



## Role of Independent Judiciary in Islamic State: An Exploratory Study

Naveed Ur Rehman<sup>1\*</sup>, Dr. Hafiz Muhammad Abrar Awan<sup>2</sup>, Tooba Khalid<sup>3</sup>

### Abstract

This study explores the role of an independent judiciary within an Islamic state, a topic of significant scholarly and practical importance. Drawing on both historical precedents and contemporary interpretations, the research examines how Islamic principles interact with the concept of judicial independence. It investigates the theoretical foundations and practical implications of maintaining a judiciary that is impartial, fair, and accountable within the framework of Islamic law. By analyzing case studies and doctrinal sources, the study aims to elucidate the complexities and nuances of balancing religious precepts with modern legal standards in the context of governance. The findings contribute to a deeper understanding of the challenges and opportunities inherent in integrating Islamic principles with the principles of an independent judiciary in contemporary societies.

**Keywords:** Independent Judiciary, Islamic Law, Judicial Independence, Islamic Governance, Legal Theory

### 1. Introduction

The role of an independent judiciary is fundamental to the effective functioning of any modern state. In the context of an Islamic state, this concept takes on additional layers of complexity due to the interplay between Islamic principles and contemporary legal standards. The independence of the judiciary ensures that legal decisions are made impartially, based on the rule of law, rather than influenced by political or personal interests. In Islamic jurisprudence, the judiciary plays a crucial role in upholding justice and ensuring that laws are applied fairly and consistently. Islamic legal tradition provides a rich framework for understanding the principles of justice and fairness. Historical precedents from the time of the Prophet Muhammad (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) and the early Caliphates offer valuable insights into how judicial independence was maintained within an Islamic framework. However, the integration of these traditional principles with modern legal concepts presents both challenges and opportunities. This study aims to explore how an independent judiciary can be effectively implemented within an Islamic state while adhering to both Islamic teachings and contemporary legal standards. By examining historical examples, doctrinal sources, and modern case studies, the research seeks to illuminate the complexities of balancing religious and legal principles. This exploration will help in understanding how an independent judiciary can contribute to good governance and justice in an Islamic context, ultimately providing a model for contemporary Islamic states to follow.

### 2. Core Aspects of Islamic Society

The Islamic society may differ for different people, but generally Islamic society is considered as a social system based on Islamic principles and values. Providing justice, peace, morality, benevolence, sacrifice and social equality are considered important in Islamic society.

Moral principles play an important role in Islamic society, forcing people to respect each other's rights and conduct social interactions with justice. Good management of Zakat, charity and other social affairs is also important in Islamic society.<sup>1</sup>

Judiciary also plays an important role in the definition of Islamic society, which helps in solving social and legal problems and works for the delivery of justice.

Knowledge and education also play an important role in defining an Islamic society, which educates people in moral and worldly sciences so that they can participate optimally in social life.

#### 2.1. Political system of Islam and modern times

In the present era, the rulers and politicians have given such an identity to politics and have made it so far away from its original purpose that when a person hears the name of politics, he imagines such a bad politician in his mind. Who is based on lies, breach of promise, accusations, deceit and whose hands are stained with blood, who strangles humanity for his own interests, who causes riots in the name of caste, religion etc., who Also, he oppresses a person by using his power, and he who uses money in an illegal way, etc.

After seeing such politics, the question arises in the mind of a person that what is the relationship between Islam and politics? And why will Islam allow politics? Remember Islam has nothing to do with such dirty politics.

But Islam and politics are inseparable for each other because Islam has not only guided the individual life of man but also has a deep influence in the collective life.

Islam is a system of life and it has been guiding and guiding man in every corner and every front, whether it is related to worship or affairs, economics or sociology, or whether it is related to political science. He shows the way in every aspect of life, now let's know the true definition of politics.<sup>2</sup>

<sup>1\*</sup> Assistant Professor, University Law College, University of the Punjab, Lahore, Pakistan., [naveedurrehman.law@pu.edu.pk](mailto:naveedurrehman.law@pu.edu.pk)

<sup>2</sup> Assistant Professor, Department of Urdu Encyclopedia of Islam, Allama Iqbal Campus, University of the Punjab, Lahore, Pakistan

<sup>3</sup> Doctoral Candidate, Department of Islamic and Oriental Learning, University of Education, L.M.C, Lahore

## 2.2. The Concept of Politics in Islam

In Islam, politics is called the act by which people are closer to reform and away from temptation and corruption. In the Qur'an, the meaning of politics is for the ruler to decide between the people with justice, to free the society from oppression, to enjoin what is good and not to do what is evil (to prevent evil and to encourage good) and to prohibit bribery, etc. Is.

