



## THE SHARIAH FOUNDATIONS OF CONSTITUTION AND LEGISLATION: A RESEARCH REVIEW

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### Abstract

The constitution is the basic structure of any nation and on which that nation stands, the constitution is the basic principle Under which different people can be brought together under one nation to achieve peace and order and to establish good governance, The better the constitution of the nation, the more the nation will be on the path of development and success, the constitution of any country highlights the status of that country in a very good and pleasing way, in the following, we will discuss some issues related to the constitution, the main thing of which is what should be the constitution of a Muslim nation. And is there a need for a constitution when there is Quran and Sunnah? In this regard, what was the conduct of the Muslims in the golden period of the past?

**Keywords:** constitution, Legislation, Shariah, Quran, Sunnah, State

### Constitution and law:

The main difference between constitution and law is that the constitution is the text of the law and the law is its interpretation. In the constitution, it is determined how the government will be formed, on what basis the overall situation of the country will be run, while explaining the meaning of the “Ayin”(constitution) in Feroze Al-Laghat, written: Rule, Basic Law of the country,<sup>1</sup> Muhammad Taqi sthmani says in his book “Islam aor siyasi nazriat”:Generally, people do not differentiate between constitution and law, constitution is the document that contains the rules and regulations for running the government, as if the constitution is the law of the government and the government is run by it”<sup>2</sup>.

There are three basic features of a democratic state:

1. Legislature. 2. Judiciary. 3. The House, i.e. the National Assembly. The Legislature is called the Senate. The main function of the legislature is legislation, the legislature formulates laws, or laws and bills are passed in the National Assembly and come to the legislature, after revising them, the legislature implements them. Since the legislature is also only bound by democratic traditions, therefore, if a law is passed by the overwhelming majority of the members of the National Assembly, no matter how dangerous and harmful it is to the country and the nation, the legislature cannot reject it, but again the senate sends it to the assembly for consideration, if the same bill again gets the support with the majority vote in the assembly, then the legislature is forced to implement it.

Because there is no condition for those coming to the National Assembly that those people should be educated, experienced, and should prioritize the country's interest over personal interests. In the coming lines, there will be some discussion on majority Vote.

### Concept of Legislature in Islam

Those who believe in Allah Almighty, those who believe in the greatness of Allah, and those who consider Allah as the Creator and Owner of all creations and universe have the belief that as Allah sent human into the world, he taught him all his needs, Provided all the necessary information, taught him all the skills, gave him all the leadership skills according to which man can successfully cope with his world and the hereafter, In other words, Allah Almighty has given man the constitution, and has ordered him to follow it. In many verses of the Holy Qur'an, Allah has clearly mentioned as he says in the story of Moses (peace be upon him) and Pharaoh:

“ قَالَ رَبُّنَا الَّذِي أَعْطَى كُلَّ شَيْءٍ خَلْقَهُ ثُمَّ هَدَىٰ <sup>3</sup> ”

“Moses said that our Lord is the one who gave everything the structure that was suitable for it and also guided it<sup>4</sup>.

At another place, Allah Almighty said: “Nay, O Prophet, by your Lord, these people cannot be believers until they make you judge in their mutual disputes, and then do not feel any rigidity in their hearts about what you decide, and Surrender to Him completely”<sup>5</sup>.

At another place he said: “Verily, We sent down the Torah in which there is guidance and light, all the prophets who obeyed Allah, decided the affairs of the Jews according to it, and all the people of Allah and the scholars also (followed it), because They were made the custodians of the Book of Allah, and they were its witnesses.... and those who do not judge according to the revealed order of Allah, they are Non-believers<sup>6</sup>”.

After the same verse, in the second verse, Allah Almighty explained the commandments of retribution, and said that whoever kills another person, then he should be killed in retribution for his life, and for an eye, an eye and for a nose a nose should be cut. and finally says:

“ وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ”

“And whoever does not judge by what Allah has sent down, then those are the wrongdoers/unjust<sup>7</sup>”.

.Allah says: “The people of the Gospel should judge according to what Allah has revealed in this book, and those who do not judge according to what Allah has revealed are wrongdoers<sup>8</sup>”.

