

Published:
July 30, 2026

The Principles of Shura and Limits of Executive Power: Re-Evaluating Yahya Khan's Regime Through Islamic Jurisprudence

Mashal Malik

M.Phil. Scholar, Abdul Wali Khan University Mardan

Email: www.bismaiqbal3344@gmail.com

Mobile: 03165433449

Prof Dr Muhammad Tahir

Dean of Faculty, Arts and Humanities, Abdul Wali Khan University Mardan

Abstract

This study attempts to reconsider the constitutional and administrative governance of General Muhammad Agha Yahya Khan's regime (1969-1971) by Drawing on Islamic political jurisprudence (Siyasa Shar'iyyah) in light of the principle of Shura (consultation) and the legal limitations on the powers of the executive. In Islamic jurisprudence, executive power is limited and bounded by the concept of public interest (Masalah 'Ammah) and consultative constitutionalism. A descriptive, analytical and jurisprudential approach is used to critically analyse important legal instruments and executive decisions leading to the constitutional crisis of 1971, the most notable of which was the Legal Framework Order of 1970.

The analysis shows that the consolidation of the ultimate legislative veto power in the hands of the executive office and direct overriding of the elected representative assembly would stand in contradiction to Islamic legal maxims, such as Al-Tasarruf 'ala al-ra'iyyah manut bi al-maslahah (Governance over the subjects is contingent upon public interest). The paper argues that a consultative legitimacy, which was subordinated to autocratic executive authority, was a significant threat to state integrity and legal order. The results are significant implication for the accountability of the executive, the design of the constitution and the balance of power in contemporary Islamic governance.

Keywords: Islamic Political, Principle of Shura, Jurisprudence, Limits of Executive Power, Legal Framework Order 1970, Yahya Khan Regime, Maslahah, Autocracy vs Consultative Governance

Published:
July 30, 2026

Introduction

How power should be exercised, restrained and subject to accountability is a fundamental¹ issue in modern constitutional theory as well as Islamic political jurisprudence². While the institutional frameworks of modern states have changed from those of the classical Islamic political framework³, Islamic jurisprudence contains a number of basic principles related to the exercise of public authority⁴, such as Shura (consultation), Maslahah (public interest),⁵ Justice, accountability, Obedience to Law, and the prohibition of Arbitrary Rule.⁶ These principles establish that political authority is not an absolute personal right of the ruler⁷, but a trust (amanah) entrusted to the protect society and promote justice.⁸ Thus the legitimacy of executive power must be judged not only by its formal existence⁹ but also by how it is exercised and by the public institutions that support it and by how governmental decisions¹⁰ are made to benefit the collective interests of the people.¹¹

There are a number of important events in the political history of Pakistan¹² where such issues of constitutional legality and executive authority arose with special intensity.¹³ Of them, the regime of General Muhammad Agha Yahya Khan (1969-1971) is unique¹⁴ in that

¹ restrained and subject to accountability is a fundamental issue

² Musa, Abdul Samat. "Constitutional Law: An Overview of the Islamic Approach and Its Contemporary Relevance." In *1st International Conference on Indonesian Legal Studies (ICILS 2018)*, pp. 27-35. Atlantis Press, 2018.

³ Lapidus, Ira M. "The golden age: The political concepts of Islam." *The Annals of the American Academy of Political and Social Science* 524, no. 1 (1992): 13-25.

⁴ Akgunduz, Ahmed. *Islamic Public Law-Islamic Law in Theory and Practice: Documents on Practice from the Ottoman Archives*. Iur Press, 2011.

⁵ Rahmawati, Aulia, and Bagus Satrio. "Re-Actualization of the Concept of Al-Maslahah Al-Mursalah in Sharia-Based Public Policy Formulation." *Samarinda International Journal of Islamic Studies (SIJIS)* (2024): 89-100.

⁶ Murphy, Colleen. "The Rule of Law, Democracy, and Obedience to Law." *Louis ULJ* 62 (2017): 293.

⁷ Sartorius, Rolf. "Political authority and political obligation." *Virginia Law Review* (1981): 3-17.

⁸ Islam, Md Sirajul, and Sofiah Samsudin. "Interpretations of Al-Amanah among Muslim scholars and its role in establishing peace in society." *Social Change* 48, no. 3 (2018): 437-450.

⁹ Kleinerman, Benjamin A. *The Discretionary President: The Promise and Peril of Executive Power*. University Press of Kansas, 2026.

¹⁰ Horn, Murray J. *The political economy of public administration: Institutional choice in the public sector*. Cambridge University Press, 1995.

¹¹ Coleman, James S. "Individual interests and collective action." *Papers on non-market decision making* 1, no. 1 (1966): 49-62.

¹² Javaid, Umbreen, and Amir Latif. "Historical analysis of successive governments in Pakistan: a history of first six decades, 1947-2007." *Pakistan Vision* 18, no. 1 (2017).

¹³ Tiefer, Charles. "The Constitutionality of Independent Officers as Checks on Abuses of Executive Power." *BUL Rev.* 63 (1983): 59.

¹⁴ Raza, Rafi. *Zulfikar Ali Bhutto and Pakistan, 1967-1977*. Vol. 7. New York: Oxford University Press, 1997.

Published:
July 30, 2026

it was born during a very difficult period of political unrest,¹⁵ and ended in the constitutional and political turmoil of 1971. In March 1969, President Field Marshal Muhammad Ayub Khan resigned and Yahya Khan took over then, introducing a system of direct military rule.¹⁶ The political policy of his government aimed to solve the constitutional and representative crisis by a series of legal and administrative measures, mainly the Legal Framework Order (LFO) of 1970¹⁷. The LFO was the structure of the first general elections based on adult franchise and laid down some key foundations for the foundations of a future constitution.¹⁸ But it also gave the executive significant discretion and imposed some restrictions on the constitutional process¹⁹. Therefore the importance of the rule of Yahya Khan has to be read in the light of the traditional political history of Pakistan, which is defined in terms of military intervention, elections, struggle between the political parties and the eventual breakdown of Pakistan in 1971²⁰. Also, it poses a fundamental jurisprudential question: How can the concentration and exercise of executive power be linked with the principles of Shura, Maslahah, justice, accountability and legal restraint recognised by Islamic political jurisprudence?²¹ Such a question is especially relevant regarding the exercise of powers by an executive authority that have a direct impact on the constitutional process, the representation mandate of the people and the operation of the legislative institutions.²² An Islamic jurisprudential outlook would restrict

¹⁵ Aparicio Fenoll, Ainoa, and Libertad González. "Political instability and birth outcomes: Evidence from the 1981 military coup in Spain." *Health Economics* 30, no. 2 (2021): 328-341.

