

Siasah Shariah: A Mean to Ensure Justice in the Society

Ziaullah Rahmani, Assistant Professor

Faculty of Shariah and Law, International Islamic University, Islamabad

Abstract

Islam is a complete, universal and permanent code for the guidance of all spheres of human life. These characteristics of Islam require two kinds of peculiar qualities in the rules of Islamic law to remain fit for all the times and all the circumstances. One type is which makes the rules of Islamic law applicable universally i.e. the fundamental textual unchangeable principles which are not subject of any more *ijtihad*. Second is the type of rules which are flexible and are applied according to the demands of time and circumstances. The flexible part of rules which are legislated for governance purposes to keep the society affairs on the track of justice is called “*siyasah Shariyyah*” by the Muslim jurists. In the current article the background of *Siyasah Shariyyah* has been explained by discussing the significance of justice, its meaning and the texts of Quran and Sunnah about justice. Paving the way towards the discussion upon the meaning and scope of *siyasah Shariyyah*, the article tries to look into this matter in the light of opinions of different Muslim jurists. The main conclusion drawn from the discussion is that *Siyasah Shariyyah* is required to complement the body of political system of Shariah.

Keywords: Siasah Shariah; Justice; Society

Introduction: Islam is a *deen* of justice. Its sole purpose is to ensure justice in every sphere of life. In particular its political and legal systems aim at providing universal justice to every individual and group in the society. All the institutions established by Islamic political and legal system are basically structured in a way that they ensure the delivery of justice. One of the main tools for this purpose is called *Siyasah Shariyyah* which is an area of legislation left to the discretion of Islamic government to make sure the administration of justice.

The current article aims at highlighting this area of Islamic law; a facade of Islamic law which seldom comes under discussion. Firstly it discusses the meanings and significance of justice in the light of Quran and Sunnah and then it moves on to elaborate the meaning of *Siyasah* according to the opinions of Muslim jurists. There is also a brief comment on the opinions of two orientalist scholars about *Siyasah Shariyyah*. Ultimately the meaning and scope of *Siyasah Shariyyah* is discussed.

- Administration of Justice: the ultimate purpose of Islamic legal system

Justice is the foundation stone of Islamic legal system. It is the ultimate goal of sending the Prophets and messengers by Allah as has been declared in *Qur'an*:

(لقد أرسلنا رسلنا بالبينات وأنزلنا معهم الكتاب والميزان ليقوم الناس بالقسط...)

“Indeed we sent Our Messengers with clear signs and revealed with them the book and the Balance so that they might put people on Justice.”⁽¹⁾

Islam links the highest significance to justice. Divine Justice is the main pillar of the whole creation. The balance that is clear in the creation of heavens and the earth are a evidence Divine Justice.

So in Islam, justice and balance are vital to the scheme behind Allah’s creation as will be the case of accountability on the Judgment Day. It is the result of Allah’s Justice that man has been given free will because, without it, man neither deserves reward nor punishment for his actions. That is why, the great Muslim scholars have termed free will the Principle of Justice. Study of the reasons behind the destruction of many past nations reveals that they were ruined because there was less care or no care at all towards the establishment of justice.

Justice is perhaps the most important of the supreme values of Islam. In fact, it can be said that the main purpose of revelation and the tasks of Prophets (*‘alayhim-ussalām*) has been to establish a just order in the world.

Justice is the first principle of social life. It can be shown to govern all relations in life: between ruler and ruled, rich and poor, husband and wife, parents and children.

Even in the ordering of an individual's personal habits, justice must be done to the respective requirements of body, mind and spirit. As we have seen, it is unjust, for example, to neglect your body and its needs in search of spiritual development. The Prophet (peace be upon him) has clearly prohibited that by saying:

"أعط كل ذي حق حقه..."

“Give the right to every one to who it is due.”

In all Islamic institutions, justice can be seen to be operating: in the lines of congregational prayers where no one has precedence over another by virtue of power, wealth or rank; in the equality of all before the law such that no one, whether ruler or criminal turned "prosecution witness", can claim immunity; in the family where no preference should be shown by a parents to one child over others and so on.

In all your dealing, you are required to stand firmly for justice even if it be against yourself and your kith and kin, for love too can lead to injustice.

(وإذا قلتم فاعدلوا ولو كان ذا قربى وبعهدالله أوفوا، ذلكم وصاكم به لعلكم تذكرون...)

“And if you give your word you must be just, even though it be against your kin, and fulfil the covenant of God. For that is what He has commanded you that you may remember.”⁽²⁾

The fear of committing cruelty may even be a hurdle in doing of an act

that is otherwise allowed. In fact one of the derived principles of the *Shari'ah* is that all things are permissible provided that no damage or harm is caused to others from their practice and that in the event that such damage or harm is feared or confirmed, the permissible shall be proscribed to avoid such harm.⁽³⁾

So all the Prophets and messengers of Allah beginning from Adam (peace be upon him) to the last Prophet Muhammad (peace be upon him) strived for the establishment of justice in human life, in all its aspects. Justice is nearer to equality i.e. it creates a condition of equilibrium in the protection of rights and assignment of duties. Justice is obtained, sometimes, through inequality, like in unequal distribution of wealth. As declared by Allah the Exalted, Islam is a perfect system of life, therefore its way of establishing justice is also perfect. It is the only system which has been implemented in letter and spirit for centuries in many different cultural environments and societies. This is a feature unique to Islam.