In all these verses, the last sentence includes all the nations, that is, according to the book that has been given to each nation, it is necessary for this nation to act, make decisions, make laws, and form a government, otherwise the same order as stated will be necessary, but After that, Allah has clearly stated that:

{And we have sent down to you the Book with the truth, which confirms the previous Books and watches over it, so judge between them according to the order that God has revealed<sup>9</sup>.

These verses and other such verses make it clear that the constitution of the Muslim nation is the Holy Qur'an and the Sunnah of the Messenger of Allah, may God bless him and grant him peace, because the Sunnah is also included in the revelation of Allah. He has given a clear and emphatic command about the following of the Messenger of Allah and his decisions. So he said:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَىٰ اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُّبِينًا<sup>10</sup>.

“And when Allah and His Messenger make a final decision on a matter, there is no choice for any believing man or any believing woman to have any authority in their matter. And whoever disobeys Allah and His Messenger, he has made a big mistake”<sup>11</sup>.

At another place he said: "And whatever the Messenger gives you, take it, and refrain from whatever He forbids, and fear Allah, surely Allah is severe in punishment"<sup>12</sup>.

Allah has drawn attention many times to this basic point in Surah al-Shu'ara, which is about the Prophets whose dialogues with their people have been described, and the basic call/message of the Prophet has been described so that the main thing in the preaching of the every Prophet was that:

إِنِّي لَكُمْ رَسُولٌ أَمِينٌ ۖ فَاتَّقُوا اللَّهَ وَأَطِيعُوا<sup>13</sup>

Indeed, I am the trusted messenger of Allah to you, so fear Allah and obey me.

Apart from these verses, there are many such verses in which the clear ruling to follow the Messenger is given. In view of briefness, this is sufficient. Also, in a hadith, the saying of the Holy Prophet is:

لَا أَلْفِينُ أَحَدَكُمْ مُتَّكِنًا عَلَى أَرِيكَتِهِ يَأْتِيهِ الْأَمْرُ مِنْ أَمْرِي مِمَّا أَمَرْتُ بِهِ أَوْ نَهَيْتُ عَنْهُ فَيَقُولُ لَا تَدْرِي مَا وَجَدْنَا فِي كِتَابِ اللَّهِ اتَّبَعْنَاهُ<sup>14</sup>.

" I will never find one of you reclining on his seat and some command from me comes to him about what I have ordered to do or forbidden from doing, and he says: We do not know what we found in the Book of God. We followed him.

It means that if the halal and haram orders from sunnah come to any one, he says, "I do not know (believe) the hadith, I only follow what is in the Qur'an." Our prophet says: it should not happen, because like the Holy Quran, obedience to the Messenger is also necessary.


Similarly, when the Holy Prophet (peace and blessings of Allah be upon him) sent Mu'adh bin Jabal (R.A.) as the governor of Yemen, the prophet ﷺ came out of Madinah while walking with him and (S.A.W.) gave him some advice and said. O Moaz, how will you make decisions? So Mu'adh (RA) said, "O Messenger of Allah, I will judge from the Book of Allah, the prophets asked: if nothing is found in the Book of Allah, then what will you do?" He said, "O Messenger of Allah, I will judge from the Sunnah. The asked: if that thing is not found in the Sunnah, then what will you do? He said, "O Messenger of Allah, I will try and do ijtihad and I will not neglect anything." The Messenger of Allah, peace and blessings of Allah be upon him, was very happy and said, "Thanks be to Allah that He inspired the messenger of his Messenger with something that pleased his Messenger"<sup>15</sup>.

All these verses and the great collection of hadiths clearly prove that what should be the primary responsibility of the legislature in the Islamic system And what powers does the Legislature have, and it also makes it clear that the members sitting in the legislature should be of what level of people? Therefore, no book of constitution was available except the Qur'an and the Sunnah in the great caliphates in the history of Islam.

