

**ABSTRACTS
OF THE
ARTICLES**

- ⁴³ See for example Burhanuddin Ali bin Abi Bakr bin Abdul Jalil al Marghinani, *Al Hidayah Sharh Bidayat al Mubtadi* (Karachi: Idarat al Qur'an wa al 'ulum alIslamiyyah, 1417 A.H) 5/241-244
- ⁴⁴ Ibn-e-Khaldoon, Abdurrahman bin Muhammad, *Muqaddimah*, (Beirut: Mu'assasah al 'Ilmi li al matbu'aat, n.d) p.113
- ⁴⁵ For the use of word "siyasah" through history see "siyasah" by Bernard Lewis in *"In Quest of an Islamic Humanism"* ed. A.H. Green, pp.3-14
- ⁴⁶ Abu 'Ali Husain bin 'Abdullah bin 'Ali bin Sina, in (370 A.H./980 C.E.-----428 A.H/1037C.E) Born in Bukhara (presently Uzbekistan) He was a scholar of Mathematics, Astronomy, Physics, Philosophy and Logic besides being well-versed in Fiqh and Hadith and other branches of the Knowledge of Shariah. But in practical life he developed a great interest in Medicine and stated practising and researching it. Afterwards among other books he compiled his well-known book on medicine "*Al Qanun*" which was published and studied in Europe in fifteenth century and became a fundamental source for European medical Scientists. Ali bin Nayef al Shahood, *Mashahir a'lam al Muslimin*, available at : (<http://saaaid.net/book/open.php?cat=7&book=4843>) Accessed: 2-3-2010
- ⁴⁷ Al Maghribi, Al Wazir al Kamil Abul Qasim al Husain bin Ali, , *Kitab fi al siyasah*, , ed. Sami al Dahhan (Damascus: Al Ma'had al Fransi, 1327/1948) p. 38,39
- ⁴⁸ Al Wazir al Kamil Abul Qasim al Husayn bin Ali Al Maghribi, , *Kitab fi al siyasah*, , ed. Sami al Dahhan, op.cit. p.59
- ⁴⁹ Ibid. p.64
- ⁵⁰ See: Ibid p. 67-72
- ⁵¹ See: ibid p. 73,74
- ⁵² *Encyclopaedia of Islam*, op.cit. 9/694
- ⁵³ M. Hashim Kamali, 'Siyasah Shariyah', *The American Journal of Social Sciences*(Virginia: Association of Muslim Social Scientists of North America) 6/1, p.59
- ⁵⁴ Ibn-e-Qayyim, 'T'lam al Muwaqqi 'in (Beirut: Darul kutub al Ilmiyyah, 1978) 4/375-379
- ⁵⁵ Ibn-e-Qayyim, *The Legal Methods in Islamic Administration* trans. Dr. Ala'iddin Kharofa, (Kualalumpur: International Law Book Services, 2000) p.13
- ⁵⁶ Ibn-e-Qayyim al Jauziyyah, *Al Turuq al Hukmiyyah fi al Siyasah al Shar'iyyah*, , ed. Hamid al Faqi (Beirut Darul kutub al 'ilmiyyah, , 1953) p. 5
- ⁵⁷ Joseph Schachet, *An Introduction to Islamic Law* (New Delhi:Universal Law Publishing Company, 1997) p.54
- ⁵⁸ N.J. Coulson, *A History of Islamic Law* (New Delhi: Universal Law Publishing Company, 1997) pp.129-130
- ⁵⁹ N.J. Coulson, *A History of Islamic Law* op.cit. p.133
- ⁶⁰ Ibid. P.134
- 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'iyyah fi al Shu'un al dusturiyyah wa al Kharijiyyah wa al Maliyyah* (Kuwait: Dar al Qalam, 1988) p.6
- ⁶³ Abdurrahman Taj, *Al siyasah al Shar'iyyah 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* (Qüetta: 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