- **Meaning of Justice:**

Justice means fairness, impartiality, equitableness, objectivity neutrality, just conduct or the exercise of authority in the maintenance of right.⁽⁴⁾

In Arabic its equal is '*Adl*'. It means to place things in their rightful position. The term is found both as substantive and as an adjective. It means rectilinear, just and well balanced. It thus applies to both beings and things.⁽⁵⁾

As adjective the word '*adl*' expresses more particularly a juridical conception and has numerous applications. According to al Mawardi the quality of '*adl*' is described as a state of moral and religious perfection. For Ibn Rushd it consists in not committing major sins and also avoiding minor ones.

According to *Al Majallah*, 'the '*adl*' person is one whose good impulses prevail over bad"⁽⁶⁾

The adjective is also used substantively; that is, a person of good morals.

Plato⁽⁷⁾ says, "What is due to every man is that he should be treated as what he is, in the light of his capacity and his training, while what is due from him is the honest performance of the work which the position assigned to him, requires."⁽⁸⁾

He speaks of justice in terms of services and functions which the individuals perform with regard to state. State according to him is created by mutual needs and hence services are to be reckoned with in describing justice. The individual has no intrinsic value except that his value lies in the performance of work for the state. From Islamic point of view social justice may be defined as the principle of Divine law. Following are the components of social justice:

1. To treat man as individual with liberty and equality as his birth right,

2. To provide him with equal opportunities of developing his personality so that he is better fitted to the situation to which he is entitled,
 3. To give such individual his due wherever his course of life may lie and
 4. To regulate his relation with society in such a manner that, far from being harmful, he contributes his own to its moral value and welfare.⁽⁹⁾
- Qur'an and Sunnah on Justice:

The following texts of Qur'an are worth mentioning when talking of justice in Islam.

Allah declares:

(يَأَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ، وَلَا يَجْرِمَنَّكُمْ شَنَاَنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا،
إِذْ لَوْ هُوَ أَقْرَبُ لِلتَّقْوَىٰ...)

“O you believers, Stand out firmly for Allah, and be just witnesses and let not the enmity of people make you avoid justice...”⁽¹⁰⁾

(إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ...)

“Verily Allah enjoins justice...”⁽¹¹⁾

(قُلْ آمَنْتُ بِمَا أَنْزَلَ اللَّهُ مِنْ كِتَابٍ وَأُمِرْتُ لِأَعْدِلَ بَيْنَكُمْ...)

“...say I believe in whatsoever Allah has sent down of the Book and I am commanded to do justice among you...”⁽¹²⁾

(إِعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ...)

“Be just that is nearer to piety.”⁽¹³⁾

(لَا إِلَهَ إِلَّا هُوَ وَالْمَلَائِكَةُ وَأُولُو الْعِلْمِ قَائِمًا بِالْقِسْطِ...)

“There is no God but He: that is the witness of Allah, His angels and those endowed with knowledge standing firm on justice.”⁽¹⁴⁾

Allah says:

(لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ...)

“We sent aforetime our messengers with clear signs and sent down with them the book and the balance of right and wrong that men may stand forth in justice.”⁽¹⁵⁾

It is worth mentioning that Allah has created the whole universe with a particular measure or balance and man has been asked to observe it strictly.

(وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ، أَلَّا تَطْغَوْا فِي الْمِيزَانِ، وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ)

“And the sky He has uplifted; and He has set the measure, that you may exceed not the measure, but observe the measure strictly, nor fall short thereof.”⁽¹⁶⁾

The measure and balance refer to justice, the heavenly virtue which should be established among all types of men who constitute a society. Man has to act justly with him and the world around him.⁽¹⁷⁾

Allah says:

(إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَوَدِعُوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ، إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ.)

“Indeed Allah commands you to render back trusts to those to whom they are due and that when you judge between people, judge with justice, surely Allah admonishes you with what is excellent.”⁽¹⁸⁾

There are many sayings of the Prophet Muhammad (peace be upon him) which emphasize this principle of *Qur'an*, i.e. right man for the right job.

The Prophet (peace be upon him) said, “Whoever is entrusted with the affairs of the Muslims and he delegates part of it to a man while he knows a better one for it, he is a traitor in the eyes of Allah and His Messenger.”

It is reported by Bukhari⁽¹⁹⁾ and Muslim⁽²⁰⁾ that a group of men visited the Prophet (peace be upon him) and asked him a governmental post. He replied, “we do not install in our offices those who ask for it.”⁽²¹⁾

Once the Prophet (peace be upon him) said to ‘*Abdurrahman bin Samurah*, “O Abdurrahman, never ask for a post, if it is given to you without your demand, you left to it on your own.”⁽²²⁾ The Prophet (peace be upon him) said, “Who ever asks for the position of judge and makes others intercede in his favour will be left in it to his fate and whoever is entrusted with it without his demand and without asking others to intercede in his favour, Allah will send down an angel to direct him in it aright.”⁽²³⁾

Bukhari narrates on the authority of Abu Hurairah (May Allah be pleased with him) that the Prophet (peace be upon him) said,

“When the trust is lost, then the Last Day is at hand,” the Companions asked, “how can it be lost?” He replied, “when the offices are assigned the people not worthy of these offices, it means that the Last day is at hand”

Muslims are unanimous about the fact that the guardian of a minor, the custodian of a endowment and a legal representative should administer the affairs entrusted to them in the best of their knowledge and effort.⁽²⁴⁾

