

**Islam, Democracy and the  
Constitution of Pakistan**  
**Outcome of a series of dialogue among  
prominent Pakistani Islamic scholars**

**Editor**  
*Safdar Sial*

**Pak Insitute for Peace Studies**



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Title by: Tariq M. Sajjad  
Printer: BPH Printers, Lahore, Pakistan.  
ISBN: 978-969-9370-22-9  
Edition: First

**Distributor**

The logo for Narratives features the word "Narratives" in a green, serif font. Above the letters "a" and "i" are stylized blue and green curved lines that resemble a wave or a path.

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Price: PKR 150  
USD 05

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## Preface

Over the past four years, Pak Institute for Peace Studies (PIPS) has engaged Pakistan's leading religious scholars belonging to all schools of thought in a series of academic and intellectual dialogue to discuss critical challenges facing Pakistan and suggest their solutions. Another underlying objective of these dialogues has been to develop some consensual responses on the legal or jurisprudential aspects of the issues linked to religious extremism and militancy and create awareness among the people about that. Apart from that, the Institute has been serving as a platform to promote sectarian and interfaith harmony by holding structural dialogues among representatives of different segments of Pakistani society including religious leaders and scholars from all faiths and sects, political analysts and leaders, social scientists, media practitioners, and civil society and human rights activists, etc. PIPS has also been employing an element of dialogue to enhance interaction between students of madrassas and mainstream educational institutions so that they are able to exchange views and remove mutually held misperceptions about each other.

In 2011-12, Pak Institute for Peace Studies held four structured dialogues among leading religious scholars from all schools of thought on the concepts of *takfeer* and *khurooj*.<sup>1</sup> Some of the findings, as listed below, revealed that Pakistan's religious scholars<sup>2</sup> and leaders have

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<sup>1</sup>*Takfeer* employs practice of one Muslim declaring some other Muslim individual(s), religious sect, system of government or rulers disbelievers or *kafir* and regarding them to be outside the creed of Islam (*millat-e-Islam*). *Khurooj* means going out/ armed rebellion against the state or rulers once they are declared disbeliever.

<sup>2</sup> The term 'religious scholars' has been used throughout this report to refer to Islamic scholars.

## Preface

confused and divided views about Pakistan's Constitution and democratic system.

– Although democracy cannot be declared a system of open disbelief (*kufr buwah*), it is not an exemplary political system to implement Islam and *Shariah* because it has various limitations and is bound to abide by internationally set rules and laws.

– Democracy enforces the laws and commands which are made by a legislature comprising representatives of the people. That means, in democracy a ruler can obey a legal judgment or verdict that is not issued by God or can issue a judgment according to his own will.

– Although Islam rejects the absolute authority or sovereignty of the public representatives, it grants people the right to rule and elect their rulers.

– Allama Muhammad Iqbal deemed parliament synonym with *Ijma* (consensus among Islamic jurists in a particular age on a question of law) in contemporary times. If Muslims have given their parliament the right to interpret Islam and legislate according to Islam, then the parliament's interpretations and the laws it makes cannot be termed un-Islamic.

– Religious scholars should not deviate from the decisions their elders took regarding Islam and democracy in the form of 22 constitutional points of religious scholars<sup>3</sup> in which they had acknowledged a modern political system and its different elements including the state, parliament, constitution and legislation.

When religious scholars' confused and divided views about democracy and Pakistan's Constitution become part of larger religious discourse, they confuse public opinions as well. As a result people of Pakistan, who look towards clergy for guidance on Islamic aspects of these issues, remain confused about the legality and effectiveness of democratic system, man-made legislation and the ways to enforce Islamic system in the country.

A renowned Taliban leader Omer Khorasani wrote a letter to the newly elected *emir* (chief) of Jamaat-e-Islami Sirajul Haq stating that as the democratic struggle over the past 66 years had failed to enforce Islamic laws in Pakistan, an armed struggle was the only option left now to achieve that purpose.<sup>4</sup>

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<sup>3</sup> In 1952, 31 leading religious scholars and leaders of all schools of thought had agreed on 22 points for establishing *Shariah* in Pakistan.

<sup>4</sup> Monthly *Al-Burhan* (Urdu), Lahore, April 2014.

## Islam, Democracy and the Constitution of Pakistan:

There are many questions linked to extremist and skewed interpretations of certain legal rulings and concepts in Islam which require religious scholars' attention and response. Religious scholars must explain that if jihad is a foremost act to establish God's words or commandments, as suggested by some ideologues, then how they would rate the Islamic commandments linked to reforming the society? A leading Deobandi scholar of Pakistan Maulana Ashraf Ali Thanvi had once said that if he gets the opportunity to govern the country, he will first reform and correct the people for 10 years before establishing *hudood* Allah (boundaries or law set by God) among people.

An article in Islamic journal *Al-Sharia* presented another point of view in its June 2014 issue: "wars have always been deemed as unwanted and emergency situations in the human history whereas the times of peace have been understood as natural, desirable and a permanent feature of life." At one place in the article, a reference mentioning Maulana Maududi tells that 'historians have wrongly glorified the battles fought by the Prophet Mohammad (PBUH) to such an extent that people think that Arab's Islamic revolution resulted from wars. However the total casualties from both sides during the total eight battles fought by the Prophet were not more than 1200.'

In this context, Pak Institute for Peace Studies invited religious scholars from across Pakistan with a view to get their opinions on how democracy and man-made legislation, or constitution, could be interpreted using the precepts of Islam. A total of four structured dialogues were held among prominent religious scholars for that purpose in Karachi, Lahore and Islamabad. This book contains the outcome of these dialogues. Pak Institute for Peace Studies is thankful to all the religious scholars and madrassa teachers and students who participated in these dialogues. We hope this book will not only help understand Islam's perspective on various aspects of Pakistan's Constitution and democratic system, but will also serve as a baseline for further debate on the subject.

PIPS is thankful to Ahmad Khan for translating parts of the dialogues into English.

**Mohammad Amir Rana**  
**Director**  
**Pak Institute for Peace Studies, Islamabad**  
**March 25, 2015**





# FIRST DIALOGUE

Place: Karachi  
Date: May 17, 2014

## **Host:**

Mohammad Amir Rana (Director, Pak Institute for Peace Studies)

## **Chairperson:**

Mufti Muneebur Rehman (Chairman Ruet-e-Hilal Committee, and President, Tanzeemul Madaris Pakistan)

## **Discussants:**

Maulana Mohammad Salfi (Principal, Jamia Sattaria, Karachi)  
Professor Dr Shakeel Auj (Dean, Faculty of Islamic Studies, University of Karachi)  
Professor Syed Shahid Hashmi (Director, Islamic Research Academy)  
Allama Akbar Hussain Zahidi (Vice Principal, Jamia Al-Sadiq, Quetta)  
Maulana Saifullah Rabbani (Teacher, Jamia Banoria, Karachi, and Administrator, Wafaqul Masajid, Pakistan)  
Maulana Mohammad Shafi Chitrali (Religious scholar, and columnist daily *Islam*)

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Maulana Abdul Haq Hashmi (Emir, Jamaat-e-Islami, Balochistan, and Member, Federal Shariat Court)

Dr Ejaz Ahmad Samdani (Jamia Darul Uloom, Korangi, Karachi)

Allama Abdul Khaliq Afridi (Director General, Shaban Al-Ghurba Ahle Hadith)

Professor Mirza Amir Baig (Director, Al-Suffa Academy, Karachi)

Maulana Syed Ahmad Banori (Teacher, Jamia Islamia Allama Mohammad Yousaf Banori Town, Karachi)

Maulana Ijaz Haider Mazhari (Research Scholar, Al-Zuhra Academy)

Maulana Kashif Sheikh (Principal, Madrassatul Ansaar, Karachi)

Allama Syed Aqeel Anjum Qadri (Editor, monthly *Ufaq* and General Secretary, Jamiat Ulema-e-Pakistan, Sindh)

## Islam, Democracy and the Constitution of Pakistan:

### **Mohammad Amir Rana**

*Director, Pak Institute for Peace Studies*

Today's dialogue is aimed at understanding the viewpoints of religious scholars on the contemporary discourse on the Constitution of Pakistan and democracy.

### **Mufti Muneebur Rehman (Chairperson)**

*Chairman Ruet-e-Hilal Committee, and President, Tanzeemul Madaris Pakistan*

The words 'democracy' and 'republic' are used inter-changeably in English language. Once I participated in a dialogue in the United States in which Senator Gary Hart said that because in a republic everyone is entitled to speak for oneself and give one's opinion, it is practicable only in a very small community of around 500 people and not in a country with millions of population. In democracy, people elect their representatives, who speak on their behalf. Due to the process of election it entails, democracy cannot completely represent the opinions of a whole set of population. For instance, if there are 100 million voters in a country, not more than 60 to 70 million would cast their vote. The casted votes are then divided among many contesting candidates. Let us suppose someone secures 25 percent of the casted votes and wins the election, he is actually representative of only 25 percent of the voters. But in our modern democracy that elected person has the authority to take and implement decisions about the lives of all including those who even did not vote for him. Therefore, in my opinion, real democracy still does not exist on the earth.

The second issue is whether or not we can establish an Islamic system through democracy. The nature and structures of democracy suggest that it is a secular system. First, it assigns an equal value to opinions of all individuals irrespective of their character and wisdom. That means the value of vote, or opinion, of a criminal is equal to, for instance, that of our beloved scholar Shakeel Auj.<sup>5</sup> Secondly, democracy espouses a rule by majority opinion. That sounds good if a society on the whole upholds the virtues of righteousness, justice, and honesty etc. But in a country where majority is morally bankrupt, there is this possibility that the majority opinion could result into formation

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<sup>5</sup> Professor Dr Muhammad Shakeel Auj, dean of the faculty of Islamic Studies, University of Karachi, was shot dead on University Road in Gulshan-e-Iqbal area of Karachi on September 18, 2014 by some unknown assailants.

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of some evil laws and practices. The latter is true for Pakistan where 'vice' has mostly dominated 'good' since the country's establishment.

What kind of democracy is in Pakistan where Pervez Musharraf forcefully made sixty women part of the parliament? What was the basis of their selection and whom did they represent?

When elections in Pakistan were held on the basis of separate electorates, non-Muslims complained of having been turned into second-rate citizens. Some representatives of Hindu and Christian communities told me the same, to which I replied that if there is joint electorates system then they would ask for reserved seats for minorities. They replied they will not ask for such seats. But when the system of joint electorates was revived, separate seats for minorities were also reserved.

Another issue is that if there is a debate in the parliament about enforcement of Islamic order, a decision taken by a simple majority will be considered final. I am unable to comprehend which kind of Islam is that which needs endorsement of the majority opinion for its establishment.

On the other hand, the Constitution of Pakistan has some Islamic injunctions, which were introduced due to our elders' efforts. We can use these injunctions to exert pressure on the government with a view to create some prospects for the establishment of Islamic system in the country. Otherwise, I am not hopeful that domination of Islam is practically possible through the current democratic system and Constitution. In the beginning, there were 217 seats in the National Assembly. When the feudal lords realized that they are not winning many seats, they increased the number of seats in the assembly. India has reached a population of about 1.2 billion—six times more than Pakistan's—but has maintained 545 seats in the lower house of its parliament (Lok Sabha) since independence. We are actually making fun of Islam and democracy. Therefore, most of our debates and discussions are largely ideological with little impact on the ground. But I appreciate efforts of our religious scholars which might bring a glimmer of hope to this nation.

### **Mohammad Amir Rana**

Mufti Muneebur Rehman has raised very valid points. Many renowned Western scholars have argued that flaws do exist in democracy and that it is not an ideal political system. At the same time, they have also highlighted the fact that no better alternative is yet available. This is an opinion which requires discussion. Far more critical questions on democracy are being raised in the West than those

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raised by Mufti Muneeb. The critical review of democracy has been going on for centuries. More Muslim countries are now progressing in democracy. For example, Tunisia has successfully formed a new constitution with the participation from all segments of society. Similarly, a national dialogue is going on in Yemen, in the aftermath of the Arab Spring. Yemeni religious leaders and scholars, tribal leaders, and representatives of civil society and political elite are engaged in efforts to evolve an agreed-upon constitutional framework. Many questions are being raised in Yemen, similar to those we have raised here in Pakistan.

### **Maulana Mohammad Salfi**

*Principal, Jamia Sattaria, Karachi*

We all know that Pakistan's Constitution guarantees that no law shall be formed in the country that is contrary to the holy Quran and the *Sunnah*.<sup>6</sup> If such a law is formed, it will instantly become null and void as per the provisions provided in the Constitution. Also, it is clearly written in the Constitution that the absolute authority or sovereignty (*hakmiyyat-e-a'la*) belongs to God only. It is a big success for the Muslims in Pakistan as well as in the whole world. But the real issue is linked to the implementation of what has been provided in the Constitution. For instance, it is also clearly mentioned in Pakistan's Constitution that all citizens will be provided with the basic necessities of life; no one under 16 years will be forced to do labor; every citizen will be provided free and fair justice; living standards of the citizens will be uplifted; the state will be responsible to provide food, clothing and shelter to the people; and those who do not pay taxes or are defaulters cannot become members of parliament, etc. Without going into further details, we can say that there are mostly good provisions in Pakistan's Constitution. Few flaws could also be there. But as I said earlier, the real issue is the lack of effective implementation.

### **Professor Dr Shakeel Auj**

*Dean, Faculty of Islamic Studies, University of Karachi*

It is indeed a great achievement that no laws can be formed in Pakistan that are contrary to the Quran and the *Sunnah*. Now it is upon us to assess whether or not the laws formed in Pakistan are in accordance with Islam. If they are not, how many people have

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<sup>6</sup> The *Sunnah* of the Prophet means his legal ways, statements and acts of worship.

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challenged them in court of law? That means the fault does not lie with democracy but with the people.

Democracy can be classified into two types: one that is close to Islamic principle of consultation; and the other, Western democracy. The latter gives 51 donkeys the right to rule 49 horses, thus undermining the virtues of ability and righteousness. My humble point of view is that a system of government that is established in accordance with the Will of God is desirable and also justified, whereas the one established by humans is secular in its nature. The real problem is that the knowledge and interpretation of the Quran have been left to clergy only. In reality, every Muslim should have a strong connection with the book, which will also shut the door on theocracy. It is largely due to the disconnect of Muslims from the Quran that whenever there is a talk of making laws in accordance with Islam, the talk is simply discarded after being labeled as *mullah'ism* (the creed of clergy or *mullahs*). This indeed is very sad.

However, there is room for multiple interpretations on legality of the matters for which we do not find some clear judgment in the Quran. Such matters are always open to personal intellectual endeavors and thus could entail difference of opinion. It can be better understood from an example from Islamic history. Once, Caliph Omer tried to fix a minimum amount for wife's *mehr* (dowry). A woman stood up and asked, "Who are you to give a verdict when God has given us the authority to decide about it?" The Caliph finally surrendered his opinion. Will our rulers surrender their opinion on a matter if someone puts before them a judgment from the Quran on that particular matter? It is highly unlikely. Even our religious scholars refuse to abandon their opinion in the face of an alternative opinion that is based on stronger arguments. They would nonetheless continue to bring in weaker arguments to support their opinion. This is really a disturbing fact. Both religious scholars and rulers are indeed indulged in politics.

Islam lies in the Quran. You have to take it from there to develop a different kind of human beings and society. Islam does not like egoism. It wants to establish an order and discipline through its followers' obedience to God and His Prophet (PBUH). Similarly obeying the rulers is also obligatory upon Muslims but with certain conditions.<sup>7</sup> The Quran says that if you have some dispute or disagreement with those 'charged with authority among you' (rulers), return to God and His Apostle for guidance. That implies that with the

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<sup>7</sup> Reference to a verse from the Quran: "O ye who believe! Obey Allah, and obey the Apostle, and those charged with authority among you" (4: 59).

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exception of the holy Prophet (PBUH), disagreement is possible with all those ‘charged with authority among you’ (*ulil amr*, or rulers) including the first four caliphs of Islam. Those who disagreed with any of the first four caliphs, or all of them, cannot be thus declared disbelievers.

Divine laws cannot be changed. But in democracy, the majority opinion can change a law. Decisions should be taken on the basis of merit and not on majority.

### **Maulana Mohammad Shafi Chitrali**

*Religious scholar and columnist daily Islam*

Western democracy is usually presented as an established and ultimate political system in the world. And Islam is seen through the lens of democracy, i.e. can it adapt to democracy or not. But in reality, Islam is a complete code of life whereas democracy is only a system of governance. One of the major benefits of democracy, which has also made it globally acceptable, is related to peaceful transfer of power. Even then, it can be regarded as a system of governance rather than a code of life. Democracy does not provide guidance on ethical aspects of life in a society. Democracy is not a viewpoint in itself. It only validates the opinion of majority. Such a narrative seems incorrect on academic and intellectual grounds. Socrates was executed because his opinion was found contrary to what most people believed.

Democracy cannot establish the standards of ‘good’ and ‘evil’. It cannot distinguish between correct and incorrect, between pure and impure, and between *halal* (legally allowed in Islam) and *haram* (legally prohibited) etc. I think, to make such a distinction is out of scope of democracy. Therefore, I believe democracy is only a ‘part’ and Islam is the ‘whole’.

However Islam and democracy share some traits. For example, if democracy is all about making decisions through collective wisdom and consultation, then such practice is not new to Islam. So, what is the difference? Democracy does not make a difference between collective wisdom and collective wish. A majority expresses its wish and it becomes a law. However in Islam, collective wish has no value, and only collective wisdom can be presented as an argument for taking decisions.

If democracy is related to freedom of thought, it is also not new to Islam. Once, the Prophet (PBUH) advised a Muslim woman to continue living with her husband. She replied if that was the Prophet’s command she will obey, but if that was only an advice then she would like to argue that she did want to live with her husband anymore. If

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democracy is about the rights of women and minorities, then Islam had established these rights fourteen hundred years ago.

Now the question arises, what is the problem with democracy in Pakistan? The head of government in Pakistan is known as prime minister. Then, I ask, where is the king? Although, in our Constitution it is declared that Allah is sovereign but in commonwealth countries, prime minister is the head of the government and chair of the king is kept empty for the Queen of Britain. In 1998, when the Queen came to Pakistan, our Speaker of the Parliament expressed his loyalty to the Queen with full respect. The main cause for the failure of democracy in Pakistan is that we are still slaves to the Britain.

The British agricultural laws, which were made according to their winter conditions, are not expected to work if implemented here. The British-style democracy is enforced here, despite the differences. In Britain one person has only one vote. Irrespective of the fact that everyone has freedom in Britain and we in Pakistan are under the dominance of feudal lords and capitalists, it is hopeless to accept that Islam can be established through Western democracy.

The question arises here, what could be the alternative? In my point of view, Islam has a complete political system in the form of caliphate. Today, the world is geographically divided into many countries. In such a situation, if the caliphate cannot be established, presidential system can be the best possible alternative. Perhaps, the presidential system is better than the parliamentary system. In Egypt, a government was formed under the presidential system. But we all know how it was made a failure. The causes of failure of democracy are internal as well as external, mainly those linked to international political behavior. In 1915, the *Reshmi Rumal* Movement failed in India.<sup>8</sup> Then in 1919 Jamiat Ulema-e-Hind was established. Although a segment of the religious elite had already accepted democracy, but after 1919 many religious scholars and leaders accepted and endorsed democracy as a 'legally justified' political system. Also, they became part of the system by participating in elections. About 100 years have passed since then but democracy has provided us nothing substantial in terms of establishment of Islamic system. The questions that are being asked today and the kind of revolt that is out there reflect the growing frustration among people about democracy.

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<sup>8</sup> The *Reshmi Rumal* Movement was an Indian armed movement of prominent Islamic scholars and leaders, who planned to declare war against the British in the early 20th century.



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I have tried to describe some internal and external reasons for the failure of democracy. We are told that Islam has some problem with democracy. But we feel that democracy has a problem with Islam. A democratically elected government came into power in Egypt with a clear majority. Many PhD holders and experts of their fields were part of the parliament, who elected a president. However, within a year the government was thrown out of power. There was also an Islamic regime in Tunisia; it was also confronted. Hamas made an Islamic government, but it was not accepted. Even in Pakistan, a provincial government passed *Hasba Bill*<sup>9</sup> but it was also not accepted. In my point of view, Islam does not challenge democracy; democracy thinks Islam is a problem for it.

### **Allama Akbar Hussain Zahidi**

*Vice Principal, Jamia Al-Sadiq Quetta*

Pakistan was established in 1947. It can be understood that separating a region from another is quite easy, but to give a better constitution and law to a new state is quite a difficult task. Unfortunately, after the death of Quaid-e-Azam Muhammad Ali Jinnah in 1948, all his sermons describing the type of Pakistan he wanted to establish became controversial. Did he want to make Pakistan a modern state for the Muslim, or an Islamic state? From 1947 till today, our religious scholars and intellectuals have been unable to decide about what was the purpose of the establishment of Pakistan. Was it meant to establish religion or provide people with food, clothing and shelter? In this regard, there is a difference of opinion among our religious and secular circles. One segment alludes to the favorite pre-independence slogan: “*Pakistan ka matlab kya? La ilaha ilallah*” (What is the purpose of creating Pakistan? [answer]...there is none to be worshiped but Allah).<sup>10</sup> That implies this segment believes that Pakistan was created for the establishment of Islam. The other segment has a point of view that Pakistan was established for the well-being of the Muslims. Until the true meaning or purpose of the establishment of Pakistan is

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<sup>9</sup> The *Hasba Bill* was approved by the Khyber Pakhtunkhwa assembly in 2003 when Muttahida Majlis-e-Amal (MMA), an alliance of six religious parties, was in power in the province. But the bill was blocked by the Supreme Court of Pakistan.

<sup>10</sup> *La ilaha ilallah* (or there is none to be worshipped but Allah) is the way of profession of faith in Islam.

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decided, the contradiction will continue to become severe. This is a structural issue and cannot be resolved through superficial measures.

Pakistan has 98 percent Muslim population. No Muslim can deny the sovereignty of God, but at the same time, people shy away from the Islamic constitution and laws in Pakistan. Religious scholars played a vital role in the making of Pakistan, but onwards, they did not play their due role in the legislation of Islamic laws. Just like the politicians, the religious scholars only sought power. You will see corruption at every level. The reason is that we (religious scholars) did not fulfill our duties. Had we fulfilled our responsibilities, we would have given good rulers to the society. For example, people from all segments of life come to mosques. They listen to our sermons and advices. Had we delivered effective and purposeful sermons, those who offered prayers behind us would not have spoken lies and done adulteration. We should not vote a person who drinks alcohol. Do we say this in sermons? If yes, why do our sermons have no impact on people?

Democracy, dictatorship and monarchy are in force in different countries of the world. You will find people happy even in a country where there is monarchy. Prosperity can be found even in the countries run by dictators. Nonetheless, no system has been successful in Pakistan. Everyone is looting the country in the name of democracy. Indeed, democracy is better than dictatorship. But we cannot declare democracy a better way of living than Islam. Our religious scholars should realize their priorities.

### **Mohammad Amir Rana**

Dr Shakeel Auj has said that the single-party system is relatively better than other systems. In that perspective, I would like to ask what is the concept of legislation in an Islamic state and how can people participate in the process of legislation?

### **Professor Dr Shakeel Auj**

I just wanted to say that our political party system is a tug of war of power. Political parties cooperate with each other just to get a share and remain in power. Also, in the parliament they protect each other's interests. The holy Quran nonetheless has given us clear principles that define the basis of our support or opposition to someone. We need to see our political parties in that perspective. If Nawaz Sharif or Asif Ali Zardari says something, all members of their parties will own the statement and advocate it. Same is the case of all other parties. Merit exists nowhere in the country. It can only prevail if all the political

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parties of Pakistan shun ethnic, religious, sectarian, linguistic, provincial and regional prejudices and operate according to what Islam and Pakistan's Constitution have espoused.

### **Maulana Mohammad Salfi**

The issue is not that we should have one-party or two-party system, but the ability and commitment of the political parties in the government to work for people's betterment and prosperity. There is a need for evolving a consensus among all political parties that people's welfare will be their foremost priority.

