head of the State. And the Head of the State, although obliged to consult his advisers (*i.e.*, the legislature), yet is under no obligation to sanction, follow or adopt their unanimous or even majority verdict or opinion. In other words, he can always exercise his “veto”.

But this, when expressed in that precise form, can cause extensive misunderstanding because in modern society, people try to interpret these things with reference to present-day environments, ignoring entirely the background attending the establishment of these conventions. In the period of the Righteous Caliphs,

1. *Al-Qur’an*, XLII : 38.

2. *Ibid.*, III : 159.

persons who were acting as advisers were not the leaders or members of separate organized parties, nor were they hemmed in by parliamentary procedures which is a feature of the modern parliamentary system. They did not come fore-armed with policies and programmes drawn up in advance at party meetings. In their case, whenever asked to assemble and advise, they came with unbiased hearts and open minds and in their individual capacity, and the Caliphs themselves attended the sittings with them. The problem was freely discussed, and opinions both for and against were fearlessly given. In the end, the Caliph weighed all the arguments and exercised his own judgment, after which he gave his final verdict,— *a verdict which was generally such that the entire assembly accepted it.* Seldom did it happen that someone refused to be converted to it; but even so, he would respect it, came from the Caliph. In practice, however, despite their disagreement, they used to accept his final verdict without mental reservation and followed that whole-heartedly.

During the whole period of the *Khilafat-e-Rashidah* there is not a single instance where the differences of the advisers could force a voting; and there are only two instances where a Caliph ignored the unanimous opinion of his advisers and decided to act against it on his own. One was the case of permitting *Usamah* to proceed on his military campaign, and the other was the matter of waging war against the "apostates". But even in these two cases, the basis on which the Companions ungrudgingly accepted the decisions of the

Caliph was not so much the right of veto of the Caliph, whereby they would be compelled to accept it, but the fact that the Companions had absolute faith in his deep Islamic insight and wisdom. Hence, when they observed him preferring his own individual opinion to the unanimous opinion of his advisers mainly in the interests of the State, they reconciled themselves to his opinion with very good grace. Not only that they freely admitted afterwards that his opinion was certainly the better one and that had he not been so firm, immense harm would have been done to Islam at that early stage. It is now, an undeniable fact of Islamic history that Caliph 'Umar who in the beginning was opposed to the opinion of Caliph Abu Bakr in the matter of the "apostates", openly accepted his error of judgment later on and declared that God Almighty had endowed the first Caliph with better insight and judgment and that whatever he had decided was really the right course.

We can judge from these cases how the system of veto developed in Islam and in what environment were these precedents established. If, therefore, the method of consultation is observed in its true spirit today also and the character of "the people who are consulted" is similar to that which existed in the days of the Caliphs, undoubtedly there would be no better line of action than the one adopted then. Following it to its logical conclusion, however, we can say that, in a consultative body of this kind, if the Head of the State and his advisers stick to their own individual opinions and neither of them is prepared to recede in favour of

the other, recourse may then be had to referendum, after which the one whose opinion is rejected by the people should resign. But so long as it is not possible in our country to create a consultative body of that calibre and to foster that spirit and that mentality, there is no other alternative but to restrict and to subordinate the executive to the majority decisions of the legislature.

The Purpose of the State

We now come to a very important point : What are the fundamental objects for which Islam advocates the establishment of an Islamic State ? These objects, as defined and explained in the Qur'ān and the *Sunnah*, are as follows :

The Qur'ān says :

“Certainly We sent our Messengers with clear proofs, and sent down with them the Book and the Balance, so that people may conduct themselves with equity.”¹

At another place it has been said :

“(Muslims are) those who, if We give them power in the land, establish the system of *Salat* (worship) and *Zakat* (poor-due) and enjoin virtue and forbid evil.”²

The Holy Prophet (peace be upon him) said :

“Allāh brings to an end through the State what He does not eradicate with the Qur'ān.”³

In other words, the evils which are not eradicated through the preachings of the Qur'ān, need the coercive

1. *Al-Qur'ān*, LVII : 25.

2. *Ibid.*, XXII : 41.

3. Quoted, *Tafsir Ibn al-Kathir*.

power of the State to eradicate them.

This means that the main objects of an Islamic State are to enforce and implement with all the resources of its organised power that reformatory programme which Islam has given for the betterment of mankind. Mere establishment of peace, mere protection of national frontiers, mere endeavour to raise the standard of living of the common man do not form its ultimate goal nor do they constitute the characteristics which distinguish the Islamic State from the non-Islamic States. Its distinction lies in the fact that it has to encourage and popularise those good practices which Islam desires humanity to adopt and to discourage, eradicate and crush with full force all those evils of which Islam aims to purge mankind.

V

THE INSTITUTION OF GOVERNMENT

How, then, should the Government of a State based on these foundations be formed? In this connection the most important point is the appointment of the Head of the State, termed as *Imām* or *Amir* or *Khalifah* (Caliph) in Islamic terminology. In order to fully understand the stand-point of Islam with regard to this we will have to refer to its initial history.