Allah says:

(وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ)

“...and don’t approach the property of orphan except in the best possible manner...”⁽²⁵⁾

The Prophet (peace be upon him) also said:

“كلكم راع وكلكم مسؤول عن رعيته وإمام راع ومسؤول عن رعيته والرجل راع في أهله ومسؤول عن رعيته والمرأة راعية في بيت زوجها ومسؤولة عن رعيته والخادم راع في مال سيده ومسؤول عن رعيته والرجل راع في مال أبيه ومسؤول عن رعيته”

“Everyone of you is a shepherd and everyone of you is responsible for his flock, the caliph who rules the people is shepherd and is responsible for those whom he governs, the woman is a shepherd in her husband’s household and is responsible for what is under her supervision, the servant is a shepherd as regards his master’s wealth and is responsible for it and a man is shepherd with respect to the wealth of his father and is responsible for what is under his supervision, Lo! Every one of you is a shepherd and is responsible for his flock.”⁽²⁶⁾

The Prophet (peace be upon him) said:

“Any ruler to whom Allah has entrusted His flock and who dies one day after having cheated his subjects; Allah will not allow him to smell the fragrance of paradise.”⁽²⁷⁾

According to a tradition of the Prophet (peace be upon him) seven categories of believers will be given place under Allah’s shade on the Day while no other shade will be available except His. The first of those mentioned is a just ruler.⁽²⁸⁾

Abu Muslim; al Khawlani ⁽²⁹⁾ entered the court of Muawiyah and greeted him by calling him as hireling (*ajir*). The people there told him to call him as Commander of the Faithful but he insisted to call him ‘hireling’ and Muawiyah allowed him to do that. Then he explained, “You are a hireling whom the Lord of these sheep has hired to take care of them. If you tar the itchy among them and cure the sick and put the surplus of the more advanced at the service of the poor, their Lord will reward you in full. If you on the contrary do not tar the itchy nor cure the sick nor put the richer at the service of the poorer, their Lord will punish you.”⁽³⁰⁾

Islamic history is a witness to the fact that Muslim rulers understood the significance of administration of justice. The ideal period in this respect was, no doubt, the earliest era of the Prophet (peace be upon him) and his Companions particularly the *Khulafa-i-Rashideen*.

In the famous letter sent by Umar (May Allah be pleased with him) ⁽³¹⁾ to Abu Musa Ash‘ar^l the functions of judiciary were laid down as follows. “After the praise to Allah, the administration of justice is a duty. The court must observe equality between the parties so that the weaker party may expect justice and the stronger may not expect concession. The burden of proof is on the plaintiff and the defendant may be put on oath but let this not defeat the ends of justice and law.”⁽³²⁾

In this letter and a few other letters, Umar (May Allah be pleased with him) has explained the basic principles of the administration of justice through courts. But Islam does not only inspires its followers to adhere to the rules of formal justice, rather it creates a characteristics of watchfulness in its followers which at times persuades them to bring themselves to justice without any external force making them do that.

Umar (May Allah be pleased with him) once went out carrying a skin for fetching water. His son asked him disapprovingly, “ why are you doing this?” Umar replied, “ I have been too self-satisfied and I must humble myself.” Here is a man who can recognize in the depths of his soul a pride in his office as caliph; in his conquests and greatness which he has attained and unwilling that such pride should continue. So he determines to humble himself in the right of all his subjects.⁽³³⁾

The theory behind the administration of justice in Islam is based on unique principles and the fountain head of the same is *Quran* and the legislative sovereignty of the Muslim community. Under these principles the Caliph, the Emperor or the Sultan is not the fountain head of justice.⁽³⁴⁾

As *Qur'an*, *Sunnah* and practice of *Ummah* throughout the history is a witness to the fact that the administration of justice is the primary purpose of Islamic legal and political systems, it is therefore imperative upon the Muslim *Ummah* that this important mission should be strived for by its representative rulers and it should be carried out completely i.e. all the basic departments of the administration of justice should be brought in action.

Siyasah Shar'iyah: A Means For Ensuring Administration of Justice

A contemporary scholar comments on *Siyasah Shariyyah* as follows:

Administration of justice is called *Siyasah Shariyyah* in Islamic law. In the wider meaning it includes the courts of the *Qadis* as well, and would thus cover the work of the jurists. In its narrow sense, it means the area of the law that the jurists left to the ruler to develop and adapt according to the changing times and circumstances. The distinctive feature of this part of law is its flexible rules of procedure and evidence as compared to the laws derived by the jurists. Under this heading we discuss the *Mazalim* courts and the offences falling under their jurisdiction. There were many other functions like regulation of the markets and maintenance of public morality that also came under this jurisdiction. Today the laws of taxation, traffic, hijacking, terrorism, corruption, accountability and the like would all fall under the *Siyasah Shariyyah* of the ruler.⁽³⁵⁾

Meaning of *Siyasah*:

Strictly literally speaking the word '*Siyasah*' means to tend and manage, connected with *sus*, which in Hebrew means "horse". Originally it was used in Bedouin society for tending and training of beasts, hence "*Sa'is*" is manager or trainer of horses, camels, etc.⁽³⁶⁾

The word *Siyasah* has been used in the sayings of the Prophet (peace be upon him). It is reported by Abu Hurairah (May Allah be pleased with him) that the Prophet (peace be upon him) said:

