

# Concept of Sovereignty & Other Issues

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First of all, I shall discuss sovereignty. The Muslims have largely misunderstood this concept.

The question is: Why I am raising the issue of sovereignty? Recently in the BBC Dialogue Editor of a Bangladesh newspaper commented that – democracy means the sovereignty of people and as long as people who believe in the Sovereignty of God are involved in politics, there is no prospect or future of democracy in the country. And there was none to reply.

We have to address the issue of sovereignty afresh and look deep into it. The issue needs further in depth study.

It is said that British Parliament can do anything except making a man a woman and woman a man. What it means? It only explains the limitations of man's authority. We Muslims also do believe that by using our human authority we cannot change the natural law - for example we cannot force the sun to rise in the west and set in the east and so on.

The essence of Islam is submission to God, to always remain loyal and faithful to the command of God. To some people it is a limit to man's authority. U.S. Declaration of Independence does not expressly say that the people are sovereign, but rather that all men are created equal and endowed by their Creator with certain unalienable rights. An unalienable right cannot be eliminated even if the people vote to abrogate it. Unalienable rights therefore place a limit on the sovereignty of the people, even in democracy.

Allah is Hakim, Command is only for Allah [Al Quran 12:40] should not therefore be equated with Austin's concept of sovereignty. Austin did not refer to the Authority of God; he was referring to the authority of the ruler. Even in Kholafa-e-Rashadeen, Caliphs issued laws both in written and unwritten form and this did not constitute violation of Hakimiyaat of Allah.

In fact the modern concept of sovereignty is highly complex and technical in nature. According to Austin sovereign power possesses unlimited power, indivisible and a determinate authority. In real practice however there is nothing that can be called unlimited sovereignty in the sense that states actions are externally limited by the other states actions and rights, and internally state's power is divided between different organs of the state and government namely legislature, executive and judiciary. Powers are even sometimes subject to customs and public opinion. The bureaucracy and the media do exercise powers. Authority is divided and it is not possible to say that one controls the whole because each controls only a part. Each is supreme in its own sphere. Neither can be said to be supreme over the other. Taken all these factors into

consideration we can say that state's powers are internally divided. The state only exists externally, in relation to other states.

In 1969 I visited Lahore in student exchange program between the two wings of Pakistan. I met Moulana Mawdudi and discussed with him the concept of sovereignty. I asked him: In the matters of interpretation of the Text of the Quran- the Shariah- the Law, who shall exercise the final authority- who shall have the final say. Is it the Parliament? Is it the Judiciary- the Supreme Court being the interpreter of Constitution and Law? Is it the Council of Elders or the people by referendum?

Moulana Mawdudi did not give any specific or clear-cut reply. He only said that such issues would be resolved once the Islamic government is formed. I believe that the issue is not still resolved and the Islamic scholars and Ulama are even now divided on the issue and it needs to be discussed at the academic level.

To me the authority that shall have final say in the interpretation of the Text of the Quran is sovereign.

Only recently, I visited the website of the Jamaat-e-Islami Pakistan and downloaded a 'JI Media News' item dated Lahore 5 July 2002 captioned "Govt. deprives people of sovereignty". The news item states: "Ameer Jamaat-e-Islami Qazi Hussain Ahmad said on Friday that the government has deprived people of sovereignty ..." Look even the Jamaat-e-Islami Pakistan official website-news reports that Ameer of Jamaat-e-Islami Pakistan considers that the people of Pakistan are sovereign.

The preamble of the 1956 Constitution of the Islamic Republic of Pakistan states: "And Whereas the Constituent Assembly, represented by the people of Pakistan, have resolved to frame for the sovereign independent State of Pakistan a constitution". Look, even the 1956 Constitution of Pakistan, which was accepted by the then all Ulama and Islamic political parties of Pakistan, states that Pakistan is a sovereign state. The preamble at another place states: "Whereas the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights over land, sea and air should be safeguarded". That means Pakistan is a sovereign country and it must exercise its sovereign rights over all territories including sea and air.