### **Question & Answer Session**

*Question: Tariq Suleman (Karachi University)*

Do the legal concepts of Islam that Allah is the only source of power and authority and that all laws are divine declare Pakistan's democratic system and Constitution Islamic? What is the status of the Constitution of Pakistan in the light of Islamic laws?

*Answer: Maulana Akbar Hussain Zahidi*

Theoretically, the Constitution of Pakistan guarantees the supremacy of the holy Quran and the *Sunnah* and the sovereignty of God. It also says that no laws will be made that contradict the holy Quran and the *Sunnah*. Therefore, we can say that the Constitution of Pakistan is not un-Islamic in this context. However, the speakers have pointed out that we need to implement the Constitution so that God's sovereignty and the rights of Allah and those of human beings are guaranteed. A fundamental difference between a secular state and an Islamic state is that Islamic state guarantees both the rights of Allah and the rights of humans. If we see our state through this lens, we find a negative answer to the question. But because things are inconclusive in our state system, we have to continue our struggle to find and bring forward better people. We can prepare such people in our schools and madrassas. Islam gives solutions to every problem, but we do not have good people who can show us the right path.

*Question: Abdul Basit (Teacher, Jamia Islamia)*

Where has Islam determined a particular system of government? If there is any, please tell us about that.

*Answer: Maulana Mohammad Shafi Chitrali*

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No single system of governance can be implemented in the world. The world has different geographical conditions, and every society has its own problems. Therefore, no single style of governance can be determined and imposed. Islam has provided some fundamental principles to run a state including for a state's responsibilities. As I have already spoken that a state needs to ensure the rights of Allah and the rights of humans. According to the Quran, if we give some people the right to govern, they will have to establish the systems of *salat* (five prayers a day) and *zakat* (giving of alms, or the poor tax). Islamic jurists and scholars have interpreted that the system of *salat* is meant for the rights of Allah, and the system of *zakat* is for the rights of humans. Establishing a society in which everyone observes the rights of Allah and the rights of human beings, is the prime objective of Islam. Any method can be adopted to achieve this objective. However, the caliphate emerges as an ideal system from the history of Islam.

*Question: Shahzad Ahmad (Teacher, Jamia Naeemia)*

According to Maulana Salfi, cheap or inexpensive justice should be provided to the people. As a student, I doubt the word 'cheap' may also refer to get the justice through bribe instead of fulfilling all the due requirements. My second question is directed towards Dr Shakeel Auj. He has said no principle of formation of parties exists in Islam. My question is based on a verse from the Quran that describes that some among us are believers and some are non-believers. Broadly speaking, should not there be a party of believers and a party of non-believers?

*Answer: Maulana Mohammad Salfi*

The fundamental point is not about cheap or costly justice, but about the implementation of *Shariah* and the *Sunnah*. Free and fair justice will be available where the rule of Allah and the *Sunnah* are implemented. Therefore, do not indulge yourself in the literal meanings of the word and consult the holy Quran and the *Sunnah* to understand the truth.

*Added Answer: Dr Shakeel Auj*

You referred to a verse mentioning a party of believers and a party of non-believers. Can you explain how the rationale employed in this verse can be used to explain the existence of multiple parties among Muslims? The second point is that a main principle ordained in the Quran says that Muslims should not create any division/strife among them. The division/strife is compared to *shirk* (idolatry) at one place in the Quran. At another place in the Quran, God tells the holy

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Prophet that those who separated themselves from the creed of Islam (*deen*) after creating a divide, and made a party of their own, the Prophet has no relation with them. When we talk about one-party or no party system, we indeed talk about an ideal system which is not easy to establish. In absence of political parties, any individual can criticize the government in an Islamic state. The government then should welcome suggestions and correct the system. Look at the political parties in Pakistan which work only for their leaders' personal interests. We could not construct the Kalabagh Dam due to political parties' personal interests to secure their political constituencies or support bases. We do not know how many similar issues became controversial like Kalabagh Dam. As I said earlier, merit is ruined when such parties come into power. Hence, if we have an in-depth analysis of one party versus another party, it is usually a sort of rebellion. Once Muslims have formed their government, any party that stands against it would be taken as a rebel. But we have justified it in the garb of democracy. It is amazing to see how many parties exist in the country. It is even harder to find which one is on the right path. The people are being misled by these parties.

*Question: Mohammad Yasin (Teacher, Jamia Islamia)*

It has been said here that Pakistan has the office of prime minister whereas the chair of kingship is still held by the Queen of Britain. Does that mean we are still slave?

*Answer: Maulana Mohammad Shafi Chitrali*

Unfortunately, all those countries which got independence from the Britain, their heads of the state are prime ministers. I had raised a similar question. It is written in our Constitution that God holds the sovereign and absolute authority. But not only in Pakistan but also in other commonwealth countries such as India, the chair of kingship is kept empty for the Queen of Britain. I have argued that the Speaker of Pakistan's National Assembly had recognized in 1998 that we are still under the British rule. My point is, although we are not under direct British rule, but have been living under dominance of the British democracy. We cannot make progress until we come out of this oppression.

*Added Answer: Maulana Saifullah Rabbani (Teacher, Jamia Banoria, Karachi, and Administrator, Wafaqul Masajid, Pakistan)*

Democracy originated from Greece, where women were not allowed to vote. Even in Britain, the right to cast vote was denied for a

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long time, and the United States had similar kind of situation. The type of democracy we discussed here is a replica of Islam's system of *shura* or consultation. More than 65 years have passed, but we have failed to establish Islam's system of consultation. Nor have we been able to implement the so-called Islamic democracy. However some efforts were made for that. Those who consider democracy a system of disbelief (*kufir*) are indeed exaggerating the things. I believe if we continue to call democracy a system of disbelief then the religious scholars from all Islamic sects who have reached the parliament and continue to correct democracy are also the part of this disbelief. Indeed this is not the case. Prominent religious scholars including Maulana Shah Ahmed Noorani, Mufti Mahmood, Maulana Al-Azhari and many others have struggled for democracy in Pakistan. However, we have not been able to clear all hurdles present in the way of implementing true democracy in Pakistan. Although it is called democracy, we are still mentally slaves. Therefore, we should make concrete efforts to bring further betterment in democracy.

### **Mufti Muneebur Rehman (Keynote Address)**

*Chairman Ruet-e-Hilal Committee and President, Tanzeemul Madaris*

All the participants have talked explicitly, scholarly and wisely. They expressed their points of view in a very cognitive and lucid way. I want to say a few things to conclude this debate. If this is an Islamic state, then justice should be served fair and free. The first righteous caliph Hazrat Abu Bakr laid down some principles of Islamic caliphate in his first address to the people: "...The weak amongst you shall be strong with me until I have secured his rights, if God wills; and the strong amongst you shall be weak with me until I have wrested from him the rights of others, if God wills." Therefore I would argue that if it is the responsibility of the state to ensure people's rights that should be free and without any cost.

I do not believe that an ideal Islamic state can be established through the current democratic system. My brother Allama Zahidi said we should not lose hope and remain pragmatic. But losing hope means being dissatisfied with the available resources and prospects. One verse in the holy Quran describes a situation when the holy Prophet (PBUH) lost his hope and those who had embraced Islam thought that they were told lies [about Islam's victory or dominance]. In the books of exegesis it is interpreted that the Prophet did not lose hope in God but in the available resources. Those who had embraced Islam nonetheless were waiting for God's help as they were told. But that help [for victory] came at a time that was set by God. Hence God's help is not bound to

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come at a time desired by the people. Nor should we lose our hope in God.

Another question arises here: is our Constitution Islamic or not? I would like to say that it is Islamic according to the soul of our constitutional charter. But it is not completely Islamic. It still has a lot of contradictions and discrepancies.

Making 'righteousness' a dominant force in the present system is practically impossible until and unless you, the religious scholars and leaders, are on the driving seat. Here in Pakistan, if you start a movement in the name of religion, it will usually follow a trend of killing of Shias or adherents of other sects of Islam. Eventually the movement will fizzle out. The militant organizations operating in the name of religion have also created a lot of problems for us. Now the situation is that we cannot even speak the truth. The Islamic sects are unable to control their respective extremist elements and are reluctant to curb the latter's wrongdoings. We cannot bring reforms in the system until we raise our voice against the extremist and militant elements operating within us. Ideological debates on the legal status of democracy and constitution alone will not solve the problem. I would say that whatever we have in the form of democracy and constitution is a blessing and we can further improve it. But we should not declare it a system of disbelief.

Once I went to a program of Dr Israr. He was against the electoral system in Pakistan and participating in the elections. We all know he had disassociated himself from the Jamaat-e-Islami. As he had been criticizing all political parties taking part in elections for several years, I asked him how many people he had prepared thus far to bring Islamic revolution in the country. My purpose was to tell him that his way of bringing revolution could require hundreds or even thousands of years in preparation. Therefore, in my understanding, instead of asking some aliens to govern us, we should make sure that people who are in the present system continue to work and raise their voices. Today, if you are not part of the system, your voice will not carry any weight irrespective of who you are including Dr Shakeel Auj and myself. Therefore, we should bring further betterment in the system by keeping our hopes alive.

## First Dialogue: Second Session

### Host

Mohammad Amir Rana (Director, Pak Institute for Peace Studies)

### Chairperson

Maulana Abdul Haq Hashmi (Emir, Jamaat-e-Islami, Balochistan, and Member, Federal Shariat Court)

### Mohammad Amir Rana

In this session, we will try to focus on three main questions.

1. Who will determine the type of government and the method of governance in an Islamic state? Also, as we claim in our legal/jurisprudential debate that a ruler should possess certain qualities and attributes, which institution or person will identify and appoint a ruler having those qualities?
2. Is the demand for a separate homeland for the Muslims on administrative, legal or political basis un-Islamic?
3. What is your opinion about the present Constitution of Pakistan and the role of religious scholars in the process of Constitution building?

### Maulana Abdul Haq Hashmi

Democracy is a system of government that is established in consultation with all people living in a country. Although it is not possible to consult opinion of each and every person, we, the religious scholars, should not look towards different interpretations of democracy given by the West. Nonetheless, a term *jamhoor* has remained in use in *fiqh* (Islamic jurisprudence) to describe the majority



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opinion; it does not mean the opinion of a whole set of people. Therefore, in our understanding, the usual definition of democracy does not contradict with what *jamhoor* means in Islamic jurisprudence. In democracy, too, decisions are made on the basis on majority opinion.

Our entire ideological discussion in the first session revolved around two main questions: is democracy acceptable for us or not; and does democracy entails a system of disbelief or we can initiate a process of Islamization while being within it. These and other similar questions are part of ideological debate on the subject. But I want to draw your attention towards a more practical aspect of the debate. Democracy emerged as a result of growing secularism and diminishing role of religion in Western societies. To expect that a system that originated from a non-believing and secular society would talk of Islam would be a huge mistake. But it has already happened. Therefore, instead of debating the nature of democracy we should think about the options which available to us.

Humans have accepted most of the changes that resulted from the process of social and civilizational evolution. For example, we have on the whole accepted the documentation of matters related to wedding, divorce and birth, although the system of documenting these matters did not exist before. We have accepted financial systems, principles of import and export and other similar mechanism in the wake of modern civilization. These systems were practically not present during the Prophetic era. Likewise, although we do not recognize the current banking system, we have practically accepted it. As we continued our efforts to bring reforms in the present banking system, today we have a parallel 'Islamic banking system' irrespective of how people perceive it.

A review of the life of the holy Prophet suggests that he persuaded and prepared people to work for gradual reforms instead of an outright rejection and demolition of a system. For instance, despite being a great champion of freedom, Islam did not abolish slavery in one go. Indeed slavery continued to exist in the Arab society after the advent of Islam, but the holy Prophet had introduced such reforms in the system that finally put an end to the practice of slavery. We should look at democracy in the same perspective. I cannot declare democracy the best system. It came from a secular society and was imposed on us. On the other hand, we do not have an alternative of democracy. Nobody can restrict us from doing reforms. We should recommend reforms. Also, we should acquire the power to implement these reforms.

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### **Dr Ejaz Ahmad Samdani**

*Jamia Darul Uloom, Korangi, Karachi*

Islam is a comprehensive creed (*deen*) which talks about everything ranging from an individual's life to state and society. In this respect, the ideology of Islam is based on moderation (or taking the middle path), rather than *ifraat* (doing something to excess) or *tafreet* (doing something insufficiently). Letting the state continue functioning as a secular, religion-less state would be an act of *tafreet*. Indeed the secular concept of state was introduced by the West which is not acceptable to Islam. Islam's real objective is establishing an Islamic welfare state. Those who think that acts of worship and other deeds are a prerequisite to that indeed draw their argument from a verse of the holy Quran's chapter 24.<sup>11</sup> They think the profession of faith and good deeds should result into establishment of the Islamic caliphate. But in this verse, the establishment of caliphate is mentioned as a promise and not as an objective.

There are different levels of *ibadaat* (acts of devotion and worship). Some *ibadaat* are acts of direct worship such as prayers and fasting while others are acts of indirect worship such as to establish Islamic commands in an Islamic state. Islamic *Shariah* has ordained several judgments in that regard. Some Islamic commands are very simple and straight forward in which we cannot make any amendments. For example, we cannot change the number of *rakat* (parts or steps with prescribed movements and words) in the prayers and the number of fasting days. However, there are certain commands for which there is flexibility. For example, Islam has not fixed a particular dress code for its followers. Any dress that fulfills the objectives of *Shariah* is Islamic. Likewise, Islam does not prescribe a particular state system or system of government. Each of the four righteous caliphs was elected in a different way. From this, we can infer that there are no rigid rules in Islam, which makes it easier to find solutions to novel cases during different times and at different places.

Our understanding is that a king cannot be declared as the caliph. This perhaps is not true. God has said at one place in the Quran: "David

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<sup>11</sup> Probably the speaker's reference is to the following verse from the *Sura An-Nur*: "Allah hath promised such of you as believe and do good works that He will surely make them to succeed (the present rulers) in the earth even as He caused those who were before them to succeed others); and that He will surely establish for them their religion which He hath approved for them, a will give them in exchange safety after their fear." (The Quran, 24:55)

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slew Goliath; and Allah gave him the kingdom and wisdom...” And at another place in the Quran God says: “We have set thee [David] as a viceroy (caliph) in the earth...” It is written in *Muqaddimah Ibn Khaldun*<sup>12</sup> that there can be three types of governments or states. First is *tab'ai* or natural, which is found on lustful ideals and is the most primitive form of political organization. Second is *siyasi* or rational, which we can see in the West these days. The last one which is based on *Shariah* is called *khilafah* or caliphate. He defines caliphate as a state where steps are taken for people’s welfare here and hereafter in the light of Islamic *Shariah*. This can take different shapes in different periods of times and *Shariah* has no objection on that.

Second question is which kind of democracy can be declared Islamic and which one can be declared un-Islamic. We have discussed at length the definition and framework of democracy. In democracy decision are made on the basis of majority opinion or consensus. If in a meeting, majority opinion is against the opinion of the person heading the meeting (leader or emir), will that majority opinion be considered superior to emir’s? Islamic jurists have given two different opinions on that. In view of some jurists, emir is not bound to act on the opinion expressed by majority; rather he is free to take the final decision. The second caliph of Islam Hazrat Abu Bakr had sent *Lashkar-e-Osama* (Osama-led Army) to fight against infidels despite the fact that the majority opinion was against sending it.

On the contrary, some jurists suggest that the will of majority can be accepted. For instance, some jurists have interpreted the word ‘consultation’ employed in a *hadith* (saying/tradition of the Prophet) as to consult with the people of knowledge and to accept what they say. According to another tradition, the Prophet (PBUH) consulted a matter with Hazrat Abu Bakr and Hazrat Omer and then said had they both agreed on that he would not have disagreed with them. Before the battle of *Uhud*, the Prophet did not want to leave Medina but the opinion of most of his companions was that they should go out and confront the enemy. The Prophet accepted their opinion and set out for *Uhud*, the place near Medina where the battle was fought.

In the contemporary era, if we give our leaders absolute powers there is a risk that they will protect their interests first. In order to avoid such a risk, leaders can be bound to accept and act according to the will of majority. There are however two situations under which leaders can

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<sup>12</sup> Written by Ibn Khaldun in 1377, the book records an early view of universal history. It also deals with Islamic theology, political theory and the natural sciences of biology and chemistry.

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be bound to accept the majority opinion. One, we have to accept the way the majority wants the leaders to lead, whether it is against or according to the Quran and the *Sunnah*. This is secular or liberal democracy. It has no space for Islam. Second, under Islamic democracy, the will of the majority is accepted on the condition that it is not against the Quran and *the Sunnah*. If we accept and enforce this condition, we cannot call the system of democracy illegal or against *Shariah*. When democracy turns secular, it becomes un-Islamic. But when it fulfills the conditions set out by *Shariah*, we may term it close to Islam and hence, acceptable.

In Islam, people including women can participate in the processes of forming the government and legislation to a certain extent. It is obvious that the participation of whole population is practically impossible, particularly in the present times when populations of countries have grown significantly. Also, voters' turnout remains 40 to 50 percent in the contemporary elections, not 100 percent. *Shariah* also allows seeking people's opinions in the selection of a ruler. However a person cannot present himself as a candidate. When Hazrat Abdur Rehman bin Auf was made member of a six-member committee to seek people's opinion on the selection of caliph, he withdrew his candidature. The committee then consulted most of the people including women and children about who should be their caliph.

I think an alternative system should be formed in Pakistan for the nomination of election candidates. For example, the Election Commission of Pakistan can ask prominent prayer leaders and religious scholars of all Islamic sects in a certain area to provide a list of 10 candidates who have the required qualifications as provided in the Constitution. Then, these nominated candidates should not be allowed to personally run their campaigns. The Election Commission can however conduct interviews with these candidates and publish them so that people are able to decide whom to vote. The age limit for a voter should also be increased from the present 18 years to may be 40 years.

There is evidence in Islamic history to suggest that women can participate in political process and can also vote. At the time of the Treaty of Hudaibiyyah,<sup>13</sup> the Prophet consulted with Umme-e-Salma and accepted her suggestions. Similarly, Hazrat Omer asked his daughter for how long a woman can endure her husband's absence. She replied four months, which thus became the basis of Omer's decision

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<sup>13</sup> The treaty was agreed in 628 AD (6 AH) between the Prophet Muhammad, representing the state of Medina, and the Quraish tribe of Mecca. It helped decrease tension between the two cities and affirmed a 10-year peace.

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that army men should not stay away from their homes more than four months.

That suggests women can be consulted to seek their opinions on different matters. But can women be made permanent members of parliament (*majlis-e-shura*)? There are two opinions in this regard. Some people say that it is possible in some particular situations, not in normal situations. It is not evident from the history that Muslim women ever remained members of *majlis-e-shura* in an Islamic state. But if they are allowed to exercise their right to vote, it will not be called un-Islamic.

Who will determine the head of an Islamic state? I have already stated that there is no hard and fast rule in Islam about that. There are two basic conditions in Islam for a person to be given any responsibility. He should be able—i.e. have strong credentials and capacity to fulfill that particular responsibility—and honest/trustworthy. Islamic jurists have defined an honest (*amin*) person as the one whose good deeds surpass his misdeeds.

Now I come to the second question, i.e. is the demand for a separate homeland for the Muslims on administrative, legal or political basis un-Islamic?

There are two aspects of this question. First aspect is related to the demand for a separate homeland put forth by the Muslims in the British India, and the demands which are emerging nowadays in Pakistan. The second aspect of this question is related to a legal debate in Islam about whether there should be only one Islamic caliphate in the world or individual Muslim/Islamic states can also be established. Some jurists have opined that Islamic caliphate is for the whole world. We see in Islamic history that there was only one caliph who had governors in different parts of the world such as in the regimes of Banu Umayyad and Banu Abbas. But the question arises here whether each Islamic country/state should have its own ruler or not. If the rationale is this that the administrative units are too large to be properly handled by one ruler, then separate rulers can be elected on an administrative basis. A segment of Islamic scholars have permitted this option including Maulana Taqi Usmani who has discussed this aspect at length in his book "*Islam aur Siyasat*" (Islam and Politics). But individual Islamic states cannot be established on linguistic or ethnic basis. Pakistan was established on the basis of two-nation theory with the purpose of securing a separate homeland for Muslims.

What is the role of our religious leaders in the making of our Constitution? We must know that in 1952, 31 religious scholars presented a brilliant formula of 22 points. However, the subsequent

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constitutions of Pakistan did not fully reflect the Islamic provisions provided in that formula. Still, improvements can be made in Pakistan's Constitution in the light of Islamic scholars' 22 points. It is clearly written in those 22 points that the president of Pakistan will be a common Pakistani and will not have any kind of legal or constitutional immunity. But when the Constitution was made, the president was given complete constitutional immunity. Despite this, the Constitution on the whole is Islamic; however, it requires a lot of corrections and reforms.

### **Maulana Kashif Sheikh**

*Principal, Madrassatul Ansaar, Karachi*

The welfare state of Medina is still an ideal system for us. It is a role model for any Islamic state. In this context, I will present two sayings of the holy Prophet. According to one tradition, the holy Prophet (PUBH) said: "The best of your rulers are those whom you love and who love you, who invoke God's blessings upon you and you invoke His blessings upon them. And the worst of your rulers are those whom you hate and who hate you and whom you curse and who curse you."

According to another *hadith*, quoted in *Sunan Ibn Majah*, the holy Prophet said: "There are three whose prayer do not rise more than a hand span above their heads." And about the first one he said: "A man who leads people (in prayer) when they do not like him."

When we start reading the history of Islam, we come across a long list of Islamic thinkers who have talked about Islamic teachings on politics. Today, it is very easy to say that all the benefits of democracy are just because of the West, but we should also realize that from where it has originated. The states of Greece, Athens and Sparta are usually referred to in this context but what is the source of this information? Why [Western] experts do not mention the Islamic concept of state, which is indeed very clear? But the issue is we could not properly present and propagate the Islamic concepts of state and politics. If there are some virtues left in the Western democracy, these are just because of Islam. Islam has espoused a peaceful way to reform or correct the government. When Hazrat Abu Bakr became the caliph, he publicly announced: "O people! Obey me and support me if I fulfill my duty properly. Correct me when you see me going astray." We should also not forget the second caliph Hazrat Omer's saying: "If I deviate from the right path, correct me so that we are not led astray."

The system of consultation (*shuraiyyat*) is mentioned many times in the Quran. The holy Prophet followed it during his life. Irrespective

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of the methods used for that, we find many precedents of consultation in the eras of the first four righteous caliphs of Islam (*khilafat-e-rashida*). When we talk about voting in the election, we should not forget this Quranic injunction that it is a sin to hide evidence/witness. That implies that anyone who does not cast vote is indeed hiding his/her witness and thus committing a sin. To vote is to testify for/against certain individuals. In that regard women also have the right to vote and become part of legislation process. According to Imam Abu Hanifa, except for criminal cases pertaining to *hudood* and *qisas*,<sup>14</sup> women have the right to become a judge.

In Western democracy majority opinion is the basis for legislation but in Islam the judgments and laws ordained in the Quran and the *Sunnah* are held supreme. The supremacy of *Shariah* is accepted in the Constitution of Pakistan. But it is not implemented. We need to assess what are the hurdles in it and how these can be removed. Pakistan's parliament can freely debate the *Ijtihadi* (legal matters in Islam which are open to interpretation) and administrative matters. Then we have the Council of Islamic Ideology, which ensures that laws made in the country are not contradictory to Islam. The state of Pakistan had 'embraced' Islam after the approval of Objectives Resolution. Now, we should do something to remove the loopholes that exist in the Constitution.

### **Allama Abdul Khaliq Afridi**

*Director General, Shaban Al-Ghurba Ahle Hadith*

How can we remove the un-Islamic clauses that exist in the Constitution? For instance, the president of Pakistan and governors of the provinces enjoy full constitutional immunity. Likewise, the president can pardon a convicted person, and change or postpone the punishment. Therefore, it is unfair to call the Constitution of Pakistan completely Islamic. When an offender is punished after a due process of law where a judge carefully examines the evidences against him, the president should not be allowed to pardon the convicted. Only a victim's family has the right to pardon the assassin either by taking *diyyat* (compensation) or by mercy.

