Revivalism, Reformism and Pan-Islamism: The South Asian Experience

ABDUL RASHID MOTEN*

Abstract: "The colonial encounter in the nineteenth and twentieth centuries resulted in a total eclipse of the Muslim military, political and intellectual life and consequently weakened the Muslim unity. In the Indian context, this condition produced a wide range of responses. The Deobandīs, regarding the Western threat primarily as an onslaught against Islām as a religious and cultural entity, took up the task of defending the Muslim faith and its traditions as the means to Muslim unity. The Aligarh and the Pan Islamic movement emphasized the acquisition of scientific and technological knowledge and skills. The *tajdīd* movement of Iqbāl, Mawdūdī and others called for a comprehensive reform along Islamic lines and for a "League of Muslim nations," and a universal Islamic revolution. Yet, the unity of the Muslim world remains elusive. The most noticeable aspect of the South Asian struggle for Muslim unity was the distrust and disunity between various Islamic movements as well as factionalism within each organization".

Introduction

Muslims, according to the Qur'ān, "are nothing else but brothers" (49:10). They are commanded to form themselves into an *ummah*, a community of believers, bound by a common faith and with a commitment to the creation of a just society through the implementation of *Sharī'ah*.[1] The Qur'ān reminds them that the *ummah* is "only one, united and integral"(21:92). The word *ummah* occurs some 64 times in the Qur'ān in the sense of a religious community. Being part of the Muslim community is a central part of being a Muslim. The Islamic era begins not with the birth of Muḥammad (SAW) or with the first revelation of the Qur'ān, but with the *hijrah*, the point when Prophet Muḥammad (SAW) and the Muslims left Makkah for Madīnah. This was the point when the Muslims of the tribe of Quraysh opted to place their loyalty to Allah (SWT) before the ties of kinship. In Madīnah, the *ummah* was advanced as the best of all communities. Muslims believe that it is through belonging to this -

---

*Professor, Department of Political Science, Kulliyyah of Islamic Revealed Knowledge & Human Sciences, International Islamic University Malaysia (IIUM), Kuala Lumpur.

[81] Ibn Ḥajar, *Fatḥ al-Bārī*, vol. 17, pp. 105-106; Ibn Qayyim, *al-Turūq*, (Beirut: Maktabah al-Athariyyah, 1317), pp.18-19.
[82] al-Ṭabari, *Tārīkh*, vol. 4, p. 433.

[52] Ibn al-A'tham, *al-Futūḥ*, vol. 1, pp. 291-93.

[53] Al-Mawardi, *al-Aḥkām al-Sulṭāniyyah* (Cairo: Muṣṭafā al-Bābı, 1966), pp. 228-29.

[54] Al-Sarakhsī, *al-Mabsūt*, vol. 24, p. 30.

[55] Al-Shāfi'ī, *al-Umm*, vol. 6, p. 180.

[56] Al-Shāfi'ī, *al-Umm* , vol. 6, p. 180.

[57] Al-Sarakhsı, *al-Mabsūt*, vol. 16, p. 84.

[58] Al-Sarakhsı, *al-Mabsūt*, vol. 16, p. 84.

[59] Al-Khuza'ī, 'Alī b. Muḥammad, *Takhrīj* (Cairo: al-Majlis al-A'lā, 1401/1981), p. 533 (Mu'ādh b. Jabal, advising 'Umar, said that distribution of these fertile lands would confine estate wealth within few people. It would cause something abhorred. In future nothing would be left for real defenders of Islamic territory).

[60] Abū Yūsūf , *Kitâb al-Kharāj* (Cairo: Maktabah al-Salafiyyah, 1976), p. 27

[61] Abū 'Ubayd, *Kitāb al-Amwāl* (Cairo: Maktabah Kulliyyah al-Azhariyyah, 1395/1975), pp. 60-61

[62] Ahū Yusuf, *Kitāb al-Kharāj*, p. 27.

[63] Abū Yusuf, *Kitāb al-Kharaj*, p. 27; Abu 'Ubayd, *Kitāb al-Amwal*, pp. 60-63; al-Khuza'ī, *Takhrīj*, pp. 531-32; al-Ṭabarī, *Tarikh*, vol. 3, pp. 586-88.

[64] Abu 'Ubayd, *Kitāb al-Amwāl*, pp. 59-60.

[65] Al-Khuza'i, *Takhrīj*, p. 532.

[66] Yahya b. Adam, *Kitāb al-Kharāj* (Beirut: Dār al-Ma'ārifah, 1399/1970); see also E.J. Brill, Leiden, 1896 edition), p. 48

[67] Ibn Rajab, *al-Istikhraj* (Beirut: Dar al-Kutubn al-Ilmiyyah, 1985), pp. 9-10.

[68] Ibn al-Farrā', *al-Aḥkam al-Sultaniyyah* (Cairo: Mustafa al-Babi, 1386/1966), p. 146 (foot note 1); al-Mawārdī, *al-Aḥkam*, p. 147.

[69] Al-Māwardī, *al-Aḥkām*, p. 147; al-Shawkānī, *Nayl al-Awṭār* (Beirut: Dār al-Jīl, 1973), vol. 8, p. 163; Ibn al-Farrā', *al-Aḥkām*, p. 146 (footnote).

[70] Al-Qayrawānī, *Kitāb al-Nawādir*, manuscript at Khazanah al-Hasaniyyah, al-Maghrib, p. 122.

[71] Al-Māwardī, *al-Aḥkām*, p. 147, al-Shawkānī, *Nayl al-Awṭār*, vol. 8, p. 162.

[72] Ibn al-Farrā', *al-Aḥkam*, pp. 146-47; al-Shawkānī, *Nayl al-Awṭār*, vol.8, p.162.

[73] Al-Ṭabarī, *Tārīkh*, vol. 4, p. 229; Ibn al-Athīr, *al-Kāmil*, vol. 3, p. 67.

[74] Ibid., vol. 4, p. 229; Ibn Sa'd, *al-Ṭabaqāt*, vol. 3, pp. 249-50; al-Dhahabī, *Tārīkh*, vol. 3, p. 165; Ibn al-Athīr, *al-Kāmil* (Beirut: Dār al-Kitāb al-'Arabī), vol. 3, p.67

[75] 'Abd al-Razzāq, *al-Muṣannaf*, vol. 5, p. 445; Bukhārī, *Saḥīḥ*, vol. 3 part 8, p.210; Aḥmad b. Ḥanbal, *Musnad*, vol. 1, pp. 55-56; Ibn Hishām, *Sīrah*, vol. 2, p. 658.

[76] Al-Saymarī, *Akhbār Abī Ḥanifah*, p. 59.

[77] Ibn Khaldūn, *al-Muqaddimah*, pp. 370-71; Ibn al-Athīr, *al-Kamil*, vol.5, p.532.

[78] Al-Fasawī, Ya'qūb Sufyān *al-Ma'rifah wa al-Tārīkh* (Baghdād: Matba'ah al-Irshād, 1394/1974), vol. 1, p. 457.

[79] Ibn al-Qayyim, *I'lām* (Beirut: Dār al-Jīl, 1973), vol. 1, p. 204; Shurayḥ is reported to take advice from Masrūq, and according to Wakī', Abū 'Amr al-Shaybānī and scholars used to accompany him in his court. See *Akhbār al-Quḍāt* (Beirut: 'Alam al-Kutub, n.d.), vol. 2, pp. 213-226.

[80] Wakī', *Akhbār al-Qudat*, vol. 1, p. 110.

[29]Ibn Jamā'ah, *Taḥrīr, al-Aḥkām*, ed. Kofler H. (published in *Islamica,* no. 6, 1934, no. 7, 1935), pp. 361-364

[30]*Mutakallimūn* and *fuqahā'* also discuss the *'iṣmah* of the Prophet which makes him completely superior and infallible. See al-Baghdādi, *Uṣul al-Dın* (Islamabad: Matba'ah al-Dawlah, 1346/1928). pp. 167-69; al-Āmidī, *al-Iḥkām,* vol. 1, pp. 242-44.