Election of the Head of the State

As all of us are well aware, it was more than 1300 years ago, that the corner-stone of what is called Islamic Society was laid in the town of Mecca under circumstances intensely inimical and highly hostile. To initiate and then gradually to develop an Islamic society, in the face of that stern opposition, was the life-mission of our Great Prophet (peace be upon him). And, when, after considerable development this Islamic society had achieved political independence and its internal organization had progressed to the stage of a regular State, our Great Prophet Muhammad (peace be upon him) became and was accepted as its first Head. He was not elected by anybody. He had been chosen for this very task by God Almighty Himself.

For ten years he performed the duties of the Head of that State and then his mighty soul went to its

eternal abode. He left behind no explicit instructions or nomination for the election or appointment of his successor. On account of this abstinence on his part, and by reason of the explicit Qur'ānic injunction that all matters affecting the *Ummah* should be decided by consultation, the Companions rightly inferred that with the passing away of the Prophet, selection and appointment of the Head of the Islamic State had been left to the elective discretion of the Muslims, which was to be exercised in accordance with the spirit of the said Quranic injunction.¹

The first Caliph, Abu Bakr, was thus elected publicly. And when his last moment came, although he was personally convinced that 'Umar was the fittest person to be the Caliph, he did not forthwith nominate him as his successor but consulted the most prominent among the Companions, jointly and severally, and then dictated his will in favour of 'Umar. Thereafter, despite his serious illness, he addressed the Muslim masses thus :

“Are you willing to accept him your *Amir* whom I nominate as my successor? God is my

1. No doubt, the Shi'a sect of the Muslims holds the belief that, like the Prophet, the Imams too are chosen and nominated by God Almighty Himself. This divergence of belief from the rest of the *Ummah*, i.e., the *Ahl al-Sunnah* has, however, no practical value now, as with the disappearance of the 12th Imam, the Imamate remains in abeyance until he reappears. For all actions in respect of the collective problems of Muslims, therefore, reference has got to be made to some such person who has not been directly chosen by God Almighty but elected by the Muslims themselves.

Judge, I have left no stone unturned in coming to (the best) conclusion in this matter. I am not nominating anybody related to me. I nominate 'Umar son of Khattab as my successor. Therefore, listen you all to him and obey him."

From the crowd the people cried : "We have heard and we accept."¹

Here we find that Abu Bakr only suggested and recommended the name of 'Umar after consultations with those in whom the people had confidence, and then it was put to the vote of the Muslim masses who accepted him.

Again, when 'Umar was on the point of leaving this world, he noticed that out of the large number of the most reliable Companions of the Prophet, only six persons were then alive to whom the Muslim masses could look for guidance and from amongst whom his successor could be chosen. He, therefore, created a Consultative Body of those six persons and delegated to them the task of selecting the next Caliph from amongst themselves, prescribing that whosoever tried to become the *Amir* without the approval of the Muslim masses was to be beheaded.²

This consultative body ultimately delegated its task to one of its members, 'Abd al-Rahman Ibn 'Auf, who went round Madinah to gauge the feelings of the general public in the town. He ascertained the opinions

1. Tabari, *Tarikh al-Umam wa'al-Maluk*, Vol. II, Cairo p. 618.

2. Muhammad Hussain Haykel, *Al-Farooq 'Umar*, Cairo, Vol. II, p. 313.

of the women-folk and the reactions of the students of schools also and even of the pilgrims from various parts of the country, who visited Madinah after their pilgrimage at Mecca. After this thorough survey, he came to the conclusion that the Muslim masses had the greatest possible faith in two persons, 'Ali and 'Uthman, of these two, the opinion being slightly more in favour of 'Uthman. So the vote was cast in his favour and he was openly accepted as the Caliph.

Then occurred the tragic and deplorable incident of 'Uthman's brutal assassination, which created a serious situation. Some of the Companions, therefore, assembled in the house of 'Ali and told him that nobody was there more suited than him to be the *Amir* of the Muslims and he should, therefore, shoulder that responsibility. 'Ali declined to do so. But when these people insisted, he, at last, agreed saying :

“If you wish it to be so, then come to the mosque, for my acceptance as *Amir* cannot be secret nor without the approval of the Muslim masses.”¹

Consequently, 'Ali went to Prophet's Mosque where people were assembled. And it is an incontrovertible fact that the majority of the people accepted him as their Caliph, even though this acceptance was not unanimous.