Similarly, a concept in democracy that people are the source of power (sovereignty) contradicts with the holy Quran. God says in Surah Yusuf of the Quran that "Judgment [as to what is right and what is wrong] rests with God alone." There are many Islamic clauses in the

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<sup>14</sup> *Qisas* means retaliation or retribution but the Quran prefers for Muslims compensation (*diyyat*) than demanding retribution.

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Constitution including the one that says that only a Muslim person can become Pakistan's president. But recently there has been debate on certain forums of peace and tolerance about how to get rid of this particular clause. Hindus and Christians are living among us and they are demanding the same. The religious scholars had agreed on the 1973 Constitution on the condition that all un-Islamic laws will be removed from it within a period of ten years. If that has not been done, we have a role to play to make this Constitution completely Islamic. We should not out-rightly reject this Constitution, because it declares Ahmadis non-Muslims.

### **Professor Mirza Amir Baig**

*Director Al-Suffa Academy, Karachi*

Different systems of government are in place in the world including authoritarian, democratic and consultative. In the authoritarian rule, a ruler is dictator. He enforces what he believes is right. On the other hand, in a democratic form of governance, the ruler is bound to make decisions according to opinion of the majority among his people. Both these methods are against Islamic tradition. Islam believes in a method of consultation. A consultative body (*majlis-e-shura*) gives suggestions to the ruler. If he thinks these suggestions are in the interest of people, he can decide to put them into force. But he is not bound to abide by these suggestions; if he wants he can issue a contradictory judgment, too. For instance, when the issue of apostasy emerged during the period of the caliph Abu Bakr, most among the Muslims were not in favor of fighting war against those who were committing apostasy, or renouncing Islam. Even Hazrat Omer suggested against wars on imposters/false prophets and Islamic tax evaders on account of unfavorable circumstances. However, the caliph Abu Bakr decided to fight.

As far as the election of ruler is concerned, it has already been said that all the four righteous caliphs were elected through different methods. However, there is one similarity in all those elections; nobody presented himself for the office. Hence in Islamic system of caliphate, no one has the right to present himself as a candidate for the post of caliph. However, there is a possibility of forming a party with the highest standards to appoint the ruler and all Muslims should accept its decision. A process can be adopted for this. It is not necessary to equate the vote of a common person with that of a doctor, teacher or scholar. There is a need to evolve a framework, such as the formation of a consultative body, as I mentioned earlier, comprising of righteous, educated, honest and pious people to decide who will be our leader



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(ruler) and what will be his characteristics. The holy Quran has hinted at desired characteristics of a ruler including physical health, wisdom, trustworthiness, and piety etc. The method of Islam may be different, but we should realize the standards as espoused in the holy Quran and *ahadith* (plural of *hadith*; sayings of the Prophet).

After becoming caliph, Hazrat Omer said in his address: “O ye faithful!...[After Abu Bakr], the mantle of caliphate has fallen on my shoulders...In [fulfilling] this task I seek your assistance. If I follow the right path, follow me. If I deviate from the right path, correct me so that we are not led astray...” Indeed it is the responsibility of a ruler to reach out to his people, listen to them and fulfill their needs. In other words, people should not find it difficult to approach their ruler and record their needs or complaints. The holy Prophet once said that that person will not enter the paradise whom Allah made the ruler and he showed neglect or inaction in the welfare of his people. Our leaders, who regard the throne of power as a bed of roses should not forget that the same throne can lead them to hell. Why do they forget that they will be held accountable before God? The second caliph of Islam Omer once said that if a dog died hungry on the bank of the River Euphrates, he [as a ruler] would be held responsible for that. Today, thousands of people are murdered and no one [among the rulers] is held accountable.

At the time of partition, it was feared that the British government was implementing laws which might allow the Hindu majority to rule. Therefore, religious scholars and political thinkers realized that an Islamic state should be established in Muslim-majority areas so that Muslims can live their lives according to their civilization and moralities. Today, some people say that Quaid-e-Azam Muhammad Ali Jinnah was a secular person and he wanted to establish a secular state. After the establishment of Pakistan, a close companion of Jinnah, Liaquat Ali Khan, presented the Objectives Resolution in the first constitutional assembly of Pakistan in 1949. The resolution vowed to make Pakistan’s constitution on Islamic lines. All those who were present in the assembly at that time had participated in the Pakistan Movement. Had they desired to make Pakistan a secular state, the Objectives Resolution would not have been passed. The same resolution later became the part of the 1956 and 1973 constitutions.

That suggests that the leaders of Muslims of Indian subcontinent who struggled for the establishment of Pakistan wanted to establish a separate state for Muslims where they could live their lives according to Islamic principles and ideals. They did not struggle to establish a secular state.

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As far as the question that Pakistan's Constitution is Islamic or not is concerned, I would like to say it is Islamic in its nature and objectives. But religious circles have concerns about the implementation of Islamic provision it contains.

The movement of Shaikh Ahmad Sirhindi (1564–1624), also known as Mujaddad Alf Thani, offers the best roadmap and model for establishment of Islam in today's Pakistan. He did not adopted the way of armed struggle like the Taliban have adopted here, but he tried to correct and reform the people who were close to Mughal Emperor Akbar. His struggle in rejuvenating Islam and opposing the heterodoxies prevalent in the time of Akbar is the perfect example for us. Unfortunately, today, our religious scholars are more focused on jihad than reforming the rulers and people.

### **Maulana Syed Ahmad Banori**

*Jamia Islamia Allama Yousaf, Banori Town*

A lot of academic and legal research work has been done and literature produced on the subject of Islamic concepts of political system and state, particularly in recent years. Even then some argue that *Ijtihad*,<sup>15</sup> a fundamental element of Islamic law, has not been employed to find solutions to emerging issues of modern age. But I think a sufficient amount of work on the said subjects has been done in *Ijtihadi* perspective. Still books are being written and experiments being done to research and analyze Islam's political system and concept of state.

Therefore I believe if any sufficient research work Muslims have conducted it is largely about what is the Muslims' concept of state; what should be the form of government; how should an Islamic government be formed; and how the government of Muslims should function, etc. In this regard, they did several experiments as well. Political parties were formed. In Saudi Arabia, the monarchy was Islamized. Theocracy was established in Iran for a particular purpose. A system was introduced in Afghanistan through alternative means. Pakistan represents a democratic narrative put forth by Quaid-e-Azam and Allama Muhammad Iqbal. But we still do not know what we want to do and where we want to head.

I will give my humble opinion on the root cause of this persisting ambiguity among us. We usually want to understand things through their face value or literal sense. For example, I put a question before

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<sup>15</sup> Intellectual exercise or effort to form an independent opinion or judgment on a legal question in different circumstances and contexts.

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you: how a hotel should look like according to Islam? I mean how it will be constructed? How many rooms it will have? Will it have lobby and swimming pool? It is possible some say that as there is no concept of hotels in Islam therefore establishing hotels is out of question. Others may try to find some precedents from Islamic history and say that in a certain period of Islam there was an inn for travelers that had an attached pond too, therefore establishing hotels with swimming pools is justified. This is the confused state of mind that has not allowed us to develop some established opinion on the issues confronting us including Islam's system of government and state. We will have to look at the principles provided by Islam. In my opinion the term 'Islamic hotel' is vague, hence we should not think about how to establish an Islamic hotel. At maximum, what we can try to explore is whether Islam allows strangers to hire some place on rent in some community and start living there. After that the matter of building hotels, including five and seven stars, will be seen in the perspective of social and civic needs and requirements. In Islamic perspective, we can see if a hotel is being run according to Islamic principles or not, e.g. is any cheating or injustice being done to someone or some immoral acts are happening there.

I suggest that instead of getting lost into a superficial and vague debate, we need to focus on objective and fundamental aspects of Islam's teachings and instructions on the state and politics. Otherwise I can continue discussing each and everything about the Islamic governance, which you ask me, irrespective of either it is relevant and useful or not. As a result, the things will stay unresolved. A big problem is that we try to add Islam as a prefix or suffix to everything. For instance, we demand of Islam to give us comprehensive concepts and systems for governance, banking, education, and army etc. If we do not find these concepts and systems in Islam, we will either declare them un-Islamic or try to put a veil of Islam on or 'Islamize' them. We have done a great deal of Islamization of things.

Islam is God's creed which did not start with the arrival of the Prophet Muhammad but of Adam. It has been guiding the human beings through Messengers of God. It is human beings who establish states and state system through the processes of socio-cultural, political and civilizational evolution. Islam has provided some fundamental principles which should only serve the purpose of an oversight.

Democracy has passed through a process of evolution and has adopted many changes in the process. In my view, Islamic scholars should pronounce in clear and categorical terms about how a government should be formed. In logical terms, there could be three

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different forms of government. First, when God declares a person among people as their leader. The Messengers of God are His vicegerents who educate and train the people to practice God's commands. After Messengers, we are left only with two options to select a system of government and elect our rulers: through consultation; and through the principle of might is right.

On the question of who will be the successor to the holy Prophet, Muslims were divided into two groups. This division established two major sects of Islam, i.e. Sunni and Shia. The basis of this division was a legal question that was raised at that time that whether the Imamate (leadership) is from God (*mansus*) or people can also appoint/elect their *imam* (leader). One group of Muslims, which we call the Shia sect now, argued that the Imamate is from God and only His Messengers can appoint the *imam*. Second group, which later became to be known as Sunni sect of Islam, stated that it is the right of the people to elect their leader.

The first caliph of Islam Hazrat Abu Bakr was elected on this basis of consultation, or public opinion, and since then it has become a tradition among Sunni Muslims that the *Imammate* (or the appointment of *imam/leader*) will not be *mansus* (from God). The word *shura* was used to describe the way to get people's opinion. There can be a thousand methods to collect people's opinion under the system of *shura* or consultation. Many changes have occurred in the electoral system on the basis of adult franchise and many more will occur. We know that the women in Switzerland were given the right to vote during the last century. It is quite recent. Therefore it is upon societies and civilizations to decide about how to get public opinion and who is eligible to give opinion.

But the first four caliphs of Islam had established that the right to rule will be decided with people's opinions and endorsement. Hazrat Omer had made it categorically clear that Islamic caliphate cannot be established without considering people's opinion. Hence, there is no justification in Islam for a government that does not represent people's consent and opinions. We have discussed here that the right to vote should be given only to the people of knowledge and wisdom. In this regard the age limit of 18 years for a voter was also questioned. But my question is how can we declare a person of 18 years of age insane or ignorant? The same applies for the candidates, i.e. if they are righteous and wise or not. Only people can decide about that through their votes. Therefore I am very clear that in an Islamic state only people are authorized to elect their system of government and rulers.

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Every adult person is free to take his decisions independently; we can only educate or try to convince him/her. To me, every individual is independent to act in his personal matters and is answerable to only God. Secondly, only a majority can decide about what is right and what is wrong. A minority cannot impose itself and rule the majority by declaring itself on the right path because there is no place for that in Islam. Therefore our religious scholars should understand that no system of government, including caliphate, democracy or secularism, can be established forcefully. I will try to explain it with an example. Drinking alcohol is prohibited (*haram*) in Pakistan both legally and in terms of divine laws because majority population of the country is Muslim. But in Britain, it might be prohibited in terms of divine laws but not legally because the majority population is not Muslim.

As far as the establishment of individual Islamic/Muslim states is concerned, this is linked to social and civilizational evolution and the matter was decided one century after the advent of Islam. Two separate states of Banu Umayyad and Banu Abbas have co-existed in Islamic history. When Islamic jurists said that there should be only one leader (emir) for Muslims, they were trying to describe a basic principle that presence of more leaders would cause conflict and trial among Muslims. That means if we are in one room, there will be only leader. Interestingly, we are ready to accept one caliph for Muslims of the whole world but want to establish multiple caliphates in Pakistan on sectarian basis. Everyone seems to establish one's own caliphate here.

We need to understand one fundamental question: We all are inferring our opinions from the Quran but in case of different of opinion among us who will issue the final judgment? The majority makes decisions in Pakistan. I like to say that in Islam, nobody has the right to impose his will upon the majority of the people.

### **Maulana Ijaz Haider Mazhari**

*Research scholar, Al-Zuhra Academy*

The holy Quran states it clearly that the divine rule is essential for the establishment of Islam. There are many verses which describe that the right to judge/command rests with God. No one has a doubt in that. But do we want to adopt the Western way of living a life? The West itself has recently learned the principles of humanity. Many Western countries have recently given their women the right to vote and the right to get inheritance. Should we learn democracy from these countries? We have democracy of our own. We have a democratic thinking. Our democracy is very rational. No human has the right to rule others except with the divine commands.

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We, the adherents of the Shia sects of Islam, believe that our *imams* (leaders) are *gha'ib* (hidden or invisible) but we believe in them. There is a consensus on this religious decree [among Shias] that until we are able to see our [hidden] *imam*, religious scholars have the obligation to form the government. In our sect, democracy is a blend of the line of leadership (*nasb*) and elections. Every person who has reached the age when he/she becomes religiously responsible or accountable (*mukallif*) has the right and eligibility to vote. In our jurisprudence a nine years old girl is religiously obliged to offer her prayers; in boys however this age is 15 years. Therefore every *mukallif* man and woman is eligible to vote and also become member of the parliament. But a woman cannot become the ruler because this is not allowed in Islam. Most Islamic jurists and scholars have a consensus on that.

One of the ways to elect the ruler of an Islamic state is based on the belief that the caliph is from God. As the holy Prophet (PBUH) was the last prophet of God and God's revelation has completed upon him, now wise people among Muslims will elect their ruler. Though all people in an Islamic state have the right to vote, they are not allowed to elect a person of bad character.

### **Allama Syed Aqeel Anjum Qadri**

*Editor, monthly 'Ufaq' and General Secretary, Jamiat Ulema-e-Pakistan, Sindh*

Once I participated in a session of debate among religious scholars on the issue of passage of a resolution against the Council of Islamic ideology by the provincial assembly of Sindh. The debate started off from the 1857 War of Independence and ended on jihad. I stressed that why is there no religious scholar present in the Sindh assembly, despite the fact that all the other provincial assemblies have religious scholars? Then I put forth what I considered was the main reason for that. I said that our [religious scholars'] internal differences and discord have provided the secular and liberal circles to keep us at a distance and malign us in the eyes of the people. I further said that on the one hand you invite infidels and non-believers towards Islam on the other hand you issue decrees of jihad against those Muslims sitting in Pakistan's parliament and provincial assemblies. Instead of declaring them disbeliever, we should try to influence our political leaders and parliamentarians in favor of Islamic system through preaching. Dr Baig rightly gave the example of Shaikh Ahmad Sirhindi who changed

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minds of the people in Emperor Akbar's inner circle through his letters, which led to demise of Akbar's *Deen-e-Ilahi*.<sup>16</sup>

I think leaders of all religious and political parties should have been invited to be part of this debate because they are part of Pakistan's political system and hence can effectively influence public opinions. Secondly those who think democracy is a system of disbelief should also have been invited. Anyhow the participants of this dialogue have agreed on one thing that democracy could become workable for us if we 'Islamize' it, remove secular elements from it and base it on the principles espoused in Islam.

Our religious circles completely ignore the fact that between 1970 and 1977 prominent Islamic leaders and scholars including Shah Ahmad Noorani of Jamiat Ulema-e-Pakistan, Maulana Maududi and Maulana Tufail Mohammad of Jamaat-e-Islami and Maulana Mufti Mahmood of Jamiat Ulema-e-Islam were the main proponent of the idea of proportionate representation of political parties in the National Assembly. That implied a party could acquire seats in the assembly according to the number of votes it got during the election. The parties then would send those of its representatives in the assembly whom they regarded relatively more pious, honest and righteous.

In Pakistan, we see that everything is adulterated including democracy. Dictatorship is lot better than democracy if it provides justice. In Pakistan mutilated bodies are found and 'crocodiles' have destroyed the economy of our country. They have plunged our next generations into debts and darkness and nobody holds them accountable. We cannot decide about democracy until we have a real one in Pakistan. The 1973 Constitution is a sacred document, which has endorsements of credible and prestigious religious scholars and leaders. We can have a difference of opinion with Allama Shah Ahmad Noorani, Mufti Mahmood, Allama Abdul Haq, Allama Mustafa Al-Azhari Maulana Ghulam Ghaus Hazarvi and other politicians of that time including Ghaus Bakhsh Bizenjo and Khan Abdul Wali, but we cannot ignore their fairness and hard work. The first amendment made in the Constitution, i.e. the change of name of Pakistan to Islamic Republic of Pakistan, was due to efforts of Shah Ahmad Noorani. Again it was because of religious scholars' struggle that the definition of a Muslim was introduced in the Constitution and Ahmadis were

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<sup>16</sup> *Deen-e Ilahi* (Religion of God) was a syncretic religion propounded by the Mughal emperor Akbar in 1582 AD, intending to merge the best elements of the religions of his empire, and thereby reconcile the differences that divided his subjects.

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declared non-Muslims. The Constitution includes the Objectives Resolution and most of the recommendations made in the 22 points of the religious scholars. It gave the concept of the Council of Islamic Ideology, which was established by General Ziaul Haq under the chairmanship of Justice Zillur Rahman. Unfortunately none of its recommendations are implemented till today. But I can proudly say that the decisions of the Council of Islamic Ideology were made with consensus and had no stamp of any particular sect. Today, people are appointed for the Council on the political basis and through corruption. If credible scholars are inducted in the Council, it can solve many problems of Pakistan according to the teachings of Islam. As far as the governance system is concerned, everyone accepts that Islam provides the basic principle to govern and also shows flexibility for introducing reforms in the order of government. All of the four righteous caliphs were selected through different methods but on the basis of one fundamental principle of righteousness and piety. Therefore, we should take advantage of the flexibility provided in Islam while sticking to fundamental principles it has espoused. We should restrain from issuing the decrees (*fatwas*) of disbelief [against rulers].

Democracy has transformed the United States and many European countries into welfare states. It is unfortunate that while Islam ordains the establishment of a welfare Islamic state, we do not find such state in any of the Muslim countries including Pakistan and Saudi Arabia. Poverty is in the West too, but I never saw people begging there; instead they would play violin in trains to raise money. Islam allows us to construct our system in the light of our own socioeconomic needs and civilization. Things can be translated according to the situation. Lastly, I want to say that all the principles, be it Islamic or democratic, can be good, but the real issue is their implementation. There are only two classes in the world, rulers and subjects. We should stand with the oppressed and not with the transgressors.



## Question & Answer Session

### Questions

*Mohammad Ammar (Student, Jamia Naeemia)*

It was said here that voting is a religious duty. I think those who do not vote in Pakistan have some doubts on the integrity of the candidates. Should they even then vote?

*Qurban Ali (Student, Darul Uloom Naeemia)*

My question is directed to Dr Ejaz Samdani. He said that a woman can become a parliamentarian, but she cannot rule us. If a woman can become member of the parliament why cannot she become the prime minister?

*Abdullah (Teacher, Jamia Naeemia)*

My first question is directed to Dr Ejaz Ahmad Samdani. Can you please explain the basic structure of Islamic governance? What is the difference between Western-style governance and Islamic-style governance? My second question is for Allama Shahid. Democracy is defined as the government for the people and by the people. Does democracy in Pakistan fit in this definition or not? Had our leaders dreamt for the same Pakistan we have today?

### Answers

*Maulana Kashif Sheikh*

In the absence of a qualified person/candidate, shall we cast our vote or not? In my opinion, there are some fundamental Islamic principles and some things we learn through experience. We should keep these two separate. Articles 62 and 63 in the Constitution set the criteria for the qualification of election candidates. Irrespective of candidates are allowed to contest in line with those criteria or not, we should follow the basic principle of qualification of candidates when voting.

*Dr Ejaz Samdani*

The main objective of an Islamic order of government is to establish the system of prayer and *zakat* and to enjoin acknowledged

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virtues and forbid the vice (*amr bil ma'aruf wa-nahi anil munkir*). At one place in precepts of Islam it is also stated that an Islamic government will establish a system of justice too. These are fundamental things to do. The establishment of defense and foreign ministries is an administrative issue. Such tasks fall under the category of *mubahaat* (plural of *mubah*, permissible things in Islam), which can be adopted and abandoned according to the needs of a certain time and place. The fundamental difference between an Islamic government and a Western style government is that in Islam the authority to rule is not a right but a responsibility, whereas in the West, it is declared as a right. The term *wazir* (minister) is derived from an Arabic word *wazr*, which means a person who bears or carries the burden. Hence, prime minister is someone who bears the maximum burden. Another difference is that the West likes liberalism, whereas we endorse *Shariah*. As far as the definition of democracy is concerned, there are different approaches. As a result, experts do not agree on a single definition of democracy. For example, when we talk about people's government, how is it possible that people are the ruler as well as the subjects. We say that people have elected their rulers, but after that the former become dependent on the latter's decisions.

*Maulana Abdul Haq Hashmi*

Most of the participants of this dialogue probably share this view that although Pakistan's Constitution is not as comprehensive and perfect as Islamic law but it can pave the way for the establishment of Islam. When Maulana Afridi said that he could not declare Pakistan's Constitution as Islamic, he perhaps wanted to say that it can be made acceptable and practicable by removing certain existing flaws and discrepancies. I too said the same that certain reforms are needed in the Constitution. Secondly, we are still unable to implement the good things present in the Constitution. The main reason for that is that our religious circles are divided

## SECOND DIALOGUE

Place:Lahore  
Date: May 19, 2014

### **Host:**

Muhammad Amir Rana (Director, Pak Institute for Peace Studies)

### **Chairperson:**

Qari Haneef Jalandhary (Secretary General, Wafaqul Madaris Al-Arabia Pakistan)

### **Discussants:**

Maulana Yasin Zafar (Secretary General, Wafaqul Madaris Salfia Pakistan)

Allama Ghulam Baqir Ghillon (Jamia Al-Muntazir, Lahore)

Sahibzada Amanat Rasool (Principal, *Idara Fikr-e-Jadeed*, Editor monthly *Rooh-e-Buland*)

Mufti Mohammad Zahid (Vice Principal, Jamia Imdadia, Faisalabad)

Allama Shahzad Mujaddedi (Chief Administrator, *Dar-e-Ikhlās*, Lahore)

Professor Hafiz Khalid (Leader of Tanzeemul Ikhwan)

Allama Sadiq Qureshi (Deputy Head, Tehreek Minhajul Quran)

Allama Khaleelur Rehman Qadri (Editor, Urdu monthly *Soo-e-Hijaz*)

*SECOND DIALOGUE*

Allama Ammar Khan Nasir (Deputy Director, Al-Sharia Academy Gujranwala)

Allama Younas Qasmi (Editor monthly *Khilafat-e-Rashida*, Faisalabad)

Mufti Mansoor Ahmad (Religious scholar and columnist)

Professor Mirza Ayub Baig (Leader of Tehreek-e-Islami Pakistan, Lahore)

Dr Raghbir Hussain Naeemi (Principal, Jamia Naeemia, Lahore)

## Islam, Democracy and the Constitution of Pakistan:

### **Professor Mirza Ayub Baig**

*Leader of Tehreek-e-Islami Pakistan, Lahore*

It is indeed a big mistake to regard democracy a system. It is only a way of governing. Those countries where democracy exists have capitalist economies. Democracy exists in the United States, Europe and India, but not in Russia and China. Capitalism plays a key role in the formation and demolition of governments. It is not possible for a person in the United States to win election without the support from capitalists. Capitalism is the most exploitative economic system in the human history. The system is covered with the silk veil of democracy to make it appear soft and clean.

Certain attributes of democracy are certainly very good such as the importance of public opinion, the right of the people to elect their ruler, and consultation, etc. But, democracy largely serves the interests of the rich, or the capitalist class. Most of the wars fought in the recent past were initiated by the capitalists so that they could sell their arms. Take the example of Pakistan, where nobody could participate in democracy without the support from the capitalist and rich classes.

