

## **AN APPROACH ON THE ROLE OF GOVERNMENT IN THE CONTEXT OF AN ISLAMIC STATE: RELIGION AND POLITICS**

**Assoc. Prof. Saim Kayadibi<sup>1</sup>**

<sup>1</sup>Department of Economics, Kulliyah of Economics and Management Sciences, Research Fellow in Centre of Islamic Economics (CIE), International Islamic University Malaysia (IIUM), KL, Malaysia. Email: saim@iium.edu.my, Tel: +601139090475

**Accepted date:** 30-09-2018

**Published date:** 12-12-2018

**To cite this document:** Kayadibi, S. (2018). An Approach on The Role of Government in The Context of An Islamic State: Religion and Politics. *Journal of Islamic, Social, Economics and Development*, 3 (14), 78-101.

---

**Abstract:** *A system that is not formed by specific values, such as justice, trust, accountability and so forth, cannot sustain its existence. History provides both secular and revelation-based government systems, the latter of which is often found within the Islamic world in the past. Islam's governing system is not limited to specific forms and policies in order to rely upon specific principles. The style of governance may turn out to be good or bad, effective or ineffective, depending upon whether the religion's values or the ruler's self-desires are implemented. Due to the political instability in Islamic countries, it creates confusion in the administration and the role of government. The objective of this paper is to highlight the significant role of the government and the governance through the concept of state in Islamic law by analysing the concept of the sharī'ah-oriented public policy (siyāsah sharī'ah). Content analysis research method is used in this conceptual paper by collecting data from library and secondary resources. This paper, therefore, intended to contribute to the academic research related to the government and the concept of state of siyāsah sharī'ah by identifying the appointment and qualities of officials, leadership, and the organs of the state, such as the consultation body (shūrā), public orders (ḥisbah), and undetermined punishment (ta'zīr) by developing the concept of state as the seventh value of the maqāṣid al-sharī'ah in order to achieve a successful government system.*

**Keywords:** *Governance; Siyāsah Sharī'Ah; Leadership; Consultation Body (Shūrā); Public Orders (Ḥisbah); Undetermined Punishment (Ta'Zīr); Islamic State.*

---

### **Introduction**

Since Islam is the last revealed religion sent to humanity and the *Qur'ān* is the final testament, Allah (*swt*) will protect its essence until the Day of Judgment. Therefore, it has the

capacity to provide appropriate solutions and suggestions for every age and condition. The Glorified and Exalted, who created human beings, has perfect knowledge of His creation's needs both in this world and the future world. The problems of humanity, as one of God's creations, can only be resolved via revelation from its Creator. Given that humanity was not created haphazardly and thus needs a system in which it can survive, this system must be structured with laws and regulations so that chaos and turmoil cannot arise.

The teachings of the *Qur'ān* and the *Sunnah* show us that Islam provides both moral and juridical principles. Regulating this system properly requires an Islamic state. Such a state must be constructed, according to Maududi's "First Principles of the Islamic State" (Maududī 1978), upon four fundamental sources: the *Qur'ān*, the *Sunnah*, the conventions of the *khilāfah al-rāshidah (ijmā' [consensus])*, and the rulings of great jurists (*qiyās [analogy]*). Along with his explanations of these concepts, Maududi mentioned four important difficulties and obstructions that may confront us while transforming an unwritten constitution into a written one: the novelty of terms, odd-editing of the ancient juristic literature, defects of our educational system and ignorance run amuck (Maududī 1978).

Religion and politics have never been separated from each other in Muslim life; however, some modernists contend that they are separate spheres. Although Abū Ḥanīfah defined *fiqh* (jurisprudence) as "a person's knowledge of his rights and obligations" (Kayadibi 2010; Ṣadr al-Sharī'ah 1979), this same definition can be applied not only to legal matters, but can also be extended to spheres of one's life, including politics. Given that Islam leaves nothing to itself (i.e., meaningless), excluding life from politics is unthinkable. Muḥammad Asad approached this reality from the perspective of what God wills for humanity, "The *Qur'ān* makes it abundantly clear that the ultimate purpose of all creation is the compliance of the created with the will of the Creator. In the case of man, this compliance called Islam, is postulated as a conscious, active coordination of man's desire and behaviour with the rules of life decreed by the Creator." (Asad 1981). Our world has not been left to itself, for it is a place where each individual is tested. Therefore, leaving it alone would violate the goal of its creation.

Allah (*swt*) controls the world's politics by sending prophets (*ṣ*) one after the other. The last one was Prophet Muhammad (*ṣ*). Since humanity was created to represent God on Earth as His caliph, its members must fulfil the responsibilities that are inherent to their creation. As Allah (*swt*) intended worldly and religious affairs to function simultaneously according to the teachings of the *Qur'ān* and the *Sunnah*, they cannot be separated. In that respect, such a notion is altogether rejected.

In terms of the context of an Islamic state, Muslim scholars have considered three important dimensions: the Muslim community (*ummah*), the Islamic law (*sharī'ah*), and the leadership of the Muslim community (*khilāfah*). As these three dimensions support each other, neglecting any one of them renders the state meaningless. For this reason, the state must maintain the *sharī'ah's* supremacy in all because Allah (*swt*) has absolute authority or ultimate sovereignty and the caliph, who represents this law on Earth, is duty-bound to implement it through the guidance of a consultative group (*shūrā*). Nevertheless, he is not

bound by their decision (Iqbal 1986) as Allah (*swt*) has stated “and take counsel with them in the affair; so when you have decided, then place your trust in Allah” (*Qur’ān* 3:159). In other words, the caliph is permitted to exercise his free will when making his decision.

As Islamic countries have been experiencing political instability that creates confusion in the administration and the role of government, a focus should be made on the role of government in the context of an Islamic State. Therefore, the role of government in the context of an Islamic State dealing with religion and politics is highly important.

Given the above, this conceptual-based research article will seek to elaborate upon some concepts related to an Islamic government. Therefore, no quantitative data will be presented, for the objective is to analyse leadership (*khilāfah*), the organs of the state (e.g., the consultative body), public order (*hisbah*), undetermined punishment (*ta’zīr*), defence policy, the appointment of state officials and the qualities that they should possess.

### **The Role of Government in Islam**

People may think that establishing a government or a state is not an ultimate goal for Muslims. But without it, no Muslim is safe from external and internal attack. The author of this article strongly believes that establishing and then protecting such a state is one of the *sharī’ah*’s essential values, namely, the protection of life, religion, intellect, lineage, property, honour and eliminating corruption. Therefore, protecting and sustaining its existence is necessary, for only a strong government, one that establishes justice and eliminates corruption, can fulfil this task. Both the state and the essential values, therefore, protect each other. In short, the state is sustained by preserving its people.

As one of the *sharī’ah*’s ultimate objectives is to protect the state, Islam strongly encourages the establishment of a state to create unity among Muslims and their obedience to the state’s leader. This is so an important matter that the Lawgiver proclaims: “O you who believe! Obey Allah and obey the Messenger and those in authority from among you; then if you quarrel about anything, refer it to Allah and the Messenger, if you believe in Allah and the last day; this is better and very good in the end.” (*Qur’ān* 4:59). The Prophet’s (*ṣ*) life proves that he affirms the exigency of establishing a legitimate government: “When three persons set out on a journey, they should appoint one of them as their leader.” (Abū Dāwūd, Book 8, *ḥadīth* no. 960). The Prophet (*ṣ*) emphasised this matter via a *ḥadīth* narrated on the authority of Abū Hurairah: “Who defected from obedience (to the leader) and separated from the main body of the Muslim – then he died in that state – would die the death of one belonging to the days of *Jāhiliyyah*.” (Ṣaḥīḥ Muslim, Book 020, *ḥadīth* no. 4557). Abū Hurairah also narrated that the Messenger of Allah (*ṣ*) said: “It is obligatory for you to listen to the ruler and obey him in adversity and prosperity, in pleasure and displeasure, and even when another person is given (rather undue) preference over you.” (Ṣaḥīḥ Muslim, Book 020, *ḥadīth* no. 4524).

Again, the ruler must discuss every issue with the consultative body (*majlis shūrā*) so that his decisions will be legitimate. Accordingly, a specific institution must monitor all government activities to determine whether they are *sharī’ah*-compliant or not. But how are these values to be protected and the standards for *sharī’ah* compliance determined?

A competent power is needed to protect the values and to establish a set of controllers. The best one to fulfil such a responsibility is the state. In fact, this was exactly what the Prophet (s), the best example, did after arriving in Yathrib: He established a mosque to govern his community's affairs. The new state's administrative centre, which handled all administrative and judicial affairs at this very early stage, combined the legislature, executive and judiciary branches of government.