Lastly, when 'Ali was murderously attacked and the time of his death drew near, he was asked if he permitted the Muslims to accept his son Hasan as

1. Tabari, *op. cit.*, Vol. III, p. 450.

their *next Amir*, his reply was clear :

“I neither ask you to do so, nor forbid you from doing so. You can decide according to your lights.”¹

This, therefore, is the accepted convention of the period of the Caliphate regarding the appointment and election of the Head of the Islamic State, and this is also the sum-total of the collective conduct of the Companions in this important matter. It is based as much on the Prophet’s abstinence from nominating his successor as on the Qur’anic injunction that all important decisions in matters of collective interest should be taken by consultation. The points that can be clearly inferred from these authentic constitutional precedents are :

(1) In an Islamic State, the election of its Head depends entirely on the will of the general public and nobody has the right to impose himself forcibly as their *Amir*.²

1. Tabari, *op. cit* , Vol. IV, p. 112.

2. There are some people who say that if this be accepted as the principle of Islam, what about the verdict of eminent jurists and learned men of the days of the Muslim kings who accepted the authority of those who became the rulers through sheer force of arms. As a matter of fact such people mix up and confuse the following two entirely different and distinct positions adopted by the Muslim scholars of the past :

(i) All the eminent scholars are unanimously of the opinion that the only proper and *permissible* method is that of election in which the will of the Muslim masses should express itself freely.

(2) No clan or class has a monopoly of this office.¹

(3) The election should take place with the free-will of the Muslim masses and without any coercion or force.

How this opinion of the masses is to be determined, is a point where Islam does not limit its scope by prescribing specific methods. Different methods can be adopted in different circumstances, provided such methods are designed only to determine as to who enjoys the greatest measure of nation's confidence and regard.

The Formation of the Consultative Assembly

After the problem of the election of the *Amir* the next most important problem is : How are the members of the Consultative Assembly (*Majlis-e-Shura*) to be elected and who shall elect them ?

(Contd. from p. 48)

(ii) Even the most modest attitude adopted by our learned men does not go beyond the fact that such tyrants can only be tolerated in the common interests of collective security, provided such an *Amir* does not interfere with the fundamentals of Islam. In other words, the most that these people do it not to concede a right to revolt, because that would lead to anarchy only. This does not at all mean that persons holding this opinion approve of such tyrants and prefer them to properly elected *Amirs*.

1. In relation to this matter also, certain people raise doubts as to how to reconcile it with the *Hadith* in which the Quraysh have been declared to be the fittest for the office of the Caliphate. I have already replied to this in my book : "*Rasa'il wa Masa'il*". Vol. I, p. 76, 3rd impression, Lahore.

From a superficial study of the problem it has been erroneously concluded that because, during the period of the Caliphs, the members of the Consultative Assembly were not chosen through organized general elections, there is no place of elections in Islam and it has been left solely to the discretion of the *Khalifah* as to whom he should consult. This error is due to the fact that the precedents of those times are applied to modern practices without reference to the then prevailing conditions. The correct way would be to apply them only with reference to the then existing circumstances and to make an honest attempt to understand the spirit of those principles and their details as interpreted within the frame-work of the then existing conditions.

Islam arose in Mecca as an ideological movement. And it is an inherent feature of all ideological movements that persons accepting that movement first, are counted as the true Companions and friends as well as advisers of the Leader of that movement. Likewise in Islam, persons who were the first to associate themselves with the Prophet and his movement, naturally and automatically became his advisers whom he invariably consulted in all cases wherever clear and definite injunctions of the Qur'ān were not available. When, however, new blood entered the Islamic body politic and the struggle with the opposing forces increased, those who rendered outstanding service by virtue of their sacrifices, insight and wisdom, naturally became prominent without any conscious effort on their part. This election, therefore,

took place not by means of votes but by virtue of practical tests and performances which are indisputably a more natural and reliable method. Thus even before the Prophet migrated to Madinah, two kinds of people had already become members of his Consultative Assembly, viz., (a) those who had been associated with him from the very beginning, and (b) those who subsequently became prominent by virtue of their sacrifices, insight and ability. The members of both these groups enjoyed the confidence of the Muslim masses also to the same extent to which they enjoyed the confidence of the Prophet himself.

Then occurred the historical event of Migration (*hijrah*), and it took shape in the following way. A year or two before Migration, certain influential personalities of Madinah had embraced Islam and, through their labours, Islam had established a secure foothold in that city among the tribes of *Aus* and *Khazraj*. It was at the instance and request of these people of Madinah that, leaving their hearths and homes, the Prophet and his followers migrated to that city where the Islamic movement naturally grew into a political organization and blossomed into a full-fledged State. It was, therefore, only natural that these very people, with whose services Islam had prospered and progressed in Madinah, should be the leaders of the newly-formed society and its political organization. And, naturally, again it was most befitting that these very people should be included in the Consultative Assembly of the Prophet along with his very first associates and tested comrades from

Mecca. These people thus became the representatives of the people and the members of the Consultative Assembly through a natural process of selection, and they enjoyed the confidence of the Muslim masses to such a degree that if elections of the type current in modern days would have been held, these and these people alone would have been chosen.