Democracy serves human better than communism does. For example, wherever democracy exists, you will find better health facilities, education and more opportunities of employment. Communism tried to exploit humans and as a result collapsed within 70 years. On the other hand, capitalist system feeds its 'horses' (people) very well to ensure a better 'ride'.

A question arises here: what does Islam say regarding that? The state and the government were considered the same thing in the pre-Islamic times of ignorance (*jaahiliyyah*). That is why anyone who dared to speak against government was killed on the charges of rebellion against the state.

But Islam gave a very beautiful system of caliphate, in which although the leader of the faithful has been given full authority yet he is bound to consult people before taking decisions. Islam provides a comprehensive framework for establishing the Islamic society. But for establishing a political order in that society it has provided only a fundamental principle of 'consultation'. The opinions of few representatives were perhaps deemed enough to elect the caliph, something that is not possible in the modern day world. However Islam puts some conditions for the qualification of rulers. I think there should

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be some conditions on the eligibility of voters as well. In general, I do not see any clash between Islam and democracy.

As far as the question whether our Constitution is Islamic or not is concerned, I would like to quote Dr Israr Ahmad, who once said our Constitution is full of hypocrisies and contradictions. The Article 2 of the Constitution says Islam is the state religion. Article 2-A says that the Objectives Resolution is the integral part of the Constitution; Article 32 says it the responsibility of the state to make its citizens better faithful Muslims. Despite all these clauses, un-Islamic amendments were passed and they are still part of the Constitution.

### **Mohammad Amir Rana**

*Director, Pak Institute for Peace Studies*

During the first session of debate held in Karachi, the participating religious scholars had agreed that if democracy stands for managing state affairs through collective wisdom, it is certainly Islamic in its essence. The religious scholars had also declared the presidential system closer to Islam than the parliamentary system. Also, there was a consensus among scholars that the current democratic system of Pakistan is not against Islam, but has a lot of ambiguities that should be removed. Similarly concerns were also raised about how to implement the Islamic provisions that are part of Pakistan's Constitution. The religious scholars also discussed that if democracy is only a method of transfer of power, rather than being a comprehensive system, then what should be the method for elections? Who will vote? How will people elect their rulers?

It was also observed that all the problems we have in Pakistan are usually seen as a whole and inter-linked. For instance, if problems of the common man are not solved, democracy will be blamed for that. Is it possible for us to see democracy as separate from the administrative aspect of governance? And which should be the nature of administrative structure? A consensus had emerged in the Karachi dialogue that the people have the right to elect their ruler. However, there was confusion on who is eligible to vote. A question also arose if women can also become members of *shura* (council/parliament). Most participants said yes they can. Most of the religious scholars also agreed on the issue of how to form the government. No one favored the use of force for replacing a government or coming into power. We want to reach on further agreements on the matters in question in today's dialogue.

## **Sahibzada Mohammad Amanat Rasool**

*Principal, Idara Fikr-e-Jadeed*

There is some ambiguity about the religious scholars' viewpoints on the Constitution of Pakistan. Pakistan's media is also presenting these viewpoints in an incorrect way. Before Islam, a ruler had the complete authority to rule. Islam continued this practice and a similar system persisted during the period of caliphs. Even in the contemporary era, whether it is a presidential or parliamentary system, a single person who heads the state has the authority to make final decisions. Similarly, in Pakistan's family system, usually the head of family has all the powers of decision making. Islam gives the concept of consultation regarding governance. In Western democracies, this consultation comes directly from the people and their suggestion is considered as the final word. However, in Islam, the consultation has to follow the divine law. If anything negates the teachings of Islam, it will not be accepted.

Islam permits women to participate in the political system. But it wants women to primarily focus on their homes and remain free of economic activities. As Islam is the creed of nature (*deen-e-fitrat*), it does not negate any knowledge which human beings achieve through their experience and the process of evolution. However, it also gives us a principle that any decision made by the majority should not conflict with Islam. As far as voter's age is concerned, I think education and awareness are more important factors than age to determine who is eligible to vote. However, if deemed necessary voter's age can be enhanced from the current 18 years to 25 or 30 years. Islam has also ordained to elect pious and righteous rulers.

Islam gives the message of reconciliation in international relations. The Holy Quran says if they send the message of reconciliation and lay down their arms, accept their message. Islam also prohibits proxy wars.

Islam gives a very clear understanding of the financial system. Islam prioritizes humans, whereas the West prioritizes the capitalists in the financial system. Islam has strictly forbidden *riba* (interest). In Islam's political system, principles are supreme; in the West, vested interests are held supreme. The same rule applies for managing international relations. I would like to say there are relatively more good things in democracy than bad ones. The Constitution of Pakistan is the best among those of all Islamic countries. Therefore, its implementation is more important than its status of being Islamic or un-Islamic. When some people say that un-Islamic clauses exist in the Constitution, it is possible that that is not the case; the complaints

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might be based on certain interpretation in Islamic jurisprudence. However, if some clause in the Constitution is really against Islam, we can discuss it.

### **Allama Shahzad Mujaddedi**

*Chief Administrator, Dar-e-Ikhlās*

The Western democracy is an outcome of their continuous socio-political evolution and reflects their civilization. Nonetheless, Pakistan adopted democracy because of its needs. The perceptions of Pakistani people towards democracy are largely based on their experiences of democratic system in Pakistan and what it has delivered so far. Nonetheless, though Islam and democracy share some traits, we should critically examine things before adopting them. In Islam, sovereignty belongs to God and man is His vicegerent. At the same time, Islam makes obligatory for its followers to obey the ruler until and unless he becomes transgressor and does an act of open disbelief. Islam does not allow establishing a state within a state because it creates discord and anarchy.

### **Mufti Mohammad Zahid**

*Vice Principal, Jamia Imdadia, Faisalabad*

The constitution is like an agreement, and Islam emphasizes on abiding by agreements. I want to refer to a decision made by an Umayyad caliph Hazrat Omer bin Abdul Aziz. He wanted to appoint Qasim ibn Muhammad—a prominent doctor of Islamic law who was grandson of the first caliph Abu Bakr and a disciple of Hazrat Ayesha—as his successor. The decision could be best in those circumstances. But Omer bin Abdul Aziz said that it had been agreed during his predecessor Suleman bin Abdul Malik's regime that Waleed bin Abdul Malik will be elected as the next caliph after Omer's demise. Therefore, he decided not to break the commitment he had made. Every day, we see someone on television mourning the Objectives Resolution. It is not correct to discuss removing the things which have already been established and agreed upon.

Although democracy started from the West, but it accepted local influences wherever it went. Chinese food is very famous across the globe, but the taste of Chinese dishes in Pakistan is completely different from their taste in China. Just like we have made a Pakistani adaptation of Chinese food, the Western democracy has also Pakistani, Indian, Afghani, Malaysian and Iranian versions. No doubt the Western democracy is dominant. Sometime we put the blame on democracy for



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the problems which are emerging as a result of the dominance of Western civilization. If a society is able to reject the dominance of West's systems then it is another issue. For example, in Gulf countries the system of guarantor (*kafil*) does not follow the international labor laws, but they still have it. Therefore, they do not have democracy and have their own standards.

We have to underline the aims of *Shariah* and decide whether or not we can fulfill these aims through democracy. I was going through a report published by the Democracy International. The report has chalked out seven ingredients for democracy. The first ingredient is the balance of power, which is exactly according to the aims of *Shariah*. It abolishes totalitarianism and monarchy. Another ingredient mentioned in the report is the freedom of judiciary, which is also a very much an Islamic concept. The report also mentions pluralism, which we also have here in Pakistan but only due to democracy. This is also because of democracy that we are freely expressing ourselves in this dialogue, a luxury that is not available in Saudi Arabia. The fourth ingredient is the rule of law. The remaining three ingredients mentioned in the report are accountability and transparency; a diverse, free and independent media; and the establishment of human and political rights. Therefore, I understand that we should look at these seven basic elements of democracy and compare them [with the aims of *Shariah*].

There are a lot of discrepancies in democracy. We do not have a divine system of government in Islam that is why all four righteous caliphs were elected through different methods. I believe that if our society is fully conscious and aware, the aims of the *Shariah* can be better achieved through democracy.

### **Allama Ghulam Baqir Ghillon**

*Jamia Al-Muntazir, Lahore*

There should be no doubt in it that people's progress and welfare is the fundamental principle of the Islamic order of rule. The four righteous caliphs of Islam and leadership of members of the family of the Prophet (PBUH) or *Ahle Bait* prioritized welfare of their people. Hazrat Ali wrote letters to administrators and governors of different provinces of Islamic state which are included in *Nahjul Balagha*. These letters put a significant emphasis on piety, human rights and justice. Anyone who becomes the ruler should keep these responsibilities in mind.

Credible religious scholars from all Islamic sects contributed in the formation of the 1973 Constitution, which has nothing that can be called as un-Islamic. The problems we face in Pakistan are due to the

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lack of the rule of law. If the Constitution and laws are implemented effectively and democratically, Pakistan's people and the state will prosper and move forward.

### **Maulana Yasin Zafar**

*Secretary General, Wafaqul Madaris Salfia Pakistan*

Many books have been written on Islamic governance, politics and the caliphate. The concept of Islamic state and government existed and became the basis of the establishment of governments of the four righteous caliphs. These caliphates were established on what we call the method of the Prophet (PBUH). If a government's foremost aim is to promote *Shariah* then it does not matter if it works under the presidential or parliamentary system. As we usually do not accept or reject things without understanding their benefits and harms, the same treatment we should do with democracy. If democracy is beneficial for us, we should adopt it.

In the West, whatever the majority decides, it will be accepted. But in our system, God is sovereign, and there is no space for further discussion on the [clear] laws and rights ordained in the precepts of Islam; these are implementable as they are. However, I would like to say that we should rethink about who is eligible to cast vote or give opinion. Islam differentiates between a literate and illiterate person, as has been illustrated in the holy Quran at many places and in different forms. Therefore, there should be some conditions for voting. It has already been discussed that the minimum age for a voter should be above 18 years. It is a fact that the thinking capacity of an 18-year old person is like of a child. I do not think that even the parents will recognize their 18-year old offspring's decisions. There are chances of betterment if the age of the voters is raised along with their level of education.

In the West, legislation is done on the basis of majority opinion. In Islam, we can do legislation only in accordance with the spirit of the holy Quran and the *Sunnah*. We cannot let free democracy as in the West. However, the doors of *Ijtihad* (intellectual exercise to develop independent opinion or judgment on a legal question) are always open to do legislation for the novel cases. For this, it will be better to fulfill the conditions underlined by the knowledgeable. To solve the administrative problems, the government is allowed to make legislation, for example, the issues of traffic and similar kind of problems.

The third question is to what extent the public opinion is respected in the formation of a government. We all know that at the

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time of Hazrat Usman's election as the third caliph, Hazrat Abdur Rehman Ibn Auf went door to door to seek people's opinion and he made his decision in the light of that consultation. Some Islamic jurists say that not only men but women were also consulted by Ibn Auf. *Shura* (consultation) is indeed one of the basic principles of Islam. There is no restriction to seek consultation. The rulers can seek any type of consultation and if it is credible, it is of more worth. Consultation can be sought not only from men, but also from women.

### Question & Answer Session

*Question: Asif (Student, Jamia Naeemia)*

Some religious scholars consider democracy to be the best governing system. Then, how should we rank the period of the righteous caliphs, which we consider the best?

*Answer: Mufti Mohammad Zahid*

Nobody among us said that our current governing system is completely according to Islam. However, we can say that this is not against Islam. Or we can say it can be adapted according to Islam. As far as your reference to the righteous caliphs is concerned, I think we can learn from them how to underline our fundamental aims and objectives in the light of the holy Quran and the *Sunnah*. Similarly, we can take help from *Shariah* to further correct our system. For example, in the period of the righteous caliphate, not only the people had the right to criticize, but Hazrat Abu Bakr and Hazrat Omer said in their inaugural addresses that it was the responsibility of the people to keep an eye on the government. The periods of monarchy in Islamic history including Mughal, Turk, Umayyad and Abbasid did not allow such practices. If a ruler was personally pious, he allowed criticism. Otherwise, there was not a system for an organized criticism or accountability of the government. I said that we can achieve it only through democracy. No doubt injustices are done in democracy too, but it allows for criticism and protest. Where there is no democracy, you cannot even 'cry' to record your protest. I will repeat that first we have to underline the objectives of *Shariah* and then determine through which system of government we can achieve these objectives.

*Question: Rashid Mehmood (Teacher, Jamia Naeemia)*

Mirza Ayub said democracy is full of hypocrisies. I request him to please explain it. The Constitution of Pakistan was compiled by leading Islamic scholars. Importantly, the elected members of the

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parliament do not fulfill the conditions set out in the Articles 62 and 63 of the Constitution. The Council of Islamic Ideology can play an important role, but this can happen when the members are elected on merit.

*Answer: Professor Mirza Ayub Baig*

There is no doubt about the participation of leading Islamic scholars in the making of the Constitution. In rewards of their participation, they were promised that all the clauses of the Constitution will be made Islamic in ten years, e.g. revisiting the issue of *riba* (interest). But it did not happen.

*Question: Khalid Iqbal (Student, Jamia Naeemia)*

The religious scholars said whatever is missing in our Constitution will be filled by using the platform of the Council of Islamic Ideology. I want to say that thousands of recommendations are made by the Council, but they are not even reviewed and paid attention, leave aside their implementation. How can we influence our legislators regarding that?

*Answer: Mufti Mohammad Zahid*

This issue has been debated in our courts too. Although, our courts gave some very good verdicts, but the verdict in Hakim Khan case<sup>17</sup> was disturbing. But it can be reviewed any time. Zafar Ali Shah case decided that the Constitution of Pakistan will be federal, parliament and Islamic. In this way, the supremacy of the Islamic clauses was accepted although provisionally. However, until the Supreme Court gives a clear verdict that Article 2-A holds supremacy over the other clauses of the Constitution, the issue will not be solved. Similarly, Article 45, which allows the president to pardon a convicted assassin, is also controversial. If our people want they can put pressure on the government to declare the clause null and void.

Someone here also asked about *hudood Allah* (boundaries set by God). I would say that *nusus* (divine rulings with clear/absolute meaning and no difference of interpretation) and those commands on which there is a consensus among Muslim *ummah* cannot be changed, revisited or abandoned. We need to enforce them at any cost. However

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<sup>17</sup> Supreme Court's verdict in Hakim Khan case (1992) ascribed an equal status to all clauses of the Constitution including Islamic provisions that guarantee supremacy of *Shariah*.

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we can review those legal matters which are open to interpretation (*Ijtehadi*) and can delay their implementation if required.

*Question: Muhammad Junaid (Student, Jamia Naeemia)*

My question is whether or not the current democratic system in Pakistan is successfully protecting and fulfilling the fundamental rights of the people? If it is unsuccessful, can we derail it? If it cannot be derailed according to Islam, then what is the way to reform it?

*Answer: Allama Shahzad Mujaddedi*

We have a Pakistani edition of democracy. Despite we have democracy in the country, people face the problems of persecution, oppression, brutality and exploitation and there is no lawful excuse or element of fear among our rulers. Looting is going on in the name of democracy. Our *Shariah* says we should at least acknowledge our sins and feel bad about having committed them. If we start doing sins without even noticing their ugliness, then they will take their toll on us. I think we are permitting this system of oppression, exploitation and brutality in the name of 'Islamized' democracy. However, we are not getting the true benefits of this democracy as the Western countries are getting. If Pakistani brand of democracy is not delivering, then adopting the Western democracy in its original form may solve our problems. I feel the Western form of democracy is close to Islam in its spirit. If a crime is being committed in the uniform of police, the uniform cannot be blamed for that. Likewise, the brutality and exploitation that is being carried out in Pakistan in the name of democracy, can neither be blamed on democracy nor is it acceptable.

*Question: Khalid Mehmood (Student, Jamia Naeemia)*

Allama Baqir said our Constitution is completely Islamic; whereas, some scholars said there are some problems with it which are synonym to conflict with Islam. In the light of these problems, e.g. the implementation of *hudood Allah* and permission from the first wife to have second marriage, can we say our Constitution is Islamic? If not, then how can we make it Islamic?

*Answer: Allama Ghulam Baqir Ghillon*

I said our leading Islamic scholars and leaders made this Constitution. If there are some flaws in it, those can be addressed through the Council of Islamic Ideology. Some problems are related to interpretations of certain rulings by different Islamic schools of thought such as for criminal laws, which should be solved accordingly. Some

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issues need to be addressed according to the nature and severity of crime. In criminal laws also, there are some rulings which allow the *qazi* (judge) to give his verdict on a particular crime according to his personal assessment. Likewise, the contradictions in the Constitution can be solved. The Council of Islamic Ideology was formed to find the solutions of these particular problems. However, its members should be appointed on Islamic basis and not on political references.

### **Qari Haneef Jalandhary (Keynote Address)**

*Secretary General, Wafaqul Madaris Al Arabia, and Principal, Jamia Khairul Madaris, Multan*

Monarchy and democracy are two different rather conflicting terms; in monarchy things are done to excess (*ifraat*) and in democracy things are done insufficiently (*tafreet*). The Islamic system of government is based on moderation and lies somewhere in the middle of these two extremes of monarchy and democracy. In legal terms, we call this middle path a system of consultation or *shura*. A true Islamic state is neither a system of kingship or dictatorship nor democracy. That implies Islam neither accepts oppression (as in monarchy) nor the sovereignty of people over divine laws (as in democracy). A state can only become Islamic if sovereignty of Allah and supremacy of divine laws is accepted and established there. The purpose of establishing God's sovereignty is to establish God's commands with a view to promote virtue and undermine vice. It has also been decided through the Objectives Resolution that the people of Pakistan will accept God's sovereignty and use their authority as vicegerents of God. The Constitution clearly mentions that the Quran and the *Sunnah* will be the prime sources of legislation in the country. Initially the Objectives Resolution formed preamble of the Constitution and hence remained non-functional but now it is part of the Constitution.

Therefore we can say that the concept of democracy in Pakistan is different from the secular concept of democracy in the West. In the Western democracy, the elected representatives are sovereign and authorized to make and reform laws. Islam gives its followers a limited and conditioned authority whereas the absolute sovereignty and authority to rule, or issue judgments, rests with God that has reached us through the holy Prophet (PBUH). Using this limited authority, however, Muslims can form and demolish the administrative and legislative institutions with mutual consultation. Muslims will also decide those issues through *Ijma* (consensus among Islamic jurists in a particular age on a question of law) for which no clear legal ruling is available in *Shariah*. On the other hand, no one can change the clear

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rulings (*nusus*) be it emir of the Muslims, religious scholars or Muslims of the whole world united. When we say that no one can change the absolute legal rulings in Islam, some say it is theocracy, religious government or the government of clergy. Those who were educated in the West have Western concepts in their minds. They think that just like in Europe, Christian clergy had taken up the responsibility to legislate and translate divine laws as the sole representatives of God, in an Islamic form of government Muslim clerics will do the same. But that perception is not true and has resulted from ignoring a major fact that Prophet Isa (Jesus) did not leave behind any legal code except moral teachings in the form of *Injil* (the Gospel of Isa). Therefore, when Christians needed laws and judgments to manage their political, economic and financial affairs, their religious leaders fulfilled this requirement by presenting their own legal opinions on those matters. They insisted that those opinions should be endorsed as divine laws. But Muslims have the holy Quran which contains complete and comprehensive commands. The traditions of Prophet Muhammad, which are with us in safely preserved form, interpret and elaborate the Quranic injunctions. In matters of difference, we have judgments of Islamic jurists and those made through consensus to follow. In presence of such a comprehensive guideline, it is not possible to accept a person's legal opinion as God's judgment.

Therefore, it would be completely wrong to call Islamic state a theocratic state, as suggested in the Western terminology. As you know that theocracy is referred to as the government of God and, in terms of its basic concept, is very ideal and wonderful thing. But, when the rule of clergy was established in the name of theocracy, the original concept of theocracy disappeared. Democracy, which you call the government of people, was established in reaction of theocracy. Theocracy was wrongly used and democracy emerged as a reaction. You all know that reactions are not moderate in their nature. We should remember that democracy in its historical context is reactionary. Today, in Pakistan we are saying that the mandate of the people has been stolen. In this situation, the word sovereignty of the people sounds good but there is no reality in it.

Democracy has two basic principles: the political and legal authority of the people that comes into force through majority opinion; and the formation and replacement of governments with the independent consent of the people. Islam acknowledges only the second principle of democracy.

The first principle of the democracy can be divided into two parts, according to the Islamic point of view. Islam ordains the

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sovereignty and authority of God, and it does not allow the state to amend the divine laws. But Islam declares Islamic caliphate as the will of God and provides the people with political authority to run state affairs as His vicegerents. This caliphate can be practically established through the majority of the people or the elected public representative. Taking this difference into account, it is not correct to term the Islamic state a democracy according to the Western terms. Democracy considers opinion of each and every opinion equal irrespective of their scholarship, character or wisdom, which cannot be endorsed in Islamic perspective.



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## **Second Dialogue: Second Session**

### **Chair**

Dr Raghob Hussain Naeemi, Principal Jamia Naeemia, Lahore

### **Allama Younas Qasmi**

*Editor Monthly Khilafat-e-Rashida, Faisalabad*

When we talk about democracy we often give an impression as if it is a system wholly different from the concept of state espoused in Islam. Perhaps that is the reason for most people's contrasting Islam with democracy because they think that the concepts of democracy and Islamic caliphate offer two conflicting state systems. In my opinion, it is not justified to compare Islam with democracy. As a religion and code of life, Islam can be compared with Christianity, Judaism, Hinduism, and Buddhism but not with democracy. Democracy is not a faith or religion but only a system of running the government affairs.

If we acknowledge the Islamic concept of state wholly different from the concept of state espoused in democracy then we will have to wrap up the entire political system in Pakistan to establish the Islamic caliphate. To demolish a system with a view to replace it with another is interpreted as 'rebellion' in all political lexicons of the world. So if we want to establish Islamic caliphate in Pakistan we will have to first demolish the current democratic set up, which we assume is contradictory to Islam. In this situation a question arises: can Pakistan afford such a revolution? Pakistan is facing enormous economic and social problems. There is a growing polarization in society on ethnic, political and sectarian grounds. In such a situation of discord and trial, the efforts to bring a revolution would only create bloodshed rather than replacing the current system with the Islamic one.

In my opinion, we should review and reanalyze the relationship between democracy and Islamic caliphate to see if democracy is really contradictory to Islamic caliphate. If yes, to what extent? It is said with full authority that the system of caliphate in Islam is based on a system of *shura* or consultation. In my opinion, democracy is also a system of consultation in which people have the right to elect their representatives

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or members of *majlis-e-shura* (council or parliament). Then these members of the council elect their *emir* or executive head of the government. This method of election is very much close to the one introduced by the Islamic caliphate system; both are two sides of the same coin but employ different terms. In case of Pakistan, we cannot blame democracy for the faults and weaknesses that exist on the level of state. Indeed our society is responsible for that, which is not only corrupt but is also undergoing moral and intellectual decay. The same kind of democracy exists in France, the UK and the United State but we do not see as many problems there as we see here in Pakistan.

In my opinion, we should not opt for an outright rejection of democracy. The discourse on democracy will remain incomplete without reviewing what we call *khilafat-e-rashida* (the righteous caliphate) established by the first four righteous caliphs of Islam. Centuries ago, Islam had granted to human beings all those rights which the Western democracies provided to their citizens in the 16th and 18th centuries. The rights that the French people got after the French Revolution, *emirul momineen* (leader of the faithful) Hazrat Omer had granted to the citizens of the Islamic state many centuries ago. The West perceived in the 18th century that the king and a common citizen should be equal before law, but Islam had practically demonstrated it centuries ago. The people of the West started the movements for freedom of speech, accountability of rulers, and independence of judiciary in the 16th century, but all of these traits were present during the times of the first four righteous caliphs of Islam. The courts were independent and the caliph was bound to appear before a court of law as a common citizen. The rulers were held accountable by the people, even at public places. The freedom of expression was allowed to such an extent that Companions of the Prophet (PBUH) had the freedom to differentiate between the Prophet's command and advice and were free to follow their own will in case of the latter. I think the West has extracted fundamental concepts of democracy from Islam. Hence we can say that democracy is our lost legacy, which is currently in hands of the West.