¹⁶ Khan, Arshad Sami, and Ambassador Archad Sami Khan Sj. *Three Presidents and an Aide: Life, Power and Politics*. Pentagon Press, 2008.

¹⁷ Ahmed, Mujeeb. "The Constitutional Development in Pakistan (1970-1977) and the Jam'iyyat-i-'Ulama-i-Pakistan." *Journal of the Pakistan Historical Society* 45, no. 4 (1997): 443-453.

¹⁸ Khan, Noor Hamid, and Husnul Amin. "Electoral Forms without Democratic Substance: The Persistent Paradox of Elections in Khyber Pakhtunkhwa (1932–1977)." *Policy Journal of Social Science Review* 3, no. 12 (2025): 353-363.

¹⁹ Tiefer, Charles. "The Constitutionality of Independent Officers as Checks on Abuses of Executive Power." *BUL Rev.* 63 (1983): 59.

²⁰ Rahim, Tariq. "Political parties and democratic development in Pakistan: Military regimes and democratic transformative struggle." PhD diss., Middle East Technical University (Turkey), 2023.

²¹ Sohail, Aftab, Nurhafilah Musa, and Mohamad Rizal Abd Rahman. "Justice, Governance, and Legal Stability: Functional Parallels and Philosophical Divergences in the Rule of Law across Islamic and Western Legal Traditions." *Manchester Journal of Transnational Islamic Law & Practice* 21, no. 2 (2025): 297.

²² Bellamy, Richard. "The political form of the constitution: the separation of powers, rights and representative democracy." *Political Studies* 44, no. 3 (1996): 436-456.

Published:
July 30, 2026

political power and would highlight the fact that the actions of the ruler are supposed to be linked to the public interest and not the personal, institutional or authoritarian interest.²³ Shura is one of the most significant principles that can be used to explore representative and consultative governance within the Islamic framework. The word shura, which is mentioned in the Qur'an as an attribute of the believers, was used to describe the process the believers implement in their affairs, and the Prophet Muhammad ﷺ practiced shura in many political, military and administrative matters with the Companions²⁴. Shura is not just the seeking of advice voluntarily by the ruler, it is actually an attitude of participatory decision making, collective responsibility and an acknowledgement of the legitimate needs and opinions of the community²⁵. This rule is useful as an analytical tool for assessing the interaction between the executive power and the representative institutions in the framework of contemporary constitutional governance²⁶. In addition, the principle of Maslahah, which means the interest of the society, is closely related to Shura; in the application of government authority, the government should be directed toward protecting the legitimate interests of society and advancing them.²⁷ The well-known jurisprudential principle of "تصرف الإمام على الرعية منوط بالمصلحة"²⁸ (Tasarruf al-Imam 'ala al-Ra'iyah Manutun bil-Maslahah) teaches that a ruler's attitude toward his subjects depends on the public interest.²⁹ This rule gives substance to the limitation on political power: Government has legitimate powers when it is exercised in the interest of the community³⁰, but it cannot

²³ Fadel, Mohammad. "Political legitimacy, democracy and Islamic law: The place of self-government in islamic political thought." *Journal of Islamic ethics* 2, no. 1-2 (2018): 59-75.

²⁴ Marwat, Muhammad Zaman. *Al-Shura: An analysis of its significance and the need for its implementation and institutionalization in the contemporary Muslim world*. Temple University, 1990.

²⁵ Mohiuddin, Md Golam. "Decision making style in Islam: A study of superiority of Shura (Participative Management) and examples from Early Era of Islam." *European Journal of Business and Management* 8, no. 4 (2016): 79-88.

²⁶ Ahamed, A. M. "A Comparative Study of Presidential and Parliamentary Systems of Government." (2026).

²⁷ Sohail, Aftab, Nurhafilah Musa, and Mohamad Rizal Abd Rahman. "Justice, Governance, and Legal Stability: Functional Parallels and Philosophical Divergences in the Rule of Law across Islamic and Western Legal Traditions." *Manchester Journal of Transnational Islamic Law & Practice* 21, no. 2 (2025): 297.

²⁸ حمادة. "قاعدة: تصرف الإمام على الرعية منوط بالمصلحة وتطبيقاتها المعاصرة." *مجلة كلية الشريعة والقانون بأسبوط*، محمد جاد علي (2020): 119-199.

²⁹ Gunn, John Alexander Wilson. *Politics and the Public Interest in the Seventeenth Century (RLE Political Science Volume 27)*. Routledge, 2013.

³⁰ Beetham, David. "Political legitimacy." *The Wiley-Blackwell companion to political sociology* (2012): 120-129.

Published:
July 30, 2026

exercise powers legitimately if it causes an arbitrary harm, injustice or the destruction of legitimate rights³¹. This idea is especially significant in relation to the analysis of the constitutional and administrative actions taken by Yahya Khan, as it enables the actions of the executive to be analyzed both on the historical legal level and on the jurisprudential responsibility level as well.³²

The Legal Framework Order of 1970 is thus a key document in this analysis. The LFO laid the groundwork for elections and constitutional development, but also demonstrated the ongoing supremacy of the executive branch of government³³. The question was not just whether the executive had formal legal power under the existing political system, but whether the increased constitutional power vested in the hands of the executive can be balanced with the principles of consultation, representation, accountability and public interest³⁴. This question was further complicated by the political changes that came after the general elections of 1970³⁵. A constitutional dispute escalated into a crisis of political legitimacy and state cohesion because the political leadership failed to come up with a constitutional solution, the National Assembly session was postponed and the growing confrontation between the central authorities and the political leadership of East Pakistan³⁶. The difference between authority and arbitrary power is significant from the viewpoint of Siyasa Shar'iyah. Islamic political jurisprudence understands the need for political power to establish order, safeguard rights, and dispense justice and serve the common good. But the ruler is not considered to have an absolute or unlimited authority. The principles of Shariah, justice, public interest, consultation and accountability are the conditions of his

³¹ Applbaum, Arthur Isak. *Legitimacy: The right to rule in a wanton world*. Harvard University Press, 2019.

³² Zehra, Muhaddisa, Noreen Akhtar, Muhammad Babar Shaheen, and Shoket Ali. "The role of the judiciary in constitutional interpretation in Pakistan." *Inverge Journal of Social Sciences* 4, no. 3 (2025): 20-35.

³³ Khan, Aamir, Imran Naseem, and Muhammad Inamullah. "Constitutional dynamics and judicial autonomy in South Asia: A comparative study of Pakistan and its neighbors." *Al Manhal Research Journal* 5, no. 1 (2025).

³⁴ Flinders, Matthew. "Shifting the balance? Parliament, the executive and the British constitution." *Political Studies* 50, no. 1 (2002): 23-42.

³⁵ Berkowitz, Edward D. *Something happened: A political and cultural overview of the seventies*. Columbia University Press, 2007.

