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IFY $\qquad$ The Constitutional Model of an Islamic State $\underset{Z}{ }$ By：Dr．Israr Ahmad


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ترالطّ مطادح :

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"Among the causes which precluded the extended sale of British goods in India he mentioned" the religious and Civil habits of the natives and more than anything else. 1 am afraid the excellence of their own manufactures.
have never seen an European Shawl that, I would use, even if it were given to me as I a Present.
(Minutes of Evidence, and Co , on the Affairs of the East India Company (1815) PP - 123-172, 172, 196


 :
"Can you state what is the ad valorem duty on piece goods solds at the East India House?
"The duty on the class called calicoes is $(3,6 s, 8 d$ percent upon importation and if they are used for home consumption there is a further duty of $68,6 s, 8 \mathrm{~d}$ percent.
"There is a another class called Muslims, on which the duty on importation is 10 percent and if they are used for home consumption of $27,6 \mathrm{~s}, 8 \mathrm{~d}$ percent."
"There is a third class coloured goods which are prohibited being used in this country, upon which theres a duty upon importation of 3,6\& 8 d percent, they are only for exportation point.
This session of Parliament there has been a new duty of 20 percent on the consolidated duties, which will make the duties on Calicoes used for home comsumption, 78,66,8d percent, upon the muslims for home comsumption 31, 6s, 8d" (Ihid. page 296)

"India is thus reduced from the state of the manufacturing to that of an agricultural country
(Memorials of the Indian Govt. being a selection from the papers of Henry St. George Tucker London, 1853 Page 494
 كالماملامَ


It is also a melancholy instance of the wrong done to India by the country on which she has become dependent. It was stated in evidence (in 1813) that the cotton and silk goods of India upto the period would be sold for a profit in the British Market at a price of 50 to 60 percent, lower than those fabricated in England, it consequently become necessary to protect the latter by duties of 70 and 80 percent. On their value or by positive prohibitation. Had this not been the case had not such prohibitary duties and decreses existed. The mills of Paisley and Manchester would have been stoped in their outset and could scarcely have heen again set in motion, even by the power of steam. They were created by the scrifice on the Indian manufacture. Had India been independent she would have retaliated, would have imposed prohibitive duties upon British goods and would thus have preserved her own productive industry from annihilation. This act of self defence was not permitted her, She was at the mercy of stranger: British goods were forced upon her without paying any duty, and the foreign manufacturer employed the arm of Political in justice to keep down and ultimately strangled competitor with whom he could not have contended on equal terms."
(Miil History of British India, H.H. Wilson's continuation, Book l, Chapter 8 note)
(突包







 Mathematics, AstroPhysics,Physics













روثد:
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 2- Heartland



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1- ورر اول : (1945-1925)جبـ يمورى'










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اءثامـيثات زورى'ارتج

 (Rationalisation)



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 تخت سب, فلز كارباوَ (Pressure of Marginalisation) ا- اسلمكا
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 Committee of the Savate Foreign Relations Committee Lb sub



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The unbalanced state of the world after the oil crisis called for much more fundamental changes in the economic arrangements."
"The reconciliation of this uneasy triangle could not be achieved by the workings of free enterprise alone, even by the most farsighted hankers and businessmen; for it calls for political accomodations which can only be reached by governments and world institutions."
وهزيكمتابَ :

The development of truely International hank hacked by the resources of all the major nations, which was in the minds of Keynes and others at the end of the second world war, was never more necessary then now, thirty five years later."
 كمئى رلور پ




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(International Bank for Reconstrction and Development)
(International Finance corporation)
(International Development Association)
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(International Trade Organisation)
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 Gold Standard








(1) Recommendation of the Common Wealth Study Group (Towards a new Bretton woods 1983

Recommendation of the Atlantic Council working Group on the United Nations
(The future of the U.N: A strategy for like minded nations - 1977
The International Monetary system: Progress and prospects by Atlantic Group
(3) Sister in the Woods: The Economist A Survey of the IMF and the World Bank Oct. 1991


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HEARTS


## PLEASE CONTACT

TEL : 7732952-7735883-7730593
G.P.O. BOX NO. 1178, OPP KUC WORKSHOP

MISTER ROAD, KARACHI-74200 (PAKISTAN)
TELEX : 24824 TARO PK CABLE : DIMAND BALL FAX: 7734776
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(Opening Shortly)

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Brandreth Road, Lahore-54000
Ph: 54169
1-Haider Shopping Centre, Circular Road, Gujranwala Tel : 41790-210607

ميامرتيإِر رنانالبارك

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PAUSE FOR THOUGHT
It needs no over emphasis that this gigantic change can happen only by mounting a vigorous and sustained popular campaign. However even at the moment all the religious political parties must ponder the fact whether it is useful or proper at all to participate in the electoral system presently in vogue in Pakistan as long as the basic issues discussed before are settled in the constitution of the Islamic Republic of Pakistan.
(Courtsey : WEEKEND POST)
رمضtهكَ آخزىرات



"ק>ت الب ريه







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in our constitution. Besides due regard may be given to the linguistic and cultural identity of each unit, Arabic on account of being the language of Quran and Sunnah will be the main language of all the constituent provinces of Pakistan. Its teaching in all educational institutions will be compulsory and it will be declared the National Language as soon as it is possible to do so.