### **Professor Hafiz Khalid**

*Leader of Tanzeemul Ikhwan*

The era of real democracy had begun during the Prophetic period and the era of the Companions. The way of election of the four caliphs proves that. Hazrat Omer's formation of a six member committee to choose a new ruler demonstrates that it was Muslims who laid the foundation of democracy. I am not talking about Western democracy.

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Islam has its own concepts. But after starting well, we neglected these concepts. Around three hundred years ago, the West started a process of political evolution. Western scholars created awareness among people. As a result, democracy emerged first in France and then in other parts of Europe.

We have discussed here that even the full majority of the elected representatives of the people cannot change the divine rulings with clear/absolute meaning and no differences of interpretation. That is why the judiciary has been given the authority to review the laws passed by the parliament. The Quran hints at 40 years of age for public representatives (rulers). Also, in early era of Islam members of *majlis-e-shura* or consultative council – equivalent to today's parliament – were free of their personal biases and affiliations. But today, particularly in Pakistan, democracy is dominated by the feudal lords and capitalists. There is famous saying of the second caliph Omer that if a dog died hungry on the bank of the River Euphrates, he [as a ruler] would be held responsible for that on the Day of Judgment. But today we see our rulers are not willing to take responsibility for sufferings of their people. We cannot succeed unless the laws of Allah and His messenger are implemented in true letter and spirit.

### **Mufti Mansoor Ahmad**

*Religious scholar and columnist*

We deliberately avoid many things while discussing democracy. We claim that Islam is a complete code and constitution of life. If it is true then does Islam not have a political system or system of government of its own? It is true that since 1924 we do not have an Islamic system in place anywhere in the world. But has the word of 'caliphate' become so obscure that we shy away from even uttering it while discussing Islam's political system? Some scholars here discussed caliphate and described its principles too but mostly in perspective of democracy. Everyone is interpreting democracy differently. Some call it a secular system. Neither meaning nor objectives of democracy are clear. The democracy in place in the West is seen as different from the one in place in our part of the world. Mr Mujaddedi has said that we are in a state of frustration. We should discuss democracy in international perspective because Muslims are everywhere in the world. But we will have to look at Pakistan's democracy and Constitution in local perspective.

I subscribe to Deobandi school of thought. I will refer to a religious decree that represents the whole Deobandi school of thought.

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This decree can be seen in Maulana Ludhianvi's book "*Aapke masail aur unn ka hall*" (Your problems and their solution), volume 8, page number 176: "Democracy is a great deity of modern times. In the beginning Western ideologues and scholars worshiped it because they lacked divine guidance and opted democracy among the available alternatives. When Muslims saw the growing popularity of democracy they also adopted it. Some raised the slogan that 'Islam advocates democracy'. Others invented the term of 'Islamic democracy'. But the democracy advocated by the West is not only irrelevant to Islam but is also contradictory to Islam's political ideology. Therefore to tag democracy with Islam and to try to intrude democracy into the creed of Islam is absolutely wrong."

I think what we have said here is an effort to intrude democracy into the creed of Islam or to make democracy acceptable in Islam. As we are in a state of frustration, we have accepted democracy as a matter of expedience. We should not forget that we did not get Pakistan through jihad. After the World War-II when the hold of the Great Britain on its colonies weakened, it thought to hand over the governments to local people but with the same British system. The purpose was to maintain a hold. Looking into ground realities in the newly established Pakistan, prominent religious scholars of that time came up with an Islamic roadmap for the country's constitution in the form of Objectives Resolution. That was a great achievement. The inclusion of Islamic injunctions in the 1973 Constitution was religious scholars' next success.

Some people say that 50-60 years are not enough to measure success of a nation. But we should accept that we have failed to establish Islam in Pakistan despite the inclusion of Islamic provisions in our constitution. Enforcement of divine commands cannot be linked to public support or endorsement.

Once I met a religious scholar in Mecca whom I also regard as my teacher. At that time military operation was going on in Swat. I told him that we cannot say that the Taliban [in Swat] have committed some act of disbelief (*kufr*) and are not willing to listen to us. They are making academic/legal claims by using arguments. They appear on media. They are writing books. It is our fault that we never tried to listen and understand their viewpoints. We never responded in the same way as they raised questions. We only issued statements on media and issued decrees against them. I am not with the Taliban. My legal opinion is also different from theirs. I have remained engaged with them in very lengthy sessions of discussion, some expanding over

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whole nights. The religious scholars sitting here have also not listened to the Taliban.

I want to put a question before you. What happened to the purpose of establishment of the religion ordained in the Quran and God's stated purpose behind sending the holy Prophet to us? Imam Jassas has quoted in his book "*Ahkamul Quran*" a consensual legal opinion that establishment of the religion is one of the foremost religious obligations of Muslims after they profess their faith in God and His Messenger (PBUH).

### **Allama Sadiq Qureshi**

*Deputy head of Tehreek Minhajul Quran*

The creed of Islam (*Deen*) has two shades, religious and political. Political Islam offers systems of social, political stability and social security. The state of Medina established by the holy Prophet (PBUH) should be a role model before us where all political and religious groups and communities, including Jews, Christians, Muslims and non-believers lived together. The Prophet Muhammad was unanimously accepted as the head of state. Then we have the era of the first four righteous caliphs of Islam, which will be forever a role model for an Islamic state to be established anywhere in the world. No system of government is acceptable in Islam except the Islamic caliphate.

Political representation is required for political stability. Representatives of different communities including *Ansaar* of Medina (the people of Medina who hosted Muslim immigrants from Mecca) were present at the time of selection of Hazrat Abu Bakr, the first righteous caliph. About 33,000 people gave him the *bai'ah* (oath of allegiance) and elected him as their caliph. Hazrat Abu Bakr had nominated Hazrat Omer as the second caliph, who was then elected by a council of the people. At the time of election of the third caliph, Hazrat Osman, a six member committee was formed. After the votes were tied at three each, the matter was put before a 50 member committee comprising representatives from both *Muhajireen* (the immigrants from Mecca) and *Ansaar*. Abdul Rehman bin Auf was made the chief election commissioner who went house to house to seek people's opinions. Hazrat Osman was elected the caliph with a margin of only a few votes. That suggests that a system of political parties existed during the era of the Companions, but it was made compulsory that the manifestos/agendas of the parties will not be against Islam. Any political party having anti-Islam manifesto is not allowed to operate in an Islamic state.

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### **Allama Ammar Khan Nasir**

*Deputy Director, Al Sharia Academy, Gujranwala*

I think, the questions such as who can cast the vote, are women eligible to vote or not, and should we have direct or indirect elections, are irrelevant in the contemporary context. The religious scholars present here should take up and discuss three critical concepts to make this dialogue more useful. First, the significance of political power and authority are fundamental in the way Islam wants to establish the state and society. Islam is not merely a religion of worship and ethics, but it wants to establish the state and society on a particular pattern and according to certain principles. Therefore any concept abstracted from Islam that ignores the role of state will be deemed as incomplete. Secondly, the current civilizational, intellectual, moral and cultural state of Muslim societies in the world is not satisfactory in relation to the dominant Western political thought and civilization. This situation demands adaptation, innovation and struggle. But our system has failed to bring into play the roles of state and politics as espoused in Islam's political framework. Thirdly, we need to evaluate whether the political model of democracy resembles to that of Islam or not. Even if we assume that there is only a small difference between the two, which can be bridged through constitutional means, we still face the West's intellectual and civilizational dominance. All the political systems introduced by the West entail an element of capitalistic suppression. Therefore we cannot achieve the desired result [of establishing Islam] simply by making changes or adjustments in democracy.

If we think we can establish the kind of society espoused in Islam while being within the system of capitalism, we are absolutely wrong. We should understand and accept the reality that in the presence of capitalism and under the contemporary international pressures we can move forward [to achieve our Islamic ideals] only to a certain extent. That implies there are limits to the extent of change we can bring in our state and society through democracy. We can operate only within the space the contemporary Western political system provides us. Capitalism wants to establish the state and society on an entirely different level from the one ordained in Islam. Because the Western system is dominant, we can struggle to achieve our ideals only by using the space and opportunities it offers. If we think that we can challenge the Western system and establish an ideal Islamic state, which we study in Islamic history, on the former's debris, it seems impossible, at least in the current circumstances. There are certain limits which we cannot cross.

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On the whole, Islamic scholars and the people of knowledge in the Muslim societies seem convinced on the argument that we should learn to live with all those changes which have taken place over the course of history in politics and civilizations. Confrontation will not only deprive us of the available opportunities but also harm us badly. That implies we can strive for 'good' and resist 'evil' through peaceful efforts within the available systems. Emotionalism has no space in this discourse.

A review of human history suggests that sometimes a change is so overwhelming that one civilization completely overpowers the other, resulting in a complete shift in the balance of political power and strength. The dominant civilization brings with it a new system of political and economic dominance. Therefore it is difficult to defeat a civilization at its peak. Our confrontation with the Western civilization will thus add to our problems.

I see that most among us agree on some key points. We can learn and benefit from experiences of different civilizations. We can adopt their methods and tools after making certain changes and adjustment in them according to Islam. As we cannot change *nusus* (divine rulings with clear/absolute meaning and no difference of interpretation), we can review only those legal matters which are open to interpretation (*Ijtihad*) and that too in accordance with the principles of Shariah. Islamic Shariah is very clear and absolute and its laws are eternal and unchangeable. But as cited earlier, there can be different opinions on legal matters subject to interpretation or *Ijtihad*—effort to form an independent opinion or judgment on a legal question—in different circumstances and contexts. Muslims ruled the world for 12 hundred years and had their own social and political systems. But then other nations and civilizations became dominant. We can have a flexible approach towards these dominant civilizations unless it is against *Shariah*. Secondly, to benefit from human experiences is an eternal principle of Islam and *Shariah*. I will try to explain it with a reference to Islamic history. We often read and hear that Hajjaj bin Yousaf killed thousands of people. Although courts, a Muslim society and Islamic scholars were there but there was no mechanism in place to stop Yousaf from committing such atrocities. In those times, a judgment by the caliph was considered the final word. If Hajjaj arrested someone on political grounds, he was not bound to present him before the court. But today, the rulers cannot convict a person even if he is facing the treason charges. What I want to say is there is no harm in learning from other civilizations. For instance, a fundamental element of democracy is related to devolution or decentralization of power. We see in Islamic

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history that the issue of delegation of power was never given the due attention, which also caused many tragedies including the one cited earlier in relation to Hajjaj bin Yousaf.

At the same time, there is another point of view. Proponents of this view argue that if we cannot bring the desired change while working within the existing system then why to accept it. They believe they can remove the existing hurdles in the way of establishing Islamic order by challenging the dominance of democratic system through armed struggle. I agree with Mufti Mansoor that we have not engaged ideologues of this view [including the Taliban] in a useful dialogue. Even if some efforts were made regarding that, the main argument put before them, i.e. ‘when Pakistan’s leading religious scholars have adopted a way [of non-violence] for establishing Islamic system in Pakistan then who are you to advocate and adopt a different way,’ did not serve the purpose. As dialogue should be based on arguments, we should have told them why we opted for this way and what harm is attached with their way. They [the Taliban] in return could have argued that no change is possible within the existing system and could have supported their claim with evidence from Pakistan’s history. Then we could have asked them about the possibility of success of their armed struggle compared to constitutional struggle of clergy, looking into the ground realities and circumstances in Pakistan. We could have asked them about where their way of action will lead Islam and Muslims.

Personal desires, mainly those constructed in the light of so-called religion-based prophecies, for bringing Islamic revolution are one thing and to devise and follow a practical roadmap for the same purpose in the given circumstances is another thing. We can learn from history as well regarding that. In the beginning, Muslims of the subcontinent including prominent scholars of the Deoband had adopted the way of armed struggle against the Britain. Later, when they realized the dangers of their armed struggle, they separated themselves from that way. I would like to quote here some abstracts from Allama Hussain Ahmad Madni’s<sup>18</sup> book “*Malfoozat-e-Hazrat Madni*”: “Islamic scholars (*ulema*) have tried it [the armed struggle] again and again in the past but achieved nothing. What came out of the strenuous efforts put by Syed Ahmed Shaheed and Maulana Ismail Shaheed? In 1857’s war of independence, Haji Imdadullah Sahib, Maulana Nanotvi and Maulana Gangohi were on the forefront. But what did they achieve? Similar efforts were put by Hazrat Maulana Shaikhul Hind in 1914. But what did he get?”

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<sup>18</sup> Madni was a leading scholar from the Darul Uloom Deoband.



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That is why Maulana Madni opted for peaceful and non-violent ways to bring a change. He even did not anticipate establishment of an Islamic state there after the withdrawal of the Britain from the Indian Subcontinent. Instead he foresaw a secular state that would protect the rights of Muslims. For that he had to face criticism as well from Muslim clergy. At the end, I will repeat that we should learn from our history. Then I will ask our prominent religious scholars that whether they make a strategy on the basis of certain concepts, ideas and religious idealism or do they also consider the existing ground realities?

### **Allama Khaleelur Rehman Qadri**

*Religious scholar and editor Urdu monthly Soo-e-Hijaz*

The debate has reached an interesting juncture and we should add to it to make it more useful. Struggle to come out of the worsening state of affairs is also desirable in Islam. In order to reviving or establishing Islam's dominance, we find three types of approaches in our religious circles. First is related to democratic struggle. Those who believe in this approach want to get hold of the enforcing power, that is the government, and use this power to establish *Shariah*. They know that without being in the power they cannot achieve their objectives. All political parties with religious background are part of this struggle. These religious-political parties support the Constitution of Pakistan. Second approach, which was also mentioned by Mufti Mansoor and Allama Nasir, is built on an armed struggle for bringing the desired change. Then there is third stream of struggle which calls for public revolution. Proponents of this approach give some credit to democracy but claim that the current democratic system in Pakistan is fully rotten and should be uprooted through mass protests and agitation. There is another segment too that is enjoying power as well as talking about revolution. It is a tragedy that all these segments are not united. If they get united they can get the power to enforce Islam.

Democracy is a system of government as well as a philosophy. Many of its principles and values resemble with Islam's such as the rule of law, justice, human rights, freedom of thought and equality. Also there are similarities in practical aspects of democracy and Islam's political system. For instance, both in democracy and Islamic caliphate a ruler can be elected only through public support, or vote. But the question is which democracy are we talking about? Why is it not successful in Pakistan? Democracy is very strong and is also delivering in the countries from where we borrowed it. There is rule of law and accountability in those countries. If a public representative makes a mistake, he/she prefers to resign. But here in Pakistan, the most corrupt

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hold the biggest offices. We need to investigate why democratic norms and values could not flourish in Pakistan. Let us talk about the 1973 Constitution which was unanimously formed by all the democratic forces in the country. Since then, army has ruled the country for 18 years. Many elected prime ministers were unconstitutionally removed from their offices. I think democratic forces should be allowed to work uninterruptedly. Gradually they will start delivering. People rejected in the 2013 election those who could not deliver.

I also feel that we should respond to objections being raised on Pakistan's Constitution from some quarters. It will also help identify and correct if there are any flaws in the Constitution. You must have read Ayman al-Zawahiri's book on Pakistan's Constitution.<sup>19</sup> The good thing is that he has raised only eight objections on the Constitution. While most of these objections can simply be rejected as being irrelevant or baseless, there are one or two objections which really need our attention.

Islam is a great champion of accountability. Democratic norms also stress on accountability. The caliphs of Islam voluntarily presented themselves for accountability. But please tell me how easy or difficult is it to do the accountability trial of a minister under our Constitution? See the procedures. You first present your point of order to the speaker who may take one month to allow a debate on that. In the meanwhile, new questions may arise and outdate the one presented one month before. What type of democracy is this? The real democracy was when a Caliph of Islam was asked to explain how he managed to make a shirt with an available piece of cloth that did not suffice for that. Today, the process of accountability has been made very complex. It needs immediate corrections.

First we introduced a clause in the Constitution barring a person from becoming prime minister for a third term. Then we removed it. Now we are making hue and cry that hereditary politics is thriving in the country. I would like to quote Hazrat Omer here. Someone advised Omer to nominate his son as his successor. But Hazrat Omer replied that irrespective of whether the caliphate was a good or bad thing, one man from the Omer's family had already headed it and that was enough. But today we want to enjoy power until our last breath and

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<sup>19</sup> Reference to Al-Qaeda leader Ayman Al-Zawahiri's Book *Al-Subh wa' Al-Qindil* (The Morning and the Lamp). Zawahiri has tried to prove in his book that neither is Pakistan an Islamic country nor is its constitution Islamic. A critical review of the book is included in Safdar Sial (ed.), *Critical Ideologies: A Debate on Takfeer and Khurooj*, (Islamabad: Narratives, 2012).

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then want our son to enjoy the same. Democratic culture and norms have not taken roots in our political parties as is evident from their distribution of election tickets and appointments on government offices. Provision of justice to citizens is ordained in the Constitution but practically only few manage to get it. We all know that justice delayed is justice denied.

We, the religious scholars, are not willing to take responsibility. Instead we put all the responsibility on the Council of Islamic Ideology, which is practically worthless. Although the Council represents all Islamic schools of thought but its status before the government is nothing more than a dustbin. It is only an advisory council and can advise only when the government asks it for that. Also, it can advise only in legal matters and not for legislation. Then we have the Federal Shariat Court where we can appeal against a court verdict if we think it is contradictory to Islamic law. But what is the status of the judges of the Shariat Court? Since long we have been demanding that the procedure to appoint its judges should be the same as for the High Courts' judges. Also, the Federal Shariat Court judges should be appointed on non-political basis so that they have the courage and freedom to present their independent legal opinions in terms of Islamic law. One example aptly describes it. We were so happy when the Federal Shariat Court banned interest (*riba*) in Pakistan in 1991. But the federal government filed an appeal against this decision in the Shariat Appellate Bench of the Supreme Court.<sup>20</sup> When a verdict came, a review appeal was filed again. Now we are in 2014, but the legal efforts to get *riba* banned stands where it started in 1981. Are we afraid of the US and imperialist powers in deciding these matters? But we can find a solution to all such issues while being within the democratic setup.

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<sup>20</sup> Pakistan's Federal Shariat Court had declared on November 14, 1991 a number of laws of the country to be repugnant to the injunctions of Islam on the pretext that they had provided for charging or paying interest, which according to the Court fell within the definition of *riba* and clearly prohibited by the Holy Quran. The Federal Government of Pakistan and certain banks and financial institutions filed 67 appeals against this judgment in the Shariat Appellate Bench of the Supreme Court which in 1999 declared interest legally prohibited in Islam, and banned it in all its forms and by whatever name it may be called.

## SECOND DIALOGUE

### **Mufti Mansoor**

Allama Ammar Nasir has provided a very comprehensive account of Islam's link to Western political thought and democracy. I would like to say a few things regarding that. His viewpoint is very relevant and factual in the context of the current international environment. But the fact of the matter is we have been forced to accept this system. We should accept that we have not adopted it willingly. His suggestion to avoid confrontation with the system of democracy and Western civilization is understandable. But his proposal to reconcile with the West is beyond understanding. If a segment of religious scholars will try to convince people on this system, then it would be a big mistake. Whenever our elders [from Deoband] decided to renounce armed struggle they did that in some specific circumstances and also showed the way to come out of those circumstances. Maulana Abu Al-Hassan Nadvi has provided a very comprehensive description of the Deoband in his book "*Tarikh-e-Da'wat*" (History of Invitation to Islam). He says that the Deoband is all about knowledge, piety and jihad. I am wondering what we should do in the situations where someone else has started a war against us and has thus forced us to take up arms. Should we try to convince the Muslims of Afghanistan, Kashmir, Palestine and Burma to lay down arms irrespective of what their enemies do to them and their societies and civilizations? I had said in previous sessions of debate held on this forum few years back that Jihad is more important topic to discuss than the concepts of *takfeer* and *khurooj*.

### **Question & Answer Session**

*Question: Mohammad Saadat Ali (Student, Jamia Naeemia)*

My question is to Allama Sadiq Qureshi. What is the legal status of a monarchy/sultanate, such as Brunei, where *Shariah* and *hudood Allah* (boundaries set by Allah/divine laws) have been established? Will the monarchy become legally justified after the implementation of *Shariah*?

*Answer: Allama Sadiq Qureshi*

I have said earlier that the ideal form of state system espoused in Islam is Islamic caliphate as established by the first four righteous caliphs of Islam. Muslims adopted monarchy also after the caliphate. If the essence of democracy exists in a monarchy/sultanate, then Islam does not reject it. But the ideal situation will be the establishment of

## Islam, Democracy and the Constitution of Pakistan:

Islamic caliphate and not monarchy because through the latter we cannot fully enforce Islamic laws and values.

*Question: Khalid Mehmood (Student, Jamia Naeemia)*

My question is to Mufti Mansoor. You have said enforcement of Islamic laws is not dependent on people's support or endorsement and that we can establish Islam even forcefully. But do our governments have reached a point [of transgression] where armed struggle or jihad can be declared justified against them to enforce Islam? Or should we find another way for it?

*Answer: Mufti Mansoor*

That does not mean the use of physical force. We have the Council of Islamic Ideology, whose proposals serve the purpose of 'force'. Therefore, theoretically we have enforced Islam in Pakistan. There is no debate among our religious scholars about where Pakistan is *darul Islam* (abode of Islam) or not.<sup>21</sup> There are different judgments for the ways to enforce Islam in *darul Islam* and *darul kufr/harb*<sup>22</sup> (abode of infidelity/war).

*Question: Nawaz Kharal (Journalist)*

Since long we have been hearing from our religious scholars that if a person presents himself for a public office, he is not a good person and thus not eligible for that post. But in our electoral system, candidates not only present themselves as contenders for government offices but also seek votes. In this context, how can we claim that our political system is Islamic?

*Answer: Mufti Mohammad Zahid*

Had we some constitutional experts here, they would have better responded to the question. For example, it is written in the Constitution that Pakistan's president has the authority to pardon the convicted person. In general, our religious scholars believe this is not an Islamic way. But many details are involved in this constitutional provision,

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<sup>21</sup> *Darul Islam* is a territory which is part of the Islamic empire or is governed by an Islamic government, so that it is possible for the commandments of Islam to be enforced there.

<sup>22</sup> *Darul kufr* is generally considered synonym with *darul harb*, or a territory where enforcement of the Islamic commandments is not possible, and neither are Shariah commandments in effect. This is outside the Islamic state's boundary, regardless of its political system and laws.

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which only a legal expert can describe. For instance, in which circumstances president can use this option and which crimes/offenses are pardonable and which are not. As far as the demand of a person for any public designation is concerned, the debate is not new. Islamic scholars and those having authority on the knowledge of *hadith* (*mohaddiseen*) have been giving their opinions on the issue. This is an ideal situation when some other people suggest or nominate a candidate instead of the latter presenting himself for an office. Our Constitution also says that two people would propose the name of a candidate (a proposer and a seconder). But in some cases, an exception is also discernable from some *ahadith* (plural of *hadith*, the tradition of the Prophet). Some Islamic scholars also have agreed that in some cases, a person can propose himself for a public office.

### **Dr Raghīb Hussain Naemi (Keynote Address)**

*Principal, Jamia Naemia, Lahore*

A review of this discussion suggests that we should acknowledge the importance of dialogue. Dialogue is of higher worth than *mujadala* (arguments which result in fighting) and *manazara* (tug of arguments). Through dialogue/debate we can understand a person's claim and the arguments he/she employed to prove his/her claim. We can then decide on the basis of credibility of the employed arguments that we will accept the claim or not. I think participants of today's dialogue used a better way of reasoning.

As far as democracy is concerned, imagine that when Muslims ruled over the whole world, Europe was plunged into darkness. Europe set off on the road of progress using the knowledge it borrowed from Muslims. Have not we been in dark ages since 1857<sup>23</sup> or 1924<sup>24</sup>?