- Shahud, *Mashahir A'lam al Muslimin*, pp. 818-820 available at :
(<http://saaid.net/book/open.php?cat=7&book=4843>) Accessed: 2-3-2010
- ²¹ *Sahih Bukhari*, Hadith NO. 6730
- ²² *Sahih Muslim*, *Kitab al Imarah, Bab: Annahy 'an talab al imarah wa al hirs alayha*, Hadith No 3401, *Sahih Muslim*, *Kitab al Ayman, bab: man halafa yaminan fa ra'a ghayraha khayran minha an ya'tiya*, Hadith No 3120, *Sahih Sahih Bukhari*, *Kitab al ayman wannur, Bab Qawl Allah t'ala, la yu'akhidhukumu Allahu bil laghw fi aymanikum*, Hadith No 6132, *Jami' Tirmidhi*, *Kitab al Nudhur wal ayman, bab: ma ja' fi man halafa 'ala yamin fa ra'a ghayraha khayran minha*, Hadith No 1449, *Sunan Nasa'i, Kitab: adab 'l Qudah, bab: annahye 'an mas'alat al imarah*, Hadith No 5289, Ahmad, *Kitab: awwal musnad al Basriyyin, Bab: Hadith Abdurrahman bin Samurah*, Hadith NO, 19704, 19707, 19709, 19711, 19712
- ²³ Abu Dawud, *Kitab al udhiyyah bab: fi talab al Qada wa al tassaru' ilayhi*, Hadith No 3107, Tirmidhi, *Kitab al ahkam 'an rasulullah Bab: ma ja' 'an rasulullahi fi al qadi*, Hadith 1246, Ibn-i-Majah *Kitab al ahkam Bab: fi talab al qada wa al tassaru' ilayhi*, Hadith No 3107
- ²⁴ Dr. Omar A. Farrukh, *Ibn-i-Tamiyyah on Public and Private law in Islam or Public Policy in Islamic Jurisprudence* (Beirut: Khayat Book and Publishing Co. 1966) p. 19
- ²⁵ Al Qur'an6: 152
- ²⁶ *Sahih Bukhari*, *Kitab al Istiqrad wa ada' adduyun wa al hajr wa al taflis, Bab: al 'abdu ra'in fi mal-i-sayyidihi wa la y'amalu illa bi idhnihi*, Hadith No 2232, *Sahih Muslim*, *Kitab al Imarah Bab: fadilat ul Imam al 'adil wa 'uqubat al ja'ir wa al hath 'ala al rifq*, Hadith No 3408, Tirmidhi, *Kitab al Jihad 'an rasulullah, Bab: ma ja' fi al imam*, Hadith No 1627, *Abu Dawood, Kitab al Kharaj wa al Imarah wa al fay, Bab: ma yalzamu al imam min haqq al r'iyah*, Hadith NO 2539, Musnad-i-Ahmad, *Kitab: musnad al mukthirin min al sahabah, Bab: musnad 'Abdullah bin 'Umar bin al Khattab*, Hadith No 4266,
- ²⁷ *Sahih Muslim*, *Kitab al 'iman, Bab: Istihqaq al wali al ghash li r'iiyyatihi annar*, Hadith No 203
- ²⁸ *Sahih Bukhari*, *Kitab al 'Idhan, Bab: man jalasa fi al masjid yanta'uru al salah wa fadl al masajid*, Hadith No 620, *Sahih Muslim*, *Kitab al Zakah, Bab: fadl ikhfa al sadaqah*, Hadith No 1712
- ²⁹ A Companion died 62 A.H.
- ³⁰ Dr. Omar A. Farrukh, *Ibn-e-Tamiyyah on Public and Private law of Islam*, op.cit. p.20
- ³¹ Abu Hafs 'Umar bin Al Khattab, Second Caliph of Islam, was born after 13 years of the Elephant Year and was martyred by Abu Lu'lu' Feroz in 23 A.H.
- ³² Al Haj Muhammad Ullah, *The Administration of Justice in Islam* (New Delhi, Kiab Bahavan, ,1990), p.6
- ³³ Syed Qutub, *Social Justice in Islam*, (trans.) John B. Hardie(New York, Islamic Publications International, 2000), p. 183
- ³⁴ Anwar Ahmad Qadri, *Justice in Historical Islam* (Lahore: Shaikh M. Ashraf, 1974), P.2.
- ³⁵ Imran A. Khan Nyazee, *Outlines of Islamic Jurisprudence*, (Islamabad: Centre for Islamic law and Legal Heritage, 2002) pp.32,33,
- ³⁶ Gibb, H.A.R. et.al. *The Encyclopaedia of Islam* (Leiden, E.J. Brill, , 1991)9/694
- ³⁷ *Sahih Muslim*, *Kitab al Imarah, Bab: wujub al wafa bi bay'ah al khulafa al awwal fa al awwal*, Hadith No 3429, Ibn-i-Majah, *Kitab al Jihad, Bab: al wafa bi al bay'ah*, Hadith No 2862, Musnad-i-Ahmad, *Kitab: baqi musnad al mukthirin, Bab: musnad Abi Hurayrah*, Hadith No 7619
- ³⁸ Tabari, Imam Abu Jafar Muhammad bin Jarir, *Tarikh al Umam wal Mulook*, (Cairo: Matba'ah al Istiq' mah, 1939)
- ³⁹ Ibn-e-Manzur al Afriqi, *Lisan al 'Arab*, , (Beirut , Dar Saadir,) 6/108
- ⁴⁰ Muhammad bin Muhammad Abu Hamid al Ghazali, *Ihya' 'Ulumuddin* (Beirut: Dar al Ma'rifah n.d) 1/9
- ⁴¹ Muhammad Amin bin Umar Ibn-i-Lbidin, *Radd al Muhtar 'Ala al Durr al Mukhtar* (Quetta: Maktaba Majidiyyah, 1399 A.H) 3/162
- ⁴² ibid, 3/203