[31] Al-Qurṭūbı, *al-Aḥkām al-Qur'ān,* vol. 4, p. 252

[32] Ibn Kathīr, *Tafsī,r* vol. 1, p. 420

[33] Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, vol. 2, p. 40

[34] Ibn Hishām, *Sīrah,* vol. 3, pp. 415-16; Eng. trans. P. 504; al-Suhaylī, *al-Rawḍ al-Unuf* (Cairo: Dār al-Kutub al-Hadīthithah, 1387/1967), vol. 6, p. 462.

[35] Bukhārī, *Saḥīḥ* vol. 1, part 2, p. 131.

[36] Bukhārī, *Ṣaḥīḥ,* vol. 1, part 2, p. 131; al-Dhahabī, *Tārīkh al-Islāmī* (Cairo: Matba'ah al-Qudus, 1973), vol. 3, pp. 20-21; al-Qasṭalānī, *Irshād al-Bārī*, vol. 10, p. 306.

[37] Ibn Taymiyyah, *al-Siyāsah al-Shari'yyah* (Kuwait: Dar al-Arqam, 1406/1986), p. 214

[38] Bukhārı, *Ṣaḥıḥ,* vol. 1, part 3, p. 231; Malik, *al-Muwaṭṭa'*, with *Sharḥ Tanwīr* of Suyūṭī (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1370/1951), vol. 2, p. 118; 'Abd al-Razzāq, *al-Muṣannaf* (Beirut: al-Majlis al-'Ilmī, 1403/1983), vol. 5, pp. 381-382; al-Ṭabarī, *Tārīkh,* vol. 3, pp. 86-88; Ibn Kathīr, *al-Bidāyah* (Beirut: Maktabah al-Ma'ārifa, 1966), vol. 4, p. 454; Ibn al-Athır, *al-Kamil*, vol. 2, pp. 268-69; Ibn Khaldun, *Tarıkh* (Beirut: Dar al-Kitab al-Lubnani, 1958-59), vol. 2, p. 816; al-Quṭubī, *'Uyūn al-Tawārīkh*, vol. 1, p. 332.

[39] Al-Ṭabarı, *Tarikh* (Cairo: Dar al-Ma 'arifah, 1961), vol. 2, pp. 361-64; Ibn al-Athır, *al-Kāmil*, vol. 2, p. 99; Ibn Khaldūn, *Tārīkh,* vol. 2, p. 732.

[40] Van Vloten, *al-Siyasāh al-'Arabiyyah* (Arabic trans.) referred by M. 'Imārah in *al-Islām wa Falsafah al-Ḥukm* (Beirut: al-Muw'assasah al- 'Arabiyyah, 1979), p. 59.

[41] See the *Ikhtiyār* of Abū Bakr in M.Y. Farūqī, "Legitimacy of Authority in Islam", *Hamdard Islamicus,* vol. xix, no. 3, 1996.

[42] Bukhārī, *Ṣaḥīḥ,* vol. 1, part 2, p. 131; al-Dhahabī, *Kitāb al-Kabā'ir*, p. 35; al-Sūyuṭī, *Tārīkh al-Khulafā'* (Cairo: Matba'ah al-Madani, 1383/1964), pp. 734-75; al-Ṭabarī, *Tārīkh,* vol. 3, pp. 241, 244-45; al-Dhahabi, *Tārīkh,* vol. 3, pp. 20-21.

[43] Ibn al-A'tham, al-Kufī, *al-Futūḥ* (Hyderabad: Da'irah al-Ma'arif al-'Uthmaniyyah, n.d.), vol. 1, pp. 71-72.

[44] Ibn Sa'd, *al-Tabaqāt* (Beirut: Dār al-Tabari, al-'Ilmiyyah, n.d.),vol. 4, pp. 77-78; al-Muttaqī al-Hindī, *Kanz al-'Ummāl* (Hyderabad,DN: Dā'irarah Ma'ārif al-Nu'maniyyah, 1374/1954), vol. 5, pp. 361-62.

[45] Al-Muttaqī, *Kanz al-'Ummal,* vol. 5, pp. 365-66

[46] Al-Dāramī, *Sunan* (Beirut: Dar al-Kutub al-Ilmiyyah, n.d.), vol. 1, p. 58; al-Muttaqī al-Hindı, *Kanz al-'Ummāl,* vol.5, pp. 348-49; al-Bayhaqī, *al-Sunan,* vol. 10, pp. 114-15.

[47] Bukhārı, *Saḥıḥ,* vol. 3, part 9, p. 116

[48] Bukhārı, *Saḥıḥ,* vol. 3, part 9, p. 138; Ibn Ḥajr and al-'Aynī explains that qurrā' means *'ulamā'*. See *Fatḥ* (Cairo: Muṣṭafa al-Bābī, 1378/1959), vol. 17; al-'Aynī, *'Umdah* (Beirut: Dār Ihyā, al-Turath al-'Arabī, n.d.), vol. 25, p. 80.

[49] Al-Yaqubī, *Tārīkh* (Beirut: Dār Sadir, 1379/1960), vol. 2, pp. 138, 161.

[50] Ibn Jama'ah, *Tāhrīr al-Aḥkām*, p. 361.

[51] Al-Ṭabarī, *Tārīkh*, vol. 3, pp. 480-83.

Notes and References

[1] Ibn Hishām, *Sīrah* (Cairo:Muṣṭafā al-Babı, 1375/1955), vol.2, p. 658, Bukhārī, *Ṣaḥīḥ* (Cairo: Dār Wa Matabi' al-Sha'b, n.d.),vol. 3, part 8, p. 210

[2] Al-Saymarī, *Akhbār Abī Ḥanīfah* (Beirut: Dār al-Kitub al-'Arabī, 1976), pp.59-60

[3] Al-Shafi'ı, *al-Umm* (Beirut: Dār al-Ma'rifah, 1393/1973) vol. 6, p. 203; al-Māwardī *Adab al-Qādī* (This is the advice of al-Shāfi'ī to all those who are invested juridical power, including the *Khalīfah* who was, in early Islamic period, invested with juridical power, and the establishment of justice was his first and foremost duty).

[4] *Al-Qur'ān*, 42:38

[5] *Al-Qur'ān*,3:159.

[6] Al-Māwardi, *Adab al-Qāḍī* (Baghdād: Matba'ah al-Irshād, 1971), vol. 1, pp. 255-56

[7] Al-Shāfi'ī, *al-Umm*, vol. 7, p. 95; Tirmidī, *Sunan*, vol. 6, p. 35

[8] Bukhārī, *Ṣaḥīḥ*, vol. 3, part 9, pp. 138-39

[9] Al-Khassaf, *Adab al-Qāḍī* (American University Press, Cairo, 1978), p. 102

[9] Al-Khassaf, *Adab al-Qāḍī*, pp. 105-06

[10] Al-Ṭabarī, *Tafsır* (Beirut: Dār al-Ma'rifah, 1392/1972), vol. 4, pp. 100-101.

[11] *Al-Qur'ān*, 42: 37, 38

[12]See the following verse the *Salah* (prayer) and *Zakāh* (poor due) are mentioned together *al-Baqarah*, 2:3, 43, 83, 110; al-Nisā' 4:77; *al-Ma'idah*, 5:55; *al-Anfāl*, 8:3; *al-Tawbah*, 9:71; *al-Ḥajj*, 22:78; *al-Nūr*, 24:56; *al-Naml*, 27:3; *Luqman*, 31:4; *al-Mujādalah*, 58:13; *al-Muzzammil*,l 73:20; *al-Bayyinah*, 98:5

[13] Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*(Constnatinople: Matba'ah al-Awqāf, 1335),vol. 3, p. 386

[14] Ibn al-Jawzī, *Zād al-Masīr*(Damascus: al-Maktab al-Islamī, 1384/1964), vol. 7, p. 291; al-'Imādi, Abū al-Sa'ūd, *Tafsīr* (Al-Reyaḍ: Maktaba al-Riyaḍ al-Haditha, 1391/1971), vol. 5, p.70

[15] Al-Qurṭubī, *Al-Jām ' al-Aḥkām al-Qur'ān* (Beirut: Dār al-Kitāb al-'Arabī, 1387/1967), vol. 16, pp. 36-37; al-Shawkānī, *Fatḥ al-Qadır* (Cairo: Muṣtafa al-Bābī al-Ḥalabī, 1383/ 1964), vol. 4, pp.540-41; al-Ālūsī, *Rūḥ al-Ma'ānī*, vol. 25, pp. 46-47.