The contemporary concept of democracy was given by Muslim rulers. But in recent times we have seen different responses from Muslims to democracy; one segment resisted it, another accepted some of its traits and a third segment adopted it wholly. We should also develop a diachronic comparison of Muslims' attitude towards democracy in the past and present. Those Islamic scholars who lack in-depth understanding of the issue regard Pakistan's Constitution as un-

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<sup>23</sup> After India's War of Independence in 1857, the rule of Muslim emperor Bahadur Shah Zafar ended. The country was thereafter directly governed by the Britain.

<sup>24</sup> The Ottoman Empire, the last Sunni Islamic caliphate, was abolished in 1924.

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Islamic. Whatever we have discussed here today can only be useful if its outcome is disseminated to clerics and prayer leaders in mosques as well. Clerics and prayer leaders are the people who need this awareness more than anybody else.

We should also discuss Allama Iqbal's concept of *Ijtehad*, i.e. *Ijtehad* should be the prerogative of the parliament. In his lectures on "Reconstruction of Religious Thoughts in Islam," Iqbal has proposed a three house parliament. He also proposed an overseeing body comprising Islamic scholars. When Iqbal coined this idea, a council of *ulema* (religious scholars) existed in Iran and Iqbal also provided a critical review of that council. Probably the idea of the Council of Islamic Ideology was also derived from Iqbal's concept. But it was not devised in full accordance with the one envisaged by Iqbal.

We have discussed the legality of political parties. As in an Islamic state there is no place for a political party having un-Islamic agenda, we cannot divide political parties into religious and non-religious.

I consider presidential system close to monarchy where only few people enjoy the absolute authority. But today's presidential system has evolved and a congress guides the president's actions. As far as Pakistan is concerned, the country came into being after a long political and democratic struggle. Pakistan was established with people's votes. We did not get it through the use of force or armed struggle. Many say Quaid-e-Azam Muhammad Ali Jinnah was a secular person. How come a secular person founded an Islamic state? Others say Jinnah's ideas had changed over time with his increasing understanding of Islamic principles.

One thing is certain that idealism alone is not enough to enforce Islam. We need the enforcing power for that. Similarly, the outcome of this debate can be implemented only through a certain mechanism. Also, we should analyze whether there is perceptibility of such dialogues and their outcome among our common people or not. For instance, our people usually prioritize their everyday issues linked to courts and police stations while voting for a candidate. Honest and able candidates who cannot provide an out-of-the-way patronage to the people find difficult to get votes.

We have also discussed the president's power to grant a pardon or cancel a punishment. More than 8,000 people sit on death row in Pakistan and the government is not reinstating the death penalty. Why

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do we discuss the Article 45<sup>25</sup> only and ignore a long-held moratorium on executions? Reinstating the death penalty will initiate a process of purgation in our society.

Our courts should decide about those who do not acknowledge Pakistan's Constitution and are considered as rebels.

The concepts of 'opposition' and 'opposition leader' as practiced in democracy are not found in Islam. In Islam, opposition is relevant only until a leader of the house is elected. After that it simply disappears. After Hazrat Abu Bakr was chosen as the first caliph, all people including those who were earlier opposing him professed their allegiance to him. But here in Pakistan, the parties which are not part of the government start pulling government's legs from the very first day.

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<sup>25</sup> Article 45 of Pakistan's Constitution describes President's power to grant pardon.



# THIRD DIALOGUE

Place: Islamabad  
Date: August 11, 2014

## Host

Mohammad Amir Rana (Director, Pak Institute for Peace Studies)

## Chairperson

Dr Qibla Ayaz (Vice Chancellor, Islamia College University, Peshawar)

## Keynote Address

Dr Khalid Masood (Former chairman, the Council of Islamic Ideology)

## Discussants

Professor Raja Muhammad Aslam Khan (Tehreek-e-Haq, Rawalpindi)

Allama Mumtaz Nizami (Principal, Jamia Muhammadiyah Ghausia, Chak Shahzad, Islamabad)

Dr Rasheed Ahmad (Assistant Professor, Shaikh Zayed Islamic Center, the University of Peshawar)

Mufti Muhammad Khateeb Mustafai (Administrator, Madrassa Fatimatul Zahra, Islamabad)

Allama Abdul Qudoos Muhammadi (Spokesperson, Wafaqul Madaris Al-Arabia, Islamabad)

Dr Munir Ahmad (Khateeb Makki Mosque, Agha Khan Road, Sector F- 6, Islamabad)

Sahibzada Hassan Farooq (PhD Scholar, Shaikh Zayed Islamic Center, the University of Peshawar)  
Khurshid Nadeem (Religious scholar, and anchorperson Pakistan Television, Islamabad)  
Professor Mushtaq Ahmad (Department of Law, International Islamic University, Islamabad)

## Dr Qibla Ayaz

These questions [related to legality of democracy and constitution in Islam] are being debated everywhere in the Muslim world. Islamic scholars should carefully examine these questions and guide their people in an effective and progressive manner. The trend of mobs taking over control in Somalia, Syria, Iraq, and Libya has now shifted towards Pakistan and it has the tendency of paralyzing the state. The contemporary Islamic perspectives on state, constitution, and democracy stress on the need for *Ijtehad*, which is one of the key sources of Islamic law, and entails intellectual effort to derive appropriate legislation from the Quran and the Sunnah for novel cases.

## Dr Khalid Masood

Islam's 'political system' is debated a lot in Pakistan and other Muslim countries, a term which has come into use in recent or modern times. On the contrary, if we look at the history of *fiqh* (Islamic jurisprudence), we find that Islam's political system is not even a topic of discussion in the books of *fiqh*. Only when doctors of Islamic law (*fuqaha*, plural of *faqeeh*) were asked to provide their opinion and guidance on Islam's political system, they wrote exclusive books for that. All the books written by Islamic jurists on the subject thus far, starting from Al-Mawardi (972-1058), have mostly discussed different ways that were used in the past to elect Islamic caliphs. Our teachers used to tell us that rulings or commands (*ahkam*, plural of *hukm*) are of three types in terms of jurisprudence: *takleefi*<sup>26</sup> (defining), *wadi'i*<sup>27</sup> (declaratory) and *imza'i*. *Imza'i* means what we learned from experience. Islamic scholars have noted that *imza'i* is also a way to decide how to elect the caliph or what will be the form of government. Muslim *ummah* has accepted historical experiences and had made them part of acknowledged principles. Now we need a collective *Ijtehad* for [giving a legal endorsement to] all these accepted experiences, as we have already abundance of individual opinions and ideologies. There are certain established principles for creating consensus, which were debated in the 19th and 20th centuries. But these are still opinions of some individuals or parties.

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<sup>26</sup> *Al-hukm al-takleefi* (defining ruling) is that which defines injunctions and rights.

<sup>27</sup> *Al-hukm al-wadi'i* is that which expounds on the conditions and qualifications of the *takleefi* ruling so that it is implemented properly.

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Secondly, most of our academic and jurisprudential debate focuses on the caliph as an individual and not as an institution. For instance, what should be the personal attributes of a caliph or what are the preconditions for qualifying of a person for the post. We have never presented the office of caliph as an institution. Al-Mawardi has also discussed this aspect in one of his books. He raises a question that if the caliph is the centre of power and authority in Islamic caliphate, what is the legal status of his deputies (*naibeen*, plural of *naib*)? He was the first Islamic jurist to opine that deputies did not have a legal status/authority of their own but were dependent on the caliph. He also suggested institutionalizing the office of caliph.

Although the concept had entered the world of politics in the 18th century and our [Islamic] tradition of 19th century also approved the institutional form of the office of caliph, but our traditional *fiqh* (jurisprudence) is still stuck to individualistic status of the caliph.

Thirdly, there is a need for removing two main ambiguities that persist in our political thought. We should make it clear that sovereignty of God does not mean rule of God or theocracy, and a caliph is not representative of God but the people who elected him. Pakistan's Constitution has resolved these issues but our religious discourse is still not clear on whether the caliph represents God or people. In fact, the caliph's being God's vicegerent means that *Shariah* will be our consensual point of focus. God's rule is established thorough *Shariah*, which becomes the basic principle of the rule of law. The rule of law is not the rule of some person. It does not need individual opinion or *fatwa* but *Ijma* or consensus. This consensus does not mean a consensus among religious scholars and jurists only but experts and scholars from all walks of life and also people would be part of this consensus.

Lastly, I want to say that while we are still debating these issues, some radical changes have taken place in the world politics. First, the concept of nation-state emerged. Then the world was divided into two power blocs. Now we live in unipolar world. At present, a debate is going on in the West and the US about the 'state of exception' that is not dependent on laws but has a power of its own [to constitute rules using a time of crisis or claims of crisis]. We should also review such debates to understand what those states, which are far ahead of us, are thinking. The issue is that the West first separated 'morality' from 'law' and is now trying to separate 'state' from 'law'. Representative of religions are trying to unite against this effort. They say we should revert to global ethics, or those ethical traits which are acknowledged by the world.

Islam, Democracy and the Constitution of Pakistan:

### **Professor Raja Muhammad Aslam Khan**

*Tanzeemul Haq, Rawalpindi*

Pakistan's present constitution was made by secular and not religious people. Constitutional evolution of India revolved around the concept that the real rulers would be the British people and representatives of the local people would do whatever the former would want. This dichotomy was visible in the 1935 India Act. The same reflected in the 1956 and 1973 constitutions of Pakistan. A council of Islamic scholars was created under the 1973 Constitution which was later given the name of the Council of Islamic Ideology whose suggestions were never implemented. The Penal Code of 1860 is still in force in Pakistan. The political system we have enforced in the country was given by Lord Clive, who was a criminal. Consequently, we see that the poor and the rich are not equal before law. I believe that in country where there is no rule of law criminals get into parliament instead of going to prisons. Islam says unless there is rule of law in Pakistan, democracy will not deliver. All political systems currently in force in the world were borrowed from Islam. But the West tells us do not talk of Islam. Pakistan is the only federation in the world which is being run through a unitary system. The status of federating units has been ignored. We will have to enforce a system of accountability. Interest (*riba*) is un-Islamic but is still a daily practice in Pakistan.

### **Allama Mumtaz Nizami**

*Principal, Jamia Muhammadiyah Ghausia, Chak Shahzad, Islamabad*

Human beings have been experimenting different systems since the first day of life. Thinkers and scholars have analyzed and compared different system and suggested correctives measures to make them more useful for human beings. This process will continue. Allah has made the creed of Islam perfect for the fulfillment of both individual and collective needs of people. Profession of faith is the most significant thing on individual level. Then these individuals of faith unite to form Muslim *ummah*. Islam advocates collectiveness. It has founded all systems of life—e.g. family, state and society—on the principle of collectiveness. Islam describes human welfare as the main objective of all these systems. According to this rule, any system which undertakes the welfare of humanity and falls within the realm of Islam and *Shariah* is desirable. It can be given any name including democracy, caliphate or *shura*.

We are facing a multitude of challenges not only in the fields of knowledge, economy and law, but also in the political arena. How can

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we judge which political system is Islamic and which is not? As I said earlier, it is quite simple. More a system guarantees human welfare, more it is closer to Islam. And I agree with Mufti Muneebur Rehman's opinion that democracy is closer to Islam because it guarantees human welfare. But the real issue is its implementation. Unfortunately, we have failed in it. We are in a state of inaction in almost all aspects of life including individual, familial, constitutional, political and economic. All dossiers of life including the constitution and democracy are safe in "book" form only. Each clause is clear including the supplementary provisions. Only the practical implementation is lacking. The relationship between a system and its practical implementation is that of body and soul. If there is no soul in the body, despite it appears to be strong, attractive and beautiful, it will have to be buried after a certain period of time. Otherwise its smell will spread in the society.

It was the power of implementation that made Islamic caliphate acceptable across wide swathes of the Arab and non-Arab world as a welfare system. When with the passage of time, inaction started to grip the Islamic caliphate system, people started to look towards alternative systems. It was during the period of Hazrat Omer bin Abdul Aziz that one of the pillars of political system, i.e. justice/fairness was established. It is our tragedy that we are not addressing the root causes of the problem. We will have to evolve a political system that is based on Islam's concept of human welfare and implement it with full force to come out of the current state of turmoil and trial.

#### **Dr Rasheed Ahmad**

*Assistant Professor, Shaikh Zayed Islamic Center, the University of Peshawar*

Although 'political system of Islam' is certainly a recent term, but our ancient literature and certain injunctions in the holy Quran allude to a system of caliphate in Islam. Perhaps principles are there but a comprehensive framework for Islam's political system does not exist like those for prayers and fasting etc. However Islamic jurists and scholars including Imam Abu Yousaf, Imam Abu Obaidah Al-Qasim and more recently Shah Waliullah have talked about the concept. Islamic jurists largely agree on essentials of an Islamic state but have provided different opinions on how to establish it. These differences probably did not exist before the establishment of the institute of caliphate but emerged gradually particularly after its demise. Now there are multiple points of view, which we can help us better understand this debate. Maulana Waheeduddin Khan did not believe in establishing an

## Islam, Democracy and the Constitution of Pakistan:

Islamic state in India. In his point of view, there is no need for that. On the other hand we see that Maulana Abul A'la Maududi put a lot of effort for the establishment of Islamic state. Now the organizations like Hizbut Tahrir and Al-Qaeda have emerged which are following their own methodologies to establish Islamic caliphate. A few months ago I was in Kazakhstan. I was told that the number of the Hizbut Tahrir members and followers is rapidly increasing in Central Asia, especially in Turkmenistan.

I think we should try to understand what divine rulings with clear/absolute meaning (*nusus*) and sound traditions of the holy Prophet (PBUH) tell us about the concept of caliphate. Muslims largely agree on the line of the leadership or Imamate (*nasb-e-imamat*). However Shias and Sunnis differ on that. Shias believe that the Imamate is from God (*mansus*) or the Imam is appointed by Allah.

Now coming to the contemporary world, we should see whether democracy can be an alternative to the caliphate or not. Are the essentials and fundamentals of democracy and Islamic caliphate same or different? To find an answer to those questions, we will have to go to the beginning of democracy. Usually, it is said that democracy originated in Greece or emerged from the French Revolution, but if we just have a glance at the Islamic history and process of selection of all four righteous caliphs of Islam, we will find the spirit of democracy there.

As far as Pakistan's state system is concerned, the Article 1 of our Constitution says that Pakistan is an 'Islamic republic'. Similarly Article 2 declares Islam as the religion of Pakistani state. Dr Munir has rightly noted that how can we personify a state and force it to embrace Islam. The Article 2 also says that absolute sovereignty belongs to God and its sub-clause F says that Islamic principles of democracy, freedom, justice and fairness will be followed in Pakistan. That means the Constitution of Pakistan advocates democracy. State, parliament, and legal status of voters are some of the accessories of present day democracy. Pakistan's Constitution contains Article 62 and 63, which describe qualifications or attributes of people to be elected as the members of parliament. We should also discuss legal status of these clauses.

### **Mufti Muhammad Khateeb Mustafai**

*Administrator, Madrassa Fatimatul Zahra, Islamabad*

Islam is not a mere set of rituals, traditions and spiritual concepts but a complete code of life. It gives complete guidance in every sphere of human life including daily life affairs, politics and economics. Islam

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is based on the highest principles of justice, integrity, and honour. The basic principles of Islam are *tawhid* (the Oneness or Unity of God) and human equality. Equality, freedom and Islamic brotherhood are the basic principle of Islam.

Before the advent of Islam, monarchy or sultanate prevailed everywhere where kings and dictators had absolute authority to make and implement laws. The laws were not made for the benefit of those who were to experience them. Islam not only brought incredible, far-reaching and revolutionary changes in different walks of life, but also underlined new principles in politics. It gave a new political system of *shura* (consultation), which belongs to the people. People are consulted in this system, thereby not only encouraging them but also giving them due importance. It helps people to free their souls from the coercive system.

Implementing the decisions of a single person (dictator) on major national issues will be unfair. His limited knowledge, inadequate experience or poor judgment can lead to poor decision making, which can cause unbearable loss to the people. Therefore, collective consultation on the basis of everyone's qualifications, experience and skills to advise matter is highly required for decision making.

It had been a popular tradition of Muslims to get together and discuss at length whenever they faced some critical issue. After extensive sessions of consultation, they would finally reach some consensus agreement. The holy Prophet (PBUH) frequently practiced the principle of consultation. Whenever some important matter emerged, he used to call the consultative meeting of his Companions and then made make decision after a thorough discussion. Hazrat Omer had constituted an advisory board comprising eminent Companions of the Prophet, which took important decisions. Because consultation is given a lot importance in democracy and decisions are made after mutual consultation, it is very close to the spirit of Islam.

The only problem with the democratic system is that the elected representatives have the authority to legislate on their own. But the Constitution of Pakistan has addressed this problem by binding the legislators to legislate in accordance with the holy Quran and the *Sunnah*. Also, according to the Constitution, sovereignty belongs to God. If the Constitution is implemented in its letter and spirit, it will be called Islamic.



Islam, Democracy and the Constitution of Pakistan:

**Allama Abdul Qudoos Muhammadi**

*Spokesperson, Wafaqul Madaris Al-Arabia, Islamabad*

Irrespective of the shortcomings it has viz a viz Islamic law, Pakistan's Constitution was largely prepared in consultation and conjunction with Islamic scholars. Although the Objectives Resolution has become part of the Constitution, the implementation of Islamic clauses has been hindered by some persisting legal complications. Religious scholars also did not discuss this aspect of implementation too much and accepted the situation as a matter of expediency. Because the secular segments of Pakistan want to damage the 'Islamic' face of Pakistan, our religious scholars should tell the people about what does the inclusion of the Objectives Resolution and other Islamic injunctions in the Constitution mean.

Initially, the words 'the Quran' and 'the *Sunnah*' were used by our rulers—which were very clear in their meaning and practicability—but were later replaced with the word 'Islam'. You all know that the Islam in General Pervez's time was different from the Islam in General Ziaul Haq's time. Hence there is a possibility that rulers' personal views also become part of Islam.

It is said that no laws will be made which are against Islam. But the question is: do we have any effective system of reforms for those anti-Islam laws which already exist in our Constitution? Yes we have the Council of Islamic Ideology but we all know its effectiveness and the absurd procedure and standard for its membership. Religious scholars have achieved some successes in the past, e.g. declaration of Ahmadis as non-Muslims and formulation of blasphemy laws. But afterward what happened with us under the title of Women Rights Bill? Sugar-coated [bitter] tablets were also given to our Constitution periodically. Our scope is only limited to the seminaries and mosques. We must analyse this situation so that we can understand where we are standing now and where we are heading.

**Dr Munir Ahmad**

*Khateeb Makki Mosque, Agha Khan Road, Sector F- 6, Islamabad*

As far as democracy and caliphate are concerned, I want to allude to Dr Hameedullah. It is written in his book *Khutbaat-e-Bahawalpur* (The Bahawalpur Letters) that someone asked him if Islam's political system was a system of democracy or the caliphate. He replied Islam wants democracy as well as the caliphate. He further said that during the Prophetic era, a situation like democracy existed. Hazrat Omer's father was given the management of external affairs and

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elders of other tribes were also given different offices in the state affairs.

Some scholars have written that the Arab's pre-Islamic tradition of burying their girls alive was also based on a democratic/consensus decision taken by tribal elders. But such customs were abolished by the holy Prophet. In his last address, the Prophet (PBUH) categorically announced the abolishment of all the rituals of the period of ignorance (*jaahiliyyah*). That means the holy Prophet put an end to certain inhuman practices which the Arabs had accepted and enforced in the name of mutual agreement, or what we today call democracy, and enforced divine judgments. Therefore, it is discernable that democracy can be acceptable only if it is subservient to divine judgments. If democracy trespasses the divine rulings, it will neither remain legal nor acceptable.

It is written in our Constitution that no law will be made against the holy Quran and the *Sunnah*. But there are many laws in the Constitution which are against Islam. For example, our financial system is completely against the holy Quran and the *Sunnah*, but it is still being practised. This matter was taken up by the courts several times, but nothing was gained practically. But that still does not mean that our whole Constitution is un-Islamic. The Taliban had refused to accept this Constitution in the presence of the holy Quran and *ahadith* (plural of *hadith*; traditions of the Prophet) in their talks with the representatives of the previous government.

Nonetheless, our basic claim is that the fundamental principles espoused in holy Quran and *ahadith* will be followed as the prime source of legislation; but we will interpret them in the context of current circumstances, and our Constitution will reflect these interpretations. For example, we have traffic laws and issues of foreign affairs, which are redesigned in every period of time. There is a space to amend these laws. But there is no space to amend the holy Quran and the Prophet's traditions. It is allowed in the light of the teachings of the holy Quran and the *Sunnah* that amendments can be made on some particular matters through consensus (*Ijma*). But these amendments should not be against Islam.

According to the Constitution, our parliamentarians should have all those qualifications which are required for just rulers. If these constitutional provisions are not being implemented, we should discuss about that. If a law permits homosexuality in Europe, it should not be our concern because we can strive to enforce *Shariah* only in an Islamic/Muslim state. We cannot pass a similar law in Pakistan because it would be considered against Islam.

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Democracy is not against Islam. All of the four righteous caliphs of Islam had sought people's confidence and support in running the state affairs.

### **Sahibzada Hassan Farooq**

*PhD Scholar, Shaikh Zayed Islamic Center, the University of Peshawar*

We are passing through critical times. Therefore instead of cursing the past we should try to find some ways to come out of these times of turmoil. Islam can provide us solutions to all problems we are currently facing. But there are certain matters where Islam does not provide comprehensive guidance. For instance, we do not find a consistent or fixed method in Islam and Islamic history for the formation of government. We talk a lot about the role of caliph and members of *shura* (council/body of advisors) in Islamic system of government but we are not clear about who will elect them.

Before comparing democracy with Islam, we should try to study and comprehend it. If we look at democracy in the context of the West, we may not find it acceptable for Islam. But if we compare characteristics of the two systems, we feel that Islam is more democratic than the system of democracy. Pakistan's democratic system and Constitution can neither be termed completely Islamic nor democratic. There are certain ambiguities in them. For instance, if we present a bill in the parliament that is fully according to Shariah, it will not be passed until most of the parliamentarians endorse and vote for it. Do divine judgments also need such endorsements for being implemented? In Islam, the absolute sovereignty belongs to God whereas in the West it belongs to people. In Islam, personal freedom has certain limits but in the West it is boundless.

Islam's political system is basically based on the caliphate system, where people act as God's vicegerents, but it is very much democratic in its spirit. Is Pakistan's Constitution Islamic? It is very interesting debate. On the one hand, the Objectives Resolution is part of the Constitution. On the other hand, some verdicts issued by the Supreme Court have not considered the Objectives Resolution and other Islamic provision in the Constitutions as supreme.

As far as the method of election is concerned, ten ignorant and uneducated persons in Pakistan can impose their decisions on five religious scholars. Had this principle of democracy applied and opinions of all people sought, Pakistan would not have come into existence. Majority opinion is itself a problem.

Pakistan's Constitution does not provide safeguards for Islamic values; it only makes promises. It promised to put an end to the practice

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of *riba* (interest) but that promise was never fulfilled. Similarly, in Islam a judge should be 'just/fair' but our Constitution does not provide any such provision. Also, Pakistan's legal system does not practice Islamic system of punishments.

We should adopt democracy according to our values and needs as many other countries have done. Democracy can be compared to Islam in its characteristics but not in its implementation. Religious scholars do not form even 10 percent of the number of our parliamentarians. For legislation we need two-third majority. This explains how much our laws could be based on Islam.

#### **Professor Mushtaq Ahmad**

*Department of Law, International Islamic University, Islamabad*

A fundamental question before me is whether or not Pakistan's Constitution is Islamic. There are conflicting opinions on that. Some say it is not Islamic. Some say it is Islamic to a limited extent. Others say it is Islamic to a greater extent. Another group which believes in the armed struggle categorically rejects Pakistan's Constitution.

Pakistan's Constitution establishes 'judiciary's *Shariah*'. That means Pakistan's justice system will accept that interpretation of *Shariah* which is made by the courts. Even on Islamic legal issues, final verdict is given by Pakistan's courts.