³⁶ MANDAI, SOHAIB BALOCH. "Confrontational Politics and Working of National Assembly of Pakistan 1988-1999." PhD diss., UNIVERSITY OF THE PUNJAB LAHORE, 1999.

Published:

July 30, 2026

authority³⁷. Classical Muslim scholars including al-Mawardi, Abu Ya'la al-Farra', al-Ghazali, Ibn Taymiyyah and Ibn al-Qayyim addressed the duties and restrictions of political power in different historical periods. They have shown, in their writings, that the scope and exercise of Governmental power should be guided by Justice and the maintenance of the natural rights of the people. Hence, the term *Siyasa Shar'iyyah* offers an interesting jurisprudential lens on which modern executive power can be critically analyzed.³⁸

The difference between authority and arbitrary power is significant from the viewpoint of *Siyasa Shar'iyyah*. Islamic political jurisprudence understands the need for political power to establish order, safeguard rights, and dispense justice and serve the common good. But the ruler is not considered to have an absolute or unlimited authority. The principles of Shariah, justice, public interest, consultation and accountability are the conditions of his authority. Classical Muslim scholars including al-Mawardi, Abu Ya'la al-Farra', al-Ghazali, Ibn Taymiyyah and Ibn al-Qayyim addressed the duties and restrictions of political power in different historical periods. They have shown, in their writings, that the scope and exercise of Governmental power should be guided by Justice and the maintenance of the natural rights of the people. Hence, the term *Siyasa Shar'iyyah* offers an interesting jurisprudential lens on which modern executive power can be critically analyzed.³⁹ The difference between authority and arbitrary power is significant from the viewpoint of *Siyasa Shar'iyyah*. Islamic political jurisprudence understands the need for political power to establish order, safeguard rights, and dispense justice and serve the common good. But the ruler is not considered to have an absolute or unlimited authority. The principles of Shariah, justice, public interest, consultation and accountability are the

³⁷ Swaab, Selma. "Playing politics with national unity; or, The role of political leadership in secession on the Indian subcontinent: the partition of 1947 and the secession of 1971." PhD diss., University of British Columbia, 1973.

³⁸ Islahi, Abdul Azim. "History of Islamic economic thought: Contributions of Muslim scholars to economic thought and analysis." In *History of Islamic Economic Thought*. Edward Elgar Publishing, 2014.

³⁹ Sohail, Aftab, Nurhafilah Musa, and Mohamad Rizal Abd Rahman. "Justice, Governance, and Legal Stability: Functional Parallels and Philosophical Divergences in the Rule of Law across Islamic and Western Legal Traditions." *Manchester Journal of Transnational Islamic Law & Practice* 21, no. 2 (2025): 297.

Published:

July 30, 2026

conditions of his authority⁴⁰. Classical Muslim scholars including al-Mawardi, Abu Ya'la al-Farra', al-Ghazali, Ibn Taymiyyah and Ibn al-Qayyim addressed the duties and restrictions of political power in different historical periods. They have shown, in their writings, that the scope and exercise of Governmental power should be guided by Justice and the maintenance of the natural rights of the people. Hence, the term *Siyasa Shar'iyah* offers an interesting jurisprudential lens on which modern executive power can be critically analyzed.⁴¹

The significance of this study extends beyond the historical assessment of yahya khan's regime the experience of 1969- 1971 provides an important case study for understanding the consequences that may arise when executive authority becomes insufficiently restrained by representative institutions and constitutional mechanisms. Issues related to the interplay between the executive branch, parliament, constitutionalism and Islamic political concepts are not out of the context in today's Muslim dominated countries⁴². A jurisprudential study of the regime of Yahya Khan, therefore, might help the wider debate on how the concepts of Islamic principles of Shura, Maslahah, justice and accountability can be integrated with contemporary constitutional systems without falling into the trap of unchecked executive power or a mere copy of Western models of constitutionalism⁴³. In line with this, the researcher believes in the nature of political authority as a trust in an Islamic normative system and its legitimacy is tied to justice, consultation, public interest and institutional accountability. The lessons to be learnt from the experience of the regime of Yahya Khan, are that the political power can be overconcentrated and constitutional restraints and representative participation are essential in preventing such concentration. Reinterpreting the regime in the light of Islamic jurisprudence, the study intends to shed a

⁴⁰ Quraishi-Landes, Asifa, and Muhammet Sami Eryan. "Islamic Law and the Modern State: Islamic Constitutionalism for Shari'a-Minded Muslims." (2018).

⁴¹ Islahi, Abdul Azim. "History of Islamic economic thought: Contributions of Muslim scholars to economic thought and analysis." In *History of Islamic Economic Thought*. Edward Elgar Publishing, 2014.

⁴² Arjomand, Saïd Amir. "Islamic constitutionalism." *Annu. Rev. Law Soc. Sci.* 3, no. 1 (2007): 115-140.

⁴³ Musa, Abdul Samat. "Constitutional Law: An Overview of the Islamic Approach and Its Contemporary Relevance." In *1st International Conference on Indonesian Legal Studies (ICILS 2018)*, pp. 27-35. Atlantis Press, 2018.

Published:
July 30, 2026

critical light on the relationship between Pakistan's constitutional history and the normative conception of *Siyasa Shar'iyyah* that is essential for contemporary discussions on the constitutionally appropriate scope of executive power, consultative governance, and constitutional accountability in Islamic political thought.⁴⁴

Conceptual and Jurisprudential Framework

1. Islamic Conception of Political Authority

Islamic political jurisprudence is a rather normatively oriented political approach. Authorities are not regarded as something which belongs to the ruler alone but as a trust (*amanah*) whose exercise is legitimate for the sake of religion, life, property, honor, security, and the public good. This knowledge is what sets it apart from just having power⁴⁵. In the jurisprudential tradition of *Siyasa Shar'iyyah*, the ruler, governor, or public authority has the responsibility of acting within the limits set by the Shariah and to use discretionary authority only when it serves a legitimate public interest and does not harm society.⁴⁶ Such a view is especially relevant in a constitutional context where the rule of the executive can take over in the absence of adequate institutional checks. Rather than assessing whether a ruler has enough authority to make a given decision, it is a question of whether or not the manner in which the authority is exercised is adequate to the substantive principles of justice, public welfare, consultation, and accountability. *Siyasa Shar'iyyah* thus offers a set of normative principles to critically analyse the relationship between governmental discretion and the rights and interests of the governed.⁴⁷

The classical jurists never thought of political power being equivalent to unfettered discretion. Instead the authority of the ruler was linked to responsibilities to the community. In the case of the imam, for instance, Al-Mawardi's description of his functions establishes

⁴⁴ Bidabad, Bijan. "Reinterpreting Constitutional Law through the Lens of Islamic Sufism: A Theosophical Approach to Governance and Legal Principles." *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 6, no. 2 (2024): 435-454.