[16] Al-Rāzī, *Tafsır al-Kabīr*, vol. 27, p. 177.

[17] *Al-Qur'ān*, 3: 159.

[18] See the verses, *al-Nisā'* ,4:13, 69, 80; *al-Mā'idah* 5:92; *al-Anfāl* 8:20, 46.

[19] Abū Ḥayyān, *Al-Baḥr al-Muḥīṭ* (Cairo: Dār al-Fikr, 1403/1983), vol. 3, p. 98

[20] Al-Jaṣṣās, *Aḥkam al-Qur'an*, vol. 2, p. 40

[21] Ibid., vol. 2, p. 40

[22] Bukhārı, *Ṣaḥīḥ*, vol. 1, p. 157; Muslim, *Ṣaḥīḥ*, vol. 2, pp. 2-3; Ibn Mājah, *Sunan* (Cairo: Dar Iḥya' al-Kutub al-'Arabiah, 1372/1952), vol. 1, p. 233 (*Ḥadīth* No. 707).

[23] Al-Jaṣṣas, *Aḥkam al-Qur'ān*, vol. 2, p. 43.

[24] Ibn Kathīr, *Tafsīr al-Qur'ān al- 'Azīm* (Cairo: 'Isa al-Bābī al-Ḥalabī, n.d.), vol. 1, p. 420

[25] Al-Qurṭūbī, *al-Aḥkām al-qur'ān*, vol. 4, p. 249.

[26]Abū Ḥayyān, *al-Baḥr al-Muḥīṭ*, vol. 3, p. 99.

[27]Al-Qurṭubī, *al-Aḥkām al-Qur'ān*, vol. 4, p. 249; al-Shawkānī, *Fatḥ al-Qadīr* (Cairo: Mustafa al-Bābī al-Halabī, 1383/1964), vol. 1, p. 394

[28]Al-Sarakhsī, *al-Mabsūṭ* (Beirut: Dār al-Ma'arifah , n.d.), vol. 16, p. 84.

because 'Uthmān and the companions feared that differences may crop up among Muslims on the dialect of the Qur'ān and may lead to dissensions in the *ummah*. This issue of paramount importance was solved through mutual consultations.[81]

The fourth *khalīfah* 'Alī who had been an active member of the *shūrā* during all the earlier *khulafā'*, and had full perception of the significance of mutual discussion and consultation, demonstrated the same spirit when he was requested to accept the *khilāfah*. Al-Ṭabarī reports that when 'Alī was approached and invited to accept the mantle of *khilāfah* he told his colleagues that the decision should not be made in a hurry. Let the people get together, discuss the matter and consult each other, he added.[82]

Conclusion

The practice of mutual consultation initiated by *rāshidūn khulafā'* infused in the *fuqahā'* the spirit of delving deep into the knowledge of traditions and thus institutionalize the principle of *shūrā* in order to deal with the social political, judicial and administrative affairs of the Muslim community. The *shūrā* assumed further importance for the *fuqahā'* because it was the most expressive means to conclude *ijmā'* on newly-emergent of communal issues. The examples left behind by the *rāshidūn khulafā'* and the companions of the Holy Prophet (PBUH) to decide matters through mutual consultation have, in the course of time, achieved the status of *Ijmā'*.

'Umar is also worth consideration as it shows the quantum of importance given to the *shurā* by the *khalīfah*. 'Abd al-Razzāq narrates that 'Umar strictly prohibited making *bay'ah* (oath of allegiance) without consulting the community. He declared that such *bay'ah* would be null and void. "Both the one who made the *bay'ah* and the one to whom the *bay'ah* was made, deserve sentence to death," he declared. According to another tradition, 'Umar is reported to have said that anyone who claimed to be *amīr* without taking counsel with the Muslims, must be punished. "His *imārah* is not valid, and such person is liable to be killed," he added.[75] Basing his arguments on the above-quoted declaration of 'Umar, Imām Abū Ḥanīfah says that the *ba'yah* achieved by force has no validity.[76] Similarly, Imām Mālik gave *fatwā* that all transactions carried out under the pressure of force on duress, have no legal value.[77] The eminent *faqīh*, al-Sha'bī, mentions another distinctive feature of 'Umar's judgment. He says that it was 'Umar's practice not to announce any judgment without prior consultation with the *shūrā*.[78] Occasionally he would spend a long time analyzing the issue and consulting the companions. He also issued a directive to his designated judge, Shurayh, to take advice of the *'ulamā'* before announcing judgment on any case.[79] We may also refer here to the views of the *fuqahā'* who suggest that judges must consult the *fuqahā'* and the *'ulamā'* in matters submitted to them for decision. The opinions of al-Shāfi'ī, al Jaṣṣāṣ and al-Māwardī on this vital necessity have already been mentioned in earlier pages.

'Uthmān b. 'Affān followed the practice of his predecessors regarding the function of judicial system. According to Wakī', 'Uthman did not appoint any judge in Madīnah as he himself used to perform these duties. Wakī' illustrates the procedures adopted by 'Uthmān to settle the matters which were submitted to him. He relates that the *khalīfah* used to hold his court in the mosque to hear the cases. When a case was brought to him, he summoned 'Alī, Ṭalḥah, al-Zubayr and 'Abd al-Raḥmān b. Awf. On arrival of these notables, the *khalīfah* asked the claimant and the defendant to explain their case before them. After hearing the statements of both, he used to discuss the issue with the jury and in case of consensus , he would announce the judgment in the same meeting. However, in case of difference of opinion, he postponed the announcement of judgment for further consideration and reflection.[80] It may be mentioned that it was 'Uthmān who consulted and accepted the advice of his colleagues to compile the Qur'ān in the Qurayshite dialect. This task was undertaken

Leading *fuqahā'* have expressed certain differences in their opinions on the discretionary authority of the *khalīfah* regarding disposal of conquered lands. According to Imām Abū Ḥanīfah the discretionary authority rests with the *khalīfah* and he can distribute the land among personal of the conquering army with the previous that it serves the interests of the community. The *khalīfah* can also declare the land as *waqf* under the supervision of the government as a welfare project for the people.[68] Imam Mālik, in his discussion on the issue, expresses the view that such land becomes *waqf* for the community immediately after its conquest. He is not in favour of its distribution among the people except in circumstances where it is considered necessary for public interests.[69] Another *faqīh*, Al-Qairwānī, while commenting on the views of Imām Mālik, brings forth an evidence from the days of the Holy Prophet (PBUH), saying that Makkah was conquered by force *('anwah)* but the land was not distributed. However, a standing decision on such issues was announced by 'Umar after consultations with the companions. He further adds that the precedent established by 'Umar was continued by successor Khulafā' by keeping the conquered land *waqf* as *kharājī* lands.[70] Imām Shāfi'ī, in his discussion on the issue, has differed from the views of other *fuqahā'*, saying that the land must be divided among army personnel and that it should not be declared as *kharājī* land.[71] Imām Aḥmad b. Ḥanbal, in his comments, has expressed two views on different occasions. In one of his views he agrees with the opinion of Imām Abū Ḥanīfah. This is generally considered his original opinion. However, in the second opinion attributed to him, he is in unison with the view-point expressed by Imām Shāfi'ī.[72] The difference in the opinions of these *fuqahā'* is attributed to the precedents set by the authorities regarding the disposal of the Khayber land, the Makkah land and the sawād land. These historical events have always been considered as patterns for the *fuqahā*, in their end endeavours to establish their principles.

