



**THE
FOUNDATION
OF AUTHORITY
IN THE
ISLAMIC STATE**

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THE FOUNDATION OF AUTHORITY IN THE ISLAMIC STATE AND THE SHARIAH-BASED ELEMENTS OF SOCIETY

In the name of Allah, the Beneficent, the Merciful

Allah has conferred upon the Muslim Ummah the honour of being responsible for spreading the message of *Tauhid* among mankind, to enjoin the good, and to prohibit the evil. Moreover, He has exhorted the Ummah to struggle against the forces of idolatry and injustice on earth until oppression by the disbelievers ceases, Allah's laws reign supreme, and worship is exclusively His, alone.

Allah has disclosed to the Ummah that the wisdom behind His sending Prophets to them with His guidance was that He wanted Islam to prevail over all false religions regardless of how hateful this seems to the disbelievers.

Owing to the importance of this assignment, the gravity of responsibilities it entails, and the struggle, and sacrifices it calls for, Allah has promised rewards in proportion to difficulties. In fact Allah has Himself borne witness that this Ummah is the best of all Ummahs to come to mankind.

Likewise, the Almighty has elevated the standing of this Ummah and increased its value by making it the middlemost Ummah which shall bear witness to the truth before all mankind on the Day of Judgement. In addition, Allah has promised to bring the Ummah to power on earth, to firmly establish the religion which He has been pleased to bestow upon them; He has also promised to replace their state of anxiety with one of security, on the condition that they uphold His exclusive right to be worshipped alone without ascribing divine powers or attributes to aught beside Him. It is also essential that the Ummah believes that all creation and all command are His alone, and ensuring that Islam prevails over all false religions so the cause of Allah remains supreme. This is the point upon which the legitimacy of an Islamic State is

based. The significance of this point is that absolute sovereignty rests with Allah, the Creator, and that His Shariah shall have complete precedence in all matters. This also means that there can be no turning away His decree, that there is no power that can repel His command, that He cannot be called to for whatever He does whereas all others can and that anyone who chooses to reside in the Islamic State, in faith and peace, must submit to His authority, and live in accordance with the Shariah.

In order to enable the Islamic Ummah to perform this sacred mission, the Islamic State was established at the time of the Prophet (peace and blessings be upon him) and those responsible for it's functioning were given authority essential to its functioning. In fact, protection of the legitimacy of the Islamic State is the duty of the Islamic government and the reason why legal scholars of Islam have assigned to the Khalifah the duties of the defence of the faith, and perusal of policies aimed at ensuring that defence. Indeed, the meaning of the defence of the faith is the guarding of the State's legitimacy in order to ensure that it remains viable, and that it is not rendered ineffective by any individual, group, authority or organisation.

Since the state, with all its bodies and legal powers, is established for the purpose of upholding Islamic Legitimacy, and to ensure the precedence of the Shariah and that it not be departed from in any of the various spheres of life; and since both those entrusted with directing the affairs of state, and those who serve them are given the authority they need to perform their duties, it is essential that all these governmental organizations and those responsible for their running solemnly adhere to the principle of the State's Legitimacy. If this is not done the authority of the government will be undermined.

In this brief study, we shall define what is intended by the term, "the principle of legitimacy" or the "Sovereignty of Allah." We shall also mention the proofs for it's legal authority. Thereafter, we shall discuss how this is to be

applied to the officials of the State, and governmental bodies for its implementation in contemporary times.

THE SIGNIFICANCE OF THE PRINCIPLE OF ISLAMIC LEGITIMACY

In Islamic Constitutional Law the meaning of the "Principle of legitimacy" is that the working of the State, its overall dominion, its decisions and its dispositions must all take place in accordance with the Shariah. In case the Shariah is contravened in any of the above spheres, its action will be devoid of any legal effect. Thus, those coming under jurisdiction of these bodies or authorities cannot be held legally responsible for flouting authority except for that which is in accordance with the Shariah. The individual may, within the proper legal framework and in accordance with the principle of enjoining good and prohibiting evil, monitor the working of the State, its dispositions and decisions of its officers. This may be done in order to ensure that all governmental bodies are functioning in accordance with the Shariah; and in order to reject, by legal means anything contrary to it. This principle is expressed, in constitutional law, by the term, "Supremacy of Law" or "Constitutional Government".

IMPLEMENTATION OF THE PRINCIPLE OF LEGITIMACY

This principle is to be applied in all walks of life by the Islamic state. It is to be followed in the area of legislation, policy-making, dispensation of justice, adjudication of disputes as well as in the administrative field. All state functionaries shall have to abide by this principle in the manner we are going to explain:

Legislative Authority:

The ultimate legislative authority, according to the constitutional law of Islam, belongs to Allah Almighty alone

and no-one can be associated with Him in the exercise of this authority. The Law-Giver is Almighty Allah as He has given and originated the Shariah. Allah has said "Verily, the authority to decide is only with Allah; He has commanded that you should not worship anybody except Him." Again, He says: "Verily, to Him belongs the creation and the commandment; glory be to Allah, the Lord of the Universe".

The primary function of the Holy Prophet was therefore, to convey the Shariah and explain its principles to the people. In the Quran, the Prophet is exhorted to say:

"It is not for me to make any alteration in it of my own accord. I follow only what is revealed to me."

(YUNAS, Surah 10, Verse 15)

Allah Most High said:

"O Messenger, convey to the people whatever has been sent down to you from your Lord; for, if you do not do this, you will not be doing justice to His Message. Allah will protect you from the mischievous deeds of the people."

(AL-MAIDA, Surah 5, Verse 67)

Allah has further said:

"We have not sent you, O Prophet, to be a keeper over them: your only responsibility is to convey the Message."

(AS-SHURA, Surah 42, Verse 48)

The function of the *Mujtahidin*, i.e. "Legal Scholars" is to derive the rulings of the Shariah from their original sources in the Shariah-texts in accordance with established rules of *Ijtihad* and principles of legal derivation.

There are two meanings of "sources" in this context:

1. One is the source in the sense of the issuance of law which is actually the intention and will of the Supreme Legislator as made known by means of