⁴⁵ Funk, David A. "Traditional Islamic Jurisprudence: Justifying Islamic Law and Government." *SUL Rev.* 20 (1993): 213.

⁴⁶ Rifai, Dr Sulaiman Lebbe. "The Concept of Public Interest in Islamic Law (Maslaha) and Its Modern Implications." *Available at SSRN 3788222* (2021).

⁴⁷ Syatar, Abdul. "Democracy and modern state: Siyasa shar'iyyah analysis." *JURNAL AL TASYRI'IIYYAH* (2021): 1-14.

Published:
July 30, 2026

the bases for a religious and worldly interest in the affairs of the community, and later jurists elaborated on the principles of justice, public welfare, and preventing harm and the appropriate use of governmental discretion.⁴⁸ This jurisprudence has accrued into a doctrine that executive power is not a personal power, but a functional and fiduciary power. Therefore, in this study executive power is defined as legitimate only if it is exercised in parallel with four related prerequisites: legal conformity, orientation towards the public interest, consultation, and accountability. The requirements constitute a normative framework that can then be applied to the constitutional and administrative choices made by the government of Yahya Khan.⁴⁹

2. Shura as a Principle of Consultative Governance

The principle of Shura occupies a central position in the Qur'anic conception of collective affairs. The Qur'an states: *وَأَمْرُهُمْ شُورَى بَيْنَهُمْ* "and whose affairs are conducted by mutual consultation."⁵⁰

The Qur'an also instructs the Prophet ﷺ: *وَشَاوِرْهُمْ فِي الْأَمْرِ* "and consult them in the matter."⁵¹

The meaning of these verses is not limited to the knowledge of seeking advice. Consultation is a normative attribute in collective affairs as it is presented in the Qur'an⁵². When explaining the meaning of the verse Qur'an 42:38, Ibn Kathir relates a connection between this verse and what the Prophet sallallahu alaihi wassallam did. And he mentions that issues were discussed together, especially in issues pertaining to the community. In terms of the constitution, Shura can then be seen from three different aspects, which are mutually connected. First, it demands a recognition of the unilaterally preferential stance of the ruler is not the only basis for public affairs. Second, it demands institutional

⁴⁸ Jalili, Ismail. "Imam Al-Mawardi on Leadership: Insights for Modern Islamic Governance Through Fiqh Siyasa." *Abdelhak Boudjelida Papers & Citations* 13, no. 2 (2024): 252-272.

⁴⁹ Ziring, Lawrence. "Militarism in Pakistan: The Yahya Khan Interregnum." *Asian Affairs: An American Review* 1, no. 6 (1974): 402-420.

⁵⁰ Qur'an 42:38

⁵¹ Qur'an 3:159

⁵² Kasim, Shahran. "Al-Shura: The Qur'anic Principle of Consultation-Ahmad Al-Raysuni."

Published:
July 30, 2026

structures in which representatives and/or individuals with legitimate competence are able to be involved in decision making. Thirdly, it assumes that consultation should be of constitutional importance and not be merely symbolic.⁵³

It is important for this distinction for the present study. It is possible for a government to create a consultative institution, yet still have its own discretion to ignore the institution's mandate. It is also possible for a government to constitutionally create a consultative institution but also have enough discretion to ignore it. However, in these conditions, having a consultation in form does not necessarily constitute a Shura in substance. This study thus takes a different approach, examining Shura not only to see if there existed any representative structures but whether they actually had any substance to influence the political and constitutional future of the state.⁵⁴

The principle can consequently be operationalized through the following questions:

1. Were the representatives of the people given an effective role in determining constitutional arrangements?
2. Could executive authority suspend, postpone, or substantially alter the functioning of representative institutions?
3. Were political disagreements addressed through sustained consultation and negotiation?
4. Did the constitutional framework preserve the meaningful authority of the representative assembly?
5. Was executive discretion subject to institutional accountability?
6. These questions provide a useful bridge between classical Islamic political thought and the constitutional circumstances of Pakistan in 1970–1971.

3. Maslahah as a Substantive Limitation on Executive Discretion

The principle of Maslahah provides a second major criterion for assessing executive authority. Islamic jurisprudence recognizes that public authorities frequently encounter circumstances in which detailed textual provisions do not prescribe a single administrative solution. In such circumstances, governmental discretion may be exercised, but that

⁵³ Moore, Alfred. "Democratic theory and expertise. Between competence and consent." *Expertise and democracy* 1 (2014): 14-57.

⁵⁴ Sakallioğlu, Ümit Cizre. "The anatomy of the Turkish military's political autonomy." *Comparative politics* (1997): 151-166.

Published:
July 30, 2026

discretion is not unlimited.⁵⁵ It must be directed toward the realization of legitimate public benefit and the prevention of harm.

One of the most significant jurisprudential maxims in this context is:

“The ruler's exercise of authority over the subjects is contingent upon public interest.”⁵⁶

maxim is explicitly discussed in the classical legal literature. Al-Suyuti states that it is one of the great maxims in law and mentions that it is connected to the maxim that the ruler is like a guardian over those that are under his care. Al-Zarkashi also speaks about the maxim in the context of the responsibility of the government, and later in the jurisprudence, they have clarified that the authority of the ruler is not exercised for his sake, but for the sake of the masses. The jurisprudential implication is very great⁵⁷. However, *maslahah* is not only a justification in a political sense for executive action, it also creates a criterion for judging whether or not the action will meet the test. A decision made by an executive authority which results in significant institutional instability, an infringement on legitimate rights, an unnecessary social conflict or the denial of the community's legitimate political interests may not be accepted solely on the basis that it has been made by an existing decision-making body.⁵⁸

The maxim is also reflected in the contemporary jurisprudential debates which focus on the obligation as being incumbent on the exercise of public authority and the need to link such exercise with an actual public interest, and not just a private or institutional one.

Maslahah will thus be explored in this study on four aspects, namely:

Dimension	Jurisprudential	Constitutional application
-----------	-----------------	----------------------------

⁵⁵ Handler, Joel. *The conditions of discretion*. Russell Sage Foundation, 1986.

⁵⁶ Cronin, Ciaran. "Kant's politics of Enlightenment." *Journal of the History of Philosophy* 41, no. 1 (2003): 51-80.

⁵⁷ Hallaq, Wael. "Islamic law: history and transformation." (2010).

⁵⁸ Randeria, Shalini. "Cunning states and unaccountable international institutions: Legal plurality, social movements and rights of local communities to common property resources." *European Journal of Sociology/Archives européennes de sociologie* 44, no. 1 (2003): 27-60.