One of this state's goals is to provide a political framework for Muslim unity and cooperation (Asad 1981). The *Qur'ān* specifically invites Muslims to work toward this ideal: "And hold fast by the covenant of Allah all together and be not disunited." (*Qur'ān* 3:103). In order to create unity, Allah (*swt*) ordains that a special group be established to "*enjoin the good and forbid the evil*". This "group," however, can be an institution, organization or a state, for "And from among you there should be a party who invite to good and enjoin what is right and forbid the wrong, and these it is that shall be successful." (*Qur'ān* 3:104). Here, it has to be emphasised that the ultimate objectives of Islam's social message are to prevent injustice and establish justice, for "You are the best of the nations raised up for (the benefit of) men; you enjoin what is right and forbid the wrong and believe in Allah." (*Qur'ān* 3:110). The collapse or rise of any state, whether it is Islamic or not, depends upon its inhabitants' fulfilling or ignoring this above-mentioned duty (Asad 1981).

Asad highlights that the state can rightly be called as God's vicegerent on Earth only if Islam's law becomes the law of land. Such a status would enable it to ensure justice and equity by arranging social and economic relations in such a way that every citizen could live in freedom and dignity; providing them with complete freedom of religion, culture and social development; teaching them, regardless of religion, race, gender and class, the values and ethical goals of Islam in both the spiritual and physical aspects of their life; protecting the country against all kinds of attacks; and conveying Islam's message and teachings to the world at large by using all possible means (Asad 1981).

As only Allah (*swt*) has absolute power, and not the ruler, the Parliament or the people, His *aḥkām* (rules) must remain supreme. Muhammad Iqbal states that an Islamic constitution has only two important organs: the executive and the judiciary. The third organ – the legislative – is not defined constitutionally because Allah (*swt*) has already provided the sources for all legislation (*viz.*, the *Qur'ān*, the *Sunnah* and *ijmā'*). Thus, the government's duty is restricted to implementing it, as opposed to altering the law in a way to serve its own interest. Nevertheless, any legislation not specified by the *sharī'ah* can be referred to the government's third leg, the consultative body, and enacted accordingly (Iqbal 1986). Abdulaziz Sachedina also stresses that one of the *Qur'ān*'s important objectives is to create a new society based on religious and moral concepts in order to replace and eventually supersede a tribal society, by commanding Muslims to rule with justice, since Islamic law intertwines religion and morality (Sachedina 1986).

### **The Appointment of Officials and Their Qualities**

Rulers should possess unique qualities, ones that differentiate them from other people. First of all, they should be justice-loving people who are willing to take care of Muslims and bear

heavy responsibilities, as well as being powerful, merciful, knowledgeable, pious, wise, virtuous, selfless and humble. Islam encourages the development of selfless, kind, humble, generous and vigilant individuals, along with rulers who are compassionate enough to forgive others but not to the extent of allowing the law to be violated and the social peace to be breached.

In addition, “the upright leaders who pursue a perfect *siyāsah* (*siyāsah kāmilah*) are those who enforce the commands and prohibitions of God. They are the ones who give everyone their due. They take nothing except what is lawful to them; and when it comes to their own entitlement, they are forgiving. These are the qualities of the Prophet (ﷺ) and are thus the best attitudes of a virtuous *siyāsah*.” (Ibn Taymiyyah nd).

In his famous “*Al-Siyāsah al-Shar‘iyyah fī Islāh al-Ra‘iy wal-Ra‘iyyah*” (Ibn Taymiyyah 2004), Ibn Taymiyyah (d.1328) explains the selection and appointment of officials. The *Qur’ān* explores the requirements of a just *siyāsah* as follows: “*Surely Allah commands you to make over trusts to their owners and that when you judge between people you judge with justice; surely Allah admonishes you with what is excellent; surely Allah is Seeing, Hearing. O you who believe! Obey Allah and obey the Messenger and those in authority from among you; then if you quarrel about anything, refer it to Allah and the Messenger, if you believe in Allah and the last day; this is better and very good in the end.*” (*Qur’ān* 4:58-59).

In regard to the “selection of officials”, Ibn Taymiyyah states that this trust can be fulfilled only basing this selection upon the individual’s ability and competence. He joined the phrase “*tu’addū al-amānat*” with the following *ḥadīth*: “When a person is entrusted with authority over the affairs of the believers, and he in turn, delegates this authority to another while he could find a more competent person for the task, he has betrayed Allah and His Messenger.” (Ibn Taymiyyah 2004). On the next page, he quotes ‘Umar Ibn al-Khaṭṭāb’s saying: “Whoever delegates a public office to another for the sake of friendship or personal favour indeed betrays Allah and His Messenger and the believers.” (Ibn Taymiyyah 2004). Therefore, he must find a more competent person for the task.

Abū Dharr narrated that he once asked the Messenger of Allah (ﷺ): “Will you not appoint me a governor?” The Prophet (ﷺ) tapped his shoulder and replied: “O Abū Dharr! You are weak, and governorship is a trust. It will be a cause of humiliation, except for those who are able to fulfil the responsibilities appertaining to it.” (Muslim, *ḥadīth* no. 1825). Another *ḥadīth*, narrated by Abū Hurairah (*ra*) from the Prophet (ﷺ), said: “When honesty is lost, then wait for the Hour (Doomsday).” A Bedouin asked, “How will honesty be lost?” The Prophet replied, “When the power or authority comes in the hands of unfit persons, then wait for the Hour (Doomsday).” (Bukhārī, *ḥadīth* no. 59).

In terms of ethical perspectives, requesting a public office is not a good idea because the Prophet (ﷺ) advised ‘Abd al-Raḥmān b. Samrah: “Do not ask for position of authority. If you are granted this position without asking for it, you will be helped (by Allah) in discharging its responsibilities; but if you are given it as a result of your request, you will be left alone as its captive.” (Bukhārī and Muslim, *Riyādh al-Ṣāliḥīn*, *ḥadīth* no. 82:674). However, Mohamad

Kamali has noted that “it should be considered under *tashrī‘ zamanī*, or temporary legislation which was appropriate at the time but which may not be suitable, or even feasible under modern conditions.” (Kamali 1998). He emphasised that “because of the complexity of modern life, densely populated cities, etc., it is a distance possibility that government authorities may have no knowledge as to where to find the best candidate for a particular position.” (Kamali 1998). Therefore, given the modern world’s globalized nature, it would be more suitable to seek voluntary applications (Mutawallī 1974).

In addition, the *Qur’ān* indicates that the concept of *amānah* covers all forms of trusts and responsibilities, such as one’s duties toward others, holding public office and abiding by one’s promises and contracts, and offering sincere counsel. Fulfilling one’s trusts nurtures Muslims’ loyalty and confidence, for these attributes come via honest dealings with others in order to create a truly Islamic society (Bahī 1971).

Based upon this elaboration, one can say that the *Qur’ān* mentions two qualities, namely, strength and trustworthiness, that are so significant in terms of selecting employees that they were attributed to Mūsā (as): “O my father! Employ him; surely the best of those that you can employ is the strong man, the trustworthy one.” (*Qur’ān* 28:26). And the governor of Egypt told Yūsuf (as): “And the king said: ‘Bring him to me, I will choose him for myself.’ So when he had spoken with him, he said: ‘Surely you are in our presence today an honourable, a trustful one.’” (*Qur’ān* 12:54).

Strength might differ in variety of fields, such as in the army, which refers to his knowledge of warfare, skills and discretion to his knowledge of the *sharī‘ah*. Therefore Ibn Taymiyyah explains that according to the *Qur’ān*, the trust of loyalty refers to four qualities: fear of Allah (*swt*), obeying His command, not selling His commands for a low price and not fearing men (Ibn Taymiyyah 2004): “Therefore, fear not the people and fear Me, and do not take a small price for My communications; and whoever did not judge by what Allah revealed, those are they that are the unbelievers.” (*Qur’ān* 5:44). This strength could be used in the power into two ways: strength against himself, meaning tolerance and patience, or forbearance when in a state of anger (Ibn Taymiyyah 2004).

As Ibn Taymiyyah emphasised, strength and trustworthiness are rarely combined in one man. He therefore complains about the trustworthy person’s weakness and the wicked person’s power, by which he means that due to the absence of such people, power and its responsibilities are handed over to unsuitable people (Ibn Taymiyyah 2004). The *imām*, who is appointed as the leader, must protect the Muslim community from evil acts (*mafsadah*). The better one is preferred to a person of lesser ability is necessary as is mentioned earlier, the Messenger of Allah (ﷺ) told Abū Dharr (may Allah be pleased with him): “O Abū Dharr, I see that you are weak, and I love for you the same things that I love for myself. Therefore, never become an *amīr* (a leader), not even over two persons, and never manage the property of an orphan.” (Muslim, *ḥadīth* no. 1826). On the one hand, the Prophet (ﷺ) prevented him from holding any responsibilities, since he would be a weak leader. On the other hand, he indicated that observing the prayer (*ṣalāt*) is a significant and distinctive quality, as well as a determining element, for a leader by appointing Abū Bakr (*ra*) to lead the prayers. Before

entrusting a Companion with any official authority, the Prophet (ﷺ) first asked him to lead the prayer (Ibn Taymiyyah 2004). This indicates that personal religiosity may also be one of the qualities of a potential leader. When sending Mu‘adh ibn Jabal (*ra*) to Yemen, he stated: “O Mu‘adh, your most important duty to me is the prayer,” (Ibn Taymiyyah 2004), for it prevents believers from all kind of evil and unpleasant acts.