When Objectives Resolution was passed in 1949, it accepted God's sovereignty along with many other Islamic provisions. This resolution formed preamble of the constitutions of 1956, 1962 and 1973. What is the status of preamble in comparison of the text of the constitution? This question has been debated in the courts. I will refer to the famous case of Asma Jilani vs. Government of Punjab (1972). Asma's father was arrested during the Martial Law regime of General Yahya Khan. When the case reached the Supreme Court the law under which the arrest had been made came under question. Then the debate turned to the legality of the enforcement of Martial Law. The full bench of Supreme Court gave the verdict that Martial Law is against the foundation of Pakistan's political and state system. The verdict described Objectives Resolution as a foundation of Pakistan's legal doctrine.

Later in 1973, the Supreme Court held in Ziaur Rehman case that the Objectives Resolution will not have the same status of authority as the Constitution itself until it is incorporated within it or made part of it. In 1985, through a constitutional amendment the Objectives Resolution was made part of the 1973 Constitution. The introduced Article 2-A said that 'the principles and provisions set out in the

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Objectives Resolution are hereby made substantive part of the Constitution and shall have effect accordingly.’

After this amendment it was thought that now the interpretation of the Constitution will be done in the light of the Article 2-A, i.e. Objectives Resolution, but it did not happen practically. While the Council of Islamic Ideology was asked to provide proposals to the parliament and provincially assemblies on whether a proposed law is or is not repugnant to the injunctions of Islam, the Constitution also provided that ‘where a House, a Provincial Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of the Islamic Council is furnished, the law may be made before the advice is furnished.’

The Council has presented its recommendations in parliament at several occasions but the latter has never reviewed them because it is not constitutionally bound to do so. Ziaul Haq established Shariat Benches in High Courts that accepted appeals on *hudood* laws besides declaring any anti-*Shariah* law null and void. After one year of their establishment, these benches were abolished and replaced with the Federal Shariat Court which could consider any custom or usage having the force of law but not the Constitution, Muslim Personal Law, any law relating to the procedure of any Court or tribunal, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure. Also, appeals against Federal Shariat Courts’ verdicts can be submitted in the Supreme Court.

Pakistan’s Constitution has two overarching Islamic provisions: all the existing laws will be reformed according to Islamic law; and no law will be made in future that is contradictory to the Quran and the *Sunnah*. These ‘promises’ have been part of all the three constitutions of Pakistan. In many cases Supreme Court validated these provisions. But the case of Al-Jehad Trust vs. Federation of Pakistan (1999) is very significant. In its verdict the Supreme Court declared that Pakistan’s Constitution is federal, parliamentary and Islamic and judiciary is independent. The Court went to the extent of saying that if an amendment is made against this basic structure/doctrine, that will not be acceptable. In recent past, Supreme Court asked the parliament to change the procedure of judges’ appointment. Although the Supreme Court did not give its verdict on the method of judges’ appointment as described in the 18th Constitutional Amendment but asked the parliament to change it. As a result the parliament had to make 19th Amendment in the Constitution.

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In this situation, the real problem is our courts' inconsistent interpretations of the Islamic provision of the Constitution. Some clauses are seen as Islamic and others are not even considered as Islamic clauses. These interpretations are also not based on the principles of Islamic law. For instance, Pakistan's president and governors of all provinces cannot be trialled in courts in many instances. This issue was raised before the Supreme Court during the hearing of NRO<sup>28</sup> cases but it did not consider the Islamic concept of accountability. A prominent lawyer Chaudhary Aitzaz Ahsan had even stated at that time that if the second caliph Hazrat Omer could appear before the court of law why Pervez Musharraf could not. But the court did not borrow his legal point. A case against obscenity in Pakistani media is pending in the Supreme Court and we are waiting when a decision will be announced on that.

At the end, I would say that if our Supreme Court decides today that all clauses of Pakistan's Constitution will be interpreted in the light of the Quran and the *Sunnah*, our Constitution will become fully Islamic. Next question will be what is meant by 'in the light of the Quran and the *Sunnah*'? Though we have declared in the Constitution that Islamic commands mean as espoused in the Quran and the *Sunnah*, but no institution including Supreme Court, Federal Shariat Court and the Council of Islamic Ideology has ever tried to explain what do 'Islamic commands' mean so that that could be used as a standard definition.

#### **Khurshid Nadeem**

*Religious scholar, and anchorperson, Pakistan Television, Islamabad*

In this country, first we have to decide what is the state? What are its duties? Secondly, to whom it gives the power and authority to rule? To those who have guns and want to come into power through the use of force; to those who hold the legacy of throne; or to those who largely enjoy the confidence of the common people? First, we have to answer these questions. The question of Islamic and un-Islamic will become relevant at a later stage.

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<sup>28</sup> The National Reconciliation Ordinance (NRO) was a controversial ordinance issued by the former president Pervez Musharraf in 2007. It granted amnesty to politicians, political workers and bureaucrats who were accused of corruption, embezzlement, money laundering, murder, and terrorism between 1986 and 1999. It was declared unconstitutional by the Supreme Court of Pakistan on December 16, 2009.

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For example, if a person seizes the power, and, afterwards, decides to implement *Shariah*, will his rule be justified and his authority enforced? Similarly if a group claims it has the support of Pakistan's majority population, seizes the power, and announces to establish democracy, is it justified to do so? We have not moved forward from these questions in the last 65 years. We infer our understanding of the state and its functions from the caliphate system of early Islam and want to apply it on the nation-state of modern age. The era of Islamic caliphate was entirely a different era from this modern era of nation states and thus had different religious needs. When we seek precedents from that era, they bring with them their own conflicts; for instance, the Taliban's justice system. How can we put this ancient robe [of caliphate] on today's nation state that was not made for that? Modern states have a different justice system where a judge does not make laws but tries to enforce them. Unfortunately, even those religious scholars (*ulema*) who somehow accept modern judicial system mostly think in the perspective of the caliphate system; perhaps due to this reason that in the caliphate model, the right to legislate does not lie with the legislature but the religious scholars.

Similarly, only the religious scholars have the right and monopoly to tell us what does the Quran say or want. If they declare that the testimony of women and non-Muslims in *hudoood* cases is not acceptable, this 'verdict' becomes acceptable for all. According to democratic system, a woman can become the prime minister of Pakistan, but our religious understanding does not permit that. All these contradictions emerge because we have not been able to decide some fundamental things. Whatever we have adopted as 'a matter of expediency' throughout the course of history, why do not we accept it consciously and willingly? Why we continue to give the 'adopted things' a shape or name of our own desire? For instance, the consensus that making photographs or pictures is forbidden in Islam still stands but practically this is not the case. Now the publicity postures of religious festivals carry pictures. Leading religious leaders Maulana Fazulr Rehman and Sirajul Haq cannot hold a public rally or procession where cameras are not present. But we still have the decree that picture is legally forbidden in Islam (*haram*). Similarly religious decrees about the political role of women do not match with our current practices in that regard.

The state of Medina established by the Prophet (PBUH) was different from the one established by the first righteous caliph Hazrat Abu Bakr. The Charter of Medina—a legal agreement signed between the Jews and the Prophet—entailed different features because it was

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made in the context of a different social landscape where Jews were also part of ‘*ummah*’, but the state established by the caliph Abu Bakr was purely a state of Muslims. Hazrat Omer also followed the decisions of his predecessor, i.e. Hazrat Abu Bakr. At the time of selection of the third caliph between Hazrat Usmani and Hazrat Ali, the [consultative] committee asked the both if they would accept the decisions/precedents of their predecessors/elders after the Quran and the *Sunnah*. Hazrat Osman agreed with the committee, but Hazrat Ali refused. The latter’s refusal was perhaps based on this understanding that the importance of views of the elders or previous rulers was valid only for a certain period of time and could not become a permanent source of legislation.

Therefore, when we dream or try to establish an Islamic state without understanding the domestic, regional and international perspective of our current situation, all these problems arise which have been pointed out by the participants.

### Question and Answer Session

*Question: Mohammad Irfan (Student, Jamia Ghausia)*

Is the *Hudood* Ordinance according to Islamic teachings? In this regard, there are a lot of ambiguities.

*Answer: Dr Khalid Masood*

*Hudood* laws, or laws on the crimes punishable under the *hudood* (boundaries set by God), were formulated in 1979 and were also implemented in several instances. But no legislation had been made on the issue of *hudood* laws. In the formulation of those laws, most things had been taken from the books on Islamic jurisprudence (*fiqh*). Islam differentiates between *ta’zir*<sup>29</sup> and *hudd* (singular of *hudood*). The government included clauses pertaining to *ta’zir* also in *hudood* laws but with a description of classified differentiation between the two. For many years we continued doing experiments in that regard, which only made the matters complex. Our religious scholars and lawmakers have raised a lot of questions about the *hudood* laws. When I was heading the Council of Islamic Ideology, we reviewed the *hudood* laws because at that time there was a consensus among the members of the Council for that. We recommended to the government for a review and started a debate on the *hudood* laws to solve the issue in a political manner. A

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<sup>29</sup> In Islamic law, *ta’zir* refers to punishment, usually corporal, that can be administered at the discretion of the judge or *qazi*, as opposed to the *hudood*, which refers to boundaries set by God.



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committee of religious scholars was formed. A draft was prepared in which only two issues came under discussion, *zina* (adultery) and *qazaf* (accusation of *zina*).<sup>30</sup> Religious scholars argued that there is no difference between *zina bil jabr* (rape, or sex without consent) and *zina bil reza* (fornication, or consensual sexual intercourse between two persons not married to each other). They stated that when a woman accuses a man [of adultery] she admits that she was also part of the sin, and hence should also be punished. This matter could not be further debated. Therefore, all those women who came to register their complaints of being raped were sent behind the bars. Also, it was on the women to prove their accusations, which was very difficult in the presence of a weak procedural framework. In my point of view, the holy Quran asks those who accuse chaste women to provide four witnesses but we made it a procedure in Islamic jurisprudence both for rape (*zina bil jabr*) and fornication (*zina bil reza*). The Quran clearly says: “And those who accuse honourable women but bring not four witnesses, scourge them (with) eighty stripes and never (afterward) accept their testimony. They indeed are evildoers” (24:4). As a result of our jurisprudential procedure, a woman who was the victim of rape was asked to prove her accusation with four witnesses, which was indeed very difficult for her to do. As I said earlier, the laws on *hudood* and *ta'zir* (crimes not punishable under *hudood* laws but under other criminal laws) were put together and treated under the procedure of *hudood* laws. But one good thing happened later and they [the government] separated the laws on *ta'zir* from *hudood* laws and put them under other criminal laws. No one has seriously studied the *hudood* laws. Indeed there are many problems with these laws.

Secondly, Khurshid Nadeem has rightly pointed towards existing ambiguities in our religious discourse. If we place Islamic jurisprudence (*fiqh*) on one side and common law on the other side, then this debate should be between British common law and *fiqh*. The debate on *fiqh* in Pakistan is not focussed on the holy Quran and the *Sunnah* but it is largely a sectarian debate. Moreover, who has the authority to interpret the Quran and the *Sunnah*? It is also a question of who holds the authority or power. I think one main factor that formed the basis of Islamic jurisprudence, or *fiqh*, in Islamic history was related to Umayyad and Abbasid rulers' interference in the affairs of judges (*qazis*). Therefore *fiqh* was established as an alternative, private law without participation of rulers. The state was expected to just

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<sup>30</sup>*Qazaf* means to wrongfully accuse a chaste Muslim man or woman of adultery.

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enforce it whereas its interpretation was the sole responsibility of jurists and scholars. This alternative law was made just for those matters for which clear guidance was available in the Quran and the *Sunnah*, and all other things were included in the common criminal law. Religious scholars say that no one including parliament can debate the Islamic jurisprudential matters because this right solely lies with them. Eventually this debate does not remain academic and legal but becomes political.

There is a lack of trust between Pakistan's religious and secular circles. I think there should be an open dialogue between them. We should also have in depth study of all related matters. Mostly we establish our opinions on partial study of an issue. If we study the arguments presented in the sectarian and interfaith discourses, we will come out of this illusion that all others are disbeliever. All Islamic sects indeed interpret the Quran and the *Sunnah*. We can have a disagreement with them but this disagreement can also lead us to some sort of consensus (*Ijma*) because our principles are same.

*Question: Suleman Arif (Jamia Muhammadiyah Islamia, Islamabad)*

Which is the ideal period of Islamic history in terms of Islamic state and society, especially when we have the life of the Prophet (PBUH) in Mecca and Medina before us?

*Answer: Khurshid Nadeem*

You will find an answer to first part of your question if you keep before you the debate on the abrogator and the abrogated (*nasikh* and *mansukh*)<sup>31</sup> in Islam. We believe in this fact that once the creed of Islam has been perfected,<sup>32</sup> and things accomplished, we are not bound to follow the old/pre-Islamic precedents and doctrines. The jurists and exegesis writers of the Quran have also narrated this opinion that after the revelation of verses of jihad, mainly those in Chapter 9 of the Quran, the earlier verses calling for patience/restraint will be considered as abrogated. Similarly some say that the Charter of Medina became null and void after the religion of Islam was perfected. Many contemporary religious scholars do not agree with this debate [of abrogation] and say that the holy Quran and the *Sunnah* as a whole are

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<sup>31</sup> The abrogating Quranic verse is called in Muslim tradition *nasikh*, the abrogated passage *mansukh*, and abrogation *naskh*.

<sup>32</sup> Reference to a verse from the Quran: "...This day have I perfected your religion for you and completed My favor unto you, and have chosen for you as religion AL- ISLAM..." (5:3).

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role models for us. The Charter of Medina is a role model for us to live in a pluralistic society. If you are living in a pluralistic society, then it is still implementable. If you are living in a society where you are powerless, then the period of Mecca is a role model for you to live there. When the Prophet (PBUH) was not in power, no collective campaign was run to establish the religion. All these things happened later, when the state of Medina was established. Religious scholars still talk about the models of Mecca and Medina. Especially, after people started migrating from one country to another in search of a job, a lot of new problems arose. That gave birth to *Fiqh al-Aqalliyyat*—the jurisprudence of Muslim minorities.<sup>33</sup> I personally believe that while living in a pluralistic society, the tradition of the Holy Prophet (PBUH) viz a viz the Charter of Medina should be acceptable for us. Secondly I argue that when we have the cloth and thread (Islamic principles), why do not we prepare our robe according to our present needs? Why do we still insist to wear the robe of caliphate that was prepared to fulfil the needs of early Islamic era?

We should follow the principles of Islam; however, the system should be made according to the requirement of the contemporary era. Islam does not have some fixed or rigid political system but it keeps changing with the change of time and place. It can have many systems at one particular point of time. For instance, today we see that different kinds of Islamic or Muslim states exist in Sudan, Saudi Arabia, Iran, and Afghanistan. The Taliban have their own version of Islamic state.

We should use the fabric and thread, or fundamental principles, of Islam and make the dress according to our own requirements. This is what we call *Ijtihad*.

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<sup>33</sup> *Fiqh al-Aqalliyyat* is a legal doctrine introduced in the 1990s by Taha Jabir Al-Alwani and Yusuf Al-Qaradawi which asserts that Muslim minorities, especially those residing in the West, deserve a special new legal discipline to address their unique religious needs that differ from those of Muslims residing in Islamic countries. (Source: Tauseef Ahmad Parray, “The Legal Methodology of “Fiqh al-Aqalliyyat” and its Critics: An Analytical Study,” *Journal of Muslim Minority Affairs*, Volume 32, Issue 1 (2012).

# FOURTH DIALOGUE

Place: Islamabad  
Date: October 22, 2014

## Host

Mohammad Amir Rana (Director, Pak Institute for Peace Studies)

## Chairperson

Khurshid Nadeem (Religious scholar, and anchorperson Pakistan Television, Islamabad)

## Keynote Address

Dr Qibla Ayaz (Vice Chancellor, Islamia College University, Peshawar)

## Discussants

Maulana Abdul Haq Hashmi (Emir, Jamaat-e-Islami, Balochistan, and Member, Federal Shariat Court)

Dr Rasheed Ahmad (Assistant Professor, Shaikh Zayed Islamic Center, the University of Peshawar)

Sahibzada Amanat Rasool (Principal, *Idara Fikr-e-Jadeed*, Editor monthly *Rooh-e-Buland*)

Maulana Syed Ahmad Banori (Teacher, Jamia Islamia Allama Mohammad Yousaf Banori Town, Karachi)

Islam, Democracy and the Constitution of Pakistan:

Mufti Mohammad Zahid (Vice Principal, Jamia Imdadia, Faisalabad)

Maulana Yasin Zafar (Secretary General, Wafaqul Madaris Salfia Pakistan)

Allama Ammar Khan Nasir (Deputy Director, Al-Sharia Academy Gujranwala)

Dr Ejaz Ahmad Samdani (Jamia Darul Uloom, Korangi, Karachi)

Maulana Attaullah Shahab (Member Gilgit-Baltistan Council, leader of Jamiat Ulema-e-Islam)

Maulana Mohammad Shafi Chitrali (Religious scholar, and columnist daily *Islam*)

Dr Saqib Akbar (Director, Akhuwwat Academy, Islamabad)

## **Mohammad Amir Rana (Inaugural Address)**

This is the last of a series of four dialogues. First three dialogues were held in Karachi, Lahore and Islamabad, respectively. When we started this dialogue, the situation in Pakistan was much different; non-state actors were posing major challenge to the state. Therefore, we made this attempt, realizing the need for an intellectual dialogue on this topic. Its significance has increased in today's circumstances. We would, therefore, request you to guide us, keeping the current political scenario of the country in mind, and answer the questions that were raised in the previous dialogues. I would request Mr Khurshid Nadeem, who would be presiding over today's dialogue, to take this discussion forward.

## **Khurshid Nadeem**

*Religious scholar, and anchorperson Pakistan Television, Islamabad*

Given that today's dialogue is the last one in this process, we would try to take this discussion forward building upon the findings of previous dialogues. We would keep in mind what we have already learnt so that the context and outcome of previous discussions also freshens up in our minds and we are able to take the discussion forward in a better way. I would request Mr Qibla Ayaz to share his views on the subject.

## **Dr Qibla Ayaz**

*Vice Chancellor, Islamia College University, Peshawar*

Societies have been trying to evolve different systems to run their political affairs since ancient times. The present concept of democracy originated from Greece. Before the advent of Islam there, the Arabs had this tradition of making important socio-political decisions through consultation among their elders. The clan of Quraish had the status of a leader. The holy Prophet (PBUH) gave the idea of *shuraiyyat* (system of consultation) in the light of the teachings of the Quran and the *Sunnah*, which was also prevalent in the period of the righteous caliphs.

Later on, when kingship and hereditary regimes set in, Islamic jurists and intellectuals kept raising the questions about the modus operandi of transfer of power. Prominent scholars like Imam Al-Mawardi and Al-Farabi wrote comprehensive books on this topic including *Al-Ahkaam-e-Sultaniyyah* (The Ordinances of Government) and *Hakoomat e Al-Shariah* (The Rule by Shariah). Imam Abu Hanifa developed a complete thought on the subject that discussed the ways of

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protesting against the government, transfer of power and eradication of trials and discords (*fitna*<sup>34</sup>).

During the imperialist regimes in the Arab world and the Indian Subcontinent, the religious segments of society led independence movements on political and military fronts. Even after Pakistan's creation, Jamaat-e-Islami, a religious party comprising educated people, wondered whether or not to become part of the democratic and electoral system. Those who did not believe in the system separated themselves from the party and made their own groups. But some religious scholars chose the democratic and political route and also became part of the legislative process.

On the other hand, Islamist militant groups such as Da'ish (ISIS), Al-Qaeda, Taliban, and Ansarul Ummah also exist in the world, which claim that neither desired change can be brought nor Islamic government can be established through democracy. Da'ish has recently declared its caliphate, or Islamic state, in Iraq and Syria and has chosen Abu Bakr Al Baghdadi as its caliph. They have distributed their pamphlets in Afghan immigrant camps in Peshawar titled 'Al-Fatah' (Victory). Prior to Da'ish, the Afghan Taliban had established their government in Afghanistan in the 1990s. Those who did not agree with the Taliban, were declared rebels and punished according to the Taliban-interpreted Islamic law.

Today's politics of sit-ins also questions the parliament's prerogative of bringing change or changing a government. It is in this context that we debate today, so that we can offer some agreed-upon political framework to our future generations.

### **Sahibzada Amanat Rasool**

*Principal, Idara Fikr-e-Jadeed, Editor monthly Rooh-e-Buland*

Many movements in our country are striving to enforce Islam or establish Islamic state through jihad, whereas Islam emphasises on achieving these objectives through mutual consultation and consensus. Violent attempt to bring change or establish Islam will only result into anarchy and bloodshed. We cannot establish the religion by ignoring the views and wishes of the people. Islam gives importance to people's participation in making decisions for collective affairs. There is no room in Islam for establishing parties on sectarian, ethnic and regional basis. When you are part of Muslim *ummah* (nation), you are

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<sup>34</sup> *Fitna* literally means persecution or trial and discord, and is also understood as disorder and civil strife in an Islamic society. It means that matters become confused, mistakes increase, and minds and intellects begin to waver.

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religiously entitled to have and give your opinion, but you cannot impose this opinion on others. Men and women have the right to give their opinions on political matters, without any discrimination. However, we can see that women are not usually given an equal right regarding that.

We also ignore the fact that change is a gradual process. For instance, we talk about Articles 62 and 63 of the Constitution. But do we have such people who have the required characteristics of honesty, righteousness and fairness etc., as well the capacity and ability to rule? Therefore, looking at the overall situation in the country, we cannot enforce Islam here by ignoring the Islamic principle of gradual change (*tadreej*).

It is a fact that in the past two to three hundred years, we have not made some intellectual progress in the fields of knowledge and philosophy. Even if some works had been done, those were result of some individual efforts. Western intellect and thought are the dominant force in today's world. When our educated class does not want to live here, how can we develop intellectual and research-related practices? No matter what do you say about the West and democracy while sitting here, the matter of the fact is we cannot compete the West until we develop ourselves intellectually.

#### **Maulana Syed Ahmad Banori**

*Teacher, Jamia Islamia Allama Mohammad Yousaf Banori Town, Karachi*

Those among our youths who believe in the armed struggle are no more focused on the external world, but are targeting us and the society they belong to. They believe that the real problem does not lie with West but the Muslim societies, which they think have adopted practices of disbelief. Hence, their first objective is to 'fix' their societies. Strikingly, even some liberal segments of Pakistani society believe that the current political system cannot deliver.

As far as Islam's view on democracy is concerned, I think the most important thing is to decide whether our leaders will be chosen by us or someone else. Also it is important to decide whether opinions of all people will be considered equal or some opinions will be held supreme over the others. First division among Muslims emerged on this legal question that whether the caliphate (leadership) is from God (*mansus*) or people will decide about that. Sunni jurists and scholars believe that it is the right of the people to elect their leader(s).

The anti-democracy religious narrative is based on this belief that while Islam espouses a complete submission or subservience to God,



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democracy holds public opinion supreme. We have wrongly created this perception that people cannot have their own opinions in Islam and are completely subservient to God's opinion. I think we need to remove this misperception. Although God wants humans to be His subservient but He does not want them to renounce their freedom of thinking. When Iblees (Satan) asked God's permission to misguide Adam, God allowed him to do so but said those who will follow you will remain in loss. I would mention here the historic quote of Voltaire: "I do not agree with what you have to say, but I will defend to the death your right to say it." Being a student of religion, I believe people should accept what God and His Prophet (PBUH) say but through their own will. After this, doubts about democracy will end.

### **Dr Rasheed Ahmad**

*Assistant Professor, Shaikh Zayed Islamic Center, the University of Peshawar*

As we talk about Western democracy, we have to analyze if the term 'Islamic democracy' makes some sense. The Pakistan's Constitutions is certainly Islamic, but we do not see it being implemented in its true letter and spirit. Similarly, Islam's spirit is democratic, but we do not observe democratic values taking roots in Muslim societies.

