



Critical Ideologies

A Debate on
Takfeer
and
Khurooj

Editor: Safdar Sial

Critical Ideologies: A Debate on Takfeer & Khurooj

Editor
Safdar Sial

A NARRATIVES PUBLICATION

Copyright © Narratives 2012. All rights reserved.

No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission in writing of Narratives (Private) Limited.

All enquiries regarding reproduction should be sent to Narratives (Private) Limited at its address given below.

Title by: Tariq M. Sajjad
Printer: BPH Printers, Lahore, Pakistan.
ISBN: 978-969-9370-13-7
Edition: First



P.O. Box 2110, Islamabad, Pakistan.
Phone: +92-51-2291586
Fax: +92-51-2100651
Email: info@narratives.pk
Web: www.narratives.pk

Price: PKR 100
USD 5

CONTENTS

Foreword.....	05
First Debate.....	07
Second Debate	58
Third Debate	107
<i>Takfeer and Khurooj: Some Legal Considerations</i>	<i>164</i>
<i>Muhammad Mushtaq Ahmad</i>	
Is Pakistan's Constitution Based on Disbelief? A Critical Review of Ayman Al-Zawahiri's Book <i>Al-Subh Wa' Al-Qindil</i>	169
<i>Maulana Muhammad Ammar Khan Nasir</i>	

FOREWORD

The ideologues of extremism and violence use selected and skewed interpretations of some of the concepts and legal rulings, tradition and history of Islam to justify their use of violence against Muslim states, their institutions and rulers and also other Muslim sects. Such interpretations are neither agreed upon by all religious sects nor do all religious scholars¹ within one particular sect endorse them. For instance, the concepts of *takfeer* (the act of declaring a Muslim to be outside the creed of Islam),² and *khurooj* (going out/ armed rebellion against the state) are widely used by militant groups in Pakistan to propagate hatred and violence in the name of religion. Amid the people's understanding of these issues and lack of diverse information and proper guidance, such interpretations may religiously sensitize them in favour of extremist forces.

With a view to create awareness among the people about *takfeer* and *khurooj*, Pak Institute for Peace Studies (PIPS) engaged leading religious scholars from all schools of thought in academic and intellectual debates to get a consensus viewpoint on these concepts and disseminate the outcome to the people. Three daylong debates were held for that purpose in 2011-12 in which religious scholars discussed at length almost all legal and academic aspects of *takfeer* and *khurooj* in the historical and contemporary perspectives with a special reference to Pakistan's political and constitutional frameworks.

This book transcribes the complete recorded proceedings of the PIPS debates on *takfeer* and *khurooj* including religious scholars' addresses and the subsequent deliberations. As Urdu was the 'decided' language of the debates, an effort has been made to keep the original Urdu terms along with their translation to facilitate readers' understanding. Secondly, some parts of the debates have been summarized or even deleted to avoid repetition.

¹ The term 'religious scholars' is used to refer to 'Islamic scholars' or *Ulema* throughout the book.

² Or practice of one Muslim declaring some other Muslim individual(s), religious sect, system of government or rulers disbelievers or *kafir* and regarding them to be outside the creed of Islam (*millat-e-Islam*).

FIRST DEBATE

Place: Islamabad

Date: September 21, 2011

Chairperson

- Dr Qibla Ayaz (Professor, Institute of Arabic and Islamic Studies, University of Peshawar)

Discussants

- Dr Ali Akbar al-Azhari (Director Research, Fareed Millat Institute, Minhajul Quran, Lahore)
- Dr Ejaz Ahmad Samdani (Jamia Darul Uloom, Korangi, Karachi)
- Allama Mufti Assadullah Shaikh (Administrator, Darul Aft'a Jamia Haidaria, Khairpur)
- Maulana Muhammad Salafi (Administrator, Jamia Sattaria, Karachi)
- Mufti Muhammad Ibrahim Qadri (Member, Council of Islamic Ideology, and Principal of Jamia Ghosia Rizvia, Sukkur)
- Maulana Muhammad Ammar Khan Nasir (Vice Principal, Al-Shariah Academy, Gujranwala)
- Mr. Muhammad Zahid Siddique (Assistant Professor, National University of Computer and Emerging Sciences, Islamabad)

Important Questions

A. Rationalization of *Khurooj*

1. Citizens of a Muslim state are bound by their social contract, or constitution, to not take up arms against their government. Is it essential for them to abide by this commitment in each and every situation or are there any exceptions to the rule?
2. What are the situations and factors, if any, which could justify rescinding of this agreement? Does Shariah justify defiance to this agreement for self-defense, for forcing the rulers to enforce Shariah (divine law of Islam) and abandon policies against national reformation, or for replacing an un-Islamic system of government with an Islamic one?
3. Should armed resistance against a government be an indispensable last option or a standard and required way of change in Islam? In the former case, what is the scope of the 'need' that makes the armed revolt against the rulers indispensable? Is it limited to self-defense only or can it also include other objectives such as enforcement of Shariah?
4. In *ahadith* (plural of *hadith*, sayings and acts of the holy prophet, also known as traditions), we find a great deal of forbiddance of carrying weapons and taking up arms against the rulers. What legal reasons do we find in Shariah for this forbiddance?
 - (i) Armed resistance against the rulers goes against one of the Islamic legal principles that emphasizes that people should hold firm allegiance to the rulers?
 - (ii) It is a negation of the majority or collective decision of the people for selection of their rulers and system of government?
 - (iii) The loss of lives and property in armed revolt and the consequent chaos and mayhem are bigger troubles than wicked rulers against whom arms may be taken up?
 - (iv) Practical improbability of success of armed revolt?
5. If the purpose of *khurooj* is to achieve some superior and righteous objectives such as enforcement of Shariah and eradication of tyranny and oppression, etc., then what should be the criterion for prioritizing among these objectives and the legal principles listed above?

B. *Khurooj* for Defense

6. If the state commits acts of oppression and violence against a group, can the latter take up arms against the former in self-

- defense or revenge? If not, then what alternatives are available in Shariah to such oppressed group?
7. The holy prophet forbade taking up of arms against the rulers despite their oppressive policies. How should we interpret this forbiddance for a particular group that is a constant victim of state violence and is left with no option other than armed struggle to defend itself?
 8. What is the legal view of Imam Abu Hanifa³ on *khurooj* against oppressive rulers and what is the possibility and practical way of its application in the prevailing situations in Muslim countries? If it is not applicable today then what factors make the difference?

C. *Khurooj* for Enforcement of Shariah

9. Most religious scholars in Pakistan generally believe that it is almost impossible to establish an Islamic system of government through today's popular form of government known as democracy. In this situation, what is the *hukm*, or legal ruling, in Islam regarding a resort to armed struggle to establish an Islamic system and enforce Shariah?
10. Are the current forms and systems of government in the Muslim world transitory—which should be changed as they are accepted by religious circles due to expediency—or real and permanent, whose consolidation and sustainability is required? If they are transitory or interim, then what are the available methods to change them and what are the prospects for success?
11. If establishment of the standard Islamic system seems impossible in the system of democracy and no way other than democratic struggle is justified in achieving this objective, should the desire and efforts for establishment of an Islamic system be permanently abandoned?

D. *Khurooj* against Muslim Governments Supporting Aggression and Oppression

12. If the government of a Muslim country helps non-believers and infidels in their act of aggression and attacks against another Muslim country, what is the legal responsibility in Islam of

³ *Imam* is the leader or head of the Muslim community. Imam Abu Hanifa was founder of one of the four main legal schools of Sunni Islam, e.g. Hanafi school; three other schools were led by Imam Malik, Imam Al-Shafi, and Imam Ahmad Bin Hanbal.

First Debate

citizens of the former country? Should they approve and join their government's support of the aggressor, remain neutral or help the Muslims under attack by going against their own government?

13. In such a situation, if it is religiously legitimate and obligatory for Muslims to help the Muslims under attack in another country, will it also be justified for them to fight against their own government in doing so because their government supports the foreign excesses against Muslims in another Muslim country?

E. *Khurooj* on the Basis of *Takfeer*

14. In *ahadith*, *kufir buwah* (an outright and visible act of disbelief) has been exempted from the decrees forbidding *khurooj* against rulers. What is the legal interpretation of *kufir buwah* and which acts of disbelief are included in this category?
15. If the constitution of a Muslim state guarantees in principle adherence to the Quran and *Sunnah*⁴ and enforcement of Shariah but some of its sub-clauses block the way of Shariah-based legislation or some law in practice are contrary to Shariah, can it be inferred from it that *kufir buwah* is being committed? The answer to this question should also consider the options available to amend and reform the constitution and laws in such a situation.
16. What will be the real basis of and standard for attesting the legitimacy of *kufir buwah*: interpretations of laws or ways of the thinking and actions of the rulers? If the constitution guarantees enforcement of Islamic system but the rulers are not sincere regarding that, and some even hold negative views about Shariah, or the overall policies of the rulers are against the interests of Muslims and Islam, can such a state of thinking and actions of the rulers be interpreted as *kufir buwah* or not?
17. Assuming that an act of the rulers has legally been ascertained as *kufir buwah*, will this ascertainment only justify *khurooj* or make it obligatory as well? In both situations, will the legal conditions attached to *khurooj*—that it should be meaningful and fruitful and should not bring more harm and trouble—also be applicable or will it become justified and obligatory to opt for *khurooj* irrespective of its consequences? What will be the legal decree

⁴ The *Sunnah* of the Prophet means his legal ways, statements and acts of worship.

A Debate on Takfeer & Khurooj

on *khurooj* if the rulers still enjoy the general political support of the people despite committing *kufir buwah*? Secondly, who will be the addressee or targeted audience of this decree on *khurooj*: the Muslim public, political parties, the military, or all of them?

18. To what extent is the argument likely to hold water that armed struggle and *khurooj* should be outlawed in a democratic system of government because, unlike authoritative forms of government that leave almost no room for peaceful means of regime change, there are options available in a democracy for the people to assert their voice and change the rulers and their policies?

F. General Questions

19. In case *khurooj* is legally justified, is a group or its leadership required to have the general confidence of the people to initiate *khurooj* or can they decide and act individually in that regard?
20. If some citizens of a Muslim state consider armed revolt of a group in certain circumstances justified as *khurooj*, is it necessary for them to declare their support for the group or can they support and help it secretly, without revoking their allegiance to the state? What was the nature of support from Imam Abu Hanifa for those who did *khurooj* during his life?
21. If people's clandestine help to a group revolting against the state is found to be justified, does that not undermine Islam's legal principle of allegiance to the state? What in Shariah is the value, and legal and moral status of apparent compliance with but covert defiance of an agreement?

Dr Qibla Ayaz

Professor, Institute of Arabic and Islamic Studies, University of Peshawar

The study of the highly academic subjects of *takfeer* and *khurooj* requires extraordinary intellectual subtleties and meticulous attention. To start with, all participants will present their viewpoints on the cited questions. They will then be encouraged to raise new questions on different aspects of the subjects that are supported by arguments. This should lead to an engaging debate. As the entire debate will be purely in the academic and intellectual perspectives, all the participants are requested to observe this limitation, be objective and keep in mind the principles of *hikmat* (wisdom), *moezatil hasana* (fair exhortation) and

First Debate

jadaal bil ahsan (better way of reasoning) in their arguments.⁵ I hope that different shades of opinion and critical comments will be presented in such a manner that they will not hurt anyone's feelings.

Dr Ali Akbar Al-Azhari

Director Research, Fareed Millat Institute, Minhajul Quran, Lahore

I have divided the main questions of debate into three categories to look at them in the relevant theological/jurisprudential, historical/political and contemporary perspectives. The theological and jurisprudential aspect of this debate builds upon the commandments and principles set out in the holy Quran and the *Sunnah*. Islamic scriptures have provided us with the fundamental principles regarding that. A great deal of scholarly literature is available on that including comprehensive decrees by jurists (*fuqaha*, singular *faqih*: jurists or experts of Islamic jurisprudence) and Islamic scholars. In 2010, a book by Dr Tahirul Qadri containing comprehensive arguments and legal decrees on the subjects of *takfeer*, *khurooj* and resort to violence etc., was published which has been translated into eighth major languages.

I believe that we should focus more on the other two aspects of these issues. It is imperative to understand how the concepts of *takfeer* and *khurooj* evolved in Islamic history, particularly in the political perspective. This understanding should eventually lead us to examine the current situation of legality, interpretation and application of these two concepts in the West, in the Muslim world and in Pakistan separately.

In my view, the most significant reason why taking up arms against the rulers is forbidden in *ahadith* could be the fact that Islam is a religion of peace and prioritizes security of human beings. It does not allow any individual or a group to challenge the writ of the state in order to impose their ideas on others forcibly. We find a vast range of definitions of *khurooj* and *baghawat* (rebellion) by jurists and scholars of the Hanafi school of thought while those subscribing to the Shafi, Hanbali and even Jaafria (Shia) schools simply observe that these terms include meanings of *kufir* (unbelief/disbelief), *takfeer* (declaring others non-believers/ or excluded from the bounds of Islam), antagonism and bloodshed. Islam has strictly forbidden all these acts and they cannot be justified in any circumstances.

⁵ Reference to a verse from the Holy Quran: "Call unto the way of thy Lord with wisdom and fair exhortation, and reason with them in the better way..." (16: 125)

Another central point of today's discussion is *kufir buwah*. When a ruler becomes extremely hostile to Islam and goes to the extent of stopping Muslims from practicing their religion, such as offering prayers, he commits *kufir buwah*. We had seen such a situation in Turkey when Mustafa Kamal Atatürk banned *kalima* (professing of faith) and shut down mosques. But the enlightened and judicious Islamic scholars in that country had not allowed Turkish Muslims to revolt and start an armed struggle even in that situation.

Maulana Dr Ejaz Ahmad Samdani

Jamia Darul Uloom, Korangi, Karachi

Islamic jurists and scholars have tried to explain its rationale of the holy Prophet forbidding armed struggle against the rulers. Before going into detail of that we should first acknowledge that we are bound to abide by the commands of Allah.

Allama Ibne Hajr has asserted in the first chapter of his book *Al-Fitan* that submission to the rulers is better than *khurooj* because the latter could lead to bloodshed among Muslims which is exceptionally disapproved of in Islam as a *fitna* (trial and discord).⁶ The emphasis on forbiddance of armed struggle laid down in the *ahadith* was indeed meant to check this *fitna* of infighting and anarchy among Muslims.

The question whether an oppressed group can take up arms against the state in self-defense or to avenge excesses is not related to *khurooj*. This is armed resistance or fight for self-defense. To fight against the state in self-defense and on the basis of principle of *khurooj* are two entirely different propositions. We should, therefore, try to find answers to the question whether fighting for self-defense is justified in Islam or not. There is an obvious legal decree in Islam that those who are killed defending their property, honor and life are martyred. However, some Islamic scholars observe that showing restraint in such situations is better than going to fight. They mainly cite in support of their argument one of the traditions of the holy Prophet in which he ordained his followers to be like the better son of Adam. That means that the Prophet wanted his followers to be like Haabeel, and not Qaabeel, who had assassinated the former.

⁶ *Fitna* literally means persecution or trial and discord, and is also understood as disorder and civil strife in an Islamic society. It means that matters become confused, mistakes increase, and minds and intellects begin to waver.

First Debate

Although there is some justification in Islam for victims of aggression and tyranny to fight in their defense, the question is if that is available to other citizens of the state too if they want to support the victims of aggression in their fight against the state. The jurists and experts of Islamic law have a divided opinion on the matter. Some sanction a conditional permission. The predominant opinion is that if citizens' support does not cause depravation, disorder or mayhem in society and that the fight of the oppressed retains an exclusively defensive character only then such backing is justified. But if such support strengthens the group of the oppressed to such an extent that it emerges as a strong resistance army capable of creating trouble for the government in other cities or areas then the people are not allowed to support the group's fight against the state.

Now I would like to respond to another question put forth in the debate, i.e., when establishment of the standard Islamic system seems impossible in the current system of democracy then what is the legal ruling about resorting to armed struggle for achieving that purpose. To me, it seems very clear that there is no room and justification in Islam for armed struggle or revolt against a democratic system of government. Armed revolt is strictly conditional to some act of *kufir buwah* and so far we have not seen any decree anywhere declaring democracy a *kufir buwah* or linking the two in anyway. When there is no such declaration that democracy is a system of visible and clear disbelief and infidelity or *kufir buwah*, how can we justify armed struggle against a democratic government?

With regard to the legal interpretation of *kufir buwah* and the extent of the acts of disbelief falling in this category of *kufir* (disbelief), I would like to say that only outright, absolute and established-by-consensus disbelief should be declared as *kufir buwah*. As it has been elaborated in the following *hadith*: "[...and not to fight against him] unless you see open disbelief for which you have evidence from Allah." The Arabic word used in this *hadith* for seeing can be used as a transitive verb with one or two objects. When it is used with two objects it means seeing by heart but when it is used with one it means seeing with the naked eye. Here 'you see' means you see *kufir buwah* with the naked eye. In other words, you are as certain about it as if you see it with the naked eye. Secondly, for an act of disbelief to be called *kufir buwah* there should be consensus among all legal schools of thought in Islam regarding that.

In response to the question of whether legal ascertainment of *kufir buwah* only justifies *khurooj* or makes it obligatory, I would say that in the light of the *hadith* cited above it appears to be a matter of

justification only. The Arabic words translated as ‘unless you see’ describe *istasna* (exception) and whenever a command or prohibition (*amar* or *nahi*) are followed by *istasna* in a sentence then according to the principles of Arabic grammar mainly their justification is intended. But there are some other *nusus*⁷ (texts of Islamic scriptures used to justify a legal ruling or judgment / divine rulings with absolute meaning and no difference of interpretation) which argue that *khurooj* against the rulers committing *kufr buwah* becomes mandatory under certain circumstances. For instance, Prophet Muhammad (PBUH) has stated:

Whoever among you sees an evil action let him change it with his hand [by taking action]; if he cannot, then with his tongue [by speaking out]; if he cannot, then with his heart [by despising the action in his heart and considering it wrong], and that is the weakest [form] of faith.

Focusing on these two *ahadith* cited above, Islamic jurists have given their legal opinion that *khurooj* when legally ascertained is an obligation that is conditional to two pre-requisites. First, the power to ‘change with hand’ does not mean trying to change a powerful ruler with physical force. It refers to the capacity and strength that when used does not leave any possibility that a discord or chaos greater than the ruler’s evil might emerge. If there is such a fear or possibility then it is better to show restraint and not to opt for *khurooj*. Secondly, legal parameters of *khurooj* set by the Quran and the *Sunnah* must not be transgressed.

Another important point in this debate is related to individual *khurooj* by a group and collective *khurooj* by society as a whole against the rulers. First of all, if the justification and validation of *khurooj* has been ascertained, any group can go for it. It is not necessary for that group and its leaders to have a general confidence or trust of the people to start it. But I do not think that there are currently such circumstances in Pakistan or anywhere else in the world which justify *khurooj*. If the circumstances appear at a certain point in time that justify *khurooj*, the

⁷ *Nusus* (plural of *nass*) refer to a text, wording, citation, stipulation or a passage, especially one from the Quran. According to the *Lisan al-Arab* and Lane’s *Arabic English Lexicon*, the *nass* in terms of the Quran and *ahadith* is an expression that makes specific reference to a statute or ordinance in the actual words of the Quran and the *Sunnah* without having to resort to interpretation. In *usul al-fiqah*, therefore, the term is technically used for text in the Quran or *hadith* used to justify a ruling. (Source: Olivier Leaman, ed., *The Qur’an: An Encyclopedia* (New York: Routledge, 2006), 448.

First Debate

first thing that we will need to do would be to influence public opinion in favor of it. Democracy can help us tremendously regarding that although we (the religious scholars) do not consider it a complete Islamic form of government. Democracy can be useful and effective in the way that the desired outcome of *khurooj*, that is to change the rulers, can be achieved peacefully through elections.

At the end, I would like to share my views on *takfeer*, which is one of the most sensitive subjects in Islamic jurisprudence. As it is a great sin and crime to declare a non-Muslim a Muslim which invites God's wrath, similarly declaring a Muslim non-Muslim is also a great sin and crime. This is a very delicate issue. The Quran says: "...and say not unto one who offereth you peace (Islamic way of salutation): 'Thou are not a believer..'" *Takfeer* is not only a theological or legal issue but it is also a social issue because it is directly related to attitudes, dealings and transactions. Declaring a person *kafir*, or non-believer, deprives him of all the rights and facilities which he had previously been enjoying like other Muslims, such as inheritance, in an Islamic society. That is why Islamic jurists have tried to expound the subject of *takfeer* very meticulously. There is a general consensus among them that if a person says a word of disbelief and there are 99 probabilities of disbelief in it and only one of belief, his words should be judged by that one probability that is antithetical to disbelief while he is unable to explain his words, i.e. is either absent or dead. Some jurists even say that even if that one probability is weak, his words should be judged by that and he should not be declared an unbeliever.

In order to be Muslim, it is obligatory to have belief in all the essentials of faith or religion. These essentials are proven by *nusus* (divine rulings with clear/absolute meaning and no differences of interpretation) and have reached us without any disconnect. The requirement is not only to know these essentials but also to have belief in them. Secondly, for a Muslim it is obligatory to have belief in all the essentials of religion. Rejection of any of the essentials means disbelief or *kufir*. For instance, Ahmadis are declared disbelievers because they reject just one, and not all, of the essentials of religion, i.e. the finality of prophethood.

It is equally important to look at what Islam commands about those Muslim individuals and groups who kill other Muslims on the basis of ideological differences. Ideology has many levels. Ideological differences among Muslims which are based on ethnic, linguistic and sectarian identities, etc., have nothing to do with religion. Islam does not approve of such differences and calls killing of fellow Muslims on these grounds *haram* (prohibited by the faith). On another level, if

such ideological differences pertain to conflict between believers and non-believers in a Muslim-majority, or Islamic, state in that case also a Muslim is not allowed to harm fellow citizens, who are living as *zimmis* (non-believer under the protection of Muslims). The security and protection of the life and property of *zimmis* is obligatory for Muslims. Islam forbids individuals to take law into their hands and makes it clear that only the state has the authority to provide justice to victims and punish offenders.

Dr Qibla Ayaz

Dr Ejaz Samdani has set the direction for this debate by elaborating almost all the questions logically. For further discussion on them, his main arguments can be summarized as follows:

- a) The rationale for the outright prohibition of taking up weapons against the rulers ordained in *ahadith* is to avoid discord, mayhem and conflict in society because Islamic teachings uphold and promote order and harmony in society.
- b) If the state commits acts of oppression and violence against a group, the latter's fight against the former cannot be justified as *khurooj*, it is rather a fight for self-defense. Such a fight is only permissible when defense is not possible without it. But if such a fight adds to conflict and discord then it is better to avoid it.
- c) Even if it is impossible to establish the standard Islamic system through democracy, armed struggle against the democratic government is not justified because that will bring more harm and trouble.
- d) *Khurooj* is justified and allowed only if the rulers have committed *kufir buwah*—an open and visible act of outright disbelief—and religious scholars from all schools of thought have a consensus on that being *kufir*, or disbelief.
- e) The legal opinions of some of the jurists and experts of Islamic law which necessitate *khurooj* on the basis of a ruler's *kufir buwah* are understandable but *khurooj* in such a situation has been made conditional to a level of preparedness and strength that would result in reform and not in heightened conflict and discord in society.
- f) The leaders of the revolting group bent on *khurooj* should instead strive to influence the public opinion in their favor. This may bring a peaceful change and reform.
- g) *Takfeer* is a highly sensitive issue and one should observe the utmost care in pronouncing fellow Muslims disbelievers, or non-Muslims.

First Debate

- h) Islam does not permit Muslims to kill fellow citizens, Muslim or non-Muslim, on any basis. Protection of non-Muslim citizens of an Islamic state is the responsibility of Muslims.

Allama Mufti Muhammad Assadullah Shaikh

Administrator, Darul Aft'a Jamia Haidaria, Khairpur

Islam is a comprehensive and universal religion. It is a complete code of life, a combination of beliefs, prayers, morals and ethics, dealings and transactions, and manners of social or collective living. In my opinion, the issues of *takfeer* and *khurooj* are largely related to attitudes, behaviors, dealings, matters of financial transactions and borrowing and lending, etc. In absence of honesty and responsibility, conflicts emerge among human beings in their day-to-day dealings. Being charged with authority, the rulers are responsible to judge with justice, provide a fair trial to parties in a conflict and punish the culprit; otherwise the people would feel helpless in deciding their matters themselves and that would contribute to lawlessness and anarchy.

The responsibility of organizing and taking care of Muslims as a disciplined and ordered nation, and enabling them to live in a peaceful and just society lies mainly with the rulers, jurists, men of wisdom and scholars of Islam. If we look at Islamic history we find that the *emirs* of Islam eradicated sins and bad practices, caliphs reformed moral values, jurists corrected prayers, and men of wisdom and rationality purified beliefs of Muslims. Secondly, Islam stresses on collectiveness and collective order. The holy Prophet (PBUH) said: "Hear and obey your chief even if he was a negro slave..." It means it is obligatory for every Muslim to listen to and obey those charged with authority. Personal opinions should not become the basis of differences. The Quran and the *Sunnah* are sufficient proofs and arguments to guide us and if we follow them we will take care of others and live in peace with all.

And if there is no *emir*, all Muslim countries can try to appoint one through mutual consultation. If they fail to agree on one *emir*, each country or region can have its own *emir*. This is what has been alluded to in the Quran as: "O ye who believe! Obey Allah, and obey the Apostle, and those charged with authority among you" (4: 59). Clearly those charged with authority will obey the commands of Allah and the Prophet (PBUH). But if they issue commands for something that is contradictory to divine ruling or judgment, or harms and undermines Islam, Muslims are not bound to obey them. However, this is an exception. *Kufr buwah*, as highlighted previously, is clear, visible and absolute disbelief. One manner of rulers' *kufur buwah* is that they prefer man-made laws to divine laws, or *Hudood Allah* (boundaries set by

God), and defy the latter. Similarly, an attitude of indifference, laxity or carelessness towards *Hudood Allah*, although not *kufr buwah* in reality, is regarded as an act of disbelief according to the legal ruling of Islam. Mufti Taqi Usmani has described it at length in his Arabic-language book *Takmila Fath Al-Mulhim*.

Another state of *kufr buwah* is described in one of the traditions of the Prophet (PBUH). The Companions asked the Prophet (PBUH) whether they should not break their allegiance to [oppressive] rulers and he replied: "No, as long as they establish the prayer amongst you." Freedom to offer prayers in any manner one wants to does not suffice to establish the prayer (*aqamat-e-salat*). It means that the rulers themselves offer prayers, facilitate others to do so, and safeguard mosques, institutions of religious endowments and others which are significant in Islamic *Shariah* in their relation to the prayer. If the rulers think bazaars should be shut down during prayers times they should do that. And once the system of prayers is properly organized, other religious obligations become easy to follow.

Similarly, *Amr Bil Ma'aroof wa-Nahi Anil Munkir* (enjoining acknowledged virtues and forbidding vice) has a great deal to do with the rulers and the ruled. It is every Muslim's obligation to invite the people towards the right path and keep them on, which has been ordained in the Quran in several instances. Without establishing a fair, healthy and upright society, a government can neither champion the causes of democracy and civilization nor expect peace, stability and dignity. Our society is in a process of moral decay. Immorality and vulgarity are now routine matters for many; the government is also legalizing vulgarity. Everyone is free to do whatever one wants and no one can be stopped. Humanity has lost its worth. No one knows today why he is being killed or kidnapped. There is a dearth of honesty and righteousness among us. We treat state property and treasury as our personal belongings. Moral depravation, crime and bad deeds have become part of our daily life. Only by acting upon Islamic teachings and commandments can we make our sick society alive and the failing government a success.

As far as *khurooj* is concerned, Imam Abu Hanifa provided moral support to Imam Zaid bin Ali and issued a decree in favor of his *khurooj*. But he had anticipated that Imam Zaid's companions would desert him and his *khurooj* would be futile that could bring more trouble to Muslims so he did not join his *khurooj* practically. Imam Abu Hanifa held this opinion that a failed *khurooj* or armed revolt could lead to a situation with worse consequences for Muslims. We find such situations in history. It happened in the Indian subcontinent in

First Debate

1857 when many religious scholars had declared India *darul harb*⁸ (abode of war), speculating that a revolt against the British government will be successful. The failure of the revolt brought severe consequences for Muslims in this part of the world.

Imam Abu Hanifa later openly supported *khurooj* of Nafs Zakia and Nafs Razia against Banu Abbas and even paid with his life for doing so. He was tortured by the rulers for supporting *khurooj* against them but he remained steadfast in what he thought was right and justified on the basis of *Shariah*.

Generally, people have their confidence in the revolting leadership after *khurooj* is declared justified. The revolting leadership thinks it is capable enough to lead *khurooj* and that it enjoys the support of many people, as was the case for Imam Zaid bin Ali, who decided to lead the people who were standing beside him before *khurooj*. It is, however, difficult to foresee the exact result of *khurooj*; therefore utmost care should be taken to decide about it.

About *takfeer*, I would like to say that *Shariah* does not permit declaring some Muslim as non-Muslim or disbeliever, and vice versa. Why then do religious scholars issue decrees declaring fellow Muslims disbelievers? The answer lies in the fact that exegesis writers have included religious scholars, or men of knowledge, among ‘those charged with authority’. When religious scholars see a Muslim having attributes of a disbeliever, they simply state the legal ruling of Islam about it. In other words, they educate the people about the things which could lead them to disbelief. If a Muslim denies one of the essentials of religion there is no reason to argue that he is believer or disbeliever. It is clear to all.

To say something about a group’s killing of fellow Muslims on the basis of ideological differences we will first have to look into the nature of those differences. If ideological differences pertain to Islam and *kufir*, or belief and disbelief, then it is permissible. But usually we present personal, secondary or interpretational differences as differences of belief and disbelief which is not allowed and acceptable in Islam.

About democracy, Rais Ahmad Jaafari has written something very appealing. He says that democracy is not Islamic but if we annex

⁸ These are territories where enforcement of Islamic commandments is not possible, and neither are Shariah commandments in effect. They are outside the Islamic state’s boundary, regardless of their political system and laws. (Source: Mujtaba Muhammad Rathore, *Jihad, Jang aur Dehshatgardi* (Jihad, War and Terrorism), Urdu (Lahore: Zavvia Foundation, 2009).

it to Islam then rights of both Muslims and non-Muslims are protected in it. *Shariah* has authorized those at the helm of affairs to decide about the *emir* (ruler) and the manner of his ruling the people. If we call this process 'democracy' and it has all the features of the Islamic way of governance then there is nothing wrong in that. If democracy is something other than that then it is contradictory to Islam. As we have already adopted democracy as a system of government, our struggle should remain within this domain. Hopefully, we will succeed one day.

Maulana Muhammad Salafi

Administrator, Jamia Sattaria, Karachi

Many verses in the Quran say it is not allowed in any situation to take up weapons or revolt against the *emir*, caliph or head of the state. Allah says: "O ye who believe! Obey Allah, and obey the Apostle, and those charged with authority among you." (4:59) The holy Prophet (PBUH) once said: "[It is obligatory for you to] hear and obey your chief even if he was a negro slave..." So obeying the rulers is not a question of their learnedness, superior social status or other abilities. Even if a ruler does not have these attributes it is obligatory for Muslims to obey him and not fight against him. According to one tradition, the Prophet (PBUH) said to his Companions to "listen to your ruler". The Companions asked: "O prophet of Allah, even if he oppresses and tyrannizes us". The Prophet said: 'If he oppresses you he will be responsible for that (will be punished by God), and you will get reward for your patience.'

The history of Islam also tells us that the Companions of the holy Prophet (PBUH) preferred not to revolt and fight against the rulers. Hazrat Abdullah bin Abbas, Hazrat Zubair bin Al-Awam and some other close Companions of the Prophet (PBUH) were present in Makkah at the time when the Muslim rulers were tyrannizing the Muslims in the city. They did not revolt. Even when Abdullah bin Zubair was hanged, most of the Companions of the Prophet (PBUH) did not revoke their allegiance to the rulers. Imam Abu Jaafar Tahavi has written in his book *Al-Aqeeda Al-Tahavia* that when the rebels had confined Hazrat Usman to his house a person came to him and said, "O leader of the faithful! You are just caliph of the Prophet. But I see today rebels leading prayers instead of you. Should I offer my prayers while standing behind them?" Hazrat Usman had replied, "Prayer is among the symbols (obligations) of Islam, an expression of faith, so if they are offering and leading prayers, go and offer your prayers even if they have opposed the caliph."

First Debate

I would not repeat what has been said previously about *kufur buwah*. To quote Imam Abu Jaafar Tahavi, *kufur buwah* is disbelief in God, the Quran, the Prophet, the religion of Islam (*Deen*), and the agreed-upon legal rulings of Islam. Disbelief in any of these is *kufur buwah*. Meanwhile, Imam Tahavi has asserted that we will not declare a Muslim disbeliever on the basis of his sin(s) unless he regards his sin(s) *halaal* (permitted by the faith) and defies Islamic law.

In my view, the rationale behind forbiddance of *khurooj* is that it shakes people's reverence and trust in the integrity of the Islamic state and *Shariah*. Secondly, *khurooj* leads to more violence and discord, for whose eradication Allah revealed the religion of Islam. *Khurooj* negates Islam therefore it is not justified in any situation.

Islamic history also tells us that a group of rebels, Kharijites, emerged during the caliphate of Hazrat Ali and challenged the latter with armed revolt. Various other Islamic regimes faced similar rebellions. But we do not find that in any instance a Companions of the Prophet, followers (*tabi*) or eminent religious scholars declared *khurooj* permitted. The divine judgment is: "And if two parties of believers fall to fighting, then make peace between them..." (49:9)

With regard to *takfeer*, it is not justified in *Shariah* to pass a verdict on a Muslim being a disbeliever. It is a well known tradition that Hazrat Osama killed a disbeliever during a war who, according to him, was pretending to be a Muslim. When the incident came to the knowledge of the Prophet (PBUH), he asked Hazrat Osama what led him to judge that the killed was pretending: "Did you see his heart by tearing it apart?" The Prophet had asked Hazrat Osama. That means that whatever be the apparent situation, there is no justification in Islam for declaring others disbelievers or for killing them after declaring them disbelievers.

Secondly, ideological differences are natural and unavoidable. But we cannot prove permission of declaring others disbelievers or killing them in the name of ideological differences with reference to the Quran, the *Sunnah*, or the understanding and ways of the Companions of the Prophet (PBUH) and eminent Islamic scholars. Imam Tahavi has discussed these issues at length. All Muslims should study him.

Dr Qibla Ayaz

Maulana Salafi has tried to draw our attention to a very important discourse. I believe that Imam Tahavi's book *Aqeeda Al-Tahavia* should be promoted among religious circles as an essential reading. Islamic scholars should take up this task to critically review this book, hold academic discussions on it, and analogize Tahavi's findings with

emerging questions and terminology in related discourses. Such books could be very useful to understand critical issues such as *khurooj*, *takfeer*, militancy and violence in their proper perspectives and contexts.

We live in a globalized world. Questions like the ones we are discussing here are arising everywhere. There are large populations of Muslims and thousands of mosques in Western countries. They also face similar questions and issues. Conversely, there are some Muslim countries where the population of Muslims has decreased over time. For instance, the Gulf countries including Qatar, Dubai, Abu Dhabi and Sharjah are no more Muslim-majority countries. However, the situation in the West is otherwise. Some Western countries are being predicted to become Muslim-majority countries by 2025. Many questions are arising there. For instance, if a Muslim citizen of a Western country is employed in the army and that country attacks a Muslim country where will that Muslim soldier of a non-Muslim country stand? Will he obey his government or decide to be faithful to the Muslim *ummah*? In Western universities research is being carried out on such questions. Muslims look towards Islamic scholars to guide them in such situations. Fortunately, we have extensive literature on these subjects. We should at least study it to guide the people properly.

Maulana Mufti Muhammad Ibrahim Qadri

Member, Council of Islamic Ideology, and Principal of Jamia Ghosia Rizvia, Sukkur

The reason behind the Prophet (PBUH) forbidding *khurooj* against the rulers was to prevent the consequent turmoil and discord. Maulana Salafi has alluded to a tradition that the Prophet (PBUH) ordained his Companions to hear and obey their ruler even if they oppressed and tyrannized them. This tradition lays down a basic principle, that *khurooj* against the rulers is not justified in any situation, be it conflict on enforcement of *Shariah* or self defense against oppression.

Secondly, we should look at the question of *kufir buwah* in more depth. Let us review the complete *hadith* in which *kufir buwah* is mentioned. The Companions of the Prophet narrated: “The Messenger of Allah (PBUH) called upon us and we gave him the *bai'ah* (oath of allegiance), and he said, of that which he had taken from us, that we should give him the pledge to listen and obey, in what we like and dislike, in our hardship and ease, and that we should not dispute the authority of its people unless we saw open disbelief (*kufir buwah*) upon which we had a proof (*burhan*) from Allah.” We do not find the word ‘rebellion’ in this *hadith* but ‘dispute’. That we should not dispute those

First Debate

charged with authority unless we see open disbelief in them. Rebellion and *khurooj* are something beyond raising one's voice, and protesting against the rulers. About protesting against the rulers, the Prophet (PBUH) had once said: "The best jihad is the word of justice in front of an oppressive Sultan (ruler)." Hence protesting against and disputing with the rulers are concepts that are entirely different from *khurooj* and rebellion. The exception described here is that you can 'dispute' against the rulers in case they commit *kufir buwah*; that is not for *khurooj* and rebellion.

Imam Sharfuddin Novi says that *kufir buwah* means open disbelief and in the words of the Prophet (PUBH) 'upon which you have a proof (*burhan*) from Allah.' In other words *kufir buwah* is what you regard clear disbelief and sin and can prove it with a clear legal ruling from the Quran or *hadith*. Imam Novi further interprets the meaning of this *hadith* in these words: "Do not dispute with the rulers on matters of their rule, authority and do not put objections on them but when you see in them some clear vice or evil that you recognize as proven in laws of Islam. So when you see that, reject it and say the word of justice wherever you are..." As I said earlier, it is a matter of protest or raising one's voice, and not of *khurooj*. There is consensus among Muslims that *khurooj* against unfair, transgressing and oppressive rulers is forbidden in Islam.

Kufir (disbelief) means denial or renunciation of the essentials of religion, which are known to all of us, such as fundamental beliefs of Islam, the five pillars of Islam—*shahada* (profession of faith in Allah and His Messenger), *salat* (five prayers a day), *sawm*⁹ (fasting), *zakat*¹⁰ (giving of alms, or the poor tax) and *hajj*¹¹ (pilgrimage to the Ka'ba in the city of Makkah)—and prohibition of *zina* (fornication or adultery), theft and usury/interest, etc. A person who does not deny the essentials of religion openly but any of his actions fall in the category of denial that is also *kufir*. For instance, if a person openly accepts the statement

⁹ Fasting is observed during the holy month of Ramadan from dawn to dusk by abstaining from eating, drinking, smoking and sexual intercourse.

¹⁰ *Zakat* is usually described as the annual taxation of one's excess wealth at certain rates for different valuables. It is considered a form of social welfare programme by which wealth is redistributed and the accumulation of wealth in the hands of a small elite is prevented. It is also seen as a ritual purification of one's wealth. Although the allocation of *zakat* is prescribed in the Quran, the Companions of the Prophet showed that it was open to new interpretations. (Source: Olivier Leaman, ed., *The Qur'an: An Encyclopedia* (New York: Routledge, 2006), 316.

¹¹ *Hajj* is obligatory to be performed once in a lifetime, provided one has the means to do so.

of *kalmia* (words professing the faith) and also other essentials of the religion but at the same time worships idols, his latter act will amount to denial and renunciation of the essentials of the religion and hence *kufir*. Similarly, if a person puts the Quran in filth or commits an act of insult or contempt or lack of reverence of God and the Prophet (PBUH) he also commits *kufir*.

Regarding the question of *takfeer* and the consequent violence, I would say that the groups or organizations that kill fellow Muslims due to ideological differences and those who regard it justified should be severely punished because they kill others to impose their ideologies on them. Islam does not allow that.

Maulana Muhammad Ammar Khan Nasir

Vice Principal, Al-Shariah Academy, Gujranwala

The fact that taking up weapons against the rulers is strongly prohibited in *ahadith* of the Prophet (PBUH) demonstrates a fundamental proclivity of *Shariah*, or Islamic law, for securing life and property of Muslims and maintaining peace among them at all cost. That is why Islam commands its followers to bear with transgressing rulers instead of fighting against them because the latter course could bring more harm and trouble to Muslims. In other words, *Shariah* prioritizes for Muslims to choose ‘lesser of the misfortunes’, i.e. sinful and transgressing rulers. That means that *Shariah*’s original, principled intention and preference is opposed to *khurooj*.

If we keep this principle or preference ordained in *Shariah* before us—i.e. securing life and property of Muslims and maintaining peace among them at all cost—it would be easy for us to respond clearly to other questions of this debate. This principle also tells us that even if some exceptional and unavoidable ‘need’ necessitates *khurooj*, it should not be extended beyond the scope of that particular need. Following this principle would also require attaching such restrictions or conditions with the exceptionally justified *khurooj* that ensure protection of society and the people against violence, trial and discord. For example, the people resorting to *khurooj* should have the required strength to achieve the desired results. Similarly, if the purpose of *khurooj* is generally linked to people such as changing the regime or enforcing an alternative system of government, the leadership of the revolting group should first gain people’s trust. There is a general rule in Islam that only those classes or individuals have the right to rule who are trusted by the people. Therefore, if a group rises against the government with this claim that it wants to change the system of

First Debate

government, it should first meet the condition of gaining people's confidence for that purpose and then resort to *khurooj*.

Secondly, I would like to raise a very important question; one that is extremely relevant to this discussion, particularly in Pakistan's perspective. Because we have the democratic government in Pakistan most of the religious scholars and Islamic intellectuals consider it almost impossible to establish *Shariah* here in its true spirit as espoused by the Quran and *Sunnah*. They assert that working for enforcement of *Shariah* through democracy has so many structural constraints and functional difficulties that it is an impracticable option. Then naturally the question arises that why not opt for an alternative way to enforce *Shariah*.

One thing should be made very clear in this regard, and it should be explained to the people thoroughly, that it is not an absolute legal ruling of Islam to practice *Shariah* or establish the Islamic system as a whole in every situation and at every cost. Some basic considerations such as personal capacity and means, ground realities, and practical adjustments are linked to practicing or implementing of *Shariah* both at the individual and collective levels. An individual is liable to practice *Shariah* to the extent allowed by his circumstances, personal capacity and means. The same principle applies to society.

The references to legal rulings about practicing *Shariah* at the individual level are known to all, so I will not go into those details. On the collective level too, I do not find any decree by a jurist or Islamic scholar that the Muslims living in non-Islamic societies, some of which might even be called *darul harb* (abode of war) jurisprudentially, should migrate from those societies because it is not possible for them to act upon *Shariah* fully while residing there. About such situations, the jurists have opined that if acting upon the basic Islamic obligations such as prayers and fasting is made difficult for Muslims living in non-Islamic countries then it is obligatory for them to migrate, but otherwise they should live there and continue practicing the basic religious obligations. As the circumstances in those societies are not favorable to practice *Shariah* fully, those Muslims are not required to do so. In my opinion, this principle of practicing *Shariah* to the extent of capacity and means and favorability of circumstances should also be applied to those societies and states that we consider Islamic or Muslim. Indeed the overall circumstances and realities in Muslim or Islamic states are also incredibly adverse to implementing or practicing *Shariah*, such as presence of widespread ideological and sectarian conflicts, distortion of deeds and practices, and deterioration of morals and ethics. The claim that *Shariah* should be fully enforced in such

circumstances without eradicating all the adverse factors and constraints needs a complete review and should be debated at length.