The term *amānah* (trust) has various meanings, some of which are related to the leader’s qualities and responsibilities or vicegerents of God. As the *Qur’ān* proclaims,

*“And when your Lord said to the angels, I am going to place in the earth a khalīf, they said: What! wilt Thou place in it such as shall make mischief in it and shed blood, and we celebrate Thy praise and extol Thy holiness? He said: Surely I know what you do not know.” (Qur’ān 2:30); “Allah has promised to those of you who believe and do good that He will most certainly make them rulers in the earth as He made rulers those before them, and that He will most certainly establish for them their religion which He has chosen for them, and that He will most certainly, after their fear, give them security in exchange; they shall serve Me, not associating aught with Me; and whoever is ungrateful after this, these it is who are the transgressors.” (Qur’ān 24:55).*

Given that Islam views government as a trust, the leader (*‘ulū al-amr*) is a trustee who can use his own judgment to carry out this trust in the best possible way. In other words, *siyāsah sharī‘ah* is an instrument of the trust that Allah (*swt*) has placed on the shoulders of the community and its leaders (Kamali 1998). The trustees can use it to implement a just policy based on the *sharī‘ah*’s general principles.

In addition to the above qualities, *amānah* has a variety of meanings in the *Qur’ān*, such as the scale of the trust that man has undertaken: “Surely We offered the trust to the heavens and the earth and the mountains, but they refused to undertake it, being afraid thereof: but man undertook it; He was indeed unjust and foolish.” (*Qur’ān* 33:72). Indeed, this verse indicates that only did man agree to accept this responsibility, namely, the vicegerency (*khilāfah*) of God, but also the heavy burden of responsibility (*taklīf*) (Aqqād nd). It also indicates that only man can bear this heavy responsibility, which can be used for both good and evil (e.g., injustice, corruption and betrayal) depending upon his inclinations, desires and instincts.

The *Qur’ān* also uses this term in terms of fulfilling the promises toward Allah (*swt*) and the Messenger (ﷺ), “O you who believe! Be not unfaithful to Allah and the Messenger, nor be unfaithful to your trusts while you know.” (*Qur’ān* 8:27). Here, this term refers to how one fulfils worldly promises, such as paying a debt and financial obligations (e.g., providing a dowry to women, paying wages and taking care of deposited property), “but if one of you trusts another, then he who is trusted should fulfil his trust.” (*Qur’ān* 2:283). In this respect, this verse enjoins the trustee and provider, as well as the ruler and ruled, to pay their dues to one another (Ibn Taymiyyah 2004). In the Prophet’s (ﷺ) own words: “Pay your *amānah* to whom it belongs, but do not betray in return the one who has betrayed you.” (Abū Dāwūd, *ḥadīth* no. 3535). The Prophet (ﷺ), who came to fulfil good manners, advises people to compete in doing good instead of evil.

Appointing officials, especially ministers, is critically important to a smoothly functioning government. Al-Māwardī (d. 1058) refers to the permissibility of appointing ministers by citing Mūsā (as): “And appoint for me a *wazīr* from my people, Hārūn, my brother, and consolidate my strength by him and make him a partner in my affair.” (*Qur’ān* 20:29-32). As the *imām* or leader cannot deal directly with all what has had been entrusted to him, he must appoint representatives who are experts in their field and let them take care of government affairs. This has the added benefit of allowing him to share his heavy burden with those who could also help him avoid making errors and mistakes (Māwardī nd).

In regards to appointing *wazīrs* (ministers), Khalīfah Ma’mūn remarked: “I am looking for a man for my affairs who has all of the qualities of goodness, who is modest in his behaviour and resolute in his ways, a man who has been defined by manners and strengthened by experience, a man who is entrusted with secrets acts accordingly and if entrusted with important matters moves to execute them, a man whose forbearance causes him to be silent and whom knowledge causes to speak, a man for whom the moment is enough and for whom a glance is sufficient, a man who has the intrepidity of *amīrs* and the perseverance of the wise, the humility of the ‘*ulamā*’ and the understanding of the *fuqahā*’; if people treat him well, he is grateful and if put to the test by their mistreatment, he is patient; he does not sell the portion of today only to be deprived the next; a man who capture the hearts of men by the sharpness of his tongue and the beautify of his eloquence.” (Māwardī 2006).

Al-Māwardī (d. 1058) demanded seven qualities of these officials: “1. **Trustworthiness**, such that he does not misuse whatever he has been entrusted with and does not deceive regarding whatever he is consulted about; 2. **Truthfulness**, such that his report of what he has carried out is believed and his word is acted upon regarding what he transmits; 3. **Lack of greed**, lest he accept bribes in return for influence and lest he allow himself to be cheated and become careless; 4. **Lack of enmity** or hate between him and the people, for enmity prevents equitable transactions between people and excludes mutual sympathy; 5. **A retentive memory**, such that he can transmit things to and from the *Khalāfah* and be able to bear witness for him and against him in such matters; 6. **Accurateness and astuteness**, such that affairs do not confuse him and he slips up or that affairs muddle him and he makes mistakes: determined action is of no use when affairs are confused and resoluteness is of no use when mistakes are being made; 7. **Lack of craving and desire**, as such passions will divert him from truth to falsehood and he will no longer discriminate between those who speak the truth and those of falsehood: such passions deceive the intellect and lead it away from what is correct. It is for this reason that the Prophet (ﷺ) said, “*Your love of something makes you blind and deaf.*” (Māwardī 2006).

He also discusses the interesting issue of female leaders, whom he contends cannot hold this post even if they have sufficient experience in such matters (Māwardī 2006), and cites the Prophet’s (ﷺ) saying: “*A people who entrusted their affairs to a woman will not be successful.*” (Bukhārī, vol. 9, *ḥadīth* no. 119).

## **Leadership (*Khilāfah*) and the Role of The Leaders**

As stated earlier, Allah (*swt*) grants leadership to the qualified man in order to convey His message by enjoining believers to promote good and prevent evil: “And from among you there should be a party who invite to good and enjoin what is right and forbid the wrong, and these it is that shall be successful.” (*Qur’ān* 3:104; see more at *Qur’ān* 9:71). Given this, the believers should obey the ruler, provided that he obeys Allah (*swt*) and His Messenger in order to discharge the duty: “O you who believe! Obey Allah and obey the Messenger and those in authority from among you; then if you quarrel about anything, refer it to Allah and the Messenger, if you believe in Allah and the last day; this is better and very good in the end.” (*Qur’ān* 4:59).

Again, one of the leader’s essential roles is to protect the objectives of the *siyāsah sharī‘ah*. In his famous book “*Kitāb al-Aḥkām al-Sultāniyyah*”, al-Māwardī (d. 450/1058) explained that the rulers must fulfil ten important duties regarding public affairs (Māwardī 2006). These are:

**First:** He must safeguard the religion (*dīn*) as it was established in its original form and about which the first generations of the *Ummah* are agreed by *ijmā‘*; if an innovator appears or someone of dubious character deviates from this religion, the leader should counter the deviations by proving legal proofs to rectify such error, explain the right way to him and take the appropriate measures including to punish him with reasonable punishments in order to ensure the image of Islam is protected and the whole *Ummah* are prevented from going astray.

**Second:** He must implement the legal judgments between two contestants and bring to an end any dispute between two litigants so that equality prevails, the tyrant does not transgress and the weak are not oppressed.

**Third:** He must protect the territory of Islam and defend the sanctuaries so that people may earn their sustenance and journey safely from any threat to their person and belongings.

**Fourth:** He must establish the *ḥadd* (capital) punishments in order to protect what Allah (*swt*) has made inviolable from being violated and prevent the rights of his slaves from being abused.

**Fifth:** He must fortify the border posts against attack and defend them with force against an enemy which might appear unexpectedly and violate what is sacred or shed the blood of Muslims or *dhimmi*s protected by a pact or treaty.

**Sixth:** He must implement *jihād* against those who resist Islam after having been called to it until they submit or accept to live as a protected *dhimmi* – community – so that Allah’s rights, may He be glorified and exalted, “be made uppermost above all (other) religion.” (*Qur’ān* 9: 33).

**Seventh:** He must collect the *ḡay'* (booty) and *zakāh* taxes from those on whom *sharī'ah* and legal judgment has made it an obligation to pay, and this without fear or oppression.