In this connection what Moulana Motiur Rahman Nizami, Chief of Jamaat-e-Islami Bangladesh said in his inaugural address at Rukan Conference 2006 on 3 June 2006 is significant. He said: "Jamaat is respectful to the independence and sovereignty of all countries in the light of UN Charter" [Booklet- Inaugural Speech, JIB, Publication Department, Bara Moghbazar, Dhaka, 2006, p 22]. Look, Moulana Motiur Rahman Nizami even departed here from the traditional concept of the Sovereignty of God and making a statement that Jamaat believes in the sovereignty 'of all other countries'.

Let me give another example. Who was sovereign in the state of Medina? The state of Medina was established under the Covenant of Medina to which Muslims, Jews, Christians and pagans were parties. "Sovereignty in the society [of Medina] would not rest with the rulers or any particular group, but with the law founded on the basis of justice and goodness, maintaining dignity of all" [Dr. Louay M. Safi, Overcoming the Religious-Secular Divide: Islam's Contribution to Civilization in Muslim Contributions to

World Civilization, International Institute of Islamic Thought, U.S.A., 2005, p 16]. That means Covenant of Medina was the supreme document to which all Muslims, Jews, Christians and pagans of Medina owe their allegiance and therefore this document may be described as sovereign.

What I want to add is that there is no meaning of saying that God is Sovereign without fully analyzing this concept in its modern connotations. Sovereignty is a new word and it has no exact parallel or equivalent in Arabic or Islamic terminology. Sovereignty is totally a western concept. We can only infer how far Islam is nearer to this concept or to what extent Islam differs with the modern day concept of sovereignty. What I want to say is that Bangladeshi ummah shall have the final say, last word to decide who shall have final authority in the interpretation of the Text of the Quran in Bangladesh. The Bangladeshi ummah through its constitution can exercise it by referendum, or confer it either to the Parliament or the Supreme Court or the duly constituted Council of Elders.

The second issue I would like to discuss is: What is the position of those Muslims who do not rule according to Islam.

Al Quran states: Whoever does not judge by what Allah has revealed are disbelievers (Kafirs) [5: 44]. Can we really term a Muslim country as Dar al Harb or Dar al Kufr if certain Laws of Islam are not observed?

We have before us the example Negus, the Emperor of Abyssinia, who embraced Islam but did not rule as per Shariah as that would have threatened his Kingdom and Prophet Muhammad offered Salatul Janaza for him when the news of his death reached him. Prophet did not consider Negus a disbeliever (Kafir) although he did not implement Shariah. From this it becomes clear that Muslims can rule without implementing Shariah if the circumstances are not in their favor or people are not ready for such reform or the situation is not healthy enough or conducive for such a transformation or change [Sheikh Rachid Ghannouchi (eminent Tunisian Islamic scholar, leader of An Nahadah Party and now in exile in U.K.), The Participation of Islamists in a Non-Islamic Government in Azzam Tamimi ed Power-Sharing Islam, Liberty for Muslim World Publications, London, UK, 1993, pp 57-58. Also see Prof Dr. Yusuf al Qaradawi, Islamic Awakening between Rejection and Extremism, IIIT, Virginia, USA, 1991, pp137-138].

It is also pertinent to note the most recent translation of the verse 5: 44 of the Quran. Earlier commentators of the Quran translated the verse 5:44 as: Whoever does not judge by what Allah has revealed are disbelievers (Kafirs) [5: 44]. The verse is now been translated as: And if any fail to judge by the light of what Allah has revealed, they are no better than wrongdoers [Prof Dr. Yusuf al Qaradawi, Islamic Awakening between Rejection and Extremism, IIIT, Virginia, USA, 1991, p 70]. Muhammad Asad in his monumental commentary of the Quran translated this verse: They who do not judge in accordance with what God has bestowed from on high are, indeed, deniers of the truth (5: 44) [Muhammad Asad, The Message of the Quran, Dar Al Andalus, Gibraltar, 1980, p 152]. The new translation of verse 5: 44 of the Quran is more appropriate in the sense that circumstances might exist or arise as in Abyssinia during Emperor Negus where Muslims may not be able to implement Shariah.