Later on, in this society of Madinah, two kinds of people began to become prominent. The first were those who during the next eight to ten years rendered yeoman's service in political, military and missionary fields to such an extent that practically in all important matters everybody automatically looked to them. The second group consisted of those persons who gradually became well-known for their wide knowledge and deep insight in the Qur'ānic jurisprudence and literature. After the passing away of the Prophet, the people naturally treated them as being the most reliable authorities in these matters. The Prophet himself, by saying that the Qur'ān should be learnt and understood from such and such persons, put his seal on their erudition. Thus, these two groups also were elected as a matter of course, like those before them, by the same process of natural selection and became automatically included in the Consultative Assemblies of the Prophet's successors. There was, thus, no need to take a vote for them and even if vote was taken, there was nobody else in that society who would have been preferred by the votes. And those constitutional conventions under which fresh nominees continued to be incorporated in the Consultative Assembly by virtue

of their services, experience and outstanding intellectual attributes, automatically received universal approval.

This was the class of people which was known as *Ahl al-hal wa'al-'aqd* (i.e., those who could "tie" and "untie"), and it was these people without whose advice no decision was ever taken in any important matter. As to their constitutional status, some opinion can be formed by the fact that when, after the unfortunate assassination of 'Uthman, some of the Companions came to 'Ali to ask him to accept the office of the Caliphate, 'Ali said :—

"This is not a matter whereon you can take a decision. This is a task for all those who can advise and have fought in the battle of Badr (*Ahl al-Shura wa ahl al-Badr*). Whosoever is approved by them will be the Caliph and let us therefore, congregate and consider it."¹

It is thus clear that at that time there were certain specific persons called "*Ahl al-hal wa'al-'aqd*" who had been continuously holding the position of great trust for a very long time and were thus entitled to take collective decisions in all important matters affecting the *Ummah*. There is, therefore, no valid ground to presume that the *Khalifah* could call for consultations whomsoever he liked or that it was not generally known as to who were his advisers (*Ahl al-Shura*) entitled to give advice to him in the most important matters affecting the collective good.¹

1. Ibn Qutaibah, *al-Imamah wal-Syasiyyah*, Cairo, p. 41.

2. Here the question naturally arises: Why were these
(Contd. on p. 54)

From the conventions of the Caliphs, nay, even from the conduct of the Prophet himself, the inferred rule is that the *Amir's* Consultative Assembly is not to consist of his hand-picked men but only of those per-

(Contd. from p. 53)

Ahl al-hal wa'al-'aqd comprised only of people from Madinah, although the frontiers of the Islamic State had extended beyond Arabia up to Afghanistan in the East and North Africa in the West during the period of the Righteous Caliph, and why were not loyal representatives from other parts of the State summoned for this purpose? The answer is that it was due to two very valid reasons namely :—

- (a) The Islamic State was not a mere national State. It had come into existence in a unique fashion. With the preliminary propagation of the Islamic ideology in the minds and morals of the people an ideal society was first created, which subsequently developed into an ideal State. In such a State, naturally, the load-centre of all devotion was that individual who had initiated and then perfected the revolution. Next to him, the body of his associates and right-hand men became the repository of all public confidence and faith. Their leadership was thus most natural, and nobody else from amongst that society could possibly be any way more worthy of the confidence of the public. That is exactly the reason why, in spite of complete freedom of expression, even in that era, nobody from any corner of the country raised even a single voice of protest against the selection of only the people from Madinah for inclusion in the Consultative Assembly.
- (b) Secondly, it was not possible in the then existing conditions of life to hold general elections in an area extending from Afghanistan to North Africa and thereafter to expect that all the elected members of the Consultative Assembly could attend all its ordinary sittings and meetings.

sons who enjoy the confidence of the masses. They should be such whose sincerity, ability and loyalty is above reproach in the eye of the public and whose participation in the major decisions of the State would itself be a guarantee of the fact that free and willing co-operation of the masses would be available to the State in the implementation of all the decisions thus taken.

It may well be asked as to how the persons enjoying such confidence of the masses are to be determined today. It is evident that the shape of things which existed in the special circumstances of the early days of Islam is not to be found today, nor do the obstacles existing in the civic conditions of that era exist now. Consequently, after considering the circumstances and need of modern times, we can adopt all such possible and permissible methods whereby we might be able to find out truly as to which persons enjoy the confidence of the masses in the greatest measure. The modern system of elections is one of these permissible methods, provided it is not tarred with those corrupt practices which render democracy a sheer farce.