There are many verses in the Holy Qur'an that clarify the meaning of politics, but most of the Qur'an contains politics, for example, justice and fairness, commanding what is good and not what is wrong, expressing support and sympathy for the oppressed, hating oppressors and oppression, And apart from this, the style of politics of the Prophets has also been described in the Qur'an.<sup>3</sup>

### 3. The Political System Established by the Prophet Muhammad (PBUH)

The political system and its important aspect of the life of the Holy Prophet (peace and blessings of Allah be upon him) starts from Madinah. Taking into account the polytheists of Medina and the surrounding areas of Medina and other Arab tribes, a constitution containing about 53 points was prepared, which was known as the Covenant of Medina.<sup>4</sup>

He established such a system of politics that the world cannot present an example of. He established brotherhood, justice, equality and rights. Jews were given religious freedom. Punished the murderers and provided justice to the oppressed.

He (peace and blessings of Allah be upon him) created a clear system of state related to foreign affairs, trade, justice, health, industry, education and human rights, but also taught the world how to run the affairs of government and after that, the Caliphs of Rashidun in their time. By following the life of the Prophet (pbuh), he made arrangements and organized, even animals were given rights.<sup>5</sup>

The caliphate period of Hazrat Umar Farooq (RA) was an excellent period. During the ten and a half years of the caliphate of Hazrat Umar (RA), the Islamic state spread from Iran, Balochistan, Khorasan to Tripoli and the foothills of Islam extended to about 2.2 million and 15 thousand square miles. Ho Gaya, which is a record in human history in the period also known as the Golden Period, he conquered more than a thousand cities in the Caliphate and set a high example of justice and honesty on earth.<sup>6</sup>

On the one hand, he created righteousness and purity in the hearts of God's creatures, on the other hand, he established such a welfare system that fulfilled all the basic needs of every person, even clarified the laws for the protection of animals and said that if the banks of the Nile River If even a dog dies of hunger, Omar will be responsible for it.

Hazrat Umar Farooq (RA) was once delivering a sermon in the mosque. A man stood up and said, "Umar, we will not listen to the sermon until you explain how you got more clothes than us." If you have divided it equally, Hazrat Umar said, "By God, I am witness to Allah. This is my son Abdullah in front of you. You can find out from him. In fact, the clothes that I received were not suitable for me. So I have made one by mixing my son's clothes.

### 3.1. Electoral system in the light of Islamic guidelines

Islam has provided guidance and guidance for every corner of life, be it individual or collective. Some issues are related to the individual and some issues require collective action. An individual's own mistakes affect only him or at most those associated with him. While social issues affect the entire society. This is the reason why Islam has laid great emphasis on "collectivism" and the stability of the collective system. The greatest quality of the collective (political and social) system of Islam is that it is very simple and consistent with natural requirements. Our main topic of discussion and research is the electoral system of Islam. In this regard, Islam has previously given some simple and very common instructions, whose complete observance will block the way of future evils. For example

### 3.2. Prohibition of office seeking

The Prophet ﷺ said:

一

By God! We will never make anyone who questions and is greedy over our affairs."

This makes it very clear that such a person who himself aspires to a post or position is not eligible for it. If we go deeper into this point, it is found that the sincerity required to fulfill and pay for the collective affairs ends with the desire for position and the spirit of greed. This is the reason why Islam gives great importance to this important natural point.

### 3.3. A sense of trust

According to the concept of congregation in Islam, if a person gets a position, his status becomes an "Amin". Who is accountable to Allah Almighty for all his duties. Because the position of supreme sovereignty belongs only to Allah. We can call this concept "Ehsaas-e-Amanat".

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ<sup>٨</sup>  
"And those who do not judge according to the revealed order of Allah, those are the disbelievers."

2

2

2

6

10

6

5

1

### 3.4. Arbab settlement consulting

The order of the state which Islam likes can never be established without mutual consultation and consent. The divine statement is:

وَالَّذِينَ اسْتَجَأُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ

"And those who accepted the invitation of their Lord and established prayer and consulted each other in their affairs."

Here in the Holy Qur'an, the characteristic of the Islamic society is that they decide their affairs through mutual consultation. In all electoral processes, especially for the selection of the ruler, the consultation of the members of the Shura is necessary.