Published:
July 30, 2026

Public benefit	Does the decision advance or genuine public interest?	Did executive action promote political stability and constitutional settlement?
Prevention of harm	Dose the decision prevent or intensify foreseeable harm?	Did executive measures reduce or deepen political conflict?
Prevention of rights	Dose the decision preserve legitimate interests and political participation?	Was the electoral mandate effectively respected?
Institutional welfare	Dose the decision preserve the functioning of public institutions?	Were representative institutions strengthened or subordinated to executive discretion

Table 1. Jurisprudential dimensions of Maslahah used as analytical criteria in this study

The table is not intended to suggest that classical jurists formulated these four headings as a single standardized framework. Rather, it is an analytical operationalization developed for the present study from the broader jurisprudential principle of Maslahah. This distinction is important for maintaining methodological transparency.⁵⁹

4. Accountability and the Fiduciary Nature of Political Power

A third limitation on executive authority emerges from the Islamic conception of political power as a trust. The Qur'an commands: *إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ*. "Indeed, Allah commands you to render trusts to whom they are due and when you judge between people, to judge with justice."⁶⁰

The verse sets up an idea link between amanah and justice. Public authority is thus not only a privilege of giving orders, but also a duty to exercise it in a responsible and just manner. This principle is an important foundation in political jurisprudence for holding rulers and public officials responsible for the outcomes of their actions. In a modern constitutional

⁵⁹ Fathorrahman, Fathorrahman, Ahmad Faujih, Marpuah Marpuah, Asep Lukman Hakim, and Syahrullah Syahrullah. "Operationalizing Maslahah Mursalah: A Six-Stage Methodological Framework for Contemporary Ijtihad." *GHAITSIA: Islamic Education Journal* 7, no. 2 (2026): 287-298.

⁶⁰ Qur'an 4:58

Published:
July 30, 2026

state, accountability can manifest in various institutional ways, such as by legislative oversight, judicial review, constitutional restrictions, electoral accountability, and public accountability. These mechanisms, though not the same as those of classical Islamic governance, share the same goals as do the jurisprudential conditions that must be met in order to produce justice, to prevent arbitrary rule, and to safeguard the public interests. Executive accountability will therefore be assessed through the following questions: were there meaningfully institutional barriers to the executive authority and was there an adequate capacity of representative institutions to challenge or limit executive decisions? Lack of effective accountability is especially important in the event the identical entity carries out executive, legislative and constitutional powers.⁶¹

5. Rule of Law and the Prohibition of Arbitrary Government

Islamic political jurisprudence also puts a great emphasis on the concept of justice and on the ban of arbitrary actions. The ruler is not one that sets themselves above the norms of the community. Judiciousness demands that the action of government be taken on justified grounds and not arbitrary or for political expediency or force.⁶²

A principle of particular importance in the military or emergency regime is that in such circumstances, the normal constitutional order may be set aside or significantly changed. Emergency conditions may be deemed an exception to allow for limited restrictions to be put in place to maintain public order; any such restrictions must have a clear connection to a legitimate necessity and public welfare.⁶³ Where there are exceptional circumstances, however, this does not necessarily mean they will become a long-standing rule.

The system of jurisprudence that is applied in this article thus makes a difference between government discretion and government supremacy. The former can be justified if used in

⁶¹ Bovens, Mark. "Analysing and assessing accountability: A conceptual framework 1." *European law journal* 13, no. 4 (2007): 447-468.

⁶² Sullivan, E. Thomas, and Richard S. Frase. *Proportionality principles in American law: controlling excessive government actions*. Oxford University Press, 2009.

⁶³ Keane, Jaclyn M., and Anthony J. Raganella. "Protection of Citizens' Rights, Public Safety & Police Legitimacy: The Legal Equilibrium for Public Order." In *Public Order Policing: A Professional's Guide to International Theories, Case Studies, and Best Practices*, pp. 231-246. Cham: Springer International Publishing, 2024.

Published:
July 30, 2026

pursuit of a legitimate public purpose and within the law and ethical boundaries; the latter is problematic if executive authority is exercised without consultation, accountability, proportionality, and for the good of the public.⁶⁴

6. Classical Principles to a Modern Constitutional Analytical Model

There is nothing wrong in trying to apply Islamic political jurisprudence to the regime of Yahya Khan, but it is not intended to say that a constitutional state that emerged in the twentieth century should replicate the institutional framework of the classical caliphate. This would make the comparison anachronistic and break the analytical value of the study. What is needed, however, is to rather discover the normative principles that have emerged from Islamic jurisprudence and consider how they can be made operational in the context of a modern constitutional order.⁶⁵

On this Based, the following analytical model is developed in the present study:

Figure 1. Basic analytical model to assess executive authority using Islamic political jurisprudence.

The number is not a result of measurement, but has been imagined. The purpose is not to quantify the performance of Yahya Khan at this stage, but to define the criteria that will be used to determine his performance in constitutional and executive decisions in the future, hence the equal analytical weight (value) for each dimension. This methodological distinction will make it impossible for the study to make any numerical conclusions that are not substantiated by the historical evidence.⁶⁶

The framework can be summarized as follows:

Islamic jurisprudential principle	Core normative requirement	Indicator for analysis of yahya khan's regime
Shura	Meaningful participation and consultation	Relationship between executive authority and elected representatives

⁶⁴ Mulgan, Richard. *Holding power to account: Accountability in modern democracies*. Springer, 2003.

⁶⁵ Fadel, Mohammad. "The true, the good and the reasonable: The theological and ethical roots of public reason in Islamic law." *Canadian Journal of Law & Jurisprudence* 21, no. 1 (2008): 5-69.

⁶⁶ Gough, David. "Weight of evidence: a framework for the appraisal of the quality and relevance of evidence." *Research papers in education* 22, no. 2 (2007): 213-228.

Published:
July 30, 2026

Maslahah	Advancement of public welfare and prevention of harm	Consequences of major constitutional and political decisions
Justice ('Adl)	Fairness and protection against arbitrary treatment	Treatment of political actor regions and representative mandates
Amanah	Public authority as a trust	Purpose and limits of executive discretion
Accountability	Responsibility of rulers before legitimate oversight	Institutional check on presidential and martial –law authority
Rule of law	Governmental action within legitimate legal constraints	Relationship between martial-law authority LFO and representative institution

Table 2. Operational framework for the jurisprudential assessment of Yahya Khan's executive authority.

This analytical framework will then be used in the next sections to examine the main constitutional and political developments during the period of Yahya Khan's rule. It is not about deciding a history's ending but to set a standard that can be evaluated for competing interpretations.⁶⁷ The framework enables the answer to two different questions: First, did the executive have a formal authority in the legal order established by the regime; and second, did the exercise of that authority meet the substantive standards of Islamic political jurisprudence? This is the crux of the argument of which the present article is concerned. Formal legalism and normative legitimacy don't always go hand in hand. It is possible for the executive to have authority in a legal process of emergency or transition without being bound from the Islamic perspective to provide justification on three grounds, namely justice, consultation, public welfare and accountability.⁶⁸

7. Analytical Proposition of the Study

According to the above structure this research leads to the following hypothesis: The legitimacy of executive power in Islamic jurisprudential structure is not only based on legal and coercive authority but also on the form, function and the institutional setting of executive authority.