The Form and Nature of Government

We now come to the third important point: What should be the form and nature of the Government of an Islamic State? If we closely study the conventions of the Caliphs to obtain guidance on this point, we will notice that the *Amir* was the only person to whom obedience and loyalty were enjoined and to whom the people delegated in the fullest possible measure their right of taking decisions in all matters concerning their

collective existence. His status was, therefore, entirely different from the status of the British Monarch, or the French President or the British Prime Minister, or the American President, or the Head of the Soviet Union. He was not only the President of the State but also the Prime Minister. He attended the parliament himself and presided over all its sittings. He used to take the fullest part in its discussions and was responsible not only for his own acts and opinions but also for all the decisions of his Government. In his parliament there was neither any specific Government Party nor any specific Opposition Party. The whole parliament was his party as long he kept to the right path. But as soon as he deviated from it, his whole party automatically turned into opposition. Every member of his parliament had full freedom to vote for or against him on any point and even his Ministers were free to oppose him if they felt impelled to do so honestly and sincerely. And, in spite of all this, the Ministers and the Head of the State were all along working in complete co-operation and harmony and the question of anybody resigning in protest never arose at all.

The Caliph was not only answerable before the parliament but also before the people ; and that only for his public acts but also for his private and personal conduct. Five time every day he had to face the people in the mosque, and he had to address them every week on Fridays. Each and every member of the public had the right to stop him in the streets of Madinah to question him on his conduct or to demand any of his rights from him, and he would do so at all

times and at all hours. No such rule existed that if a question was to be asked from the Government, some member of the parliament must give a previous notice about it. The general proclamation of the Head of the Islamic State was :

“Assist me when I act rightly ; but if I go wrong, put me on the right path. Obey me as long as I remain loyal to Allāh and His Prophet ; but if I disobey Allāh and His Prophet, then none is under the slightest obligation to accord obedience to me.”¹

This form of Government cannot be identified with any modern form of government. But it is this which stands in the fullest accord with the ideology of Islam. It is, therefore, our ideal too. But it can be achieved only when the society has been already developed in accordance with all the revolutionary teachings of Islam. And that is exactly why no sooner than the Islamic society deteriorated, this ideal of Government could not be fully adhered to. As to the present, if we desire to revert to it, it would be essential to adopt the following four basic principles initially, and then to adjust them in accordance with our subsequent requirements and needs :

(1) Whosoever is entrusted with the responsibilities of Government should be required to face not only the representatives of the public but the public itself ; further, he should not only discharge his duties in consultation with those entrusted with the job but also should be answerable for all

1. Muhammad Hussain Haykel, *Al-Siddiq*, Cairo, p. 67.

his actions.

(2) We should reform, the prevalent system of strict party-loyalties—a system in which party instead of remaining an agency of public opinion becomes the standard of truth and untruth. Such a system pollutes the Government with a false sense of loyalties, and it carries within it the possibility that once a group of self-seeking people comes into power, it may manoeuvre party politics, at public expense itself, in such a way as to continue in the saddle *ad infinitum*.

(3) The system of Government should not be based on such complicated rules and regulations as may render it extremely difficult for the earnest workers to work, for the critics to criticise and for the people in general to find out the root cause of the evils that might arise from time to time.

(4) The last and the most important principle should be that only those are elected as Head of the State and as members of the Consultative Assembly, who possess those qualities and are equipped with those qualifications which have been prescribed by Islam for the office-bearers.

VI

RULERS AND THEIR QUALIFICATIONS

From the Islamic point of view, the question of qualifications of office-bearers is very important. In fact, this alone can guarantee the proper functioning of the Islamic Constitution.

As regards the eligibility for membership of the Consultative Assembly or for the post of the Head of the State, there is one aspect which might be termed as legal eligibility, on the basis of which an Election Tribunal or a Judge, after due consideration and verification, may declare a person eligible or non-eligible for election. There is yet another aspect of eligibility on which the selectors, the proposers and the voters base their judgment. The first aspect of eligibility may be possessed by everyone of the millions of citizens of a State, but, it is the second which actually elevates a very select few to the top. Criteria with regard to the first aspect are to be in a few operative clauses of the Constitution. But the standards of the second aspect of eligibility must permeate the spirit of the entire Constitution. The success or otherwise of any constitution would depend on the fact that the minds of the masses have or have not been trained properly to elect only those who are eligible for those august positions in accordance with the *spirit* of the Constitution rather than its *form* only.

Both the Qur'ān and the *Hadith* give clear guidance about these two aspects of eligibility. As regards the first, the following four conditions have been prescribed :

- (1) *Should be a Muslim.*—The injunction of the Qur'ān is :
 “O ye who believe ! Obey Allāh, and obey the Prophet and (obey) those who are in authority from among you.”¹
- (2) *Should be a male.*—The Qur'ān says :
 “Men are in charge of women.”²
 And the Prophet declares :
 “Verily, that nation would not prosper which hands over the reins of its government to a woman.”³
- (3) *Should be sane and adult.*—The Qur'ān lays down :
 “And do not make over your property which Allāh has made for you a (means of) support, to the weak of understanding.”⁴
- (4) *Should be a citizen of the Islamic State*—The Qur'ān declares :
 “And those who have declared their belief in Islam but have not migrated (to the Islamic State), you have nothing to do with their guardianship until they migrate.”⁵

These are the four legal qualifications which deter-

1. *Al-Qur'ān*, IV : 69.