Not in the era of the true Rightly Guided Caliphs, nor in the rule of the banu umaiha, the Abbasids, the Fatimid state, or the Azadi empire in Egypt, Syria, Iraq, the Euphrates, Raqqa, Hama, the suburbs of Damascus, and across Aleppo to Mosul and Sinjar, to the Sultanate of Turkey.

There was no constituting except Quarn in sunnah from the suburbs, Ashkelon and Palestine and Gaza to Alexandria in Egypt, from Bethlehem to Cairo. In the Ayyubid Empire, or the Ghulam Empire and the Mughal Empire in India, or the Ottoman Caliphate of Turkey, because the constitution of the Muslim Ummah is the Book of Allah, the Sunnah of the Messenger of Allah and Ijmaa (Consensus), so this rule is prominently mentioned in the books of Islamic jurisprudence:

"There are three principles of the holy Shari'ah: the Quran and the Sunnah and consensus"<sup>16</sup>, the responsibility of the legislature is to formulate the practical implementation of these three principles, not to make constitutions and laws against the Qur'an and the Sunnah. Since there was no separate department in the name of legislature in the caliphates, rather there were Ashab al-Shuri, who have been defined as the Ahl al-Hal and Uqd (competent authority), so



people were appointed to enforce the Qur'an and Sunnah, each of whom had complete knowledge of the Qur'an and Sunnah and the lives of the rightly caliphs, and he used to make decisions accordingly, and the system of government was based on that and if anyone suspected a problem, he would ask the scholars and muftis and make a decision. The son of Shami wrote about him:

In his time, Damascus was the most just country, and the Shariah had a great honor, and no one could dare to oppress anyone, nor to assert the truth without a legitimate cause, not even in most areas are close to it, because if the judgment on a person without a legal basis, the victim came to him in the form of the judge's evidence, and he would issue a fatwa declaring its invalidity and the judge would review it, and implements his fatwa.

In other words, in the time of Shami, Damascus was very moderate and at the forefront in the provision of justice. If there was a wrong decision, they used to ask questions from Shami and obtain a fatwa, and because of Allama Shami's knowledge, piety and actions, people were forced to accept his fatwa<sup>17</sup>.

It seems that the main task of the Legislature is to enact laws for the implementation of the Qur'an and Sunnah and to make efforts to implement the laws that are proven by the Qur'an and Sunnah, as a result of this effort, the Treaty of Medina came into being. After the Prophet's peace be upon him, the Caliphs of the truly guided caliphs established the Majlis Shura in the presence of the Qur'an and Hadith.

Scholars wrote detailed books describing the country's management and structure, in which Imam Abu Yusuf wrote kitab al-Khiraj<sup>18</sup> in the second century of Hijri, in which he wrote the interpretations and laws related to the details of the tax system and the system of zakat. In the second century of Hijri, Imam Muhammad, may God have mercy on him, wrote thick books such as Al-Seer al-Kabeer, Al-Seer al-Sagheer, and Al-Jamae al-Kabeer and Al-Jamae al-Sagheer<sup>19</sup>. Imam awza'i said about it: if there were no hadiths in these books, there is so much knowledge in them that I would say that this person has created knowledge on his own<sup>20</sup>.

In the era of the Abbasid Caliph Al-Qadir Billah, Allama Qazi Al-Mawardi wrote thick books such as Al-Ahkam al-Sultaniyyah and Durar al-Saluk fi Siyasat al-Muluk in the 4th century Hijri<sup>21</sup>, in which there is a detailed discussion on the complete system of government and the order of government, the attributes of the caliph, and the method of appointing the caliph. In the fifth century of Hijri, Imam al-Haramain, Jawaini, may God have mercy on him, compiled a thick book called Ghiyath al-Unul fi al-Tiyath al-Zulm<sup>22</sup>.

Allama Ibn Taymiyyah, may Allah have mercy on him, wrote al-Hisba fil Islam<sup>23</sup> in the 8th century Hijri, which contains the principles from the chief justice to the lowest employee. Allama Alauddin Ali bin Khalil al-Tarbalsi, may God have mercy on him, wrote Moin al-Hukkam<sup>24</sup> in the ninth century of Hijri. And in our recent past, as the law of the Ottoman Caliphate, Majlis e Ilmiah compiled Majalah Al-Ahkam-ul-Adliyya<sup>25</sup> in which the complete details of the Islamic judicial system have been recorded.