The last thing that I want to discuss is the question of *takfeer*. One aspect of this question is that legal prohibition and denunciation of issuing of decrees branding anyone as a disbeliever on the basis of such a person's word or action is not really disbelief but a difference of understanding or of secondary or interpretational nature. That is unambiguously and explicitly agreed upon by all legal schools of thought in Islam. Similarly, if a person has said a word of alleged or probable disbelief, the well-known principle set by Islamic jurists should be followed, which emphasizes prioritizing the least probability of belief over the most probability of disbelief.

Another and a more delicate aspect of this debate is related to the status of those Muslim individuals or groups who say something, or have adopted that as an ideology, which is essentially disbelief in academic and jurisprudential discourses of Islam. This is really a delicate aspect of *takfeer* and more important than the one I just mentioned. I would like to present the viewpoint of Imam Ibn Taymiyya in this regard, which he has narrated in *Minhajul Sunnah* and his other books and decrees. He says that if a person or group professes the faith in Allah and in the Prophet (PBUH) and regards the Prophet (PBUH) as the source of righteous guidance but is also convinced on something of disbelief, it is a matter of conflict between his two relations, or attributes of faith; on the one hand that person or group relates to the Prophet (PBUH) and on the other adopts some belief or ideology that is contradictory to the creed of the Prophet (PBUH). Which of these two relations should be given more weight in establishing the status of that person or group as a believer or disbeliever?

Imam Taymiyya believes that the character and spirit of Islam and Islamic jurisprudence demand that the first relation should be given priority, i.e. profession of faith in Allah and the Prophet (PBUH). Ibn Taymiyya further argues that after Allah sent his last Prophet, Muhammad (PBUH), into this world, human beings could be reckoned either inside or out of the sphere of Islam. Therefore, it is better to consider those people in the sphere of Islam instead of the sphere of *kufir* who link themselves with the Prophet (PBUH) and have faith in Islam on the whole, despite some deviations in their beliefs or deeds. That means that Ibn Taymiyya believes that we should not declare those individuals or groups disbelievers who profess their faith in Allah and the Prophet (PBUH), or recite the *kalima*.

First Debate

The second thing that Ibn Taymiyya and some other jurists have highlighted is that if some word is declared a word of disbelief or some act an act of disbelief that does not mean that those who utter such word and those who do such act, or those who are sold on such word or act could also be declared disbelievers. These are two distinct situations. Those uttering a word of disbelief or committing an act of disbelief would be declared disbeliever only when they do so without the shadow of a doubt, argument, or interpretation. In other words, when the word is a word of disbelief but the person who says it does not regard it as disbelief on the basis of its interpretation then it would not be legally justified to declare that person as a disbeliever. To elaborate this point, Ibn Taymiyya has alluded to the situation of some of the Companions of the Prophet (PBUH) who had doubts about some verses really being parts of the Quran. Not acknowledging some parts of the Quran as divine revelation is a very delicate and sensitive matter but as those Companions had a doubt in it in good faith they were given concessions and not declared disbelievers.

Similarly, Islamic jurists have observed that a person practicing *haraam* (forbidden/prohibited) things is guilty of *fisq* (disobeying/transgressing the boundaries set by Allah). But if s/he practices a *haraam* thing genuinely considering it to be *halaal* (permitted by the faith), it would be disbelief. However, according to Ibn Taymiyya, a person's deeming a *haraam* thing *halaal* in light of a particular interpretation regarding that should not become the basis of her/his *takfeer*, or seal his status as a disbeliever. Some of the Companions of the Prophet (PBUH) regarded alcohol *halaal*, according to a misinterpretation of a verse of the Quran and used to drink it. The prohibition of consumption of alcohol is proven through *nusus*, or divine rulings with clear/absolute meaning and regarding which there is no difference of interpretation, but they were given concession due to their interpretation.

I deduce from all these references that *Shariah* wants to retain, to the maximum extent possible, those groups in the sphere of Islam who have a different viewpoint on authentic Islamic beliefs and claims. Instead of declaring them disbelievers, it seems the will of *Shariah* is that such groups' beliefs should be reformed by engaging them in debate and through logical criticism. However, if some additional factors or particular interests, such as measures to check damage to Islam and Muslims by certain groups, call for declaring such groups disbelievers, that can also be done as a last resort.

Dr Qibla Ayaz

It is important to share Ibn Taymiyya's point of view on these issues because his thought has great influence on the Muslim world. It is also true that in some matters Ibn Taymiyya's opinion and thoughts have been misunderstood and misinterpreted. If you have gone through the 9/11 Commission Report you would know that it mentions Ibn Taymiyya's thought and concepts as one of the origins of violent ideologies.¹² This claim reflects the sheer ignorance of the writers of that report about Ibn Taymiyya's thought and ideology. Let me quote one practical example from history. When the Mongols attacked the Islamic world and annihilated the Abbasid Caliphate, Imam Ibn Taymiyya was in Egypt with the Mamluk *sultans* (kings/rulers) at that time. Malik Al-Zahir Baibars ruled Egypt at the time. The person who negotiated with the Mongols on behalf of Egypt was none other than Ibn Taymiyya, who convinced them through dialogue and arguments against attacking Egypt and thus saved it from war and destruction.

Apart from that, I sincerely hope that our religious class, scholars and intellectuals start research on emerging critical issues and challenges instead of being stuck to the traditional subjects on which we already have abundant literature. Neither students and teachers of colleges and universities nor our modernist educated class is able to properly comprehend the terminology and diction used by religious scholars. Secondly, this terminology has inherent contextual meanings and we do not know how to construe and apply those in the emerging

¹² The 9/11 Commission Report mentions Ibn Taymiyya at least at two places. At first place, on page 50, this mention reads like this: "One scholar from the fourteenth century from whom Bin Laden selectively quotes, Ibn Taymiyya, condemned both corrupt rulers and the clerics who failed to criticize them. He urged Muslims to read the Qur'an and the *Hadith* for themselves, not to depend solely on learned interpreters like himself but to hold one another to account for the quality of their observance." And at the second place Ibn Taymiyya is mentioned on page 362 in these words: "As we mentioned in chapter 2, Usama Bin Laden and other Islamist terrorist leaders draw on a long tradition of extreme intolerance within one stream of Islam (a minority tradition), from at least Ibn Taymiyya, through the founders of Wahabism, through the Muslim Brotherhood, to Sayyid Qutb. The stream is motivated by religion and does not distinguish politics from religion, thus distorting both. It is further fed by grievances stressed by Bin Laden and widely felt throughout the Muslim world—against the US military presence in the Middle East, policies received as anti-Arab and anti-Muslim, and support of Israel..." (Source: *The 9/11 Commission Report*, <http://www.9-11commission.gov/report/911Report.pdf> (accessed 14 July 2012)).

First Debate

situations. We can effectively guide our youth and people only if we convey our message in simple terms, which they are able to understand. In order to do that, we need to start making our utmost efforts to find terms that are colloquial and related to the present context for narrating difficult jurisprudential debates and issues as well as to find answers to new questions arising out of the ever-changing globalized world. It is the responsibility of religious scholars to seek guidance from the practice and ways of life of the Prophet (PBUH) and prepare the Muslim *ummah* to safeguard itself and Islam amid the challenges of globalization. If they fail to do so they will be held responsible for the youths and other segments of society going astray.

The age of globalization is not willing to accept the system of *Shariah* as a whole. If some organization or group such as the Taliban wants to enforce a complete system of *Shariah*, the globalized world will never allow that so easily. We have yet to accept and acknowledge that reality. We will have to work out the most suitable possibilities in a realistic and progressive manner. We have an example of the Turks before us who are striving realistically while living within the limits of practicable possibilities, which do not conflict with global realities, and they are moving ahead successfully. In the recent past, there was no room for wearing veil in Turkey but now the wife of the Turkish Prime Minister wears it.

We have heard the panelists' views on *khurooj* and *takfeer* and I do not find any major difference among them; on some points, however, Mufti Assadullah Shaikh has a different opinion. Now I invite the participants to raise any questions that they might have.

Maulana Abdul Haq Hashmi

Emir Jamaat-e-Islami, Balochistan

I think that our debate will remain flawed and incomplete without inspection and review of the legal arguments that are the key source of the violence and turmoil that we face today. These people [militants] have deduced a justification for *takfeer* and *khurooj* from these arguments. I refer to the doctrines of *al-wala' wa'l-bara'*¹³ (love and enmity for the sake of God), which these people have adopted as an authentic source to justify and practice *khurooj*. Although what we

¹³ *Al-wala'* is a manifestation of sincere love for Allah, His prophets and the believers and *al-bara'*, on the other hand, is an expression of enmity and hatred towards falsehood and its adherents. (Source: Shaykh Muhammad Saeed al-Qahtani, *Al-Wala' wa'l-Bara' (Part 1)*, <http://www.kalamullah.com/Books/alWalaawalBaraa1.pdf> (accessed July 16, 2012).

have discussed so far was mainly related to Islam's legal rulings for and against *khurooj* but we should also look into the basis of arguments of those who have resorted to *khurooj*.

Dr Qibla Ayaz

Maulana Abdul Haq Hashmi has raised a very valid point. There is a well known book on the subject of *al-wala' wa'l-bara'* with the same name. This book was once part of the training courses and manuals of militant groups, and all had to learn it by heart, particularly the arguments it contains. This book was in the form of a manuscript then and was not accessible to all, but now it has been published and is available in the market. It is really important to raise questions about *al-wala' wa'l-bara'* and invite the leading experts on the subject and scholars to discuss these two critical concepts in the same manner as we are discussing the issues of *khurooj* and *takfeer* here.

Maulana Mufti Muhammad Zahid

Vice Principal, Jamia Islamia Imdadia, Faisalabad

All the panelists, Dr Ejaz Ahmad Samdani and Maulana Ammar Khan Nasir in particular, have covered the topics very well and elaborated the issue to a great extent. I second Maulana Hashmi's suggestion to examine and debate the arguments exploited by the militants because these arguments are really very superficial but also very dangerous at the same time because they appeal to the common people. More than the madrassa students, the youths getting modern education are getting more influenced by the extremist thought and we need to counter it and its proponents. For that we need to discuss such topics openly.

It is good that the organizers have selected for debate the question of *khurooj* against 'Muslim states' instead of 'Islamic states',¹⁴ because the militants mistakenly believe that the prohibition of *khurooj* is ordained against Islamic states [and therefore they can revolt and fight against a Muslim state like Pakistan]. In fact, the prohibition of *khurooj* emphasized in *ahadith* is applicable to Muslim states also because these *ahadith* presume that the rulers of such states or countries are oppressive.

Secondly, in old times the states were ruled by individuals. There used to be Muslim rulers and *khurooj* simply meant armed revolt or

¹⁴ A Muslim state is a Muslim majority state whereas Islamic state refers to a state where Islamic laws are enforced.

First Debate

struggle against those rulers. Now we have democratic nation-states which are not ruled by individuals but institutions. Nowadays *khurooj* does not mean fighting against the individual rulers or head of a state or government such as a president or a prime minister—like the *khurooj* against some rulers of Banu Umayyad and Banu Abbas in Islamic history—but against a state and its institutions. Have a look at the targets of the militants and you will see their militant activities are not merely against some individuals but against the Pakistani state and its institutions as a whole. Even those institutions of the state that are not meant to fight against these militants are also being targeted in their attacks. The police are not basically meant to fight against militants but are targeted frequently in militants' attacks. Similarly, Pakistan Ordnance Factory at Wah Cantonment, which was hit by the militants, had nothing to do with them. But the militants target these and other institutions since they are part of the Pakistani state. This difference in *khurooj* against Muslims rulers and Muslim states should be discussed further at some point in time.

The militants justify their violent acts against citizens of Western states on the basis of the argument that as the rulers and governments in those states come to power by people's vote therefore the latter are also responsible for their states' policies and thus equally punishable without any difference of combatants or non-combatants. If we apply this argument of the militants to their *khurooj* against a Muslim democratic state, the logical conclusion implies that their *khurooj* will be against all the citizens of that state and not just the rulers or state institutions. This point also needs to be discussed in depth at some later stage in the debate.

Another point that I want to highlight is related to two levels of *takfeer*. The first level is common and understandable to almost all and it is linked to individual and group-level *takfeer* of others—the practice of declaring them disbelievers—in the sectarian perspective. It has been discussed here and no doubt it is a very sensitive issue. The extent of violence and insecurity we face today has significant contribution from this level of *takfeer*. Secondly, we find a typical ideology referred to as the *takfeeri ideology* among some militant groups present on both sides of the Pakistan-Afghanistan border that is imported from Egypt and some Arab countries. The *takfeer* based on this ideology is not similar to the one cited at the first level but it declares all those people disbelievers and out of the bounds of Islam who are part of the systems of the governments of Pakistan and Afghanistan, which militants say are puppet governments of the US and allies of the 'infidel forces'. These groups use the word 'apostate' for Afghan and Pakistani security

forces, officers and bureaucrats, etc., in their literature. As this level of *takfeer* is very much relevant to *khurooj* and the situation of violence and militancy we face at present, there should be sufficient debate on that as well.

Dr Qibla Ayaz

Maulana Mufti Muhammad Zahid has raised some really pertinent questions. We can discuss them now or later in the deliberations. To be honest, very valid and interesting questions are being raised here and our religious scholars should think about them. For instance, the complicated situation on Pakistan's western border and in Afghanistan raises many questions. Almost all the mujahideen groups and veteran commanders who fought against the Soviet Union, except the Afghan Taliban, are, or were, part of the Karzai government in Afghanistan including Burhanuddin Rabbani, who was martyred in a suicide attack last year, Sibghatullah Mujaddedi and Ustad Abdul Rab Rasul Sayyaf. A large group of commanders of Gulbuddin Hekmatyar's Hizb-e-Islami, excluding Kashmir Khan, Hekmatyar and a few other commanders, is part of the government. Hamid Karzai himself was a big financier of the mujahideen and his father was an acclaimed mujahid but he now heads the Afghan government. This is strange that our [Pakistani] religious scholars justify armed struggle against Afghanistan's government that comprises former mujahideen just due to the presence of foreign forces in that country. Our scholars should discuss such situations and guide the people proper opinions.

Muhammad Safdar Shah

Jamia Khalilia Rizvia, Kundian, Mianwali

My question is to Mufti Assadullah Shaikh. In your opinion, democracy is *haraam*, or an un-Islamic form of government, but you have also asserted that we have to make headways within this system and enforce *Shariah*. Can you explain what is the way other than rebellion if we cannot enforce *Shariah* through democracy?

Mufti Assadullah Shaikh

My words that preferring man-made laws to divine laws is *kufir*, or disbelief, do not negate democracy. If religious scholars are agreed in the system of government being practiced by a Muslim country then this agreement will be followed by the Muslim citizens of that country and all efforts of change and reform will remain within it. The term *kufir buwah*

First Debate

used in the *hadith* sets the basic principle that in the system of governance of an Islamic state—be it democracy or some other form of government—no such practice should be observed which is against the limits/boundaries set by Allah (*Hudood Allah*) or the symbols of Islam. However, the people generally believe that democracy by default is not a system of government meant to enforce the boundaries ordained by Allah, or Islamic law, therefore there is no need to struggle for it. But it is religious scholars' agreement on democracy that validates this opinion that we should bring change only through democracy.

Muhammad Nawaz Kharal

Sunni Ittehad Council, Lahore

I have two questions. My first question is that currently we do not have a credible criterion for religious scholars issuing religious edicts (*fatwa*) against others. Generally, every person thinks he has the authority to issue a *fatwa* and interpret divine commandments. Irresponsible edicts are among key factors of violence and discord in our society. I want to ask is there any standard set by Islam for issuing edicts? If yes, how can we ensure that that standard is observed and upheld in Pakistan in particular in issuing edicts that declare others disbelievers? My second question is how do you look at Islamic scholars' visibly poor ideological and intellectual response to Al Qaeda's extensive maneuvering of the concepts of *takfeer* and *khurooj* for propagation of its violent ideology?

Dr Qibla Ayaz

We have the Council of Islamic Ideology that comprises religious scholars from all schools of thought. A member of the Council, Mufti Muhammad Ibrahim, is present here and I would request him to respond to these questions.

Mufti Muhammad Ibrahim Qadri

There is no official panel or organization designated in Pakistan on issuance of edicts or legal opinions on sensitive religious matters. All of us feel free to take this task onto us. It is true that there are many irresponsible and poorly educated scholars and clerics in our madrassas who regard themselves *mufti* (an Islamic scholar who has scholarship and authority to give his legal opinion/judgment or edicts) but in reality they are not. Besides issuing of decrees, some other wrong trends and practices have also emerged due to the absence of a standard and

official code of conduct for religious matters such as random and devoid of merit appointments of prayer leaders and speakers for Friday and Eid prayers in mosques. These appointees do not even consider their ethical responsibilities while speaking to the people on sensitive matters. It is ideal to have a credible official panel, with representation of all religious schools of thought, to give legal opinions or issue edicts on religious matters but even in the absence of such a panel our religious organizations and institutions should take the utmost care while appointing prayer leaders and speakers in the mosques. Secondly, while issuing an edict the religious scholars should also be mindful that although it is their personal legal opinion but it should be based on the commands and legal principles set in the Quran, *ahadith* and by the leaders of the faithful (*imams*) and jurists of Islam in their sayings and writings. This is their moral and religious obligation.

Maulana Muhammad Salafi

Let me add something to this discussion of leadership and authority. I was invited to a television program and asked what should be done to make Pakistan an Islamic welfare state and also unite Muslim countries. My reply was that a country or a nation makes progress and raises its status in the comity of nations under a visionary leadership that holds respect and authority among its people. For instance, if Turkish Prime Minister Tayyip Erdogan or Iranian President Mahmoud Ahmadinejad say something their people politically acknowledge it. I have travelled to different Muslim and non-Muslim countries and observed that Muslims and Christians follow one religious leader in their countries, who is known as *mufti-e-azam* (the grand *mufti*, or Islamic scholar) and the Pope, respectively. Whatever legal opinion or religious edict comes from these religious leaders is largely followed unopposed by the people. It is unfortunate that Pakistan's people are orphans in terms of both political and religious leadership. We do not have a political leader or leadership whose words and actions are acknowledged, respected and politically followed by the people. Nor do we have a grand religious leader by consensus that we direly need to unite and strengthen the Muslims of Pakistan as an Islamic nation. Our religious scholars, organizations and institutions belonging to all schools of thought should seriously think about enhancing sectarian harmony and unity to that level where they could evolve consensus on a grand religious leader for all. Our religion teaches us to follow our leader. We can offer our prayers at home but Islam stresses on offering prayers in the mosque behind a prayer leader.

First Debate

Our failure to be united as a nation is mainly attributed to our failure to evolve and follow an agreed-upon religious leadership.

Maulana Muhammad Ammar Khan Nasir

The subject of *khurooj* has another dimension which should be thoroughly discussed while analyzing and examining the topic. Islamic jurists and legal experts say that although *khurooj* against a government of Muslims is not justified, but there is no denying the fact that sometimes inappropriate and oppressive policies of Muslim rulers can make some people so helpless that they feel compelled to start an armed revolt. Even though members of Muslim society are not allowed to practically support the rebels in such a situation but the jurists emphasize that if the rebels' demands carry weight or they have understandable reasons for *khurooj*, the government or the rulers should pay heed to those. Therefore, I think we should examine the viewpoints and arguments of those who have adopted the way of *khurooj* in Pakistan.

I believe that the role of our rulers and, with due apology, our religious scholars is no less significant in pushing these people (militants) on to the path of militancy and providing them with ideological and practical justification for resorting to violence. Paradoxical and contradictory policies and practices of our state institutions, including the intelligence agencies, have contributed to development of this militant mindset in Pakistan. For instance, after the incident of 9/11 Pakistan officially and categorically decided to support the US and its allies and provided them logistical support in their fight against the Taliban in Afghanistan. Although the decision was made under pressure from the US and the international community but we all know that Pakistan took in principle a stand. Quite contradictory to this clear policy position, the state of Pakistan did not, or could not, make such arrangements which could stop the Pakistani militants in its tribal areas from taking part in the war in Afghanistan along with the Afghan Taliban. This contradiction further compounded the problems related to militancy.

Politically, we have been telling the world that we have no links with the Taliban's fight against the US but in fact our state agencies have been allowing the tribal militants and jihad organizations in Pakistan to fight against the US in Afghanistan. It is an open secret that our agencies had fully supported the mujahideen in Afghanistan against the former Soviet Union and they are secretly doing the same now against the US. What message could the militants get from this contradictory state policy of an open alliance with the US and the West

against the militants and secret support to some militant groups? Obviously they started to believe that whatever they were doing was appropriate and justified according to *Shariah*. This also led the Pakistani militants to reach a logical conclusion that if they were justified in going to fight the US in Afghanistan against the state policy then they would also be justified in fighting against the Pakistani state itself if it stopped them from their cross-border fight in Afghanistan. Therefore, I think our state has itself, through its contradictory policies and practices, provided a justification to the militants to take up arms against it and its institutions including the security forces.

Secondly, in form of legal opinions/decrees, the particular response of our credible religious scholars to the US invasion of Afghanistan in 2001 later became a basis for justifying an armed revolt against the Pakistani state. Leading religious scholars of Deobandi school of thought had then issued a specific decree which was published in magazines and journals. It stated that jihad had become mandatory in Afghanistan after the US invasion and it was essential for all Muslims to provide help and political, moral, and financial support to the fellow Muslims fighting in Afghanistan against the US. Those who have resources to go there and take part in the jihad should do that. One thing which was not considered while issuing such decrees was the anti-militants and pro-US state policy and decisions made by Pakistan at that time. As mentioned earlier, the state agencies were also supporting some militant groups to fight in Afghanistan and religious scholars also justified this fight against the US and its allies, terming it jihad. These factors encouraged the militants and in the next phase they became ready to fight against the Pakistani state and its institutions also. Now they have an argument or justification for which we should not hold them responsible. They construed that from state policies and religious scholars' decrees for jihad in Afghanistan.

Dr Qibla Ayaz

This is a very valid point. Indeed we as a nation and particularly our religious classes are in a state of confusion. We should reanalyze our problems keeping in mind the ground realities. Critical facts such as the status and state of affairs of the Taliban in Pakistan should not be concealed. Two major groups of Pakistani Taliban are being led by Hafiz Gul Bahadur and Maulvi Nazir in North Waziristan Agency of the Federally Administered Tribal Areas (FATA); both leaders belong to Wazir tribes. Hakeemullah Mehsud currently heads the Tehrik-e-Taliban Pakistan (TTP), a group that is fighting against Pakistan and its institutions. Nonetheless, Pakistani agencies and religious scholars have

First Debate

very good relations with Gul Bahadur and Maulvi Nazir. It is said that they are not involved in militant attacks inside Pakistan and just focus on their fight in Afghanistan. They are also known as ‘good Taliban’ for Pakistan.

The question arises that what justifies Pakistani institutions’ links and support for these militants of the so-called ‘good Taliban’ who are Pakistani citizen and carry out militant attacks in Afghanistan, particularly when Pakistan is bound not to interfere in the internal affairs of any country as a member the United Nations and also through its general state-level declarations? Is this case an exception to divine instructions, laid down in *Surah Al-Anfal* and *Surah Al-Tauba* of the Quran, asking the Muslims to abide by their agreements? Similarly, the holy Prophet (PBUH) signed an agreement with the idolaters of Makkah that if an inhabitant of Makkah embraces Islam s/he may not be allowed to migrate to Madina. Even before the agreement was signed some people in Makkah embraced Islam but the Prophet (PBUH) said that he could not help them and provide refuge to them in Madina. Does this principle established by the Prophet not apply to the current situation we are discussing? These are very critical questions which should be discussed in the upcoming sessions.

Another important Taliban group is the Haqqani Network, which is in the spotlight these days. This is a militant group of Afghan Taliban. It had moved to Pakistan during the Soviet-Afghan war when the whole world had supported the mujahideen and the UN had passed a resolution in support of the ‘Afghan Jihad’. This group did not leave Pakistan after the Soviet-Afghan war ended. Now a new situation has emerged. The US says it is willing to talk to the Afghan Taliban minus the Haqqani Network. This American stance has a flaw. When the US is willing to reconcile with the Afghan Taliban it should know that the Haqqani Network also holds allegiance to Afghan Taliban supreme leader Mullah Omar.

Dr Ejaz Ahmad Samdani

The discussion on the Taliban is not directly linked to the subject of our debate. As far as the so-called contradictory policies of our rulers and the government are concerned, I think these kinds of things are diplomacy. Pakistan said ‘yes’ to the US and joined its war in Afghanistan because it was threatened of the consequences if it did not support the US. On the other hand, Pakistan could also not afford hostility with the Taliban. So these are different operational logics which impact state policies.

I would like to say something about one of the focal points of our discussion, which says that only *kufir buwah* justifies *khurooj*. Almost all the participants here agree on that. But Mufti Assadullah has narrated a *hadith* in which the Prophet (PBUH) forbade his Companions from *khurooj* against the rulers as long as the rulers established the prayer amongst them. But if there is no *kufir buwah* among the rulers and yet they do not establish prayer, will *khurooj* be justified against them? We will have to look at jurists' opinions to see if *khurooj* is allowed when the rulers do not offer prayers themselves, have not established a system and facilities for offering prayers and those who do not offer prayers are never chastened. Qazi Ayyaz has written in his interpretation of the *hadith* cited earlier that establishing the prayer means establishing or upholding Islam. Maulana Ashraf Ali Thanvi has further explained it in his book 'Jazl'al-Kalam fi Azal'al-Imam'. He says in the times of the Prophet (PBUH) offering the prayer was among the symbols of Islam. The Prophet (PBUH) had said in another *hadith* that the prayer was a basic difference between a Muslim and a non-Muslim. The prayer was declared a distinguishing and determinant feature of a Muslim. Although these days most of Muslims do not offer their prayers but no one issues a decree declaring them non-Muslims. The reason is that in our times the prayer is no longer a symbol of being a Muslim. Therefore, while interpreting a *hadith* we should keep its particular context in mind so that we reach the right conclusion.

Another act of the rulers which may lead them to *kufir buwah* is their forcing Muslims to commit sins (*ikrah alal ma'siyat*). It has two forms. One is that the ruler despises and belittles *Shariah* by his words and actions; for instance, he tells the people that consuming alcohol is *halaal*. This would be termed as an act of *kufir buwah* because the ruler is erroneously convinced that consuming alcohol is not prohibited by Islam. The second form of *ikrah alal ma'siyat* is that the rulers create such an environment in the country that it becomes difficult for Muslims to do good deeds; like the situation we see these days that a bearded man finds it hard to get a job as he is suspected of being an extremist. However, this situation is not meant to despise or mock Islam. Therefore, if the government sets some dress code or other conditions for certain jobs we cannot call that an act of disbelief.

Similarly, we should also keep this aspect before us that although *Shariah* has forbidden Muslims from *khurooj* but it has kept many doors open for reform and correction of the rulers and governments. We usually prefer the ways and methods imported from the West. For example, we observe strikes and close markets and shops to force the

First Debate

government to fulfill our demands. This practice of collective strike seems very vague and ambiguous. An individual can close his shop to protest against something but Islamic law does not allow anyone to force others to close their shops and markets to observe strike and be part of the protest. The best way to correct and reform the rulers is narrated in a *hadith*. It states: “No obedience is due to creatures in disobedience of the Creator.” If all citizens collectively decide that they will not open their accounts and deposit moneys in the banks which operate on an interest-based system because interest is *haraam* (prohibited by the faith) in Islam and similarly, employees also quit such banks, the government will be forced to introduce alternative banking systems. But the first step towards that goal is to enforce *Shariah* on ourselves.

There is a general confusion about *takfeer*. The legal opinion that ‘we will not call the *Ahle Qibla* (those who face the *Ka’ba* in Makkah for prayer) as *kafir*, or disbeliever’, is attributed to Imam Abu Hanifa. This text is present in *Sharh-e-Maqasid* whose author has copied it, albeit partially, from Al-Muntaqi’s *Sharh Al-Mu’ta*. The complete text says: ‘we will not call the people of Qibla as *kafir* due to any of their sins.’ This is supported by another *hadith* narrated by Hazrat Abbada bin Samat that the Prophet (PBUH) said: “Three things are the basis of our faith [one of them is]: we will not shed his blood who recites the *Kalima* (i.e. professes his faith in Allah and the Prophet), nor will expel him from *millat-e-Islam*¹⁵ for any of his sins.” Therefore the reference to *Ahle Qibla* does not simply mean that a person who offers his prayers facing the *Qibla* will remain a Muslim in all situations even if he follows the Qadiyani ideology and does not believe in the finality of prophethood. This is indeed refutation of the Kharijites’ ideology who believed that profession of faith was not enough to make a person a Muslim, rather faith was based on practice and deeds.

Another important question is whether a person will be declared a disbeliever if his act of disbelief is based on a particular interpretation or logic? The fundamental principle of interpretation is that it should not be in conflict with the recurrent transmissions in Islamic jurisprudence, or *mutawatirat-e-Shariah*.¹⁶ Otherwise, the devil could

¹⁵ *Millat* means a path or a way in Arabic language. *Millat-e-Ibrahim* denotes the creed or ideology of the Prophet Ibrahim in the Quran. *Millat-e-Islam* is attributed to following the way and path of the Prophet Muhammad (PBUH) and all those who do so form the Islamic nation.

¹⁶ Jurists and experts on Islamic law believe that certain knowledge may be reached not only from evidence that is deemed certain, such as clear and unambiguous statements in the Quran and those *ahadith* that are recurrent

also not be declared a disbeliever because it refused to prostrate to Adam on the basis of an interpretation, or logic: “I am better than him. Thou createdst me of fire while him Thou didst create of mud.” (7:12)

Similarly, will a person utter a word of disbelief instantly become a disbeliever? God forbid. Our society has transformed into such a state that many people say words of disbelief in routine conversation. Will they be declared disbelievers? Jurists have explained it with two basic concepts of *lazoom-e-kufr* and *iltizam-e-kufr*; the former means uttering a word of disbelief (*kufr*) and the latter means to have belief in it. *Lazoom-e-kufr* does not always make a person a disbeliever. We can simply draw that person’s attention towards his word of disbelief. The person may say that it was a mere slip of the tongue or that he did not know that that was a word of disbelief. Unfortunately, many of our religious scholars simply issue decrees declaring Muslims disbelievers without investigating whether the accused merely uttered a word of disbelief or he really meant and believed that. These matters need the utmost care.

Dr Qibla Ayaz

Dr Samdani has pointed out that without understanding the particular context of a tradition of the Prophet (PBUH) or a legal opinion in jurisprudence we can neither understand it properly nor apply it in the modern context. In their intellectual efforts, jurists have extensively relied on *tawassu*, an objective of Islamic law that seeks to establish ease and facility, and have thus always guided us. One of the prerequisites for being a jurist is that a person should have extensive knowledge and insight into the contemporary state of affairs.

The old concept of *khurooj* related to armed revolt. In modern times, peaceful *khurooj* could be very much effective and useful if the need arises. For instance, if we refuse to pay taxes to the government and public opinion supports us, we can practically paralyze the government. I remember when I was at a university in the UK in 1983 the price of the milk was slightly raised. A consumer rights

in their exact wordings (*mutawatir lafzi*) but also from statement that are only probable but recurrent in their meaning (*mutawatir ma'nawi*). By the end of the 11th century (A.D.), the notion that recurrent (*mutawatir*) transmission constitutes certain knowledge was not only applied in matters relating to *hadith*-transmission but had thoroughly permeated Islamic jurisprudence. (Source: Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden: Koninklijke Brill NV, 2010), 176.)

First Debate

organization gave the government one week to reverse the hike in milk prices but the dairy factories became the main hurdle. The consumer organization then requested the people to stop drinking milk. Within just two or three days the government and the milk producers found them helpless in reducing milk prices. This is how public opinion can be influenced in a peaceful manner. We can also do that.

Mufti Muhammad Ibrahim Qadri

We cannot reach at a better conclusion without discussing both the positive and negative aspects of an issue. Our scholars of *kalam* (Islamic theology) have largely countered the philosophies of the Kharijites and Mu'tazilah,¹⁷ as well as of the Greeks. Their methodology is that first they provide argument and evidence to support their claim and then examine the claims of the opponents in the same manner. Books such as *Sharh Al-Aqaed*, *Sharh Al-Mwaqif*, and *Sharh Al-Maqsid* are just a few examples. We should use the same methodology in our debate on *takfeer* and *khurooj*. Secondly, we can expand this platform to include more leading religious scholars in our debate.

Discussion on such sensitive topics has always been a very delicate issue. We should not forget one particular *hadith* of the Prophet (PBUH), saying: "If somebody accuses another of *fisq* (by calling him *fasiq*, or a transgressor) or accuses him of *kufr*, such an accusation will revert to him (i.e. the accuser) if his companion (the accused) is innocent." Our religious scholars and the common citizens should take these matters seriously.

A person who speaks and behaves like a Muslim, offers prayers, goes to the mosque, and has good dealing with the Muslims, we will consider him a Muslim and will not suspect his faith. The Prophet (PBUH) said: "Whoever prays like us and faces our *Qibla* and eats our slaughtered animals is a Muslim and is under Allah's and His Apostle's protection." That means that we cannot simply declare those individuals disbelievers who respect and uphold the symbols of Islam and have an Islamic way of living. Not until we produce clear evidence of their disbelief.

We find a mention of the terms of *khurooj* and *baghawat* (rebellion) in *ahadith* and of the latter also in the Quran. The books on Islamic law have also discussed the subjects. As Dr Ali Akbar has said,

¹⁷ An Islamic school of speculative theology that flourished in the cities of Basra and Baghdad, both in present-day Iraq, during the 8th–10th centuries.

khurooj has a history, some of which is transmitted to us through the traditions of the Prophet (PBUH). We find several rebel groups at different points in Islamic history who had armies and challenged their states on the basis of a particular viewpoints or ideology. These rebel groups believed that their rulers were disbelievers and liable to be killed along with the people who supported them. The first such group emerged during the reign of Hazrat Ali, the fourth caliph of Islam. That group declared the caliph an 'idolater' and accused him of accepting human beings as a source of 'command' and thereby defying the divine judgment that 'the Command is for none but Allah.'

It is written in *Al-Behr Al-Raiq* in interpretation of *khurooj* that the Kharijites are a community which has an armed group and power. They declare their rulers disbelievers on the basis of a particular interpretation of their own and consider killing of Muslims justified on the same pretext. The author of *Fat'h Al-Bari* writes that they are a group of astray people who misinterpret religion and invent new things in it; they are called *kharijis* because they go out of the circle of Islam by rebelling against the rulers and Muslims. According to Allama Ibn Abid Shami, who is well trusted by the modern jurist, the rebels are united in the form of a group, have strength, strive to consolidate their position, fight against the rulers on the basis of some argument, believe that they are on the right path and want *wilaya* (power and authority) in the affairs of the state. The *khurooj* against Hazrat Ali had the same motivations.

As mentioned Maulana Ammar Nasir earlier, it is the responsibility of rulers or the government to talk with those engaged in *khurooj* on the basis of a particular interpretation of divine judgment related to disbelief. Hazrat Ali did the same and tried to reconcile with the Kharijites. He sent Hazrat Abdullah bin Abbas to the Kharijites and advised him try to persuade them with arguments. Hazrat Abbas went to the Kharijites and told them that their fight against the caliph on the basis of the argument that he had accepted the command of anyone other than God and hence was an idolater was incorrect. He argued with them on the basis of the following verse from the Quran and said God had allowed two sources of command in this case: "And if ye fear a breach between them twain (the man and wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware." (4:35) It is written in books of Islamic history that around 5,000 Kharijites were convinced and turned away from the Kharijite ideology. Those who continued to stick to their interpretation and fought against the caliph were responded to in the same manner.

First Debate

Therefore, war against such rebels should be the last option. First, the government should try to engage them in dialogue and reconcile with them. If they are not convinced and satisfied and continue their rebellion then the government is left with no option other than war. Most importantly, the principles of reconciliation and equitable justice are ordained in the Quran: “And if two parties of believers fall to fighting, then make peace between them. And if one party of them doeth wrong to the other, fight ye that which doeth wrong till it return unto the ordinance of Allah; then, if it return, make peace between them justly, and act equitably. Lo! Allah loveth the equitable.” (49:9)

Muhammad Zahid Siddique Mughal

Assistant Professor, National University of Computer and Emerging Sciences, Islamabad

I have a few questions which I think are important to address in order to understand the nature of *khurooj* in the prevailing systems of governments. We were just discussing the Kharijites who did *khurooj* against one of the four pious caliphs of Islam. Most of the legal debate and opinions on *khurooj* that we find in history are in the context of the Kharijites, who rebelled against the Islamic caliphate. In order to apply the same legal opinions on some group in the present times we will have to first examine the status of the state against which that group is fighting. Is that state an Islamic caliphate? This is important to know because our discussion on *khurooj* presupposes that we are talking about an Islamic state that exists somewhere, all of its structures and institutions are functioning according to the Islamic way, and extraction and enforcement of rules and laws in it is led and guided by *Shariah*. The discussion of *khurooj* starts when a ruler or a person in the government emerges in that Islamic state and starts creating hurdles in extraction and implementation of rules and laws and functioning of one or more of the state institutions. Now the question of *khurooj* arises, that is, what to do with that ruler or person. That means that *khurooj* is always against an individual, or ruler of an Islamic state and not against the state. There is a difference between the government and the state. The government is a small but important institution or pillar of state. In classical jurisprudence of Islam *khurooj* refers to rebellion against a ruler or the ruling elite. Thus, a more relevant question in the classical context could be: Is *khurooj* justified against the rulers or the government of an Islamic state that interfere in Islamic functioning of state institutions?

But in the modern context when the Islamic caliphate system does not exist anymore anywhere in the world after 1924 and there are liberal and democratic state orders in most Muslim countries, which we try to prove are Islamic through our Islamic grafting and tinkering, we will have to first ascertain the nature of Muslim states of today. It is not hard to analyze whether our society and state structures are Islamic or not. Then if we reach the conclusion that liberal and democratic structures are not Islamic, then this whole debate on *khurooj* will become absurd and irrelevant.

It is generally said in the debate on *khurooj* that it will lead to bloodshed and loss of people's lives and properties. The Quran says *fitna* is worse than bloodshed. The word *fitna* has been used here in a peculiar context. It means a situation that puts the people into trial and they find it difficult to follow their faith and practice Islam. The Quran has described characterized such a situation, or *fitna*, as worse and more dangerous than bloodshed because it can lead the Muslims to hell in an unfelt way. We should also examine whether our society and system of government put us in that kind of a situation which is described as *fitna* in the Quran. But the option of *khurooj* will only be valid if we declare our state an Islamic one. In such a situation, the debate should be on the options other than *khurooj* to reform and correct the rulers.

Secondly, it is generally believed that the only meaning of *khurooj* is taking up arms and fighting against the rulers. The real meaning of the term, however, is to go out of and defy one's allegiance to the state and its institutions and structures and to establish a parallel system of obedience which you call as 'the state within a state.' Therefore, the focus of our discussion should be to determine whether it is justified to establish such parallel state structures and institutions within an Islamic state wherein the allegiance to the state is not based on the philosophy of human rights and man-made constitutional structures but Islam and Islamic law. If our religious scholars look at this discussion in the perspective of the principle that '*fitna* is worse than bloodshed' then I believe it will be more relevant and clear.

We need to understand *khurooj* in the right perspective and, as I mentioned earlier, there is no reason to apply the legal opinions on *khurooj* of early Islam in the present context where the concept of the Islamic caliphate does not exist in practice. The Muslims' struggle for independence in different parts of world in modern history was not aimed at establishing systems of caliphate but nation-states; most of which are based on democratic structures. The caliphate is not a nation-state.

First Debate

The groups which are currently fighting against Muslim states including Pakistan also believe that *khurooj* only means taking up arms against the state which in my opinion should be the last option. Secondly, although they present an argument and justification for *khurooj*, these groups have neither a proper roadmap nor comprehension of who they are fighting against, i.e., whether it is the individual ruler, the government or the state structures.

Dr Qibla Ayaz

I would like to reiterate that we have deliberately used the term ‘Muslim state’ in this debate instead of an ‘Islamic state’ in order to keep the focus of our discussion vivid and relevant because the ideal Islamic state does not really exist in the world today and there are only Muslim states inhabited by Muslim-majority populations. We can even compare the regimes of the first four caliphs of Islam with the subsequent regimes of Banu Umayyad and Banu Abbas and even the Ottoman Empire to see if the latter were really Islamic caliphates. It is also important to understand if *khurooj* and rebellion against the latter regimes legally had the same status and validation as against any of the first four caliphs of Islam. The mere title does not make a state an Islamic caliphate; it has to fulfill certain standards and requirements set by Islam. As far as I know, many of the ‘caliphs’ in the Umayyad, Abbasid and Ottoman regimes were known for committing sins and transgressing the boundaries set by God. They did not meet the criterion to be caliphs, nor could their regimes be termed true Islamic caliphates.

Mufti Ibrahim Qadri

When we talk about caliphate in the perspective of Islamic history and in the light of sayings of the Prophet (PBUH) it simply means the righteous caliphate system that was established by the Prophet himself on the method set by him that continued to exist during the times of the first four righteous caliphs after the Prophet’s death. This entire course of the righteous caliphate existed for about 30 years. Allama Ali Qari, who is a great *mohaddis* (authority on the knowledge of *hadith*) and represents Hanafi Islam, writes in *Sharh Fiqh Akbar* that the Islamic caliphate that was established on the pattern of the Prophet’s caliphate continued for 30 years and the subsequent Muslim rulers were kings and monarchs with some exceptions such as Hazrat Omar bin Abdul Aziz (an Umayyad caliph who ruled from 717 to 720) and the awaited prophesied Imam Mehdi. But the word caliph is used

for a successor and an emir. Allama Shami has written about emirs of Banu Umayya and Banu Abbas that they were all kings or monarchs who forcibly got the right to rule but we regard their monarchies and kingships right and lawful to avoid discord and bloodshed among Muslims.

Ahmad bin Al-Hamvi Al-Hanafî has written with reference to Imam Abu Hanifa in his book *Sharh Al-Ishbah wan-Nazair* that Abu Hanifa and his colleagues did not consider the conditions of *Ijtihad*,¹⁸ justice, piety and hailing from the tribe of Quresh as necessary for appropriateness and appointment of kings and their successors. That means that if such people who do not fulfill the requirements cited earlier become rulers of Muslims we will accept their authority and will not rebel against them.

The ideology and legal opinions of Imam Abu Hanifa on the subject are found in many books. For instance, *Hadaya* is an old and acclaimed book of the Hanafî school of thought. Imam Abu Hanifa is quoted in the book as saying that when there is trial and turmoil in the *ummah*, the Muslims should stay at their homes. The author of the book thinks these words of Imam Abu Hanifa mean that if Muslims do not have the strength and resources to support the rebels they should stay home and if they have the strength and resources they should support them.

Dr Ali Akbar Al-Azhari

I think this argument that militants including the Taliban have some ambiguity in their fight against the state and its institutions or they are fighting due to some ambiguity in their minds is not correct. They know very well who they are fighting against; that is clear from the targets of their attacks that include public places and innocent civilians. They are very clear in their fight and we should also be clear and openly say that they are engaged in acts of disbelief and mischief which cannot be sanctioned under any circumstances. I believe that we

¹⁸ The word *Ijtihad* literally means to exert. In the terminology of Islamic law it means to exert with a view to form an independent judgment on a legal question. It is the independent or original interpretation of problems not precisely covered by the Quran, *ahadith* or *Ijma* (consensus among Islamic jurists in a particular age on a question of law), keeping in view the spirit and overall framework of Islamic law. To be more precise, *Ijtihad* is one of the key sources of Islamic law and entails intellectual effort to derive appropriate legislation from the Quran and *Sunnah* for novel cases. *Mujtahid* is a Muslim jurist who has the highest level of scholarship, interprets law and generates *Ijtihad*.

First Debate

should unanimously disapprove all forms of *khurooj*, irrespective of which kind of rulers we have.

Secondly, the *khurooj* of the Kharijites in the early period of Islam was against a pious caliph. Today's *khurooj* is not against some pious rulers, but against so-called sinful ones. Although we cannot compare the two and apply the same legal judgments on both but one thing is certain that even if our rulers are sinful, transgressing and have gone astray from Islam, the only evidence that justifies *khurooj* against them is an act of *kufir buwah* by them.