When 'Umar constituted *al-Shūrā* to determine the *ikhtiyār* (election) of his successor he gave clear instructions that the decision of the *shūrā* would be mandatory. He said that in case of any difference of opinion among the members of the *shūrā*, the decision of the majority would be binding on all.[73] Even a severe punishment was suggested for those who refused to accept the decision of the *shūrā*.[74] The later-day *fuqahā*, who established the idea of bindingness of the decisions of *shūrā*, might have taken their inspiration from the tradition of 'Umar. Another verdict of

and Bilāl b. Rabāḥ differed from his views but 'Uthmān b. 'Affān, 'Alī b. Abū Ṭālib, Ṭalḥah, Abd Allah b. 'Umar and Sa'd b. 'Abī Waqqāṣ, the commander of the army, agreed with 'Umar's proposal and supported him. Mostly those participants who were expecting to have a share in the fertile lands of sawad, opposed 'Umar's view point. They based their argument on the *Sunnah* of the Holy Prophet (PBUH) who had distributed some of the agricultural lands of Khyber. 'Umar then summoned the most experienced and seasoned elders of the Anṣārs to express their opinions on the burning topic. Before the commencement of discussion 'Umar delivered a speech, the salient points of which needs mentioning in order to understand the significance of *shūrā* and also the purport of the opinion of the *khalīfah*. 'Umar said: "I do not implore you but to share with me, in all affairs, entrusted to me and to share with me the burden put on my shoulders. I am one of you, and do not want you to follow my desire. You have the Book of Allah which tells the truth, and when I talked to them (the Muhājirun) I meant nothing but the truth".[62]

'Umar then discussed the issue with the Anṣar and explained his views telling them that in his opinion they were in the best interest of *ummah*. After a long discussion and reflection on different aspects of the matter, all the members of the Anṣār agreed with the *khalīfah* and gave their consent to his proposals. 'Umar, after getting the consent of the Muhājirūn and the Anṣār, left the lands with their original owners. As per normal rules he levied taxes on them. Later, he again approached the *shūra* to hold consultation with its members for the appointment of a suitable person as governor of sawād region. The name of 'Uthmān b. Ḥanīf was unanimously approved, who was then immediately appointed by 'Umar as governor of the region.[63]

The momentous decision of the *shūrā* on sawād lands became the rule for all the lands of '*anwah* (conquered by force). The same rule was applied to the lands in Egypt.[64] When Syria was conquered, and Bilāl, who participated in the battle, brought up the issue of land distribution, 'Umar refused saying that "this is the real wealth which would be held as *waqaf* for the well-being of the community".[65] According to Yahya b. Adam, 'Umar further said that "these lands would remain as source of livelihood for these who join the Muslim community.[66] Imām Aḥmad b. Ḥanbal says that 'Umar was the first person who introduced *kharāj* in Islam; before him there was no *kharāj*. He brought it into practice with the consultation of his colleagues.[67]

Sarakhsī reports that the issue came up again during the *khilāfah* of 'Umar when a number of cases of intoxication were reported to him. He took almost one month reflecting on the real problem and consulting the *fuqaha'*.[57] Discussing 'Umar's approach to the problem, al-Sarakhsī and a number of other *fuqahā'*, draw the conclusion that the people holding decision-making authority should not finalize decisions in a hurry; rather they must consider all aspects of the issues submitted to them and that they must consult the *fuqahā'*.[58]

The settlement of the lands of Sawād is another example when *shūrā* was involved for legislation. The normal practice for distribution of war booty, at the time of the Holy Prophet (PBUH) and the first *khalīfah*, was to portion out the captured property, whether movable or immovable, among the soldiers of the victorious army after deducting one fifth from the booty as government's share. 'Umar, during his *khilāfah* looked at the issue of land distribution from a different angle; he considered its social, economic, political and defence aspects and concluded that the distribution of land among warriors was not in the best interests of the *ummah*. At the time of the Holy Prophet (PBUH) and Abū Bakr, the soldiers and their families needed to be provided with means of livelihood and had to be satisfied economically. During the period of 'Umar, on the other hand, the people and the soldiers enjoyed economic prosperity, particularly when wealth started pouring in after the conquest of Persian vassal states. 'Umar, perhaps, did not approve of the Army getting too much involved in land cultivation which could have adversely affected their fighting capabilities; or perhaps he did not want them to emerge as a class of landed aristocracy.[59] Whatever the reason may be, he wanted to review the old rules and desired to keep the land as *waqf* for the welfare of the community and for the future generations. 'Umar, however, did not take any decision without consulting the *shūrā* on this important issue. The issue was submitted to the *shura* for discussion. It was, in fact, a great step to bring a major change in the social structure. Some of the companions of the Holy Prophet (PBUH) did not agree to his proposal. However, a number of them appreciated the view-point of the *khalīfah* who explained to the *shūrā* various pros and cons of his proposal relating to its social, economic and political advantages. He did not impose his opinion and clearly told the *shūrā* that his views were purely based on his personal assessment of the issue.[60] The members of the *shūrā* who supported his view-point included 'Alī, Mu'ādh b. Jabal and many others.[61] From among the Muhājirūn according to Abū Yūsuf, 'Abd al Raḥmān b. Awf

emerging in the society.[48] Al-Yaqūbī, in his treatise on the subject of *shūrā*, has given the names of the *ahl al-'ilm* or the *fuqahā'* who when in a position to give their opinions on various matters during the *khilāfah* of Abū Bakr and 'Umar.[49]

On the basis of the aforementioned traditions, Imām Bukhārī considers *shūrā* as a legal obligation. Ibn Jamā'ah also holds the view that one of the obligations of the *khulafā'* is to determine and to bring into order the system of *shurā*.[50]

The historians and scholars have recorded many occasions in which 'Umar held long discussions and consultations with his colleagues and tribal leaders; and in the light of their advice he took his decision on that specific issue. Historian al-Ṭabarī, in his book, *Tārīkh al-Umarā' wal Mulūk*, says that before the battle of al-Qādissiyyah, 'Umar summoned *ahl al-ra'y* (people of considered opinion), *wujuh* (leading companions) and the *a'lām* (chiefs) for consultation. After long discussions and deliberation, Sa'ad b. Abi Waqāṣ was designated as the commander of the Muslim Army.[51] On another occasion, Abū 'Ubaydah b. al-Jarrah wrote a letter to 'Umar informing him that the people of Palestine were willing to sign a peace treaty provided the Caliph visit their country and sign the treaty. 'Umar did not take any decision till he consulted the matter with the leaders of the Muhājirūn and the Anṣār. After getting their approval 'Umar decided to go to Palestine in Syria.[52] During his *khilāfah*, 'Umar came to know that a few Muslims were habitual drunkards and had badly affected their mental balance. In order to check this malady 'Umar wanted to change the current law of punishment for inebriation with more stringent penalty. 'Alī, drawing inference from the *ḥadd al-qadhf* (punishment for defamation) suggested punishment of eighty lashes for the drunkards.[53] His view was considered most logical and, therefore, it was approved by the companions.[54] 'Umar, then, enforced it as rule of law.[55] This issue had been discussed earlier also during the caliphate of Abū Bakr when the question was raised as to how an intoxicated person be punished. The issue was put up to the *shūrā* for discussion. Some of the companions, who were present on an occasion when a drunken person was punished during the days of the Holy Prophet (PBUH), told Abū Bakr some details about the punishment. It was reckoned from their account that the penalty for the offence was forty lashes. Abū Bakr, therefore, enforced punishment of forty lashes for intoxication.[56] It was considered a good example of exercising the collective power of legislation. Al-

governor, summoned the Muslims in the mosque. He explained the situation and discussed the matter with them and asked their advice. Abū Bakr, than called on 'Umar who was not present in the mosque gathering, and took his counsel on the issue. Later, in the light of all discussion and consultations, Abū Bakr ordered military action against the rebellious tribes.[43] Another example of the *shūrā* relates to the appointment of governor of Baḥrayn, Aban b. Sa'īd who was appointed to that post by the Holy Prophet (PBUH), resigned after the demise of the Holy Prophet (PBUH). Abū Bakr wanted to appoint someone suitable for that sensitive post in Baḥrayn. He took counsel with his companions. 'Uthmān advised him to assign this responsibility to al-Alā b. al-Ḥaḍramī who had been there as special envoy of the Holy Prophet (PBUH). Abū Bakr accepted 'Uthmān's advice and posted al-Alā b. al-Hedramī as governor of Bahrayn.[44]