In short, there is a long list that contains the statement of the laws of the Islamic state, including children, women, senior citizen, youths, employees, non-employees, traders, slaves, managers, officers, investors, contractors, buying and selling, assets, liabilities, zakat, tax, marriage, dissolution of marriage, divorce. So there is no issue that has not been debated, unfortunately, our rulers have adopted democracy in such a way that this great academic, practical and easily (applicable) law have been neglected. And they have started to adopt western laws, at least we should learn lesson from the Muslim king of India in the twelfth century of Hijri awrangzeb Alamgir, may Allah have mercy on him, who issued a thick book like Fatawi-ul-Hindia as the principle and law of his great and best Islamic empire, in which he



discussed the problems and laws of human life and even death have been discussed extensively<sup>26</sup>.

### **Election of the Head of State**

For the stability of any state, the intervention of the ruler of that state is the most important, because the affairs of the state are under his control, so the more sincere, honest, honorable, fearless and brave the head of the state is, the more that state and empire will develop, otherwise the same conditions will occur which are observed today in many countries including our country. And if the leader is sincere, fearless, proud and God-fearing and self-confident in his heart, then such a country sets the path of development in such a way that its stories become a model for other nations to follow., the early golden age of Islam is a shining example of this.

if we look at Seerha of Abu nkr Siddiq (RA), Umar Farooq and Uthman, Ali and Hassan and Amir Muawiya, as well as Hazrat Umar bin Abdul Aziz, may God have mercy on him, among the caliphs of Banuamiyyah, the circumstances of their reign and their roles, their reforms, service to the people, propagation of the religion of Islam and peace and order, then it seems that when these gentlemen were chosen for the caliphate and emirate, no better choice could have been made, These decisions were made by Allah Almighty due to God-fearing honesty, piety, knowledge and broad view on the conditions of the Ummah in the hearts of the people who made this choice.. And the reason for this is that the person who is made Caliph in Islam is Not thoughtlessly, but it is made after a lot of thinking and attributes and conditions.

### **Conditions for the Caliph**

In the famous book Ahkam al-Sultaniyyah, Allama Mawardi, have stated the seven conditions of the Caliph:

1. Be righteous, that is, one who fears Allah, be honest and fear God in his heart.
2. Should have knowledge of Islam, and have abundant knowledge of religion and the world so that it is easy to decide on new issues and matters when needed.
3. Be fit and healthy, that is, do not be disabled.
4. Be fully conscious.
5. Be fearless and brave.
6. Be a person of right decisions and right opinion.
7. Be from Quraish tribe<sup>27</sup>.

So, if such a person is elected Caliph/Amir/President and takes over the management of the government, then the problems and challenges start to be solved automatically. And to select such a person, Islam has given a very simple and easy way:

The Muslims of each region, the intellectuals, the scholars, the experts and who have a wide knowledge of the current situation, should be selected, and they should choose the best person from among themselves, so that every region of the country People with such qualities should send one of their righteous and honest, religious and a person who have a wide knowledge of the current situation and fully aware of the Contemporary issues to the parliament<sup>28</sup>. This committee of people of honesty and top knowledge in religion and politics is known as "Ahl al-Hal wal-Uqd"(Competent authority) in jurisprudence books. These are in a very small number from every province of the whole country. And this committee should choose the person from among themselves who is honest, trustworthy, loyal to the country, brave, fearless, and has the pain of the Ummah as a leader and support him with their good advice and actions So<sup>29</sup>, when Uthman bin Affan (RA) was elected Caliph, the same situation happened at that time that

2<sup>nd</sup> Caliph Umar (RA) formed a Shura (committee) and this Shura selected one from themselves<sup>30</sup>.