### 4. In the electoral system of Khilafah-e-Rashida

We find the practical example of the election system from the Rashidah Khilafah, because in the era of Prophethood, every order issued from the "House of Prophethood" was a permanent constitution. Which was accepted by all Muslims. In the presence of the Prophet ﷺ, the realization of this need (election system) could not have arisen, that is why it did not happen. After the passing away of the Prophet ﷺ, the most important thing that was faced was the establishment of the Prophetic Caliphate. Three groups became among the Companions (1) Muhajirin (2) Ansar and (3) Bani Hashim. All three were hesitant in their respective places but the problem was solved easily and very quickly. Because they found a text (legal evidence) in this matter. The Companions, may Allah bless them and grant them peace, learned that the one whom the Prophet (peace and blessings of Allah be upon him) made the Ameer of Hajj during his lifetime and entrusted the duty of leading the prayers to the most practical member of the Muslims, and who was blessed with the perpetual companionship of Allah, the Most High, and the Prophet (peace and blessings of Allah be upon him).<sup>10</sup> He is the only person who can deserve to be the successor of the Messenger.

There was no need for any electoral strategy in the presence of these clear signals and statements given by the Prophet ﷺ on various occasions. The main event was that the tragedy of the death of the Prophet ﷺ left many of the Companions in a state of wonder and amazement. This was the reason that as soon as they realized this matter (i.e. the Shariah text for the Caliphate of Siddiqui), all the differences ended completely. Done. It was the requirement of their character and character that they obeyed the command of God and the desire of the Messenger of God, and they did so. Not a single person voiced opposition to the establishment of the Caliphate of Siddiqui. In this way, the prophecy of the Prophet ﷺ was fulfilled word for word

The Caliphate of Siddiqui was established by the agreement of Allah, the Most High, the Prophet ﷺ and all the believers. Since we get the evidence of the Caliphate of Siddiqui from the "Scripture of Shari'a", therefore, his behavior will also be declared as "scriptural". He chose Syedna Umar Farooq-e-Azam as his successor.<sup>11</sup>

The manner in which Hazrat Umar Farooq (RA) adopted for his succession sheds a lot of light on the electoral process of Islam. They were among the most holy and blessed group of the Companions (i.e. Ushra Mubashra) i.e. Hazrat Uthman, Hazrat Ali, Hazrat Abd al-Rahman bin Awf, Hazrat Zubair bin Awam, Hazrat Talha bin Ubaidullah and Hazrat Saad bin Abi Waqqas. Radiyallahu Anhum was nominated as his successor and gave the right to the Companions to choose any of these six people as their caliph. The situation became such that only two candidates for the caliphate, Hazrat Uthman and Hazrat Ali, were left, and Arbab Hal wa Uqd entrusted the responsibility of electing the Caliph to Hazrat Abd al-Rahman bin Auf. If they wanted, they would have nominated Hazrat Uthman or Hazrat Ali as Caliph, but they were trained in the field of Prophethood. The time had come to build the political system of Islam in accordance with the spirit of Islamic teachings on the lines that could become a practical example for the later ones. He consulted the great companions in this matter. A referendum was held with the people of Madinah. He met the caravans coming and going to Madinah and also reviewed their views. After that, he came to the conclusion that Sayyidna Uthman Ghani, may Allah be pleased with him, is considered worthy of the caliphate by the most knowledgeable of the Ummah. So Hazrat Usman Ghani was elected Caliph. From this nature of "election of caliphate" we get the following points, which are the guiding key for the election process of Islam:

For the matter in which the stage of selection is presented, preference should be given to the companions of excellence. Since there was a significant number of Ushra Mubashra, only they were selected.

People should be consulted. But the opinion (vote) of each class cannot be equal. Therefore, the opinion of Arbab Halwa-Aqd should be given importance and the trend of thought supported by the majority of them should be accepted.

Arbab Shooora will also nominate the candidate.

No person may present his name by himself. Why should political parties be formed?

After the issue of caliphate or rulership is settled, all matters return to their respective places. The non-elected persons will naturally and in principle be declared ministers of the elected Caliph.

For the personality of the person to be elected, public opinion should be uniform among the people.

In Islam, the real election is of the Caliph. After that, all the subordinate positions and positions will be decided by the Caliph from time to time with the advice of his Shura.<sup>12</sup>

## 5. The method of choosing a ruler in Islam

The jurists have cited four methods of appointing a caliph on the basis of which any person can be declared a caliph:

Appointment of the Caliph by Ahl al-Hal wa Uqd and Ashab al-Rai.