We should compare the elements of what Islamic jurists have called '*Daulat-e-Islamia*' (Islamic State) with those of a modern state. A modern state is built around four elements: population, territory, government and sovereignty. The biggest objection that our scholars raise on democracy is that it makes the people sovereign and free of divine rulings in deciding their matters. Similarly, democracy treats religion and state separately but Islam puts them together. Democracy promotes nationalism which produces discord whereas Islam opposes all types of divisions. Also, there is no concept of political parties and political opposition in Islam. Some however state that three groups of Muslims had emerged after the death of the holy Prophet, which could be regarded as parties. One group comprised of *Ansaar* (the people of Medina who hosted and helped Muslim immigrants from Mecca) under the leadership of Saad Bin Abada; the second group was of Quraish, which was headed by Hazrat Abu-Bakr, Hazrat Omar and Hazrat Abu Obaida bin Jarah; and the third group was of Banu Hashim, headed by Hazrat Ali and Hazrat Abbas.

In democracy, parliament has the right and authority to legislate on any matter but in Islam *shura* or, parliament can make laws only on certain matters, which are not clearly decided in the Quran and the

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*Sunnah*, and that too in the light of Islamic teachings. In democracy, everybody has the right to give his/her opinion or vote, but Islam does not give this right to all.

Today some religiously motivated groups such as Da'ish, Al-Qaeda, Al-Shabab, Hizbut Tahrir and Taliban believe in the armed struggle to establish Islam. On the other hand we also have Islamic parties like Al-Ikhwan in Egypt, Jamaat-e-Islami and Jamiat-e-Ulema-e-Islam in Pakistan which are carrying out political struggle to establish the religion. After Shaikhul Hind Mahmood Al-Hassan returned from Malta [exile], he also gave up the idea of armed struggle. We will have to analyse as to why people are attracted towards armed struggle.

#### **Dr Ejaz Ahmad Samdani**

*Jamia Darul Uloom, Korangi, Karachi*

Islam has provided some basic principles for forming the government, which we can use according to our own priorities and needs. There's no single way of establishing Islamic caliphate and electing the caliph. All of the four righteous caliphs came into power through different ways. We can infer from that people can decide by themselves in a certain context of time and place. At the same time, according to Islamic principles, a ruler should have the trust of his people. According to Islamic tradition, first a group or body of advisors—the people of opinion—selects a caliph and then people give their oath of allegiance to the caliph. To some extent, this procedure is also adopted in today's parliamentary democracy where people elect their representatives, who then elect the prime minister.

There are two basic types of democracies, liberal and Islamic. In a liberal democracy, 'good' and 'evil' are additional terms because masses have the right to decide matters with majority opinion. However in Islamic democracy, 'good' and 'evil' are absolute as ordained in precepts of Islam. What is described as evil in Islamic *Shariah*, people cannot make it good by any means. Similarly, there are two areas of legislation. Only doctors of Islamic law and scholars can legislate in matters related to *Shariah*. However in other matters including administrative, legislature can also make laws.

According to Islam, if someone revolts against the government he will be considered a rebel until and unless he acquires complete control and authority. But if someone takes full control of the government after revolt, people are bound to follow his command, as we see in case of Martial Law. Similarly, some people say that the government does not give them their rights, which is why they will

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revolt against it. Islam does not allow for that, but asks people to be patient and continue fulfilling their duties.

### **Maulana Mohammad Shafi Chitrali**

*Religious scholar, and columnist daily Islam*

This topic [of Islam's link to democracy and man-made legislation] has been under discussion for the past 100 years but became particularly hotter after the incidents of 9/11. When we talk about the relationship between Islam and democracy, two extreme views emerge. The first declares democracy as un-Islamic, while the other states that liberal democracy should be accepted and used to interpret Islamic precepts.

In my opinion, a middle way can be found to describe the link between the two. The basic principles of Islam and democracy are similar, and both believe in mutual consultation and collective wisdom. After the Western societies started to separate religion from the politics, they established a human rights-based political system which became the basis of democracy. But does such a conflict also exist between Muslim societies and the mosque?

Until 1920, a large segment of clergy in the Indian Subcontinent supported confrontation and rebellion against the British rule. But after the failure of *Reshmi Rumal* Movement, all religious circles agreed that they will do political struggle through constitutional means. After the establishment of Pakistan, this persisting narrative of peaceful and democratic struggle led to the passage of the Objectives Resolution and inclusion of Islamic provisions in Pakistan's all three constitutions. Pakistan's religious scholars and leaders had played a great role in that regard.

If someone says today that democracy and Pakistan's Constitution are un-Islamic, he or she indeed disapproves the entire struggle and achievements of the religious scholars. It is a fact that Pakistan's Constitution is Islamic; but in terms of practice, things are different. When we tell a layman that Pakistan's Constitution is Islamic and it is an Islamic state, he starts wondering that while Islam is based on justice why there is no justice in Pakistani society. Islam talks about rights, but do we all have equal rights in Pakistan? Islam talks about a government that works to spread Islam but we do not see our leaders doing that, therefore, people are getting fed up of our political system. In Egypt, the government of the Muslim Brotherhood came into power through democratic means, but it was removed from power after just one year. The government of Hamas was not accepted either. Hence, the groups like Da'ish, or the Islamic State of Iraq and Syria, and others

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try to justify their violence saying that the West does not approve Islamic governments established through democratic means.

#### **Khurshid Ahmed Nadeem**

An important point has been raised by Maulana Chitrali as to whether it is vital to be secular to be democratic. This question holds great significance in our current situation, I would request other speakers to speak on it.

#### **Maulana Abdul Haq Hashmi**

*Emir, Jamaat-e-Islami, Balochistan, and Member, Federal Shariat Court*

If democracy is all about knowing and respecting the will of people, I do not see any logical or legal (Islamic) problem with that. Democracy was first adopted by Muslims. Islamic jurists used to employ the term '*jamhoor*' to refer to majority opinion whenever there was a difference of opinion on a certain legal issue. When we accept the opinion held by majority jurists on a certain legal issue as final, then there should not be any hindrance in applying the same principle in politics.

We learn from the life of the Prophet (PBUH) that we should adopt new things and continue improving and reforming them. That means we should not regard anything absolute or final when we adopt it. For instance, slavery was an old custom among Arabs which was not possible to eradicate instantly. The holy Prophet (PBUH) let it stay but introduced certain laws which eventually ended it. Therefore, we can adopt democracy and make changes in it so that it becomes acceptable for an Islamic government. Pakistan's Constitution includes the Objectives Resolution and Islamic provisions as well as the Council of Islamic Ideology, but none of these things is being practiced. Societies which uphold human rights do not have Da'ish, the Taliban, Al-Qaeda or Boko Haram; these groups are present in those societies where people are oppressed.

#### **Mufti Mohammad Zahid**

*Vice Principal, Jamia Imdadia, Faisalabad*

Many have raised the question if democracy can help us in bringing the desired [Islamic] change. I think it is our religious and moral duty to abide by the 1973 Constitution. The Constitution is not an ultimate document but it needs changes to evolve according to

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emerging needs and challenges. Thus far, 18 amendments have been made in our Constitution. The 18th Amendment has given our Constitution a new look. It is possible that it adopts a whole new face in another 20-30 years because the Constitution is not the Quran or the *Sunnah* and can be amended for the betterment of the society. The Constitution does not inhibit a change but makes a way for that.

The problem with our society is that if someone has developed an opinion that contradicts with the Constitution and has managed to get the support of few people as well, he/she would want to change the Constitution. But there is a set procedure to introduce changes in the Constitution; it is not a matter of personal wishes.

Confused and ambiguous religious-ideological narratives that permeate in our society have made our Constitution less acceptable among the people. Sadly, we do not have the culture of institutional research which could counter such narratives. If we can work for that, a lot of problems will be fixed.

### **Dr Saqib Akbar**

*Director, Akhuwwat Academy, Islamabad*

A lot of work has been done on the status of the traditions of the Prophet as a source of legislation in the Muslim world including Pakistan. The Council of Islamic Ideology has also produced significant work in terms of *Ijtihad* but that was not debated in the parliament. The best thing about the Council is that it has representation of all Islamic schools of thought, or sects. As a result, its recommendations have the approval of all Islamic sects.

It is good we talk about renaissance of Islamic caliphate, but we do not find some agreed-upon mechanism in Islam to elect a ruler. That is why there is a conflict between evolution of a constitutional government and the establishment of caliphate.

We often hear that there is no need for a constitution in presence of the Quran and the *Sunnah*. This is creating misperceptions and ambiguities in our society. I believe that need for a constitution is very much according to the Quran and the *Sunnah*. It is responsibility of our Islamic research and academic institutions to respond to rational and scientific queries being raised by our new generations. Our jurists and scholars should also give their opinions on the international laws which our governments abide by. Learning from human experiences, we should try to revisit our understanding of *Shariah*.

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### **Maulana Attaullah Shahab**

*Member Gilgit-Baltistan Council, leader of Jamiat Ulema-e-Islam*

Since the Pakistan Movement began, there was only one slogan everywhere that Islam is the purpose of creating Pakistan. But after Pakistan came into being in 1947, the debate started on the practical implications of this slogan. That led to ideological conflicts and divisions. Secular power elites whose self interests were attached with the creation of a separate country also contributed to widen these divisions so that their interests are not affected. That is why whenever we talk about enforcement of Islam in the country, they say which Islam, Deobandi, Barelvi or Shia?

In 1952, religious scholars from all Islamic sects got together under the leadership of Allama Bashir Ahmed Osmani and agreed upon 22 points for establishing Islam in the country. A number of Islamic clauses have been inserted in the Constitution, but implementation is missing. The Constitution itself is being challenged at D-Square by political protestors on a daily basis. As ambiguities are increasing among the nation, such dialogues should continue to guide the people.

### **Allama Ammar Khan Nasir**

*Deputy Director, Al-Sharia Academy Gujranwala*

Which way of establishing Islam is in accord with the Islamic principles? The way that Pakistan's leading political and religious-political parties have adopted? Or the way of armed struggle which some groups have recently adopted? I think we need to respond to the questions raised by these armed groups. The groups engaged in the armed struggle against the state are not concerned about the issues of delegation of power, methods of election or the importance of public opinion. But they are not willing to accept this system as a whole because they think it is a hurdle in their way of enforcing Islam. These groups want to see or establish a similar dominant Islamic state in terms of civilization, integrity and power that existed during the early period of Islam. Therefore, it is important for us to have a dialogue with them and answer their questions.

In my opinion, we should try to answer the following fundamental questions to effectively respond to the groups engaged in armed struggle.

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1. What is the divine principle for a nation's becoming dominant in the world in terms of civilization and politics? Is this dominance linked to the truth and righteousness? Does the law of God makes those nations dominant which are on the true path or there are some different principles for that?
2. To what extent a nation's political and civilizational dominance is a matter of that nations' struggle and hard work and to what extent it is linked to fate or divine blessings? Can we achieve through our struggle the opposite of what God has decided or chosen for us?
3. Can some short term strategy be useful and effective to give rise to a nation that has been in a position of decline for centuries?
4. Many references can be found in the Quran and the *Sunnah* about jihad. At some places, Muslim *ummah*'s success has been linked with jihad. Should we try to understand these commands on jihad by linking them to some other conditions and options or jihad alone is enough to achieve what Islam had achieved in early years of its history?
5. *Shariah* has provided us with certain principles to determine whether jihad should be waged or not. For instance weighing the likely outcome, that is, jihad should not bring more harm and trouble to Muslims; preparedness and sufficiency of resources; and greater probability of success etc. To what extent should we consider these conditions as espoused in *Shariah* while deciding about jihad?
6. Is the rise of the West a result of its use of force, wealth and weapons or it is based on its intellectual, social and political evolution?
7. Can Muslims become a dominant nation (*ummah*) and civilization in the world without debating their current plight and suggesting a comprehensive strategy to come out it?
8. Islam is not just a religion of offering prayers or worship. It is a civilization and its followers dream about its dominance one again. Can Islam become dominant in the world once

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again in the same material and form as we predict or foresee?

9. The basic point of the debate about democracy and Islam is how Muslims perceive the fundamental concepts of Islam and Islamic history and how they correlate these two things. Are Islam and history of Islam synonym or we need to differentiate between the two?
10. Who has the right to choose a course of action for Muslims? While everybody has the right to give one's opinion [about others' actions] but how is it possible for some person or group to devise a roadmap, declare it 'Islam' and force others to act upon it? Strangely, if someone refuses to follow that particular path, *fatwas* or religious decrees are issued against that person.

I believe answers to these questions should be given in our upcoming dialogues in which the people engaged in armed struggle should also be invited to participate. Even if they do not agree to become a part of it, the nation itself should come up with a strategy to end the violence.

#### **Khurshid Nadeem (Chair's Address)**

We need to comprehend one basic question that why we need state and what are its objectives. Is the establishment of religion the core purpose of the state or it has some others aims to achieve and needs to fulfil? Many more questions arise out of this question. If the establishment of Islam is the main objective of forming a state and its features are from God (*mansus*), then any state Muslims will establish will be considered an Islamic ideological state. Its main objectives will include promotion of a specific ideology. No doubt this state will be quite different from today's modern, secular state, which has come into existence after a long process of evolution. The modern nation-state undertakes to organize people's economic, political and social activities under an overarching system. This state ensures the protection of human rights as they have evolved over the periods of time. It does not have any ideology—its citizens can have one or another ideology and the state allows them to propagate and promote their ideologies but within certain limits. On the other hand, an Islamic state sets its targets under the objectives of *Shariah*. The foremost objective of an Islamic state as aptly described by Maulana Maududi is the obligation of establishment



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of the religion or dominance of Islam. According to him, there are no five but six religious obligations in Islam with the sixth being establishment of the religion.<sup>35</sup> Therefore, whenever an Islamic state will be established, its foremost objective will be to establish Islam.

The next question is: can those citizens of an Islamic state who do not believe in the foundational ideology of the state, i.e. non-Muslims, hold key offices? Similarly, are they entitled to have the same rights as the Muslim citizens of an Islamic state have? Maulana Maududi and Maulana Amin Islahi have written a lot on this topic. The basic problem Muslims faced was that the available model they could use to promote their viewpoints was that of a nation-state. The circumstances that contributed to the formation of Pakistan made it an ideological state. Many efforts were made to establish the religion in this state starting from the passage of Objectives Resolution to the formation of the 1973 Constitution. When we decided that a non-Muslim cannot become head of the state, non-Muslims raised many questions in the perspective of a nation-state; but we looked at those questions in the perspective of an Islamic state.

As time passed on we kept making adjustments but failed to evolve a particular viewpoint on the issue. First there were separate electorates where Muslims elected their representatives, and non-Muslims elected their separate representatives for the seats reserves for them. Later when the matter was debated, joint electorates system was established that gave the non-Muslims the same right to vote as Muslims had. When you have given this right to non-Muslims, how can you force political parties to nominate only Muslim candidates for contesting elections? According to the Constitution, anyone who can cast the vote can also contest the election. You cannot force a non-Muslim to not contest election from a Muslim-majority constituency.

Another important question is that he who presents himself for a specific position or post automatically becomes ineligible. The Jamaat-e-Islami also faced this problem in the 1950s. When this debate took place in the Jamaat, a complicated way was chosen to address it that said first a group will be formed that will nominate a candidate to contest elections. The party nominated two prominent Islamic scholars Maulana Amin Islahi and Maulana Ismail Salfi as election candidates, but as expected, both could get only a few votes. That was a natural

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<sup>35</sup> Five religious obligations in Islam, also known as the five pillars of Islam, include: *shahada* (profession of faith in Allah and His Messenger), *salat* (five prayers a day), *sawm* (fasting), *zakat* (giving of alms, or the poor tax) and *hajj* (pilgrimage to the Ka'ba in the city of Makkah).

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outcome because when Maulana Islahi addressed the election gatherings and rallies he used to say that nobody is worse than the one who presents himself for a public position/post. After a gradual evolution, Jamaat-e-Islam also adopted the normal practices of contesting elections like other political parties of the country. If we keep this evolution in our minds, we feel that Muslims and religious parties gradually accepted and adopted the essentials of a nation-state. If you ask them about some legal/jurisprudential reason and justification for that they do not have any. There is a big list of things which have been accepted by religious circles in a similar way, ranging from prohibition of photographs to woman's role in politics. Still, legal opinions of religious scholars do not match with what they usually practice.

Apparently, we [the religious scholars] have revisited our basic idea of state and are following the narrative of those who believe that a state should not have any ideology. These are some of the basic contradictions we currently face. We think in the framework of an ideological state but practically operate in a nation-state. We accept parliament's prerogative of legislation but when it wants to make laws to protect women rights we stand up against it. Constitutionally, we can protest against the formulation of any law, but cannot take the right of legislation away from the parliament. We all know that when a bill for the protection of women rights was presented in the parliament during the Musharraf regime, religious parties stood up against it. Eventually, a secular person like Musharraf had to retreat and an alternative law was evolved under the supervision of some religious scholars. It means that religious scholars still believe that in an Islamic state the right to formulate laws still lies with them and that this right cannot be given to those who do not have expertise in religious affairs. I believe until these issues are given crucial importance and debated, problems will continue to compound.

Apart from internal, we also face external compulsions which compel us to accept those things which cannot be legally justified in Islam; for instance, the issue of capital punishment or the death penalty. Islamic principle of *qisas* (retaliation or retribution) is very much clear and absolute. But the international community keeps telling us that the countries who execute death penalty will have to face economic sanctions. That is why Pakistan has imposed a moratorium on the execution of the death penalty for several years. That means you did not change the law but halted its implementation. If a state is ideological, what should it do on such matters which involve

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international community? I think we should also discuss this kind of questions.

In the perspective of democratic state, there is no justification for sit-ins outside the parliament to remove a democratically elected government. In Islam, majority opinion does not hold supremacy over what God has described as good and evil, and rebellion is allowed against transgressing regimes although with certain conditions. Then how would you look at these political protests and sit-ins going on in Islamabad; in the perspective of democracy or Islam? Our religious scholars do not even acknowledge Allama Iqbal's legal opinion that the parliament is tantamount to *Ijma* (consensus among Muslims) and it has the authority to make laws.

What should be an Islamic state's mode of action to achieve its objectives? Maulana Maududi even wrote a booklet on this topic. He described phases for the establishment of Islamic state and stated that it is *mansur* (from God) and discernable from the life and ways of the holy Prophet (PBUH). The formation of Al-Jamaat—the group or party of Muslims that undertakes to establish Islam—is also among the fundamental essentials of the religion. And if you are not part of that Jamaat then you are deviating from your religious obligations.

I would also like to talk about the prophecies we believe in because these hold an important place in our religious and political narratives; for instance, the concept of Imam Mahdi.<sup>36</sup> In Islamic history many persons have claimed to be Mahdi. Maulana Habibur Rehman has written a booklet titled "*Mahdiyyat ne Islam ko kia diya hai?*" (What has Mahdism given to Islam?), in which he has described profiles of all those people who had claimed to be Mahdi and asked people to stand with them. Shias even pray for Imam Al-Mahdi Al-Muntazar. If we pray for Mahdi, we will have to pray for the emergence of Dajjal<sup>37</sup> also. This is not a child's play that a person stands up and claims to be Mahdi. Also, how my faith is safe if Mahdi emerges in real and I do not support him? This is a fundamental question before us.

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<sup>36</sup> The divinely guided savior who would establish justice upon earth and deliver the oppressed from tyranny (*zulm*). (Source: Olivier Leaman, ed., *The Qur'an: An Encyclopedia* (New York: Routledge, 2006), p. 591.)

<sup>37</sup> Dajjal, the Anti-Christ, is a prominent figure in Islamic eschatology who is going to appear at the end of time and sow confusion among the ranks of the believers. (Source: Olivier Leaman, ed., *The Qur'an: An Encyclopedia* (New York: Routledge, 2006), p. 164).

#### *FOURTH DIALOGUE*

We have also discussed here about the establishment of the Islamic caliphate on the method of the Prophet (PBUH). Many among Islamic scholars and experts have the opinion that the tradition of the Prophet referred to for this claim was indeed meant for the caliphate established by Omer bin Abdul Aziz (717 to 720). As he established the caliphate on the method of the Prophet and the prophecy came true, there is no need to continue waiting for such a caliphate.

#### **Dr Ejaz Samdani**

*Jamia Darul Uloom Korangi, Karachi*

Maulana Mohammad Hussain Madni gave the concept of nation-state in India about 70 years ago. He believed that the world was going that way so we should accept India as a nation-state and should protect our rights while living in it. In its opposition, the idea of an Islamic state was given by those who had studied in the Oxford and the Cambridge universities. They believed that a state in the name of Islam should be created. It is important to mention this because I believe the contradictions in our society have been there ever since the creation of our country primarily due to the basis on which it was created. Had the views of religious scholars been accepted at that time, we would not have been standing where we are today.

#### **Khurshid Nadeem**

Pakistan was created on the basis of the two-nation theory, but today, it stands on Maulana Madni's ideology. That is why, now we talk about Pakistani nationality. Those who are living in it are one nation. Our national identity is not based on ideology but geography.

## RECOMMENDATIONS

Following unanimous recommendations emerged during the four dialogues among religious scholars held in Karachi, Lahore and Islamabad.

1. Sovereignty belongs to Allah. In a Muslim state no law can be formed that is contradictory to Islamic law or *Shariah*. However, in matters pertaining to *Ijtihad*—which is one of the key sources of Islamic law and entails intellectual effort to derive appropriate legislation from the Quran and the *Sunnah* for novel cases—legislation can be done through collective wisdom and intellectual exercise. That implies that the concept of legislature is not against Islam.

2. The concept of political system espoused in Islam is based on the concept of consultation (*shuraiyyat*). The concepts of monarchy and dictatorship are against Islam.

3. Islamic law does not provide a fixed way to elect the ruler of a Muslim state. However he should have trust of his people. As the four righteous caliphs were elected through different methods, any appropriate way can be adopted according to circumstances to elect a ruler.

4. In view of Islam, election of a ruler should be based on the attributes of faith, good deeds, ability and honesty. Articles 62 and 63 of Pakistan's Constitution also guarantee that. Emerging suggestions, options and means for electoral reforms should be debated at national level that should also include a debate on alternative options such as proportionate representation.

5. National-level disputes and conflicts, which are shared by all and not linked to certain religious sect or community, should be settled through the majority opinion. A minority cannot be granted the right to impose its opinion on majority. Same principle would apply to the interpretation and exegesis of *Shariah* that would be the prerogative of the elected parliamentarians.

6. Though Islam does not forbid establishment of political parties but it insists that the purpose of opposition to or criticism of a government should be an improvement in governance, protection of human rights and public welfare.

## RECOMMENDATIONS

7. Pakistan's Constitution is an Islamic constitution that was prepared with the help and support of Islamic scholars and leaders. The Objectives Resolution guarantees that laws in Pakistan would be made in accordance with Islam. The Constitution is a national accord which enjoys trust of all sects and communities.

8. Besides the assurances and guarantees provided in the Constitution, certain un-Islamic practices could not be practically removed from the state affairs. Governments should ensure a true implementation of the Constitution that will also help address some emerging negative behaviors in the country.

9. Recommendations by the Council of Islamic Ideology to reform Pakistan's laws in the light of *Shariah* should be reviewed and rigorously debated in the parliament.

10. Pakistan's Constitution is a national-level social contract and in the light of Islamic teachings every Pakistani is bound to abide by it. However there should be no curbs on the debate to explore and suggest reforms/changes in the Constitution. Neither a critical appraisal of any clause of the Constitution should be declared as revolt, nor should someone be allowed to change the existing system through the use of force and unconstitutional means.

11. Propagation of un-Islamic concepts and practices should be discouraged to eradicate faith-based violence.

12. Democracy in a Muslim country should conform to Islamic values and obligations. The West should take care of religious and socio-cultural sensitivities of Muslim societies and accept the latter's democratic decisions for a change of government or transfer of power.

13. Ambiguities exist among different segments of Pakistani society with regard to priorities of an ideological Islamic state and a nation-state that should only be addressed through academic and legal debates.

14. Those who believe in the establishment of Islam through the use of force and non-democratic means should be engaged in academic and intellectual dialogue with Pakistan's prominent religious scholars and experts of Islamic law.