Examples of this type of selection are also available in the recent past, so: The Mamalike Empire in Egypt is the best example of this, in where a group of freed intellectuals slaves ruled Egypt for many years and The outstanding feature of the government was that they administered the country in a very splendid manner and played an important role in protecting Syria and Palestine, including Jerusalem, from the attacks of the Tartars. They had a rule that there was a group of slaves which consisted of brave and fearless people with knowledge and wisdom.. Their internal and external policy was so strong that when the Tatars who conquered Baghdad and other Islamic kingdoms reached here, they were defeated and returned backwards. The same was the case of the slave kingdom of India<sup>31</sup>.

### Western democracy's method of election and its harms

The aforesaid was the election system presented by Islam, but nowadays this is the era of democracy. However, the system of election in Western democracy is rarely successful, Generally, The people who do not have knowledge, work and experience become rulers and heads of Islamic countries, then they have to face the failure of running the country and establishing good governance, but at the same time the whole country loses its rights, Because in the words of Abraham Lincoln, the basic concept of democracy is:

Government of the people by the people for the people-

This means that people can make laws as they want, make constitutions as they want, no matter how much that constitution causes chaos and confusion in the country, and the main basis of democracy is on majority i.e. on counting, if a person succeed in gathering a large amount of votes then he will be elected as the head, no matter how he has taken steps to get majority, and this majority comes with the destruction and damages because the majority of the world is of ignorant, inexperienced. The Holy Quran has explained this fact in very clear words:

وَأَكْثَرُهُمْ لَا يَعْقِلُونَ<sup>32</sup>

That majority of them do not understand.

وَلَكِنَّ أَكْثَرَهُمْ لَا يَعْلَمُونَ<sup>33</sup>

But most of them do not know.

وَلَكِنَّ أَكْثَرَهُمْ يَجَاهِلُونَ<sup>34</sup>

Most of them are ignorant.

وَإِنْ تُطِيعُوا أَكْثَرَ مَنْ فِي الْأَرْضِ خَلَوْا عَنْ سَبِيلِ اللَّهِ<sup>35</sup>

{And if you obey the majority on earth, these people will lead you astray from the path of Allah.

Now, if western democracy is to be accepted, the law of disobedience should be established, which is against common sense.

In the election of the head of state, this majority of opinions is made the basis, and everyone uses all kinds of tactics and strategies to get more votes, when he gets more votes, then he is elected as the head of the country. It is not seen that the person who has reached the assembly is of what is his qualification? Who were the people who voted for him? Was he voted on the basis of his merits or was he forced to vote? Or has the vote been bought? And among those who voted for it are all the people of knowledge and religion? Or vice versa?

In a democracy, everyone votes, in which the loss is decided only on the counting, in such a case, if ten crazy people vote for a crazy person and nine wise people vote for a wise person, then Democracy considers the crazy person as its imam (head) because:

Democracy is a form of government in which the people are counted and not weighed.

Commenting on the destructions of the followers of majority, Mufti Muhammad Shafi Uthmani, may Allah have mercy on him, says in his famous book *Jawahir al-Fiqah*:

“At the time of disagreement, the decision of democracy is subject to majority opinion, and against majority opinion, there is no power of chair, nor other people with opinion, knowledge and experience, this is a main error that has hundreds of principled errors at its feet, Today, we see the stormy scenes of misrepresentation in the election of councils and boards and the unpleasant consequences of majority opinion decisions suffer people daily. No one can turn a blind eye to their corruption. Votes are sold in some rupees, each party uses all kinds of illegal courses to get a majority of opinion, votes are obtained through the pressure of relations, forceful exhibitions, and finally the result goes to the person who has more money in his pocket. This is an evil that everyone observes annually”<sup>36</sup>.

This is the reason why western democracy is no longer considered a successful electoral system in its own motherland countries and to get rid of it they are using different tactics. Details can be studied from the book “*Islami aor siyasi nazriyat*”<sup>37</sup>.

Also, under a democracy, the head of state does not have the powers that any amir (caliph) or head of state should have, so the president or the prime minister cannot pass any law unless two third majority of the parliament supports it. The opposite of this is in same position.