The Khalifa should nominate someone as his crown prince.

The Caliph appoints a Shura who in turn appoints the Caliph.

Supremacy and Dominance, i.e. the Caliph was not appointed by Ahl-e-Hal Uqd, nor did the Caliph appoint anyone as Crown Prince, nor did he form a Shura to appoint the Caliph, but someone forcibly prevailed over the Musnad Caliphate and the people Let him become a caliph by joining himself with gentle love or by force.

Just whoever sits on the throne of Khilafah by the sword, then the position of the Salaf is clear that even if such a person is unconditional, the goal has been achieved, so his Khilafah will be recognized anyway.<sup>13</sup>

### 5.1. Independent Courts in an Islamic State

Independent courts are an important and fundamental principle in an Islamic state. An independent judiciary is essential for justice, transparency, and provision of justice. Independence of courts and delivery of justice is given great importance in Islamic teachings. Peace and development cannot be provided in any society without independence of courts and provision of justice.<sup>14</sup>

### 5.2. Rights of subjects in an Islamic state

The concept of the rights of subjects is an important and fundamental principle in an Islamic state. In Islamic teachings, importance has been given to protect the rights of the subjects and protect them. In Islamic society, the judiciary and the government are claimed to be responsible for the provision of the rights of the subjects and their protection. In Islamic teachings, the Judiciary has been ordered to act with integrity and justice to protect the rights of the subjects so that the rights of the subjects can be provided with justice.<sup>15</sup>

### 5.3. The concept of collectivism

The concept of collectivism is a very important topic studied in the social sciences. This means that man is a social animal and his life and development takes place in a social environment. The concept of collectivism encompasses the study of human relationships, social systems, and social affairs. Its purpose is to provide for the betterment and development of human society. The concept of collectivity is also very important in Islamic teachings and Islamic teachings provide various principles and guidelines for the improvement of social affairs, human relations, and social order.<sup>16</sup>

## 6. Values in an Islamic State

### 6.1. Order of Justice and Justice in an Islamic State

In an Islamic state, justice is ordered to be established between non-Muslim minorities and Muslims. Apart from duty and worship, it is concerned with state discipline and fundamental rights of citizens. In the Holy Quran, benevolence, mercy, kindness and tolerance have been given to non-Muslims.

### 6.2. Rights of non-Muslims

In an Islamic state, all non-Muslim minorities and subjects will be guaranteed protection of faith, religion, life and property, and honor and dignity. They will share civil liberties and fundamental rights on a human basis with Muslims.

### 6.3. Justice

Everyone will be treated equally in the eyes of the law, no discrimination will be allowed as a human being. Non-Muslims will have the rights and responsibilities of Muslims, which are incumbent on Muslims.

### 6.4. Protection of Life

Both a Muslim and a non-Muslim are equal in the protection of life, the life of both will be equally protected and respected. It is the responsibility of the Islamic state to protect the lives of its non-Muslim subjects and protect them from oppression and abuse.<sup>17</sup>

### 6.5. Independent Courts in the Islamic State

Independent Courts in the Islamic State One of the important and fundamental teachings is the independence of the courts and the provision of justice is given great importance. Independence and justice are the principles of the courts. An independent judiciary is essential for justice, transparency, and provision of justice. Peace and development cannot be provided in any society without Islam: The concept of rights in an Islamic state is an important and fundamental principle. In Islamic teachings, importance has been given to protect the rights of the subjects and protect them. In Islamic society, the judiciary and the government are claimed to be responsible for the provision of the rights of the subjects and their protection. In Islamic teachings, the judiciary has been ordered to act with trust and justice to protect the rights of the subjects so that the rights can be provided to the subjects with justice. The concept of collectivism is a very important topic studied in the social sciences. This means that man is a social animal and his life and development takes place in a social environment. The concept of collectivism encompasses the study of human relationships, social systems, and social affairs. Its purpose is to provide for the betterment and development of human society. The concept of collectivity is also very important in Islamic teachings and various principles and guidelines have been provided for the improvement of social

affairs, human relations, and social system in Islamic teachings. It is consistent and values play an important role in human life. The concept of values in Islamic teachings encourages people to have patience and trust and makes people believe that everything happens according to the will of Allah. In an Islamic state, justice is ordered to be established between non-Muslim minorities and Muslims. Apart from duty and worship, it is concerned with state discipline and fundamental rights of citizens. In the Holy Quran, benevolence, mercy, kindness and tolerance have been given to non-Muslims. In an Islamic state, all non-Muslim minorities and subjects will be guaranteed protection of faith, religion, life and property, and honor and dignity. They will participate in civil freedom and fundamental rights on a human basis as Muslims. Everyone will be treated equally in the eyes of the law, no discrimination will be allowed against anyone as a human being. Non-Muslims will have the rights and responsibilities of Muslims, which are incumbent on Muslims. In the protection of life, both a Muslim and a non-Muslim are equal, the life of both will be protected and respected equally. It is the responsibility of the Islamic state to protect the lives of its non-Muslim subjects and protect them from oppression and abuse.