The traditionists, in their compendiums, have given detailed descriptions of the methods used by Abū Bakr for arriving at decisions concerning the state affairs. Al-Muttaqī says on the authority of al-Qāsim that when the counsel of experienced and knowledgeable people was needed on some important issue, Abu Bakr used to invite seasoned personalities, especially 'Umar, 'Uthmān, 'Alī, 'Abd al-Raḥmān b. Awf, Mu'ādh b. Jabal, Ubayī b. Ka'b and Zayd b. Thābit for discussion on the matter. According to Al-Qāsim, this was the normal procedure of *shūrā* adopted by Abū Bakr during his caliphate. Subsequently the same practice of holding *shūrā* was followed by 'Umar.[45] Another report recorded by al-Dārimī and al-Bayhaqī spells out the procedure of *shūrā'* adopted by Abū Bakr and 'Umar to settle community problems. In his discussion, al-Dāramī says that when Abū Bakr could not find a solution of the problem from Qur'ānic verses and *sunnah* he would invite the notables and of Muslims leaders to discuss the issue. Al-Muttaqī corroborates this report saying that they used to discuss thread-bare the details of various facts of the thread-bare matter. Finally, any action unanimously approved, was implemented. 'Umar continued following the same procedure during his *khilāfah*. However, he used to give special weightage to Abū Bakr's decisions on similar issues.[46] Imām Bukhārī, in his discussion on *al-shūrā*, also mentions that the *khulafā'* after the Holy Prophet (PBUH) took regular advice from reliable and trustworthy *'ulamā* before taking action on an impending issue.[47] According to another report, the *qurrā'* were members of 'Umar's *shūrā* whom he consulted on any fresh issue

this issue took place at a very early stage of Islamic history even before the formation of the government and the Islamic state.

During the days of the Holy Prophet (PBUH) the *shūrā* was not formalized as an institution. The community was small and included a few notables who were close to the Holy Prophet (PBUH). Whenever an emergency arose or an issue needed discussion, the Holy Prophet (PBUH) consulted with his companions who were present there. A western historian, Van Vloten, however, is of the view that the *shūrā* had taken its shape as an institution in Madinah and there were seventy persons as members of the *shurā* during the life of the Holy Prophet (PBUH).[40]

After the demise of the Holy Prophet (PBUH), the *khilāfah* followed his footsteps to settle the community affairs through consultation. The companions established the *khilafāh* immediately after the death of the Holy Prophet (PBUH). This was the paramount issue facing the *ummah* which was settled with mutual consultation and Abu Bakr was chosen as *khalīfah* after a long discussion between the *Muhājirūn* and the Anṣār at *saqīfah* of Banī Sā'idah.[41] Abū Bakr, on assuming the office, faced the most difficult problem of his administration when a number of tribes refused to pay *zakah* to the government. He wanted to take military action against them. However, before issuing any orders, he put the issue before his colleagues for advice. Initially, 'Umar and some other companions opposed the idea of military campaign giving the argument that the people were in a state of shock due to the demise of the Holy Prophet (PBUH) and said that they were in need of sympathetic conciliation. 'Umar was of the view that the circumstances were not in favour of such a drastic action. However, Abū Bakr explained the issue from a different perspective, foreseeing the future impact of such a rebellious attitude of tribes on the solidarity of *Ummah*. Finally, 'Umar and other dissenting companions visualized the veracity of Abū Bakr's argument and favoured military action against the recalcitrant tribes.[42]

The above incident has been described by Ibn A'tham al-Kufī in further details to elucidate how the *shūrā* was concluded by Abu Bakr. He says that Abū Bakr sent his special envoy to deliver his letter to Ash'ath b. Qays, the leader of the rebellious tribe of Kindah, with the message to desist from disobedience and to return to submission to Islām. The tribal chief and his people refused to submit and murdered the envoy of the *khalīfah*. Later, the governor of that area, Ziyād b. Labīd informed Abū Bakr about the whole situation. Abū Bakr, on receiving the letter of his

These are the two opinions of the scholars regarding the quantum of imperative authority of the *shūrā*. The scholars of divergent opinions have copiously given arguments and reasons in support of their viewpoints. However, the views expressed by al-Jaṣṣāṣ in support of his stand point are considered to be more cogent and convincing than the arguments put forward by the other group of scholars.

Part II

Al-Shūrā in the Practices of *Rāshidūn Khulafā'*

As has been mentioned earlier, the Holy Prophet (PBUH) was commanded by Allah to take counsel of his companions in matters relating to Islamic polity. He, accordingly, discussed all important affairs with the *shūrā* and implemented the decisions after arriving at consensus of opinions. We have mentioned about a number of such occasions in earlier paragraphs in our discussion on the views of *fuqahā'*. Now we give two more such examples in which collective decisions were taken after consultation with leading members of Muslim society. One such example which carries a great significance pertains to the issue of the prisoners of the Hawāzin who were held by the Muslims in the battle of Ḥunayn. A delegation from the Hawāzin came to the Holy Prophet (PBUH) and requested him to release their people. The Holy Prophet (PBUH) gave a sympathetic hearing to their case and advised them to come to the mosque at noon prayer and make an appeal to the Muslims. The Holy Prophet (PBUH) was in favour of their release. He put the question to the people alongwith his views on the issue. However, the Holy Prophet (PBUH) did not announce any decision on his own. The *Muhājirūn* and the Anṣār immediately agreed with the Prophet and gave their consent but some of the new converts were hesitant to give their opinion. Therefore, the Holy Prophet (PBUH) summoned the leaders of various clans to discuss the matter. The leaders, *'urafā'*, assembled in the mosque where they settled the issue on behalf of their clans. They all agreed to free the captives. Later, the Holy Prophet (PBUH), on hearing the unanimous decision of various clans, freed all the captives.[38] Another noteworthy example relates to the appointment of *nuqabā'* at *al-'Aqabah*. All the *nuqabā'* were designated with the consultation of the Anṣār who were present at the meeting.[39] It is significant to note that the consultation and discussion on

that the Holy Prophet (PBUH) according to this verse, was given a choice to accept the advice or act on his own judgment. They support their view point by quoting the treaty of al-Ḥudaybiyyah, which was signed by the Holy Prophet (PBUH) despite the fact that most of the companions were not in favour of the terms of the treaty. This argument, however, carries no weight because the Holy Prophet (PBUH) did not consult anyone on the issue because he was following the divine guidance on this matter. When 'Umar objected to the contents of the Treaty, the Holy Prophet (PBUH) said that "he would not go against the command of God; and that God would not have him perish."[34]

Another argument put forward by these *fuqaha'* relates to Abu Bakr's decision to send troops under the command of Usāmah bin Zayd to Syria despite opposition of the companions. However, this matter was not subject to *shūrā* as the orders for the military expedition were given by the Holy Prophet (PBUH) and Abū Bakr carried out these orders on his assumption of the office of *khilāfah*. These *fuqahā'*, put forward another argument in support of their viewpoint which pertains to Abu Bakr's action against the tribes who refused to pay *zakah* to the government. It is said that Abū Bakr did not accept the advice of the *shūrā* in this matter. Two points need to be brought home when considering the pros and cons of this issue. The first point is that Abu Bakr gave justification of his action by quoting a *ḥadīth* which says "I have been ordered to fight people until they say there is no god but Allah. Who said this, would save his life and property from me, except what is due on him; and his reckoning will be with Allah".[35] The *zakah* is an obligatory due on property, and there is no difference in the significance of *zakah* and *ṣalāh*. The second point regarding the issue is that Abū Bakr persuaded his colleagues and tried to convince them of its importance before taking action against the tribes. Imām Bukhārī narrates the words of 'Umar who was the leader of those persons whose view was that a military action was not suitable in such a situation. 'Umar said: "By God, when I saw that God had opened the heart of Abu Bakr to fight, I realized that it was right". It means that the *ḥadīth* of the Prophet (PBUH) and the reasoning of Abū Bakr convinced them.[36] The great scholar, IbnTaymiyyah, in his discussion on the principle of *shūrā*, has advocated certain restriction on the rulers. He says that in case of differences in opinions, the view-point which is nearer to the spirit of the Qur'ān and *Sunnah* should be accepted.[37] It will be the obligation of the *jumhūr 'ulamā'* to decide which of the opinions is closer to the Qur'ān and the *Sunnah*.