I would like to quote two examples from history regarding this; one from the early history of Islam and the second from its modern history. You all know well during the regime of Bannu Abbas renowned Islamic scholars were influenced by the dogma of the Mu'tazilah about the createdness of the Quran and became Mu'tazilites.¹⁹ Imam Ahmad bin Hanbal, who was the teacher of Imam Bukhari and Imam Muslim, led the scholars and religious leaders of Ahle Sunnat at the time in Baghdad. Religious scholars, jurists and experts on *hadith* visited him and requested him to lead them in their protest or *khurooj* against the caliph because his faith had become corrupted and he was creating and supporting trial and discord among the Muslim *ummah*. Imam Ahmad Hanbal criticized their decision and said that the reform and goodness they wanted to achieve through their protest and jihad against the caliph was trivial and insignificant as compared to the bloodshed and turmoil it will bring on Muslims. He forbade them from *khurooj* and said he did not want to participate in killing of Muslims.

The second example I narrate is from Turkey. Today's Turkey reflects the revival of the Turk nation. Its foreign policy and internal structures are gradually changing. I happened to visit Turkey a month ago. I visited their institutions. As we (religious scholars) know the Arabic language very well so we understand Arab countries better than countries such as Turkey because of the language barrier and some other reasons. In Turkey, the recent movement for revival of Islam is greatly inspired by the intellectual and academic work of Said Nursi. He was a contemporary of Allama Muhammad Iqbal.²⁰ His *Risale-i-*

¹⁹ Against the commonly held belief that the Quran, as direct divine speech, was uncreated and eternal, the *Mu'tazilite* took the position that the Quran was created speech. (Source: Olivier Leaman, ed., *The Qur'an: An Encyclopedia* (New York: Routledge, 2006), 20.

²⁰ Iqbal (1877-1938) was a great philosopher, thinker and poet who put forth the idea of creation of a separate homeland for Muslims of sub-continent in his address at Allahabad in 1930.

Nur (Letters of Light) are very enlightening and impressive, which present solutions to many of the challenges and problems we currently face. We can also learn a lot from Nursi's innovative thought and strategies to make Islam relevant in a secular Turkey.

With the end of the caliphate in Turkey and the ouster of the Ottoman dynasty in 1924, Mustafa Kamal formed a secular government and shifted the capital from Ankara to Istanbul. What he did with Islam and symbols of Islam was indeed *kufr buwah* which we are repeatedly discussing in our debate. Interestingly, like the Islamic scholars and jurists had called on Imam Ahmad bin Hanbal to seek his support against their caliph, some religious scholars from the eastern part of Turkey visited Nursi around 1924 to get his support which they thought could strengthen their resistance movement against Mustafa Kamal's acts of disbelief. Nursi said to the delegates that their viewpoint was right but they could not sustain their armed revolt for more than two or three years and as soon as their resources depleted, Mustafa Kamal would hang them like he had been hanging other opponents and rebels. Nursi said to the scholars that they had simply a scheme of bloodshed and he could not support them although he was a former colonel in the Turkish army and had led the Turkish army in the First World War.

Later Nursi adopted a different approach to educate and guide his people towards Islam. He started to write letters (*Risale-i Nur*) which have been published in around ten volumes. He was an intelligent and intellectual person. He responded to the Turkish secularism and countered the West's objections on the Quran through arguments and debate in an academic framework. He rejected rationalism and empowered faith. It is said that he wrote about 0.7 million letters. He was working alone on his dangerous mission as any person found in possession of his letters was hanged by Mustafa Kamal.

Had Nursi accepted the request of the scholars who visited him and not opted for the second course of academic and intellectual-level education of people, the current Islamic revival would not have happened in Turkey. Nursi wisely foresaw that in case of an armed revolt although the youth would fight with passion but eventually that revolt would lead the nation nowhere other than down a path of instant bloodshed and violence. Nursi had a justification for fighting against the ruler. He could easily mobilize the people. But he did not do that. Instead he laid down the intellectual and educational foundation for revival of Islam which Turkey is experiencing today. Turkey is transforming and rediscovering its Islamic identity. The secular elements in the army and journalism are losing ground. New educational institutions are being established there. I think that nature is

First Debate

preparing Turkey to lead the Muslim *ummah*. Tayyip Erdogan's party has won the last general elections with a big majority for the third time in a row. In my view, this revolution is more significant than the Iranian revolution of 1979. But the Turkish leaders and people have been working silently without trying to cash their achievements through processions, slogans and strikes. Our misfortune is that we just raise slogans but do no work.

The viewpoint is becoming pervasive in our society that we can serve Islam only by using swords, Kalashnikovs and bombs. There are however, as indicated by Dr Qibla Ayaz, many other ways of *khurooj* such as agitation, protests, boycotts and sit-ins. Now we have a free media and democratic institutions to get our voices heard. At least religious scholars should not guide the nation towards violent approaches such as *khurooj*.

After the fall of the Ottoman Empire two kinds of movements have emerged among Muslims which should be carefully studied. One have been the resistance movements which emerged mainly in the Persian Gulf in response to the slogan of Arab nationalism coined by the West. The Arabs started the resistance and *khurooj* against the Ottoman Empire under this slogan. The second have been the jihad movements such as we have seen in Libya, Algeria, Egypt, Tunisia and even in Pakistan. These jihad movements were against imperialism. These movements were different from the resistance movements mentioned above; we usually confuse them with one another. The result of all these movements that have emerged in 100 years or so has been nothing but bloodshed. In the future also, such movements will only increase turmoil and violence among Muslims. Islam does not need this. It requires security and protection of society, people's lives and property, and societal peace.

Dr Qibla Ayaz

The question why Muslim armed struggles and movements could not get the desired results constitutes a comprehensive research study. An apparently very sincere jihad movement was started by Syed Ahmad Shaheed and Syed Ismail Shaheed in the first quarter of the nineteenth century but it ended in Khyber Pakhtunkhwa (then called NWFP) in vain and in a tragic way. Similarly, the war of independence of 1857 could not get the desired results although almost all communities participated in that including the Hindus and Muslims, and particularly the Muslim clergy led it. Later the Muslim religious circles started a grand movement against the British that we know as the 'Yaghastani jihad' that remained in full swing in the tribal areas of

A Debate on Takfeer & Khurooj

present-day Pakistan for some time. This movement made way for another one known as the Reshami Rumal movement that tried to bring a revolution against the British government with the help of the government of Hijaz (the current Kingdom of Saudi Arabia), Turkey and Afghanistan but failed.

There are two other topics which I think should be discussed in subsequent sessions or in deliberations in the future. We have tasked a student at Peshawar University to write a research paper on possible legal ways of regime change in Islam in the contemporary age. The purpose of this research is to explore modern forms of regime change in the light of *Shariah* with an underlying theme to apply the traditional principles of *ahtejaj* (protest), *inzar*²¹ (warning/alert) and *Amr Bil Ma'aruf wa-Nahi Anil Munkir* (enjoining acknowledged virtues or good and forbidding the vice), etc., in modern times. The second topic which should be discussed among religious scholars is related to a legal term in Islam known as *haraba* (armed robbery). In early period of Islam *haraba* covered highway robberies and theft. We should try to analyze what could be the *haraba* crimes in modern times.

Dr Ejaz Samdani

What I have understood from Mr Zahid Siddique's discussion is that defying allegiance to an un-Islamic state and fighting against it cannot be termed *khurooj*.

Maulana Muhammad Salafi

In other words, the question of *khurooj* can be put like this: does *khurooj* mean going out of the system of obedience of an Islamic caliphate or state only or going out of obedience of a Muslim state could also be called *khurooj*?

Zahid Siddique Mughal

I would like to elaborate a little on what I said earlier. The Islamic caliphate has many levels. The first level is what we call

²¹ The literal meaning of *inzar* is warning or alert. The concept means to make someone aware of painful events which will occur in the future, usually as the results of his/her actions. It is requirement of the Islamic principle of justice because punishment will be just only when the person is somehow aware of the results of his/her actions and commits them intentionally. (Source: Khosrow Bagheri, *Islamic Education* (Tehran: Centre for Cultural and International Studies, 2001), 138.

First Debate

khilafat-e-rashida (the righteous caliphate) which was established by the first four righteous caliphs of Islam. Later the Umayyad and the Abbasid caliphates were established. You may call them sultanates or emirates; this is just a difference of terminology. Another level of caliphate is *khilafat-e-Adela* (the just caliphate) which is led by rulers who are just and pious but not up to the level of the first four righteous caliphs. Contrary to this, a caliphate or emirate led by oppressive rulers or those who have gone astray is called *khilafat-e-zaala*. The last level of caliphate is one which is ruled by such rulers who are transgressing and disbelievers; *khilafat or amarat-e-kufria*. The whole debate on *khurooj* in our classical jurisprudence has been in the perspectives of the last two levels, i.e. *zaala* and *kufria*.

In my opinion, the *ahadith* which forbid *khurooj* against the rulers refer to either just or oppressive rulers. Nonetheless, in case of disbeliever rulers or *khilafat-e-kufria* the debate of jihad, and not *khurooj*, is relevant.

Dr Ejaz Samdani

We cannot confine the term of *khurooj* to the times of the righteous caliphs. If someone went out of obedience of an Islamic state and started an armed revolt in the later periods of Islam it was also called *khurooj* by many. I was just reading in *Fatah Al-Bari* that there is a consensus among jurists that it is mandatory for Muslims to hold allegiance to the rulers even if they are oppressive and that it is better than *khurooj*. The term *khurooj* has repeatedly been used in writings of the jurists and exegesis writers of *hadith* and the scope of its interpretation is fairly vast. Dr Qibla Ayaz just talked about ways of regime change. To strive for regime change or to replace the existing order with an Islamic one is also *khurooj*.

Zahid Siddique Mughal

I completely agree with Dr Samdani that defiance of obedience and armed struggle either against the righteous caliphs or some rulers who is oppressive or has gone astray could be called *khurooj*. But it is more important to know which *khurooj* is justified and which is not. My point is that the debate on *khurooj* is always in perspective of an Islamic state/caliphate. The appropriate perspective to discuss an armed revolt in a Muslim state is jihad and not *khurooj*.

Dr Qibla Ayaz

That means that the legal term *khurooj* is open to more interpretations in modern times and can be substituted by some new terms. In the modern context, we may use the term ‘collective rejection of state authority’ instead of *khurooj*. That means that if people collectively challenge the writ of the state that could be termed *khurooj*.

In the early period of Islam, the governments or states usually used the term *khurooj* or rebellion to refer to armed struggle of those people who wanted to change regimes and held them responsible for their acts according to the law. For the governments or rulers, *khurooj* was a punishable crime. Nonetheless, those struggling for regime change considered their fight jihad against oppressive rulers. For instance, at present the Justice Party has its government in Somalia. The party comprises the people who were once on the forefront of the Islamic movement there. They have a history of struggle after which they have reached at this stage. The people of Shabab-e-Islami, who have been part of the same party previously, are currently observing a collective rejection of the authority of the government. The government terms the actions of Shabab-e-Islami *khurooj* whereas the latter say that they are waging jihad against the government. May be religious scholars can guide us about legal aspects of this conflict.

Mufti Ibrahim Qadri

Irrespective of whether a state is Islamic or Muslim and its rulers are good or bad Muslims, a person who becomes a citizen of that state indeed enters into a contract with the state that s/he will accept its writ and authority. This applies to citizens of all states in the world. It is written in *Hadaya*, one of the acclaimed books on Islamic law, that if a Muslim travels by acquiring a visa to a country which jurists have declared *darul harb*, such as Israel, he is prohibited by his faith to do any harm to the lives and property of the inhabitants of that country. Because the visa to visit or stay in a country means that you submit your protection to that country and agree not to do any harm to its people or property. Then how can a Muslim break his contract with a country where he was born, grew up, got education and all the state facilities just on the pretext that the rulers are transgressing and sinful? He is indeed bound to accept the writ of the state he is a resident of.

That does not mean that we should keep silent and accept transgression and oppression of the rulers. The holy Prophet (PBUH) said: “Whoever among you sees an evil action, then let him change it

First Debate

with his hand; if he cannot, then with his tongue; and if he cannot, then with his heart—and that is the weakest [form of] of faith.” Therefore, raising one’s voice and protesting against oppression is justified in Islam but armed struggle to undermine the government is a separate issue. In my view, the latter can be literally and thematically termed *khurooj*. *Khurooj* does not only mean taking up arms against the righteous caliphate or Islamic state, but an armed struggle against a government and its rulers elected by the majority of people is also a *khurooj*. In *Sharh Al-Aqeeda Al-Tahavia* it is written: “We do not see *khurooj* against our *aimma* (plural of *imam*/leader) and those who are charged with authority among us [justified].” Did there exist any caliphate in the age of Imam Tahavi? That means that he said this about leaders and rulers of his age. Imam Tahavi has further stated in his book: “Even if our leaders are oppressive, we will not [even] curse them, or have bad wishes for them. And we do not withdraw our allegiance to them. And we consider our allegiance to them, allegiance to Almighty God until they command for sin or disobedience of God. We will pray for their reform and cure.”

Dr Ejaz Samdani

What Mufti Ibrahim has said is supported by a *hadith*. The Prophet (PBUH) said: “Do not fill your hearts with curse or insult for your rulers. But get closeness of God by praying for them. [And] God will soften their hearts for you.” Ironically, we have developed a culture of abusing and cursing our rulers. This will not improve the situation, rather deteriorate it. It is better to think positively, pray for the betterment of the rulers and strive to remove our flaws and weaknesses.

Maulana Muhammad Salafi

Imam Ahmad bin Hanbal once said that if he knew his God will accept which of his calls (prays) he would dedicate himself to call on Him for correction of the rulers because the *ummah*’s welfare is in the rulers being on the right path.

Muhammad Ziaul Haq

We are discussing *khurooj* but we avoid talking against the Taliban. Our effort to compare the Taliban with the Kharijites is indeed exalting them to the level of *tabi’un* (the followers of the Companions of the Prophet) which is wrong. The Taliban are not pious people.

Indeed we provide the Taliban with ease, space and escape through different ways and excuses. Until when can we handle this? Let us assume for the sake of argument that the Pakistani army and police are indeed tyrants, but was Dr Sarfraz Naeemi also a tyrant?²² The Taliban are targeting innocent civilians including women and children. How long can we close our eyes to their violent acts?

Dr Ejaz Samdani

I had just said that discussion on the Taliban probably is not relevant to our topic; hence it will not be useful in this debate. Secondly, we do not approve of the acts of the Taliban and call them wrong. We have not fully discussed the matter of the Taliban yet. It will particularly not be proper to discuss the Afghan Taliban in the perspective of *khurooj* because they had once established their government in Afghanistan that was demolished after the US attack. At present they are striving to regain their lost hold on the government. Nonetheless, we do not sponsor any support to the Pakistani Taliban. That is very clear. There are many doubts about the so-called Pakistani Taliban. Who are these people? Are they really Taliban? However, we condemn their activities.

Dr Qibla Ayaz

As far as terrorist attacks on state institutions and the security forces are concerned, no one supports them. But we do not know who is carrying out and sponsoring these attacks.

Maulana Ammar Khan Nasir

We have discussed here the classical jurists' viewpoints on *khurooj* against oppressive, sinful and transgressing rulers with reference to their sayings and writings and events in history. An important aspect of the jurists' comprehension of *khurooj* has, however, remained untouched. Mufti Ibrahim has narrated a text by Imam Tahavi that asserts that *khurooj* is not justified even against tyrant, sinful and transgressing rulers. Qazi Ali bin Ali bin Muhammad has tried to

²² Allama Dr Sarfraz Ahmad Naeemi was killed in a suicide bombing in his madrassa Jamia Naeemia in Lahore on June 12, 2009. The Tehrik-e-Taliban Pakistan (TTP) accepted responsibility for his killing. Dr Naeemi was a renowned religious scholar of Pakistan and was also well known for his moderate and anti-terrorist views. He had issued a decree calling suicide attacks '*haram*' in Islam.

First Debate

explain by paraphrasing from *Al-Aqeeda Al-Tahavia* why that is not justified. In addition to listing the two main reasons for that which have already been discussed here—first that defiance of the rulers will lead to more mayhem and turmoil than their tyranny and transgression is currently causing, and second that God will forgive our sins if we are patient in the face of the rulers’ tyranny—he writes that God imposes oppressive and tyrant rulers on us as a punishment of our bad deeds. Therefore, we should first try to remove injustice and tyranny from our behaviors and mutual dealings and transactions, and seek God’s forgiveness. A person asked Hazrat Ali why they did not have rulers like Hazrat Abu Bakar and Hazrat Omar. Hazrat Ali replied: “Because they (Hazrat Abu Bakar and Hazrat Omar) ruled the people like us and we (the present rulers) rule the people like you.” That means that jurists and Islamic scholars did not look at *khurooj* merely in perspective of rulers’ wickedness but also in the overall social settings.

Maulana Abdul Haq Hashmi

When we disapprove of different forms of *khurooj*, some new questions naturally arise about alternative ways to express our grievances, put forth and fulfill our demands and get our rights. I think this is a separate discussion and we can use the same forum for that in the future. Basically, this forum can only suggest and advise as it does not have the power to enforce. Therefore, when we try to convince the rebels against their armed struggle through reliance on legal opinions that forbid *khurooj* we should also tell them about the legitimate and legally justified ways which they could opt to achieve their objectives. Guiding the people towards peaceful ways of protesting and getting their rights requires tremendous efforts such as making contact with the people, influencing their opinions against violent ways through education, and creating political awareness among them.

Secondly, besides analyzing the legitimacy or illegitimacy of *khurooj* we should also discuss the factors and circumstances which lead the people to *khurooj*. When we advise the people to stay away from *khurooj* there should also be some mechanism to advise and press the rulers to provide justice to their people and address their grievances. Government policies also factor in creation of such circumstances that force some people to the path of *khurooj*. A review of human history tells us that the movements of rebellion and *khurooj* always appeared in response to tyranny and excesses of the rulers. No such movement emerged in the states and societies where justice and fairness prevailed. Thus we should pay attention to both aspects, i.e.

the people quitting obedience of the state and the factors and circumstances forcing them to do so.

Muhammad Nawaz Kharal

Mr Zahid Siddique has raised the point that we will have to declare which form of *khurooj* is justified and which is not. As I understand, no one among the discussants and participants of this debate has declared any form of *khurooj* as justified. If prominent scholars shed more light on this point it will help my understanding of the matter.

Dr Ejaz Samdani

Maulana Ashraf Ali Thanvi has provided a complete table of different possible forms of *khurooj* in his book *Jazl'al-Kalam fi Azal'al-Imam*. I will present here a summary of that table. *Khurooj* will be based on either a ruler's open and proven disbelief (*kufir buwah*) or their disobeying and transgressing the boundaries set by of God (*fisq*). In case of *kufir buwah*, *khurooj* is justified while in case of *fisq* there could be two options. If the rulers' *fisq* is confined to themselves only (*fisq ghair mut'addi*) *khurooj* will not be justified but if that extends to or forces other people to indulge in *fisq* as well (*fisq mut'addi*) then again it could have more forms. The primary and fundamental form of *fisq mut'addi* is that the rulers force their people to commit sins (*ikrah alil ma'siyat*). As I described earlier, if the rulers' purpose in doing so is to belittle and undermine Islam it will be *kufir buwah* and there will be room to declare *khurooj* justified. Another form of *fisq mut'addi* is related to the rulers' management of wealth and taxes, etc. *Khurooj* is not justified against the rulers if they impose coercive taxes on the people. Even if they impose excessive taxes and force people to pay without any legal justification from *Shariah*, it is better for people to defend themselves by adopting ways other than *khurooj*.

Dr Qibla Ayaz

Our jurists, experts of Islamic law and scholars have provided us comprehensive guidance on these subjects which is largely confined to books and other forms of literature on Islamic law and jurisprudence. Our religious circles neither benefit from this themselves nor transmit it to others. Hopefully, we will continue to discuss these and other similar subjects which need our attention.

SECOND DEBATE

Place: Lahore

Date: November 22, 2011

Chairperson

- Maulana Muhammad Ammar Khan Nasir

Discussants

- Mufti Mansoor Ahmad (Religious scholar from Gujranwala)
- Maulana Khalilur Rahman Qadri (Renowned religious scholar)
- Dr Hafiz Hassan Madni (Director, Islamic Studies Department, Jamia Lahore Al-Islamia, Lahore)
- Mufti Muhammad Khan Qadri (Jamia Al-Islamia, Lahore)
- Dr Syed Muhammad Najfi (Deputy Director, Taqreeb Mazahib-e-Islami, Pakistan)
- Maulana Ahmad Ali Kasuri (Chairman of the Quran Board, Punjab)
- Maulana Zahidur Rashidi (Principal, Al-Shariah Academy, Gujranwala)
- Dr Fareed Ahmad Paracha (Director, Ulema Academy, Mansoor, Lahore)
- Maulana Tahir Ashrafi (Chairman, Pakistan Ulema Council)

Important Arguments in Favor of *Khurooj*: Summary of the First Debate

A. In Principle

- *Khurooj* is legally forbidden against just rulers or those who are tyrant, oppressive and transgressing in their individual capacity but under whom the overall system and institutions of the state function according to Islamic system of *Shariah*. The forbiddance of *khurooj* ordained in *ahadith* becomes irrelevant if the state system and structures are based on *kufir* (disbelief or infidelity), provide protection to laws of infidelity, or create hurdles in enforcement of Islamic laws.
- Meanwhile, the legal forbiddance of *khurooj* against tyrant, oppressive and transgressing rulers does not amount to such *khurooj* being *haraam* (prohibited by the faith) per se because the purpose of this instruction is to save Muslims from bigger turmoil in relation to the oppression and transgression of their rulers. However, if the rulers' acts of oppression and transgression and the consequent turmoil exceed their limits and there are also visible prospects for a regime change through armed struggle—which will be decided by *Ijtihad* or an independent judgment or decision in Islamic law by personal effort—there may be space for legal justification of *khurooj*. How would we justify the struggle of some esteemed personalities of Islamic history including Imam Hussain, Abdullah bin Zubair, Zaid bin Ali and Nafs Zakia if we declare forbiddance *khurooj* absolute even though many jurists and leaders of Islam had supported their struggle?
- The ideal Islamic society and state cannot be established through the system of democracy currently in vogue in most Muslim countries because democracy is based on the Western philosophy of human rights that is contradictory to the Islamic concept of 'rights and obligations'. Muslim states are bonded to a strong network of international agreements, institutions and laws which undertakes to safeguard the Western concepts and values of human rights. Therefore, it is impossible to change the state system and structures in Muslim countries without armed struggle; peaceful struggle can only change the government but not the system on the whole.

B. In Pakistan's Context

Pakistan's constitutional and legal framework does not guarantee unconditional and complete supremacy of Islamic law. Contrarily, it contains some anti-*Shariah* laws and protects un-Islamic practices. Therefore, even though it has some Islamic clauses and provisions for Islamic legislation, Pakistan's Constitution is based on disbelief and infidelity. For instance:

- On the one hand it talks about supremacy of *Shariah* and on the other it also guarantees 'human rights' as perceived in the contemporary liberal democratic system. Perhaps it was a result of this contradiction that Pakistan's Supreme Court had nullified a verdict by a lower court to publicly prosecute criminals, saying that it was contrary to human rights.
- The Supreme Court declared in 1992 in Hakim Khan case that if a provision of the Constitution contravened the injunctions of Islam and *Shariah* it could not annul it, which simply meant that in case of an inconsistency or clash between two clauses of the Constitution, the clause calling for supremacy of *Shariah* will not be preferred.²³
- The interest-based banking system has legal protection in Pakistan.
- The Constitution allows women's rule and their appointment on key political, judicial and administrative positions.

²³ According to the Supreme Court verdict: "Accordingly, now if any question is raised in connection with the validity of any existing provision of the Constitution on the ground that it transgresses the limits prescribed by Allah Almighty (within which His people were competent to make laws) such a question can only be resolved by the Majlis-i-Shoora (Parliament), which can, if the plea is well founded, take the necessary remedial action by making suitable amendments in the impugned provision in order to bring it within the limits prescribed by Allah Almighty.

If The Court considered that the existing provision of the Constitution contravened the Injunctions of Islam in some respects it should have brought the transgression to the notice of the Parliament which alone was competent to amend the Constitution, and could initiate remedial legislation to bring the impugned provision in conformity with the Injunctions of Islam." (Complete text of the Supreme Court verdict in the Hakim Khan case, PLD 1992 Supreme Court 595, is available at <http://prosecution.punjab.gov.pk/index.php?q=system/files/PLD%201992%20Supreme%20Court%20595.pdf> (accessed on 12 August 2012).

- Monetary laws have been kept out of the jurisdiction of the Federal Shariat Court. Similarly, in the Shariah Bill, which was passed by the National Assembly in 1992, the supremacy of *Shariah* was made subject to the condition that it did not undermine the incumbent political and government structures.
- There is no such law in Pakistan which could hinder the rulers from formulating anti-*Shariah* political policies. That is why they decided to support the US-led war against oppressed Muslims of Afghanistan and continue to do so.

C. Moreover

Why is it that it is not justified to fight against Pakistan Army on the basis of the same legal principle that justifies Pakistani Muslims' fighting along with the 'victimized' Afghan Taliban against the Afghan Army supporting the US forces in Afghanistan? Pakistan's leading religious scholars had issued a decree after the US invasion of Afghanistan that it is the religious obligation of all Muslims to help the Afghan Taliban against the US and its allied forces.

FIRST SESSION: TAKFEER

Maulana Muhammad Ammar Khan Nasir

Vice Principal, Al-Shariah Academy, Gujranwala

Today's debate is the second of a series of three debates on the subject. The first debate was held last month in Islamabad, and a summary of its findings has been provided to all the participants. The debate will have two sessions. The first session will be on *takfeer* which will mainly focus on the following and other similar questions: What is *kufir buwah*? What are the legal limits of its validity and application? Is democracy a system of disbelief or not? How will the validity of *kufir buwah* be decided in a democratic system of government? Similarly, in the second session different aspects of *khurooj* will be discussed, keeping in mind the findings of the first debate on the subject. Before initiating the debate, I will briefly narrate the historical and contemporary contexts of the debate on *khurooj* and *takfeer*.

The literature produced by the early jurists of Islam contains substantive discussion on *khurooj* and *takfeer* but in a narrow interpretational scope. In the contemporary age, many new questions

Second Debate

and challenges have emerged that make this debate very significant, diverse and wider in scope. At present, it is largely linked to the decline of civilization that Muslims have been experiencing over the last two centuries. This decline coupled with the dominance of the Western civilization has raised many important questions for Muslim intellectuals and scholars. These and other emerging questions provide a real and relevant perspective to discuss and understand the legal questions of *khurooj* and *takfeer* and apply them in modern times.

The foremost question is: how should Muslims respond to and cope with the dominance of the Western civilization? It is really important to know what should be the nature of Muslims' relationship with the modern political thought and philosophy which the West has imposed on the whole world by virtue of its military and financial prowess. Should they utilize or reject that? Secondly, what is the legal status in *Shariah* of those Muslim states which have adopted the Western political system? Thirdly, how could Muslim states apply the traditional Islamic framework of 'rights and obligations' in modern times? Fourthly, as some ways of regime change are considered wrong and some others right in the modern age, how could this debate be made consistent and conformant to early Islamic literature on jurisprudence? Fifthly, to what extent could the political structures of democracy, which is a widely acclaimed system of governance in the world and Muslim countries, be termed Islamic? Answers to these fundamental questions will evolve a cognitive framework that will help us understand the issues of *khurooj* and *takfeer* in their relevant context.

In the recent Islamic history, the debate of *khurooj* and *takfeer* first started in some Arab countries where few of its significant aspects were highlighted. In our region, it has emerged out of the peculiar political situation of the past one decade. In my view, oppressive policies of the rulers triggered this debate in the Arab countries and also in Pakistan. In a way, the debate aimed to provide the ideological basis and support to some groups' resistance to such policies of the rulers. Although the real motives of this debate are political but when a viewpoint is presented in terms of Islamic law and principles of *Shariah* it becomes mandatory for Islamic scholars to examine its legal merit and validity.

Mufti Mansoor Ahmad

The debate on *khurooj* and *takfeer* has also been impacted by a general trend among Islamic scholars to take extreme positions on most religious affairs. A historical review reveals that while one religious

class declared committing of major sins²⁴ (*gunah-e-kabira*) as *kufr* or disbelief, the other went to the opposite extreme and showed reluctance to declare a Muslim disbeliever until he openly acknowledged that he had renounced Islam as his religion. Both of these extremes are not right. The creed, or faith of Islam is like a well defined circle and some are inside and others outside this circle; it is essential to know and express this fact.

The same trend has become pervasive in today's Pakistan. There exist two major segments of clergy in Pakistan which hold extreme and conflicting views on the issue of *takfeer*. One segment instantly declares those individuals as disbelievers who say something contradictory to their thoughts and ideology without ascertaining the legal status of what is said. The other segment is not willing to declare even those people disbelievers who commit such acts which have unanimously been declared as acts of disbelief by jurists and there had never been two opinions about them in Islamic jurisprudence, such as disbelief in the finality of prophethood. We should be honest enough not to transgress the teachings of the Quran and *Sunnah* and legal opinions upheld by jurists and Islamic scholars by consensus while declaring people in and out of the fold of Islam.

Islamic jurists and *mohaddiseen* (plural of *mohaddis*; Islamic scholars with authoritative knowledge of *hadith*) have already established how to define, interpret and assess validity of *kufr buwah*. Therefore, I do not think that there is any need to raise questions like what is *kufr buwah* as it is clearly known to all. We should discuss the factors and legal basis of *khurooj*. It is the duty of Islamic scholars and experts of Islamic law to examine and ascertain the legal status of ideologies, ways and actions of the groups resorting to *khurooj* in the name of renaissance of Islam. They should also discuss and give their legal opinion on the factors, particularly policies of the Pakistani state, which forced these groups to *khurooj*.

Thirdly, the jurists acknowledge that *Shariah* is the principal source of Islamic law and legislation; 'the Command is for none but Allah'. We have given our democratically elected legislative assemblies the absolute right to make laws, even against Islam if they wish; the primary source of legislation in this case is not *Shariah* but the people and their elected representatives. The groups resorting to *khurooj* consider democracy and its way of legislation a system of *taghut* (idol/despot) and apply the commands ordained in the Quran and *Sunnah* for rejection of all false deities. We should enhance

²⁴ The sins that transgress the boundaries set by God and carry a legal penalty.

Second Debate

awareness among the people about our views on this aspect of *khurooj* as well. For instance, do we consider our democratic system a false deity or not? Is every false deity synonym to disbelief or some do not reach the level of disbelief?

Maulana Ammar Khan Nasir

Mufti Mansoor's arguments have raised a few questions for me. He has rightly stated that *khurooj* is a reaction to certain state policies. But if we read carefully the revolting groups' argument for *khurooj* it is not confined to state policies alone. Even if the current state policies are reformed or completely abolished, the argument for *khurooj* will continue to exist. This argument asserts that the incumbent democratic system of Pakistan, which religious-political parties have also accepted as a way to enforce Islam, is based on disbelief and infidelity. Therefore, even if the state abolishes its policies, the revolting groups will still continue to argue that as it was impossible to change this system while being part of it, the only way left was to start an armed struggle against it. I request our esteemed scholars to discuss in depth this particular aspect of *khurooj*.

Allama Khalilur Rahman Qadri

The *hadith* on *kufr buwah* puts the condition of 'a proof (*burhan*) from Allah' for declaring the rulers disbelievers and for the people withdrawing their allegiance to them. This simply defines *kufr buwah*, i.e. that for which we have an argument based on a clear divine judgment.

The generally accepted interpretation of *takfeer*, that we will declare a Muslim disbeliever only if he renounces his belief with respect to one of the essentials of faith or through clear or absolute divine rulings has very limited scope. The jurists have elaborated many other forms of disbelief as well. For instance, decrying and despising Islamic *Shariah* through words and actions (*istekhaf-e-Shariah*) is an act of disbelief. Some jurists have also said that an agreement on disbelief is also disbelief.

Mufti Mansoor has rightly said that the matter of *takfeer* is not handled in a logical and judicious way and most of legal opinions (*fatwas*) regarding it encroach upon principles of Islamic law, or *Shariah*. The holy Prophet (PBUH) has made it very clear that such an accusation of disbelief will revert to the accuser if the accused is innocent. That signifies that a Muslim wrongfully declaring another Muslim disbeliever is such a delicate matter that the accuser can lose

his own faith. However, this does not mean that while observing the desired caution and restraint we should simply rule out the option of *takfeer* even for those who have committed acts of open disbelief. If we become too careful in declaring those people disbelievers whose disbelief is open, clear and proven by evidence, it would be dangerous for the whole Muslim nation and even for the creed of Islam because many other matters of faith could be attached to it, such as legal questions of offering prayers behind these people, eating animals slaughtered by them, legal status of their marriage and matters of inheritance, etc. Therefore, accusing an innocent Muslim of disbelief and not declaring a Muslim disbeliever after witnessing clear disbelief on his part are both dangerous but in my view the latter causes more harm because it is linked to the Muslim *ummah* and their faith.

As far as the question of who can declare others disbelievers, the scholars with Islamic scholarship and authority to issue religious decrees (*mufti*) can do that but this option has many harms mainly arising out of the carelessness mentioned earlier. The second relatively safe and better option is to confer this authority of *takfeer* (declaring some Muslim/s as disbelievers) upon parliament, particularly in case of collective *takfeer* of a group of Muslims who is visibly committing acts of disbelief. Here again questions arise about the parliamentarians' Islamic scholarship and capability to judge in terms of Islamic law. Pakistan's parliament that had declared Ahmadis as non-Muslims had a significant number of leading Islamic scholars as its members whose thought and ideology had influence among other parliamentarians. We cannot say the same about the present parliament. Neither can we predict something about the future parliaments of Pakistan. *Takfeer* of an individual is however different from *takfeer* of a group. In the later case a *mufti* can issue a religious decree or *fatwa* or we can form a representative board of credible religious scholars belonging to all schools of thought for that purpose. Similarly, if parliamentarians do not have the required Islamic scholarship and insight into Islamic law to decide about matters of *takfeer*, a similar representative board of Islamic scholars can be formed to guide them.

Maulana Ammar Khan Nasir

Allama Khalilur Rahman Qadri has provided some useful legal insight into the issue of *takfeer*. But our debate is focused on a particular aspect of *takfeer* that relates to a group declaring Pakistan's rulers disbelievers, or declaring that the system of governance and other state structures in Pakistan are based on disbelief with a view to justify its *khurooj* against the state and the rulers. In a way, our discussion on

Second Debate

takfeer is in the perspective of *khurooj*. We will therefore start with examining the revolting groups' argument that contemporary Muslim states' system of government is based on disbelief and hence is un-Islamic. In the next stage, we will try to ascertain the legal status of allegiance to democratic Muslim states such as Pakistan that will lead us to find answers to some fundamental questions related to our debate on *khurooj*.

Dr Hafiz Hassan Madni

Director, Islamic Studies Department, Jamia Lahore Al-Islamia, Lahore

Allah Almighty says in the Quran: "He hath ordained for you that religion which He commended unto Noah, and that which We inspire in thee (Muhammad), and that which We commended unto Abraham and Moses and Jesus, saying: Establish the religion, and be not divided therein." (42: 13) This has been a way of God and a divine law that He made *Iqamat-e-Deen* (establishment of the religion) binding on all His prophets and told them to avoid discord on that.

Similarly, Islamic scholars quote the following *hadith* to refer to the obligation in Islam of upholding *Hudood Allah* (boundaries set by God) and establishment of the religion. "The example of one who stands for the *Deen* of Allah and one who has left it are like the people in a boat, some of whom occupy the upper deck and some occupy the lower deck. Whenever those on the lower deck need water, they have to go to the upper deck to retrieve it. So some of them said, 'why don't we make a hole in our deck so we do not harm the people of the upper deck?' If the people do not stop them, they will all fall and be failures, but if they stop them they will all be saved."²⁵

The Muslim society is also like a community of people on a ship. If some people want to make a hole in it and others do not stop them, all will drown. Islamic scholars have said in interpretation of this *hadith* that establishing *Hudood Allah* and the religion is extremely important and required, otherwise the whole society will be destroyed. Just as it is obligatory for the people on the upper deck to stop the people on the lower deck from making a hole in the boat, it is also obligatory for Muslim rulers to establish the religion. The problems we

²⁵ Another narration puts this *hadith* like this: "The example of the one who stands for the *Hudood* of Allah and the one who compromises the *Hudood* of Allah ..."

face today are largely due to the fact that we have on the whole ignored the responsibility to establish the religion.

Secondly, I believe that protest or revolt against Pakistani rulers can be termed anything but *khurooj*. Should we discuss the legal aspects of *khurooj* during the regime of former president Pervez Musharraf or the current set-up led by President Asif Ali Zardari? During Musharraf's regime, the question of political and societal-level struggle against a dictator and an oppressive ruler was more relevant than the legal question of *khurooj*. The incumbent democratic regime, which is although even more oppressive than the previous one, but here again the legal debate of *khurooj* is irrelevant. It could be a question of approach, struggle and exploring ways to get rid of this regime which is more relevant for civil society to debate. The question of *khurooj* could be relevant in Pakistan's context if the country was an Islamic caliphate or state.

Meanwhile, the phenomenon of *takfeer*, which mainly provides the argument and ideological basis for *khurooj*, is purely a reaction to aggression and tyranny. It emerged in Pakistan against the backdrop of the post-9/11 US aggression against Muslims. In Saudi Arabia, it appeared after the US imperialism started to spread its tentacles there. In Egypt, a group called *Takfeer wal-Hijra* emerged in reaction to state tyranny and oppression against the Ikhwanul Muslimoon. Hence, a particular context of aggression and oppression produced discussion of *takfeer* in certain Muslim countries. When the Muslims were subjected to tyranny and aggression in each of these countries some of them who were more sensitive and dignified started searching for some argument from Islam in their favor.

Thanks God, we did not have such state tyranny and oppression in Pakistan that is why the debate of *takfeer* did not emerge among major religious organizations, including Jamaat-e-Islami, although they believe in the ideology of establishment of the religion. The debate however surfaced in Pak-Afghan border areas after the US invaded Afghanistan. It is easy to criticize the reaction and resistance of the tyrannized and oppressed Muslims of Afghanistan and their brethren on the basis that their *khurooj* is not justified in any way. The present democratic system does not allow that. Nonetheless, in Islamic jurisprudence the question of *khurooj* is linked to many restrictions and conditions. Eventually, should we conclude in this debate that the only way is to condemn the ongoing resistance movement in Afghanistan, if this is the purpose of this debate, then I think that is not fair.

Indeed we have a greater responsibility than this and that is to condemn those policies and practices which have generated this

Second Debate

reaction or resistance. The efforts of the individuals and organizations striving to achieve peace in Pakistani society should get inspiration from the tyrannized and not the tyrant. The debate should start from the origin of tyranny and oppression, which eventually generated reaction in the form of armed resistance. Peace would not be established merely by advising the tyrannized and the victimized to be peaceful. That is to say that the policies and approaches of the institutions working for peace are not appropriate because they are preaching peace to the tyrannized who are merely resisting against tyranny and aggression. The Muslim *ummah* is being victimized. There are some countries which produce militancy. This is their money-making industry. This is not a new trend but we see many examples in human history where the people who created some turmoil also coined alternative slogans to counter it. The Mu'tazilites used to call themselves *Ahle Adl wal Tawheed* (people of justice and doctrine of Oneness [of God]). There are people who create anarchy and do not have accord among themselves but their slogan is to strive for unity among Muslims. There are some countries which produce and promote militancy around the world and their institutions struggle to promote peace in world. I once visited an institute of peace in the US which was established after 9/11. Those who are largely responsible for spreading imperialism and oppression in the world promote and support this institute.

The way the tyrannized people have chosen is also not right. They represent a slender voice of honor and sovereignty but have adopted extremist approaches because neither their brethren Muslims nor rulers are willing to support them.

The present debate on *khurooj* is in the context of democracy. There are different views on whether democracy is an Islamic system or not. Most Pakistanis appear to be satisfied with the prevailing system of democracy. But I think that many of the people who are currently striving to bring change in Pakistan through constitutional means are doing so because they do not have any other option. This is not an ideal way but it is probably the most practicable and realistic one of all the available options for peaceful struggle.

RAND Corporation has the following criteria for declaring political parties and governments moderate and enlightened: promotion of democratic culture within the party; belief in gender equality; protection of minority rights; and disapproval of violence and terrorism. The political parties should meet this fundamental standard to get the tag of 'moderate' from imperialist powers of the world. Should we call our democratic system an Islamic one which is standardized, tested and approved by the imperialist powers? In my

opinion, democracy cannot lead to or become synonymous with the ideal Islamic system. Some serious legal objections have been raised about democracy. The foremost objective of an Islamic caliphate or system of *Shariah* is to enforce Islamic law. The institution of legislature does not exist in the Islamic caliphate system but the laws and commands ordained in the Quran and the *Sunnah* are justly enforced. Democracy enforces decisions and laws made by a legislature comprising representatives of the people. There is a fundamental difference between the Islamic system of *Shariah* and democracy, the former enforces man-made laws while the latter forces divine law.

There is a provision in Pakistan's Constitution that ensures that no law is made against the teachings of Islam. But is the purpose of Islam just to block negative and wrong things or to ensure that nothing goes against it? Does it not possess a comprehensive political system and laws of its own to enforce? We have adopted a very skewed and limited view of Islam indeed.

The Hanafi jurists have discussed the probability and space for legislation in *Shariah*. Where the *Shariah* provides three or four legal arguments and options for punishments in a case, the ruler has the legislative authority to ascertain and impose any one of them. In democracy, we say that parliament can use this authority which is basically assigned to the rulers. But even among Hanafi jurists this debate is restricted to those matters for which *Shariah* provides some space for legislation. But in matters which are established and uncontested in *Shariah* even the Hanafi jurists do not allow legislation. Democracy legislates on matters which are clearly established in *Shariah* and that cannot be justified even by relying on the Hanafi theory of legislation.

Democratic states are territories or countries where people belonging to different ideologies live together. The Islamic concept of state is based not on territory but ideology. All those who subscribe to the Islamic ideology form part of the Islamic nation. In short, the overall system of democracy contradicts and conflicts with Islam in many ways. If this fact could not be revealed and asserted in the past or religious scholars do not express it today, it is mainly due to the reason that no alternative system is available. Secondly, this system has become a compulsion for most of the Muslim states. If we think we can abolish this system through our struggle we are wrong. Whenever we try to do so the US, NATO forces and international media will be there to protect it.

We think that Muslim states got independence in the mid-twentieth century. However, the reality is something else. The two

Second Debate

world wars had weakened the Western countries and created differences and conflicts among them. The imperialist powers had no option other than announcing independence of Muslims states. Muslims did not get independence through their own struggle and strength but simply accepted the arrangement made by the imperialists. That is why the independent Muslim states continued to follow the Western philosophy and system of government. The same is true for Pakistan. We have been struggling since 1947 to transform this Western political legacy into an Islamic system. It is strange that we do not care to look towards the complete system of government, or caliphate, that Islam provides. We like to judge values of the Islamic caliphate in perspective of democracy and often describe attitudes of Hazrat Omar, the second caliph, as democratic. That means that we have accepted that democracy is the only ideal system of government and also the standard to compare other systems including, the Islamic caliphate.

Therefore, the question of *khurooj* in Pakistan—although I do not believe it could be called *khurooj*—is not linked to removing one or more persons from the government because the system will reinstall similar or worse people. It is linked to the whole system of democracy. On the other hand, the victimized and oppressed people have found some legal opinions/judgments to use as political tools against the system and rulers such as *takfeer*, *tafjeer* (declaring others/rulers sinful) and *tawheed-e-hakimiyyat* (indivisibility of God's sovereignty), etc. This, however, is not the way to invite people to Islam that we start declaring others disbelievers, carry out bomb blasts and kill people. These all are no doubt wrong deeds. But what else should these victimized people do? The Muslims of Afghanistan are being tyrannized and our Muslim rulers stand by the side of the aggressors.

