BOOK REVIEW


Constitution plays a fundamental role in the body-politics of every country. A ruler never likes a constitution which provides genuine rights to the people and sets limitations on the exercise of his power. A ruling agency generally desires to frame a constitution which gives it absolute power and puts limitations on the rights of the people. The desire of ‘unlimited powers’ and ‘restricted rights of people’ is but natural with man. This proclivity of man towards dictatorship has been checked by the concept of democracy in modern times and by Islam since its very inception. The constitutional theory provided by Islam could not, of course, be practised in full for long; the Islamic teachings on this subject, however, serve as a beacon until today. The present treatise by an eminent lawyer of Pakistan is a welcome attempt to portray the profile of the limitations imposed by Islam, indeed in theory, on the exercise of political power. The title however does not suggest that the essay deals with the Islamic teaching. It provides an answer to ‘some of the larger questions raised in this behalf’ (preface).

The author suggests, in the light of the opinions of some classical jurists, five basic constitutional limitations on the exercise of political power of a ruler, apart from the fact how he came to power:

1. The šari'ah law shall equally apply to him in respect of his personal and public conduct.
2. Obedience to him is binding only in lawful matters.
3. He is answerable to the community for his public and private conduct through all legal processes.
4. He shall take decisions in the light of the šari'ah law.
5. The fundamental rights of the believers such as protection of person, honour and property, can not be abrogated by him.

The whole treatise deals with the elucidation of these five points. Analysing them the author has justified his conclusions from the Qur'anic the Sunnah, practice of the Companions and citations from the classical fiqh literature.

The author has not touched upon the question of ‘how to come to power’; The reason may be that Islam attaches more importance to “how to rule” than “how to occupy the position of power”. Hence sometimes even the usurpers are legitimatized by the classical jurists. This is however, an important question to be discussed.

Analysing the fundamental principles of Muslim polity, the author enumerates the following five points:

1. The establishment of rule is a blessing from God;
2. The political authority is granted by God to the whole community and not to the individual;
3. The establishment of rule is designed to maintain justice;
4. It also aims at establishing the rule of God;
5. The caliph is the agent of Ummah, and not a vice-gerent of Allah. pp. 2-9.

The author has justified these principles on the basis of the Qur'an. But some of the verses cited in support of his proposition are not relevant. For instance, he quotes verse 48:10 to justify the principle No. 5 mentioned above. This verse speaks of the oath of allegiance taken on the occasion of the treaty of al-Gudaybiyah. It shows that the hand of the Prophet is the hand of God. The author equates obedience to the Prophet with the obedience to the caliph. But this is not true. The Prophet qua prophet is distinguished from the caliph. It is not possible to discuss each and every verse cited by the author. Most of the verses quoted in support of his theses are not strictly relevant.

The author has adduced the instances of 'Umar and 'Ali who appeared before the judge (pp. 22-23). By giving such illustrations he tends to show that litigation against the government was normal in early times. But it should be remarked that 'Umar and 'Ali in these cases appeared before the judge in their personal capacity, and not as a caliph, a representative of the Government. These examples do not prove his proposition.

The author holds that the opinion of the persons vested with shura is binding on the ruler, and that he has no choice of accepting or rejecting their view (pp. 33). This may be true in cases when there is a unanimous consensus of opinion, because ijma is binding. But if there is a difference of opinion among them he may adopt any opinion more akin to the Islamic teachings. It should be noted that majority opinion is no criterion of truth in Islam. Abu Bakr waged the war of apostasy against the will and general opinion of the people. 'Umar did not accept the suggestion of distributing the lands of Iraq. We think that by shura is meant the discovery of the diverse possible opinions and views on a moot question. The author has cited a number of authorities in support of his point of view. But the opinion of the classical jurists should not be taken as final, especially when the practice of Abu Bakr and 'Umar contradicts their stand. Or, we may take their examples as exceptional cases and impose necessary restrictions to exercise a check on the absolute power of the ruler.

Appendix A deals with the traditions of the Prophet which speak of the passive and unquestioning obedience to the rulers and public authorities. Obedience to the oppressive and tyrannical rulers is a question extensively discussed by the classical jurists. Passive obedience was emphasized by them to protect the community from disintegration. Explaining the traditions on this subject al-Nawawi, the commentator of the Sahih of Muslim, opines that these traditions were designed to integrate the community because schism and dissension might lead to the corruption of religion (Vol. 11, p 124). Fakhr al-Din al-Razi is of the view that obedience to the tyrannical rulers is not binding on the people (Tafsir, III, 242-43). Our author has emphasized that people should obey the rulers in lawful matters and not in matters which contradict the shariah. But it is worthy of note that unjust rulers do not always command in accordance with the teaching of the Shariah. And how can a layman distinguish one from the other? If people
disobey them in unlawful matters, anarchy and disorder may prevail in the country. Hence some jurists emphasized obedience in all circumstances. People can revolt to depose him only in case the ruler commits an act of unbelief. This is a crucial question and should have been discussed in greater detail.

Appendix B covers the fundamental rights in the Qur'ān. The author has discussed in detail the modern concept of the fundamental rights in comparison with the Qur'ānic concept on this question. He thinks that the Qur'ān gives priority to the duties over the the rights against the modern concept where the rights of an individual have priority over his duties (p. 71). He has justified this proposition from the Qur'ānic verses. It is important to note that the Qur'ān is not clear on this point. One might interpret the verses of general nature in favour of both views. In purely religious affairs, such as rituals, one finds much emphasis in the Qur'ān on the performance of the duties. But in matters related to the people and the state it is difficult to assert that the duties have priority over the rights. The Qur'ān seeks to maintain a balance between the rights and the duties. Here the question of priority is not relevant.

The treatise on the whole is a serious scholarly attempt on the subject. It has been well documented from the original sources. The lengthy and frequent quotations are boring and one can discover the author's viewpoint with great difficulty. Apart from a large number of printing mistakes, the treatise is full of errors in the Arabic names and books. The work however will be appreciated by the scholars as well as the general readers, particularly by the students of law.

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