Another point that needs to be deliberated upon, is whether the *shūrā* is binding or merely advisory. While discussing this point, we must make a distinction between the Prophetic period and the times of the *rāshidūn khulafā'*. It must be borne in mind that the Holy Prophet (PBUH) was always in communication with God through revelation and possessed divine knowledge. No one can claim himself to be a Muslim unless he has complete faith in the Messenger of God.[30] People were commanded to listen to him and obey him as he, as Prophet, was conveying to them the Message of God.

The situation concerning the *rashidūn khulafā'* was entirely different as they were neither the messengers nor they were in communion with the Almighty God through any revelations. In this background scenario we come across divergent views of various eminent scholars on the principle of *shura*. According to the opinion of some of these scholars, the *shūrā* is binding on the authorities. If we analyze the views of al-Jaṣṣāṣ and also the opinion of some *'ulamā* who recommend the ouster of such rulers who neglect the principle of *shūrā*, we come to the conclusion that they consider it binding and mandatory. The protagonists of this view draw their conception from the word, *al-'azm*, appearing in the 159th verse of *Sūrā Āl-i 'Imrān*. The meaning of the word *al-'azm* has been described as 'the resolution by consultation.' The eminent scholar Qatādah says that *al-'azm* is a matter considered with full care; and that to follow one's own opinion without proper consideration is not *al-'azm*".[31] As mentioned in earlier pages, a *ḥadīth*, reported on the authority of 'Alī, says that *al-'azm* means to take counsel and then to follow it."[32] The *shūrā*, according to al-Jaṣṣāṣ, has no meaning if it is not binding. The supporters of this view give examples from the practice of the Holy Prophet (PBUH) who accepted the advice of his companions, though at times, he seemed to have a different opinion, as on the days of Badr, Uḥud and during the battle of *Aḥzāb* when he wanted to make a compromise with the Ghaṭfān tribe.[33] Abū Bakr al-Jaṣṣāṣ is considered to be a leading *faqīh* who propounds the mandatory concept of *shūrā*.

The other concept is that the ruler is not obligated to follow and accept the decision of *shūrā*. The supporters of this view say that it is enough that the ruler consults and considers the advice of the *shūrā* however he is free to act according to his best judgment. Those who mention this view, base their argument on the verse of the Qur'ān which reads: "When you are resolved, then put your trust in Allah". They opine

with the Ghaṭfān tribe.[21] In his dissertation on the principle of *shūrā*, al-Jaṣṣāṣ favours giving authority to the consultative body to hold discussion on all issues, whether religious or temporal. He brings evidence from the *Sunnah* of the Holy Prophet (PBUH) that he consulted his companions on such religious matters about which he had not received any Revelation. The issue of the captives of Badr, for example, was settled after consultation with the companions. According to al-Jaṣṣaṣ, the issue of captives, apparently temporal, also had religious significance.[22] Another issue of great religious import was decided with the advice and deliberation of the companions. This issue which related to *adhān* (call for prayer) was discussed and was consequently resolved with the advice of the companions.[23]

Al-Jaṣṣāṣ, in his discussion, brings out another point in favour of his view, saying that the Qur'ān mentions *al-'azm* (determination) after *al-mushawarah* which denotes that determination *(al-'azm)* is the result of consultation.[24] The *'ulamā'* refer to a *ḥadīth* of the Holy Prophet (PBUH) explaining the meaning of *al-'azm*. The *ḥadīth*, which is narrated on the authority of 'Alī, says that it is the decision based on advice. The *ḥadīth* says that *al-'azm* means to take counsel with *ahl al-ra'y* (people of opinion) and following them therein.[25] Al-Qurṭubī, concluding his discussion on the Qur'ānic verse, infers that *shūrā* is one of the basic principles of *Sharī'ah* and is the foremost rule of law.[26] Al-Qurṭubī and al-Shawkānī have supported the view-points of *fuqahā'* who are of the opinion that the rulers who do not take counsel with the scholars and experts, deserve to be removed from their offices.[27]

Al-Sarakhsī (d. 490) has also mentioned the principle of *shūrā* in his book, *Adab al-Qāḍī*. He suggests that the *qāḍī* should not rush to reach some judgment in a case; he must speculate on all aspects of the case and consult the *fuqaha'* who have the ability of *ijtihād*. He opines that consultation helps the judge to reach the truth.[28] Another *mujtahid*, Ibn Jamā'ah, describes *al-mushāwarah* as one of the basic obligations of a *khalīfah* or *sultan*. He says hat a *khalīfah* must keep close contacts with the notables and the *'ulamā*, known for their candid views, and take their advice concerning the fundamentals and sources of the rule. He bases his argument on the afore-mentioned verse of the Qur'ān (3:159) and the *Sunnah* of the Holy Prophet (PBUH).[29]

strategy of the battle. The most important issue was the defence of the city. The aged and experienced people advised the Holy Prophet (PBUH) to and evacuate the adjoining villages bringing women and children to Madīnah and then the city be defended from within against enemy onslaught. Madīnah was a city of *āṭām* (plural *aṭum*, fortress) which could withstand enemy incursions. However, a larger group comprising of young zealots, opposed the opinion and insisted on facing the enemy in the battlefield. The Holy prophet (PBUH) who, in the beginning was in favour of following the city defense plan, changed his mind in consonance with the opinion of the majority and led the Muslims to the battlefield of Uḥud.

The Muslims suffered heavy losses in Uḥud and large number of prominent figures of Islām met martyrdom in the battlefield. Some of the companions were feeling depressed that the defeat in the battle was the result of their wrong advice. These were the prevalent circumstances when the above mentioned verse was revealed. The Holy Prophet (PBUH) being the Messenger, was always in communion with God through Gabriel. He had the insight and understanding of the situation and the people were commanded to follow him in all circumstances.[19] Despite all the knowledge, wisdom and foresight he was commanded by the Almighty to take counsel in the conduct of all mundane affairs. He was enjoined to do so because he had to establish a fundamental rule of conduct to be followed by the *ummah* in all times to come.[20] The eminent scholar, Al-Ṭabarī, in his interpretation of the verse, has upheld the views expressed by al-Hassan and Sufyān b. 'Uyaynah in their explanation of the Qur'ānic verse.

Al-Jaṣṣāṣ, in order to further elucidate his view-point, has narrated a number of incidents. For example, he says that the Holy Prophet (PBUH) accepted the advice of Ḥubāb b. al-Mundhir on the day of Badr. Later, before the battle of al-Aḥzāb he gave a positive response to the suggestions of Sa'd b. Mu'ādh and Sa'd b. 'Ubādah. On that occasion, the Holy Prophet (PBUH), realizing the difficult situation faced by the Muslims, wanted to neutralize the Ghaṭfān tribe men by paying them one-third produce of date-orchards of Madīnah, thereby inducing them to abstain from fighting against Muslims. However, the two chieftains of the Anṣār did not agree with the proposal and advised that the fighting should be sustained against all groups till the final victory. The Prophet (PBUH) accepted their advice and gave up the idea of making any compromise

Al-Qurṭubī (d. 671 AH), for example, interprets the verses in the light of the background in which the verses were revealed. He says that the Anṣār, when they heard about the Holy Prophet (PBUH) and his message, held extensive discussions among themselves about the relating matters. Later they also held a conference taking counsel of each other before meeting the Holy Prophet (PBUH) at al-'Aqabah. This customary practice of the Anṣār is acknowledged by the Qur'ān. The most important point of Anṣārs' gathering, according to al-Ḥasan, was that there was consensus and complete agreement as a result of their consultation (on meeting the Prophet, helping him and accepting his message).[15]