References

- 1 Al Quran 57:25
- 2 Al Qur'an 6: 152
- 3 Abdul Wahid Hamid from "Islam: The Natural way" http://www.geocities.com/mutmainaa/tafakkur/justice_islam.html (last accessed April 18, 2009)
- 4 Urdang, Laurence, *The Oxford Thesaurus*, (Oxford: Clarendon Press, 1992) p. 234, 'justice', *The Concise Oxford Dictionary* (Oxford: Clarendon Press, 1990)p642,
- 5 H.A.R.Gibb et.al. *The Encyclopaedia of Islam* (Leiden, E.J. Brill, , 1991), 1/141
- 6 *Majallah al Ahkam al 'Adaliyyah*, article 1705 (Dar al M'arifah Beirut 1977)
- 7 Plato (427?-347 BC) was a Greek philosopher. His teachings have been among the most influential in the history of Western civilization. After pursuing the liberal studies of his day, he became in 407 BC a pupil and friend of Socrates. From about 388 BC he lived for a time at the court of Dionysius the Elder, tyrant of Syracuse. On his return to Athens, Plato founded a school, the Academy, where he taught Mathematics and Philosophy until his death. His teaching was interrupted by two more visits to Syracuse (367 and 361 BC), which he made in the vain hope of seeing his political ideals realized in Sicily. Plato was a superb writer, and his works are part of the world's great literature. His extant work is in the form of dialogues and epistles. Some of the dialogues and many of the epistles attributed to him are known to be spurious, while others are doubtful. In the various dialogues he touched upon almost every problem that has occupied subsequent philosophers. The dialogues are divided into three groups according to the probable order of composition. His works include the well know *The Republic*, *Phaedo*, *Symposium*, *Phaedrus*, *Timaeus*, and *Philebus*. For more details see: *The Columbia Encyclopedia*, Sixth Edition 2008, available at: <http://www.encyclopedia.com/topic/Plato.aspx>, accessed 4-3-2010
- 8 As quoted in Muslehuddin, *Islam and Its Political System* (Islamabad, Dr. M. Muslehuddin Islamic Trust, IIUI, 1988) p. 127
- 9 Ibid. p. 129
- 10 Al Qur'an 5: 8
- 11 Al Qur'an 16:90
- 12 Al Qur'an 42:15
- 13 Al Qur'an 5:8
- 14 Al Qur'an 3:18
- 15 Al Qur'an 57:25
- 16 Al Qur'an 55:7,9
- 17 Dr. Muslehuddin, *Islam and Its Political System*, op.cit. p. 131
- 18 Al Qur'an 4:58
- 19 Muhammad bin Ismail bin Ibrahim bin al Mughirah al Bukhari, born in Bukhara in 194 A.H. in the house of a great scholar of *Hadith*. He Spent his life in collecting and compiling the famous and most authentic book of *Hadith*; *Al Jami' al Sahih*; popularly known as *Sahih al Bukhari*. Apart from it He also compiled two other books namely; *Al Tarikh al Kabir* and *Al Adab al Mufrad*. He died in 256 a.h. (See for detailed biography: Ali bin Nayef al Shahood, *Mashahir a'lam al Muslimin*, available at : <http://saaid.net/book/open.php?cat=7&book=4843>) Accessed: 2-3-2010
- 20 Abu al Husain Muslim bin al Hajjaj al Nisaburi (206A.H—261A.H), born and died in the city of Nisabur, one of the great *Imams* in the field of *Ahadith*, his book *Sahih Muslim* is one of the most authentic books of *Ahadith*. His teachers included Ishaq bin Rahwiyah, Bukhari and Ahmad bin Hanbal while his pupils included among others Tirmidhi. (See: Ali Bin Nayef al

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 Shariyyah*’ 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.

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'iyyah* 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

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