The system of Islam is also democratic and Consultative, so people were misled and started to say that Islam teaches democracy, and democracy is not against Islam. So the answer is that although the system of Islam is consultative and democratic, there is a great difference between the Western democracy and the Islamic democratic and consultative system.

### **A Comparative Analysis of Islamic Democracy and Western Democracy**

1. The main principle of non-religious (western) democracy is that the government belongs to the people in it, that is, it belongs to the people, while Islamic democracy stands on the concept that the supreme power belongs only to Allah, Which means that only the order of Allah subhanahu wa ta'ali will prevail in the country.
2. Under non-religious democracy, the elected representative will make the legislative assembly, while in Islam new constitution-making is not allowed, however, they can make laws for the enforcement of orders of Islam.
3. In non-religious democracy, the source of knowledge is reasoning and human mind, while in religious democracy, its source is divine revelation.
4. In a non-religious democracy, the Candidates go before the people and ask for votes and beg for the position of membership, while under Islamic principles, such a person who seeks the position himself is disqualified. See the hadith of Sahih Bukhari in the endnote<sup>38</sup>.
5. Morality, character, character and God-fearing trustworthiness are not seen in non-religious democracy, while under the Islamic system, the conditions for election to any position, especially the election of the head of state, are the conditions that have been stated above.
6. In a non-religious democracy, every government can amend the laws and constitution, the democracy has given it the option to make halal (lawful in Islam) haram (Unlawful in Islam) and haram halal, while in Islam, there is no possibility to make halal haram in the laws of the Qur'an and Sunnah.
7. Election in non-religious democracy is done by vote and everyone has the right to vote, while in Islam, only the person who has a good opinion in public is eligible, and Shura (Committee) is elected and the same Shura chooses someone from among themselves as the head, as mentioned in detail above.

### Islamic Government's Conduct towards Judiciary

An important and fundamental pillar of the state is the judiciary, the judiciary deals with all kinds of criminal and civil issues, the civil and criminal courts are defined as family law court and penalty court law. In our country there is no such law has been compiled to deal with these two types of cases and solve cases, which is compatible with Islamic rulings in every way, but still Western laws are considered as the standard of decision. In a Muslim country, the entire judicial system is based on non-Muslim principles. This is so sad.

It was the era of the rightly guided Caliphs, or the era of Muawiya, may God be pleased with him, or the era of Banuamiyyah kingdom, or the reigns of Banu Abbas, or the era of Harun al-Rashid, or the era of Umar bin Abdul Aziz, may God have mercy on him. Or it was the era of Sultan Imad-ud-Din Zangi or the era of the victorious Sultan Salah-ud-Din Ayyubi, may it be the Ottomaniyin Caliphate or the Mamluk Caliphate of Egypt, the land of Syria and Iraq or the blessed lands of Turkey, the Mughal Empire and the Ghulaman Empire of the recent past. or the Islamic state of Balochistan of Khan of Qalat<sup>39</sup>, the same prominent characteristic of all the courts is seen that the judge of civil cases sitting in the mosque would address the petitioner and the respondent directly, By calling him and listening to him, it was very easy for everyone to complain about the injustice done to him, it was easy to take revenge on the thief, it was easy to catch the oppressor and usurper. For this reason, there are detailed stories of judges sitting in mosques to make decisions and provide justice to people in jurisprudence books.

In the same way, the issues of marriage, divorce, Khula and dissolution were very easy in family matters, and an oppressed woman could easily reach the mosque and get rid of her husband by complaining about her husband in front of the Qazi, and because the Qazi was a scholar of Shariah The decision was made according to Sharia and the matter was settled.