## viii) Participation of Women

No women will be eligible to contest for the office of the Caliph in the Islamic state as it is certainly makrooh-i-Tehrimi (Nearly haraam) if not definitively prohibited (haraam). However, women will be eligible to exercise their franchise for the election of the office of the Caliph and Majlis-e-Shoora (Parliament). For their own election to the position of the members of Majlis-e-Shoora, no express instructions as to their permissibility or impermissibility, are available in the Quran and Sunnah. The matter can be settled by the Majlis-e-Shoora, nevertheless even if they are declared eligible by the parliament for such election they will have to observe completely the Satar and Hijab, as ordained by the Shariah.

## ix) Minorities in Islam

It has already been stated as a basic postulate of the Islamic state that the minorities will not be eligible to exercise any right of vote for the election to the members of Shoora or the Caliph. A common or separate religious Board can be constituted for representative of the minorities. The Boards will tender advice to the government for all mattes relating to the personal or collective affairs of the minorities. Although separation of minorities from the mainstream electorate for purpose of election of the Majlis-e-Shora or the Caliph does not seem to be inconsonance with the popular practice in the secular and advariced states yet for the introduction of an Islamic state, in the real sense, we may have to taste this bitter pill.
may base the civil and the criminal law on the injunctions of the Quran, the traditions of the Prophet(S.A.W) and the precepts of the companions of Prophet(R.A). However, in case of an overwhelmingly predominant sect in any Islamic state its Fiqah may be introduced there as, has been done in Iran. In my opinion the two alterative do not differ much in essence because whatever the case, Islamic law will be enacted by the parliament and in the presence of the clause that no law will be made repugnant to the Quran and Sunnah, it will practically not be possible to promulgate any law against the Quran and Sunnah.

## vii) Presidential Or Federal System

As to the question whether the system of the government in an Islamic State will be Parliamentary or the Presidential no explicit injunction of the Quran or Sunnah has prescribed any definite form of government. In this regard the guiding principle for evolving form of government will be governed by this injunction of the Quran "And their matters are settled through mutual consultation". It will not be out of place to mention here that the form of government of the Rightly Guided Caliphs (R.A) approximated more to the Presidential form of government. The parliamentary system presently popular in Pakistan does not owe its existence to any conscious and deliberate effort on the part of the citizens of Pakistan but it traces its history to the system of government introduced by our erstwhile colonial Masters, the British. An objective analysis of the facts obtaining in Pakistan \& India suggest more of the introduction of Presidential form of government in the region than any other. It will be in the fitness of things that we redemarcate the boundaries of our provinces into smaller units with homogenous size of population. It will be more appropriate if we keep the demographic size of each province within a limit of 10 million of the population. However, in case of Baluchistan we may fix a smaller limit of population keeping in view the sparseness of its population. It also seems to be vital that each province is granted the maximum possible autonomy
the state will be at liberty to settle their affairs through mutual consultation as verse 38 of Surah Shoora exhorts the believers.

## vi) Solution to the jurisprudential conflicts

An other teething problem in the way of enforcement of the Islamic law is attributed to the legalistic difference between various Fiqahs' in vogue, at present. As a matter of fact this problem has partly created by the professional religious cult and partly by the general impasse enshrouding all the Islamic institutions. With the introduction of Islamic system both these causes will automatically be eliminated. Nevertheless the real poignancy in the matter has been created by the virulent propaganda unleashed by the so-called liberals and the nonconformists of the present world. As it may not possible to bridge the gulf of differences overnight it will therefore be adviseable to accommodate them in the modern Islamic dispensation. In my opinion the present Islamic System may be called semi-secular in the sense that all the sects inhabiting an Islamic State will be free to practise their personal and the family laws according to their own Figah without any let or hinderance of the Islamic State. Not only various sects of Islam but all other non-muslim creeds will be free to exercise their personal law according to their faith and belief. For the sake of simplification we may suppose that a matrimonial alliance takes place between the spouses of two different sects; now to obviate any future complication it may be settled right at the time of Nikah ceremony as to whose personal and family law will be followed for all matters of conflict in future. In this regard we may benefit from the experience of the developed countries. There is no harm if all the sects and creeds are registered by the government and each sect may have its own Religious Board, who would not only look after its places of worship and shrines, but is also entrusted to settle the family disputes of its adherants according to its Fiqah.