**Eighth:** He must apportion the stipends and whatever is due from the *baitulmāl* without wastefulness or meanness and make payments punctually, neither before their time nor after it.

**Ninth:** He must ensure the employment of trustworthy persons and the appointment of worthy counsellors capable of undertaking those tasks delegated to them and of safeguarding monies made over to them.

**Tenth:** He must personally take over the surveillance of affairs and the scrutiny of circumstances such that he may execute the policy of Ummah and defend the nation without over – reliance on delegation of authority by means of which he might devote himself to pleasure-seeking or worship – for even the trustworthy may deceive and counsellors behave dishonestly (Māwardī 2006).

### **Organs of The State**

In an Islamic state, all power, whether executive, legislative or judiciary, must be governed via consultation with others, for as the Lawgiver states: “And take counsel with them in the affair; so, when you have decided, then place your trust in Allah; surely Allah loves those who trust.” (*Qur'ān* 3:159).

In order to govern a state, a certain organ should control its sub-organs as is the case with a human body, which consists of physical and spiritual organs. The physical organs run the body perfectly, and the spiritual one controls all of the hidden spiritual organs like the soul, which gives life to the body before any other organ (e.g., the brain and the heart). I assume that the spiritual organ is just as significant, and perhaps even more so, as the physical organs. A human being has to respect both types of organs in order to live a balanced life. As the state resembles a human being, it should have also the same physical and spiritual organs. The former can be defined as the separate powers (i.e., the executive, legislature and judiciary), and the latter as the motive behind all of them, just like the spirit of the body is that of the *siyāsah sharī'ah*.

It is indicated that the government's branches should be separated and tend to their own affairs, instead of interfering in the affairs of each other. Therefore, “the separation of powers doctrine is a fundamental principle of law that maintains that all three organs of government remain separate. This requires that the judiciary, the executive and the legislature all remain distinct from each other to ensure that the different arms of government do not encroach upon each other” (Hamilton 1788; Greenfeld 2012).

This doctrine is most associated with Charles Louis de Secondat Baron Montesquieu (d.1755), who did not invent it, but certainly contributed new ideas to it by emphasizing certain elements that had not been present earlier, particularly in relation to the judiciary (Vile 1967). The main objective of separating these powers is to protect the individuals'

rights from a tyrannical government's exercise of powers that should be kept separate (Greenfeld 2012).

In his book "*The Spirit of Laws*", Montesquieu states, "*When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty... there is no liberty if the powers of judging is not separated from the legislative and executive... there would be an end to everything, if the same man or the same body... were to exercise those three powers.*" (Charles 1989).

Clearly, none of the three powers may exercise the powers of the other, nor should any person be able to exercise two of the powers. This doctrine has been implemented, albeit to very different degrees of implementation, around the world (Benwell and Gray).

In addition, one can say that there are three models of government: national, provincial and local. Every government has responsibilities. For example, an ordinary government is responsible for making policies, laws and regulations regarding the citizens' rights and responsibilities as well as providing certain services. In that sense, the government collects revenue (income) from taxes and uses it to benefit the citizens (e.g., building infrastructure and establishing schools and hospitals to improve its citizens' life).

A national government is constructed by Parliament, elected members and national-level legislatures who represent the public; approves policies, laws and regulations; and monitors the work of the executives and departments. Its Cabinet or Executive committee members coordinate the making of policies and laws, as well as oversee their implementation by the various government departments; and the departments, public servants and administrators who are responsible for doing the work of government and is accountable to the executive. On the other hand, the structure extends to the provincial and local levels (a legislature on the provincial level and a council in local level), each of which have different levels of executives and administrators. For example, the provincial level has a premier, an executive council, heads of departments and staff of administrators, and the local level has a mayor and mayoral committees in executives and municipal manager and Head of Departments, as well as administrative staff members (Olivier 2008).

However, this type of structure may change from country to country, from model to model. In the various contemporary governing systems, politics plays a pivotal role in the government, and therefore, the "*Encyclopaedia Britannica*" defines a "political system" as "the set of formal legal institutions that constitute a "government" or a "state" (*The Encyclopaedia Britannica*). On the national level, the Parliament is this system's central point of power.

The only way to uphold the supremacy of Islamic law is for an Islamic state to ensure the judiciary's complete independence so that it can guarantee the people's rights. Iqbāl asserts that there are three possible spheres for legislative activity in a Muslim national state: 1. To enforce laws which have specifically been laid down in the *Qur'ān* and the *Sunnah*. 2. To bring all existing laws in conformity with the *Qur'ān* and the *Sunnah*, and 3. To make laws

as subordinate legislation which do not violate the *Qur'ān* and the *Sunnah* (Iqbal 1986). In terms of governance, he says that the presidential form of democracy is closer to the Islamic concept of state. In order to realize these objectives, the electorates, representatives and rulers must be educated on Islamic ethics and law. Therefore, such a state's education system must be changed so that the study of Islamic law can be joined with the enlightened study of modern jurisprudence (Iqbal 1986). Moreover, the Islamic tradition of consultation (*shūrā*) is preferred, since a religion is continuous with its values and principles. As opposed to the Western concept of democracy, *shūrā* is an Islamic value of government that has to be preserved.

### **The Consultation Body (*shūrā*)**

The consultation body is, like *hisbah* and supervisory boards, a significant decision-making institution. This Islamic style of corporate governance has been prescribed in the *Qur'ān*: “and those who respond to their Lord and keep up prayer, and their rule is to take counsel among themselves, and who spend out of what We have given them.” (*Qur'ān* 42:38). Consulting on all kinds of government affairs is necessary for efficient governance, according to the divine law, for Allah (swt) says “...and consult them in affairs. Then, when you have reached a decision put your trust in Allah. For Allah loves those who put their trust (in Him).” (*Qur'ān* 3:159). The public's participation in state governance can be achieved through *shūrā*, an important tool that can make this happen.

Life is subject to constant change, and thus new social conditions require new regulations to deal with the changing social structure. However, the majority of Muslim scholars have neglected the important area of political development and change (Aḥmad 1986). As the *sharī'ah* does not give detailed regulations for all matters, competent scholars are entrusted with providing solutions via independent reasoning (*ijtihād*) that accords with the spirit of the Islamic law and the community's *maṣlahah*. Given that the *Qur'ān* and the *Sunnah* provide mostly general principles, the *sharī'ah* can provide solutions through *ijtihād*. When confronted with matters that affect the communal side of our life, one individual's intellectual effort is not enough; rather, any such decision must be based on the entire community's definitive consensus (*ijmā'*).

And thus the need for continuous legislation is clear in all areas, including state administration, as the *sharī'ah* does not touch upon most of the relevant regulations (Asad 1981). But who should be entrusted with this responsibility? The community as a whole cannot discuss legislative issues, for doing so may cause harm. In order to avoid this possibility, the community could delegate its legislative powers to a person or a group of people to formulate acceptable binding decisions. As the Lawgiver ordained in the *Qur'ān*: “and their rule is to take counsel among themselves” (*Qur'ān* 42:38), all kind of business, including a state's legislative and administrative powers, must be based on the community's chosen assembly (Asad 1981), which would then entrust this responsibility to those who are capable of performing the necessary tasks.

Given that this mutual consultation body participates in all state matters and in selecting the representatives who will regulate state policy (‘Abdul Raḥmān 2010), its members should be

honest, unbiased, devout and trustworthy people. Avoiding all personal interests, they should seek to engender a sense of mutual consent among the leaders. The institution is a practically proven alternative system of polity, for it was applied during the Prophet's (ﷺ) time and its necessary principles of good governance were set after the *hijrah* (Hasan 2012).

### **The People's Participation in Governing**

In a general perspective, the people's participation has been called by various terms depending upon the period in which it existed. Today it can be called "democracy". Despite its controversial nature among Muslims, this term is widely used in contemporary political thought and signifies a governing system that allows citizens to choose and even replace the government through active participation in free and fair elections to protect their rights and human rights. However, 'Abdul Bārī Sarkar has a different opinion:

*"Democracy in its real sense never existed, nor exists in any time, in any country or community. Even in the much-vaunted City State Greece, there was no democracy but only Oligarchy or aristocracy" (Sarkar 1987). On the other hand, "leaving academic definitions and terminology aside the real meaning of democracy is that people must choose their ruler by themselves, no ruler or regime is to be forced upon them without their full consent. They must have the right to bring him to account if he commits a mistake. Moreover, they must have the right to depose him and choose a new ruler if he goes astray. People must not be led against their will to advocate economic, social, cultural or political trends and programs that they do not or are not satisfied with and if some of them opposed the regime, they must not be exposed to expulsion, exemplary punishment or what is worse of torture and massacre." (Qaradāwī 1998).*

Shaikh Al-Qaradāwī asks, after giving this long explanation of informal definitions of democracy, if the democracy we have just explored contradicts Islam (Qaradāwī 1998). He immediately responds that *"the connotations of democracy are in harmony with the essence of Islam, for it warns one against leading a congregation while he is disliked by the followers."* This claim is further supported with an authentic *ḥadīth* reported by Ibn 'Abbās (ra), according to which the Prophet (ﷺ) said: "Three people's prayers will not rise above their head even an inch: One who leads Muslims in congregational prayer when they do not like him...etc." (Ibn Mājah, *ḥadīth*, 971). Shaikh Al-Qaradāwī makes analogy saying that "if this was the case with the Imām in Prayers so how about the people who are in authority in life and politics?" (Qaradāwī 1998).