## 7. Conclusion

Just think! That at that time the subjects had the right to question the Caliph without fear and the Caliph was required to explain it. I wish that today's rulers would govern by keeping the reign of Hazrat Umar Farooq in front of them, then oppression and oppression would end from the whole world and justice would prevail. Today, when the whole world thinks that oppression and oppression should be ended, crimes and crimes should be stopped and peace should be restored in the society, while it is impossible to establish peace without justice, therefore justice is necessary to restore peace in the society. Must be very strong. The world today is highlighting crimes to end crime. So this is increasing the powers of the oppressors and increasing their courage because some dirty politicians are behind the perpetrators of these crimes. But if the government does not highlight the crime and highlights the punishment while fulfilling the requirements of justice, then the criminals will learn from it, their courage will be low and corruption will be eliminated to a large extent and peace and order will be established in the society. Politicians should implement the Islamic political system and adopt the style of politics of the Caliphs, then, God willing, our society will be on the path of progress and the people will be happy!

## References

Ibn Timiya. (n.d.). *Al-Syasyat Al-Sharia*. Lahore: Dar Al-Dawat Al-Islamia, pp. 101-120.

Iqbal, A. (1965). *The reconstruction of religious thought in Islam*. London: Oxford University Press, pp. 45-67.

Johnstone, R. (1987). *Religion and society*. London: Macmillan, pp. 78-99.

Soltan, H. (1986). *An introduction to politics*. London: Longman, p. 179.

Muslim bin al-Hajjaj al-Qushayri al-Nisaburi. (2002). *Al-Musnad al-Sahih al-Mukhtasar bin Qawl al-Adl an al-Adl ila Rasul Allah* (5th ed.). Beirut: Dar Ihya' al-Turath al-Arabi, Hadith No. 4717.

Al-Maida [5:44].

Al-Shoora [42:38].

Al-Bukhari, M. I. (n.d.). *Al-Jami' al-Musnad al-Sahih al-Mukhtasar min Umur Rasul Allah* (1st ed.). Beirut: Dar Tawq al-Naja, p. 13, Hadith No. 1517.

Hitti, P. (1966). *The origins of the Islamic state*. Beirut: American University of Beirut, p. 56.

Dixon, K. (1986). *Freedom and equality*. London: Routledge, p. 29.

Eatwell, R. (1993). *Contemporary political ideologies*. New York: St. Martin's Press, p. 78.

Amin, M., Isa, Z., & Fontaine, R. (2011). The role of CS in enhancing CL in Malaysian Islamic banks. *The Service Industries Journal*, 31(9), 1519-1532.

Khan, M. M. (2005). *Islamic law and the judiciary: An analytical study*. Islamabad: Islamic Research Institute, p. 112.

Husain, M. (2007). *Islamic political thought*. Lahore: Institute of Policy Studies, p. 89.

Siddiqui, A. (2008). *Islamic governance: Theory and practice*. Karachi: Oxford University Press, p. 152.

Qureshi, M. (2009). *The role of judiciary in Islamic states*. Cairo: Al-Azhar University Press, p. 95.

Yusuf, S. (2010). *Principles of Islamic jurisprudence*. Riyadh: King Saud University Press, p. 76.

Jabbar, F. (2011). *Islamic law and legal reforms*. Beirut: Arab Institute for Research and Publishing, p. 134.

Rehman, J. (2012). *Comparative analysis of Islamic and Western legal systems*. Dubai: Al-Maktaba Al-Islamiyya, p. 110.

Bukhari, T. (2013). *The evolution of Islamic judiciary*. Amman: Jordan University Press, p. 140.

Farooqi, M. (2014). *Islamic law and modern legal systems*. Kuala Lumpur: Islamic University Malaysia, p. 158.

Hameed, A. (2015). *Islamic judicial independence: Historical perspectives and modern implications*. London: Routledge, p. 202.