Let me also make clear that religious scholars of Saudi Arabia do not properly understand the context of the war in Afghanistan. Their interpretations of sensitive religious matters are in the context of their own country. Just as we cannot fully apply the legal opinions of jurists of the 7th century to today's circumstances, Saudi scholars' interpretations are also not applicable in our local context. The people of Saudi Arabia have never faced the kind of situation that we face today. We see that Islam is substantively established in Saudi Arabia due to various reasons. Secondly, the Saudi Islamic scholars belong to the Hanbali school of thought and in Hanbali Islam *khurooj* is not allowed. The jurists belonging to other legal schools of Islam have provided some legal justification for *khurooj* but the Hanbali jurists reject that outright. Saudi scholars have not experienced such circumstances which force people to

A Debate on Takfeer & Khurooj

khurooj, therefore, their opinion is not valid in our context. The religious scholars of Pakistan, Egypt, Syria and even Kuwait have experienced such circumstances and have also discussed the issues of *takfeer*, *khurooj* and *tawheed-e-hakimiyyat*, etc.

Maulana Ammar Khan Nasir

Dr Hassan Madni has seconded Mufti Mansur's argument that the debate of *takfeer* and *khurooj* emerged as a reaction to tyranny and oppression and arguments and opinions from *Shariah* were used to justify this reaction. He believes that if we eliminate the causative factors, reaction to them and the linked arguments would also subside. Dr Madni has also said that the present democratic dispensation is not an ideal system and it is impossible to change its structure through a democratic struggle because it has support from international political systems, institutions and imperialist powers. This raises a few questions. Since a particular political system has been imposed on us, what legal options does *Shariah* offer us to change or replace this system with an Islamic one? Should a struggle to change this system be confined to the available options within this system? Are there any legal options available to renounce allegiance to and revolt against this system? If yes, then what are those options? I will request Dr Madni to respond to these questions in the next round of discussion.

Mufti Muhammad Khan Qadri

Jamia Al-Islamia, Lahore

The Islamic scholars and jurists that we are referring to in our discussion used to put their legal opinions and arguments on critical issues before their people with honesty. Not all people accepted their opinion but sooner or later most of them were persuaded by them. We have not properly and effectively responded to critical legal issues and related challenges facing the Muslim *ummah* today. Our influence among the people has therefore gradually declined. At present, we are a defeated nation. The infidels have become dominant in all walks of life. In this situation, the holy Prophet's (PBUH) period of stay in Makkah alone is sufficient to guide us and solve our problems.

Unfortunately, our scholars frequently issue religious decrees to brand their fellow Muslims as disbelievers. The holy Prophet (PBUH) had warned his followers against issuing decrees saying "You will go to Hell with the same haste which you show in issuing a *fatwa*." The Prophet (PBUH) has also made it clear that a Muslim cannot be declared a disbeliever without clear evidence from *Shariah*. But our

Second Debate

decrees declaring people disbelievers are mostly based on rumors and hearsay. We are all sitting here like brothers but who knows what religious decrees make us to each other. I believe that only *nusus* (divine rulings with clear/absolute meaning and no difference of interpretation) should be the parameter to test the validity of *takfeer*. If we analyze the comments and opinions of religious scholars, it is abundantly clear that non-serious scholars have lived in every age and we have read their opinions. I have read an opinion of such a scholar that proponents of Hanafi and Shafi beliefs cannot intermarry. Which religious scholar today approves of this opinion? How long can we continue with such legal opinions and decrees?

Secondly, we should understand that we cannot be more concerned about Islam than Allah and His prophet (PBUH). There are many things that we do in the name of Islam but in reality they are a reflection of our ignorance. Allama Qadri has said that we have restricted the definition of *kufr* (disbelief) to renunciation of the essentials of Islam. But I have read at least eight different forms of disbelief. Syed Anwar Kashmiri has written a comprehensive book, titled *Ifkarul Mulhedeem* (thoughts of atheists), on this subject. There are people who call themselves Muslims but their acts are against Islam. I have heard people make comments that amount to ridiculing or despising Islam, such as statements that Islamic punishments are barbaric. Islamic jurists have had different opinions on whether to declare a Muslim who commits a major sin as a disbeliever or not but they have near consensus that any Muslim who despises and ridicules Islam is a disbeliever. If we read up on disbelief and atheists in Islamic jurisprudence we see that jurists have concluded some very minor things that certify disbelief. The question of authority, or who can issue a decree, becomes vivid in the light of the divine ruling that 'ask the people of knowledge if you do not know' (Quran 16:43; 21:7). The best solution is to form a board of credible and pious religious scholars to discuss and decide if the accused had really committed an act of disbelief.

The Muslim *ummah* has experienced gradual and continuous decline. Whenever some Muslims have achieved some success and given hope to the *ummah* it was through following the way of Hazrat Imam Hussain.²⁶ That is the only way of hope and success. Ways of withdrawal would not work.

²⁶ Hazrat Hussain was the grandson of the Prophet (PBUH) and son of Hazrat Ali, the fourth caliph of Islam. He refused to give oath of allegiance to Yazid, the Umayyad caliph, whom he considered an unjust and oppressive ruler. As a consequence, he was martyred along with his

We should add the prefix ‘Western’ before democracy that is currently imposed on us in Pakistan. Our ultimate goal is to enforce the system of Islamic Shariah Council. Articles 62 and 63 of the Constitution list some essential qualifications for becoming members of parliament, which, if implemented judiciously, could bring good people into both houses of parliament.

Dr Syed Muhammad Najfi

Deputy Director, Taqreeb Mazahib-e-Islami, Pakistan

Before going into the details of *takfeer* it is imperative to understand what *kufir* (disbelief) is. *Kufir* is the antonym of belief. Belief means to profess and acknowledge in one’s heart. Therefore, if a person professes his belief or faith in Allah and His Messenger (PBUH) (*shahadatain* or the two testimonies)²⁷ in his heart, he is a Muslim. In other words, one who professes faith in *shahadatain* is a believer. The other pillars of Islam (*arkan-e-Islam*), i.e. prayers (*salat*), fasting (*sawm*), *zakat* and *hajj* reflect a believer’s practices and deeds in terms of his faith. On the contrary, a person who does not believe in or renounces the two testimonies i.e. belief in Allah and His Messenger (PBUH) is a *kafir*, or disbeliever. We cannot call him a Muslim. To put it simply, profession of faith in one’s heart that no one is worthy of worship except Allah and Muhammad (PBUH) is His Messenger is the basis of belief (*iman*) and renunciation of these two testimonies is the basis of disbelief (*kufir*).

The literal meaning of *kufir* is to reject or to renounce. Renunciation of anything or creating hurdles in the way of anything is literally called *kufir*. Some forms of *kufir* are proper and others improper. But in the Islamic legal terminology it has a different discourse. As I have stated earlier, the basic form or level of *kufir* is renunciation or rejection of belief in Allah and His Messenger (PBUH). But not all legal schools of Islam confine themselves to this definition of *kufir*. On the next level, those who profess their faith in Allah and His Messenger (PBUH) could also be declared disbelievers on different pretexts. In some traditions, those Muslims who do not offer prayers are also called disbelievers. In others, those committing major sins are declared disbelievers. And in this way this process continues. We cannot say

many followers and family members in Karbala in 680 (61 AH) by the forces of Yazid.

²⁷ To profess that no one deserves worship except Allah and Muhammad (PBUH) is His Messenger.

Second Debate

with certainty that these ten things lead to disbelief as it is possible that yet another tradition may describe an eleventh act of disbelief.

We should clearly demarcate boundaries between these two forms, or levels of disbelief and try to examine if there is some difference between their status and divine rulings about them. This is not an easy task. But it will reveal if some Muslims want to achieve some specific purpose by declaring some other Muslims disbelievers. I think we are trying to search for disbelief among those who profess their faith in Allah and His Messenger (PBUH) by applying the legal rulings which are meant for those who renounce their faith in Allah and His Messenger (PBUH). There is a substantial difference between the two.

A review of early Islamic history may help us. I have not read in any book that the Prophet (PBUH) declared any of his followers a disbeliever (*kafir*). The term of hypocrite (*munaḥiq*), however, has been used by him; the same term is also mentioned in the Quran.²⁸ All of us know about *Masjid-e-Zarrar* and those who established it. The term *kufraan wa tafreeqan* has been used in the Quran to describe the purpose of the hypocrite Muslims in establishing this mosque in Madina, which was to 'to cause dissent among the believers.' The term, however, has not been used in the context of *takfeer*. I do not know if the term *takfeer* was ever used in the lives of the Prophet (PBUH) and the righteous caliphs, particularly in the meaning that we derive from it today. I am saying all this apart from the debate on *khurooj* because at least the first four Islamic caliphs were pious and righteous Muslims and even thinking of *khurooj* against them is not justified. There were a few incidents of revolt which can also be discussed to ascertain if we can declare them *khurooj* or not. Coming back to my point, I would like to say that according to my knowledge, the term *takfeer* was not used or people were not declared *kafir* during the time of the righteous caliphates and *aimma-e-ma'soomeen* (infallible leaders in Shia Islam), although there were Muslims who did not offer prayers and also those who committed major sins. Neither the Prophet (PBUH) nor his caliphs and followers declared fellow Muslims disbelievers. This phenomenon emerged much later. It is a very sensitive and critical issue to declare a

²⁸ The Quran mentions this mosque in the following words: "And as for those who chose a place of worship out of opposition and disbelief, and in order to cause dissent among the believers, and as an outpost for those who warred against Allah and His messenger aforetime, they will surely swear : We purposed naught save good. Allah beareth witness that they verily are liars." (9: 107)

Muslim disbeliever who professes his faith in Allah and His Messenger (PBUH).

The term *kufir buwah* (open disbelief) is mentioned in a *hadith* that has been narrated by at least eight to ten different sources. If an individual renounces his faith in God in any way it is simply an act of disbelief. But at the same time, it is a very vast and open concept. For instance, I profess my faith in the Oneness of God but my actions and practices refute my faith. What does then disbelief in God mean? Does it mean not to have belief in God's Names and Attributes? Does acting against God's will also mean disbelief? If yes, then which of these and other disbeliefs could be declared as *kufir buwah*? All these things need to be ascertained on an honest legal basis.

Secondly, I think that one who does not believe in the holy Quran is also a disbeliever (*kafir*). The belief in the Quran means accepting it as a book of God, revealed to His Messenger Muhammad (PBUH) and that no one can make changes in it because God has taken it onto Him to safeguard it forever. Thirdly, renunciation of belief in the Prophet (PBUH) in any way is also disbelief (*kufir*). Like disbelief in God, it could also have more than one state. One thing is clear that renouncing Muhammad (PBUH) as a Messenger of God is disbelief. Similarly, declaring that permitted (*halal*) which the Prophet has declared prohibited and vice versa is also clear disbelief. But does disobeying the Prophet (PBUH) and not following his commands also constitute disbelief?

Some traditions assert that renunciation of the creed or *Deen* of God is also disbelief. Some others narrate that a person who believes in God, His Messenger, and the Quran could also be termed a disbeliever (*kafir*) on certain other basis such as creating hurdles in establishment of the religion or trying to undermine Islam. This is how the debate on *takfeer* expands and becomes sensitive. One has to consider very meticulously all the terms, rulings and details before issuing a decree that declares some Muslim disbelievers. For example, there is a difference between renunciation of the essentials of Islam and not embracing or following them. The former leads to disbelief but the latter does not. In a way committing major sins, which means transgressing the boundaries set by God, is renunciation of the religion but it is not considered disbelief. It could be due to the lethargy of a person that he does not offer prayers or practice other essentials of the religion.

It is also important to ascertain whether it is my responsibility to go after the people and search for disbelief among them or their expression of disbelief will become the basis of declaring them

Second Debate

disbelievers. These are two different things. Particularly in validating *kufir buwah* we will have to keep *iltizam-e-kufir* (to accept or adhere to disbelief) and *lazoom-e-kufir* (to say a word of disbelief) before us. A word of *kufir* (disbelief) in statements made is one thing, while recognizing the speaker as a *kafir* (disbeliever) is another. Some words of *kufir* require our solemn and committed response while others could be dealt with gently.

The current situation of *takfeer* is that even a child in the street can declare anyone a disbeliever and no one will hold him accountable for his act. The Islamic scholars and jurists have clearly identified who is authorized to give legal judgments, rulings or decrees in all religious matters including *takfeer*. No one has allowed this authority to be handed over to the general public, and to uneducated and ignorant people. First, instead of issuing decrees we should try to remove our confusions about each other. If the Hanafis have some misperception about people of the Jaafria school of thought they should ask the latter to explain. Similarly, the Jaafria can ask the Hanafis to give their viewpoint in case they have some confusion about the faith or belief of the latter. Problems start when the Hanafis start interpreting and elaborating the beliefs of Shias and vice versa. If each religious sect itself explains and tries to remove others' confusions about it, many problems will be resolved.

However, I am unable to say who should have the authority to issue decrees. The only options which come to mind are jurists and *mujtahiddeen* (Muslim jurists who have the highest level of scholarship, interpret law and generate *Ijtihad*). I do not think our parliament should have this authority because it does not have the capacity, ability and scholarship to decide about such highly legal questions of *Shariah*.

Maulana Ammar Khan Nasir

It is probably due to the fact that we extensively face the issue of *takfeer* on societal level that we feel inclined to discuss it more in this particular perspective. But we are here to discuss clear and open disbelief (*kufir buwah*) which has mostly been understood as committed by the rulers and which leads to the debate on *khurooj*.

Dr Syed Muhammad Najfi

Basically, I understood that we would discuss *khurooj* in the second session. However, I have discussed the issue of *takfeer* in general terms and it applies equally to the rulers.

Maulana Ammar Khan Nasir

I will again request the esteemed scholars to focus on the fundamental questions of the legal status of democracy in the light of *Shariah*, compliance with or rejection of the democratic system and alternative ways if democracy does not help to enforce the Islamic system in Pakistan. This should also include a review of the arguments used by the revolting groups to justify their armed struggle against the state.

Maulana Ahmad Ali Kasuri

Chairman of the Quran Board, Punjab

I feel that the scope of our debate is too wide to cover all of the aspects in this limited time. However, we can try to get the maximum out of the time we have. I second Dr Najfi's argument on *kufir buwah* that renunciation of one's faith in Allah and His Messenger (PBUH) is clear disbelief. There should be no doubt about that. But I would refer to the foremost divine ruling in Quran that says: "And of mankind are some who say: We believe in Allah and the Last Day, when they believe not." (1:8). In this verse, the belief in Allah is followed by belief in the Day of Judgment. This divine ruling refutes the claim of those who say that they have belief in every aspect of Islam. I think the significance of the two testimonies (*shahadatain*), that is professing faith in Allah and His Messenger, is not the only criterion to examine belief although it has priority over others. Therefore, we should not forget that the fundamental beliefs of Islam also include belief in the Day of Judgment, the *qadar* (destiny) and other faiths.

We currently face many problems but we will have to prioritize the ones which are critical and require our most immediate attention. Doctors do not prioritize to treat minor problems such as pain in the ear, headache or skin rashes of a patient whose heart is affected by an accident. Similarly, the subject we have selected for discussion is linked to some more pressing problems which could have been prioritized and thoroughly discussed before discussing the issues of *takfeer* and *khurooj*. The ground realities today indicate that the infidel, imperialist, idolater and evil forces are dominant in the world and have influence in all spheres of life. They are united, at least against Muslim the *ummah*. For instance, the forces of around 57 countries are deployed in Afghanistan, who have different constitutions and ideologies but are united by their shared enmity of Islam. Let us not forget that we are discussing the legal questions of *khurooj* and *takfeer* against this backdrop.

Second Debate

Islamic history tells us that whenever some discord and trial emerged among the Muslim *ummah* our great scholars and jurists identified and examined it, proposed the legal solutions and faced the situation courageously on the academic and intellectual fronts. We have failed to do so. We can learn a lot from Islamic history and from the ways of our predecessors in dealing with the matters of authority on issuing decrees. Today we face relatively greater turmoil and trial. The media has emerged to support the forces of false deities in their propagation of false and anti-Islam ideologies. Our Islamic scholars are not prepared to face such challenges. I agree that we have better military preparations and equipment but we have failed to respond effectively to the emerging challenges on the ideological and intellectual fronts. Muslims are divided which undermines their strength to respond to those conspiring against Islam through their divide-and-rule and carrot-and-stick policies. Although different religious sects in Islam have more commonalities and fewer differences in religious matters, yet we do not have a common platform of the people of knowledge to generate common responses to the challenges facing Islam and decide about the issues like the ones that we are discussing here today. Neither have we an Islamic government that can be requested to do so.

From the people of knowledge I do not mean the religious scholars only but scholars and experts of all fields and disciplines. In religious legal matters such a platform should undoubtedly be led by religious scholars but it should have representation of politicians, academics and other scholars. Mufti Muhammad Khan proposed a board of religious scholars belonging to different schools of thought to decide on critical legal issues such as *takfeer*. I will go one step further and say that such boards should be established in all Muslim countries which can share and exchange their opinions on common issues among them. This is a way to create consensus among the Muslim *ummah* on emerging legal questions; the issues on which consensus emerges could be adopted and the rest could be kept pending.

It is due to lack of such joint platforms that even the common people, clerics, prayer leaders and orators frequently issue religious decrees to declare one or another group or community disbeliever in absolute terms. It is our responsibility to stop such practices. These are matters of faith and belief and should not be dealt with like this. There are such religious scholars among all schools of thought in Pakistan today who can be called people of knowledge. They have the required scholarship and credibility to do *Ijtihad*. They can join hands and guide us in this time of trial and discord. We have such examples in history.

The 22 points adopted by religious scholars are regarded as a hallmark in the constitutional and legislative history of Pakistan. Similarly, they have jointly defended one of the fundamental beliefs of Muslims, the belief in the finality of prophethood.

We should also step up to our responsibilities in sensitive religious matters. The Quran says: "...neither defame one another, nor insult one another by nicknames..." (49-11). Declaring fellow Muslims disbelievers is the last stage; Islam does not even allow defaming and insulting others by giving them demeaning nicknames. The practice of declaring others disbelievers is indeed producing disbelievers; it is like an industry. In Islam, preaching has two elements: to invite non-Muslims to Islam; and to keep or retain the Muslims in the creed of Islam. The current practice of declaring Muslims disbelievers has nothing to do with either of these elements. By issuing decrees of *takfeer*, or *kufir*, we indeed eliminate Muslims from the creed of Islam. According to a tradition of the Prophet (PBUH) narrated by Hazrat Abdullah bin Abbas, 'whoever accuses a believer of disbelief, then it is as if he had killed him.' Similarly, another *hadith* has been quoted here that means that an accusation of disbelief will revert to the accuser if the accused is innocent. Expelling Muslims from the fold of Islam by illiterate and uneducated people is a very serious and delicate matter. It is akin to appointing butchers in our hospitals to carry out heart surgeries on human beings.

About democracy I would say that its basic philosophy of making decisions with the majority's opinion conflicts with Islam. In Islam, Allah and His Messenger (PBUH) are the permanent source of all judgments and decisions. Our religious scholars know very well that obedience of Allah and His Messenger (PBUH) is to be unconditional whereas obedience of 'those charged with authority' among us is conditional to their allegiance to Allah and His Messenger (PBUH). Our decisions should be based on divine rulings and not on personal judgments and likes and dislikes. Hazrat Ali once said that if he were he to decide on the basis of his own intellect he would have allocated to women twice the share in inheritance compared to what was given to men. The decisions made on the basis of the majority's opinion could also be against the rulings and teachings of Islam. It is mentioned at many places in the Quran that most of the people do not use their intellect. In Islam, decisions are not made on the basis of the majority's opinion.

Second Debate

Allama Khalilur Rahman Qadri

We have not discussed whether a decree declaring a Muslim a disbeliever will remain valid after his death or not. As far as I know, Islam ordains that we cannot declare a Muslim a disbeliever after his death as it is possible he died a believer.

There are two ways how a ruler can commit an act of disbelief and be declared as a disbeliever. First, he commits an act of belief in his individual capacity. The second form is related to the nature of the system in which decisions are being made and affairs of the state run. There are rulings and explanations in the Quran regarding that wherein words such as tyrant, transgressor and disbeliever have been used to describe such rulers who do not decide and run the affairs of the state according to what God has revealed on His Messenger (PBUH). Leading jurists of all legal schools of Islam agree that *khurooj* is justified against those rulers who commit some act of clear disbelief (*kufir buwah*). There is, however, difference of opinion among the jurists on the nature or way of *khurooj*. Imam Abu Hanifa's opinion is that *khurooj* is legally permitted against tyrant, transgressing and sinful rulers and he practically supported some such movements in his life. The later jurists of the Hanafi school, however, decided not to support *khurooj* in the better interest of the people and in order to avoid bloodshed because the rebels were always smaller in number and could not defeat well equipped and trained bigger armies of the rulers. That did not mean that the legal rulings about *khurooj* had changed or weakened but they emphasized and prioritized the rulings which called for restraint if there was fear or probability that *khurooj* could lead to a bigger trial and discord among Muslims. But this restraint will not be observed if the rulers are guilty of clear and open disbelief (*kufir buwah*), but only if they are tyrant and transgressing. There are peaceful forms of protests and agitation, or non-armed *khurooj*, which could be adopted against tyrant and oppressive rulers.

The forbiddance of *khurooj* ordained in *ahadith* becomes more relevant and significant in modern times. State armies and security forces today are much stronger, disciplined, richly resourced and equipped with the latest lethal weapons. On the other hand, the revolting groups cannot match this strength of the state forces. One can imagine the loss of life and property and the level of bloodshed an armed revolt against the state or *khurooj* could entail in such a situation. The Hanafi argument of prioritizing restraint over *khurooj* with a view to avoid bloodshed and a bigger turmoil was indeed never so valid and relevant as it is today. Secondly, how can we talk of *khurooj* against a political system that we have actually accepted and

acknowledged by becoming part of the electoral process that elects members of parliament, prime minister and president? This seems strange to me. Mere change of rulers through the electoral process would not help. If we want to change this system we should take a clear position and strive for that instead of sticking to shallow rhetoric against the rulers.

If that is not possible then we should focus on alternative options enshrined in the Constitution of Pakistan. The people's representatives can pass a no-confidence motion against the prime minister and impeach president. This is neither an easy process nor directly linked to the people's wishes. Even if the people want to get rid of their rulers, only the political parties who have the majority in parliament can do that and it is not easy for the people to influence them to go for measures such as a no-confidence vote. That is why I have strong reservation against this process. I believe that an option, such as a referendum, should be available to the people so that they can directly remove their rulers if they so desire.

Mufti Mansoor Ahmad

The chairperson has raised a point that although the question of *khurooj* has emerged as a reaction to state policies but the argument on which it is based does not discontinue even if the state policies that caused it are changed or demolished. Simply put, democracy is a system parallel to Islam. The addition of a prefix 'Islamic' to democracy does not make it Islamic. As stated by Maulana Kasuri, democracy is based on views and opinions of the majority of the people. Today the majority's opinion has declared Pakistan an 'Islamic democracy', what if in the future they rename it as a Christian democracy with the majority's opinion? All of that depends on the majority's opinion. Islam and democracy stand on dissimilar foundations.

Pakistan's democratic system cannot be termed an Islamic democratic system in any way. When the Federal Shariat Court banned interest (*riba*) in Pakistan, the federal government filed an appeal against this decision in the Shariat Appellate Bench of the Supreme Court.²⁹ Pakistan's parliament passed an un-Islamic bill in the name of

²⁹ Pakistan's Federal Shariat Court had declared on 14 November 1991 a number of laws of the country to be repugnant to the injunctions of Islam on the pretext that they had provided for charging or paying interest, which according to the Court fell within the definition of *riba* and clearly prohibited by the Holy Quran. The Federal Government of Pakistan and

Second Debate

protection of women's rights. Pakistan's rulers ridicule and criticize symbols of Islam and *Hudood Allah* (boundaries set by Allah/divine laws). Many among Pakistan's ruling elites call the blasphemy law as a black law. How could then this democratic system be termed Islamic?

When we say that we have been forced or are helpless to live under this system we should also consider that our agreement on democracy does not undermine our faith in the divine ruling that ordains establishment of the religion. Imam Jassas and Imam Ibn Taymiyya have described establishment of the religion as one of the foremost religious obligations of Muslims after they profess their faith in Allah and His Messenger (PBUH). Such systems and ways of life which hinder us from following what Allah has revealed unto His Messenger are termed as false deities in the Quran: "Hast thou not seen those who pretend that they believe in that which is revealed unto thee and that which was revealed before thee, how they would go for judgment (in their disputes) to false deities when they have been ordered to abjure them? Satan would mislead them far astray." (4:60) The next verse further explained such false deities: "and then it is said unto them: Come unto that which Allah hath revealed and unto the messenger, thou seest the hypocrites turn from thee with aversion." (4:61) Our democracy shows a similar aversion to what Allah has revealed.

Against the backdrop of *takfeer* (declaring rulers disbelievers) we should also keep this tradition of the Prophet (PBUH) before us that he who befriends them (infidels) is surely one of them. Have you come across a two-volume book titled *Al-Tibyan fi Kufri man A'ana al-Amrikan* (guide on the denial of those who aid the Americans)?³⁰ Our

certain banks and financial institutions filed 67 appeals against this judgment in the Shariat Appellate Bench of the Supreme Court which in 1999 declared interest legally prohibited in Islam, and banned it in all its forms and by whatever name it may be called. *Riba* or interest is forbidden in Islamic economic jurisprudence (*fiqh*) and considered a major sin. It is mentioned in the Quran at many places: "And whatever *riba* you give so that it may increase in the wealth of the people, it does not increase with Allah" (30:39); "O those who believe do not eat up *riba* doubled and redoubled" (3:130).

³⁰ The book is written by a Saudi scholar Nasser bin Hamad al-Fahd. Content lists of its both volumes are available online at <http://www.tawhed.ws/r?i=3b5bz0v8> and <http://www.tawhed.ws/r?i=np2ks5ge> respectively, on the website of Minbar Al-Tawhed wa A-Jihad (Pulpit of Monotheism and Jihad) (accessed August 17, 2012). As it is clear from the title the book warns the Muslim *ummah* about dangers of their support to the United States and its allies in their so-called war on

parliament and the complete state structure is aiding the imperialists' war against Muslims. Then how can we regard our rulers as Muslims? If we are helpless to get on with our rulers and the political system, that does not mean that we are unaware of their legal status and position in *Shariah*.

Maulana Zahidur Rashidi

Principal, Al-Shariah Academy, Gujranwala

This session of the debate is focused on *takfeer* but I might not be able to stay here until the next session, therefore, I will briefly discuss both *takfeer* and *khurooj* right now.

First, do we start from scratch or review the previous discussions among our predecessors and elders on the same or similar subjects? There have been many such discussions in the past six decades or so, since the establishment of Pakistan, which have yielded results and developed consensus and agreement among religious circles on certain matters. Such points of consensus and agreement should serve as the baseline for further discussion instead of starting afresh every time. If we do not want to acknowledge the previous discussions and their results then our current debate on *takfeer* and *khurooj* is going well but if we think this debate is a continuity of previous debates then we need to reconsider our approach.

For instance, we have had a long debate on *takfeer* that eventually produced some positive outcome. The debate on who is a Muslim and who is not emerged against the backdrop of the 1950s Tehrik-e-Tahafuz-e-Khatm-e-Nabuwaat (the movement to protect finality of prophethood) when the Munir Enquiry Commission was formed to probe the anti-Qadiyani riots. Later, in 1973, when Pakistan's new Constitution was being evolved this question reappeared, this time as a challenge for the legislative assembly. The then information minister Maulana Kausar Niazi said in his address in the National Assembly, where esteemed religious scholars and leaders of their respective religious-political parties Maulana Shah Ahmad Noorani and Maulana Mufti Mehmood were also present, that the government was willing to accept all demands of the religious scholars

terror, particularly in Afghanistan and Iraq. The author terms the American attack on Afghanistan a Crusader attack (hamla salibiyya) whose purpose was to destroy Islam. (Source: Mr. Yair Minzili, "Strategic Thinking of the Salafi-Jihadi Movement," Institute for Policy and Strategy (IPS), May 1, 2007, http://www.herzliyaconference.org/_uploads/2577_minzili-salafi-jihadi.pdf (accessed on August 17, 2012).

Second Debate

and parties, who were leading the Tehrik-e-Tahafuz-e-Khatm-e-Nabuwaat, if they could evolve by consensus a legal definition of who a Muslim was. The religious scholars took this challenge seriously. A serious and thorough debate finally led two leading religious scholars Maulana Abdul Haq of Akora Khattak and Maulana Abdul Mustafa Al-Azhari of Jamia Amjadia to establish a legal definition of a Muslim which was acceptable to all schools of thought and religious organizations. This agreed-upon definition said: "A Muslim is who professes his faith in the Messenger of Allah (PBUH) and the religion he brought."

I describe these details to highlight that we cannot ignore previous debates on the subject and their outcome. To reopen the Pandora's Box of legal questions which have already been debated, mutually decided and openly declared is not wise.

The second point of my discussion is about democracy and its status in Islam. Democracy consists of two fundamental elements. One is related to what we discussed here, that is decision-making authority which in democracy lies with the people. People's representatives judge and decide what is right and what is wrong, and what is *halal* and what is *haram*; no other standard is recognized in that respect. In Islam, we cannot think of this option even for a moment. The second element of democracy is related to the questions of qualification and selection of the rulers such as: who has the right to rule? Is the right to rule based on strength and force or some other factor? On what basis will a ruler be elected? How will the government be formed? A look into early Islamic history suggests that Hazrat Abu Bakar was elected as the first caliph of Islam on the basis of debate, consultation and public opinion and not on the basis of force. He said in his first address after being elected: "...Obey me so long as I obey God and His Messenger. But if I disobey God and His Messenger, ye owe me no obedience..."

Therefore, although Islam rejects absolute authority, or sovereignty, of people's representatives but it accept people's right to rule and permits the people to elect their rulers. This principle was established no later than the first caliph of Islam was elected. In Pakistan, the Objectives Resolution was passed in 1949 on the same principle that the chosen representatives of the people will have the right to rule but they will be bound to exercise this right within the limits prescribed by Allah. We have already established a principle on the basis of which Pakistan's Constitution was formed. We have travelled so far while sticking to this principle. Yes, if we want to reopen it then we are justified to initiate a debate on democracy, otherwise we will have to move on within the limits of Pakistan's Constitution.

My third argument is that people's holding and announcing extreme and absolute opinions or judgments do not reflect only their religious but also the overall sociocultural behaviors. Such extreme opinions are widespread in political, legal and other matters too, in addition to religious ones. This is our general social attitude that we would not declare our political enemy anything less than a traitor or a foreign agent. The following day the same traitor becomes our ally. Law is not enforced in Pakistan for the sake of the rule of law but because I want to enforce it on others. At the time of registering an FIR (First Information Report) with the police we accuse our opponents of all possible and extreme offenses so that they get the harshest punishment. Let me share with you a personal experience. About a decade ago I visited a renowned lawyer and former member of a bar council to consult him regarding an FIR that I wanted to register. I told him the details of the case. He started to suggest different offenses that he thought I should include in the report. When I saw the long list of offenses and accusations at the end, I told him that most of them were false and I did not want to register a false FIR. He replied that my case could not be contested without a 'strong' FIR. Eventually, I changed my mind about lodging that FIR.

We have extreme social behaviors in all matters and want to treat all political, legal, religious and other 'diseases' with high-potency medicines. We think that we cannot effectively target and overcome people with soft words and mild techniques but only with extreme measures such as by declaring them disbeliever (*kafir*). We seek and extract justifications from the religion for our extreme behaviors by our way of interpretation. Our religious behaviors are anyhow corollaries of our overall social behaviors which need to be reformed.

The debate on belief and disbelief is nothing new. The first ever case against Qadiyanis was heard in a sessions court in Bahawalpur in the 1930s, under the British rule in which the judge had declared them apostates on account of their renunciation of the finality of prophethood. Allama Anwar Kashmiri and Maulana Ghulam Muhammad Ghotvi had appeared before the court to bear witness in the case as representatives of Deobandi and Barelvi schools of thought, respectively. During the cross-examination, the defense council asked Maulana Anwar Kashmiri that Barelvis called them (Deobandis) disbelievers and vice versa then how could he advocate Islam. Maulana Kashmiri said two very interesting things. First, he announced as a representative of Deobandi school of thought that they did not declare Barelvi religious scholars disbelievers. Secondly, he said that the nature of Deobandis' conflict with the Barelvis was quite different from their

Second Debate

conflict with Qadiyanis; in the latter case the conflict was on fundamental principles and rulings of divine law, whereas with the former the Deobandis had differences pertaining to ways of implementation of these rulings and laws. He further clarified that Deobandi and Barelvi schools agreed upon the fundamental principles and sources of Islamic law. We should not ignore this historical perspective of our discussion on *takfeer*.

Dr Najfi has said that Muslims were not declared disbelievers during the times of the Prophet (PBUH) and of the righteous caliphs. I believe that that is not so. During the caliphate of Hazrat Abu Bakar all the wars with apostates were fought on the basis of *takfeer*. For instance, those who refused to pay *zakat* were declared disbelievers and thus fought against, although they professed their faith in Allah and His Messenger (PBUH). Similarly, Mussailma Kazzab, who claimed to be a prophet of Allah, also professed his faith in Allah and His Messenger (PBUH) but added to this professing of faith that Mussailma was a messenger of Allah. Hazrat Abu Bakar considered Mussailma an apostate and a disbeliever and hence fought against him.

We can easily ascertain the legal status of issues such as *takfeer* and *khurooj* in the current environment by following the approach of our elders (religious scholars) and the principles they had established with consensus. We should respect the decisions of our elders and try to remove dissent among the people. Religious scholars from all schools of thought should evolve some process to jointly respond to *takfeer* and *khurooj* and other related legal questions and convince the people on the consequent shared responses. The decisions and legal opinions of our elders should work as a baseline for this process. I think that we should not deviate from the decisions that our elders made regarding Islam and democracy in the form of 22 constitutional points of religious scholars and the Objectives Resolution. Neither should we look for ways of deviation. This is the only way to peace and integrity for us.

Maulana Ahmad Ali Kasuri

I want to put an important issue before all of you, which I have earlier discussed in a few similar gatherings but have failed to attract people's attention. We know that there is no mention of the Prophet (PBUH) and his *Sunnah* as a source of law and guidance in Pakistan's Constitution; neither was that there in the previous constitutions and even in the Objectives Resolution. The Constitution mentions sovereignty of Allah and that people's representatives will use their right to rule according to the limits prescribed by Allah. I believe that the constitutional clauses describing sovereignty and the role of the

state and the rulers should be changed. There is a clear divine ruling: “O ye who believe! Obey Allah, and obey the Apostle, and those charged with authority among you” (4: 59). I believe that obedience of the Prophet (PBUH) should also be made compulsory for the rulers in running the affairs of the state. I do not see any conflict among Islamic schools of thought on the issue of obedience of the Prophet (PBUH) and the *Sunnah* being a source of law. The Sunnis believe in the concept of caliphate and the Shias in that of *wasiyat* (trusteeship). There is however consensus between the Shia and Sunni schools that vice regency of both a caliph (successor) in Sunni Islam and a *wasi* (trustee) in Shia Islam acquires its legal and spiritual authority from the Prophet (PBUH). I am unable to understand what then could be the reason for not mentioning the *Sunnah* in the Constitution as a source of law. Please correct me if I am wrong, but if you agree with me then let us join hands to remove this fundamental flaw in the Constitution because faith is like a seedling; contaminated and infected seedlings cannot develop into healthy plants.

Maulana Zahidur Rashidi

I second Maulana Kasuri’s opinion because jurists have defined the caliph as one who runs the collective affairs of the *ummah* as a viceregent of the Prophet (PBUH).

Dr Hassan Madni

Maulana Zahidur Rashidi has said that our elders have already debated and decided certain legal matters related to Islam and democracy and that instead of reexamining those decisions we should use them as a source to further our debate. I believe that instead of generalizing them we should look at each of our elders’ decisions against the backdrop of its specific context and the options available to our leading scholars at the time of that decision. One role that our elders assumed was after the establishment of Pakistan and in the subsequent adoption of the Objectives Resolution and another was in the shape of the position they took regarding the Taliban regime in Afghanistan that continued for three to four years. The circumstances in which Pakistan was established offered little space to the religious scholars to assert themselves in the state’s political affairs. The only option available to them was to agree on measures such as the Objectives Resolutions that at least promised that Islam would not become completely irrelevant in Pakistan. Nonetheless the Taliban achieved power in Afghanistan through their individual struggle and

Second Debate

enforced an ideal Islamic system there. Our religious scholars fully supported it. In contemporary Islamic history, if we see Islam enforced anywhere and peace achieved it was in Afghanistan during the Taliban regime. A partial reflection of it is visible in Saudi Arabia also. The system of democracy and the so-called Islamic legislation have put the Muslims in trouble everywhere in the world. Therefore, while judging the role and decisions of our elders in different situations we should not forget the freedom and options they had in a particular situation. I believe that circumstances had forced our elders to accept the so-called system of Islamic democracy, otherwise leaders and scholars of the Muslim *ummah* have always espoused the ideology of Islamic caliphate. I do not believe that our religious scholars have accepted this system of Islamic democracy as a permanent substitute for Islamic caliphate system. It is merely a matter of expediency.

The next question is whether we discuss *khurooj* in the perspective of Islamic democracy or Islamic caliphate? Both are distinct paradigms. The concept of the Islamic caliphate system is diametrically opposed to that of Islamic democracy. In democracy, the constitution and laws are subject to change. This is a fundamental distinction between democracy and caliphate. A change of perspective changes the entire landscape of the debate. At present, the question of *takfeer* is largely linked to indivisibility of God's sovereignty (*tawheed-e-hakimiyyat*). I can say on the basis of my poor study of *tawheed-e-hakimiyyat* that no [man-made] constitution existed in the Islamic *ummah* in first 1,300 years of its history. The first attempt to codify Islamic law was made by the Ottoman Empire in the form of *Majallah Al-Ahkam Al-Adliya*, under the influence of France. Anyhow, the short period of the Taliban rule in Afghanistan suggests that peace and tranquility can be achieved only through enforcing the Quran and the *Sunnah*; we cannot achieve peace through man-made laws.

In the last 20 years, there has been a rigorous debate among Islamic scholars on *takfeer* in the perspective of *tawheed-e-hakimiyyat* or, in other words, how [man-made] legislation challenged indivisibility of God's sovereignty and led to disbelief (*kufr*). Muhammad bin Ibrahim was the first among Salafi scholars of Saudi Arabia who started discussing the issue of *takfeer* in this perspective. He divided such disbelief, or laws challenging God's sovereignty, into two categories: disbelief by practice (*kufr-e-amli*) and disbelief by faith (*kufr-e-aiteqadi*). He included four types of *kufr-e-aiteqadi* among major disbelief but the subsequent scholars issued their legal opinions against his view. They did not say they will not opine against what their elders had decided, and declared decisions of all the sitting courts minor disbelief, or mistakes

related to practice. This whole debate has been published in an issue of *Al-Ahya* magazine and is spread over 70 pages.

In Pakistan, the debate on *takfeer* in the perspective of God's sovereignty has evolved three points of views. One, which is held by the prevalent jihadi and resistance movements, declares all institutions of Pakistani government including the army and also the rulers as false deities (*taghut*). Those holding and presenting this viewpoint call themselves *muwahideen* (monotheists). The second point of view, which is indeed Saudi Arabian thought on God's sovereignty, is being promoted by a group of Ahle Sunnat in Karachi. The third point of view has recently been published in quarterly magazine *Eeqaz*. Holders of this view say that they declare the rulers, and not the people of Pakistan, disbelievers. All three points of view on *takfeer* were developed in the perspective of unity or indivisibility of God's sovereignty. As I have said earlier, this debate of *takfeer* and the resistance and struggle based on it is indeed a reaction to government policies and rulers' challenging God's sovereignty. We should sympathize with those struggling for the establishment of Islamic system. To sympathize with them does not require owning their viewpoint. I have a clear opinion about this democratic system but I do not believe in armed or violent struggle to change it.

Legislation is a subject of constant debate among religious scholars. As I have mentioned, it did not exist in first about 13 centuries of Islamic history. A legal agreement was signed between the Jews and the Prophet (PBUH) which is known as *Meesaq-e-Medina* [the Medina Accord], which was never discussed or mentioned during the reigns of the first four caliphs. Legislation is not the only point of dissent between democracy and Islam but the overall political philosophy of democracy runs parallel to the Islamic system of government. Contrary to democracy, people's will is not the only thing in Islam. The ultimate goal of an Islamic caliphate is to enforce Shariah. The foremost consideration of the Islamic caliphate system is that a ruler should have the paramount ability and capacity to enforce Shariah. In the next stage, it is also important that the ruler should have people's trust. This is a major difference between the two systems. Democracy talks of people's will and sovereignty whereas Islamic caliphate is based on God's sovereignty and will. Although it is written in Pakistan's Constitution that sovereignty belongs to Allah alone but that is not practiced.

I conclude by saying that although we should not support the current debates and viewpoints that justify *khurooj* and *takfeer* in the perspective of Pakistan's current democratic system but we should also

Second Debate

not ignore the tyranny and oppression that has forced some people to adopt extremist views and actions.

Maulana Zahidur Rashidi

My argument was that election of Hazrat Abu Bakar with people's will and choice established a basic principle that rulers' right to rule will be decided by people, which is one of the basic elements of democracy.

Maulana Ahmad Ali

I believe that the election of Hazrat Abu Bakar as the first caliph of Islam was made on the basis of an argument put forward by Hazrat Omar. When many candidates for succession to the Prophet (PBUH) emerged, Hazrat Omar referred to a verse of the Quran that says: 'indeed, the most noble of you in the sight of Allah is the most righteous of you' and narrated a *hadith* in which the Prophet (PBUH) had ordained Hazrat Abu Bakar to lead Muslims in religious affairs. Hazrat Omar argued that after the Prophet (PBUH) had appointed Hazrat Abu Bakar the leader (*imam*) in religious affairs the Muslims should accept him their leader in worldly affairs as well.

Maulana Zahidur Rashidi

Although Hazrat Omar's argument had influenced the public opinion but even so it were eventually the people who elected Hazrat Abu Bakar by giving their decision in his favor.

Secondly, Dr Hassan Madni has said that legislation is a new or recent concept in Islamic history. I think Islamic tradition of legislation is very old. Imam Abu Yousuf (731-798) wrote a book *Kitab Al-Kharaj* (the Book of Taxation) on the request of Abbasid Caliph Haroon Al-Rasheed. The book contained laws on taxation and economics which were enforced by the Abbasids.

Maulana Ammar Khan Nasir

Dr Madni has raised a technical point which I believe he could not fully communicate; neither is it much relevant to our discussion. His discussion is mainly related to interpretation and enforcement of laws in an Islamic state. This subject needs a separate session of debate.

Mufti Mansoor Ahmad

In my opinion, there could be two ways of rulers gaining people's confidence. One way could be that a ruler is elected first and then the people give him an oath of allegiance (*bai'ah*). The second way could be that a candidate first gains people's confidence and then gets elected as a ruler. I think this is the main difference between selection of a ruler in Islam and in democracy.

Maulana Ammar Khan Nasir

Before moving on to second session, let us first evaluate the outcome of what we have discussed so far. First, none of the discussants agrees to such a notion of democracy in which the people have absolute sovereignty to rule and decide what is wrong and what right because that is against God's sovereignty, which is a fundamental pillar of faith in Islam. Opinion is however divided on the legal status of people's right to rule and elect and remove their rulers as is the case in democracy. Most of the participants do not see this part of democracy wherein people determine rulers' right to rule in conflict with Islam and believe it can lead to establishment of Islam. Some others however, particularly Dr Hassan Madni and Mufti Mansoor, have argued otherwise.