"كانت بنو اسرائيل تسو سهم الانبياء كلما هلك نبي خلفه نبي وانه لاني بعدى وسيكون خلفاء فيكثرون، قالوا فما تأمرنا يا رسول الله قال فو بيعة الأول فالأول، اعطوهم حقهم فإن الله سائلهم عما استرعاهم "

"The *Siyasah* of *Banu Israel* was conducted by their Prophets. When one of them passed away another succeeded him, but verily there is no Prophet (peace be upon him) after me rather there will be *Khulafa* (Successors) and they will (sometimes) be many. The Companions asked, "What then should we do?" He replied, "Fulfil the oath of

allegiance to the one whom you gave it firstly and then the next one. You fulfil your duty towards them and Allah will call them to account for the responsibility given to them.⁽³⁷⁾

Here the word *تسو سهم* means 'they ran the affairs of the government. So 'Siyasah' has been used here in its literal sense which is to run the affairs of public by their rulers in the form of enjoining what is better and forbid what is harmful. There are statements of jurists which prove this point. For example Ibn-e-Jarir al Tabari while explaining the logic behind the selection of the six Companions for *Khalifah* by Umar bin al Khattab says: "There was no one better than those six among the Muslim community in their status of religiosity, migration (for the sake of Islam), readiness (for sacrifice), wisdom and their knowledge of *Siyasah*."⁽³⁸⁾

Ibn-e-Manzoor, a lexicographer of eighth century after Hijrah, says:
"والسياسة القيام على الشيء بما يصلحه والسياسة فعل السانس"

Siyasah is managing a thing in a befitting manner and it is the job of a leader.⁽³⁹⁾

Ghazali counts knowledge of *Siyasah* as a communal obligation because it is something without that life cannot move on smoothly.⁽⁴⁰⁾

Ibn-i-Abidin defines *Siyasah* as follows:

"استصلاح الخلق وارشادهم الى الطريق المنجي في الدنيا والاخرة"

Seeking the betterment of people and their guidance towards the straight path delivering them in this world and in the Hereafter.⁽⁴¹⁾

After discussing the punishments and expiations of different crimes he says:

"وهذا تعريف للسياسة العامة الصادقة على جميع ما شرعه الله تعالى لعباده من الاحكام الشرعية"

This is explanation of true public *Siyasah* about all the legal commands of Allah the Exalted for His subjects.⁽⁴²⁾

This is because the purpose of punishments in Islamic law is to protect the basic objectives of *Shari'ah* envisaged in *Quran* and *Sunnah*. In the same manner other *Hanafi* Jurists also term the jurisdiction of the government in awarding suitable punishment for crimes where there is no provision of *Quran* and *Sunnah*, as *Siyasah*.⁽⁴³⁾

Ibn-e-Khaldoon says:

"فالسباسة والملك هي كفا لة للخلق و خلافة لله في العباد لتنفيذ احكامه فيهم"

Siyasah and government is the protection of people and being vicegerent of Allah among the subjects to implement His commands upon them.⁽⁴⁴⁾

'Siyasah' which we usually translate as "politics" could perhaps be more appropriately rendered in English as "statecraft". As normally used in classical Arabic, it denotes skill or a craft rather than a doctrine or philosophy. This word occurs frequently in the sense of statecraft, in statements or dicta attributed to the Umayyad period.⁽⁴⁵⁾

Abu Nasr al Farabi (d.339 a.h.) and Ibn-e-Seena⁽⁴⁶⁾ (d. 428 a.h.), in their writings discussed '*Siyasah*' in the sense of 'art of living and dealing with people'. They look to be impressed with the Greek philosophers because in their discussion of '*Siyasah*' one do not find the any reference to the objectives of *Shari'ah* or the popular notion of 'deputyship of Allah on earth'. They only refer to the fear of Allah in personal life of the people. Both held the same view of '*Siyasah*' of a person with himself, his relation with his Creator, dealing in the affairs of his income and expenses i.e. his economic affairs.⁽⁴⁷⁾

In fourth and fifth century after Hijra, it seems, that the Muslim jurists did not discuss '*Siyasah Shar'iyah*' as an independent branch of Islamic knowledge that is why one does not find any such reference to it in the writings of the above mentioned two scholars as is the case in the writing of later scholars who would not discuss '*Siyasah*' except in the framework of *Shari'ah*.

Another contemporary of Ibn-e-Seena , Al Hussain bin Ali al Maghribi (d. 418) wrote a manual on '*Siyasah*' particularly for rulers. In the very beginning of his book he says that when one writes something on *Siyasah*, he should be very brief because those who are involved in *Siyasah* has very little time to read for their pre occupation in the job of running the affairs of the state.⁽⁴⁸⁾

According to Al Maghribi '*Siyasah*' is of three types; *Siyasah* for self-reformation, *Siyasah* for the nobility and high ranking officials of the government, *Siyasah* for general public.