⁶⁷ Kane, Michael. "Validating score interpretations and uses." *Language testing* 29, no. 1 (2012): 3-17.

⁶⁸ Sohail, Aftab, Nurhafilah Musa, and Mohamad Rizal Abd Rahman. "Justice, Governance, and Legal Stability: Functional Parallels and Philosophical Divergences in the Rule of Law across Islamic and Western Legal Traditions." *Manchester Journal of Transnational Islamic Law & Practice* 21, no. 2 (2025): 297.

Published:
July 30, 2026

For this reason three propositions are used to analyse the following.

First of all, Shura needs to be involved in collective political processes and thus the power of elected officials is not absolute and may only be subordinate to the executive's discretion. Second, Maslahah demands that government decisions be taken with a view of real public welfare and the avoidance of foreseeable harm, and government action that exacerbates political fragmentation and/or weakens constitutional settlement is therefore given special weight in the jurisprudential analysis of governmental decision.

Third, in the principles of Amanah (trust), justice and accountability, public authority must be institutionally and normatively constrained; thus, if these principles are missing from the absence of effective means of accountability, the concentration of the powers of executive, legislative and constitutional functions within one office is a significant jurisprudential concern.

Yahya Khan's Regime: Constitutional Transition and the Crisis of 1971

1. Constitutional Transition under Yahya Khan

After Ayub Khan resigned as President, General Agha Muhammad Yahya Khan took over the reins of power on 25 March 1969 and declared martial law. The existing institutional set-up of the constitution and representative government was eliminated and Yahya Khan became President and Chief Martial Law Administrator. His government later made the restoration of representative government and holding of general elections as key goals of the political transition. The most significant constitutional document that helped to make this transition was the Legal Framework Order (LFO) 1970, signed on 30 March 1970. The LFO was established for adult franchise and population based elections and established a 313-member National Assembly. It had given 169 seats to East Pakistan and 144 to West Pakistan, thus discarding the previous principle of parity between both wings. It also mandated the elected Assembly to draft a new constitution within a stipulated time frame

Published:
July 30, 2026

and laid down fundamental principles of federalism, fundamental rights, Islamic identity and independence of judiciary.⁶⁹

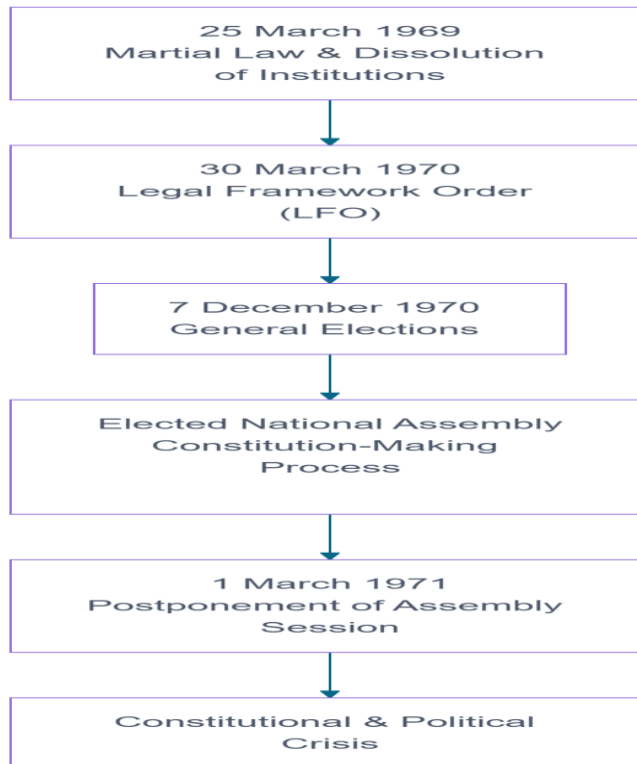


Figure 1. Constitutional Transition under Yahya Khan

constitutional experiment: the executive authority that suspended the previous constitutional order also created the framework through which representative government was to be restored. The principal question is therefore whether this transitional authority remained subordinate to its stated objective of establishing representative governance.

2. The 1970 Elections and Representative Mandate

The general elections held in December 1970 were historically significant because they constituted Pakistan's first general elections based on adult franchise and population. The

⁶⁹ Baxter, Craig. "Pakistan votes--1970." *Asian Survey* 11, no. 3 (1971): 197-218.

Published:
July 30, 2026

National Assembly consisted of 313 seats, including 13 reserved seats for women. East Pakistan received 169 seats and West Pakistan 144.

Region	Seats	Share of total
East Pakistan	169	53.99%
West Pakistan	144	46.01%
Total	313	100%

Figure 2. Distribution of National Assembly Seats, 1970

Graph to insert in Word: A vertical bar chart with two bars:

X-axis: East Pakistan / West Pakistan

Y-axis: Number of National Assembly Seats

East Pakistan = 169

West Pakistan = 144

The distribution was politically consequential because East Pakistan possessed a numerical majority in the National Assembly. The electoral framework had therefore transformed the demographic majority of East Pakistan into a parliamentary majority. This development became crucial when the question of constitution-making arose after the election.

3. Party Results and the Emergence of Constitutional Polarization

The election produced a highly polarized party structure. The Awami League emerged as the dominant political force in East Pakistan, while the Pakistan Peoples Party became the principal political force in West Pakistan. Historical election records report that the Awami League won 160 of the 162 general seats contested in East Pakistan, while the PPP won 81 general seats in West Pakistan.

Political Party	General Seats
Awami League	160
Pakistan People Party	81

Figure 3. Major Party Performance in the 1970 National Assembly Election

Graph to insert in Word: A horizontal bar chart:

Y-axis: Political parties

X-axis: General seats won

Published:
July 30, 2026

Awami League — 160
Pakistan Peoples Party — 81

Source: Historical election data based on Election Commission records.