2. *Ibid.*, IV : 34.

3. *Bukhari al-Sahih*.

4. *Al-Qur'ān*, IV : 5.

5. *Ibid.*, VIII : 72.

mine a person's eligibility to the membership of the Consultative Assembly or to the post of the Head of an Islamic State. But the question is : Whom, among the countless legally eligible persons, should we elect and whom should we ignore for those important offices of State ? A clear reply to this most important question also is to be found both in the Qur'an and the *Hadith*.

The Holy Qur'an says :

- (a) "Verily Allāh commands you to make over trusts (*i.e.*, positions of responsibility) to those who are trustworthy."¹
- (b) "Verily the most respectable of you in the sight of Allāh is the one who is most God-fearing."²
- (c) "He said : Verily Allāh has chosen him (to rule over you) in preference to you, and He has increased him abundantly in knowledge and physique."³
- (d) "And obey not a person whose heart We have permitted to become unmindful of Our remembrance, one who is following the dictates of his own desires and his case is that in which due limits are transgressed."⁴

The Holy Prophet (peace be upon him) says :

- (a) "Whosoever honours and reveres an innovator (in religion), helps in bringing down the edifice of Islam."⁵

1. *Al-Qur'ān*, IV : 58.

2. *Ibid.*, XLIX : 13.

3. *Ibid.*, II : 247.

4. *Ibid.*, XVIII : 28,

5. Quoted by *al-Baihaqi*.

- (b) "By God, we do not assign the affairs of our government to any one who aspires for it or is greedy in respect of it."¹
- (c) "We consider the seeker after a post (of trust and responsibility) as the most untrustworthy."²

Some of these qualifications can be easily incorporated as operative clauses in our Constitution. A self-styled candidate for election should be declared ineligible. As regards other qualifications for which no legal limit can be prescribed, we can certainly include provisions for them in the chapter on Directives. The duties of the Election Commissioner would, thereby, have to include the obligation to inform and educate the masses regarding the qualifications which are essentially and indispensably required and prescribed for *U'lul-amr* in Islam.

1. Quoted by *Bukhari* and *Muslim*.

2. Quoted by *Abu Da'ud*.

VII

CITIZENSHIP

We now come to the question of citizenship. Since Islam is a system of both thought and conduct and since it aims at creating a State on the basis of its ideology, it prescribes two types of citizenship. Furthermore, because straightforwardness and truthfulness from the very quintessence and soul of Islam, this idea of dual citizenship is plainly prescribed in its political structure without any beating about the bush. It does not, for instance, try to mislead the world by adopting methods of giving full and equal rights to all its citizens on paper, and yet all the time discriminating between them in practice and withholding even the fundamental human rights from a considerable section of its population, like the case of Negroes in America and of non-Communists in Russia. In fact, in all modern countries the national and the ideological minorities¹ are invariably treated in this very fashion. The course adopted by Islam in this respect too is most rational, just and honourable.

Two Kinds of Citizenship

The two kinds of citizenship that Islam envisages, are the following :

1. It must not be forgotten that there is a world of difference between a political minority and an ideological, cultural or national minority.

(1) The Muslims ; and (2) The *Zimmis*.

As regards the Muslim citizens, the Qur'ān speaks thus :

“Verily those who believed and migrated and struggled hard in Allāh’s Way their property and their souls, and those who gave (them) shelter and help—they are guardians of each other ; and (as for) those who believed and did not migrate (to the Islamic State), you have nothing to do with their guardianship until they migrate.”¹

From this verse it is clear that the basic qualifications for citizenship as prescribed by the Qur'ān are two, *viz.*, faith in Islam and original or acquired domicile in an Islamic State. If a person, even though he may be from amongst the faithful, does not renounce his allegiance to a non-Islamic State and migrate to Islamic State, he is not and cannot be its citizen. Contrary to this, all those believers who, whether they were born in the Islamic State or have migrated to it, are its citizens at par and helpers of one another.²

1. *Al-Qur'ān*, VIII : 72.

2. A precautionary measure prescribed by the Qur'ān in the case of the people who migrate to the Islamic territory is to test their *bona fides*. This, though spoken with reference to immigrant ladies, forms the basis of the general inference that the people who migrate to an Islamic State should prove their *bona fides*, *i.e.*, that they are truly Muslims and immigrants. This is to safeguard against evil-doers entering the Islamic State under the guise of immigrants. Although the truth of one’s faith is known only to God, the State in all such cases should try to verify the antecedents of all immigrants to the best of its resources and means.