Clearly, the rulers must be loved by the people, a view supported with this authentic *ḥadīth*: The Prophet (ﷺ) said: "The best of your *imāms*, rulers, are those whom you love and they love you back, and you supplicate Allah (swt) for their own good and they for you. The worst of your *imāms* are those whom you loathe and they loathe you, and you curse them and they curse you!" (Muslim on the authority of 'Awf Ibn Mālik (ra)).

Islam, by its very nature, opposes dictatorship. In conjunction with this, Hamid Enayat says,

*"If by democracy is meant a system of government which is the opposite of dictatorship, Islam can be compatible with democracy because there is no place in it for arbitrary rule by*

*one man or a group of men. The basis of all the decisions and actions of an Islamic state should be, not individual whim and caprice, but the Sharī'ah which is a body of regulations drawn from the Qur'ān and the Tradition.” (Enayat 2006).*

Thus, Muslims should find a suitable way to govern the state, one that would prevent the rise of dictatorship. Muslim scholars may use their discretionary powers to meet the new needs brought about by the changing times, for Islam has ultimate objectives and values that must be preserved and sustained: *“the acceptance of God as the Lord of the Universe does not mean that everything is a priori given: Islam is not a panacea that provides ready-made answers to all human problems of humanity, in history and for all times. Rather, Islam provides a moral and just perspective within which Muslims must endeavour to find answers to all human problems.”* (Affendi 2008).

### **An Islamic State Versus A Secular State**

A secular state is governed by man-made laws, whereas an Islamic state is governed, at least in principle, by the laws Allah (*swt*) revealed in the *Qur'ān* and the *Sunnah*. From another angle, an Islamic state is not a nation state but rather a multinational state, for the community's common value is its members' spiritual aspiration, which is based on faith and consists of people who may belong to different backgrounds or languages, colours or races. Practically speaking, an Islamic state is a sovereign state; however, theoretically, it is not fully sovereign because true sovereignty belongs only to Allah (*swt*). In addition, an Islamic state is not a territorial state in the strict sense of the term, but rather a universal state that has no borders. A secular state that has a well-defined territory may be a national as well as a sovereign state (Iqbal 1986).

A secular mind-set or state contains numerous concepts of human rights, all of which are based on different ideologies. However, in Islam human rights are based on the faith itself and are divided into the rights of Allah (*ḥuqūqullah*) and the rights of men (*ḥuqūqul 'ibād*). Therefore, an Islamic state guarantees these rights because they can be found in the *Qur'ān* and the *Sunnah*. They can be summarised as the right:

*“of life, asylum, individual freedom, equality before the law, justice, fair trial, protection of honour and reputation; protection against abuse of power, against torture; equality of status and opportunity; freedom of thought, expression, belief, faith worship, association, assembly, movement, trade, business or profession; to hold and dispose of property; protection of minorities; to participate in the conduct and management of public affairs; status and dignity of workers; social security, founding a family and related matters; of married woman; education or privacy; and so on, subject to Islamic law and morality.”* (Iqbal 1986).

But despite all of the above, an Islamic state cannot be considered a theocracy, for it only a state in which Islamic law reigns supreme. Islam rejects any division between the spiritual and the secular realms of life. Although a secular state, theoretically, guarantees religious freedom to its citizens and attempts to promote their material advancement and welfare regardless of their language, colour and religion, an Islamic state is duty-bound to protect the six values of its citizens, irrespective of religion and race, as Allah (*swt*) states,

*“And If Allah had not raised a group of people, i.e. Muslims, to ward off others from aggression, certainly there would have been pulled down cloisters and churches and synagogues and mosques in which Allah's name is much remembered; and surely Allah will help him who helps His cause; most surely Allah is Strong, Mighty.” (Qur’ān 22:40).*

Thus, an Islamic state is obliged to protect the faith and culture of all religious minorities living within its territory and to allow their communities to be represented in the assembly (Iqbal 1986).

### **The Defence Policy of an Islamic Government**

The existence of a state is necessary to protect its people and land from enemies. Therefore, defending the community’s government and territory is part of its duty. In fact, defending the community’s life (*ḥifẓ an-naḥs*) is one of the *maqāṣid al-Sharī’ah*’s essential values. Protecting the government from both internal and external enemies depends upon the establishment of a just governing system. As the obligation to protect Muslims necessitates the ongoing ability to protect the state, Allah (*swt*) mentioned several times the need to formulate a realistic defence policy in the sense of various types of *jihad*, not all of which are military. For example, “O you who believe! Take your precaution, then go forth in detachments or go forth in a body” (*Qur’ān* 4:71). and “And prepare against them what force you can and horses tied at the frontier, to frighten thereby the enemy of Allah and your enemy and others besides them, whom you do not know (but) Allah knows them; and whatever thing you will spend in Allah's way, it will be paid back to you fully and you shall not be dealt with unjustly.” (*Qur’ān* 8:60).

Defence preparations comprise all kinds of strength – intellectual, physical, material and spiritual – depending upon the needs of the time. Allah (*swt*) encouraged Muslims to prepare themselves at the beginning of *Sūrah al-‘Ādiyāt* by emphasising the importance of warhorses, which at that time were a very essential ingredient of war. Anas bin Mālik narrated that the Messenger of Allah said “There is a blessing in the forelocks of the war horses” (Saḥīh Muslim, Book 33, *ḥadīth* 150) for this very reason, and that he urged Muslims to learn the arts of war because “Allah will cause three persons to enter Paradise for one arrow: the maker when he has a good motive in making it, the one who shoots it, and the one who hands it.” (Abu Dāwūd, *Jihād*, p. 23). ‘Amr bin Absah said that “we were laying siege to al-Ṭāif and I heard the Messenger of Allah said: “Whoever shoots an arrow in the sake of Allah will be rewarded like one who has freed a slave” Amr said I shot 16 arrows on that day.” (Al-Nasā’ī, *ḥadīth* no. 801).

It should be remembered here that Sultan II Muhammad Khan (Fatih), who conquered Byzantine (Istanbul), implemented the Prophet’s (*ṣ*) advice in this regard: He used the Shahin Cannonballs, as well as other items of that era’s most advanced war tools, to destroy the city’s most majestic walls. Classical and contemporary weapons rely on iron (*ḥadīd*), which Prophet Dāwūd (as) used to make weapons and, miraculously, to shape by his hand into arms and armour: “And certainly We gave to Dawood excellence from Us: O mountains! Sing praises with him, and the birds; and We made the iron pliant to him” (*Qur’ān* 34:10). The

war industry relies heavily upon iron, for it has many weapon-related benefits. Allah (*swt*) even named a *sūrah* after it: “and We have made the iron, wherein is great violence and advantages to men, and that Allah may know who helps Him and His messengers in the secret; surely Allah is Strong, Mighty.” (*Qur’ān* 57:25). Therefore, an Islamic government must encourage scientists to conduct more research on iron so that others can invent more advanced weapons to protect the Muslims’ honour and establish justice for all.

### **The Issue of Nuclear Weapons**

The issue of nuclear weapons, which can be viewed from various angles, must first be viewed as a matter of defence. The most compelling reason for possessing them is to defend the country against external enemies. Producing or buying nuclear weapons has become an essential part of the defence policies of several contemporary countries, some of which have are doing their best to prevent other countries from developing or acquiring their own. Especially when it comes to Muslims countries, these technologically advanced and nuclear countries become extremely hostile. For example, the nuclear programs of Pakistan and Iran have infuriated Western countries, which are not nearly as worried when a non-Muslim country (e.g., India) goes nuclear. They become angry even when an Islamic country seeks to use nuclear energy for peaceful purposes.

Countries that already possess nuclear weapons try to limit the development of the technology, as well as their manufacture, sale and use due to the mass destruction they cause and also to maintain their monopoly. After America dropped atomic bombs on Hiroshima and Nagasaki in 1945, countries signed treaties designed to control such weapons, such as the Anti-Ballistic Missile (ABM) Treaty in 1972 and the Nuclear Non-Proliferation Treaty (NPT) in 1975, which was ratified by 187 countries. The objectives were to: a) prevent the spread of nuclear weapons and technology, b) promote co-operation in the peaceful use of nuclear energy, and c) achieve nuclear disarmament. The irony of such treaties was to keep the non-nuclear nations from developing or obtaining such weapons and restricting membership in the nuclear club to the few technologically advanced countries who already had them. The nuclear state of Israel, however, did not sign these treaties.