The electoral outcome created a constitutional dilemma: the Awami League possessed the largest parliamentary mandate, whereas the PPP was the dominant political force in West Pakistan. The resulting disagreement was therefore not simply a conflict between two political parties; it involved competing conceptions of federalism, provincial autonomy, and the distribution of political authority.⁷⁰

4. The LFO and the Limits of Representative Authority

The LFO attempted to establish a constitutional bridge between military administration and representative government. It required the National Assembly to frame a constitution within the prescribed period and established fundamental principles that were to guide the constitutional document. At the same time, the constitutional process remained subject to conditions imposed by the executive framework. The LFO's authentication requirement is particularly important because it meant that the constitutional settlement was not entirely detached from presidential authority. For the purposes of this study, this arrangement should not simply be described as an “executive veto.” A more precise description is that the constituent authority of the elected Assembly operated within a framework established and controlled by the executive. This distinction is important for maintaining constitutional and historical accuracy.⁷¹

Issue	Constitutional position	Islamic jurisprudential question
Election	Direct adult-franchise election	Did they establish a meaningful representative mandate ?
National Assembly	Entrusted with constitution-marking	How far should –elected representative exercise autonomous authority ?

⁷⁰ Rayside, David M. "Federalism and the party system: Provincial and federal liberals in the province of Quebec." *Canadian Journal of Political Science/Revue canadienne de science politique* 11, no. 3 (1978): 499-528.

⁷¹ Chandler, William M., and Marsha A. Chandler. "Federalism and political parties." *European Journal of Political Economy* 3, no. 1-2 (1987): 87-109.

Published:
July 30, 2026

Executive	Controlled transitional framework	Were executive powers proportionate to translation necessity ?
Authentication	Executive role in constitutional settlement	Could such authority remain consistent with shura
Political dispute	Required negotiation between major parties	executive intervention promote Maslahah or deepen conflict ?

Table 1. Constitutional structure and jurisprudential questions under the LFO 1970

The principle of Shura, the postponement of the National Assembly and the relationship between them.3.5 Shura principle, postponement of National Assembly and the relation between them.

On 3 March 1971 a meeting of the National Assembly was planned to take place in Dhaka. With great bitterness of political disagreement on 1st March, Yahya Khan announced the postponement of the session.⁷² The postponement was a turning point in the constitutional crisis and later it led to a spate of political agitation and civil disobedience in East Pakistan. An appropriate balance needs to be struck from the point of view of Siyasa Shar'iyah. The executive might claim that the delay was a ploy to give the political parties a chance to discuss the issue and avoid a head-to-head clash between the two executive and legislative branches. It is possible that such a goal might be a part of the concept of Maslahah. But there's an assessment of benefits and consequences to be made with Maslahah.

The question now is not only “Was the public interest intended?” but also “Was the way of doing things reasonable to achieve the public interest and to avoid harming more?”

This separation brings the historical episode right into the middle of the maxim: The right to initiate the process of taking away the ruling of the imam from the people in the interest of the people.

The ruler's exercise of authority over subjects is dependent on the public interest. Therefore, the postponement is a crucial exam to the connection between executive discretion and Shura. After being elected to have a clear mandate, further executive action

⁷² Raghavan, Srinath. 1971: *A global history of the creation of Bangladesh*. Harvard University Press, 2013.

Published:
July 30, 2026

needed more justification, especially regarding the necessity and public welfare, justice and constitutional stability.⁷³

6. Preliminary Jurisprudential Assessment

There are three stages intertwined in the constitutional development of 1969-1971: military transition, representative emergence and constitutional confrontation. The LFO was important because it had been the start of transitioning from martial-law administration to electoral representation. The outcome of the 1970 elections then led to a clear parliamentary mandate, with the Awami League in East Pakistan enjoying a particular mandate. However, this was followed by a delay in convening the National Assembly, creating an immediate conflict between discretion of the Executive and the representative authority.

The main question from Islamic jurisprudence is thus not whether it is permissible to have executive power in a situation where the political situation is unstable. Instead, the question is whether exceptional powers have become disproportionate to their transitional function since there are representative institutions. The evidence provided in this section indicates that the constitutional legitimacy of Yahya Khan's executive authority was becoming more and more dependent upon constitutional consultation as a tool of his facilitation, rather than merely his control of the constitution. This will serve as the basis for the next section, which will conduct a detailed jurisprudential analysis of the LFO 1970, the 120-day requirement for making a constitution, presidential authentication and the postponement of the National Assembly, based on the main criteria of Shura, Maslahah, Amanah, justice and accountability.

Jurisprudential Discussion - Executive Power between Shura and Political Necessity

The analysis above shows that the constitutional journey of the Yahya Khan's government can't be analyzed in terms of the discourse of authoritarianism or the formal legality of the

⁷³ Michelman, Frank I. "In pursuit of constitutional welfare rights: one view of Rawls' theory of justice." *U. Pa. l. rev.* 121 (1972): 962.

Published:
July 30, 2026

constitutional instruments issued by the executive. But this is an incomplete evaluation because of the interplay between political need, representative legitimacy, executive discretion and public interest must be considered. Islamic political jurisprudence is useful in examining this relationship as it recognizes the necessity of political authority and also imposes moral and legal restraints on its exercise.⁷⁴

Yahya Khan's first coup d'état can be explained in terms of the political chaos and institutional crisis. In terms of Siyasa Shar'iyyah, extraordinary administration is permissible under exceptional conditions such as where the ordinary institution is unable to maintain public order. But this authority comes with its purpose. The necessity principle does not grant unlimited or everlasting power to the Executive.⁷⁵ When the reasons for exceptional authority change, the grounds for extraordinary powers have to be reviewed. The 1970 elections were just such an election. An elected National Assembly changed the constitutional landscape and introduced a mandate which was more representative than it could be easily made subservient to the continued discretion of the executive. The principle of Shura was of great importance at this stage. The executive's role ought to have gradually been reduced from directing the constitutional process to consulting with the elected representatives.

This is not to say that accepting every political demand is the principle of Shura for the ruler. Islamic political jurisprudence acknowledges differences and provides for the role of a party in charge of public order to resolve the conflict of interests. However, mediation is very unlike unilateral determination. The function of the ruler is to make a fair settlement, to provide for "just" interests, and to avoid further damage. The greater the difference in opinion the more it is necessary to consult. The principle of Maslahah is another criterion. The government headed by Yahya Khan could argue that it was trying to avoid the falling apart of the state by delaying the constitutional process. However, it is not enough for

⁷⁴ Tamadonfar, Mehran. "Islam, law, and political control in contemporary Iran." *Journal for the Scientific Study of Religion* 40, no. 2 (2001): 205-220.

⁷⁵ Fisher, Louis. "The unitary executive and inherent executive power." *U. Pa. J. Const. L.* 12 (2009): 569.

Published:
July 30, 2026

jurisprudential assessment to be based on the stated goal of the authority.⁷⁶ The effects of governmental actions must be examined as well in a public interest context. Any decision that is designed to unite political actors and results in further polarization, a decrease in the legitimacy of institutions, and a rise in the likelihood of violent conflict, will be harder to maintain in terms of Maslahah.⁷⁷

The above cited jurisprudential maxim, then, takes on a special significance: The right to bequeath property to the people for the benefit.