About the first type, among other things , he suggests to the ruler to have sufficient time for the remembrance of Allah and reminding oneself His great bounties. In this kind of *Siyasah*, he elaborates that the essence of *Siyasah* is fulfilling promises and proving one's threats true, rewarding the one who does good deeds and punishing those who does anything wrong, credibility in seriousness and jest, using sufficient resources not exhausting all and awareness to the news of far and near. Who ever has this grace and got the sense of it, will have all the '*Siyasah*' completely.⁽⁴⁹⁾

Al Maghribi differentiates between the *Siyasah* for general public and *Siyasah* for the high ranking government officials. Whatever he says about the *Siyasah* for the high ranking government official is compatible with the statement of jurists who discussed '*Siyasah Shar'iyah*'. According to his thesis the ruler must pay full attention to train the government officials in good moral conduct and always keep reforming them so that they might render best services to the public. The government officials, according to his views are like organs of the body, so if they are not working properly or if they are corrupt, it will affect the whole structure of the state. The ruler himself should act like the eye of the public; checking conducts of the officials constantly; correcting their misdeeds through proper means. He should never stop the process [of

accountability]. He should also take care of their rights and provide them with as much ease as he can.

Al Maghribi elaborates on the characteristics of Secretaries, Security officers, Revenue collector, army chief, judge and Muftasib etc. About the Muftasib he says that he should be an honest, trustworthy, having good moral conduct, aware of different ways of financial gains and cheating, and should be well versed in what is called public interest.⁽⁵⁰⁾

He advises to have best manner in dealing with general public i.e. سياسة العامة. He suggests that violence and force is not a proper way in dealing with them but always showing leniency and carelessness must also be avoided. This is because among the people there are those who are perverted when respected much and there are those who are corrupted when insulted. Al Maghribi also suggests to the ruler that he should make people serve him and come to his house for fulfilling their needs. Likewise saints and scholars should also come to the company of the ruler.⁽⁵¹⁾

Here the sense of training and managing animals passed early into the context of Islamic rulership, the conduct of state affairs and the management of the subject people, doubtless influenced by the ancient near Eastern idea of the ruler as shepherd and director of his human flock and perhaps also with the idea of the “man on horseback” as symbol of authority.⁽⁵²⁾

From the above discussion it can be concluded that the word “*Siyasah*” literally means to train and to take care of, the meanings which are very much there in statesmanship or statecraft. Therefore *Siyasah* is used in this latter sense now. It is the practical statecraft or the same as theory too like political science or political philosophy at the same time. Examination of the statements of Muslim jurists about *Siyasah* shows that any measures taken by the Muslim rulers for ensuring the preservation of the objectives of *Shari'ah* whether positively or negatively are included in *Siyasah*. So we find jurists terming the punishments which were awarded by the Companions for different crimes, keeping in view the circumstances of the crime and the criminals, without any specific evidence in *Qur'an* and *Sunnah* as *Siyasah*.

The use of word *Siyasah* by the Muslim jurists also show that by its use they mean only the *Siyasah* which is recommended by *Shari'ah* i.e. which is in accordance with the general spirit of *Qur'an*, *Sunnah* and the practice of the *Ummah*. That is what is called *Al Siyasah al Shari'yyah*. The Muslim jurists in the past never thought of *Siyasah* as a secular concept which has nothing to do with divine revelation. As we know today *Siyasah* (politics) aims at the interests of certain groups of individuals on the basis of language, area or ethnicity etc. In such a case morality or the concept of right and wrong becomes irrelevant and every step which promotes that particular interest is

deemed legal and just. The underlying philosophy of such *Siyasah* is “might is right”.

Al Siyasah al Shari’yyah:

Most of the discussion about literal meaning of word ‘*Siyasah*’ in particular by the Muslim jurists is basically a discussion on *Siyasah Shariyyah* because as mentioned earlier the *Siyasah* which does not take into consideration the basic principles of *Shari’ah* has no value within Islamic law.

Siyasah Shariyyah, as is evident is composed of two words; *Siyasah* and *Shar’iyyah*. The former was discussed in detail in the previous unit. *Shari’yyah* means which emanates from *Shariah*.

Siyasah Shariyyah is basically a broad doctrine of Islamic law which authorizes the ruler to determine the manner in which *Shari’ah* be administered. The ruler may accordingly take discretionary measures, enact rules and initiate policies as he deems are in the interest of good governance, provided that no substantive principle of *Shari’ah* is violated thereby. The discretionary powers of the ruler under *Siyasah Shar’iyyah* are particularly extensive in the field of criminal law. The head of the state and those who is in charge of public affairs; the “*Ulu al Amr*” may thus decide on rules and procedures as they deem appropriate in order to discover truth and to determine guilt. With regard to the substantive law of crimes too, the *Ulu al Amr* have power to determine what behavior constitutes an offence and what punishment is to be applied in each case.⁽⁵³⁾

Ibn-e-Qayyim is of the view that division of methodology of decision (الحكم) into *Shari’ah* and *Siyasah* is like others’ views of the division of *Deen* into *Shari’ah* and *Tariqah* or its division into reason and transmission; all those divisions are invalid. Rather *Siyasah*, *Tariqah*, *Haqiqah* and ‘*aql*’ all of them are divided into two kinds: valid and invalid. The valid ones are part of *Shari’ah* and it has no more divisions. Invalid ones are the opposite which negate it. This is one of the most important principles and most beneficial one. It is based upon one thing i.e. the universality of the Prophethood of Muhammad (peace be upon him) with respect to all that is needed by people in the field of knowledge and their affairs. So the *Ummah* did not need any one after the Prophet except those who convey what the Prophet (peace be upon him) was told to do. Universality of the Prophethood of Muhammad has two aspects: firstly, those to whom he was sent i.e. to all, secondly, encompassing all matters of life. His Prophethood is perfect and covering everything. Belief in the Prophethood is not complete until it is firm that there is guidance in it for every matter of life. So every branch of learning is covered by it.