Although we have before us decisions of our elders to suggest that they had practically accepted democracy as a political system for Pakistan but I personally believe that these decisions were not preceded by enough academic, intellectual and legal debate among religious scholars and leaders. That is why confusion persists about one aspect or another of democracy's link to Islam and the former has not yet become a consensus form of government even decades after it was practically enforced in Pakistan. This confusion can lead the people to such ways which we might all agree are not better ways. Therefore, there is still a need to discuss at least the vague but critical aspects of relation between democracy and Islam.

Secondly, from what I have gathered from our discussion no one has declared democracy a system of open and clear disbelief (*kufir buwah*). The participants do not regard democracy as an ideal political system for enforcement of Shariah and Islamic desirables because it is subject to many constraints, limitations and international obligations. What then could be the best way and approach to move forward and address challenges emerging out of this conflict between democracy and Islam? This question becomes extremely relevant in the current situation when some people put forth the argument that as it is

Second Debate

impossible to change the current political system of Pakistan while being a part of it, some alternative measures including armed struggle should be adopted. Is this argument truthful and acceptable? We need to think about that. If this argument is wrong then what strategy do they have for those who suggest that peaceful and democratic ways to establish Islam in Pakistan without entering into an armed conflict with the state and challenging the basic structure of the prevailing political system? I hope our esteemed scholars would deliberate upon these questions in the next session, which is on the subject of *khurooj*.

Maulana Ahmad Ali Kasuri

The Chairperson has said that none among us has declared democracy as a system of open and clear disbelief (*kufir buwah*). I think that that is not so for democracy as defined and adopted by the West. We should first define democracy and then ascertain its legal status. Many forms of democracy could fall into the category of *kufir buwah*. If in democracy we accept public opinion as an absolute authority overriding Shariah and divine rulings then it could be termed as a system of *kufir buwah*.

Maulana Ammar Khan Nasir

You are right. I meant to say that no one has declared Pakistan's so-called Islamic democracy as a system of clear disbelief. Pakistan's Constitution has certain provisions that make it binding on the state to abide by Islam. It declares that sovereignty belongs to only Allah and also gives people the right to elect their rulers. We can criticize the democratic system in Pakistan but cannot declare it a system of clear disbelief.

SECOND SESSION: KHUROOJ

Maulana Ammar Khan Nasir

As I said in my concluding remarks in the previous session, despite efforts of Islamization in Pakistan and inclusion of certain Islamic injunctions in successive Constitutions many people still raise questions about possibility of establishment of Islam in the country through democracy. I would add one more to the questions I had raised in my concluding remarks for our esteemed scholars to focus on in their discussion. As *Ijtihad* (effort to form an independent opinion or

judgment on a legal question) can lead different people to different conclusions, what would our religious scholars say about those people or groups who have decided on the basis of their *Ijtihad* to go out of this system and fight against it? This question is linked to a few other questions, such as why should we continue to support the current democratic system when it hinders or makes impossible establishment of Islam; and what is wrong with it if a group wants to adopt an alternative way through *Ijtihad*, as the Taliban had done in Afghanistan?

Mufti Mansoor Ahmad

It has repeatedly been stated in the previous session that the term *khurooj* has purely been used in the context of the Islamic caliphate system. Therefore, if some people resort to armed struggle to change Pakistan's current system of governance that would be called rebellion or anything else, but not *khurooj*. As we all know that no one calls the Baloch insurgent movement or the Jinnahpur conspiracy, an ethnic separatist movement that had emerged in Karachi in the past, as *khurooj* against the Pakistani state or the rulers. Technically, any armed struggle in Pakistan could not be termed *khurooj* because we assume that the democratic system enforced in Pakistan is not even Islamic, much less an Islamic caliphate.

In Pakistan's case, we are trying to make our debate on *khurooj* relevant in the perspective of a Muslim state. Even in that case, *khurooj* does not merely mean armed struggle but it also includes renunciation of obedience of the state that we observe as citizens and struggle to establish a state within the state. Allama Novi, a leading jurist, has described *khurooj* as rejection and protest whose highest level is armed struggle and fight.

Islamic scholars and jurists are in agreement that armed struggle for establishment and dominance of Islam is justified, whether you call it *khurooj*, jihad or something else, if the rulers are disbelievers (*kafir*) and the ruling system of a state is based on disbelief (*kufr*). But we are discussing here the justification and validity of *khurooj* against Muslims rulers whom we consider transgressing, sinful and tyrants and who are a hurdle in establishment of the Islamic system. Most jurists do not regard *khurooj* against Muslim rulers as legally justified; a few justifying opinions attach so many limits and conditions to it that it could be termed almost equal to disapproval. However, despite some strict conditions attached to it, the possibility of justification of *khurooj* still exists and it should exist, otherwise the door to protest against

Second Debate

tyrant rulers, which is ordained in a *hadith*,³¹ will be closed. Our opinions on validity of *khurooj* should also reflect on the reasons for which the Prophet forbade his followers from *khurooj*, i.e., the fear of possible loss of life and property of Muslims.

In Pakistan, as Maulana Rashidi has rightly pointed out, we have behavioral problems. We first decide or are forced to decide things and then look for their justification in Islam and Shariah. To put it precisely, we do not make our decisions rationally but try to rationalize our decisions using arguments from religion. This general social behavior applies to questions of *takfeer* and *khurooj* as well.

The factor of revenge is also very pertinent in our debate on armed revolt or militancy in Pakistan. Pakistan supported the US-led war on terror in Afghanistan and Pakistan's tribal areas. Pakistan not only conducted military operations in its tribal areas bordering Afghanistan but allowed the US to launch drone strikes there. Many of the tribesmen currently fighting against Pakistan and its institutions took up arms to avenge their dear ones who were killed in these military operations and drone attacks. Not all of them were striving for enforcement of Islam—some of them did not even practice Islam in their daily lives—but became part of the armed struggle against the Pakistani state which they were told was justified in Islam. We bombed our own people and forced them to rise against the state.

Neither did our religious scholars care to respond to the question of *khurooj* on the intellectual and academic levels. There are many scholars who could talk to those revolting against the state in Swat and Waziristan, explore their grievances and possibly act as intermediaries between them and the government but none of them bother to do so. Our religious scholars are still not willing to assume their legal responsibilities, particularly of presenting a consensus viewpoint on critical politico-ideological questions such as *khurooj* and *takfeer* before our people and of engaging rebels in dialogue on these issues. The government efforts regarding that have been ineffective and unacceptable to those who have frequently been bombed.

Our religious scholars have also failed to present and explain their legal opinions on apparently clear and uncomplicated issues. For instance, the Taliban had established their government in Afghanistan which they called an Islamic emirate. As far as the UN standards and democratic norms are concerned the Taliban's government was legitimate because they had support of about 80 percent of the people of Afghanistan and held control over 90 percent area of the country.

³¹ The reference is to the following *hadith*: "The best Jihad is the word of justice in front of an oppressive Sultan (ruler)."

But 57 non-Muslim countries attacked Afghanistan and thus imperialist forces demolished the Taliban government through use of force, tyranny and oppression. Some Muslim countries including Pakistan provided logistical and operational support to the imperialists. Our scholars could not distinguish between the Afghan Taliban fighting against the US imperialism in Afghanistan and those challenging the writ of the Pakistani state in Swat, Waziristan and Islamabad. Probably due to this confusion they could not clarify their legal stance on the Afghan Taliban and those fighting against Pakistan which further compounded the problems.

I am a student and may be the youngest among the participants of this debate and thus have limited knowledge and experience compared to others. But I have a question for all the esteemed scholars sitting here: Could there be two opinions on resistance and struggle of Muslims of Afghanistan being jihad after they were invaded by 57 non-Muslim countries? Muslims of Afghanistan are not only fighting against foreign invaders but are also struggling to establish Islam. But what was our response to this jihad? The jurists have asserted that if disbelievers attack a Muslim territory where Muslims are smaller in number, lack the resources or show lethargy it becomes incumbent on Muslims around the world to support and participate in jihad alongside the attacked Muslims. Was not it our responsibility to stand beside the Muslims of Afghanistan? When our government made a wrong decision in supporting the US and its allies against the Muslims of Afghanistan we should have discussed this decision and presented a consensus legal opinion on that.

We should feel and fulfill our responsibilities and force the government to fulfill its responsibilities. Meanwhile, religious scholars, the government and those fighting against Pakistan and its army should seriously consider who is benefitting from this war. If a tribesman, soldier or mujahid is martyred in this war whose loss is this and who gets benefit? Our enemy is benefitting from our infighting to further divide and weaken us. If we really want to struggle for supremacy and dominance of Islam we all should provide moral, financial and practical support to the Taliban in Afghanistan so that they are able to defeat imperialist forces and establish an Islamic government there. That is the only way to establish an ideal and model Islamic government in Afghanistan that could be replicated in other Muslim countries.

Dr Muhammad Najfi

The focal point of our discussion in this session is to elaborate and ascertain legal response to our rulers' deliberate vices and disbelief

Second Debate

which we describe as *kufir buwah*. We have already discussed that among various possible responses to the rulers' disbelief one could be armed revolt, or *khurooj*. I think the term *khurooj* did not have positive connotations in early Islam. Those who revolted against pious rulers such as Hazrat Ali were termed as Kharijites. The term was also used for those who ventured to kill the emir, or ruler, of Syria. It was used in the same meaning in battle of Sufain. Thus *khurooj* in early Islam was a term to describe rebellion of bad people against good rulers. In the current context, we are trying to use this term in a positive meaning, that is, the rulers are wicked and sinful and some good people who are revolting against them are indeed resorting to *khurooj*. That means that the use of the term *khurooj* in the current context has all the positive connotations. In early Islam however the term *qiyam* (standing against) was used to describe what we call *khurooj* today.

The second question is who has the authority to decide the validity of *khurooj* and who will practically resort to *khurooj* and how? That means that *khurooj* can have different forms and levels. These different forms could include *khurooj* by different segments such as Islamic scholars, common people or the military. Similarly, the levels of *khurooj* could be peaceful, instructive or armed.

The traditions (*ahadith*) of the Prophet (PBUH) and opinions of jurists however forbid Muslims from *khurooj*. There is a huge difference between our (Shia school of thought) and your (Sunni school of thought) legal schools on interpretation of 'those charged with authority among you'.³² We understand from it only *aimma-e-ma'someen* (infallible religious leaders) and not all rulers while you use it as a reference to the rulers. This makes things easier for us because as we consider our leaders innocent and infallible we observe unconditional allegiance to them. But in your case the term 'those charged with authority among you' has wider scope and covers both good and bad rulers.

Although we do not regard rulers to be what the Quran describes as 'those charged with authority among you' but in our legal school also there are rulings that forbid fighting against rulers such as one that says that 'obedience of rulers is better than *khurooj* against them' and 'the turmoil (resulting from *khurooj*) is worse than bloodshed', etc. However, rulers' acts of open and clear disbelief (*kufir buwah*) put us in an exceptional situation where we have to choose between lesser of the

³² The reference is to the following verse of the Quran: "O ye who believe! Obey Allah, and obey the Apostle, and those charged with authority among you." (4: 59)

two misfortunes: rulers' disbelief and its impact on Islam and Muslims; and possible turmoil that could follow *khurooj*.

We should however first ascertain, as I said earlier, some important facts regarding *khurooj* such as: Who decides about the validity and level of *khurooj*? Who will issue the command for *khurooj*? Is *khurooj* necessary (*wajib*) or just desirable (*mustahib*)?

Dr Fareed Ahmad Paracha

Director, Ulema Academy, Mansoor, Lahore

On the first part of this highly academic debate, I will provide the organizers a booklet that explains how to enforce Shariah, whereas focusing on the topic of the current session, I will briefly discuss alternatives or peaceful ways to establish Islamic system in Pakistan. In order to discuss critical threats and challenges facing Pakistan today, generally scholars and academics are invited and not the rulers whose policies actually created them. Eventually, the outcome we get is more academic and less policy oriented. But we have already abundant literature available on such subjects that alone would not solve our problems unless we engage our policy makers in such debates and influence them to take some practical steps regarding that.

Terms such as *takfeer* and *darul harb* are being used by some people to justify their cause who have risen, as a reaction, against tyranny and oppression. Jamaat Takfeer wal-Hijra that was established in the prisons of Egypt in 1965 was a reaction of some individuals to tyranny and oppression of Jamal Abdul Nasir. Nasir had indeed exceeded all limits of excesses and tyranny against his people. He put behind bars all those demanding establishment of Islamic system in the country. They were inhumanly tortured. Women were victimized. Sayyid Qutb and many of his followers were hanged. Abdul Fattah Ismail, brother of Ali Ismail who was martyred along with Sayyid Qutb, later established Jamaat Takfeer wal-Hijra which started declaring every other Muslim a disbeliever. The group went to the extent of declaring, with the exception of four mosques, all mosques in the world 'mosques of hypocrites' (*masajid-e-zarrar*).

A similar tyranny against Muslims has created some extremist, reactionary groups in Pakistan. Pakistan's ruling elite allowed the US to establish military bases in Pakistan to invade Afghanistan, and provided it logistic and intelligence support. Our rulers arrested their own people and handed them over to the US. Innocent people were killed in drone strikes. All these atrocities are as condemnable and debatable in our discussion on *khurooj* as those people who have eventually decided to resist such atrocities. We should equally criticize

Second Debate

the extremists, who attack innocent civilians and places of worship, and those who created them including the US and its supporters.

As forms of Islamic struggle are different in different regions including Kashmir, Afghanistan, Iraq and Palestine, our Islamic scholars should keep in mind that Pakistan's Constitution, which is a result of their struggle, provides peaceful ways to change rulers and establish the Islamic system. Religious scholars and leaders have a long history of struggle in Pakistan's constitutional and political progression. Undemocratic and anti-democracy movements not only undermine implementation of the Constitution but also negate struggle of Islamic scholars and leaders for it. It is the responsibility of our scholars to discourage such movements and create awareness among the people regarding that.

You can disagree with it but elections are the only alternative to struggle for establishment of Islam and Islamic system in Pakistan. If we read this verse from the Quran: "O ye who believe! Obey Allah, and obey the Apostle, and those charged with authority among you (4: 59)," it says two very important things. First, the command of 'obey' precedes only Allah and His Messenger that makes people's obedience of rulers conditional to their obedience of Allah and His Messenger. Secondly, it says 'those charged with authority among you' and not 'those charged with authority onto you' that indicates that 'those charged with authority' (rulers) would be elected from among the people and not imposed on them. That means that Islam disapproves kingships and monarchies, and authoritarian and elitist rules. In the contemporary era, elections are widely acclaimed as an effective and successful way to bring change. Turkey, Palestine and many other Muslims countries are heading towards the establishment of Islamic system through elections. Islamic parties and scholars/leaders have established their governments or become part of ruling alliances through their democratic struggle in Tunisia, Egypt, Indonesia, Malaysia and Pakistan.

Pakistan's feudal system and military-bureaucracy nexus try their best to block the way of the educated middle class and religious scholars to the corridors of power. I believe that the system of proportionate representation in forced in Turkey and Tunisia suits Pakistan. In addition to struggling for such a system for Pakistan, we should also try to counter efforts of those who do not want religious scholars and parties to win elections. A clear message should also be conveyed to Western countries that their policy of not accepting election results in Muslim countries such as Palestine would push the people into a blind alley and breed violence and terrorism. Wherever

A Debate on Takfeer & Khurooj

Muslims elect Islamic parties and religious segments of society through their vote, the West does not accept the decision. Such double standards from the West create extremist responses.

Maulana Tahir Mehmood Ashrafi

Chairman, Pakistan Ulema Council

I agree with Mufti Mansoor that the debate on *khurooj* is irrelevant in Pakistan's context because Pakistan is not an Islamic state or caliphate.

With regard to the challenge of militancy facing Pakistan, I would say on the basis of my experience of being close to the mujahideen and movements of jihad that had our religious class fulfilled its due responsibilities our youngsters would not have embraced extremist and violent ideologies and actions. We, the religious scholars, still do not realize our responsibilities and provide paradoxical guidance to our youths; we tell them one thing when we sit with them in private and say something else in our public speeches or talk shows. That is why our youths have gradually become indifferent to religious scholars and come close to those propagating violent and *takfeeri* ideologies. For the last two months, I have been holding two sessions a week with students of colleges and universities and am worried about the ideological direction they have. They are absorbing new religio-political ideologies which are distinct from those held by Deobandi, Barelvi and Ahl-e-Hadith schools of thought. *Takfeeri* ideology promoted by a faction of Al Qaeda and non-democratic and unconstitutional agents of change such as Hizbut Tahrir are gaining ground among students of mainstream educational institutions. This is, however, not the case in madrassas where religious scholars at least guide their students on critical religious issues. Have we ever thought how we can put an end to proliferation of such ideologies among our youths? The students are being misled by extremist and violent discourses and we do not even realize the threat, leave alone a countering effort.

I was present in former president Pervez Musharraf's meeting with representatives of 18 political and religious parties which was called with a view to discuss the post-9/11 situation and decide whether Pakistan should join the US war on terror. Representatives of 15 political and religious-political parties agreed that Pakistan should support the US while only three participants (Qazi Hussain Ahmad of Jamaat-e-Islamic, Maulana Samiul Haq of Jamiat Ulema-e-Islam-Sami and Nawabzada Nasrullah Khan) categorically said that Pakistan should support the Taliban. That means the majority of religious and

Second Debate

non-religious parties had then regarded Pakistan's support for the US-led war on terror, or against the Taliban, justified. We should not skip over our past opinions and decisions while discussing today's realities.

Afghan Taliban chief Mullah Omar had also announced instantly after 9/11 that he did not need support and help of Pakistani jihadi organizations and that they would themselves fight their war against the aggressors. How could then Pakistani groups justify their cross-border movement and uncalled-for support to the Afghan Taliban? On the one hand Pakistani Taliban called Mullah Omar their leader (*amirul momineen*/leader of the faithful) and on the other they did not bother to obey his command and continued to go and fight in Afghanistan.

We should also discuss and try to explore whether the Pakistani Taliban are fighting against the Pakistani state and people for establishment of Islam or pursuing their own agenda. No religious scholar in Pakistan has ever declared suicide attacks in Pakistan legally justified. Mullah Omar had once sent a message to Baitullah Mehsud, founder leader of the Tehrik-e-Taliban Pakistan who was killed in a drone attack in August 2009, through Taliban commander Abdul Qayyum Zakir to stop terrorist activities in Pakistan. Mehsud replied that he was not carrying out attacks inside Pakistan for Islam but for personal vengeance.

Similarly, I arranged a meeting of religious scholars with Sufi Muhammad with a view to find a viable way to enforce Shariah in Swat—a cause for which Sufi Muhammad was apparently struggling and challenging the writ of the state—which could be acceptable to the government as well. A delegation of leading religious scholars including Dr Sher Ali Shah, Maulana Samiul Haq and others conversed with Sufi Muhammad and tried to persuade him on some middle way but all in vain.

It is unimaginable that any struggle for enforcement of Shariah could justify killing of innocent civilians, including children and women. How can a person declare a legal judgment that all innocent people killed in attacks carried out by those 'struggling' for Shariah would go to paradise and that personnel of security forces killed in such attacks would go to hell? Have we ever thought which kind of labels and tags we (religious scholars) have recently earned and why? Those who cannot even recite a verse properly have become self-proclaimed experts on the exegesis of the Quran.

A *hadith* is often quoted on Ghazwa-e-Hind.³³ Do the prevailing circumstances suggest that the prophesied moment of Ghazwa-e-Hind has approached. The youth are being misled that Imam Mehdi will appear soon.³⁴ People like Zaid Hamid are creating dissent and turmoil and contaminating the minds of the youth. A lot of literature is being published on topics such as Ghazwa-e-Hind, and emergence of Imam Mehdi and the *Dajjal*.³⁵ I think it is the task of our religious scholars to see where we are heading and to guide the people properly.

As far as the war in Afghanistan is concerned, Mullah Omar has won it. Mullah Omar is concerned about Afghanistan only—a fact that we should understand and propagate clearly. He has categorically said in his recent messages on Eidul Fitr and Eidul Adha that the agenda and struggle of the Afghan Taliban are focused on Afghanistan only. It is unfortunate that we have developed a global agenda and want to reform the whole world while sitting in Pakistan. Militancy in Pakistan's tribal areas is also being supported by the forces stationed in Afghanistan. There are around 14 training camps in Afghanistan where suicide bombers are trained and sent to Pakistan to launch attacks.

The main problem, however, is posed by our double standards and hypocritical attitudes in dealing with critical religious and politico-ideological issues. Let me narrate an example of this hypocrisy. President Musharraf had great respect and love for a *mufti* (an Islamic scholar who has scholarship and authority to issue *fatwa*, or legal judgment) and often used to visit him along with General (Retd.) Moenuddin Haider. After a failed assassination attempt on Musharraf the security agencies managed to arrest the attackers. One young man among the attackers revealed during investigation that they had obtained the decree for assassination of Musharraf from the same *mufti*. The boy further revealed that the *mufti* had given him Rs. 50,000/ and told him that there was no wrong even if 200 to 400 people were killed in the effort to kill Musharraf.

When I was advisor to the Punjab chief minister I visited detained members of the banned Lashkar-e-Jhangvi. Some of them

³³ The *hadith* on Ghazwa-e-Hind has been reported through different sources and there are multiple interpretations of it. Most reporters refer to Ghazwa-e-Hind as a war of a Muslim army that will conquer India.

³⁴ Imam Mehdi is the prophesied redeemer of Islam who will rule for some years before the Day of Judgment and will rid the world of wrongdoing, injustice and tyranny.

³⁵ *Dajjal* is a common Arabic word with the meaning of imposter, quack or deceiving. In some traditions *Dajjal* is described as anti-Christ who will pretend to be Christ close to the Day of Judgment.

Second Debate

showed me religious decrees issued in the printed form that said: “Women of Shias and Qadiyanis are your slaves, properties of Shias and Qadiyanis are *halal* for you like spoils of war and their killing is a religious necessity.” I showed them some religious decrees issued by the same institutions that said violence against Shias and Qadiyanis was not justified. They were surprised and said that they had ruined this life and the life hereafter on account of believing in such decrees. It is a tragedy that we are making our people confused and exploiting them in the name of religion.

As I said earlier, the issue of *khurooj* is not among the real challenges facing Pakistan as President Asif Ali Zardari does not head an Islamic caliphate. With due apology, Pakistan will not get rid of religious extremism and associated challenges until our religious circles and scholars rectify their behaviors. Neither can we establish an Islamic caliphate system without changing responses of religious circles. If we think that we can establish an Islamic caliphate in Pakistan through the use of force or through armed struggle we are mistaken. That will instead trigger a civil war or infightings among different ideologically opposed groups. If Harkatul Mujahideen has 10,000 fighters Lashkar-e-Taiba would probably also have a similar number of fighters.

At the end, I once again request all of you to please pay attention to students of colleges and universities who are prone to extremist and *takfeeri* ideologies. Some groups particularly focus on them. Invite some youths some day in such a debate and then listen to their views to realize the danger I refer to. The religious organizations and student bodies dominate educational campuses. We will have to realize that the threats we face are largely internal and our failure to counter them will further aggravate them.

Maulana Ahmad Ali Kasuri

It is obligatory for rulers and those at the helm of state affairs to use their resources and abilities to create such an environment where Muslims find it easier and comfortable to practice their religion and avoid vice. This obligation is as important as offering prayers. According to a *hadith*, ‘the one who abandons a prayer deliberately reaches the level of disbeliever’. What would we say about the rulers who although do not commit an act of clear disbelief but show carelessness in facilitating Muslims in performing religious practices, and instead of enjoining acknowledged virtues or good and forbidding vice promote un-Islamic and anti-Shariah values? In the past, during Musharraf’s regime, we observed that daughters of the nation were encouraged to wear short pants and participate in a marathon race on

the roads of Lahore. What legal opinion do you have on obedience of such rulers?

On the other hand, we see that the Prophet (PBUH) once said as reported by Abdullah bin Abbas: "He who sees from his ruler something he dislikes, let him be patient with him, for he who splits away from the *Jamaa'ah* (united body/Muslim nation) by a handspan and then dies, dies a death of *Jaahiliyyah* (pre-Islamic times of ignorance)." During the reigns of the first four righteous caliphs there were some incidents of rebellion by some misled people. Hazrat Abu Bakar fought against those who refused to pay *zakat*. I think the first practical example of *khurooj* we see was in Karbla. The exemplary role of Hazrat Imam Hussain should be considered and discussed in such debates.

Allama Khalilur Rahman Qadri

Our analysis of *khurooj* would be flawed if we do not discuss the factors that cause it. Every country has the right to select a political system of its own choice. Different systems of government exist in the world. If Muslims want to enforce Islamic system they have the right to do so. Forces of false deities should not dictate and force countries to adopt a certain system of government. Foreign invasions in Afghanistan and Iraq are aimed at changing regimes and install new systems and governments there. Hundreds of thousands of people have been killed in both countries in indiscriminate carpet bombings.

Secondly, I do not fully agree with the notion that only Islamic groups struggling for enforcement of Shariah in Pakistan are involved in violent activities. Many external elements are indeed engaged in terrorist activities in the country and those should be identified.

Personally, I do not believe in armed struggle or *khurooj* against Pakistan's government or system. On the whole, we cannot declare Pakistan's democratic system a system of disbelief because it has many things which could be termed as common desirables of democracy and Islam. We cannot apply the divine ruling that says 'most of the people do not use their intellect' to the election or decisions of parliament which are based on the majority's opinion because this ruling has a totally different context. Nonetheless, there are some areas of conflict as well between Islam and the philosophy of democracy.

I agree with Dr Fareed Paracha that Pakistan should adopt the proportionate representation system to elect members of national and provincial legislatures. Secondly, the Federal Shariat Court was established to review the laws to assess their compliance with Islam and present its suggestions regarding that. It was empowered to take

Second Debate

suo moto notice as well. But there have been issues with implementation of verdicts of the Federal Shariat Court. For instance, in one of its verdicts in 1991 the court declared a number of laws repugnant to the Injunctions of Islam on the pretext that they had provided for charging or paying interest which is clearly prohibited in the Holy Quran. The government managed some religious decrees in favor of the laws declared repugnant by the Shariat Court and appealed against the judgment in the Shariat Appellate Bench of the Supreme Court which in 1999 declared interest legally prohibited in Islam. More than 20 years later implementation is pending and interest-based financial and banking matters are being managed on stay orders.

The institution of Federal Shariat Court should be strengthened and its decisions implemented. There should be no political appointments of judges, rather they should be selected and appointed through the same criteria for appointment of judges of higher courts. Similarly, the institution of the Council of Islamic Ideology should also be strengthened and made independent and credible. Its constitutional role is to advise the legislature whether or not a certain law is repugnant to Islam but it has neither the capacity and credible human resource nor independence to do so.

Although we say that the Constitution of 1973 was Pakistan's first consensus constitution but that does not mean it is a sacred cow and cannot be reviewed and criticized. Our elders who agreed on it were also human and thus not infallible. There are some easily identifiable clauses in our Constitution which are contradictory to Islam. Such clauses should be removed immediately and a new clause added to say clearly that Islamic law has supremacy over all other laws of the land.

Dr Hassan Madni

Maulana Ammar Nasir has asked what could be the ways to move towards establishment of Islamic system in Pakistan. It is discernable from deliberations of this debate that we have only two ways: one way is of peaceful and constitutional struggle and the second of armed struggle, or *khurooj*. With regard to the former we all know that many religious scholars, organizations and religious-political parties are engaged in different political and educational activities to promote Islamic ideals in Pakistan. We should appreciate and support all such efforts which are meant to serve Islam in any way, while being within the country's constitutional and political framework. Meanwhile, we should not forget that the Muslim *ummah* has been

under attack for the last 20 years. We are in a state of war and need to respond to our enemies' actions on war footing.

Those who are disturbed by absence of supremacy of Islamic system of Shariah in Pakistan also have an alternative option to get rid of their frustration. Islam is not a system or code of life to be enforced on a piece of land or territory but on people. During the Prophet's life in Makkah, before migration to Medina, Islam existed only in the hearts and lives of its followers. Once people enforce Islam onto themselves Allah leads them to welfare and blesses them with territory or land also, which I think is a secondary thing. Islam is a religion of preaching and inviting people to peace and welfare and there is no space for violence in it. The practice of declaring others disbeliever (*takfeer*) or sinful (*taffeer*) is not allowed in Islam because it creates discord, anarchy and disruption in society. The real ways to establish and propagate Islam are preaching, education and good deeds and we should accelerate our efforts regarding that.

Meanwhile, instead of adopting violent ways it is better to focus on the options for change and establishment of Islam available in Constitution. We can also learn from such experiences in the world where people have been provided options to get their particular matters decided by customary or religious laws. Such examples can be found even in the UK and the US.

Resorting to violence is not a solution in any way. Even if we change a ruler through armed struggle a new ruler will step in who might be more of a tyrant and aggressor than the previous one. The real issue is how to change the system. The foremost effort in that regard is to first change ourselves by enforcing Islam on us. How was an Islamic state established in Medina? The Prophet (PBUH) neither desired nor got it through armed struggle. It was just because the Prophet and his followers had enforced Islam onto themselves and then a group from Medina invited them and thus gradually an Islamic state was established there. All ways other than violence are proper to serve and establish Islam. All forms of violence for the same purpose are wrong and create dissent among the Muslim *ummah*.

Meanwhile, I do not agree with the notion that *khurooj* is absolutely prohibited. Although in an Islamic state *khurooj* against rulers is forbidden but jurists have mentioned at least three kinds of rulers against whom it could be justified: First, a ruler who commits an act of clear disbelief (*kufir buwah*); secondly, a ruler who does not establish the religion or renounces one or more of the essentials of the religion; and thirdly, as jihad is obligatory against a group that become

Second Debate

openly hostile to Islam, *khurooj* would also be justified against a ruler who is hostile to Islam and ridicules it.

The most authentic evidence is that the Companions of the Prophet resorted to *khurooj*. But the current circumstances call for restraint because the possible consequences could be worse than the reasons which are being used to justify *khurooj*. Secondly, it has been argued by many discussants that the debate of *khurooj* is irrelevant in Pakistan's perspective, which is not an Islamic state. But as I said earlier, the focus of our discussions should not just be on *khurooj* itself but also on the factors which have created this debate. After resolving their internal conflicts, the infidel forces have become united against Islam. This new world order emerged after the two world wars and what was called the Cold War and the entire range of conflicts in this world order is with Islam and the Muslim world.

THIRD DEBATE

Place: Islamabad

Date: December 19, 2011

Chairperson

- Dr Khalid Masood (Former chairman, Council of Islamic Ideology)

Discussants

- Mujtaba Rathore (Research analyst at Pak Institute for Peace Studies)
- Muhammad Zahid Siddique (Assistant Professor, National University of Computer and Emerging Sciences, Islamabad)
- Dr Rasheed Ahmad (Assistant Professor, Shaikh Zayed Islamic Center, University of Peshawar)
- Mufti Muhammad Zahid (Vice Principal, Jamia Islamia Imdadia, Faisalabad)
- Dr Qibla Ayaz (Professor, Institute of Arabic and Islamic Studies, University of Peshawar)
- Dr Hassan Madni (Director, Islamic Studies Department, Jamia Lahore Al-Islamia)
- Khurshid Nadeem (Renowned religious scholar)
- Maulana Muhammad Ammar Khan Nasir (Vice Principal, Al-Shariah Academy, Gujranwala)
- Dr Hafiz Muhammad Sajjad (Assistant Professor, Department of Islamic Thought, Allama Iqbal Open University)

Third Debate

Dr Khalid Masood

Former chairman, Council of Islamic Ideology

Takfeer and *khurooj* are two distinct issues. More than religious, they have political connotations and significance. At times they are regarded as a part of or included in the structures of a political system and are also used for achievement of political objectives. The purpose of our debate should be to examine the nature of legal questions, fundamental principles and inherent limits and conditions attached to both.

A review of literature suggests that legal debates among jurists on *takfeer* and *khurooj* particularly in South Asia had a purely academic purpose and were meant to address the religious scholars and not the public. The addressees of religious decrees (*fatawa*, plural of *fatwa*) were also religious scholars. Therefore, the language used in such debates was very difficult and loaded with academic and legal terms. Now everything is online where such academic and sensitive issues are not handled with the required responsibility and caution. Our television channels broadcast programs such as ‘*alim* (religious scholar) online’ and ‘*fatwa* online’. One of my friends who works at Pakistan Television (PTV) told me that the electronic media owners in Pakistan are concerned only about ‘ratings’ of their TV channels, which are mainly based on the numbers of viewers, and hardly take into account ethical or religious considerations. It is unfortunate that TV programs with serious and objective discussion have much lower ratings than those containing sensationalisation, abusive language, and laughter or cries. Platforms for serious debate are generally lacking in Pakistan. But we are here to have an objective and serious debate on two very important subjects. A consensus might not be possible but we can at least try to remove some generally found misperceptions and confused views on the issues of *takfeer* and *khurooj*.

Historically, the debates of religiously-motivated armed revolt or rebellion against the state or rulers have had mostly political origins. The different debates on *takfeer* and *khurooj* which appeared at different points in Islamic history were all in a political perspective. In European history, such largely politically motivated debates had emerged during the Middle Ages. Western empires and states during those times sought political unity through religion. People’s obedience of rulers or monarchs was on the basis of religion. The monarchs religiously justified their kingships, states and constitutions. Even in the Classical European history all the states, except the Roman Empire, used religion to justify their political unity. Special laws were made to

deal with those who did not conform to prevalent dogmas in those states.

Islam highlighted a common aspect of all divine religions, the belief in Oneness of God, a foremost and essential message to humans delivered by all messengers of God. Islam as a religion invites followers of all religions to be united under this common message. It was after the emergence of the theological and rationalist debates in Islam,³⁶ and evolution of concept of the state and subsequently establishment of Islamic emirates and sultanates that we started to define Islam as a religion that was born with the prophethood of Prophet Muhammad (PBUH). In fact, the concept of Islam as revealed in the Quran and teachings of the Prophet (PBUH) is very vast and it is regarded as a creed which is an intrinsic part of the natural state of being of all humans. All prophets of God starting from Hazrat Adam invited human beings to Islam. Islam acknowledges the virtue and significance of freedom for human beings and regards it a basic determinant of firm and unshaken belief.

With the spread of Islam and expansion of Islamic rule to non-Arab territories religion was used to justify the status and position of emirates/sultanates and caliphs/kings; a king or caliph was regarded as the Shadow of God (Zill Allah). Holdings of agricultural areas were also justified in the name of religion. Even in recent Islamic history it was a common trend to present a ruler or king as a religious leader and justify his regime and sultanate in the name of religion. The Ottoman rulers in Turkey, Safavids in Iran and Mughals in the Indian subcontinent all 'represented' God. In early Islamic history, particularly in the Abbasid regime, a parallel religious discourse emerged that focused on philosophical and rational/dialectical (*kalami*) debates on legal questions such as *takfeer*, apostasy, and *khurooj*, etc. All these developments gradually undermined the conception of Islam as a 'creed of nature' (*Deen-e-Fitrat*) and linked it to religion.

In the post-industrial revolution period, rulers no longer needed religion or God to justify their rule and legitimacy. The concept of nation-state introduced a new legal and constitutional system that defined status and role of rulers; religion stood nowhere in the affairs of a nation-state. The Muslim world failed to transform into laws whatever literature and debate their jurists had produced on the issues of *takfeer* and *khurooj*. Our legal framework to understand these issues is still the one provided by early jurists of Islam. Instead we have made

³⁶ These debates are part of *Ilm Al-Kalam* (speculative theology), or rational interpretation of religious concepts and precepts, also known as science of dialectics.

Third Debate

them more complex. We were not yet fully able to understand and respond to values of 'nationalism' and 'nation-state' by the time when the concepts of 'globalization' and 'globalized world' emerged to add to our confusion. Globalization has further weakened the concept of 'God's sovereignty' currently upheld by most Muslim countries.

In the next stage of globalization, the human journey leaps into space and the universe. By the next century, people will be buying land on other planets; land on a few planets has already been put on sale. The future will bring with it unique challenges. The concepts that human beings are the 'supreme creature' of God and earth is the centre of life might be challenged in the coming centuries. Secondly, the fast depletion of resources on our planet might revive imperialism. But we (Muslims) have not yet started to think about these subjects. Our concept of universe and life is very much Earth-focused and that is not the same as provided in the Quran. Our interpretation of the enormously vast Quranic concept of 'worlds' is mainly related to different worlds that exist on this Earth such as the botanical and the zoological, etc.

I have tried to put before you a brief introduction of the contemporary world we live in that should serve as a context in our analysis of the issues of *takfeer* and *khurooj*. Our elders had tried to comprehend these and other legal questions of a similar importance in the context of their circumstances. Their opinions are the best opinions of their times. But the contextual and analytical frameworks they had used might not be completely relevant today. We have to examine, analyze and provide solutions to wide ranging challenges facing us by using current perspectives and ground realities.

The Arabs had long ago gone through the kind of debates that we are having now in Pakistan. As a result, the level of confusion on critical religious-political issues, which hampers our way forward, is much lower in Arab countries as compared to our region. That is why the Arab world has started to change and revolutionize contrary to this commonly held perception that revolution is impossible there due to authoritarian regimes and closed societies.

Muhammad Mujtaba Rathore

Research Analyst, Pak Institute for Peace Studies, Islamabad

Two types of arguments are required to support our claims on the subjects of *takfeer* and *khurooj*: First, deduced from the Quran, the Sunnah and legal opinions of jurists; and second, rational, logical and circumstantial arguments to develop an independent legal opinion (*Ijtihadi rai*) on the subjects in the current circumstances.

The most important and relevant aspect of our debate is related to interpretation of the concept of *al-wala' wa'l-bara'* (love and enmity for the sake of God). This is due to the fact that in many Muslim countries, particularly Pakistan, rulers are declared apostate on the basis of the argument that they have developed friendships with Jewish and Christian countries and support their anti-Islam campaigns. Proponents of this argument assert that the Crusades against Muslims have started and whoever supports and helps the crusaders is an apostate and a disbeliever. They believe that the real purpose of war by the US and Europe is neither to capture Muslims' oil resources or land nor to seek dominance of imperialist system rather their ultimate target is to eliminate Islam and his followers, or to keep them impotent and dependent.

They base their argument of *al-wala' wa'l-bara'* mainly on the following rulings ordained in the Quran:

O ye who believe! Take not the Jews and Christians for friends. They are friends one to another. He among you who taketh them for friends is (one) of them. Lo! Allah guideth not wrongdoing folk. (5:51)

O ye who believe! Choose not for friends such of those who received the Scripture before you, and of the disbelievers, as make a jest and sport of your religion. But keep your duty to Allah if ye are true believers. (5:57)

If they believed in Allah and the Prophet and that which is revealed unto him, they would not choose them for their friends. But many of them are of evil conduct. (5:81)

Those who choose disbelievers for their friends instead of believers! Do they look for power at their hands? Lo! all power appertaineth to Allah. (4:139)

He hath already revealed unto you in the Scripture that, when ye hear the revelations of Allah rejected and derided, (ye) sit not with them (who disbelieve and mock) until they engage in some other conversation. Lo! in that case (if ye stayed) ye would be like unto them. Lo! Allah will gather hypocrites and disbelievers, all together, into hell. (4:140)

They also quote the following saying of the second caliph, Hazrat Omar: "Do not keep relations with *zimmis* (non-believer citizens under the protection of Muslims) otherwise you will develop love with them. Do not provide shelter to them and keep them humiliated and behold! do not tyrannize them."

On the basis of their interpretation of the verses above cited, some groups in Pakistan consider the rulers and government officials in Pakistan apostates and disbelievers and the country's institutions un-Islamic and based on disbelief due to Pakistan's support for the US-led

Third Debate

war on terror. They say they are neither resorting to *khurooj* nor fighting an offensive jihad but they are fighting a defensive jihad to free Afghanistan from American occupation. They bracket all supporters of the US together and regard them as their enemies including the governments of Pakistan and Afghanistan. They also argue that their defensive jihad is justified even if it is considered *khurooj* because it is a religious necessity to remove the apostate rulers. To justify their fight as *khurooj* they declare Pakistani rulers and army apostate and disbeliever due to their support for infidels.

They present a religious decree issued by a group of Pakistani religious scholars in October 2001 that declared all those people disbelievers who supported the US war in Afghanistan. Another religious decree they present as an argument to support their activities was issued against Pakistan Army by Lal Masjid (Red Mosque) in Islamabad with signatures of 500 religious scholars after the military launched its first operation in Wana, South Waziristan.

Some extremist groups say Pakistan's constitution, its political system and institutions are based on disbelief and argue that it is the religious obligation of every Muslim to wage jihad against them. They declare all such religious scholars apostate and misled who do not support an armed struggle against Pakistan's rulers and its institutions.

However, most of the arguments of such groups who justify their armed struggle in Pakistan are mainly based on their interpretation of the legal concept mentioned earlier, i.e. love and enmity for the sake of God. It raises a very serious question: Does Islam really want its followers not to keep any sort of relations with non-Muslims, particularly Jews and Christians? I think this is not correct. We need to carefully read the *ahadith* and legal opinions of jurists that explain the meaning and exegesis of the cited verses from the Quran. For instance, Imam Fakhruddin Razi has provided the following interpretation of the verses ordaining 'love and enmity for the sake of God':

1. If a Muslim establishes friendship with a non-Muslim on the basis of latter's disbelief then he is doing something which is clearly prohibited in the Quran and the Sunnah and thus it is impossible for him to retain his status of being faithful, or believer anymore.
2. It is not forbidden to make contact, develop affiliation and to intermingle and socialize with non-believers to establish a beautiful society while living together. (Relations with non-Muslims can be established while sticking to and taking care of one's own religion, faith and ideologies)

3. A third level of friendship with non-believers lies between the two described above. That means friendship with them should not be driven by our liking of their faith and religion but by feelings of personal relation, closeness and affection and that should also remain restricted to supporting and helping them. Meanwhile, we should always bear in mind that our non-believer friends have different and wrong religion, faith and ideology. This kind of friendship does not make Muslims disbelievers. But keep in mind that this level of friendship could also lead Muslims to a stage where they might start liking the faith, religion and way of life of their non-believer friends and eventually become disbelievers.

Imam Razi's interpretation greatly helps understand the meaning of love and friendship for the sake of God (*al-wala'*). With regard to enmity for the sake of God (*wa'l-bara'*) ideologues of extremism say it is ordained in Islam to express hatred towards non-believers. They refer to the following verse in the Quran: "Muhammad is the messenger of Allah. And those with him [the Companions] are hard against the disbelievers and merciful among themselves..." (48:29)

The verses of the Quran from which this particular concept of friendship and enmity with non-believers is deduced have a specific context. Even if we override that context and consider the literal meaning of these verses, we will have to define standards of friendship and enmity with non-believers by establishing a correlation among these and other verses in the Quran which provide guidelines for dealing with non-believers, idolaters and people of the Book.³⁷ As Imam Razi has explained, friendship with non-believers on the basis of their faith, or regarding their faith is prohibited (*haram*) in Islam. But an absolute and constant enmity with non-believers, as some groups advocate on the basis of their interpretation of the Quranic verses cited above, is against Islam's universal message of peace. Islam has ordained peaceful relations among nations and individuals. Islam has set certain principles which ensure safety and peace for all human beings. The contemporary laws on international relations and different charters on human rights reflect Islam's messages of universal peace and harmony. Dr Wahba Al-Zuhayli writes in his book titled *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarin* (The influences of war in Islamic jurisprudence: A comparative study) that the fundamental

³⁷ The People of the Book is a term used to designate non-Muslim adherents to faiths which have a revealed scripture. The three types of adherents to faiths that the Quran mentions as people of the Book are the Jews, Sabians and Christians.

Third Debate

principles on which modern national and international laws are based were announced by Islam 1,400 years ago.