But our judicial system has been destroyed, the access of the poor man to the court is not possible, and the oppressed always grinds in the mill of oppression, and if the opposing party has money, then the oppression of the oppressed continues to grow. Lawyers easily confuse the case with the problem where the damage has been so much that it is difficult to estimate, for example:

1. The oppressor does not get timely help.
2. In our courts, those who follow western law, the original petitioners and the defendants are not able to reach them and they have been confusing the case for the sake of lawyer fees, which results bad.
3. Sometimes, the victim surrenders his life in the jail cell to Allah, after that the decision is made that the accusation against the victim is wrong, he should be cleared, even though the body of this poor person is already in the grave.
4. Lawyers with no knowledge of Shariah who only know western principles have destroyed people's lives issued divorce papers with three talaq instead of one and misled the poor and simple people.
5. Among Muslims, there are such problems of marriage and divorce, but there are many civil and family cases which can be justified only when they are in accordance with the teachings of the Sharia, if not, then the decision is in the eyes of the Sharia is completely unreliable, so in our judicial system, knowledge of Islam is not a condition, but knowledge of American and British laws is a condition, and the result is that the court issues the degree of divorce to women, and this decision is not reliable in Sharia. Now, if that woman marries somewhere else on the basis of this court decision, her marriage will not be valid and it will not be permissible for her to live with another man.



### Suggestions regarding Judiciary

1. Books containing Islamic principles should be taught to judges and lawyers in the judicial system and these books should be included in their syllabus. Similarly, family court judges should be memorized book “Haila e Najiza”, in which all such issues have been extensively discussed.
2. Instead of following the western principles in criminality and Fixed and mandatory divinity punishments (Hudood) and discretionary punishments (Tazir), those principles should be adopted which were prevalent among Muslims during the golden periods of Islamic history.
3. Instead of lawyers, the petitioner and the respondent should be heard directly in the court.
4. Access to the court should be made easy for every victim.
5. Judiciary courses should be conducted in which the judges and decision-makers should understand the Islamic style of decision.
6. The system of arbitration should also be introduced in all courts under which many such problems are solved which cannot be solved by court decision.
7. Regular guidance should be obtained from religious scholars and muftis in the complex issues of Halal (lawful) and Haram (Unlawful).

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- <sup>2</sup> . Uthmani,Muhammad Taqi, Islam aor siyasi Nazriat (Urdu), Idarah al marif , Karachi: P: 108
- <sup>3</sup> . Taha: 50
- <sup>4</sup> . Uthmani, Muhammad Taqi, Asan tarjuma e Quran, Marif Al Quran , Karachi, P:671
- <sup>5</sup> . Al-Nisaa: 65
- <sup>6</sup> . Al-Maidah: 44
- <sup>7</sup> . Al-Maidah: 45
- <sup>8</sup> . Al-Maida: 47
- <sup>9</sup> . Al-Maidah: 48
- <sup>10</sup> - Al-Ahzab: 36
- <sup>11</sup> . Uthmani, Asan Tarjuma Quran, P:894
- <sup>12</sup> . Al-Hashr: 7
- <sup>13</sup> . Al shuara: 107-108
- <sup>14</sup> Abu dawood, Sulaiman ibn Ashat Sajistani, Sunane Abi Dawood, almaktabah al asriah, Beirut, Vol:4, P:200
- <sup>15</sup> . Sunan e Abi Dawood, Vol:3, P:303
- <sup>16</sup> . Al bazdawi, Kashf ul Israr, Dar al kitab al islami, VoL:1, P:19
- <sup>17</sup> . Qara Ain al-Akhyar to complete Rid al-Muhtar Ali al-Dur al-Mukhtar, Dar al-Fikr, Beirut – Lebanon: 7 / 421
- <sup>18</sup> . Abu Yosuf yaqoob bin Ibrahim, AlKhiraj, almaktab al azhariah
- <sup>19</sup> . Al-Sir al-Mutham Author: Abu Abdullah Muhammad bin Al-Hasan bin Farqad Al-Shaybani (died: 189 AH) Publisher: Al-Dar Al-Mutahidah, Beirut
- <sup>20</sup> . with the reference of book of IbnAbidin Shami, Uqood rasm al mufti, Chapter: Authentic book for fatwa, Maktab al bushra, Karachi
- <sup>21</sup> . The book: Al-Ahkam al-Sultaniya: Author: Abu al-Hasan Ali bin Muhammad bin Muhammad bin Habib al-Basri al-Baghdadi, famous for Al-Mawardi (died: 450 AH) Publisher: Dar al-Hadith - Cairo
- <sup>22</sup> . Abu al-Ma'ali al-Jawaini (419 - 478 AH = 1028 - 1085 AD): Library of Imam al-Haramain Abd al-Malik bin Abdullah bin Yusuf bin Muhammad al-Al-Juwaini, Abu al-Ma'ali, Rakn al-Din, nicknamed Imam al-Haramain: Aleam al-Makhirin, from the Companions of al-Shafi'i. (from the area of Nisabur) and went to Baghdad, then Macca where he lived for four years. And he went to Al-Madinah so he started fatwa and teaching], Then he came back to Nissabur, and Al-Wazir Nizam al-Mulk made for him Al-Madrasa al-Nizamiyah there.