The Prophet (peace be upon him) taught the *Ummah* everything in life. Even manners of toilet, sexual intercourse, sleep, etiquettes of eating and drinking, standing and sitting, ascending and descending, staying at home and

travelling , silence and speech, isolation and socializing, poverty and financial ease, health and sickness and all rules of life and death have been taught by him. So how is it possible that such a perfect system of life would lack *Siyasah* and we would need some external aid to teach us *Siyasah*. Whoever thinks that there is no *Siyasahin Deen* or is outside it, is virtually saying that they need another Prophet (peace be upon him).⁽⁵⁴⁾

According to Ibn al Qayyim, Ibn-e-Aqeel said, ‘ the practice of *Siyasah Shar‘iyyah* in the country has been shown to be firm. No Imam disregards reliance on it. If a scholar from Shafi school said, ‘there is no *Siyasah Shar‘iyyah* except in a matter which agrees with Islamic law, Ibn-e-Aqeel says, *Siyasah Shar‘iyyah* is an action in which the people are closer to righteousness and away from mischief, even if the Prophet (peace be upon him) (peace be upon him) did not decide precisely what was to be done in such a case nor had revelation been come about it. If you mean by your saying, ‘has agreement with Islam’ that it does not have any contradiction with Islam, (that is alright) but if you mean by your statement that no *Siyasah Shar‘iyyah* except in the matter which has come through Islam with precise evidence, that would be wrong. What you are saying then is that you are considering the Companions as wrong. Since the four Rightly Guided Caliphs have punished by severe means and mutilation and no body who is versed in *Sunnah* can deny it.⁽⁵⁵⁾

According to him there are two kinds of understanding (Fiqh) that is a must for a ruler to possess. Understanding of the rules of general events and understanding of each factual situation and circumstances of people whereby truth and lie, right and wrong can be distinguished for deciding in that particular situation according to the ground facts. This is obligatory and should not be contrary to the ground facts. Whoever has a taste of *Shari‘ah* and is aware of its perfection and its inclusion of all the temporal as well as spiritual interests and its bringing of justice which resolves disputes among people and infact there is no justice superior to it and no welfare superior to what is included in it; knows well that just *Siyasah* is a part and branch of it. And whoever is acquainted with the objectives and understands it well does not need any other *Siyasah* in its presence.⁽⁵⁶⁾

According to an Orientalist Scholar’s understanding:

“the discretionary power of the sovereign which enables him, in theory, to apply and to complete the sacred Law and, in practice, to regulate by virtually independent legislation matters of police, taxation, and criminal justice, all of which had escaped the control of *QADI* in the early Abbasids’ times, was latter called *Siyasah*. This *Siyasah* is the expression of the full judicial power which the sovereign retained from the Umayyad period onwards and which he can exercise whenever he thinks fit. *Siyasah* means, literally, “policy” and it comprises the whole

of administrative justice which is dispensed by the sovereign and by his political agents, in contrast with the ideal system of the *Shariah*; the religious law of Islam, which is administered by the *qadi*. The application of *Siyasah* in the nature of things, often touches the *nazar fi al-Mazalim*, and both terms are, to a certain extent, used as synonyms. The *qadis*, too are obliged to follow the instructions which the ruler may give them in exercise of his power of *Siyasah* within the limits assigned to it by the *Shariah*.⁽⁵⁷⁾

Here the Scholar, who is of course, an orientalist, very well described *Siyasah Shar'iyah*, but he seems to be inclined towards the idea that it is something other than *Shariah*. The fact of the matter is that it is not the case. *Siyasah Shar'iyah* is the application and implementation of the real spirit of *Shari'ah* therefore there is no chance of its being something else than the ideal *Shari'ah* which is implemented by courts. Therefore according to Muslim jurists the judiciary and broadly speaking the administration of justice itself is part of *Siyasah Shar'iyah*. To say that the judiciary has to carry out whatever the sovereign tells them to do, is over simplification of the matter. Practice may have been different from time to time and person to person in the long history of Muslim governments but theoretically speaking, though, there may be legitimate orders of the government which the judiciary is to carry out as per *Shari'ah* rules but many a times the judiciary would stop the ruler from doing something which goes against the law or would assert its rightful position against any wrongful step taken by the government.

Another impression which the above mentioned scholar seems to be having and creating is that there is a division of religious and secular laws in Islamic legal system.. This is not a proper perspective in which Islamic Law is being seen. It must be based either on ignorance or mala fide intention to equalise Islamic law with the man made systems. There is no doubt that Islamic law is a purely religious law but it is an all encompassing system and no matter of life is out of its purview. The political theory of Muslims is based upon the concept of Caliphate or vicegerence of Allah on earth. So every sphere of life has to be regulated by the *Shari'ah* and whatever policy the state adopts, has to be in conformity with the basic principles of *Shariah*. The following saying of the Messenger of Allah (peace be upon him) is a fundamental norm in this respect:

" لا طاعة لمخلوق في معصية الخالق "

There is no obedience of creature if it amounts to the disobedience of the Creator.