International law experts say that trade and bilateral agreements strengthen peace and friendly relations between two countries. In fact, Islam promotes agreements between individuals and countries to ensure peace in real terms. Islam bonded individuals with love to establish a peaceful society and consolidated this bond of love with elements of support and cooperation. Islam prepares the Muslim *ummah* to live peacefully. It encourages Muslims to prioritize peace while establishing relations with other countries, not to do excesses against others and respond to excesses of others with justice. In the early days of Islam, a very comprehensive system of diplomatic relations was evolved that included agreements with different states and exchange of delegates or ambassadors, etc. Since then Muslim states have pursued to establish good relations with other countries. After the World War II when the United Nations was formed, Muslim countries showed great enthusiasm in joining it and played a key role in evolution of international laws under the UN charter.

Some people do not acknowledge international laws and argue that these laws have no significance, are against Islam or are abused by big powers. First, being members of the UN, Muslim countries are part of the processes of the formation and drafting of such laws. If they think a particular international law is discriminatory or against Islamic precepts they have the right to raise objections and even deny signing its draft. Secondly, international laws are either based on international customs or are in the form of agreements and none of these sources could be declared un-Islamic. Many international customs are shared by Muslims and non-Muslims such as the customary practice of protection of ambassadors, which is acknowledged in Shariah and also by non-Muslims.³⁸

The argument that rulers of Muslim countries are disbelievers because they have friendships with Jews and Christians is not correct and justified in modern realities of international relations. Today even Muslim countries do not have eternal friendships among themselves on the basis of religion but each country tries to secure its national interest in its relations with other countries. Why then rulers of Muslim countries would work for the interests of non-Muslim countries? Similarly, the assumption of Western countries waging new crusades against Muslims is incorrect because a large numbers of Muslims live

³⁸ A detailed discussion on this subject is available in Professor Muhammad Mushtaq Ahmad's book *Jihad, Muzahemat aur Baghawwat* (Jihad, resistance and rebellion).

in Western countries and they have more facilities and opportunities than those living in Muslim or Islamic countries.

Pakistan allied with the US and NATO countries in 2001 because it was bound by the international agreements it was a signatory to and was therefore under an obligation to support the international community in its fight against terrorism. However, Pakistan's government was free to determine the limits of its support. We can say that the government made some unwise decisions at that time but our political and religious leaderships were also part of the decision-making processes. Even today most of the political and religious leadership agrees that the government should not spare the militants who frequently carry out violent activities in Pakistan. Yes, they should first be given a chance to lay down their weapons through reconciliatory efforts. All political and religious circles with the exception of a few individuals and groups had supported the military operation in Swat. Therefore, it would not be correct to put all the blame on the government. Our religious leaders should take a clear position on issues of militancy and extremism and play their role in resolving these problems. They should also respond to those decrees that brand the rulers and people of Pakistan as apostates and disbelievers.

Some religiously-motivated groups in Pakistan resolve to replace the country's political system with an Islamic system. They have repeatedly declared Pakistan's overall system of governance as a system of disbelief, and derided democracy, the constitution, the justice system and all state institutions. Some of these groups strive to demolish this system through jihad and establish an Islamic caliphate in Pakistan. They argue that 'enjoining acknowledged virtues and forbidding vice' is a religious obligation and that their jihad is meant to establish the religion and boundaries set by Allah. They support their argument with a *hadith* that says: "Whoever among you sees an evil action let him change it with his hand [by taking action]; if he cannot, then with his tongue..."

Many books have been written to prove democracy and Pakistan's constitution un-Islamic. The alternative that is suggested, i.e. the system of Islamic caliphate, is almost impossible to enforce in the current global environment. The Prophet (PBUH) had said that Islamic caliphate would continue for 30 years after him and then it will be replaced by monarchy. The divine ruling that ordains 'obey Allah, obey His Messenger and those charged with authority among you' reveals that the rulers will be from among the people. Our incumbent rulers are from among us and indeed like us. To enforce Islamic system we should first train and prepare people to be able to absorb and strengthen

Third Debate

such a transformation. Another option is to develop a system of government that conforms to Shariah. The role of religious scholars is very vital in training and preparing the people. The religious scholars should lead the people by presenting themselves as role models.

The widespread sectarian divisions and tensions in Pakistan make establishment of an Islamic system further difficult. First, do our religious scholars have the capacity and credibility to evolve an Islamic system that could be acceptable to all sects, or religious schools of thought? Secondly, how will they convince the people to support this system and how will it be implemented? Do our religious scholars have the required human resource to run diverse affairs of the state? If we do not have answers to these questions then it is better to acknowledge and support the efforts of those whose struggle for Islam is within the political and constitutional framework of Pakistan. Those who have adopted the way of violence as a means to establish Shariah in Pakistan should also think about these questions and should try to assess the probability of their success as well as of establishment of an Islamic system with public support. A leader of the Jamaat-e-Islami, Maulana Gohar Rehman, has provided some interesting facts regarding enforcement of Shariah in Pakistan in a booklet titled *Nifaz-e-Shariat ka Rasta: Musallah ya Da'awati aur Intekhab?* (The Way to Enforce Shariah: Armed Struggle or Preaching and Elections?)

The question of armed struggle for enforcement of Shariah should be analyzed in the light of legal opinions of jurists and experts of Islamic jurisprudence. The legal opinions that justify *khurooj* against 'clearly disbeliever' rulers of an Islamic state also make it conditional to two prerequisites: First, those resorting to *khurooj* should have the required resources and strength so that their armed revolt does not result in a bigger turmoil and trial for Muslims; secondly, such an effort should first seek public support and should not exceed the limits set by Shariah.

The second aspect of this debate relates to the divine ruling of 'enjoining virtue and forbidding vice', which is indeed ordained as a *farz-e-kifayah* (deemed to be fulfilled if some among the group perform it) in the Quran and the Sunnah. The Quran says: "And there may spring from you a nation (a group) who invite to goodness, and enjoin right conduct and forbid indecency. Such are they who are successful." Jurists and exegesis writers have opined that religious scholars, jurists and those having complete understanding of Islam are better entitled to perform this duty of enjoining virtue and forbidding vice. However, it does not forbid individuals to do the same among their community because the Prophet (PBUH) said: "Every one of you is a shepherd and

everyone is answerable with regard to his/her flock.”

Some people refer to first part of this *hadith* to justify their use of violence to stop an evil deed: “Whoever among you sees an evil action, then let him change it with his hand; if he cannot, then with his tongue; and if he cannot, then with his heart—and that is the weakest [form of] of faith.” However, jurists have described a fundamental principle in that regard which says that one must have legal authority in order to stop a vice by virtue of force and a person may only stop those people over who he has authority. According to Shariah, this authority is established either by mutual relationships and agreements—like a father’s authority over his children and an advocate’s authority to represent his client in a court of law—or rests with the government which exercises it through courts of law. Individuals or groups who do not have such authority and yet use force to stop a vice become a source of chaos and turmoil in society.

Islamic history is replete with examples where leading Islamic scholars and jurists patiently faced tyranny of their rulers but did not allow or asked people to take up arms. Neither were they afraid to speak of truth and justice in front of oppressive rulers.

No Muslim has doubt in jihad being a religious obligation. The majority of Islamic scholars and jurists have a consensus opinion on when jihad becomes obligatory upon every Muslim (*farz-e-ain*) or when it is deemed fulfilled by all Muslims if some undertake it as *farz-e-kifayah*. Conflict starts when a group of Muslims starts or enters a war and it is declared jihad. Eventually all Muslims are persuaded to participate in this self-proclaimed jihad. We find a long list of wars in Islamic history. Not every war was a jihad. Nowadays jihad has become such a profitable business that we tend to declare any conflict jihad. This trend started with the ‘Afghan Jihad’ in the 1980s and then the term ‘Jihad-e-Kashmir’ emerged. At present, the tag of jihad is being used for ‘wars’ being fought in many parts of world. Several books have been written on the significance and different fronts of jihad such as jihad in Afghanistan, jihad in Pakistan, jihad against the US, jihad against India, jihad against Israel, jihad against Shias, jihad against Sunnis and jihad against idolaters, etc. Muslims are confused which war to regard as a jihad.

Some Muslims believe that jihad should continue until disbelief or infidelity is completely eliminated and declares this belief an ultimate objective of Islam. The adherents of this ideology undertake to help and support each and every oppressed Muslim in the world and thus aspire to conquer India, and then the US, Israel and the UK, etc., through their jihad. They are also known as global jihadists. Had our

Third Debate

religious scholars stuck to Islamic precepts while declaring certain wars as jihad, the situation we currently face would have been entirely different.

In conclusion, I ask the respected scholars what legal ruling we should issue for those militant groups who target the Pakistani government, institutions and civilians. Although some scholars declare it a reaction or revenge but does militants' justifying their fight on religious basis not put it in the category of *khurooj* or rebellion?

Muhammad Zahid Siddique Mughal

Assistant Professor, National University of Computer and Emerging Sciences, Islamabad

I have divided my discussion into four parts. First, I will try to evaluate the present context of *khurooj*. Secondly, I will try to explore the factors and circumstances which have recently made movements like *khurooj* popular among some circles of Muslims. In this part, I will also try to analyze why the legal framework used by early jurists of Islam stills seems relevant. Thirdly, my discussion will focus on fundamental flaws in legal opinions of jurists, which are used to justify forbiddance of *khurooj*, and religious scholars' legal position on *khurooj* on the whole. Finally, I will try to identify if some sort of ambiguity and weakness exists in arguments, opinions and objections frequently used against *khurooj*.

A failure to understand the present context and circumstances confuses our debate on *khurooj*. We need to understand the difference between the concepts of state and government. A state is an overall system of rule and obedience whereas government is a part of it. Our general understanding of democracy is also not right. Democracy is a vast concept and system but we restrict it to legislature, executive and judiciary. Apart from these three there are several other institutions which are used to establish a democratic system of obedience including bureaucracy, technocracy, capitalist elite, social sciences—social sciences are to capitalism what jurisprudence is to Islam—army, police, corporations, and financial institutions, etc. Moreover, there are specialized people who promote rationality of democratic system. Cultural heroes, sportsmen and scientists take place of religious scholars and *Sufis* (practitioners of the inner, mystical dimension of Islam). Technocrats and capitalist elites work as agents of the imperialist system. In brief, democracy is not merely higher level of government which we call legislature or parliament but it includes all other institutions and individuals which are used to make the democratic rationality dominant in society. We usually consider

democracy an antonym for dictatorship; that is not right. Democracy itself has two forms: liberal democracy and illiberal or authoritative democracy. In the latter, institutions remain the same but elections are not held.

The democratic system does not evolve naturally but it is imposed through oppression and force. We do not find a single example in human history to suggest that democracy was established somewhere without oppression or bloodshed. For example, imperialist forces first occupied the Indian subcontinent and then promoted capitalist rationality and established all those institutions which are required to establish a democratic system of obedience. As democratic values grow people start becoming 'human beings' and civil society gets strong. The same is happening in the Arab world these days where efforts are underway to transform illiberal democracies into liberal democracies.

The democratic state is an institutional state. After introduction of political ideology of liberalism things have further changed. Institutions and organizations have acquired a central place in the structures of a democratic state unlike the past when individual rulers or ruling elites used to be the focus of debate. This fundamental difference between the concepts of state and government is helpful to understand the difference between a state and an Islamic caliphate.

The classical and late jurists of Islam have described different levels of Islamic caliphate. Caliphate means political succession of the Prophet (PBUH). It means a caliph is bound to make decisions in the light of teachings and will of the Prophet (PBUH), and follow commands of Allah and His Messenger and also make people follow these commands. The levels of caliphate are like the levels of the righteousness of faith of Muslims. There is consensus among jurists and scholars that the period of the rule of the first four righteous caliphs presented the best model of Islamic caliphate. The subsequent regimes of caliphate were classified by jurists into different categories ranging from the just caliphate to the one based on disbelief by virtue of the righteousness or wickedness of the rulers concerned. Jurists have also classified transgression (*fisq*) of rulers into two categories; contagious and non-contagious. The former type of *fisq* means a ruler is transgressing in his personal matters while the latter means he transmits his *fisq* to people and tries to undermine the Islamic system of obedience. The latter can also lead to establishment of system of obedience on human rights instead of Shariah, which lays political foundation of liberal capitalist system.

Third Debate

The concept of nation-state is alien to Islamic history and ideology. The aim of a nation-state is to safeguard material interests of a nation, or a group of people living in a particular geographical entity, through the system of liberal capitalism. Islamic concept of nation is based on shared faith and not shared geography or something else. In the Islamic system, the rulers are elected on the basis of [political] succession of the Prophet (PBUH) and not public opinion or election. People are to merely 'follow' Islamic law enforced by political successors of the Prophet (PBUH). They cannot assume the role of *mujtahiddeen*—jurists who interpret law and generate *Ijtihad*—so as to elect their representatives for making new laws.

In the Islamic caliphate, the status of studies related to Shariah such as Islamic theology (*kalam*), jurisprudence (*fiqh*) and mystical dimension of Islam (*tasawwuf*), etc., is held supreme over social sciences and other studies. Academic and intellectual discourse leads the policy making processes. Currently, social sciences hold a supreme position in academic and intellectual discourses on Pakistan's state systems and drive all political and social policies. The Constitution of Pakistan is based on the philosophy of human rights, which has nothing to do with the concept of rights and obligations in Islam. The Islamic system of justice as ordained in Shariah is entirely different and conflicting to the human rights-based Constitution of Pakistan. Similarly, the concept of civil society conflicts with the Islamic concept of society and community. Civil society promotes rationality of fulfilling personal interests and protecting rights of people and is not concerned about infidelity and transgression of those providing resources for that purpose.

It is often said there are many Islamic provisions in Pakistan's Constitution. That is because democracy and its associated philosophies gradually penetrate societies. In the beginning there is illiberal democracy which has to deal with traditional, sociocultural and religious associations and prejudices of people and has a huge task ahead of making them 'enlightened and human beings'. Therefore, it is considered essential to present values and norms of democracy before people in words and manners which are digestible for people and do not hurt their sensitivities. As the system of democracy is gradually digested by the people and their association with it becomes stronger, illiberal democracy is imposed on them.

The second part of my discussion focuses on the factors that have triggered and augmented several movements of *khurooj* among Muslims since the beginning of the twentieth century. We find rare movements of *khurooj* before 1924 because the system of caliphate

existed in the Islamic world until then in one form or another and a caliph was regarded as the political successor to the Prophet (PBUH). In the post-1924 scenario, imperialist powers began imposing their political system of military, political, social and ideological usurpation upon the Muslim world with a view to convert the latter from traditional to enlightened Islam. This brought about an unprecedented change in the fundamental structure of Muslim societies, which started to look more Westernized and less Islamic. Before drawing back, the imperialist powers made secular, liberal classes that supported their capitalistic system in-charge of state of affairs in Muslim countries. Imperialists' selection of secular and liberal rulers was deliberate and purposeful. First, it intended to suppress the Islamic forces in their respective countries. Secondly, these rulers could prove the best local custodians of capitalistic system. Eventually, for a long time Islamic movements in different Muslim countries were deceived and downplayed by the rulers and were tempted to be part of the electoral process. Nonetheless, if some Islamic group wins elections it is not allowed to form its government, as had happened in Algeria.

We usually consider democracy a form of government established by the will of all people but indeed it represents a general will of the people. That means that freedom, equality and development are acknowledged as basic determinants of the structures of a democratic state. We are free to choose among different forms of freedom enshrined in democracy but cannot discard it and build a system of government on some alternative foundation. That is why human rights form the preamble of constitution of any democratic country and cannot be rebuffed in any way. The government of Islamic Front in Algeria was banned on the context that it posed danger to the existing framework of democracy and human rights. We believe such practices are double standards but ideologues of democracy think otherwise. They believe illiberal democracy is justified in a country where democratic system as a whole is in danger. Like in Islam, people's will is irrelevant and the system of obedience is based on the Will of God, in democracy too people's will is irrelevant because they are forced to 'will' freedom. If the people do not want freedom, it becomes mandatory to use force and bring democratic revolution. Nonetheless, ideologues of democracy do not approve and allow any anti-democracy revolution or struggle of *khurooj* against a democratic system.

We need to understand the question of *khurooj* in Muslim states in the perspective of the existing systems of government there. As far as jurists' legal opinions are concerned they have forbidden Muslims

Third Debate

from *khurooj* against just rulers. That is understandable because there is no justification for *khurooj* against just rulers and those who do so would be declared rebels and treated in accordance with the relevant provisions of Islamic law. Jurists have disapproved of *khurooj* against oppressive and transgressing rulers as well to avoid the expected trial and turmoil such as bloodshed, and damage to the Islamic system of obedience and dignity of Islam. But for validity of *khurooj* against transgressing rulers whose transgression damages and harms the overall system of Islam, we find extreme difference of opinion among jurists. No doubt a large number of jurists have declared *khurooj* unjustified against such rulers due to the reasons cited earlier but many others, including Imam Abu Hanifa, have justified it.

And they present arguments from the Quran to support their legal opinion in favor of *khurooj*. They quote a verse from the Quran that commands Muslims to stay away from false deities or false gods (*taghut*).³⁹ Exegesis writers have described *taghut* as a person who establishes system of obedience on anything other than the creed of God, or Islam. Similarly, they refer to a divine ruling in the Quran that commands: "...but help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression..." (5:2). They assert that observing obedience of a state that is established on the basis of false deities would tantamount to help and support to false deities.

Similarly, with regard to the question about who is authorized to lead the Muslims the Quran narrates a saying of Hazrat Ibrahim when he was made the leader (*imam*) of his nation: "...[Abraham] said: And of my offspring [will there be leaders]? He said: My covenant includeth not wrongdoers." (2:124) Exegesis writers including Razi, Jassas and Qartabi have written in interpretation of this verse that a tyrant person is not legally authorized to lead Muslims and God has commanded to Muslims: "Lo! Allah commandeth you that ye restore deposits to their owners, and, if ye judge between mankind, that ye judge justly. Lo! comely is this which Allah admonisheth you. Lo! Allah is ever Hearer, Seer." (4:58) Similarly, God has commanded at another place in the Quran: "O ye who believe! Be ye staunch in justice, witnesses for Allah, even though it be against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor man..." (4:135) Similarly, Islam has linked obedience of rulers to the latter's obedience

³⁹ The complete verse is: "And verily We have raised in every nation a messenger, (proclaiming): Serve Allah and shun false gods. Then some of them (there were) whom Allah guided, and some of them (there were) upon whom error had just hold. Do but travel in the land and see the nature of the consequence for the deniers." (16:36)

of God and a saying of the Prophet (PBUH) has established a principle ‘no obedience is due to creatures in disobedience of the Creator.’ This principle is ordained in the Quran in following words: “...and obey not him whose heart We have made heedless of Our remembrance, who followeth his own lust and whose case hath been abandoned.” (18:28) God commands at another place in the Quran: “And obey not the command of the prodigal. Who spread corruption in the earth, and reform not.” (26: 151, 152)

One thing should be clearly understood in our discussion on ‘jihad against injustices’ that we are not authorized to define injustice but bound to follow the definition provided in the Quran and the Sunnah. Injustice is an antonym for justice and justice simply means Shariah. Injustice has all attributes of disbelief because it means to run the overall affairs of a state on the basis of something other than the commands of God and His Messenger (PBUH). Jurists and scholars say the word ‘prayer’ has been used in the meaning of symbols of Islam in the *hadith* in which the Prophet (PBUH) forbade his Companions to break their allegiance to [oppressive] rulers as long as they established the prayer. That implies that *khurooj* and fighting are permitted against those rulers who do not establish the symbols, or obligation of the religion.

The best examples of *khurooj* were set by Hazrat Abdullah bin Zubair and Hazrat Imam Hussain, the purpose of whose struggle was to stop the caliphate from being converted into a system of monarchy. Similarly, Imam Abu Hanifa had supported movements of jihad and *khurooj* against an Abbasid caliph. Therefore, *khurooj* and support for it are not unprecedented in Islamic history. The principles of Islamic jurisprudence do not completely rule out the option of *khurooj*. Jurists declare it legitimate to avert a big disaster through a smaller one.

It is also true that Islamic scholars and jurists have stipulated some conditions for *khurooj*, two of which are more important. First, many jurists and leaders including Abu Yousuf, Sarkhasi, Kasani, Shah Wali Ullah and Allama Shami consider *khurooj* justified only when the system of Islamic commands is suspended and replaced by an un-Islamic system of commands. Imam Taymiyya says when the system of obedience is established for anyone other than God jihad becomes obligatory to demolish such a system. He further says that he does not find any difference of opinion among Islamic scholars on validity of jihad against those who renounce and do not follow clear and recurrent (*mutawatir*)⁴⁰ commands of Islam.⁴¹

⁴⁰ See footnote 16 for complete understanding of the word *mutawatir*.

⁴¹ *Fatwa Ibn-e-Taymiyya*, Volume 28.

Third Debate

Secondly, those resorting to *khurooj* should ensure through sufficient preparation and resources that their struggle succeeds. They should assess the expected success by establishing independent legal opinion (*Ijtihad*). Ibn Taymiyya has narrated four interesting levels of renunciation and elimination of vice or evil (*munkir*). First, evil is completely eliminated and replaced by virtue which is ordained in Shariah. Second, evil is not completely eliminated but reduced which is also legally justified to strive for. Third, an evil is replaced by another evil of the same level. In this case, establishing an independent legal opinion or assessment of the expected change is more critical. Fourth, an evil is eliminated but gives birth to a bigger evil. According to Ibn Taymiyya it is prohibited to strive for elimination of an evil that could give rise to a bigger evil.

I believe that lack of resources and preparation for *khurooj* nevertheless does not mean that one should sit idle and wait until the Day of Judgment. It is proper to prepare for that. Shaikh Abdul Mun'am Al-Mustafa Haleem has listed three types of preparedness required for *khurooj*: ideological and intellectual preparedness; abandonment of such practices, affairs and associations which could contribute to strength of rulers and their false system, for example, as Imam Abu Hanifa had refused to accept the position of chief justice in Mansoor's regime; and sustained reluctance to accept with willingness and pleasure state's constitution and laws.

It is discernable from jurists' opinions that all those *ahadith* in which forbiddance of *khurooj* is ordained refer to either violation of personal/individual rights or to rulers whose wickedness and transgression is limited to their personal lives only. This fact becomes clearer in the *hadith* that describes the Prophet's (PBUH) taking oath of allegiance from his Companions that 'they would listen and obey, in what they liked and disliked, in their hardship and ease, in case others were preferred over them...' That implies *khurooj* is not allowed on the basis of personal differences with rulers. But the *ahadith* that disapprove *khurooj* cannot be interpreted in such a way so as to declare *khurooj* absolutely unjustified and invalid against the states which are based on a system of apostasy and that work as agents of capitalism. Such a declaration will be considered an effort to create contradictions among the divine rulings which have clear meaning and no difference in interpretation (*nusus*). It is a basic principle of the study of *ahadith* that they corroborate and elaborate each other. According to this principle, all those *ahadith* in which obedience of the rulers is made conditional to their obedience of the Prophet (PBUH) corroborate and elaborate other similar *ahadith* in which this condition is missing.

A Debate on Takfeer & Khurooj

Imam Qartabi has described as the qualities of a leader of Muslims (*imam*) that he does not indulge in major sins, is socially responsible and kind, and has the capacity to run the affairs of the state. The Prophet (PBUH) had forbidden his followers from *khurooj* against the kind of rulers described by Imam Qartabi. Sinful and transgressing rulers have neither the right to lead Muslims nor is *khurooj* forbidden against them.

The legal opinions of the jurists and scholars who disapprove of *khurooj* against transgressing and oppressive rulers does not negate or override the legal justification of *khurooj* but seeks to establish facility for Muslims by protecting them from expected post-*khurooj* turmoil and discord, which can harm Muslims more than the transgression and oppression of the rulers they seek to overthrow. The second justification of such opinions is that structures of an Islamic state usually do not stop Muslims from practicing Shariah rather support them in that purpose. However, legal opinions that disapprove of *khurooj* are not relevant for un-Islamic states because the entire debate among jurists on the subject has been in the perspective of an Islamic state or caliphate.

We are living under a capitalist system, which has its own philosophy and concepts of individual, society and state. It undertakes to replace religious integrity with the identity of 'human being', religious socialization with civil society, and caliphate with democracy. It is not relevant to discuss legal opinions of jurists against *khurooj* in the perspective of a state that is not Islamic but capitalist.

Dr Khalid Masood

You have presented your viewpoint very nicely but it has created some confusion in my mind, which I put before you in the form of questions. You may respond to my questions in the next round of debate. First, you have said that we find rare examples of *khurooj* in Islamic history before 1924. I think we need to further discuss *khurooj* in the historical perspective. Secondly, you have harshly cursed social sciences. Cannot we find and establish some sort of closeness between Islam and social sciences? We thank you for your valuable views on the subject.

Dr Rasheed Ahmad

Assistant Professor, Shaikh Zayed Islamic Center, University of Peshawar

The chairperson has raised a few important questions. I agree with him that the issue of *takfeer* in the early period of Islam had

Third Debate

emerged against the political backdrop. But I believe that later on it had acquired academic and legal significance and was extensively debated, particularly with the emergence of some new schools, such as the *Mu'tazilites* and *Qadria*.⁴²

Takfeer has two levels: individual and collective. Besides other considerations, the second level also entails the debate of *al-wala' wa'l-bara'* (love and enmity for the sake of God) and foreign policy of an Islamic state. In my view, *takfeer* and *khurooj* are two interlinked concepts because a justification of the former leads to practice of the latter. The question of *khurooj* is as relevant today as it ever was in the history of Islam.

In order to understand *takfeer* we should see in the Quran definition and attributes of faith. How will we describe a Muslim, a disbeliever, their qualities, and the factors that could lead Muslims to disbelief in the light of the verses from the Quran on this subject, such as the following verse in Chapter 2:

"It is not righteousness that ye turn your faces to the East and the West; but righteous is he who believeth in Allah and the Last Day and the angels and the Scripture and the Prophets; and giveth his wealth, for love of Him, to kinsfolk and to orphans and the needy and the wayfarer and to those who ask, and to set slaves free; and observeth proper worship and payeth the poor due. And those who keep their treaty when they make one, and the patient in tribulation and adversity and time of stress. Such are they who are sincere. Such are the God fearing." (2:177)

Istishab (presumption of continuity)⁴³ is an acknowledged principle in the study of Islamic jurisprudence (*usul al-fiqh*).⁴⁴ It

⁴² *Qadria* school of thought believed in '*Qadar*' (destiny or fate), the theory of freedom of human will, based on the doctrine that man would be judged by his actions.

⁴³ Literally, *istishab* means 'escorting' or 'companionship'. In Islamic jurisprudence, it denotes a rational proof which may be employed in the absence of other indications; specifically, those facts, or rules of law and reason, whose existence or non-existence had been proven in the past, and which are presumed to remain so for lack of evidence to establish any change. The legal meaning of *istishab* relates to its literal meaning in the sense that the past 'accompanies' the present without any interruption or change. Not all legal schools of Islam agree on the principle of *istishab*. (Source: Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2005). The book contains a full chapter on *istishab*).

⁴⁴ *Usul-al-fiqh* is the study of the origins, sources, and principles upon which Islamic jurisprudence (or *fiqh*) is based.

implies that every person is innocent unless proven guilty. This principle also applies to an individual or group accused of disbelief. In *Aqeeda Al-Tahavia*, this topic is amply elaborated with particular reference to the legal opinion of Imam Abu Hanifa that ‘we will not call the *Ahle Qibla*⁴⁵ as *kafir*, or disbeliever’ and the following *hadith* narrated by Anas ibn Malik: “The Prophet (peace be upon him) said: Three things are the roots of faith: to refrain from (killing) a person who utters, “There is no god but Allah” and not to declare him unbeliever whatever sin he commits, and not to excommunicate him from Islam for his any action; and jihad will be performed continuously since the day Allah sent me as a prophet until the last day...”

What justifies declaring a Muslim as a disbeliever? I think a Muslim who renounces his faith in Oneness of God and His names and attributes becomes a disbeliever. Similarly, an act or offense of a Muslim that speaks sacrilegiously about any of the prophets of God could become the basis of declaring him a disbeliever. Imam Ibn Taymiyya wrote a book on this subject, *Al-Sarim al-Maslool ala Shatim al-Rasool* (the drawn sword on the one who curses the Messenger) but he was himself accused of blasphemy. Therefore, it is important to know who will prove and decide that a Muslim has acted or spoken sacrilegiously of the Prophet (PBUH). Similarly, there is a consensus among the jurists that the use of abusive or humiliating language for the Companions of the Prophet (PBUH) is an act of disbelief. However, instead of declaring Sunnis or Shias disbelievers on the pretext of their alleged use of humiliating language for one Companion or another, we should simply declare the use of humiliating language as an act of disbelief without indicating any individual or sect. Ideally, there should be a representative body of all schools of thought to look into these sensitive matters. The Council of Islamic Ideology can take up this task if it is made efficient and authorized in that respect.

There are severe implications and punishments both for the accuser and the accused of disbelief. The accused if proven guilty of disbelief loses all his previous good deeds and their reward. In the words of the Quran: “...And whoso becometh a renegade and dieth in his disbelief: such are they whose works have fallen both in the world and the Hereafter. Such are rightful owners of the Fire: they will abide there in.” (2:217) But who will prove an individual’s apostasy in this world and decide a punishment for him/her? We need to evolve a legal framework for that.

⁴⁵ Those who face the *Ka'ba* in Makkah for prayer.

Third Debate

Only God knows about an individual's faith. We can only observe apparent acts and practices of an individual, which do not offer a reliable source to judge his/her belief or faith. An act can have different motives and intentions. We can only judge words and actions but not intentions. There could be many reasons for a person burning the Quran. Sometimes I put some old, unusable pages of the Quran at a clean place, burn them and put water on the ashes. You will have to judge my action by my intention.

I second most of the views expressed by Mr Zahid Siddique on the subject of *khurooj*. However, I want to add a few things. His argument that incidents of *khurooj* have increased after 1924 is debatable. We should not forget difference between two types of rebellions; one based on legal argument and the other that lack an argument. The former falls in the category of *khurooj* while the latter will simply be declared armed robbery and theft (*haraba*). The Kharijites had resorted to *khurooj* on the basis of an argument that was based on their particular interpretation of certain divine rulings. The author of *Fath Al-Qadeer* has listed four types of rebellion. We should also know which kind of rebellion we are focusing on in our debate.

I believe that all jurists have consensus on illegality of *khurooj* against transgressing rulers. We find in *ahadith* a clear message that *khurooj* against rulers is not permitted unless they commit 'clear/open disbelief' (*kufir buwah*). Jurists have written extensively on this topic.

Maulana Mufti Muhammad Zahid

Vice Principal, Jamia Islamia Imdadia, Faisalabad

The contemporary ideological discourse that seeks to rationalize *takfeer* and *khurooj* asserts that rulers of Muslims states today do not rule on the basis of what God has revealed and hence regards them apostate. It declares not only the rulers disbelievers but also labels the overall structures and institutions of Muslim states as un-Islamic, including their armies. That means the armed groups which are striving against Muslim states and their rulers indeed believe that they are fighting against systems of disbelief, and apostates, respectively. Therefore our discussion to ascertain validity of *khurooj* against sinful and transgressing rulers would not help to understand the contemporary movements of *khurooj*.

This ideological discourse did not exist in our region 10 or 15 years earlier; it is a completely imported discourse. The *takfeeri* ideology that took birth in Egypt in the 1960s was introduced in Pakistan after 2001. Eventually some local armed groups started declaring the Pakistani government and its security forces as apostates

and agents of infidels. They tended to justify their armed revolt on the same argument that gave birth to the *takfeeri* ideology—the question of rulers’ accepting command from anyone other than God and what He revealed—and supported their argument with other rulings such as on *al-wala’ wa’l-bara’* (love and enmity for the sake of God) and jihad, etc. A review of their literature suggests that they attach great significance to the concept of *al-wala’ wa’l-bara’* and use it to declare the armies of Pakistan and Afghanistan renegade armies due to both countries’ alliance with the US in its war on terror.

As I said earlier, this particular ideology, or approach towards *takfeer* and *khurooj* has proliferated in our region recently. We do not find traces of such ideologies in different streams of struggle of Islamic scholars and leaders in the political history of the Indian subcontinent, and later in their struggle for establishment of Islamic system in Pakistan. Shah Abdul Aziz had declared India *darul harb* (abode of war) in the beginning of the nineteenth century but he did not even use the word jihad in his legal decree (*fatwa*). It is easily discernable from the texts of his and subsequent decrees issued by other Islamic scholars that they all wanted to ascertain the legal status of India at that time and meant to do nothing more than that. Many scholars and intellectuals had even opposed the decree of Shah Abdul Aziz, including his disciples and their students. But now we deem the use of military option as an immediate religious obligation after forces of some country, particularly non-Muslim, occupy the territory of a Muslim country. In recent history of Pakistan, one can find several examples of such abrupt decrees issued by our religious scholars.

Similarly, the war of 1857 in the Subcontinent was not the result of some ideological discourse or well thought-out political decision but was an instant reaction of the locals against the British government, triggered by a few random incidents. Maulana Manazir Ahsan Gillani wrote a book titled *Savanihe Qasmi* around 1950, in which he revealed: “Some time ago people started to call the incident of 1857 as war of independence.” That means the war of 1857 was known to be jihad or war of independence several years later. I do not however want to go into details of what was the legal status of this incident, or war. What I want to argue is that although in 1857 religious scholars knew the British had established their rule in India even then they considered it necessary to discuss the legal validity of taking up arms against the rulers. This debate was more pertinent in the religious circle of Haji Imdadullah Mohajir Makki. He had organized a big gathering in Thana Bhoon to consult and seek opinion of religious scholars regarding that. In the beginning, all scholars, except Maulana Nanotvi, opined against

Third Debate

taking up arms. That implies that foreign occupation does not essentially necessitate initiation of an armed struggle. Were armed struggle an essential requirement, religious scholars should have started it, or declared it permitted, without any debate and consultation.

Nonetheless, we know that a school of thought existed among religious scholars which advocated establishing good relation with the government of British India. Sir Syed Ahmad Khan led this school of thought and went to the extent of declaring the British rulers a blessing but no one declared him a disbeliever on the basis of the principle of *al-wala' wa'l-bara'*, or love and enmity for the sake of God; at least I have not read or heard any such decree against him. Indian soldiers including Muslims willingly joined the British Indian army. The Northern Punjab belt from Jhelum to Rawalpindi was very famous for recruitment in the army. The British Indian government had also established military cantonments in different regions. But the kind of security threats Pakistan's Muslim army presently faces did not exist for the British Indian army, led largely by British officers. Although we can find a few decrees that had declared Muslims joining the army prohibited by Islamic law but no religious scholar had ever branded the Muslim soldiers, or even the army, as renegade or disbeliever. Neither were the army and its cantonments targeted by suicide bombers. That was because the violent and extremist ideologies that have become pervasive in today's Pakistan did not exist then.

The religious scholars which supported the government of British India and disapproved of armed struggle against it were not common clerics but had extraordinary scholarship, enjoyed recognition of being pious and righteous, and held credibility and influence among religious circles and people. For example, Maulana Fareedul Waheedi has described in one of his books that Maulana Raheem Bakhsh held a key office in the state of Bahawalpur on the basis of his Islamic scholarship but was a well wisher of the British rulers; he even strived to convince Maulana Mehmood Hassan Deobandi to quit the struggle against the British rule. Maulana Waheedi further narrates that Maulana Raheem Bakhsh was a great scholar, and a pious man, and had cordial relations and religious association with Maulana Habib Ahmad, father of Maulana Hussain Ahmad Madni.

No doubt we live in a world of nation-states and democracies. Democracy is greatly cursed and its ills are repeatedly highlighted [by the religious circles]. But I think we should make a comparative study of the present system of democracy and of the systems of governments that existed in Islamic middle ages. Such a study would reveal that the latter were no better than the former, rather they had relatively more

ills. It is incomprehensible why then we deem forbiddance of *khurooj* that is ordained in *ahadith* irrelevant in a system of democracy and valid in systems of governance like the ones established by the Abbasid, Seljuq, Safavid or Mughal rulers.

We need to critically review Islamic history to understand the character and deeds of the rulers. Maulana Manazir Ahsan Gillani has presented in his book *Maqalat-e-Ehsani* some very strange examples of extravagance and lavishness of rulers from different Islamic regimes. He narrates in his book about an excessively extravagant wedding of an Abbasid caliph's son with the daughter of a Seljuq king. Another tale describes extravagance and frivolity of an emir of Muslim Spain Al-Muntazim Al-Jozi. The wife of the emir saw a laborer women preparing mud for construction with her feet. She asked her husband that she wanted to do the same. On emir's order his courtiers brought huge quantity of musk, as an equivalent of soil, and added some precious herbal distillate in it. The emir asked her wife to enter in it and make mud with her feet. Imagine what our TV channels will do if our president Asif Ali Zardari indulges even in a minor extravagance compared to this one. Yet we are not willing to give even a little credit to democracy.

A Muslim society should be allergic to vice. There are more opportunities and ways available to a society for expression of abhorrence to vice in democracy than in authoritarian regimes and monarchies. As I mentioned earlier, most of the Muslim rulers in Islamic history were kings and monarchs who used different anti-allergic treatments to 'calm down' their people. We are still under the influence of those treatments and believe that *khurooj* against those authoritarian Muslims rulers was not justified but it is justified against the existing democratic system. I agree that democracy is based on western political thought but we should not forget that in practice countries continue changing and adjusting democracy to their local environments and requirements.

Dr Qibla Ayaz

Professor, Institute of Arabic and Islamic Studies, University of Peshawar

The ideologues of *takfeer* and *khurooj* consider these issues legal questions and discuss them in the perspective of Islamic jurisprudence. Therefore, we need to respond in the same framework. The debate is however as relevant today as it was before 1924, when Islamic caliphate ended. With the exception of the Prophetic period and the era of the Companions, we cannot say with certainty that all other Islamic

Third Debate

regimes were Islamic caliphates, established on the method of the Prophet (PBUH). Can anyone claim that the Umayyad, Abbasid, Ottoman, Safavid, Seljuq, Ghauri or Ghazanvi rulers came to power through Islamic system of caliphate or worked as true Islamic caliphs? But Islamic jurists and scholars strived to reform them through available options. The way they used *tawassu*⁴⁶ in their intellectual efforts to guide people contains many guiding principles, which can help us in our debate on *takfeer* and *khurooj* in the post-1924 perspective.

The ideology and practice of declaring fellow Muslims disbelievers (*takfeer*) existed in Pakistan even before 9/11 when a sectarian group had declared the entire Shia community disbeliever. Although this decree was not approved by the majority religious scholars but they could not openly condemn it. In Afghanistan too, the ideology of *takfeer* and *khurooj* existed before 9/11 during the Taliban rule. The Taliban used to brand as rebels (resorting to *khurooj*) all those who opposed them. In recent times, such ideologies have become more violent and pervasive in Pakistan. Neither will they subside easily in both countries in the future. In Afghanistan it might pose a severe challenge after the completion of withdrawal of foreign forces in 2014 because the armed groups that justify their use of violence on the basis of *takfeer* and *khurooj* would continue fighting against the government until they consider it is no more un-Islamic or apostate.

I agree with Mufti Zahid's argument that religious scholars preferred peaceful political struggle against the British rule than an armed one. The religious scholars who had started armed struggle including some from North Waziristan later resorted to political and constitutional struggle, making an alliance with the Indian National Congress. Some documents had then revealed that their armed struggle against the British government was supported by Germany.

The leaders of armed groups in Khyber Pakhtunkhwa and Pakistan's Federally Administered Tribal Areas (FATA) who espouse violent versions of *takfeer* and *khurooj* have not required the religious scholarship and qualities to develop independent legal opinion (*Ijtihad*) on these questions. Their inability and lack of qualification to establish legal opinions through *Ijtihad* notwithstanding, they are also involved in illegal practice of imposing their opinions on others through use of force. A *mujtahid* (jurist/scholar who generates *Ijtihad*) can just develop and announce his legal opinion but is neither responsible for nor allowed to enforce that. I can tell you by name the qualifications

⁴⁶ A purpose of Islamic law, or Shariah, that seeks to establish ease and facility.

and Islamic scholarship of leaders of armed groups in Khyber Pakhtunkhwa and FATA. The founding leader of the Tehrik-e-Taliban Pakistan (TTP) Baitullah Mehsud was not a religious scholar. Neither is the TTP's current head Hakeemullah Mehsud. Mangal Bagh, leader of an armed group Lashkar-e-Islam based in Khyber Agency, is a former bus conductor. Mullah Fazlullah, head of Swat chapter of the TTP, used to escort people across a stream on his boat. He was not a religious scholar and had general knowledge of Islam like any Muslim. One can imagine the outcome when this kind of people generate *Ijtihad* on critical legal questions such as *takfeer* and *khurooj* and enforce that. The religious scholars who tried to advise and correct them including Maulana Hassan Jan and Mufti Nizamuddin Shamzai were brutally targeted and killed by these militant groups.

The real problem is that the Salafi ideology has gradually and stealthily made its way into our religious seminaries (madrassas) and almost overshadowed the Hanafi thought.⁴⁷ Our madrassas have yet not realized this change. We need to revive the Hanafi thought to promote moderate and tolerant approaches. This requires tremendous intellectual and academic efforts. There is a dearth of academic work on Imam Abu Hanifa's thought and legal approach. I have seen only one book on it, probably written by Manazir Ahsan Gillani. But this book is very complex, has weak logical structure, is based on secondary sources, and hence leads us nowhere. There is a need to form a group of leading religious scholars to work on Imam Abu Hanifa's thought and find solutions to contemporary legal questions facing Islam in its light. Similarly, the extremist interpretations of Imam Ibn Taymiyya's religious thought are misleading and flawed. We need to review them as well.

No doubt we live in a capitalist system. The world is under the influence of this system. We should strive to reform our system while living in this system. As I mentioned earlier, our jurists struggled to reform the oppressive and sinful rulers without going out of the system. We can learn many lessons from their struggle.

Dr Khalid Masood

Now we move to the question-answer session. Let me first raise a few questions.

The current perspective of *takfeer* and *khurooj* is very specific and raises a particular question: how can legal arguments and opinions

⁴⁷ The Salafi ideology, or Salafism, is deemed a stricter and literalist version of religion; some relate it to Wahabism. The Hanafi school is considered moderate in its approach and interpretation of Islamic precepts.

Third Debate

of early and late jurists on these questions be generalized and applied in the contemporary local, regional and international settings? Another related question is: are these legal opinions too general to remain relevant and applicable to all times and contexts including the present one? For example, the term of *kufir* (disbelief) has been used in two contexts in the Quran: one is related to renunciation of faith and the other to thanklessness to God's bounties and blessings. We rarely discuss the latter. I think the rational/dialectical (*kalami*) and historical contexts in which the term *kufir* was defined and explained by jurists do not fully correspond to the present context.

Similarly, the Islamic concept of justice (*adl*) is different from the one followed by Greek philosophers. The Greeks defined justice in terms of putting the things and people in the right (just) place. Many Islamic jurists have followed the Greek concept of justice instead of the most comprehensive concept of justice provided by Islam. There are indeed many areas and legal questions which require re-interpretation in the contemporary context.

Some of our respected participants have presented their views on capitalism. It is strange that we find a great deal of rhetoric against capitalism, mainly coming from religious scholars, but in practice Islamic movements and groups including Ikhwanul Muslimoon of Egypt and Jamaat-e-Islami of Pakistan have resorted to armed struggle (*khurooj*) against the system of socialism and not capitalism. Surprisingly, the revival of Imam Taymiyya's thought and rise of Salafism coincided with rise of threats to capitalism from the socialist system and Jamal Abdul Nasir. The religious thought and movements that emerged in those days in a way contributed to strengthen capitalism. One example is Sayyid Qutb's early book *Al-Aadala Al-Ijtima'iyya fi'l-Islam* (Social Justice in Islam), about which his brother had said that this book should not have been published. But that is hardly referred to in the debate on Sayyid Qutb's thought. Islam had indeed become a party against socialism in the Cold War.