As for the civil and criminal law is concerned, we may not enforce the Fiqah of any particular sect or denomination but
injunctions of shariah. This last arrangement seems to be in perfect harmony with the dictates of Shariah and demands of the modern time. Although for a transitory interregnum, the present duality of the legal system where Shariah court has been established parallel to the higher courts which administer ordinary law of the land but in the long run a unified legal system consisting of the judges and lawyers, well versed in Islamic law will have to be evolved.

## iv) Political Parties

Political parties are other enlightened institution of the present day developed world. Like freedom of thought and expression, the freedom of association is also considered to be a baisc right of the citizens. Nevertheless in an islamic State, this right will be exercised by the citizens with certain restrictions and some added liberties. The restrictions pertain to the fact that no political party will be allowed to incorporate any thing repugnant to the Quran and Sunnah in its manifesto. As for the enlarged liberties, they relate to the fact that every member elected to the parliament will be free to express his dissent on any matter, in the interest of the people or the state, even if it is in line with the party policies and declaration. However, if a member holds such a divergent view against the party lines he is expected to vacate his seat in the parliament or otherwise, be forced to quit the seat, won on the party ticket.

## v) A healthy synthesis of the restrictions and the liberties

Main thrust of this subject can be explained by a tradition of the Holy Prophet (S.A.W) "The believer is like a horse tethered to a peg", which means that although the believer will be absolutely free within the circumference of the circle created by the rope of the horse tied to the peg, yet he will be prohibited to go beyond the limits of the circumference, characterized in this example, by the restrictions of Quran and Sunnah. So we may say that within this circle, the citizens and
enforcement of the writ of the law and will be responsible for the safety of the state against all internal hazards and foreign aggression.

## iii) Legislation or Ijtihad

Allama Iqbal has very rightly said that during the present age, the Ijtihad will be exercised by parliament but it does not mean that the right of Ijtihad will utterly be denied to the Islamic jurists outside the parliament. However, only that Ijtihad will have the legal sanction behind it which will be enforced through the parliament. To decide whether a particular Ijtihad has been made within the precincts of Shariah or not, is purely a technical matter and cannot be left to the whims and caprices of a parliament whose members have been elected merely on the basis of adult franchise but are otherwise devoid of the requisite knowledge of the Quran and Sunnah. The constitution of the Islamic republic of Pakistan enshrines the provision that no law repugnant to the Quran and Sunnah will be made in this country. To give practical shape to this provision of the constitution there seems to be three alternative courses of action:-

Firstly, the parliament should consist of those men of learning who have mastered the essential quantum of the knowledge of Shariah but in the present scenario when such men of learning hardly reach the portals of parliament, the base of the legislative assembly will remain woefully narrow which runs counter to the spirit of the modern time.

Secondly, there should be a panel of erudite ulema outside the pale of the parliament who will decide whether the laws passed by the parliament are within the confines of Quran and Sunnah or not but it may promote a sort of theocracy which again goes against the dictates of the present age.

Thirdly, the right of Ijtihad should remain with the parliament but the superior courts of the country may be empowered to declare any law void if it contravenes against the

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Rehman Bin Auf (R.A), he deferred the action till his return to Madina. So as he reached Madina, he arranged an assembly of the believers and proclaimed "Whoever undertakes fealty without consultation of the Ummah, he has contracted no fealty". (Musnad Imam Ahmad). According to the tradition recorded in Bukhari, "One who extends hand of fealty to an Amir without consultation of the Ummah, he renders himself disqualified for his own fealty or for whom he had extended the hand of fealty". Although in the pristine days of Islam the electoral college of the Ummah was limited to the tribal set-up prevailing at the time of the Holy Prophet (S.A.W) and then also a gradation existed between various tribes as enunciated by the Holy Prophet (A.S) yet we find no Shariah constraint in extending today the electoral franchise to the entire adult population residing within boundaries of an Islamic State. The illustrious jurists of Islam contend that All Muslims are equal in this respect. -