Upon the shoulders of the Muslim citizens of an Islamic State devolves the main burden of running it in accordance with Islam's best traditions, as they alone are supposed to believe in it implicitly. On them alone it enforces its laws as a whole and enjoins them to carry out all its religious, moral, cultural and political directives. It invests them with all its obligations, and demands from them every sacrifice for the defence of its realm. Concurrent with this, it gives them the right to choose the Head of their State and to be the members of its Parliament. It also entitles them to be appointed to the key posts, so that the basic policy of this ideological State remains in conformity with the fundamentals of Islam. That this is the standpoint of Islam is proved by the utter absence of even a single instance in the days of the Holy Prophet (peace be on him) or the Caliphs where a *Zimmi* (non-Muslim citizen) may have been made a member of the Parliament, or the Governor of a province, or the *Qadi*, or the Director of any Government department, or the Commander of the Army, or a Minister of the Government; or may have been ever allowed to participate in the election of the Caliphs, although the number of *Zimmis* even in the days of the Prophet was considerable and during the days of *Khilafat-e-Rashidah* it had gone up to millions. As such, were it right to give them a share in the Government, we fail to understand how the Prophet of God (peace be on him) could have done injustice to them in the first instance, and how the persons directly and diligently trained by the Prophet himself could have continued

to “deprive” them of their “due rights” for the next thirty years.

(2) By *Zimmis* are meant all those non-Muslims who have affirmed to remain loyal and obedient to the Islamic State wherein they propose to live, regardless of the country they were born in. For all citizens of this kind, Islam furnishes a guarantee of protection of life and limb, property and culture, faith and honour. It enforces only its Law of the Land on them and it gives them equal rights with Muslims in all civil matters. They are eligible for all kinds of employment except for key-posts : They have an equal share with Muslims in matter of all civil liberties, and even in economic matters no discrimination is made between a Muslim and a *Zimmi*. Furthermore, the *Zimmis* are exempt from the responsibility of the defence of the State, which devolves exclusively and entirely on the Muslim citizens.

If any one has any objection with regard to these two kinds of citizenship in an Islamic State and their distinctive features, he should try to acquaint himself with the details of the treatment meted out practically by other ideological States to the people who do not believe in their ideology and with the disabilities attaching to all national minorities of the National States. In truth, it can be categorically stated that, compared with other systems of government, Islam has definitely enjoined the most just, the most tolerant and the most generous treatment to the minorities who choose to stay within the borders of its State and lead a life directed and governed by those principles which

are different from and even hostile to the ideology of the majority.

In fact, the best and most just solution of the unusual complications arising out of the existence of a foreign element in the body politic of a nation or an ideological State is offered by Islam alone. Others have resolved this difficulty in one of the two ways : They have either wiped out the minorities or have kept them under perpetual bondage as untouchables. Islam, on the other hand, adopts a very humane and equitable method. It prescribes a line of demarcation between its adherents and non-adherents and on its followers alone it enjoins complete and absolute adherence to its basic and fundamental principles with all their details. In addition to that, it places only on its adherents the responsibility of defending and running the State in accordance with those principles.

To those who do not submit to its principles, Islam gives ample latitude to lead their lives in their own way, binding them only to that extent which is the minimum essential for maintaining State Administration. And although it absolves them from the liabilities of running or defending the State, it guarantees to them all cultural and human rights.

Rights of Citizens

Next question relates to the fundamental rights of citizens in an Islamic State.

In Islam, the first and foremost right of the citizens is the protection of their life, property and honour, together with the assurance that this right would not be interfered with, except on valid legal

grounds. The Prophet has explicitly and repeatedly enunciated this thing. In his well-known address on the occasion of the Farewell Pilgrimage, wherein the details of the Islamic way of life were stressed, he said :

“Your lives, your properties, and your honour are as sacred as this day (of the *Hajj*).”¹

There is only one exception to it, which the Prophet himself describes in another *Hadith* as *الايحى الاملام* *i.e.*, if there is demand for life, property or honour according to any law of Islam, it shall have to be realised in accordance with the prescribed procedure.

The second important right is that of the protection of personal freedom. In Islam, personal freedom cannot be violated, save after proving delinquency in accordance with the due process of law and never without giving an opportunity to the accused to put his defence. It has been related that some people were arrested in Madinah, in the days of the Prophet, for being of doubtful antecedents. Subsequently, while the Prophet was delivering the Friday Sermon, a Companion got up and enquired of him as to why and on what grounds had his neighbours been arrested. The Prophet kept quiet while the question was repeated twice, thus giving an ample opportunity to the Police Officer present there to explain the legal position. When the question was put a third time, and it again failed to elicit the reply from the Police Officer, the Prophet directed that those people should be released.²

1. *Muslim* : Farewell Pilgrimage ; Ibn Hisham, pp.389-391.

2. *Abu Da'ud*.

This is a conclusive proof of the fact that as long as a specific charge is not laid against a person, he cannot be detained or imprisoned. Imam Khattabi, while explaining this *Hadith* in his *Ma'alim al-Sunan*, says that in Islam detention is only of two kinds : (a) detention under orders of the court, namely, when a person is sentenced by the court and is kept in prison till the term of his sentence ; and (b) detention for investigation. Besides these, there can be no other ground for depriving a person of his freedom.