According to another Orientalist namely Coulson:

There are two basic requirements for a person to hold the seat of Caliph. One; he should be extremely pious in his character, and second;

he must have the ability to ascertain and understand the terms of God's Law (*ijtihad*). It is a recognised doctrine among the Muslim jurists that any one being so qualified has the power to take such steps as he sees fit to implement and supplement the principles established by the religious law. This system of government was known as "government in accordance with the revealed law" (*Siyasah Shr'iyah*) but it is obvious that the term "Shar'iyah" here has a far wide connotation than the technical system of law which is expounded in the manuals of the jurists and which we refer to as *Shari'ah* Law. To the public lawyers the concept of sovereign being bound to rule according to the *Shari'ah* meant that he was bound to give effect to the general purposes of God for Islamic society. While legal doctrine had explained these purposes in terms of the rights and duties of individuals and had established certain inviolable standards of conduct, the wider and supreme duty of the sovereign was the protection of the public interest; and in pursuance of it he was afforded an overriding personal discretion to determine, according to the time and circumstance, how the purposes of God of the Islamic Community might best be effected.⁽⁵⁸⁾

He adds, that the doctrine has granted the ruler such wide discretionary powers on the assumption that he would be ideally qualified for office. But it is precisely here that the idealistic nature of the doctrine is at its most apparent; for there existed no constitutional machinery, and in particular no independent judiciary, to guarantee that the ruler would be so qualified and that those powers would not be abused. Although the doctrine expressed to perfection the concept of a state founded upon the rule of God's Law, it never seriously challenged the ruler's autocratic power to control the practical implementation of the law; and it finally reached the point of abject surrender and recognition of its total impotence by acknowledging the principle that obedience was due to the political power whatever its nature, and that even the most impious and tyrannical regime was preferable to civil strife. The order of allegiance expressed in the Quranic Verse: "Obey God, His Apostle and those at the head of affairs" had been reversed and the only limits upon the de facto power of the ruler were those that he found in his conscience.⁽⁵⁹⁾

Shari'ah Law, however, strong its religious force as providing an ideal and comprehensive code of conduct for the individual, can form only a part of Islamic Legal System. The doctrine of *Siyasah Shar'iyah* based on a realistic assessment of the nature of *Shari'ah* Law and the historical process by which it had been absorbed into the structure of the state, admitted the necessity for, and the validity of, extra-*Shari'ah* jurisdictions which cannot therefore be regarded in themselves, as deviations from any ideal standard. Islamic

government has never meant in theory or in practice, the exclusive jurisdiction of *Shari'ah* tribunals.⁽⁶⁰⁾

Mr. Coulson mentions two points in his statement which are worth commenting. One is that he mixes the practice with theory by mentioning the autocratic powers of the ruler in Islamic law. In previous lines a saying of the Prophet (peace be upon him) has been stated which is a criterion for the obedience of any leader among the Muslim at least theoretically. Nevertheless if a comparison is to be made, the Muslim rulers are the ones who have always been restricted on the pretext of rules of *Shariah*. In the systems of the government where Islamic law finds no place the ruler cannot be restricted in most cases even if he rules through so called "democratic" way. There are a thousand ways of manipulation of rules and laws for self interest by the rulers even in the apparently most advanced and civilised societies of today's world. It is the distinction of Islam, however, that when the world was not familiar with any type of rights for those ruled, in the Islamic societies there has been an opposition to the government's unIslamic policies, though its intensity varied from time to time.

Second thing which has been mentioned by Mr. Coulson is extra-*Shari'ah* jurisdiction, which again creates an impression as if there is some domain of state affairs which is out of the purview of *Shariah*. This contention is a total fallacy. There is nothing like extra-*Shari'ah* jurisdiction. The permission to the ruler to pursue special policies in fitness to the circumstances of his time, where no textual rule is available, is not unconditional. He must never deviate from the basic principles of *Shariah*. He must never legislate in the matters where clear text is available for guidance.

According to Islamic theory man is a trustee of Allah on earth. The trust which he has to take care of is '*Khilafah fi 'l Ardh*' (deputyship of Allah on earth). Islam has provided man with instruments and tools to fulfill the responsibilities given by Allah to him. One of those instruments is "*Siyasah Shariyyah*" which help the Muslim ruler to govern the affairs of the state which may sometime be quite unpredictable. If this facility is removed the ruler will be left with an inflexible and fixed legal system which will not be capable of coping with ever changing circumstances.⁽⁶¹⁾

Some contemporary jurists consider *Siyasah Shariyyah* as to act on '*maslahah*' (public interest) which the Law Giver has neither upheld nor overruled or it denotes administration of public affairs in an Islamic polity with the aim of realizing the interests of and preventing harm to the Community, in harmony with general principles of *Shari'ah* even if it disagrees with the particular rulings of Mujtahideen.⁽⁶²⁾

If one has to search for legal evidence or authority of '*Siyasah Shariyyah*' in Islamic law, one may deduce this from the injunctions of *Qur'an*

and *Sunnah* which make it a compulsion upon the *Ummah* to enjoin good and forbid evil. This compulsion is an obligation to be discharged by the *Ummah* through its representatives i.e. the rulers. To fulfill this obligation there has to be some means and that is *Siyasah Shariyyah*. As it is a duty of Muslims to follow the commands of their rulers, in turn they have to obey all the commands given by him in course of *Siyasah Shariyyah*. Thus those in authority within an Islamic state must have a way to strive for the ultimate goal of the *Ummah* i.e. to enjoin virtue and forbid evil. For this purpose the ruler can take any measures which he thinks suitable for this purpose. Any such measures will not be called *Siyasah Shar'iyah* unless it observes the limits of moderation which tends neither towards undue strictness nor towards laxity, for both lead to injustice and the loss of rights.