## ii) Three Organs of the State

It is a common knowledge that the three organs of the state, namely the legislature, the judiciary and the executive were intermixed during the reign of the rightly guided caliphs (R.A) but the Islamic State of the present time is not restrained by any binding dictate of the Shariah to benefit from the worthwhile developments of the civilization. In an Islamic State all members of the legislative Assembly, or what may be called Majlis-i-Shoora will be Muslims who will be elected by the majority vote of the Muslims and all legal acts will be framed by this Assembly; In this way the process of Ijtihad or ; recodification of the law will be carried out. Likewise the judiciary will adjudicate, on the one hand, litigation amongst the citizens of the Islamic State and on the other, will decide the issues of contention between the citizens and the state. Besides, it will safeguard the rights of citizens conferred by the constitution and interpret the law enacted by the legislature so that it does not trespass the limits allowed by Shariah. The Executive arm of the state will maintain law and order, ensure
responsibility of an Islamic State. Their places of worship will be protected by the Islamic State just as the mosques. However, as the legislation in the Islamic State will be made within the confines of Quran and Sunnah, hence they will not be included in the process of legislation or in the formulation of the highest levels of policies and strategies for the state.

## NINE CONSTITUTIONAL POINTS OF

 ISLAMIC STATE IN THE MODERN TIMEKeeping intact the two principles enunciated above, we may utilize the popular political concepts of the modern age particularly those relating to human rights and various institutions of the state as discussed below:-

## i) Collective Caliphate

In the times preceding Islam, political thinking of man was in infancy. He was only conscious of the kingship or personal style of governance. The Quranic verse, addressing Hazrat Daud (A.S) Ordains, "We have made you a vicegerent on earth, so judge between people with 'Justice' (Saad: 26). Hazrat Ibrahim (A.S) was given the glad tiding "1 am going to make you an Imam of the people". (Albaqra: 134). But when the political thought of man reached maturity, Almighty Allah vouchsafed collective shape to the institution of caliphate. Now on the one side, the leadership of humanity was transferred to the Muslim Ummah and on the other, the caliphate was transferred to the mainstream of the Ummah who would elect an individual from amongst themselves as caliph. When Hazrat Umar (R.A) was on the last pilgrimage of his life, he was informed by Hazrat Abdur Rehman Bin Auf (R.A) that some people were conspiring to give their hand ol fealty to a particular individual as soon as Hazrat Umar (R.A) breathes his last. It perturbed Hazrat Umar (R.A) so much that he decided to apprise the people present in Makkah forthwith of the impending danger. However, on the advice of Hazrat Abdur
cast-iron and rigid economic and political systems for generation to come. Nevertheless to contradistinguish the economic system from the political system certain determinate injunctions with regard to a few aspects of economic activities like interest, gambling, illegal gratification, laws of inheritance and mutual consent in the matters of sale and purchase are available in the Holy Quran but for the political system no such deterministic edicts are found.

## TWO DISTINCTIVE QUALITIES OF AN ISLAMIC STATE

What will be the outline of an Ideal Islamic State in the modern times. To my mind it will be a state cherishing the highest democratic traditions of the contemporary times. However it will differ the present secular nationalist states in the basic aspects.

## 1. Absolute Sovereignty of Allah Almighty

In an Islamic State absolute sovereignty will rest in Allah Almighty which will be incorporated in the constitution of an Islamic State as a cardinal principle. The Islamic State will be characterized by the concept of popular vicegerency instead of popular sovereignty.

## 2. Nationality in Islam

The concept of nationality in Islam unlike the present secular concept is not confined by the geographical boundaries of the state but all adherents of Islam who declare belief and affirmation in the unity of Allah Almighty and the finality of the Prophethood of Muhammad (S.A.W) will be the citizens of this state. Minorities in Islam will be a secure community who will be called Zimmis, will be free to practise according to their creed and belief, will have the freedom of personal and family laws and the protection of their lives and property will be the

# THE CONSTITUTIONAL MODEL OF AN ISLAMIC STATE IN THE CONTEMPORARY TIMES 

By: Dr. Israr Ahmad

(Translated By: Mr. Muhammad Siddique)
The Islamic injunctions can be divided into three main strains:

Firstly, the injunctions pertaining to the Islamic devotions (rituals) which constitute the predominant part of Islamic Shariah are though collective in character to fair degree, yet can be termed individualistic from a purely legal standpoint.

Secondly, laws relating to dos' and don'ts which are related to a large extent to the basic human morals and can be called the common heritage of humankind and world religions.

Thirdly, the injunctions that concern the collective life of a man. It may be taken for granted that the basic unit of society is a family with particular emphasis on matters relating to the conjugal life and it is here that Holy Quran has placed paramount stress and the laws regarding family life have profusely been expounded.

The psychological make-up of a man fundamentally remains unchanged, so to regulate the human behaviour in the context of social relationships, concepts of dos' and don'ts have been given due exposition. However the political and economic realms of human life stand at a different plane altogether. The process of social evolution is continuing today as it was in motion when the Holy Quran was being revealed. The Holy Quran has, therefore delineated basic principles for the guidance of individual and the state but has not prescribed any


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