- 23 . Al-Hasba fi-ul-Islam, or wazifah al Hukomah al Islamiyah, Author: Taqi al-Din Abu al-Abbas Ahmad bin Abdul Halim bin Abdul Salam bin Abdullah bin Abi al-Qasim bin Muhammad Ibn Taymiyyah al-Harrani al-Hanbali al-Damashqi (died: 728 AH) Publisher: Dar al-Kutub al-Al-ilmiah
- 24 . Mu'in al-Hukkam Fima Yataradadu bain al Khasmain Author: Abu al-Hasan, Ala-ud-Din, Ali bin Khalil al-Tarbalsi al-Hanafi (died: 844 AH) Publisher: Dar al-Fikr
- 25 . Majallah Al-Ahkam al-Adliyah, Author: Committee composed of several scholars and jurists in the Ottoman Caliphate Publisher: Noor Muhammad karkhane tijarat e kutub, Aram Bagh, Karachi
- 26 . Hindi Fatawi - (1 / 2)
- 27 . Al mawardi, Al-Ahkam Al-Sultaniya, Dar al-Hadith – Cairo: (1 / 19):
- 28 . Abdul Malik bin Abdullah bin Yusuf bin Muhammad al-Juwayni, Abu al-Maali, Rakn al-Din, known as Imam al-Harameen (died: 478 AH) , Ghiyath al-Umam fi al-Tiyath al-Zulm, Publisher: Imam al-Harameen Library Edition: Second. 1401 AH: - (1 / 62)
- 29 . Al-Ahkam Al-Sultaniya: 1/22
- 30 . Mueen al Hukkan, 1/177
- 31 . Maulana Najib Akbarabadi Tarikh e Islam, Maktabah Khalil Yusuf, Lahore, Vol: 3 p: 493.
- 32 Al maida: 103
- 33 . Anam :37
- 34 . Ibid:111
- 35 . Ibid:116
- 36 . Muhammad Shafi Uthmani, Jawaharlal Fiqh, Chapter: The Importance of Counseling in Islam, Maktaba Darul Uloom, Karachi: Vol: 06, P: 458,
- 37 . Uthmani, Islami and siyasi nazriyat: P. 90,
- 38 . حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ سَمُرَةَ، قَالَ: قَالَ لِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «يَا عَبْدَ الرَّحْمَنِ بْنَ سَمُرَةَ لَا تَسْأَلِ الْإِمَارَةَ، فَإِنْ أُعْطِيَتْهَا عَنْ مَسْأَلَةٍ وَكَلِمَةٍ وَإِنْ أُعْطِيَتْهَا عَنْ غَيْرِ مَسْأَلَةٍ أُعِنْتَ عَلَيْهَا» (البخاري محمد بن اسماعيل، صحيح البخاري، بَابُ مَنْ سَأَلَ الْإِمَارَةَ وَكَلِمَ إِلَيْهَا، دار طوق النجاة: 9 / 63).

Translation: Abd al-Rahman bin Samurah told me: The Messenger of God, may God bless him and grant him peace, said to me: “O Abd al-Rahman bin Samurah, do not ask for leadership, if you are given it after demand, you have been entrusted with it , and if you were given it without request and demand, you will be helped with it. (Bukhari:9/63)

<sup>39</sup> . Najib Akbar Abadi, Tarik Islam: Vol.03