A just *Siyasah* would require that a judge should not set well known and dangerous criminals free merely because of insufficient evidence, but should detain them until the truth emerges. It would be patently tyrannical on the other hand to exercise the same degree of severity with every accused person, especially the first time offenders who have no criminal record.⁽⁶³⁾

According to the opinion of Muslim jurists *Siyasah* is of two kinds; *Siyasah Adilah* (just) and *Siyasah Zalimah* (unjust or cruel). The former is recommended and encouraged by *Shari'ah* because it helps the oppressed to gain his lost right from the dissolute oppressor and it is a vital part of Islamic legal system. The latter is forbidden by Islam.⁽⁶⁴⁾

Some scholars explain types of *Siyasah* as follows:

1. *Siyasah* [of selfishness] which basically aims at benefitting a particular group of individuals on the basis of colour, area or ethnicity etc. This kind of *Siyasah* permits use of any and every means for achieving its goals notwithstanding their legitimacy. It follows the saying; Goals justifies the means. To elaborate on this kind of *Siyasah* Machiavelli compiled his infamous book 'the Prince' and therefore this kind of *Siyasah* is attributed to him as Machiavellian *Siyasah*. It is neither approved by Islam nor by any good moral standard and it can never be adopted by Islam because it divides the humanity into the ruling and the ruled nations which leads to every kind of evil in the course of establishing hegemony upon each other.
2. Just and Straight forward *Siyasah*: it aims at reaching at the truth and obtaining of welfare for humanity in general. Only legal means are sought to achieve its goals. This is the *Siyasah* which Islam promoted during Prophet (peace be upon him)ic era and in the era of the Rightly Guided Caliphs.⁽⁶⁵⁾

3. According to Tarablusi, *Siyasah* is extensive law (شرع مغلظ) and it is of two kinds, unjust *Siyasah* which is prohibited by *Shari'ah* and just *Siyasah* which takes the usurped right from the cruel, redress many grievances, deters the mischievous and obtains objectives of *Shari'ah* for people. Thus it is obligatory to adopt it and rely upon it. It is vast areas of understanding where many are mistaken and their steps slip. To overlook it is to waste rights, leave *Hudood* (fixed punishments of public crimes) and encourage evil doers. On the other hand to commit an excess in it opens the door of cruelties and injustice which causes blood shed and usurpation of wealth illegally.⁽⁶⁶⁾

The concept of *Siyasah Shar'iyah* though in practice since the earliest period of Islamic history, was crystallized by Muslim scholars like Ghazali and others but very particularly by the two Hanbali scholars, Ibn-e-Taimiyyah and his pupil Ibn-e-Qayyim al Jauziyyah. The former thinks that if the divine law or *Shari'ah* is duly observed, *Siyasah* of the rulers will not conflict with Fiqh as elaborated by the scholars. Earlier authorities had conceded that rulers had the need and the right to deviate from Fiqh in order to attain collective *Siyasah* but Ibn-e-Taimiyyah claimed that such "deviation" are imaginary. If the conflict between them appears, it is either because the Fiqh is understood too narrowly, neglecting the rich resources of the *Shari'ah* for attaining the public good or because rulers disregard the divine will and act unjustly.⁽⁶⁷⁾

An in depth examination of the statements of the scholars about '*Siyasah Shar'iyah*' reveals that from practical viewpoint it denotes extensive powers of the ruler to carry out anything which is in the larger collective interest of the community and which is not conflicting with any injunction or principle laid down in *Qur'an* and *Sunnah* although there is no specific evidence for each of such cases. In fact it is the manifestation of the universality of *Qur'an* and permanence of great part of *Shariah*. It is through this means that the Muslim rulers, on behalf of the Muslim community at large can play the role of the deputy of Allah on earth.

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- ⁶¹ M. Hashim Kamali, 'Siyasah Shariyah', *The American Journal of Social Sciences*, op.cit. 6/1, p. 63
- ⁶² Abdul Wahab Khallaf, *Al Siyasah al Shar'iyah fi al Shu'un al dusturiyyah wa al Kharijiyah wa al MAliyah* (Kuwait: Dar al Qalam, 1988) p.6
- ⁶³ Abdurrahman Taj, *Al siyasah al Shar'iyah wa al fiqh al Islami*, (Beirut: Dar al Fikr, 1976) p.67,
- ⁶⁴ Ibn-e-Qayyim, *The Legal Methods in Islamic Administration*, op.cit. p.3, Ibn-e-Nujaym, *Al Bahr al Ra 'iq Sharh Kanz al Daqa'iq* (Quetta: Maktaba Majidiyyah n.d) 5/76,
- ⁶⁵ Abdul Muta'al al Sa'idi, *AL Siyasah fi 'Ahd al Nubuwwah* (Beirut, Dar al Fikr al 'Arabi) p.3,4
- ⁶⁶ Al'a'uddin Abi al Hasan 'Ali bin Khalil al Tarablusi, *Mu'inul Hukkam fi ma yataraddadu bayna al khasmayn min al Ahkam* (Egypt, Mustafa al Babi al Hilabi wa Awladuhu) p. 169
- ⁶⁷ *Encyclopedia of Islam*, op.cit.9/695