Imam Abu Yusuf, in his *Kitab al-Kharaj*, has also stressed the same point, *i.e.*, nobody can be imprisoned on false or unproved charges. The Holy Prophet did not imprison people on mere accusations. It was necessary that the two parties should appear in the court and if the complainant failed to prove his allegation with all the evidence at his disposal, the defendant was acquitted.

'Umar, the second Caliph, while pronouncing judgment in a famous case, said :

"In Islam no one can be imprisoned without due course of justice."¹

The third important right is that of freedom of opinion and belief. 'Ali, the fourth Caliph, has given the best exposition of Islamic law in this respect. During his period, the party known as the *Kharijites* reared its head in revolt. This group was very similar to the modern anarchists and nihilists. Its members defied the State openly and denied the need for its

1. Imam Malik, *Muwatta*, *Baab Sharat-a-Shahid*, *Kitab Ahkam al-Khilafat*.

existence in Islam, and they were making preparations to wipe it out by sword. 'Ali (God bless his soul) sent the following message to them :

“You may live wherever you like, the only condition between us being that you will not indulge in bloodshed and will not practise cruel methods.”¹

On another occasion, 'Ali addressed them thus :

“As long as you do not indulge in actual disruption and disorder, we will not wage war against you.”²

This makes it quite clear that even an organised group entertain any set of ideas and may also peacefully practise them ; and an Islamic State would not hinder or harm it. But if it tries to foist its ideology on others by violent means and endangers the security of the State or its administration, necessary action shall certainly be taken against it.

Another right which has been greatly emphasised in Islam is that of the provision of basic necessities of life to all citizens without distinction of caste or creed. *Zakat* was made compulsory for Muslims for this very purpose and the Prophet himself says :

“It shall be taken from the rich and distributed amongst the poor and the needy.”³

At another place he (peace be on him) enunciates the following principle :

“The Government is the *guardian* (helper)

1. Shaukani, *Nail al-Autar*, Vol, VIII, p. 139.

2. *Ibid.*, p. 133.

3. Related by *Bukhari* and *Muslim*.

of everyone who has no guardian.”¹

And again :

“Whoever leaves liabilities (such as debts or destitute families at the time of his death), the burden (of all such liabilities) is upon us (*i.e.*, the State).”²

In this matter, Islam has made no distinction between the Muslims and non-Muslims. It gives to the *Zimmis* the same guarantee as it gives to the Muslims, that the State would not let anybody be without food and clothing or a place of residence. Caliph ‘Umar once found a *Zimmi* begging alms. He granted a pension to him, absolved him from the payment of *Jizyah* and wrote to his Treasury Officer :

“By God, we fail to do justice if we leave people unprovided for in their old age, while making the fullest use of their services in the prime of their life.”³

The Covenant that Khalid, the Sword of God, gave to the non-Muslims of Hirañ, contained the conditions that whosoever became old or afflicted or destitute, would not be required to pay the *Jizyah*, and that, on the other hand, he and his family would be looked after from the funds of the State Treasury.

The Duties of the Citizens

As against these rights of the citizens, there are certain rights of the State upon its citizens. Among these, the first is that of obedience, for which the tech-

1. *Abu Da’ud, Tirmizi.*

2. Related by *Bukhari and Muslim.*

3. *Abu Yusuf, Kitab al-Kharaj*, p. 72.

nical term of *Sam'-o-Ta'at* is used in Islam. The Prophet has explained it thus :

“The State shall have to be heard and shall have to be obeyed, in adversity and in prosperity, and whether it is pleasant or unpleasant to do so.”¹

In other words, the order of the State, be it palatable or unpalatable, easy or arduous, shall have to be obeyed under all circumstances (save of course when it involves God's disobedience, as discussed earlier).

The second obligation on the citizens *vis-a-vis* an Islamic State is that they should be loyal to it and work for its welfare. In the Qur'an and the *Hadith* the term نصح “*Nus'h*” has been used for this purpose, which in Arabic means more than what is conveyed by the words loyalty and allegiance. It inherently demands that a person should, truly and faithfully and with all his heart, wish and work for the good, prosperity and the betterment of the State, and should not tolerate anything likely to harm its interests.

It is also obligatory on the citizens of the Islamic State to co-operate whole-heartedly with the government and to make sacrifices of life and property for it so much so that if any danger threatens the State ; he who wilfully refrains from making a sacrifice of his life and property for warding off that danger has been called a hypocrite in the Qur'an.

Broadly speaking, these are the salient features of that ideal form of government which we call an Islamic State. You may describe it by any modern

1. *Bukhari and Muslim,*

technical term you choose. You may call it secular, or democratic, or theocratic. We will not fight for giving it a particular name. What we do insist upon is the content. So long as we claim to believe in Islam and to accept it as our way of life, our System of Government should essentially be based on the fundamentals prescribed by the Qur'an and by the Holy Prophet Muhammad (blessings of Allāh be with him for all times to come).