The practice of reaching a consensus of opinion after consultation remained in vogue during the life time of the Holy Prophet (PBUH); he consulted his companions on several occasions. Al-Qurṭubī, while supporting the argument of al-Ḥasan, says that the companions also, later on, followed the example of the Holy Prophet (PBUH) in seeking counsel in all religious and temporal affairs. He adds that even the establishment of the *khilāfah* was the result of their mutual consultation.[16] Al-Qurṭubī, in fact, supports al-Rāzī (d. 606 A.H) who was of the opinion that the *shūrā* was an established principle at the time of *rāshidun khulafā'*. Discussing the Qur'ānic verse on *shūrā* he points out that it was the agreed practice of the companions to decide the issues after consultation and mutual consent.[17]

The second verse, discussed by al-Jaṣṣāṣ, is clearer, in its directives. The verse was revealed in Madīnah after the battle of Uḥud, the third year of the *hijrah*. The verse reads:

> It was by the Mercy of Allah that you dealt so leniently with them. Had you been severe and hard-hearted, they would surely have dispersed from about you. So pass over their faults and ask forgiveness of Allah for them, and counsel with them upon the conduct of affairs; and when you are resolved, then put your trust in Allah. Allah loves those who trust in Him. [18]

The *fuqahā'* have mainly based their argument on the above mentioned verse while explaining the significance of *shura*. It would be appropriate to examine the situation in which the verse was revealed so that one can have a clear perception of the principle of *shūrā*. The situation as related, was that the Holy Prophet (PBUH), before going to Uḥud, held as consultative meeting with the companions to discuss the

when the Muslims were recognized as a separate community on the basis of their faith. The Holy Prophet (PBUH) was, at that time, in contact with tribes of the adjoining regions in order to convey to them the message of Islām and to seek a suitable homeland for the Muslims to sustain their mission. At that stage the following verses of *al-Shūrā* were revealed to the Holy Prophet (PBUH).

> "Those who avoid gross sins and indecencies and, when they are angry, are willing to forgive; who obey their lord, establish regular prayer, and who conduct their affairs by mutual consultation, and who spend out of what We have bestowed on them." [12]

Al-Jaṣṣāṣ, while elucidating his view-point, basis his arguments not only on the text of the verses and also on adjoining matters relating to the text. He draws attention to the tenor of the verses which conspicuously point out that the Muslims are commanded to establish a consultative system in the society. The context of the verses on which al-Jaṣṣāṣ focuses his attention needs a circumspective study. The Qur'ān, in the above-cited verses, describes the characteristics of the believers and their qualities which distinguish them from the non-believers. The qualities mentioned in the verses include observance of religious obligations, establishing regular prayers and paying poor-dues. The Muslims are commanded to abstain from grave sins and indecencies, to control emotional outbursts in anger, to establish prayers and to pay poor-dues. The meaningful point to be noted here is that the *shūrā* is also mentioned in the same verse. The special import of these verses worth considering is that the Qur'ān adopted a distinctive approach of illustration by mentioning the *shūrā* in between the two fundamentals of Islām—the prayer and the poor-due which demonstrate the significance of the institution of *shura* in social life. It does not mean that the *shūrā* is one of the pillars of Islām; however the style of its description gives ample evidence of its special importance in Islamic polity. The known style of the Qur'ān combine both the fundamentals of Islām—the prayer and the poor dues.[13] After elaborate discussion of the above-cited verse, al-Jaṣṣaṣ concludes that the Muslims are commanded to settle their affairs with consultation.[14]

It would be appropriate to give a brief account of opinions of eminent *mufasirūn* who have made some interesting points in the interpretation of the verse under consideration.

established principle. He discusses the *shūrā* in a separate chapter in which he mentions the Qur'ānic verses and *aḥādīth* in support of his arguments; and points out that after the Holy Prophet (PBUH) the *khulafā'* also followed the practice of *mushāwarah*. The *Qurrā'*, (the learned) according to Imām Bukhārī, were the members of the *shūrā* during the *khilāfah* of 'Umar. Elucidating various points of the subject in support of his arguments, Imām Bukharī seeks to prove that *shūrā* is a vital part of the social and political practices in Islām. According to him, the system was in vogue during the days of the Holy Prophet (PBUH) who consulted his companions in all social and political affairs of the Islamic state. The *khulafā'* followed his practice and used to consult other companions and scholars in permissible matters *(al-umūr al-mubaḥah).*[8]

Abū Bakr al-Khaṣṣaf (d. 261 A.H.) a prominent Ḥanafī *faqīh*, while supporting the view point of Imām Bukhārī, suggests proper and regular consultation process for those who are invested with judicial authority. He says that it was the practice of early judges such as Shurayḥ and other luminaries who always consulted the *'ulamā* and *fuqahā*, before announcing their verdicts on various cases. It was also the practice of 'Umar who always consulted the companions of the Holy Prophet (PBUH) before taking any decisions,[9] he adds. Al-Khaṣṣaf bases his arguments on the same verses of the Qur'ān which have been mentioned by Imām Shāfi'ī.[10]

Al-Ṭabarī (d. 310 A.H.), in his discussion on the subject, has laid more emphasis on the institution of *shūrā* than what has been put forward by Imām al-Shāfi'ī and al-Khaṣṣāf in their arguments. He relates the opinions of Imām al-Ḥasan and Sufyān b. 'Uyaynah who are reported to have said that God wanted His Messenger to establish the principle of *shūrā* by his practice so that the future generations would follow it as the *Sunnah* of the Holy Prophet (PBUH). He opines that all religious and temporal affairs on which there are no clear injunctions in the Qur'ān and the *Sunnah* of the Holy Prophet (PBUH), are subject of *shura*. This is the practice approved by God, Who commanded that the affairs of the faithful be conducted by mutual consultations.[11]

Abū Bakr al-Jaṣṣāṣ (d. 370), being a great jurist, has discussed the principle of *shūrā* in its legal aspect. Depending largely on the Qur'ānic verses for his reasoning he discusses *al-Shūrā* as a legal principle. The first verse relating to the issue was revealed in the last period of Makkah

only the *khilāfah* owes its existence to it but also the affairs of the state and the community receive their guidance from its vital essence. It is an explicit Qur'ānic injunction with mandatory authority as elucidated in the revelation and in the *Sunnah* of the Holy Prophet (PBUH). The *fuqahā'*, while defining *shūrā* as a principle of Islamic polity draw their conclusion from the relevant verses of the Holy Qur'an.

The great *fuqahā'* of the early days of Islām, in their voluminous compendiums on *fiqh*, *ḥadīth* and *tafsīr*, have undergone to great lengths to dilate the principle of *shūra* and its concomitants concerning the affairs in an Islamic state. Here under, an attempt has been made to illustrate salient points of their opinions in order to make a companion between their views on the subject and the practice prevalent during the days of *rāshidūn khulafā'*:

Imām Abū Ḥanīfaḥ (d. 150 A.H.), in his discussion on the subject of *shūrā*, expressed the opinion that the matters of community the and collective problems should be settled with mutual consultation. He also made his viewpoint clear on the issue when Manṣūr, the 'Abbasid *khalīfah*, asked him about his opinion on *khilāfah*. Imam Abu Ḥanīfah explicitly told Manṣūr that the *khilāfah* was not valid without consultation with the community and without achieving consensus.[2]

Imām al-Shāfi'ī (d. 204 A.H), while describing *shūrā* as an important Qur'anic injunction advises the judge to take counsel from the *'Ulamā'* who are well-versed in the knowledge of Qur'ān, the *Sunnah* and the *athār*. He should have the ability to exercise analogy,[3] meaning thereby that the judge should have a fair understanding of the existing culture and traditions of the society so that he can exercise *ijtihād*. In support of his arguments, Imām Shāfi'ī relies on the relevant Qur'ānic verses and the *Sunnah* of the Holy Prophet (PBUH). He quotes the following verses: (i) "Those who conduct their affairs by mutual consultation"[4] and (ii) "Counsel with them upon the conduct of the affairs".[5] Another point put forward by Imām Shāfi'ī, in support of his argument, is that the *shūrā* emanated as the *Sunnah* of the Holy Prophet (PBUH).[6] He substantiates this point by tradition in which Abū Hurayrah is reported to have said that he had not seen anyone taking counsel more frequently that the Holy Prophet (PBUH).[7]

Imam Bukhārī (d. 256 A.H.) in an all embracing discussion on the subject, has given specific attention to *al-mushāwarah*, describing it as an

The Institution of *Shūrā*: Views of the Early *Fuqahā'* And the Practices of the *Rashidūn Khulafā'*

MUHAMMAD YUSUF FARUQI*

Abstract: "*Shūrā* (Consultation) is one of the basic principles of *Sharī 'ah* and is the foremost rule of law in the Islamic System of political administration. The rulings of the Qur'ān and *Sunnah*, regarding *shūrā*, are very clear and of legally binding nature. The *rāshidūn khulafā'* (rightly guided Caliphs) therefore, followed these rulings in letter and spirit.