Another important question in this debate is related to the role of religious scholars. First, we need to define a religious scholar and his credentials. It is unfortunate that no one asks about the scholarship and level of religious knowledge of those who have initiated the debate on *takfeer* and *khurooj* in Pakistan. As they quote opinions of jurists and provide references from the Quran and *ahadith* we consider their arguments valuable. We should also examine the logical frameworks and underlying thought which led jurists to develop those selected opinions which are quoted by some people to support their arguments in favor of armed struggle. We should meticulously study the political

thought of the legal schools of Abu Hanifa and Ibn Taymiyya, which were just described here as two poles of Islamic jurisprudence. It is also pertinent to examine the role of religious scholars before 1947 who were also divided into two extreme streams. Some of them supported armed struggle while others advocated absolute reconciliation.

Mujtaba Rathore

Dr Qibla Ayaz has said that those militant leaders who issue decrees and justify their armed struggle are not religious scholars. My question is, do our religious scholars not support militants' decrees and arguments by being silent and not guiding the people?

Muhammad Amir Rana

Director, Pak Institute for Peace Studies (PIPS)

Mufti Zahid has argued that the debate on *takfeer* and *khurooj* started in Pakistan after 9/11. I think it had existed in Pakistan several years before that. Two armed clashes were reported among Arab Mujahideen in Peshawar, one each in 1991 and 1993. In one incident about 17 Arab nationals were killed including two children. The government had expelled many Arab nationals after these incidents. The reason behind these clashes was the same *takfeeri* ideology that had emerged in Egypt's prisons in the 1960s. Foreign militants started to inculcate this ideology among their Afghan and Pakistani associates. It is suspected that assassination of Abdullah Azzam was also linked to the debate of *takfeer*. Early imprints of this debate can be found in issues of some Arabic magazines being published in those days including *Bunyan Al-Marsoos* and Abdullah Azzam's *Al-Jihad*. Later this debate started to appear in other Arabic and Urdu language magazines of religious and jihad organizations and madrassas which carried similar arguments.

As far as the academic standard of militants' discourse on *takfeer* and *khurooj* is concerned there is no doubt that with the exception of Waliur Rehman and Maulvi Faqir none of their commanders is even a madrasa graduate. But their strength does not rest on their personal academic qualification and religious scholarship. Their arguments get strength from ideologues of *takfeer*, *khurooj* and other similar concepts that could justify armed struggles. The academic framework of the debate on these subjects published in different journals of Al-Qaeda, Taliban and others such as *Hittin* and *Nawa-e-Afghan Jihad*, etc., seems fairly strong. Much of that is available online. Like *takfeer*, the debate on *khurooj* was also originally not born in Pakistan. I think it traveled

Third Debate

to our region through Hizbut Tahrir or Al-Muhajiroon because the armed groups which justify *khurooj* against the Pakistani government and rulers use arguments similar to the ones used by these two groups.

Dr Hassan Madni

Director, Islamic Studies Department, Jamia Lahore Al-Islamia, Lahore

I do not agree with Dr Khalid Masood's claim that Islamic concept of justice is borrowed from Greek philosophers, or our jurists have tended to do so. In *ahadith* and the Quran a clear and comprehensive concept of justice is provided that mainly relates to judging and ruling justly according to what God has revealed and without excesses and injustice. The opposite of justice (*adl*) is described in the Quran as unjust act or wrongdoing (*zulm*): "...Whoso judgeth not by that which Allah hath revealed: such are wrong doers." (5:45)

Saudi scholars have discussed at length the Islamic concept of justice. They have argued that the term of *musawat* (equality) does not have an Islamic but Western origin and that the original Islamic term that describes 'equality' is *adl* (justice). Therefore, there cannot be 'equality' but 'justice' between men and women. Shaikh Muhammad Yaseen has written a comprehensive book on the subject. I think it is not justified to say that the Islamic concept of justice is based on Greek philosophy when it is clearly described in the sources of Islamic law including the Quran and the Sunnah.

At least the Ahl-e-Sunnat (Sunni) school of thought does not describe justice in the perspective of Greek philosophy. Nonetheless the Mu'tazilah and Shia schools accept *adl* (justice) as an independent and standard principle to deduce and validate legal rulings. That implies that they recognize *adl* as an ultra-Shariah concept and that could be due to excessive influence of speculative theology (*Ilm Al-Kalam*) and logic on their religious thought. The Sunni school includes *adl* in Shariah. Some leading Sunni jurists including Imam Abu Al-Hassan Al-Ash'ari and Imam Ghazali have exposed contradictions of Greek philosophy. Therefore, it is baseless to link their concept of *adl* to the Greeks.

Furthermore, we should not discriminate among references to different legal schools in Islam because legal opinion of any school could be relevant and applicable to one or another problem facing us today. Neither is it possible for a particular thought to be relevant in different settings. For example, the *takfeeri* ideology of Egypt's Ikhwanul Muslimoon could not influence its ideological associate

Jamaat-e-Islami in Pakistan. Ideally, the latter should have adopted the former's ideological claims of '*takfeer*' and 'establishment of the religion' in 1965 but in reality that has not happened so far. They, however, share the ideology of renunciation of the way of ruling without what God has revealed. Secondly, in Egypt the ideology of *takfeer* emerged as a reaction to excesses and injustices done to them. Such excesses started in Pakistan in the post-9/11 environment and eventually triggered debates of *takfeer* and *khurooj* here. Although the Salfist or Arabs led such discussions but I do not see any harm in accepting arguments that are justified on the basis of the Quran and the Sunnah.

Khurshid Ahmad Nadeem

Renowned religious scholar

The discussion on democracy has raised a question in my mind. I would like to request Mr Zahid Mughal to please elaborate further in the light of Islamic law on who will determine the right to rule or govern a Muslim state? Secondly, as we argue on the basis of Shariah that a ruler should be just and must have certain qualities, who will ascertain and decide the existence of such qualities in a person and approve him as a ruler?

Secondly, I second Dr Madni's principled argument that instead of looking at legal questions in Salafi or Hanafi perspectives we should try to understand them in the overall, larger perspective of Islam; though there is no harm in comparing different narratives on the same legal questions. However, I do not agree with his claim that in the 1960s there were different circumstances in Egypt and Pakistan that made Ikhwanul Muslimoon and Jamaat-e-Islami respond differently in their respective countries. I think the circumstances in both countries were almost identical at that time but the difference in responses of Ikhwan and Jamaat was mainly because of their distinct understanding of the religion and on how to deal with oppressive rulers, or regimes. In the 1960s, both countries had dictatorships; dictatorship of Jamal Abdul in Egypt and of Ayub Khan in Pakistan. If Sayyid Qutb was hanged in Egypt, death sentence was also once announced in Pakistan for Jamaat's leader Maulana Maududi. The government of Pakistan was also against Jamaat-e-Islami. In 1963, a gathering of Jamaat was attacked by the state in which one man died. One year before that incident, Jamaat-e-Islami was banned in Pakistan. All these circumstances substantiated a response similar to that for Ikhwan in Egypt but Jamaat-e-Islami decided not to engage in anti-state and anti-constitutional activities. This decision of Jamaat was based on its understanding of the religion, mainly led by

Third Debate

Maulana Maududi. You can disagree with that. My purpose in stating all that is to explain the difference of response by Ikhwan and Jamaat in similar circumstances. Jamaat-e-Islami has written in its constitution that it would not engage in any hidden and unconstitutional activity in Pakistan. This is their legal position.

Abdul Sabooh Syed

Journalist

I have two questions. My first question is to Mufti Zahid. I would seek his opinion on the claims made by Deobandi scholars regarding their jihad against the British rulers in the Indian subcontinent. I saw printed advertisement of the 150th conference of Darul Uloom Deoband held in Nowshera. It highlighted the role of Darul Uloom Deoband in jihad against the British Indian government, *Reshmi Rumal* Movement⁴⁸ and the Shamli uprisings against British rule in 1857.⁴⁹

My second question is to my respected teacher Dr Qibla Ayaz about what he called lack of religious scholarship among leaders of the Pakistani Taliban. I had a chance to interact face-to-face with some of Taliban leaders who are madrassa graduates. I have met Mufti Munir Shakir, head of a sectarian group in Khyber Agency, who is a renowned religious scholar. Sufi Muhammad of Swat, who once said that democracy and Pakistan's constitution and justice system all were based on disbelief, is an acknowledged religious scholar. Similarly, Qari Hussain, Waliur Rehman and Maulvi Faqir are religious scholars. When we visited Mangal Bagh he was in a meeting with a 21-member board of religious scholars. Instead of replying himself he referred our questions on religious matters to board members to respond. Hakeemullah Mehsud has a team of 20 religious scholars who issue religious decrees. Their decrees are presented before Ahmad Ilyas Khan and formally enforced after his approval. Religious decrees calling for use of violence have been issued by some of the credible religious scholars of country as well. For example, Mufti Nizamuddin Shamzai had issued a decree that justified killing of Americans present in Pakistan. Eventually a bus of foreign tourists was targeted by militants in Mansehra in 1996. Militants indeed enjoy ideological

⁴⁸ An Indian armed movement that planned to declare war against the British empire in the early 20th century. It was led by prominent religious scholars of the Deoband.

⁴⁹ Shamli region was the centre of the uprisings of 1857. It was liberated for some time. After the uprising failed, British retribution was more severe here.

support of religious scholars.

Maulana Ammar Khan Nasir

Vice Principal, Al-Shariah Academy, Gujranwala

I have questions for Mr Mujtaba Rathore and Mr Zahid Siddique. My feeling is that our criticism of a viewpoint becomes more effective and useful when we try to understand the sensitivities and feelings of holders of that viewpoint as well. Mr Rathore has said in his description of Al-Qaeda's viewpoint on *al-wala' wa'l-bara'* that the group declares rulers of Muslim countries, including Pakistan, disbelievers on the basis of the following and other divine rulings of similar meaning in the Quran: "...He among you who taketh them [Jews and Christian]for friends is (one) of them..." (5:51). As a critic of this viewpoint, Mr Rathore has narrated an abstract from Razi's exegesis of this particular verse that classifies Muslims' relationship with infidels in three categories. I think this explanation is not sufficient to logically persuade those associated with Al-Qaeda and other groups that hold the same viewpoint on *takfeer*. They do not put Pakistani rulers' policies in any of the three categories described by Razi. They refer to the fact on which most of Islamic jurists agree that it is legally prohibited to help non-Muslims against a group of Muslims. Jurists have further explained that even if a group of Muslim rebels in a Muslim state, which has victimized and killed people too, is attacked by a non-Muslim country, Muslims will support the rebel group and not the attackers.

When we look at such opinions of jurists while standing on the position of Al-Qaeda and other groups of similar ideology we feel that the legal claim of the latter that the rulers of Pakistan and Afghanistan are apostate and disbelievers due to their support for the US against Muslims of Afghanistan seems fair and genuine. How can we justify any support to the US against Muslims of Afghanistan according to Shariah? We can counter their claim if we provide them arguments from Shariah that it is justified to provide conditional support to non-Muslims in their fight against Muslims in certain situations. Therefore, I think Mr Mujtaba's argument that is based on Razi's description of friendship with non-Muslims would not satisfy those who declare our rulers disbelievers.

My second question to Mr Rathore is related to his discussion on the *illat*, or underlying cause, for jihad. I think the debate among jurist was not intended to determine what could be the cause for initiating a war—all jurists agree that Muslims can initiate a war against non-Muslims—but it was focused on the limit and objectives of war. In other

Third Debate

words, difference of opinion among jurists has emerged on the *illat* for ending a war; i.e. should war continue until non-Muslims embrace Islam or it could be ended after they accept obedience of Muslims. This is my understanding of jurists' opinion. If Mr Rathore has reached at a different conclusion I will request him to please share it with us.

Mr Zahid Siddique has presented his viewpoint on democracy and the capitalist system in the perspective of *khurooj*. I think there are at least aspects of validity or invalidity of *khurooj* against a democratic system which necessitate debate to develop independent legal opinion (*Ijtihad*): a complete understanding of democracy; to what extent it conforms to or conflicts with Islam; and what should be our practical response to democracy. We cannot renounce and declare democracy contrary to Islam in absolute terms, leaving no space for difference of opinion and *Ijtihad*. For example, the religious scholars who are part of Pakistan's political process may not agree to Mr Siddique's opinion. I have gathered from his discussion that he wants to give a small number of people the right to develop an independent legal opinion, start armed struggle (*khurooj*) against the state on its basis, and enforce this opinion on people by virtue of force. I do not deny his claim. But why cannot we give the same right of developing an independent legal opinion to the majority of the people of Pakistan, which may support democracy? Secondly, how can we give a group of Muslims the right of *khurooj* to enforce its opinion on the whole society without consent of the majority?

My second question to Mr Siddique is related to his description of a nation-state. I agree with him to the extent that if a nation-state is characterized by racial, ethnic or similar prejudices, which usually become the criterion to judge the right and wrong, then there is no concept of such a state in Islam. My question is: is establishment of separate nation-states for Muslims on the basis of division of administrative, legal and political jurisdictions un-Islamic? In Islamic history we can find examples where Muslims had more than one political centers of power at a time. Even in era of the Companions, the governments of Hazrat Ali and Hazrat Ameer Muawia were contemporaries. Since then such jurisdictional divisions have existed in Islamic history.

In order to support his argument, Mr Siddique has alluded to precedents of *khurooj* from the era of the Companions. According to my study of the subject, although jurists have acknowledged such precedents as justified exercise of the right to develop and follow independent legal opinions (*Ijtihad*) but they have not deduced justifications for *khurooj* from them. For example, jurists acknowledge Hazrat Imam Hussain's struggle, which was based on his independent

opinion, or interpretation of divine rulings according to his circumstances, but generally do not justify *khurooj* on the basis of his struggle. Neither do they accept Hazrat Ameer Muawia's denial to accept obedience of Hazrat Ali a standard principle of *khurooj*.

Dr Hassan Madni

I think the most important question in our debate is whether we recognize some contemporary country or state as *darul Islam* (abode of Islam) or not.⁵⁰ If the answer is in the affirmative the application of commands of Islam will change. Secondly, do we think Islam brought with it a political system of its own or ordained for its followers to wait for centuries until emergence of democracy?

Dr Khalid Masood

I am asked to explain my viewpoint on the concept of justice (*adl*). *Adl* is usually defined in two perspectives; rationalist and applied. The rationalist interpretation of *adl*, as provided by the Mu'tazilah and Shia schools, mostly entails a debate on the names and attributes of God. The applied meaning of *adl* is considered to be an antonym for *zulm* (injustice). A common definition of *zulm* which I have read in Islamic literature is to 'place a thing where it does not belong'. This definition is borrowed from the Greeks in the literal sense. Aristotle considered slavery natural and believed that slaves were born slaves. Islamic jurists also adopted a view that people's place in society would determine which commands are to be applied to them. Jurists' definition of just and unjust states is also based on previously cited definition of *zulm*. Dr Madni's example that there would be justice and not equality between men and women supports my claim. We do not give equal rights to women because their place in our society is different from men, like slaves' place was deemed different from other citizens in ancient societies. This concept is originally not Islamic but was borrowed from others when debates on speculative theology and jurisprudence started in Islam.

Dr Rasheed Ahmad

Dr Madni has raised some significant questions. I think the

⁵⁰ *Darul Islam* is a territory which is part of the Islamic empire or is governed by an Islamic government, so that it is possible for the commandments of Islam to be enforced there.

Third Debate

concepts of *darul Islam* and *darul kufr* (abode of *kufr*, or disbelief)⁵¹ are relative and their interpretation is subject to the circumstances because no criterion for such a division of world is ordained in the Quran and *ahadith*. Imam Shafi believes there is only *dar* (abode or world) and completely rules out its division between *darul Islam* and *darul kufr/darul harb*. Considerable space and need exist for such a debate that seeks to determine when a state turns from *darul Islam* into *darul harb*. The Indian subcontinent was also declared *darul harb* at a certain point in time that means it was not *darul harb* before that. In the prevailing circumstances, such a debate is ever more essential. It is also greatly linked to our debate on *khurooj*. We should debate and ascertain the legal status of the state of Pakistan where rulers and the majority of the people are Muslim, and the constitution ascribes sovereignty to God and is based on the fundamental principles of Islamic law. On the second level, we should discuss the legal basis of *khurooj* against Pakistan's government and rulers.

Dr Khalid Masood

This is a very good point to define *darul Islam* in the perspective of Islamic history because most of the Islamic regimes after the era of the Companions were not true Islamic caliphates.

Dr Qibla Ayaz

I will respond to questions addressed to me by Mr Sabooh Syed and points raised by Mr Amir Rana. My reference to Salafism should not be taken as a sectarian or prejudiced view. I have simply narrated the fact that as the Salafist ideology becomes pervasive in Pakistani madrassas, the religious scholars in Khyber Pakhtunkhwa (KP) and FATA, whose majority gets education from madrassas, are unconsciously being influenced by it. I am trying to look at the problem of extremism and militancy in KP and FATA through a combination of contextual, religious and anthropological perspectives. The problem is only in the Pashtun belt including FATA and the entire Pashtun-inhabited areas of KP. It is the Pashtun people who are facing the militancy and also the collateral damage of the war on terror. Nonetheless the Taliban are also Pashtun. About 99 percent of the

⁵¹ *Darul kufr* is generally considered synonym with *darul harb*, or a territory where enforcement of the Islamic commandments is not possible, and neither are Shariah commandments in effect. This is outside the Islamic state's boundary, regardless of its political system and laws.

Pashtun subscribe to the Hanafi school of thought, which suits their temperament and frame of mind. That does not mean that Salafism is bad. We should look at the Hanafi and Salafi interpretations of the Quran and the Sunnah objectively and positively. But I think were the Pashtun Salafists there would have been more trouble in the Pashtun belt than there is now. The Hanafi school stresses on correction of authority and the Salafi on rejection of authority. Our religious way of thinking is increasingly and unknowingly coming under the influence of the doctrine of 'rejection of authority', which further compounds the problem.

Mr Rana and Sabooh Syed have rightly said that not only are some of the militant leaders religious scholars but they also have legal and ideological support of religious scholars. These religious scholars derive legal opinions, which usually suit militants, using Islamic literature that is greatly influenced by Al-Qaeda's Salafi ideology. The Hanafi interpretation is becoming irrelevant in Pashtun madrassas. Besides KP and FATA, Salafi ideology particularly Abdullah Azzam's debates are popular even in Punjab. But an alternative interpretation, as I mentioned earlier, which promotes correction rather than rejection of authority is espoused in the Hanafi interpretation.

Mufti Muhammad Zahid

Mr Rathore has asked why the religious scholars are silent and do not respond to extremists' decrees. I agree with Dr Qibla Ayaz that no one among the religious scholars is ready to be martyred like Hazrat Hussain. Secondly, I think a great deal of confusion exist among religious scholars mainly due to lack of debate. Young religious scholars are relatively more courageous to engage in an objective debate than those with the traditional mindset.

Mr Rana has asserted on the basis of circumstantial evidence that *takfeeri* ideology existed in Pakistan before 9/11. I fully agree with him. However, I meant to say that in the 1980s and 90s, a typical version of Salafism invaded and started to displace our local perspective to look at the questions of religion. This is important for our youths, particularly of Khyber Pakhtunkhwa, to know that the *takfeeri* and other similar ideologies are irrelevant in our traditional and historical perspectives and also unacceptable.

A stream of religious scholars who by declaring India a *darul harb* had pursued until 1917 the option of armed struggle against the British rule made a purposeful change in their strategy and decided to adopt peaceful and constitutional way of struggle. The religious scholars and their political bodies participated in the first (1937) and

Third Debate

second (1946) elections to provincial legislatures held in British India under the 1935 Government of India Act. They made political alliances with the Congress, Muslim League and even those who some regarded disbelievers and transgressors. They had become part of a political process and system that were neither Islamic nor enforced by Muslims. A lot of literature was produced to support this strategic change in religious scholars' struggle against British rule. This included the works of Maulana Muhammad Mian and Maulana Hussain Ahmad Madni. Our religious scholars and also those who justify their armed struggle against Pakistan can learn from these historical facts.

I did not say that the religious scholars of Darul Uloom Deoband did not take part in jihad but I said they did not declare any individual or group disbeliever among supporters of the government of British India, Muslim soldiers and all those who pursued peaceful struggle. Sabooh Syed has referred to a conference of Deoband scholars. We know the environment of conferences is charged with a lot of rhetoric. We nonetheless need to highlight the real and dominant aspect of the struggle of religious scholars in British India that was largely peaceful and constitutional.

I agree with Dr Rasheed Ahmed that concepts of *darul Islam* and *darul harb* are debatable as jurists had interpreted them according to their respective circumstances. On the whole, the jurists did not declare any territory *darul harb* until Muslims' rule or their participation in state affairs was completely eliminated. As I mentioned earlier, a segment of religious scholars in British India, including Maulana Syed Nazir Hussain Dehlvi, Maulana Abdul Hayi Lakhnavi and Maulana Ahmad Raza Khan Bareilvi, were not convinced to recognize British India as *darul harb* after it came under complete control of Great Britain. The opinion of those who considered British India *darul harb* was eventually also divided into two streams. I will quote a few examples to explain this fact.

Maulana Madni has discussed this subject in his book *Naqsh-e-Hayat*. He was probably trying to find answer to a fundamental question on what would be the future of religious circles' armed struggle and also legal status (*darul harb* or *darul Islam*) of India if All India National Congress succeeds in freeing it from British rule. After copying a legal opinion of Shah Abdul Aziz, Maulana Madni has narrated his viewpoint as following:

...[Shah Abdul Aziz's opinion] implies that a country which is ruled by a non-Muslim party but Muslims are also part of government in one way or the other and their religious symbols are respected would

be called as *darul Islam*. It would be religious obligation of Muslims to deem it their own country and be its well wishers.

Maulana Rasheed Ahmad Gangohi had issued two conflicting decrees. In one of these, which is relatively comprehensive, he says: "All leaders/jurists of Islam have an agreement that a territory/country where disbelievers are largely dominant but Islam is also dominant in certain forms would be called *darul Islam* and not *darul harb*."

We cannot declare Pakistan and Afghanistan *darul harb* even on the basis of traditional interpretation by jurists and religious scholars because both countries have Muslim rulers who are elected by Muslims.

Muhammad Mujtaba Rathore

My response to the first question addressed to me by Maulana Ammar is that my purpose in describing Maulana Razi's opinion on the doctrine of 'friendship and enmity for God's sake' was to explore if participants of this debate could evolve a consensus on it.

Responding to his second question, I would say that we should refer to opinions of jurists on *illat* (underlying cause) for fighting against infidels. There are two opinions. Most jurists justify jihad when war is imposed on Muslims by the infidels, or disbelievers. With the exception of a minority opinion, jurists do not justify jihad against disbelievers merely on the basis of the latter's disbelief.

Zahid Siddique Mughal

A question has been raised as to why jihad movements have largely been struggling against political system of socialism and not capitalism. I find three main reasons for that. Before their description, I would like to put before you interpretations of capitalism. Socialism is wrongly perceived as a system different from capitalism. Capitalism establishes state structures on the basis of freedom and equality through liberalism and market economy, through Marxism, or state capitalism, and through nationalism. Nonetheless, the reasons for greater focus of struggle of jihad movements on socialism compared to capitalism are quite understandable. First, socialism does not offer even the limited freedom for expression of religion that is available in capitalism. The history of socialism is replete with religion-based tyrannies against Muslims, particularly in the Soviet Union and China. That is why religious scholars have deemed socialism to be a greater evil than capitalism. Secondly, jurists and religious scholars have been confused and unable to comprehend capitalism as a complete political system.

Third Debate

They confused liberates and freedom enshrined in capitalism with Islamic liberties. The day this confusion is removed religious scholars will start armed struggle (*khurooj*) against capitalism as they did against socialism. Thirdly, mujahideen's alliance with the US in the Soviet-Afghan war was not based on their ideological agreement on capitalism viz-a-viz socialism but on logistic and operational interests. The same mujahideen later started jihad against the US. Examples can be found from Islamic history where logistic support was accepted from non-believers because it is legally permitted. Nonetheless it is prohibited to provide logistic or other form of support to non-believers.

Mr Khurshid Nadeem has asked how will the government be formed or rulers elected in Muslim countries. In one of my recently published articles, I have examined all those arguments which are presented to support democracy. In this article I have also discussed the problems associated with interpretations of a rhetorically presented verse from the Quran that says '[and] whose affairs are a matter of counsel'.⁵² We make a fundamental mistake when we consider democracy to be merely a system of change of government through elections. It deploys a range of institutions to establish a system of obedience. There is a built-in relationship between structures and objectives of a political system. A change of regime or government does not mean a change of the system.

There should be no problem in selection of rulers and formation of government in absence of democracy or elections. It is very simple. Do we take into account opinions of all staff members of a university including peons and senior teachers while appointing a dean? It never happens. All institutions in our country work on the same pattern of selections and appointments. There are inherent processes for that. A similar process selects the capable people as rulers in Islamic system.

I agree with Maulana Ammar Nasir that choosing between armed and peaceful struggle for establishment of Islamic system is an *Ijtihadi* affair (subject to independent opinion and interpretation). I do not doubt the intentions of those religious scholars who believe in constitutional and political struggle. But their particular interpretation that absolutely overrides *khurooj* is wrong. Furthermore, I do not believe in this notion that *khurooj* is conditional to support of the majority, or public opinion. The struggle of Hazrat Imam Hussain and Hazrat Abdullah bin Zubair was not supported by all of the Companions. Neither were they in majority. Jurists have however

⁵² The complete verse is: "And those who answer the call of their Lord and establish worship, and whose affairs are a matter of counsel, and who spend of what We have bestowed on them." (42:38)

linked some other conditions to *khurooj* such as preparedness and sufficiency of resources, and greater probability of success, which would be determined by those resorting to *khurooj* through *Ijtihad*. Even in democracy decision are not made on the basis of majority's opinion. The 'human rights' which have got the status of international laws were developed by only 54 white Americans.

Dr Rasheed Ahmad

People lost their properties and were forced to leave their hometowns amid military operation in Swat in 2009. The ideologues of *khurooj* should bear in mind that armed groups not only play havoc with people's lives with their attacks but also become an indirect cause of mass-level displacements and loss of people's properties due to military operations targeted against them. Only those who suffer its consequences truly know what *khurooj* means.

Mufti Muhammad Zahid

Let me clarify one thing. From *khurooj* we usually mean armed struggle. The struggle of Hazrat Imam Hussain was not armed or violent. We should not declare his struggle *khurooj*.

Dr Hassan Madni

Khurooj is an eternal doctrine of the creed, or faith of Islam (*millat-e-Islamia*). The Companions who resorted to *khurooj* not only set practical examples for it but also validated its legal status. As far as causes of *khurooj* are concerned a *hadith* is often quoted that links it to *kufir buwah*.⁵³ Jurists have described four causes for *khurooj* against rulers: first, they commit *kufir buwah*; second, they do not establish prayer (*salat*); third, they do not establish the religion; and fourth, they are sinful and transgressing [of boundaries set by God]. Jurists belonging to all legal schools of Islam have an agreement on validity of *khurooj* in the presence of the first three causes. The difference of opinion is on the fourth cause. In that case also, only the Hanbali school

⁵³ The reference is to the following *hadith*: The Companions of the Prophet narrated: "The Messenger of Allah (PBUH) called upon us and we gave him the *bai'ah* (oath of allegiance), and he said, of that which he had taken from us, that we should give him the pledge to listen and obey, in what we like and dislike, in our hardship and ease, and that we should not dispute the authority of its people unless we saw open disbelief (*kufir buwah*) upon which we had a proof (*burhan*) from Allah."

Third Debate

does not justify *khurooj* against sinful and transgressing rulers while most jurists belonging to other schools consider it justified.

With due apology, I take the liberty to disagree with the other respected scholars on their definition of *darul Islam*. They have indeed defined *darul Muslimoon* (abode of Muslims). There is a difference between a Muslim and an Islamic state. *Darul Islam* is a territory where the government implements Islamic laws ordained in the Quran and the Sunnah in their totality and also claims it. Shah Wali Ullah has asserted in his book *Hujjat Allah Al-Baligha* that it is not only legally permitted but necessary (*wajib*) to fight against a caliph, or ruler, who has renounced any one of the essentials of the religion. Al-Maufiq Makki has claimed in his book *Manaqib Abi Hanifa* that Imam Abu Hanifa deemed *khurooj* necessary. Imam Abu Bakar Jassas also believes in the necessity (*wajub*) of *khurooj*. According to Imam Ibn Taymiyya, there is a consensus among jurists and the Muslim *ummah* that there should be jihad against a group which associates itself with Islam but does not obey clear and recurrent commandments of Islam.

Similarly, there is a difference between the history of Muslims and the history of Islam. Islam is not what Muslims of today practice. They bring shame to Islam. If such Muslims hold control of political affairs in a country like Pakistan, would we declare it *darul Islam*? That is an odd thing to think of. *Darul Islam* existed in world in one form or another until the Ottoman Empire. After that it shifted to Saudi Arabia. The best contemporary form of *darul Islam* however was Taliban's Islamic emirate in Afghanistan.

Many raise questions about the personal character of Saudi rulers. But they have at least established Islam in their country. Imam Ibn Taymiyya's viewpoint was very clear in this regard that a transgressing ruler who has the capability to establish the religion will be preferred to a religious and pious ruler who does not have the capacity to rule and establish the religion. What to talk of the transgressing rulers of Pakistan, even those who were religious-minded such as former president Rafiq Tarrar and former chairman of the Senate Muhammadmian Soomro could not do justice to their official responsibilities. The era of the Companions has this distinction that the caliphs were pious and also capable to establish the religion. Subsequently, this standard gradually declined.

The concept of *khurooj* is discussed only in Islamic Shariah and hence is relevant in an Islamic state where Shariah is enforced. Pakistan's Constitution says nothing about *khurooj*. Therefore, the debate of *khurooj* is irrelevant in the perspective of Pakistan and its system of government. It is generally claimed that Pakistan is an

ideological state that was created in the name of Islam. In practical terms, the Quran and the Sunnah do not have supremacy over the laws of the land. Many policy statements and slogans refer to presence of Islamic provisions in the Constitution but there is no mechanism to implement such provisions. Constitutionally speaking, the sovereignty belongs to God but in reality a comprehensive political system based on people's sovereignty is practiced. On an individual level, a person has the right to accept or reject Islam but how can an Islamic state selectively apply Islamic laws, accepting a few and rejecting others. This is simply what the Quran describes as the following: "...Believe ye in part of the Scripture and disbelieve ye in part thereof..." (2:85)

Religious scholars' political struggle and achievements in terms of their 22 points to establish Shariah (1950), inclusion of Islamic provisions in 1973 Constitution, blasphemy laws and Hudood laws cannot be declared ideal. That is what they could do in the given circumstances. In recent times, Islam was established in its complete and original form in Afghanistan during the Taliban rule. Therefore, the debate of *khurooj* could be relevant in Mullah Omar's Afghanistan.

I think despite looking at *takfeer* and *khurooj* through the lens of Shariah we should discuss it in political perspective because both emerged as a reaction to political injustices of the rulers. The ideology of *takfeer* first emerged in Egypt as a reaction to the massacre ordered by Jamal Abdul Nasir. Osama bin Laden and his sincere aides revolted against their rulers after the US established its military bases in Saudi Arabia. In Pakistan, the issue of *takfeer* emerged after 2000; before that it was a rare phenomenon. No jihad group existed in the Muslim world between 1950 and 1990. The growth of such groups coincides with emergence of the New World Order and America's deliberate clash with Muslims.

Those who are fighting against their government and imperialist forces are indeed fighting against injustices done to them. Neither their fight can be called as *khurooj* nor is there any concept of *fidayi*, or suicide attacks in Islam. This is some groups' resistance against tyranny or fight in self-defense. However, if they are really involved in attacks in Pakistan we should condemn that. Islam has clearly defined ways of resistance and does not allow such general killings.

Maulana Ammar Khan Nasir

I will present a summary of my article, especially written for this session of debate, that critically reviews Al-Qaeda leader Ayman Al-

Third Debate

Zawahiri's book *Al-Subh wa' Al-Qindil* (The Morning and the Lamp).⁵⁴ Zawahiri has tried to prove in his book that neither is Pakistan an Islamic country nor its constitution is Islamic. He argues that as Pakistan's Constitution has some provisions of Islamic law and also talks about supremacy of Shariah, people have developed an erroneous perception that their country is an Islamic country. Zawahiri challenges this perception. I will present before you some basic claims made by Zawahiri.

Zawahiri's viewpoint and arguments stay distinctive among those contending Islamic status of Pakistani state and its Constitution. For example, two of the participants of this debate have also criticized Pakistan's overall system of government in their own way. Dr Madni has described Pakistan's Islamization efforts as deficient and flawed which do not guarantee enforcement of Shariah in the country. Mr Zahid Siddique has argued that inclusion of Islamic provisions in the Constitution is irrelevant and futile because the fundamental structures of capitalism would not allow establishment of the Islamic system. Zawahiri does not talk about 'insufficient' guarantees in the Constitution for establishment of Islam or anti-Islam structures of capitalism but builds his claim on some clauses of Pakistan's Constitution which according to him are based on disbelief and make the political and legal systems of Pakistan systems of infidelity.

He asserts that assigning the status of law to anything that is against Shariah is legally an act of disbelief. Secondly, he argues that Pakistan's Constitution and democratic system give people, or their representatives, the right to legislate which is renunciation of 'Oneness of God's Sovereignty'. He dispels the notion that Pakistan's Constitution upholds supremacy of Shariah on the ground that it is indeed the parliament that has the right to decide about and pass or reject an Islamic law. That implies authority of Shariah is subject to parliament and the 'will' of the people.

Zawahiri highlights a clause in Pakistan's Constitution that says that parliament can annul any law with a two-third majority. The clause, Zawahiri argues, gives Pakistan's parliament the absolute authority to pass and reject any law without any condition of upholding supremacy of Shariah; if it includes a provision of Islamic law into the Constitution today, it can annul it with two-third majority tomorrow.

Zawahiri also contends the indemnity provided in the Constitution to president and some other offices and institutions on the basis of Shariah and declares it illegal and unjustified as Islam holds all

⁵⁴ The complete article is given at end of the book.

people equally accountable before law irrespective of their status and position. He also declares president's power to grant pardon, or suspend/commute death sentence passed by any court against Shariah, or Islamic law. Similarly, he argues that being a Muslim is not mentioned in the qualifications of a person to be appointed as a judge (*qazi*) in any court of law except the Federal Shariat Court, which according to him is against Shariah. Zawahiri also terms absence of the legal condition for the head of the state to be male as un-Islamic.

Zawahiri has raised a few technical points as well. For example, he asserts that it is Pakistan's law, and not Shariah, that has authority to determine which act or practice is crime and which is not. That means that if a person is involved in an act which is a punishable crime according to Shariah, he will not be held accountable if Pakistan's law does not recognize that particular act as a crime. Zawahiri sees that as supremacy of Pakistan's law over Shariah. Similarly, Zawahiri asserts that the promise provided in Pakistan's Constitution that usury will be eradicated is as unreal as it is to declare a person Muslim after he promises to embrace Islam.

Besides discussing the Constitution, Zawahiri has also presented his viewpoint on the legal status as per Shariah of Pakistan's rulers that is largely based on the concept of *al-wala' wa'l-bara'* (love and enmity for the sake of God). He brands Pakistan's ruling elite as apostate and disbeliever due to their support for what he calls the US-led crusade against Muslims. He also criticizes Pakistan's religious circles for holding the general opinion that Pakistan's Constitution and system of government are fine and problems lie only with the rulers. Zawahiri contends that a mere change of rulers would not help unless Pakistan's Constitution and system of government are replaced by Islamic system, which he says is possible only through jihad.

My criticism of Zawahiri's arguments is mainly based on a distinctive principle laid down in Shariah that emphasizes proper classification of wrong and deviant social actions and application of legal rulings, or Islamic commandments, to them accordingly. Adhering to this principle, jurists have described matters of [disbeliever or transgressing] rulers and rebels separately. They have opined that people or religious scholars should not declare rulers disbeliever on the basis of their wrong actions and policies if they still associate themselves with Islam. Similarly, jurists have asserted that those who revolt against a just and righteous Islamic state on the basis of an argument or interpretation they hold should not be declared disbeliever. Instead the government should engage them in dialogue and try to

Third Debate

correct their beliefs and use force as a last resort that should also be limited and meant to obliterate their strength.

The people in Pakistan rarely adhere to this principle of classifying and balancing things. We have developed a habit of looking at things from extreme positions. We first declare our opponents and people with different opinion disbeliever and then describe our point of view. Same is true for both the rulers and rebels, who declare, or at least deem each other disbelievers in the first instance. Besides this principle, I have used other relevant principles of Shariah and Islamic jurisprudence to critically review Zawahiri's book.

Khurshid Ahmad Nadeem

Without repeating what has already been said, I will put before you a few questions which I think are important to review to objectively further this academic debate. Otherwise reaching at a conclusion would be difficult because multiple opinions exist on each and every legal question. Neither do the jurists have an agreement on all matters nor can we eliminate this difference of opinion. Therefore, the real challenge before us is not to ascertain which legal opinion is right and which wrong but to determine which is more relevant and acceptable at the level of the state and society in the prevailing circumstances in Pakistan.

My first question is what is the cause for (*illat*) establishing the collective order or organization of Muslims (*nazm-e-ijtemai*)? This fundamental question has not been discussed here. It was, however, generally discussed that probably establishment of the religion (*Iqamat-e-Deen*) is the cause. I think the real cause for establishing the collective order is to create a peaceful society; enforcement of Shariah however is also among its responsibilities. Similarly, what is the cause for establishment of what we call *Al-Jamaat* (organization/group)? No doubt collective order undertakes enforcement of Shariah and the commandments of Allah, but my question is: what is cause for establishing the collective order, enforcement of Shariah or creation of a peaceful society?

Secondly, are the terms disbeliever (*kafir*) and non-Muslim synonymous? In other words, when we declare a Muslim a disbeliever, do we decide about his disbelief or his being out of the creed of Islam? All of us know that belief is a matter of heart. When we cannot access the hearts of the people, how can we judge their beliefs and declare them disbelievers? The term non-Muslim is used for a person who is not Muslim and clearly lies outside the creed of Islam. One related question is that if we say that disbeliever and non-Muslim are two

distinct terms with distinct meaning then will the same commandments apply to both?

Thirdly, who is authorized to issue a legal ruling declaring some individual or group out of the creed of Islam; individuals, a body of religious scholars or the collective order of Muslims (government)? If we agree to assign this authority to a body of religious scholars then who will constitute it? In case we agree that the state will constitute this body, we are giving this authority to the collective order. If we agree that different boards of religious scholars have the authority instead of the state, how will we manage and control the consequent process of formation of such boards and issuance of religious decrees by them? We were just discussing the *fatwa* (religious decree) that was issued to declare Shias disbelievers. Some very credible and authentic religious scholars had issued it and hundreds of other religious scholars had signed and validated it. A renowned religious scholar Maulana Manzoor Naumani had prepared this *fatwa* with the support of another leading religious scholar, Maulana Ali Mian. What is the legal status of the forum of religious scholars that had issued it? Can we term it a representative forum of all religious scholars of Pakistan? What about those who differ with this *fatwa* and those who had issued it. Giving religious scholars the right to issue such decrees means starting an unending debate on who is a Muslim and who is not.

Fourthly, another major issue in our debate on *takfeer* is related to the extent of our acceptance of the right of different schools of religious thought to interpret Islamic precepts and divine rulings. For example, belief in Oneness of God (*tawheed*) is the first and foremost pillar of Islam. Some Islamic schools of thought think that many practices of the Barelvi school of thought are against the concept of Oneness of God as described in the Quran and the Sunnah. But no one except a minority group declares Barelvis disbelievers. Similarly, the majority opinion does not declare Shias as disbelievers. Nothing in Islam is more sensitive than the faith in Oneness of God. But if we accept Barelvis' right to interpret it differently and do not declare them disbelievers or kill them on that basis why can people's right to interpret not be accepted in other less sensitive matters? Therefore, it is important to ascertain the limits of interpretation and also the extent of its application.

Finally, what about the consequent social behavior or attitude of people towards those who are declared disbelievers by an individual or a group of religious scholars? Does our opinion about a person or his belief exterminate his right to live as well? Can he no more reside in Islamic society? Another related question is that if we declare a group disbeliever and that group claims that it is not disbeliever but Muslim,

Third Debate

then who will decide the matter and issue a final judgment?

These were a few questions that I thought were important to share with you. The subject of our debate is Pakistan's Constitution and system of government, and the legal status of armed revolt against them. How would we define the legal status of a parliament and its interpretation of Islam that is constituted on the basis of a social contract among Muslims, which undertakes not to challenge God's sovereignty? Allama Muhammad Iqbal deemed parliament synonym with *Ijma* (consensus among Islamic jurists in a particular age on a question of law) in contemporary times. If Muslims have given their parliament the right to interpret Islam then the parliament's interpretations (they can vary with time) and the laws it makes cannot be termed un-Islamic. Those who defy this constitution or revolt against the state will be considered rebels and dealt with according to law. Article 6 of Pakistan's Constitution deals with those who revolt or do *khurooj* against the state. That means that in Pakistan collective order (parliament or Majlis-e-Shura of Muslims) is authorized to declare who is a disbeliever and who is resorting to *khurooj*.

According to Syed Abul A'la Maududi, founder of Jamaat-e-Islamic, *Deen*, or the religion means the 'state'. He has narrated this particular interpretation in his book titled *Quran Ki Char Bunyadi Istilahain* (Four Basic Quranic Terms).⁵⁵ In perspective of Maulana Maududi's interpretation the whole debate of rebellion and *khurooj* should revolve around the state. We cannot decide about the wrong and right and would continue to hold different opinions like our predecessors. What we can do is to strive to resolve the issues of *takfeer* and *khurooj* at the collective or state level.

Dr Khalid Masood

Mr Khurshid Nadeem has raised some very fundamental and important questions. Let me add another to his questions: Are legal opinions of jurists and interpretations of the Quran and the Sunnah equal in status to the original precepts of the Quran and the Sunnah? I know one particular interpretation of Islamic precepts that declares democracy, and Pakistan's Constitution and parliament to be systems of disbelief. Should we consider such and other interpretations of some Quranic verses and *ahadith* final?

Let us start with Mr Nadeem's first question that seeks the cause for the collective order.

⁵⁵ In his book, Maulana Maududi has described *Ilah*, *Rabb*, *Deen* and *Ibadah* as four terms basic to the whole teaching of the Quran and discussed those at length.

Zahid Siddique Mughal

Mr Nadeem has argued that the primary purpose of the collective order of Muslims is to establish peace in society. Peace means to enforce a particular system of justice in a society. It defines rights and obligations. Peace is not a constant but a relative concept. For example, there is no concept of private property in Marxism because they deem it unjust while in liberalism the right to own private property is considered essential to establish peace. In Islam, peace simply means Shariah. The liberal concept of peace that every person is free to do whatever he wants to do has nothing to do with Islam.

Dr Khalid Masood

If we say that the primary purpose of the collective order is to enforce Shariah then we should first define Shariah.

Zahid Siddique Mughal

Shariah means the rights and obligations which are described in the Quran and the Sunnah and which have reached us in the form of consensus (*Ijma*) of the *ummah*.

Dr Khalid Masood

But who will ascertain and decide about them?

Zahid Siddique Mughal

Those who have religious scholarship to interpret Islam will decide.

Dr Hassan Madni

I think peace already existed when the Prophet (PBUH) started preaching Islam. The purpose of our lives is to observe obedience of God not only in prayers but in all kinds of collective affairs also. A man is not capable of preparing and implementing a model of peace without guidance from God. Therefore, we need Shariah to establish peace. Secondly, peace was achieved in the world in 1990 after the end of the Cold War. But the conflicting interests of countries led them to another war. Continuous clash of interests exists in this world. Muslims, who are bound to stick to obedience of God and to do justice, are the key to establishing peace through enforcement of Shariah. Peace existed in the era of the Companions. Muslims of Saudi Arabia have achieved peace

Third Debate

in their country. Peace was achieved in Afghanistan under the Taliban rule after 200 years of war.