The third issue I would like to discuss is: Can a Muslim country be called Islamic if it is not run by the divine laws? Our laws, namely the Law of Inheritance, the Law of Endowment and Marriage and Divorce Law are by and large based on Shariah. Most of our laws are administrative laws and Allah has given us freedom to legislate in these areas which is called Siyasah al Shariyyah in Islamic Fiqh. In case of Tazir, where the Quran and Sunnah are silent, punishment is prescribed by the Parliament or State Authority. Our laws are not against Islam in the sense that these laws contain almost nothing that contradicts the Text of the Quran and the objective of these laws are human welfare and these laws also mostly fall within the category of amr bil maruf wa nahi al munkar- realizing interests and removing evils. Only a few sections have to be amended in some laws, not even all sections of these laws. The constitution of Bangladesh reiterated its absolute trust and faith in Almighty Allah and the state religion is Islam. The two major political parties namely, BNP and Awami League are committed not to frame un-Islamic laws. Everybody in Bangladesh can perform religious rituals. Women can observe Hijab and there is no bar to establish mosque and madrasa. In theory we have Islamic laws in the country although we find lapses in some cases. Such lapses were there also during the Umayyad and the Abbasid Caliphates. We can however enact law of blasphemy so that none can dare to criticize Prophets and leaders of other religious faiths. Such a law should contain provision of harsh penalty for the violation. We can also frame law banning the production, storage, carrying, sale, import and drinking of wine and use of other narcotics and the law should have provision for severe punishment for the violation. However we have to keep in mind that as individual Muslim continue to remain a Muslim even if he or she violates or fails to observe certain practices of Islam, as such it is not proper and justified to think that a Muslim state loses its Islamic character just for not observing certain provisions of the Shariah. It remains Dar al-Islam, Islamic state in the technical sense despite some deficiencies.

I am of the view that Bangladesh is essentially an Islamic state by its constitution. Only thing we require is that we have to constitute a committee in the Ministry of Law, Justice & Parliamentary Affairs consisting of eminent Islamic scholars, Ulama, jurists and Fuqaha, Islamic theologians having the essential ability for expounding Islamic law and being an authority thereon, just, virtuous, abreast of time, having political and social insight, judicious and who generally command and enjoy the trust and confidence of the people. The members of this committee shall examine and review all drafts acts to be passed by Parliament (also all Presidential Ordinances) and give its views on such act(s) to the Government so that parliamentary enactments are not contrary to the tenets and precepts of Islam. The inclusion of such members in the committee will ensure that the Government is being judiciously advised at the drafting stage so that no law repugnant to the Quran and Sunnah comes before the Cabinet or Parliament for consideration.

Fourthly, we all must remember that the political institutions and laws of an Islamic state are binding on all citizens irrespective of religion- Muslims and non-Muslims. For Muslims it is religious obligation to follow the political system of Islam for Islam is a Deen, a complete way of life. Such laws in no way would violate the religious rights of non-Muslims. However in line with the Quranic dictum: There is no compulsion in religion [2:256], we must remain conscious and vigilant about the rights of non-Muslims.

It is therefore seen that Islam has few or no fixed prescription regarding institutional arrangements for an Islamic society's political system. Eminent political scientist Omer Caha has remarked: "The Quran often makes reference to past societies and rulers, but its principal focus is on the moral behavior of societies and the extent of justice observed by rulers rather than on the format of politics and its structure ... The Sunnah of the Prophet of Islam does not touch upon the organizational structure of political governance, but contains advices geared to the rulers on principles of justice, compassion, mercy and obedience [Omer Caha, Islam and Democracy: A Theoretical Discussion on the Compatibility of Islam and Democracy, Alternatives: Turkish Journal of International Relations, fall-winter 2003]

To conclude, I want to emphasize that the issues just I have raised need wider deliberation and reflection by the Ulama, academicians and scholars of Islam. What I have discussed here is not the last word, rather the subject demands in depth analysis, critical examination and painstaking exercise. #

[The text is the summary of the speech delivered at the seminar organized by Bangladesh Institute of Islamic Thought on 30.05.2007 as session's chairman]