In mid-1991, Washington and Moscow signed the Strategic Arms Reduction Treaty I (START), which called for disarming strategic nuclear weapons, converting the carriers to conventional use, and limiting the number and lifting power of intercontinental ballistic missiles and submarine-launched ballistic missiles. Following the Soviet Union’s dissolution, its successor states (i.e., Russia, Belarus, Ukraine and Kazakhstan) signed this treaty with the United States on December 5, 2001. In May 2002, the United States signed the Strategic Offensive Reduction Treaty (SORT) and agreed to reduce its deployed strategic arsenals to between 1,700 and 2,200 warheads apiece by December 2012. The media proclaimed this to be the end of the Cold War (Zekavat 2007).

The only Muslim country with nuclear weapons is Pakistan. Despite Washington’s strong opposition, Pakistan developed it to maintain a military balance with India due to their mutual rivalry and adversarial relationship in Kashmir. Currently, nine countries have nuclear weapons: the U.S., the U.K., France, Russia, India, China, North Korea, Israel and

Pakistan. Iran has been struggling to develop nuclear energy and has refused to stop enriching uranium, despite American opposition (Zekavat 2007). The West in general, and specifically the U.S., do not allow other Muslim countries capable of developing nuclear weapons even to obtain nuclear energy on the grounds that they might one day learn how to convert it into nuclear weapons.

As Allah (*swt*) says “And prepare against them what force you can and horses tied at the frontier, to frighten thereby the enemy of Allah and your enemy and others besides them, whom you do not know (but) Allah knows them; and whatever thing you will spend in Allah's way, it will be paid back to you fully and you shall not be dealt with unjustly.” (*Qur’ān* 8:60). For peaceful purposes, I strongly believe that Muslim countries must develop both nuclear energy and weapons to protect their countries from external occupation and undesired interferences. Otherwise, they will remain under constant threat.

### **The Attributes of an Islamic Government**

Some attributes of an Islamic government should cause it to be differentiated from a tyrannical regime. A transparent and accountable government would be more deserving on trust on the assumption that these qualities increase the public’s awareness of the governing system and, accordingly, the government itself as it becomes more sensitive in using the source of the *Ummah* whether in physical or value-oriented sources. The following verse might reflect the idea of both personal and state accountability when it comes to making all types of transactions clear and understandable.

*“O you who believe! When you deal with each other in contracting a debt for a fixed time, then write it down; and let a scribe write it down between you with fairness; and the scribe should not refuse to write as Allah has taught him, so he should write; and let him who owes the debt dictate, and he should be careful of (his duty to) Allah, his Lord, and not diminish anything from it; but if he who owes the debt is unsound in understanding, or weak, or (if) he is not able to dictate himself, let his guardian dictate with fairness; ”* (*Qur’ān* 2:282-283).

The word of the Lawgiver (*swt*) explains that proper record-keeping, part of which involves ensuring transparency and accountability, is vital to preventing anybody from being treated unfairly. The Prophet’s (*ṣ*) statement that “surely all of you are shepherds and each of you is responsible for his flock” (*Al-Adab Al-Mufrad*, *ḥadīth ṣaḥīḥ* Book 10, *ḥadīth* no. 212) reflects this ideal of accountability in terms of anyone who holds any type of responsibility, whether it is visible or hidden, for as the *Qur’ān* proclaims: “Whatever is in the heavens and whatever is in the earth is Allah's; and whether you manifest what is in your minds or hide it, Allah will call you to account according to it” (*Qur’ān* 2:284).

Flexibility in rulings can be another attribute, for circumstances change according to time and the people’s needs. The *sharī’ah* does not ignore any human needs, as long as the seven essentials are considered. Therefore, the rulings might have to change to secure the people’s *maṣlahah*. ‘Abd al-Wahhāb Khallāf (d.1956) indicated this reality by writing “*opening the doors of mercy and beneficence to the people, and selecting from the diversity of schools and interpretations advanced by the scholars that is beneficial to relieve people from severity and*

*hardship.*” (Khallāf 1931). Using an appropriate way to solve problems and remove obstacles from the public or government administrations in order “*to prevent corruption and to facilitate benefit which were in accord with the principles of the sharī‘ah even if it disagreed with the views of the mujtahidūn of the past,*” (Khallāf 1931) indicates that doing so does not violate the *sharī‘ah*’s essence. Thus, any branch of government could use it to benefit the community and eliminate corruption from the administration.

The true spirit of exercising *ijtihād* must be preserved to keep its dynamic character, which provides solutions to new situations, rather than adhering to the misconception that the door of *ijtihād* has been closed. Even if this closure is considered a historical fact, it is nevertheless logically wrong because the original teaching of Islam contains no such concept (Kamali 1998). In fact, any *fatwā* and *ijtihād* is only temporary in nature, for they must change as the people’s circumstances change, provided, as Ibn Qayyīm indicates, that they neither violate the *maṣlahah* or lead to corruption (*mafsadah*) (Ibn Qayyīm 1968). In reality, the door of *ijtihād* can never be closed because the *sharī‘ah* is everlasting and the people’s needs and circumstances are so varied. It has to be clearly known that the application of *ijtihād* must not violate the rulings of the main sources, the *Qur‘ān*, the *Sunnah* and *Ijmā‘*, of the *sharī‘ah*.

Along with many other concepts in Islamic law, *siyāsah sharī‘ah* is an instrument for accommodating the needs engendered by social change with the *sharī‘ah*. Many Muslim scholars, including Khallāf, maintain that *siyāsah sharī‘ah* is flexible enough to do this and thus uses different concepts, such as *sadd al-dharā‘i*, which is regarded as “one of the most significant fields where *siyāsah sharī‘ah* can be utilized as a means of improving the conditions of the community.” (Tāj 1953).

If, for example, people can use a *mubāh* (neutral practice) for an evil and/or criminal purpose, it may be prohibited by *sadd al-dharā‘i* (blocking the means), such as a sale that leads to usury (*ribā‘*). If something lawful is turned into a *mafsadah* due to changing times and circumstances, the ruler may use his discretionary power to declare it unlawful in order to protect the public interest (*maṣlahah ‘āmmah*) (Tāj 1953).

### **The *Ḥisbah* Institution (Ombudsman, Public Order)**

The institution of *ḥisbah* played a significant role in market regulations and controls. In his *al-Aḥkām al-Sulṭāniyyah*, Al-Mawārdī (d. 450/1058) states that this term refers to commanding what is good when it is being neglected and to forbidding what is evil if it is being practiced. As Allah (swt) ordained: “*And from among you there should be a party who invite to good and enjoin what is right and forbid the wrong, and these it is that shall be successful.*” (*Qur‘ān* 3:104) According to him, this command applies to every Muslim. He explains the difference between someone who voluntarily undertakes this and a person officially appointed to do so (i.e., a *muḥtasib*) in nine points (Māwardī nd). Ibn Taymiyyah argues that its goal is to enjoin what is generally known as good (*al-ma‘rūf*) and to forbid what is generally known as evil (*al-munkar*) in those areas where the authority of the governor, judges, or other specified public officers does not prevail or cannot reach (Ibn Taymiyyah 1976).

In that respect, this institution's scope can be classified in three ways: that which concerns the right of Allah (*swt*), the rights of individuals and, lastly, that which is common to both of them (Māwardī nd). It is defined briefly as “the office to control the market and common morals (*ādāb*)” (Ziadeh 1963).

This institution, one of Islam's significant social and economic supervision institutes, was set up by the Prophet (*ṣ*) himself and adhered to by the Rightly Guided Caliphs (Qarnī 1994). As the state's affairs became more complicated due to the multi-cultural nationalities within its realm, a special officer known as the *muḥtasib* (the person in charge of the *ḥisbah* department) was appointed. The Abbasid caliph al-Mahdī (d.169/786) was the first one to designate a *muḥtasib* (Qarnī 1994). Under the Ottomans, this institution became well-established, developed its role and prestige and increased its jurisdiction with a new term – *iḥtisāb*. Its duties and functions were codified in the *iḥtisāb qānunnameleri* under Sultan Bayazid II (r. 886-918/1481-1512) (Mantran 1971).

Ibn Taymiyyah suggested that *ḥisbah* may affect the regulation of market mechanisms in terms of producing social and economic efficiency simultaneously, given that it was established to regulate the market. Therefore, “*ḥisbah* is another important positive institution in the Islamic economic system that regulates the market mechanism by responding to its failures and shortcomings and overcoming its excesses.” (Asutay 2007).