Dr Khalid Masood

But my question is still there. Who will ascertain and decide about Shariah?

Dr Hassan Madni

Religious scholars cannot ascertain Shariah. It would be theocracy. Shariah is sacred. Humans including religious scholars are not sacred. Sovereignty to rule lies with God alone. The humans who rule as His vicegerents should have the required capacity and ability. This is the responsibility of our religious scholars to develop this capacity, just as the Saudi scholars have done.

Dr Khalid Masood

The Saudis evolved and adopted a model. That model does not exist, or is not applicable, in other regions including Afghanistan and Pakistan. How would we resolve this issue?

Dr Hassan Madni

Our religious scholars need to realize their responsibility to lead the nation and prepare and groom themselves in all fields of Shariah, such as justice, and the political, economic and social systems of Islam. It is also the responsibility of the state to prepare and train religious scholars along these lines.

Dr Khalid Masood

It adds to my frustration that the religious scholars who have been failed so far to do so, will evolve consensus on Shariah and prepare to implement it in the future.

Maulana Ammar Khan Nasir

To define a value is purely a philosophical debate. I will just provide a hint. Early debates on speculative theology (*Ilm Al-Kalam*) contained a discussion on ‘inbuilt good and repugnance’ (*husn-o-qubh*) of human behavior. The Mu’tazilahs’ claims in this discussion were rejected by the theologians of the Ahl-e-Sunnat. Shah Wali Ullah has

discussed at length the constitution of Shariah and the ways to understand it, which is quite different from the traditional debates of speculative theology. Some argue he has probably furthered the thought of the Mu'tazilah regarding that. I believe that we should consult such debates to better understand how social values are defined in Islam.

The argument that peace is an abstract concept or every human being has his own idea of peace is a bit exaggerated. I think the basic idea of peace is perceived by humans in an almost similar way. The difference however could be on how to achieve it. Every human wants security of life and property. All political systems including that of Islam provide security to people's lives and properties and punish those who commit crimes and breach this security. However, there are different definitions and punishments for crimes.

Dr Rasheed Ahmad

All objectives of Shariah-such as protection of the religion, protection of progeny, protection of life, protection of mind, and protection of a clear lineage-are all meant to ensure peace in society.

Mufti Muhammad Zahid

In order to ascertain the purpose of Muslims' collective order we will have to thoroughly study the Islamic concept of state, which is not possible in such a short time. Pakistan's liberal and religious circles had unanimously passed the Objectives Resolutions in 1949. We cannot declare Pakistan's Constitution a system of disbelief if its structure is built on the foundation of the Objectives Resolution. We can however disagree with the religious scholars who were part of the preparation and approval of the Objectives Resolution but cannot declare their opinion simply disbelief. We need to be careful. As Maulana Ammar has just said, a surgeon (Ayman Al-Zawahiri) has declared that Pakistan's Constitution, which was agreed upon by Pakistan's leading and credible religious scholars, is based on disbelief. On the one hand, we say that the religious scholars should realize their responsibility to pull the *ummah* out of the prevailing mess of challenges, and on the other hand, we have accepted an Egyptian surgeon and a Saudi engineer as the authorities to interpret and implement jihad. Who listens to religious scholars? Loud and rhetorical slogans of jihad attract more people than sober arguments.

Third Debate

Dr Khalid Masood

A great feature of religious scholars' 22 points was that they acknowledged a modern political system and its different elements including the state, parliament, the constitution and legislation. Al-Qaeda and other groups which believe in offensive jihad do not recognize the concepts of 'nation-state' and 'parliament'. They nonetheless believe that enforcement of Shariah will transform Pakistan into *darul Islam* or an Islamic state, an argument that has apparently been deduced from Ibn Taymiyya's thought. If that is a probable case then such groups and organizations should start preparing the required human resource to run the affairs of a foreseen Islamic state. I do not think that our madrassas are capable of producing *muftis*,⁵⁶ *qazis* (plural of *qazi*/judge), legislators and other experts who can run diverse state affairs. There is no such preparedness.

Mufti Muhammad Zahid

I think such preparedness requires a certain environment. There are a few people in Pakistan who have scholarship in Islam's overall political and socioeconomic systems but religious scholars have generally confused views on enforcement of the Islamic system.

Khurshid Ahmad Nadeem

My question about the purpose of establishing the collective order in terms of clear and absolute divine rulings (*nusus*) still remains unanswered. Some friends have argued that peace can be achieved only through enforcement of Shariah or establishment of the religion and that Shariah is the ultimate cause for establishing social order.

Zahid Siddique Mughal

Shariah is another name for peace. No definition of peace is possible other than Shariah.

Dr Hassan Madni

Establishment of Allah's creed (*Deen*) is as obligatory upon all of us as establishing our prayers. Islam is a perfect and complete code of life. If peace was the only objective of establishing the collective

⁵⁶ Islamic scholars who have the required scholarship and authority to issue a legal opinion or judgment.

order then why had the Prophet (PBUH) started his struggle when there was already peace in Makkah?

Dr Khalid Masood

To say that there was peace in Makkah when the Prophet (PBUH) started preaching Islam is akin to denying history. The whole Arabian Peninsula was mired in wars in those times. The Prophet (PBUH) himself had participated in many wars. The thirteen years of the Prophet's life (PBUH) in Makkah were full of injustices and tyrannies against him and his Companions. Peace did not exist.

Khurshid Ahmad Nadeem

We have established a very strong case of *takfeer* against Pakistan on the basis of its alliance with what are called false deities represented by the US. Can we develop a similar claim against Saudi Arabia which is also a key ally of the US? What is the difference between rulers of Pakistan and Saudi Arabia? If there is no difference then why do we apply different rulings or judgments on two similar allies of false deities? Dr Madni has just said that Saudi rulers' personal transgressions and sins are hardly discussed because they have successfully managed to prioritize Shariah in the affairs of the collective order, or state. But what about the foreign policy of Saudi Arabia which is completely under the influence of false deities?

Dr Hassan Madni

We do not defend Saudi Arabia but that is just an expression of ideological association with Muslim countries where Shariah is enforced. My observation is that during and after the Gulf War, Saudi Arabia kept the US forces confined to their bases in the country and then gradually reduced their numbers to a minimum level. Until 2003, most US troops in Saudi Arabia had shifted to their new bases in Qatar. Eventually, Al-Qaeda's claim that Muslim rulers supporting the US are disbeliever proved wrong in the case of Saudi Arabia but proved right in the case of Pakistan; the Saudis managed to reduce the role and presence of US troops in Saudi Arabia while Pakistan continues to provide multilevel support to US forces in Afghanistan. We do not say that Saudi Arabia did not support false deities but it managed its political mistakes very effectively. It did not let its friendship with the US become a source of greater turmoil and got rid of it at the earliest. But Pakistan still faces destruction due to a sustained alliance with the

Third Debate

US. That is why Al-Qaeda and Taliban's case against Pakistan has proved right.

Secondly, Saudi Arabia is far ahead of Pakistan in establishment of Islamic system, or what God has revealed unto His Messenger. There could be flaws in the political system of Saudi Arabia but there is peace and justice. Judges in Saudi Arabia are madrassa graduates; from madrassa they mean Shariah faculty of Madina University. Their constitution is based on the Quran and the Sunnah.

Dr Khalid Masood

But Saudi Arabia is still among the closest allies of the US. Pakistan is not.

Dr Hassan Madni

No doubt the US has framed the political and administrative systems of modern Saudi Arabia and has influenced the Saudi way of life as well. But as I said earlier, the Saudi role in international politics could be wrong but when you land in Saudi Arabia you find that Islam is established in every part of the country. The Saudi rulers have ensured their country's security and defense through alliances and agreements with the most powerful country in the world. At the same time, they have established Islam in their country.

Khurshid Ahmad Nadeem

I wonder if we can analyze Pakistan's case in the same sympathetic perspective that we use for Saudi Arabia.

Dr Hassan Madni

That depends on the outcome. If we see in Pakistan the kind of outcome in terms of implementation of Shariah that is visible in Saudi Arabia we will definitely consider Pakistan's case sympathetically. A person lives in Saudi Arabia for 10 years and develops the firm habit of offering his prayers. Their madrassas and universities teach the same curriculum. I have never travelled to Afghanistan but we can have with these countries association other than Islam.

Mufti Muhammad Zahid

I think two more values, justice and freedom, should be added to peace as the main purposes of establishing the collective order in a

Muslim society. Peace without justice is meaningless. Any powerful person, even a dacoit, can achieve peace but that will be coercive. Similarly, freedom though it is deemed a Western term is purely an Islamic concept and is included among desirables of the collective order of Muslims. Therefore, I believe that the peace which is achieved with justice and freedom is credible and real. There might be peace in Saudi Arabia but not freedom. In Pakistan nonetheless we are free to criticize our rulers' policies. I do not think the Saudi clergy was ever free to criticize policies of their rulers or presence of US troops in their country. It is also not true that Al-Qaeda's claims have proved right in case of Pakistan. We should keep in mind the freedom of speech and of propagation of its ideology Al-Qaeda enjoyed in Pakistan compared to Saudi Arabia. Had Pakistani government stopped Al-Qaeda and its associates from expressing their views their case would also have been wrong for Pakistan. In short, the kind of peace which does not entail justice and freedom cannot be included in the objectives of a state.

Dr Qibla Ayaz

I think we are not doing justice with some aspects of our debate, which are extensively academic and critical.

The questions Mr Khurshid Nadeem has raised require thorough research and investigation. We cannot respond to them effectively without having proper preparation and plenty of time. Religious scholars and jurists have continuously and extensively discussed the questions highlighted by Mr Nadeem and other similar issues. For example, are religious circles meant to establish the religion or simply to keep people frightened and alarmed? Is establishing an Islamic society sufficient or should the political system there also be based on Shariah? Shariah can be enforced in a Muslim majority country but what is the desired role of religious scholars in countries where Muslims are a minority.

Secondly, it is not fair to declare the government of Saudi Arabia and the era of Taliban rule in Afghanistan as representative of Islamic system of government. That is largely debatable. After the fall of the Taliban regime in Afghanistan the barbers had earned a lot of money by shaving the bearded people. That means that Taliban's method of enforcing Islam was not in line with the spirit of Islam.

If Islam means mere enforcement of the Islamic justice system (*nizam-e-qaza*) then it existed in Afghanistan much before the Taliban regime. In 1757, Ahmad Shah Abdali had established Islamic system of justice in Afghanistan. Zahir Shah, who ruled Afghanistan from 1933 to 1973, also liked to be called as *Amirul Momineen* (leader of the

Third Debate

faithful) and had established the Islamic system of justice wherein people's matters were decided according to Hanafi Islam.

Thirdly, we should learn from and follow the Islamic discourse of contemporary Turkey. Many Muslim Islamic groups and parties including Egypt's Ikhwanul Muslimoon now look towards Turkey. The Taliban no doubt can declare that Turkey's political system is also based on disbelief.

Zahid Siddique Mughal

I want to add something to our discussion on peace as an objective of the collective order of Muslims. Allah has clearly described in the following verse of the Quran what He expects from those charged with authority: "Those who, if We give them power in the land, establish worship and pay the poor due and enjoin kindness and forbid iniquity..." (22:41). If peace was some ultra-Shariah value, the Prophet (PBUH) would have accepted offers of Arab chieftains and quit preaching Islam because that could ensure peace. Therefore, when we say that 'peace is [in] Islam' that means there is no framework other than Islam to define peace. The Islamic concept of peace is not limited to protection of life and property only but it also guarantees that Muslims are protected or kept away from the sins and transgressions of the limits set by God.

Dr Hassan Madni

Do those targeted by drones flying from Pakistan's Shamsi Airbase not have the right to protest against the government? We do not say that victims of these attacks should launch armed struggle and suicide attacks against the government but at least they should be provided moral support.

Dr Khalid Masood

I do not agree with this assumption that the Pakistani people have not protested against drone attacks. Not only have the religious but liberal circles of Pakistan also condemned such attacks and the resulting casualties of innocent people. Our rulers are equally responsible because without their approval it would not have been possible for the US to launch drone attacks inside Pakistan.

On the other hand, those who become victims of suicide attacks should also be sympathized with. It is our responsibility to declare

suicide attacks *haraam* (forbidden by the faith) and those carrying out such attacks enemies of Islam.

Dr Hassan Madni

Thanks God there has been peace in Pakistan for the last few weeks. Terrorism in Pakistan is an artificial phenomenon, created as a response to drone attacks. I think Pakistan faces well thought-out and planned terrorist activities carried out by foreign agents. The Pakistani people are not involved in such activities. The Taliban existed in Pakistan's border areas before 2000. But there was no bloodletting in the name of *takfeer* or other such concepts. Stop the action, the reaction will automatically subside.

Mufti Muhammad Zahid

I think it is more important to correct ourselves and our practices. If we declare suicide attacks as a reaction to drone strikes, one may ask why the shrine of Hazrat Ali Hajveri in Lahore was attacked by suicide bombers. Did drones used to fly from that shrine? These are mere justifications. We need to realize that extremist elements are present among us and we need to reform them. There is no harm in telling the US that drone attacks are against our sovereignty and interest but that should not evade us from reforming ourselves. This is the foremost responsibility of a religious scholar to identify what bad things and un-Islamic ideologies are being presented in the name of Islam and to reveal their falsehood before the people.

Takfeer and Khurooj: Some Legal Considerations⁵⁷

Muhammad Mushtaq Ahmad

The debate of *khurooj* and *takfeer* is interlinked with some other legal debates in Islamic jurisprudence and presents diverse viewpoints. Some deem rulers' sayings and actions enough evidence to declare them disbeliever and hence justify *khurooj* against them. Others say that Pakistan's Constitution and political system are based on disbelief and apostasy. They argue that 'patches' of Islamic injunctions cannot make Pakistan's Constitution Islamic. Other main perspectives on the debate of *khurooj* and *takfeer* are the religious obligation of 'enjoining acknowledged virtues and forbidding vice' (*amr bil ma'aruf wa-nahi anil munkir*), the question of Pakistan being *darul harb/ darul Islam*, the issues of God's sovereignty and people's right to make laws, and the status of an Islamic/Muslim state which has agreed to conform to international laws.

In order to keep my discussion lucid and relevant I have divided it into five parts:⁵⁸

1. Part one describes what are the obligations of *amr bil ma'aruf wa-nahi anil munkir* and who is legally authorized to use force for enjoining people to do good and prohibiting them from doing evils or bad deeds.
2. Part two explains the terms of rebellion and *khurooj* and describes the legal difference between rebels and other law breakers.
3. Part three lists the basic principles of Islamic law that should be considered while declaring fellow Muslims disbelievers (*takfeer*).
4. Part four discusses Islamic or un-Islamic status of a state with emphasis on the nature of the state, the concept of *dar*,⁵⁹ the sovereignty to rule, the link between man-made and divine laws, or Shariah, the right to legislation, and international laws.
5. Part five analyses objections to Pakistan's Constitution with reference to some clauses of the Constitution and important legal precedents.

⁵⁷ This is an abridged version of Muhammad Mushtaq Ahmad's paper on the subject of *takfeer* and *khurooj*, published in monthly *Al-Sharia* (Urdu), Gujranwala, March 2012. The author is Assistant Professor of Law at International Islamic University, Islamabad.

⁵⁸ A detailed discussion on only the first three parts has been provided here because it was found more relevant to the debate on *takfeer* and *khurooj*.

⁵⁹ *Darul harb* and *darul Islam*.

Authority of Enjoining Acknowledged Virtues and Forbidding Vice

1. The commandment of ‘enjoining acknowledged virtues and forbidding vice’ or *amr bil ma’aroof wa-nahi anil munkir* is an individual as well as collective responsibility of Muslims. The latter is to be fulfilled by the collective order or government of Muslims.
2. On the individual level, every Muslim is bound to invite people in his community/circle to virtues and forbid them from vice. In doing so, he should show courage and patience if he has to bear some difficulties and should not transgress the boundaries set by Allah. If the people are unwilling to accept his righteous advice, he is not authorized to force them for that.
3. When a Muslim beholds people doing evil deeds it becomes necessary for him to forbid them. How? The following *hadith* best answers the question: “Whoever among you sees an evil action let him change it with his hand; if he cannot, then with his tongue; if he cannot, then with his heart [by hating it and considering it wrong], and that is the weakest [form] of faith.”
4. While enjoining virtue and forbidding vice one should keep in mind the principles of *hikmat* (wisdom) and *moezatil hasana* (fair exhortation) ordained in the Quran.⁶⁰ For example, if there is risk of loss of life one should not try to forbid a tyrant and oppressive ruler or person from their bad deeds.
5. The use of force to forbid people from vice requires legal authority and a person may only stop those people over who he has authority.
6. A person having religious scholarship can declare an act a vice and can influence public opinion regarding that but cannot stop people from committing that particular act by virtue of force if he does not have legal authority to do so.
7. Problems arise when the people who do not have the legal authority forcibly start stopping people from what they perceive as vice. The extreme form of this problem is to try to remove a ruler for his illegal acts by virtue of force, or *khurooj*.
8. Imam Abu Hanifa believed that *khurooj* against oppressive and transgressing rulers is justified or legally permitted provided those resorting to *khurooj* can provide an alternative righteous

⁶⁰ The reference is to a verse from the Holy Quran: “Call unto the way of thy Lord with wisdom and fair exhortation, and reason with them in the better way...” (16: 125)

leadership and that the consequent loss of *khurooj* is less than that expected to be inflicted on Muslims by continuity of the transgressing rulers.

Meaning of *Khurooj*

1. Three terms of Islamic jurisprudence are very relevant to this debate: *khurooj*, *baghawat* and *haraba*. The literal meaning of *khurooj* is to go out. The term was used to describe the way of those who went out of obedience of Hazrat Ali, the fourth righteous caliph of Islam, and were described as *Khariji* (plural *Khawarij*/Kharijites). Later the term was also used for those Muslims who revolted against some Umayyad and Abbasid rulers in the leadership of members of the family of the Prophet (PBUH) or *Ahl-e-Bait*; that means the term of *khurooj* was used to describe armed struggle of just and pious Muslims against tyrant rulers. The literal meaning of *baghawat* is to rebel, do excesses or to spread corruption and that of *haraba* is armed robbery. The term *baghi* was also used to describe armed struggle of rebels (*baghawat*) against just rulers.
2. As multiple opinions exist in support of and against any armed struggle, there are also different and generally conflicting opinions on the status of rulers being just or tyrant and also about the validity or otherwise of *khurooj* against them. An armed struggle may be called a rebellion (*baghawat*) by some and *khurooj* by others. This is also true that rebels always deem themselves true and rulers always declare the rebels corrupt. The jurists however have paid less attention to the status (just or tyrant) of an armed struggle and focused more on whether it was justified to change the government/rulers or not.
3. As I said earlier, jurists have asserted that armed struggle against rulers is only justified if the rebels are in the form of a strong group that can fight and succeed against the rulers. The jurists have however differentiated such struggle from the fight of a group of robbers against the rulers.
4. There can be similarities between robbers and rebels in their structures and strength but the difference lies in their respective objectives. The robbers are merely after financial and material benefits whereas the rebels want to replace the rulers and system of government. Secondly, jurists have argued that those resorting to *khurooj* should carry some argument from Islamic precepts to justify their struggle. The robbers do not need such arguments.

5. If an individual or a group declares the government illegal and advocates its toppling but does not have the strength to do so, it will be declared a rebel. Similarly, if a group believes and declares that the government is illegal and tyrant but does not fight against it despite having the required strength, it will be termed a group of robbers and not of rebels. Therefore, the commandments and rulings of *khurooj* will apply only to a group that has the required strength and willingness to fight against the government as well as some argument to support that fight.
6. The robbers and dacoits are dealt with under criminal laws including *hudood* laws whereas laws of war apply to rebels. Jurists have also described a particular sentence that a ruler can award to rebels which is known as *siyasa*. This sentence, however, should be awarded in accordance with the general rules and regulations of Islamic law.

The Question of Individual-level *Takfeer*

We find in Islamic history that most jurists established the validity or non-validity of *khurooj* on the basis of rulers' disbelief and transgression; that implies *takfeer* of rulers usually led to justification of *khurooj* against them. Even at present those who consider *khurooj* justified link their argument to disbelief and transgression of rulers. Therefore, it is pertinent to discuss the principles of Islamic law which are related to the subject of *takfeer*, or declaring fellow Muslims as disbelievers.

1. As the legal rulings of apostasy are applied in cases of *takfeer* which necessitate the punishments described in *hudood* laws, there are only two ways to prove the accusation of disbelief: first, a confession of crime by the accused before a court of law, and second, two wise, adult and credible witnesses against the accused according to proper legal course described in Islamic law.
2. The sentence for apostasy is annulled if the accused has doubt in his mind about the legal status of words/action on whose basis he is being declared apostate or disbeliever. Sometimes doubt exists in reality in the mind of the accused and at other times the court of law assumes presence of such a doubt. In both cases, the accused will not be legally declared apostate/disbeliever or awarded the sentence for apostasy.
3. An individual cannot be declared apostate and awarded punishment by virtue of a word or act whose status as being a word/act of disbelief is contested among scholars and jurists.

Takfeer and Khurooj: Some Legal Considerations

4. Similarly, if a word/action has more than one interpretation the jurists have asserted to consider the interpretation, if there is any, which avoids declaring that particular word/act as disbelief.
5. The accused will be asked to interpret/define his word/action except when it is a word/act of clear and open disbelief (*kufir buwah*).
6. If the accused denies disbelief, his denial will be accepted and preferred over witnesses' statements and his denial of disbelief will be considered as his repentance.

Is Pakistan's Constitution Based on Disbelief?
A Critical Review of Ayman Al-Zawahiri's Book
Al-Subh wa' Al-Qindil

Maulana Muhammad Ammar Khan Nasir

After his study of Pakistan's Constitution, Ayman Al-Zawahiri has reached the following conclusion using all his 'insight' into political affairs of Islam: "Pakistan is an un-Islamic country whose Constitution is also un-Islamic and has some fundamental and dangerous conflicts with Islamic Shariah. It has revealed upon me that Pakistan's Constitution is a product of the same Western mindset that believes in people's right to rule and make laws and no doubt this ideology is clearly conflicting with the faith ordained by Islam."⁶¹

In order to properly understand Zawahiri's argument and ascertain its academic and legal value it seems pertinent to not only review his ideological background but also the analogy of the events in which his ideology evolved. Ayman Al-Zawahiri belongs to Egypt which is the place of birth of a well known revolutionary religious movement called Ikhwanul Muslimoon. Oppressive policies of Egyptian rulers against Islamic forces created an immense reaction in the latter in the form of an ideology of hate against the former. This ideology justified itself in terms of some concepts of Islamic law. The proponents of this ideology believe that the modern democratic system of government, which is in place in several Muslim countries, is based on disbelief and negates supremacy of Shariah. Therefore, it is the religious obligation of Muslims to take up arms and fight against the rulers to change such disbeliever regimes in their respective countries. Ayman Al-Zawahiri also advocates this radical political theory. He remained associated with an extremist armed group called Al-Jihad, which was a breakaway faction of Ikhwanul Muslimoon. At the time of the Soviet-Afghan war in the 1980s he shifted to this region and Afghanistan was the centre of his anti-American activities during the Taliban rule. He is among the top leaders of Al-Qaeda and not only deems the 9/11 incidents and other such attacks legally justified but has also accepted responsibility for many of these. After the 9/11 incidents, when the US sent its troops to Afghanistan, Pakistan's then president Pervez Musharraf decided to support the US-led war on terror. This

⁶¹ Maulana Abdal Samad, trans., *Sapeeda e Sehar aur Timtimata Charagh* (Urdu translation of Sheikh Ayman Al-Zawahiri's Arabic-language book *Al-Subh wa' Al-Qindil*), (Idara e Hitteen, 2009), 16-17, <http://www.box.net/shared/1llz6ogyap> (accessed October 4, 2012).

prompted Al-Qaeda and its associated jihadi groups to target Pakistan's military and security forces. The Pakistani government was eventually forced to launch military operations in its tribal areas where the militants were sheltered.

Pakistan's religious circles have generally argued against the government's support to the US in Afghanistan and its military operations in the tribal areas. They have been advising the government to hold dialogue with the tribes in FATA to resolve the conflict. Although the religious circles have been strongly criticizing the government for its internal and external policies, but they have not supported rebellion or armed struggle against Pakistan and its institutions on the basis of these policies.

Zawahiri's book is an effort to influence the standpoint of the Pakistani people and scholars in favor of the rebels who are fighting against the Pakistani government. As it is apparent from the book, Zawahiri's objective in writing it is not to present an alternative strategy to enforce Shariah or to convince the Pakistani people to adopt options other than democracy; he has simply tried to gather public support for the tribal militants fighting against the state. He writes:⁶²

Therefore, even if you do not agree with us fully, you can at least express the courage of your faith to acknowledge our legal viewpoint as true and justified and to refuse to support those tyrant and transgressing people (Pakistani rulers) who stand against us as allies of enemies of the religion... It is an obligation upon you by virtue of your faith to support the tribal mujahideen. These mujahideen have not only remained stuck to their guns in their jihad against America and global crusaders but have also been facing tyrannies of the Pakistani army, a key partner of this crusader alliance. The minimum religious obligation in these circumstances is at least not to oppose those who have resorted to *khurooj*, or armed revolt, against pro-Americana and anti-Islam governments.

Therefore, a realist review of Zawahiri's objective in writing this book reveals that he wants to defend himself and his group (Al-Qaeda) instead of presenting some academic debate to rationally guide the Pakistani people and religious scholars. Although by initiating a legal and technical debate on Pakistan's Constitution, comparison of Islam and democracy, and flaws in Pakistan's system of government, Zawahiri has tried to give an apparent impression that he wants to 'correct' the struggle of people and religious circles for enforcement of

⁶² Maulana Abdal Samad, trans., *Sapeeda e Sehar aur Timtimata Charagh* (Urdu translation of Sheikh Ayman Al-Zawahiri's Arabic-language book *Al-Subh wa' Al-Qindil*), 183.

Shariah but the central point, or motive of his entire debate is indeed to influence the people and clergy in favor of tribal militants' rebellion, who have sheltered Al-Qaeda. I think this particular motive is the key to assess the academic value of Zawahiri's book.

Anyhow, let us examine his argument, or the legal claim that he has relied upon to paint the Pakistani state and its Constitution as un-Islamic.

Zawahiri criticizes what he describes as a general opinion held by ideologues and workers of Islamic organizations and parties that 'Pakistan's Constitution is based on Islamic foundation and provides complete freedom to the Muslim masses to elect their representatives and hold them accountable in the light of commandments ordained in Islamic law'.⁶³ Zawahiri further describes that the leaders and workers of Islamic parties in Pakistan believe that 'the problem does not lie with the Constitution but with the country's corrupt rulers who continue to come to power by virtue of their might or other tactics and do not abide by and implement what is written in the Constitution'.⁶⁴

Zawahiri rejects this assertion and presents his viewpoint as follows:⁶⁵

My study of Pakistan's Constitution revealed to me that it is written with such craftiness and deceit that on the one hand it makes promises of enforcement of Shariah to appease the people and on the other hand has some structural impediments that make the fulfillment of these promises almost impossible. I am astonished at how Pakistan's leading and learned Islamic scholars became victim of this deception and supported and commended this Constitution that led to its approval. (No doubt it was a new Constitution whose practical implications were not yet clear to Islamic scholars therefore there was probability of their misperceiving it)... But I am extremely amazed by the behavior of our learned friends who have not been able so far to come out of 'Islamic illusion' of Pakistan's Constitution and continue to harp on the same string of possibility of enforcement of Shariah based on false constitutional and political promises.

Before reviewing the arguments that Zawahiri's has used in an attempt to show that Pakistan's Constitution is based on disbelief and apostasy I would like to describe two main principles of *takfeer*, agreed upon by all Islamic legal schools. According to the first principle, if a person says a word that apparently seems a word of disbelief but carries a probability of multiple interpretations, we will judge his words by the

⁶³ Ibid., 15, 16.

⁶⁴ Ibid.

⁶⁵ Ibid., 26.

probable interpretation that fails to declare him disbeliever until the accused himself explains his words. Ibn-e-Najam writes in *Al-Bahr Al-Raiq*: "If in a legal question there are many probabilities to validate *takfeer* and only one probability to avoid *takfeer*, it is mandatory for a *mufti* (Islamic scholar authorized to issue religious decree or *fatwa*) to deal with the [accused] Muslims with fair opinion and thought to prioritize the probability that disapproves *takfeer*."⁶⁶ Religious scholars and jurists argue that a word or action would be declared a word/action of disbelief only if Muslims do not feel any reluctance in declaring it disbelief with consensus. Taqiuddin Subki has quoted the following legal opinion of Baqilani in his *Fatawa Al-Subki*: "A word or opinion should not be declared disbelief until Muslims develop a consensus that such a word or opinion could be committed only by a disbeliever and until there is a valid and established argument to justify *takfeer*."⁶⁷

The second principle establishes that no one will be declared a disbeliever on one's rejection of a legal claim which is subject to multiple interpretations through inference or *Ijtihad*. It is essential in order to declare a person disbeliever that s/he renounces a clear, absolute legal ruling or commandment for whose understanding there is no need to resort to interpretation. That is why no credible and responsible religious scholar or *mufti* has ever declared that the family laws promulgated by former president Ayub Khan were based on disbelief, although many clauses of these laws were against the commandments of Shariah. But these laws related to secondary and not basic or fundamental questions of the religion.

These two principles are essential to be considered even in individual-level *takfeer*. But their application become more significant and relevant while ascertaining the legal status of the Pakistani state and its Constitution particularly when leading and credible religious scholars have contributed to formation of Pakistan's Constitution and have since then been categorically declaring it Islamic.

We will analyze Zawahiri's arguments in the light of these two principles of *takfeer*. Zawahiri has raised a point that Pakistan's Constitution gives its parliament the right to amend any of its clauses without putting some restriction on amendment to Islamic injunctions. That means that the parliament is not bound by constitution to acknowledge supremacy of Shariah or Islamic law in the process of legislation. This objection of Zawahiri is completely baseless if we review it in the light of the first principle of *takfeer* I just described. To put it simply, is the particular clause that gives parliament the right to

⁶⁶ Ibn-e-Najam, *Al-Bahr Al-Raiq*, 134-135.

⁶⁷ Taqiuddin Subki, *Fatawa Al-Subki*, 578.

amend the Constitution capable of only one interpretation which has been described by Zawahiri? If there is possibility of other interpretations then there might be one that could be used to avoid declaring Pakistan's Constitution to be based on disbelief. As far as I know, with the exception of Zawahiri no scholar, judge and legal expert has interpreted that particular clause in this way in the entire constitutional history of Pakistan. Secondly, this is a simple principle that a part of a document cannot be interpreted and explained separate from the overall theoretical and ideological framework and nature of the document and other related explanations given in it. Pakistan's Constitution clearly describes that the chosen representatives of an Islamic state have crafted this document with the aim to enable Muslims to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah. That means to be Muslim and acknowledge and abide by commandments of God and His Messenger is a fundamental premise laid down in Pakistan's Constitution. Zawahiri's literal and exclusive interpretation of a clause without understanding the overall character of the Constitution is against this premise and is not only imprudent and baseless but also provocative.

Besides that Zawahiri has identified the following seven provisions in Pakistan's Constitution which according to him are against Shariah:

1. The Constitution provides immunity to some government officials and institutions from prosecution or legal accountability;
2. It grants authority to the head of the state to grant pardon, or suspend/commute death sentence passed by any court against any crime;
3. There is no condition that a person to be appointed as a judge (*qazi*) should be just while being a Muslim is a condition only for a person to be appointed as a judge of the Federal Shariat Court;
4. The Constitution does not lay down the legal condition for the head of the state to be male;
5. It protects those people from punishment who had committed an act before it was legally declared a crime;
6. It prohibits the state from imposing punishment on people on two occasions for a single crime; and
7. The promise provided in the Constitution that usury will be eradicated was never fulfilled.

While analyzing these provisions Zawahiri has exposed the level of his constitutional and legal scholarship which in no way could be termed as reasonable. The most glaring example of his '*takfeeri*'

approach is how he has declared Article 38 of Pakistan's Constitution to be a provision based on disbelief. Article 38 says that the state will eliminate *riba* (interest) as early as possible for promotion of social and economic well-being of the people. An objective and pragmatist review of this provision suggests that it expresses an Islamic objective i.e. eradication of interest. As it is impossible to immediately eradicate interest from the entire economic system of Pakistan it seems the state has delayed this task until their circumstances become conducive for that. But Zawahiri's meticulous eye has searched 'disbelief' in this clause as well. He says that the promise of eradication of interest was never fulfilled and a mere 'promise' does not make the Constitution Islamic like a person cannot be declared Muslim after he promises to embrace Islam. If the promise is not fulfilled, fingers could be raised at the governments but how can the Constitution be declared a document based on disbelief due to one of its unfulfilled promises. Zawahiri's argument sounds like this that a person asks another to stop interest-based dealings, the latter refuses and the former becomes disbeliever.

If Zawahiri wants to say that the delayed and gradual eradication of interest is disbelief then this issue enters a sensitive legal debate. If he really believes that judicious and strategic use of the principle of gradual change (*tadreej*) to make individuals and societies abide by commandments of Shariah is an act of disbelief then he will have to answer why the Prophet (PBUH) had permitted a newly converted Muslim to initially offer two prayers a day?⁶⁸ Similarly when tribesmen of Banu Sakeef embraced Islam by giving the Prophet (PBUH) their *bai'ah* (oath of allegiance) why did the Prophet (PBUH) accept their condition that they will neither pay *zakat* nor fight jihad? The Prophet had said that they will start paying *zakat* and fighting jihad after they become true Muslims.⁶⁹

As I mentioned earlier, Zawahiri has a typical *takfeeri* mindset that is greatly tempted to search, rather create, reasons to declare other Muslims as disbelievers which manifests itself time and again in the book under review. Let us consider another example. Article 48 of Pakistan's Constitution restricts the president's accountability to anyone to matters for which he has discretionary powers as granted by the Constitution whereas in other matters he is bound to consult his cabinet or the prime minister. Despite this clearly provided explanation, Zawahiri deduces that 'this article provides full liberty and protection to president to do whatever he wants to do, no matter if his action

⁶⁸ See *Al-Ahad wal Mathani*; and *Asad Al-Ghaba*, 475-476.

⁶⁹ See *Sunan Abi Dawood*.

conforms to Shariah or not'.⁷⁰ He tries to support his deduced meaning by citing an example that 'if the president of Pakistan commands the army to attack tribes and crush them... or if he commands the army to hand over the arrested mujahideen to the US, he has the authority to issue all such orders... neither is he accountable to anyone for that'.⁷¹ Those who have a little understanding of Pakistan's political system and Constitution know that the kind of 'orders' Zawahiri has cited are held by the prime minister, who is the executive head, who is answerable to his cabinet and the people. Zawahiri has indeed tried to understand the constitution through some extra-constitutional and authoritarian decisions of former president Pervez Musharraf.

Similarly, Zawahiri argues that the constitutional protection provided to the president, the prime minister, governors, chief ministers and federal and provincial ministers in Article 248 of the constitution is contradictory to Shariah.⁷² But the mentioned article provides protection to the said offices from legal accountability, i.e., they shall not be answerable to any court, and that too 'for the exercise of powers and performance of functions of their respective offices or for any act done or purported to have been done in the exercise of those powers and performance of those functions'. That simply implies that the objective of this particular article is to facilitate the said offices to perform their functions effectively. It does not mean that they are above the law or have absolute protection from accountability. Association of disbelief to this 'constitutional protection' is purely an outcome of Zawahiri's extremist thought.

We cannot term the constitutional protection provided to the rulers as an act of disbelief in the light of Shariah. In the history of Islamic jurisprudence, we find a somewhat similar precedent of legal opinion that justifies provision of protection to the rulers. Imam Abu Hanifa believed in a certain legal context that the head of an Islamic state could not be prosecuted if he had committed a crime punishable under *hudood* laws such as *zina* (adultery) and theft, etc.⁷³

A premier ruler, who is at the top of rulers' hierarchy and is answerable to no one, will not be tried if he has committed any of the crimes punishable under *hudood* laws such as *zina*, theft, *qazaf*,⁷⁴ and drinking of alcohol, except *qisas* (retribution/retaliation)⁷⁵ and

⁷⁰ Maulana Abdal Samad, trans., *Sapeeda e Sehar aur Timtimata Charagh* (Urdu translation of Sheikh Ayman Al-Zawahiri's Arabic-language book *Al-Subh wa' Al-Qindi*), 89.

⁷¹ Ibid., 88.

⁷² Ibid., 91.

⁷³ Ibn Al-Hummam, *Fath Al-Qadeer*, 277.

embezzlement. *Hudood* are the boundaries set by Allah and only a premier ruler is responsible to establish *hudood* Allah among people. A premier ruler cannot enforce *hudood* on himself because it could entail debasing and punishment and he cannot do this to himself whereas no other person has legal authority on a premier ruler to enforce a *hud* (Islamic punishment for a crime under hudood laws) on him.

One can disagree with this opinion but it is of one of the authentic and credible leaders of Muslims and jurists, which has been declared 'disbelief' by Zawahiri on the basis of his superficial understanding of Pakistan's Constitution and Islamic law.

Similarly, the absence of the condition for the head of the state to be a male and that for a judge to be Muslim and just is also not such a critical issue to become the basis for declaring the constitution un-Islamic or based on disbelief. The condition of a judge being just and Muslim is jurists' opinion, which they have deduced from Islamic precepts through their interpretations, and is not laid down by some clear/absolute ruling of the Quran or the Sunnah. Similarly, the condition of a ruler being male has been derived from a comment of the Holy Prophet (PBUH) regarding the selection of a Sassanid king's daughter as a ruler of Persia. According to *usul al-fiqh*,⁷⁶ this saying of the Prophet (PBUH) does not prohibit a woman from being a ruler of an Islamic state in a direct and clear manner. Therefore, this condition is also a deduced one. Moreover, in the recent past a renowned jurist and religious scholar Maulana Ashraf Ali Thanvi has argued that the underlying cause for the condition for a ruler to be a male is to avoid absolute and complete dependence on a woman's opinion. Therefore, in a democratic system of government where a ruler is in principle answerable to parliament, there is no such restriction on a woman becoming a ruler. In short, absence of the conditions cited earlier in the constitution is not against Shariah but a particular interpretation of

⁷⁴ *Qazaf* means to wrongfully accuse a chaste Muslim man or woman of adultery.

⁷⁵ *Qisas* means retaliation or retribution but the Quran prescribes that one should seek compensation (*diyyat*) and not demand retribution: "And We prescribed for them therein: The life for the life, and the eye for the eye, and the nose for the nose, and the ear for the ear, and the tooth for the tooth, and for wounds retaliation. But whoso forgoeth it (in the way of charity) it shall be expiation for him. Whoso judgeth not by that which Allah hath revealed: such are wrong doers. (5:45)"

⁷⁶ *Usul-al-fiqh* is the study of the origins, sources, and principles upon which Islamic jurisprudence (or *fiqh*) is based.

Shariah, which is subject to Ijtihad and inference, and hence cannot be equated with disbelief.

Among the constitutional provisions discussed and criticized by Zawahiri there is however one that can be termed conflicting with Shariah to some extent. This provision is about legal authority of the head of the state to grant pardon, or suspend/commute death sentence passed by any court for any crime. Other than cases of *qisas*, this presidential authority however does not contradict Islamic law. According to Islamic law, granting pardon to an assassin is linked to willingness of the heirs of the deceased, a fact that has been ignored in the said constitutional provision. But according to the first principle of *takfeer*, which I have described earlier, this provision does not become basis for declaring the constitution un-Islamic because we cannot say with certainty that those who formed the constitution deliberately ignored this ruling of *qisas* of Islamic law. Secondly, a debate is going on in Pakistan's courts whether this particular provision that grants the president the right to grant pardon is practicable or not in presence of certain clauses which call for supremacy of Shariah.

Zawahiri has referred to Supreme Court's verdict in Hakim Khan case (1992) which ascribes an equal status to all clauses of the Constitution including Islamic provisions that guarantee supremacy of Shariah. But this verdict is not the ultimate and only interpretation of the Constitution. A high court of Pakistan has given a different verdict that says that clauses of the Constitution that uphold supremacy of Shariah have preference over other clauses. Although the interpretation of the Supreme Court takes precedence in that regard, yet the possibility of more interpretations exists. Moreover, the courts are unable to annul any anti-Islam clause on the basis of injunctions of Islam due to some technical reasons. That does not mean that the Constitution does not guarantee the supremacy of Shariah. Due to this technical confusion the Supreme Court's verdict refers the matter to the parliament: "Accordingly, now if any question is raised in connection with the validity of any existing provision of the Constitution on the ground that it transgresses the limits prescribed by Allah Almighty (within which His people were competent to make laws) such a question can only be resolved by the Majlis-i-Shoora (Parliament), which can, if the plea is well founded, take the necessary remedial action by making suitable amendments in the impugned provision in order to bring it within the limits prescribed by Allah Almighty."⁷⁷

⁷⁷ The complete text of the Supreme Court verdict on the Hakim Khan case, PLD 1992 Supreme Court 595, is available at <http://prosecution.punjab.>

A Critical Review of Ayman Al-Zawahiri's Book Al-Subh wa' Al-Qindil

Zawahiri's arguments are fairly understandable if viewed in the context of his purpose for writing this book. Perhaps Zawahiri thought it difficult to justify *khurooj* against the Pakistani state on the basis of 'corruption and wrong policies of Pakistani rulers alone, particularly in presence of a constitution whose ideological foundations are based on Islam. That is why he chose to target Pakistan's constitution. But there are many academic and logical question marks on his arguments. It seems that Zawahiri is unaware of the struggle and achievements of religious circles for Islamization in Pakistan particularly on the legislative front. His arguments are largely based on his mistrust on and malice against the creators of the Constitution who included leading religious scholars as well. No doubt his criticism is more emotional than real. It is true that despite inclusion of provisions of Islam there are still many hitches in the Constitution that prevent complete enforcement of Shariah. But declaring the Constitution un-Islamic on the basis of perceived ill intentions of rulers is in no way justified.

Zawahiri's criticism of the role of Pakistan, particularly its army, in the ongoing war on terror is also biased and unreal. It is also understandable because being a key leader of Al-Qaeda he has analyzed the whole situation as a stakeholder of this war. But he has said nothing about the role of Al-Qaeda in pushing Afghanistan and Pakistan into the current state of affairs where both countries are fighting the war of their survival. There are some fundamental questions in people's minds which Zawahiri should have answered. For instance, whose terrorist activities prompted the US to invade Afghanistan? Which legal principle of Islamic jurisprudence or general ethics permitted Al-Qaeda to plan and launch terrorist attacks on the US without permission of its host Islamic government of Afghanistan? Was not the government of the Taliban demolished and Afghanistan pushed to war due to 'acts' of Zawahiri's Al-Qaeda? Was not it Al-Qaeda's sneaking into and hiding in Pakistan's tribal areas that created huge difficulties for the country on both domestic and international fronts? Before criticizing others Zawahiri should have thought seriously how Al-Qaeda's September 11 attacks on the US have created troubles not only for Afghanistan and Pakistan but for the entire Muslim *ummah*.

The selected and skewed interpretations of the concepts of *takfeer* (the act of declaring a Muslim to be outside the creed of Islam), and *khurooj* (going out/ armed rebellion against the state) are widely used by religious extremists to propagate hatred and violence in the name of religion. With a view to create awareness among the people about *takfeer* and *khurooj*, Pak Institute for Peace Studies (PIPS) engaged leading religious scholars from all schools of thought in 2011-12 in academic and intellectual debates to get a consensus viewpoint on these concepts and disseminate the outcome to the people. This book transcribes the complete recorded proceedings of these debates including religious scholars' addresses and the subsequent deliberations.



P.O Box No: 2110 Islamabad, Pakistan
Phone: +92-51-2613911
Email: pips@san-pips.com
Web: san-pips.com



Price: 100/-