The *fuqahā'* (jurists) of the second and third century *hijrah* looked at the period of the *rāshidūn* as a model and derived several social, legal and political principles from the precedents they observed in the practices and decisions of the *rāshidūn khulafā'*.

This paper attempts to make a analytical study of the views of the early *fuqahā'* and practices of the *rāshidūn khulafā'*. An attempt has also been made to show that how keanly the *fuqahā'*, observed the *rāshidūn*'s period and were influenced by their views and decisions. The *fuqahā'* considered decisions and practices of the *rāshidūn khulafā'* ,relating to statecraft and institution making, as a source of political and constitutional law of Islam."

Part I

Opinions of the *Fuqahā'*

The institution of *shūrā* is the intrinsic component of Islamic polity, the edifice of which has been designed on the principle of 'counsel or mutual consultation' in order to achieve collective consensus by generating a constructive discourse and electing opinions of experts and eminent scholars. The significance can be ascertained from a ruling b y 'Umar the second *khalīfah* in which he stated that *"khilafāh"* was not valid without counsel".[1] This principle is regarded as all-pervasive as not

---

* Professor, Islamic Research Institute, International Islamic University Islamabad (IIUI), Pakistan.

Contributors

MUHAMMAD YUSUF FARUQI
Professor, Islamic Research Institute, International Islamic University Islamabad,

ABDUL RASHID MOTEN
Professor, Department of Political Science, Kulliyyah of Islamic Revealed Knowledge & Human Sciences, International Islamic University Malaysia (IIUM), Kuala Lumpur.

MUHAMMAD MUMTAZ ALI
Associate Professor, Department of Usuluddin and Comparative Religion, Kulliyyah of Islamic Revealed Knowledge & Human Sciences, International Islamic University Malaysia (IIUM), Kuala Lumpur.

MUHAMMAD YUSUF SIDDIQ
HEC Foreign Professor, Department of Islamic Studies, University of the Punjab, Lahore, Pakistan.

JIHĀT AL-ISLĀM

A Journal of Islamic Studies

Volume: 1 (January-June, 2008) Number: 2

Contents

TRANSLITERATION TABLE

ا	a	ذ	ḏ	غ	gh	بھ	bh
ب	b	ز	dh	ف	f	پھ	ph
پ	p	ر	r	ق	q	تھ	th
ت	t	ڑ	ṛ	ک	ķ	ٹھ	ṭh
ٹ	ṯ	ز	z	گ	g	جھ	j̈h
ث	th	ژ	ẓ	ل	l	چھ	ch
ج	j	س	s	م	m	دھ	ḏh
چ	ch	ش	sh	ن	n	ڈھ	ḍh
ح	ḥ	ص	ṣ	ں	ṇ	ڑھ	ṛh
خ	kh	ط	ṭ	ہ	h	کھ	ḵh
د	d	ظ	ẓ	ی	y	گھ	g̈h

Long Vowels

ا		ā
آ		ā
ی	ـِـ	ī
و	ـُـ	ū
و	(*URDU*)	ō
ے	(*URDU*)	ē

Short Vowels

ـَـ	a
ـِـ	i
ـُـ	u

Diphthongs

و	ـَـ	*(ARABIC)*	aw
		(PERSIAN/URDU)	au
		(TURKISH)	ev
ی	ـَـ	*(ARABIC)*	ay
		(PERSIAN/URDU)	ai
		(TURKISH)	ey

Doubled

وّ	ـُـ	uẇw/uvv
یّ	ـِـ	iyy

Letter ع is transliterated as elevated comma (') and is not expressed when at the beginning.

Letter ئ is transliterated as elevated inverted comma (‘).

ض as Arabic letter is transliterated as *ḍ*, and as Persian/Turkish/Urdu letter as *ż*.

و as Arabic letter is transliterated as *ẇ*, and as Persian/Turkish/Urdu letter is transliterated as *v*.

ۃ is transliterated as *ah* in pause form and as *at* in construct form.

Article ال is transliterated as *al-* (*'l-* in construct form) whether followed by a moon or a sun letter.

و as a Persian/Urdu conjunction is transliterated as *–o*.

Short vowel ـِـ in Persian/Urdu possessive or adjectival form is transliterated as *-i*.

d) **Unpublished work / Dissertation**: Effendy Bahtiar,"Islam and the State: The Transformation of Political Ideas and Practices in Indonesia". (Ph.D., The Ohio State University, 1994). pp.100-102.

e) Cite all bibliographical information in endnotes. When the book or journal article is cited for the first time, provide full information: full name(s) of the author(s), title of the source, place of publication, publishing company, date of publication, and the specific page you are citing. For subsequent citations of the same source, list the author's last name, an abbreviated form of the title, and the relevant page number(s). *Do not use footnotes or a biography.*

Arabic words should be transliterated according to the style in the ***Jihāt al-Islām***, which is based on that used by ***Islamic Studies*** (Islamabad).

We prefer that you may send two hard copies of your article along with an electronic copy on a diskette.

Editorial correspondence should be addressed to:

Muhammad Arshad
Department of Urdu Encyclopaedia of Islām,
University of the Punjab (Allama Iqbal Campus).
Lahore- 54000, Pakistan. **E-mail**: editor.jihat_al_islam@yahoo.com

The Faculty of Islamic Studies,
University of the Punjab, Lahore, Pakistan.

Jihāt al-Islām is a multi-disciplinary publication dedicated to the promotion and dissemination of scholarly study of Islām and of the Muslim world. Particular attention is paid to contributions dealing with the Qur'ān, *ḥadīth*, and *sīrah* studies, *sharī 'ah*, law, and jurisprudence, history and civilization, political and social thought, philosophy, *kalām*, literature, international relations, environmental and developmental issues as well ethical questions related to scientific research. The Journal seeks to place Islām and the Islāmic tradition as its central focus of academic inquiry and to encourage comprehensive consideration of its many facets.

Guidelines for Authors

Authors will be required to guarantee that the same manuscript or a similar version has not been submitted to any other journal or publication. If the author wishes to send the article elsewhere before the editor of the *Jihāt al-Islām* has acted on its acceptance, the author should withdraw the article from consideration by the *Jihāt al-Islām*.

Manuscript preparation and Style

1) Articles can be submitted in Arabic, English and Urdu and should not exceed 35-40 pages of typescript. All submissions must include a 150-200 word abstract. Article must have an appropriate title and a number of sections. The first section should include the purpose of the article and methods of the study, the last section should include a summery and conclusions.

2) Full name(s) of author(s) must be listed, along with university or professional affiliation, address, phone/fax number(s), and e-mail address. Provide a two-three sentence biography that can be in used in your article. *Current information only.*

3) A manuscript must be double spaced, with page numbered consecutively and references (including full biographical notes) placed as endnotes to the text. References should follow the style of the following examples, with titles italicized and not underlined:

a) **Book**: Adeeb Khalid, *The Politics of Muslim Cultural Reform: Jadidism in Central Asia* (Karachi : Oxford University Press, 2000), p. 78.

b) **Chapter**: Antonie Wessels, "Some Biblical Considerations Relevant to the Encounter Between Traditions," in *Christian-Muslim Encounters*, eds. Y.Y. Haddad and W. Z. Haddad (Gainesville, FL: University Press of Florida, 1995), pp. 54-64.

c) **Journal article:** Asma Afsaruddin, "Medieval Islamic Discourse on Legitimate Leadership and Its Modern Implications," *American Journal of Islamic Social Sciences*, 20:2(2003): 80-94.