Scholars began writing on this new mechanism around the third Islamic century. Although the term *ḥisbah* was not used, perhaps, the earliest book that has reached us is that of Abū Bakr Yaḥyā b. ‘Umar al-Kinānī (213-289/829-901), the Andalusian scholar who wrote “*Kitāb Aḥkām al-Sūq*”. Other works were written, among them “*al-Ḥisbah al-Ṣaghīr* and *al-Ḥisbah al-Kabīr*” by Al-Sarakhsī (d.286/898), who served as a *muḥtasib* in Baghdad, “*Kitāb al-Ḥisbah*” by Jamāl al-Dīn Yūsuf b. ‘Abd al-Ḥādī (also known as Ibn al-Mubarrad al-Dimashqī [d.909/1503]), “*Ilm al-Iḥtisāb*” by Tash Kubrizadah (d. 968/1561) and “*Kitāb Bughyāt al-Irbah fī Ma‘rifat Aḥkām al-Ḥisbah*” by Ibn Dayba’ (d.944/1537) (Islahi 2008).

The *muḥtasib* had to be a person of exceptionally high standard as well as fully competent in matters concerning the law, the market and industrial affairs. He was also required to oversee the people's social behaviour as well as their municipal works and performance of religious duties. In fact, this institution made it possible for the state to exercise a comprehensive socio-economic control on trade and economic practices, the most important of which were, among others, supervising industry, professional services, product standardization, preventing hoarding and usurious practices and serving as an intermediary (Islahi 1988). In addition to that, Ibn Taymiyyah summarizes the *muḥtasib*'s religious, social and economic responsibilities in the following terms: “The *muḥtasib* shall offer for the Friday prayers other congregational prayers, [ensure] truthfulness and repayment of deposits, and forbid bad things like telling lies, dishonesty, insufficient weight and measures, fraud in industries, trades and religious matters, etc.” (Ibn Taymiyyah 1976).

### ***Ta‘dhīr* (Warning)**

Under *siyāsah shar‘īyyah*, rulers and judges are permitted to use wide discretionary powers; however, they must be in accord with the Islamic law's main objectives. For example, they

can impose penalties based upon their own discretion, observations and personal *ijtihād*, which are considered as *ta'dhīr* (Kamali 1998).

It has been generally established that the prescribed penalties (*ḥudūd*) must be enforced. But if the offender is to be pardoned, one must apply a *ḥadīth* narrated on the authority of 'Abdurrahmān Ibn 'Umar that the Prophet (ﷺ) said: "Pardon the prescribed penalties (*ḥudūd*) among yourselves, for once a *ḥadd* (capital punishment) is reported to me, then it becomes incumbent upon me to enforce the penalty." (Abū Dāwūd, *ḥadīth* no. 4376). This *ḥadīth* warns the Muslims not to be too eager when it comes to enforcing the *ḥudūd*. Nevertheless, "according to Abū Yūsuf, it is not permissible for the *imām* to show leniency or accept intercession in the enforcement of a *ḥadd* unless the proof of *ḥadd* is afflicted with doubt." According to the *ḥadīth* mentioned above, as well as the view of the majority of the scholars "intercession is lawful before a *ḥadd* offence is reported to the *imām* or his representative, as it is obvious there will be no intercession once the violation has been established through the lawful evidence" (Abu Yūsuf 1352).

If any doubt remains, the prescribed penalty should be avoided, for a *ḥadīth* narrated by 'A'ishah (*rah*) relates that the Prophet (ﷺ) said: "Drop the *ḥadd* penalties, insofar as you are able, in all cases of doubt. When you find a way to release a Muslim from a *ḥadd*, then you must do so, [for] it is better for the *imām* to err on the side of leniency than err on the side of harshness." (Abu Yūsuf 1352).

If the *sharī'ah* mandates no specific punishment or if the requirements of the assigned punishment remain unfulfilled, then a *ta'dhīr* (deterrence) one can be applied. For example, "when adultery (*zinā*) is not testified to by four witnesses, or when there is a doubt in the proof of *zinā*', murder, theft, and, in all cases, attempted crimes, the judge may impose a punishment in accordance with the conditions of the offender and the nature of the offence." (Shaltūt nd).

The ruler can apply a *ta'dhīr* punishment to anyone who commits a crime for which no specific punishment has been prescribed. It may consist of any measure that inflicts suffering, a verbal warning or measures that entail social humiliation (Ibn Taymiyyah 2004), dismissal from public office, financial loss, flogging and imprisonment. Although scholars differ over such punishments, it is said that they cannot exceed ten lashes. A vast number of scholars have held that these punishments can never reach the extent of the *ḥadd* penalty (Awa 1976). In other words, one group holds that *ta'dhīr* must not reach the minimum (or the lowest) *ḥudūd* penalty, whereas the other group says that when ascertaining the *ta'dhīr*'s maximum limit, one must refer to the type of offence in the *ḥudūd* categories (Kamali 1998). Ibn Taymiyyah reports the following *ḥadīth* of the Prophet (ﷺ), in which he said: "No one may be flogged more than ten lashes, except for transgressing any of the limits prescribed by Allah (*swt*)" (Bukhārī, *ḥadīth* no. 6848). According to some scholars, the term *ḥudūdullah* (the rights of Allah) in this *ḥadīth* refers not to the prescribed offences, but to the violation of His limits in general (Ibn Taymiyyah 2004). Consequently, the *Qur'ān* emphasizes that the punishment should not exceed its like in terms of severity or leniency: "And the recompense of evil is punishment like it, but whoever forgives and amends, he shall have his reward from

Allah; surely He does not love those who do wrong.” (*Qur’ān* 42:40). Therefore, its types should be determined with reference to the nature of the offence, the pain it imposed on the victim and its implication for society (Kamali 1998).

In addition, rulers are advised to be kind when faced with a choice between mercy and severity, as this reflects the principle of removing hardship from and bringing ease to the people, based on “Allah intends ease for you; and He does not desire for you difficulty.” (*Qur’ān* 2:185). This verse is supported by the *ḥadīth* of the Prophet (ﷺ), who said: “Gentleness does not fail to create beauty, whereas harshness is most like to lead to ugliness” (Muslim, *ḥadīth* no. 1594) and “Allah (swt) loves gentleness (*rifq*) and gives through gentleness what He gives not through oppression (*‘unf*).” (Muslim, *ḥadīth* no. 2593). The Prophet (ﷺ) advised Mu‘adh Ibn Jabāl and Abū Mūsā al-Ash‘arī, before they were sent to Yemen, to “be gentle to people and not hard on them; bring them good tidings of mercy and scare them not, and do not provoke them to dislike.” (Bukhārī, *ḥadīth* no. 3038). Therefore, “it is not benevolence (*iḥsān*) to the citizens to leave them to do what they like or avoid doing what they dislike. The essence of *iḥsān* is to ask them to do what is beneficial for them in this world and meritorious in the next, even if they happen to dislike it. However, when the ruler asks his subjects to do what they dislike, he must do so with gentleness and avoid inciting people with aversion to the *sharī‘ah*.” (Ibn Taymiyyah 2004).

## Conclusion

The paper concludes the topic in the form of research derived from qualitative and theoretical investigations supplemented by an analytical and conceptual framework. It maintains that a state in general and an Islamic state in particular have certain roles and responsibilities in terms of governing their people and the system. In addition, given that people were not created arbitrarily, they need to sustain their existence within a proper governing system structured by laws and regulations. Islam was sent to humanity as the last religion, one with the proper guidance (i.e., the *Qur’ān* and the *Sunnah*) to protect its essence until the Day of Judgement. Islam is both a religion of life as well as a way of life, and therefore leaves nothing to itself (which would render it meaningless) and cannot be excluded from either life or politics. In Muslim political thought and the history of Muslim tradition, religion and politics have never been separated, although some modernists have contrary ideas.

This paper has elaborated upon the significance of establishing a state as one of the Muslim community’s ultimate goals, for without it there is no guarantee of safety and the higher objectives of the *sharī‘ah* (i.e., life, religion, intellect, lineage, property, honour and state) would be in danger. Logically, protecting this state becomes an indispensable value in terms of guaranteeing the other six values. A strong state would be able to protect these essential values and the *sharī‘ah*’s objectives. Islam, therefore, repeatedly urges its adherents to establish a state that will unify them and to obey its leader.

When dealing with state affairs, the ruler should discuss every issue with a consultation body (*majlis al-shūrā*) to ensure its legitimacy. Therefore, all of the government’s activities must be monitored by the institution of *ḥisbah* (or a similar one) to determine whether they are *sharī‘ah* compliant or not, for the ruler of an Islamic state, as well as its Parliament and

population, cannot be left to their own devices, because only Allah (*swt*) has true power. Given this reality, His *aḥkām* (rules) must remain supreme over all man-made legislation. However, rulers may use their discretionary powers, when necessary and based upon their own observations and personal *ijtihād* (i.e., *ta'dhīr*), in the absence of a prescribed ruling in the sources of Islamic law.

In addition, an Islamic state must provide a political framework for Muslim unity and cooperation, one that creates social justice among the people, because the absence of social justice makes unity impossible. The destruction of social justice would also destroy the state. Protecting Islam's territory and defending its sanctuaries against internal and external threats by any available means, including nuclear technology, is also an unavoidable necessity for ensuring the state's continued existence.

## References

- ‘Abdul Raḥmān, ‘Abdul Raḥīm. Issues in Corporate Accountability and Governance: An Islamic Perspective, *The American Journal of Islamic Social Science*, vol. 15, no. 1, 2010.
- Abu Yūsuf, Ya‘qūb Ibn Ibrahīm. *Kitāb al-Kharāj*, 2<sup>nd</sup> ed., (Cairo: al-Maṭba‘ah al-Salafīyah, 1352).
- Affendi, Abdelwahab. “*Who Needs an Islamic State*,” (London: Malaysia Think Tank London, 2008).
- Aḥmad, Mumtaz. “*State Politics and Islam*,” (Washington: American Trust Publication, 1986).
- Aqqād, ‘Abbās Maḥmūd. “*Al-Insān fī al-Qur’ān al-Karīm*,” (Cairo: Dār al-Hilāl, n.d).
- Asad, Muḥammad. “*The Principles of State and Government in Islam*,” (Great Britain: Dār al-Andalus, 1981).
- Asutay, Mehmet. “A Political Economy Approach to Islamic Economics: Systemic Understanding for an Alternative Economic System,” *Kyoto Bulletin of Islamic Area Studies*, 1-2 (2007), p. 3-18, p. 13
- Awa, Moḥammed S. Ta‘zīr in the Islamic Penal System,” *Journal of Islamic and Comparative Law* 6, (1976).
- Bahī, Muḥammad. *Al-Sin wa al-Dawlah min Tawjīhāt al-Qur’ān al-Karīm*, (Beirut: Dār al-Fikr, 1391/1971).
- Benwell, Richard. Gay, Oonagh. The Separation of Powers, *Section Parliament and Constitution Centre*, Standard Note: SN/PC/06053, Library of the House of Commons, p. 2-3.
- Charles, Montesquieu. *The Spirit of Laws*, Translated and edited by Anne Cohler, Basia Miller and Harold Stone. (New York: Cambridge University Press, 1989).
- Enayat, Hamid. “*Modern Islamic Political Thought*,” (Selangor: IBT, 2006).
- Greenfeld, Molly. *The Asymmetry of Separation of Powers Doctrine in Australia*, *The Western Australian Jurist*, vol. 3, 2012, p. 233-234.
- Hamilton, Alexander. (et al) *The Federalist: A Collection of Essays, Written in Favour of the New Constitution*, as Agreed upon by the Federation Convention September 17, 1787 (J & A McLean, 1788).

- Hasan, Zulkifli. Corporate governance in Islamic financial institutions: An Ethical Perspective. *Prime Journals of Business Administration and Management (BAM)*, vol. 2, no. 1, 2012, p. 405-411.
- Ibn Qayyim, “*I’lām al-Muwaqqi’in ‘an Rabb al-‘Ālamīn* (Cairo: al-Kulliyah al-Azharīyah, 1388/1968).
- Ibn Taymiyyah, “*Sharḥ Al-Siyāsah al-Shar‘īyyah fī Iṣlāḥ al-Ra‘iy wal-Ra‘īyyah li Shaikh al-Islām Ibn Taymiyyah*,” by al-Shaikh Muḥammad bin Ṣāleḥ al-Uthaimayn, (Beirut: Dār Uthmāniyyah and Dār Ibn Ḥazm, 2004).
- “*Al-Siyāsah al-Shar‘īyyah fī Iṣlāḥ al-Ra‘iy wal-Ra‘īyyah*,” (Riyadh: Dār al-Ālam al-Fawā’id).
- “*Public Duties in Islam: The Institution of the Ḥisbah*,” (Leicester: Islamic Foundation, 1985).
- Al-Ḥisbah* (Dār al-Sha‘b, 1976).
- Iqbal, Justice Javid. “*The Concept of State in Islam*,” in Mumtaz Aḥmad, “*State Politics and Islam*,” (Washington: American Trust Publication, 1986).
- Islahi, ‘Abdul ‘Azim. “Works on market supervision and Sharī‘ah governance (al-Ḥisbah wa al-siyāsah al-shar‘īyah) by the sixteenth century scholars,” *Quarterly Journal of the Pakistan Historical Society*, vol. 54, no. 3 (2008), p. 7-20.
- Islahi, ‘Abdul ‘Azim. *Economic Concepts of Ibn Taimīyah*, (Leicester: The Islamic Foundation, 1988).
- Kamali, Mohamad Hashim. Siyāsah Sharī‘ah or the Policies of Islamic Government, *The American Journal of Islamic Social Sciences*, vol.6, no.1, 1998, pp. 59-80.
- Kayadibi, Saim. *Istiḥsān the Doctrine of Juristic Preference in Islamic Law*, (Kuala Lumpur: Islamic Book Trust, 2010).
- Khallāf, ‘Abd al-Wahhāb. *Al-Siyāsah al-Shar‘īyyah*, (Cairo: al-Maktabah al-Salafīyyah, 1931).
- Mantran, R. “Ḥisbah-Ottoman Empire,” in *Encyclopedia of Islam*, (Leiden-New York: E.J. Brill, 1971), vol. 3, p. 489.
- Maududī, Sayyid Abul A‘lā. “*First Principles of The Islamic State*,” (Lahore: Islamic Publication Limited, 1978).
- Māwardī, Abū al-Ḥasan ‘Alī Ibn Muḥammad Ibn Ḥabīb al-Shāfi‘ī. “*The Ordinances of Government*,” translated by Asadullah Yate, (London: Ta-Ha publishers, nd.).
- “*Kitāb al-Aḥkām al-Sultāniyyah*,” (Cairo: Dar el-Hadith, 2006).
- “The Ordinances of Government,” translated by Asadullah Yate, (London: Ta-Ha publishers, nd.).
- Mutawallī, ‘Abd al-Ḥamid. “*Mabādī’ Nizām al-Ḥukm fī al-Islām*,” 2<sup>nd</sup> ed., (Alexandria: Mansha’ah al-Ma‘ārif, 1974).
- Olivier, N.J.J. Wasserfall, I. *Governance*, (Cape Town: Pearson Education, 2008).
- Qaradāwī, Yūsuf. “*State in Islam*,” translated by Al-Falāḥ, (Cairo: Al-Falāḥ, 1998).
- Qarnī, ‘Ali b. Ḥasan. “*Al-Ḥisbah fī al-Mādī wa al-Ḥādīr (The Ḥisbah in the past and the present)*,” (Riyādh: Maktabah al-Rushd, 1994), vol. 2, p. 499-521.
- Sachedina, ‘Abdulazīz A. “The Creation of a Just Social Order in Islam,” in Mumtaz Ahmad, “*State Politics and Islam*,” (Washington: American Trust Publication, 1986).
- Ṣadr al-Sharī‘ah, ‘Ubayd Allah Ibn Mas‘ūd bin Tāj Al-Sharī‘ah al-Ḥanafī. (d. 747/1346), “*Al-Tawdīḥ fī Hall Jawāmid al-Tanqīḥ*,” (Karachi: 1979).

Sarkar, ‘Abdul Bāri. “*Concept of Islamic Statecraft*,” (Bangladesh: Islamic Foundation Bangladesh, 1987).

Shaltūt, Maḥmūd. *al-Islām, ‘Aqīdah wa Sharī‘ah* (Cairo: Dār al-Qalam, n.d.).

Tāj, ‘Abd al-Raḥmān. *al-Siyāsah al-Shar‘īyah wa al-Fiqh al-Islāmī*, (Cairo: Maṭba‘ah Dār al-Ta’līf, 1373/1953).

*The Encyclopaedia Britannica*,  
<http://global.britannica.com/EBchecked/topic/467746/political-system#toc36695>  
retrieved 02 February 2015.

The three spheres of Government,  
<http://www.etu.org.za/toolbox/docs/govern/spheres.html#national> retrieved 02 February 2015.

Vile, M.J.C. *Constitutionalism and the Separation of Powers* (2nd ed.) (Indianapolis: Liberty Fund, 1967), p. 83.

Zekavat, M. *Political Economy of Islam, A Blend of Traditional Islamic Laws and Modern Political Economy*, (USA: Xlibris Corporation, 2007).

Ziadeh, Nicola. *Al-Ḥisbah wa’l Muḥtasib fī al-Islām* (Beirut: Catholic Press, 1963).