The maxim sets a substantive restriction on public power. Political action, as a moral act, is legitimate if it's linked to real public welfare. To this end, it is not enough that the executive is simply in possession of coercive or constitutional powers.

Second, representative institutions need to have real power if they have an electoral mandate. Thirdly, emergency powers should be short, appropriate and linked to public goals that are readily identified.

The principles of Islamic governance, namely Shura, Maslahah, justice and Amanah can therefore be integrated into the modern constitutionalism without institutions such as Caliphates and Calipalates being replicated in modern Muslim states. These principles can serve as criteria for the assessment of constitutional arrangements, executive discretion, legislative involvement and mechanisms of accountability.⁷⁸ The example of Pakistan also shows that constitutional stability cannot be achieved without the presence of constitutional documents. Formal rules can be set out in a constitution and political actors can at the same time attack the institutional practices that are essential for those rules to be effective⁷⁹. Islamic constitutional thought, therefore, should include not only text but also institutional

⁷⁶ Fallon Jr, Richard H. "Judicially manageable standards and constitutional meaning." *Harvard Law Review* (2006): 1274-1332.

⁷⁷ Al Hamid, Rizal, Mohamad Sobrun Jamil, Rodhotun Nimah, and Mahrus Alwi Hasan Siregar. "Political Conflict between Islamic Law and National Law in Indonesia." *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025): 48-62.

⁷⁸ Izdehi, Seyed Sajjad. "Political Participation in Democratic Political Orders; a Comparison Between the New Caliphate, Constitutional, and Religious Democratic System." *Islamic Political Studies* 1, no. 1 (2019): 47-72.

⁷⁹ Whittington, Keith E. *Constitutional construction: Divided powers and constitutional meaning*. Harvard University Press, 2009.

Published:
July 30, 2026

control, political consultation, respecting the electoral mandate and holding public officials to account.⁸⁰

Conclusion

This study has revisited the constitutional and administrative system of General Agha Muhammad Yahya Khan's regime in Islamic political jurisprudence focusing on Shura, Maslahah, justice, Amanah, and accountability of the executive⁸¹. The analysis shows that the key issue during the Yahya Khan period was not just the presence of executive authority but how it related to the process of political representation, which was also beginning to emerge.⁸² Imposition of martial law in 1969 is set in an atmosphere of political turbulence and may be studied using the jurisprudential notion of necessity⁸³. However, there could be no infinite power to execute the necessity. With the Legal Framework Order of 1970, the transition towards electoral representation was begun and the institutional structure for the making of the constitution was set up. In the following general elections, the government was elected to a clean slate: it gained a clear mandate for its action and the political context in which it exercised its power was altogether different. In the eyes of Shura, the creation of an elected National Assembly reinforced the need for meaningful representative consultation on constitutional issues. The executive could play a legitimate mediation, stabilisation function, but the progressive subordination of the representational process to the sole discretion of the executive body, raised serious jurisprudential questions. March 1971 was a special date because the National Assembly was suspended, thus elevating the conflict between executive power and representative legitimacy to its peak.⁸⁴

⁸⁰ Rosen, Bernard. *Holding government bureaucracies accountable*. Bloomsbury Publishing USA, 1998.

⁸¹ Ghias, Shoaib A. "Defining Shari'a: The Politics of Islamic Judicial Review." PhD diss., UC Berkeley, 2015.

⁸² Ziring, Lawrence. "Militarism in Pakistan: The Yahya Khan Interregnum." *Asian Affairs: An American Review* 1, no. 6 (1974): 402-420.

⁸³ Bari, Md Ershadul. *Martial Law in Bangladesh 1975-1979: A Legal Analysis*. University of London, School of Oriental and African Studies (United Kingdom), 1985.

⁸⁴ Baldwin, Nicholas DJ, ed. *Executive leadership and legislative assemblies*. Routledge, 2014.

Published:
July 30, 2026

The principle of Maslahah also illustrates that the legality of government actions cannot be judged on the basis of the government's intention or on the basis of a formal legal decree. Public authority is a trust and public authority exercised must be reasonably for the good of the community and to forebear greater harm⁸⁵. The state's legitimation of the public interest of its intervention is subject to critical questioning in the face of its downplaying of representative institutions, deepening political segregation and failure to maintain institutions. So, from the perspective of Islamic political jurisprudence, neither absolute executive authority, nor an entirely unrestricted conception of majoritarians can be supported. Rather, it offers an equitable system where justice, consultation, the public interest, accountability and the safeguarding of legitimate rights limit the scope of political power. In this sense the ruler is not only a man of power but also a trustee whose power is subject to the welfare of the ruled. The constitutional lesson from the experience of Yahya Khan's regime is thus a larger one: when extraordinary executive power is not effectively transferred to accountable and representative government, constitutional instability can gradually get even more out of hand.⁸⁶ In this study, the Islamic jurisprudence principles outlined are used to offer a normative account of how such a process can be prevented, by insisting on the limitation of executive discretion, accountability to the institutions, the public interest and consultation.⁸⁷

The importance of Yahya Khan, then, is not only in the happenings of 1969-1971, but in a broader historical context. It is a valuable case study for modern Muslim constitutional states which need to balance effective executive government with representative legitimacy. The executive authority should not be abolished or allowed to be limited in any way based on a constitutional order that is inspired by Shura and Siyasa Shar'iyyah. Instead, it should create a framework where authority is delegated, consultation is effective, public

⁸⁵ Natelson, Robert G. "The constitution and the public trust." *Buff. L. Rev.* 52 (2004): 1077.

⁸⁶ Amir, Shamaila, and Fayyaz Ahmad. "Constitutional development and political (in) stability of Pakistan: An analysis since inception of Pakistan till 2018." *RMC Journal of Social Science and Humanities* 1, no. 3 (2020): 14-20.

⁸⁷ Stewart, Richard B. "Remedying disregard in global regulatory governance: accountability, participation, and responsiveness+." *American Journal of International Law* 108, no. 2 (2014): 211-270.

Published:
July 30, 2026

interest is clearly stated, and executive authority is held to account for the act of law and legitimate representation.

Recommendations

Based on the results of this study, the following recommendations were made:

1. Emergency powers must be strictly defined by the constitution in terms of purpose, scope and duration and be subject to effective legislative and judicial control.
2. The electoral mandates shall be provided constitutional protection, especially after the representative institutions are set up by a credible electoral process.
3. Consultation must not be a formality. The concept of Shura is more aptly represented when representative institutions have real power over issues related to the collective political future.
4. The principle of Masalah should be used to assess executive decisions. Public authorities should show examples of how extraordinary measures ensure public welfare and avoid worsening public damage.
5. The executive power which launches constitutional changes should not be able to control them forever. The transfer of power to representative constitutional institutions should be gradually shifted to transitional institutions.
6. The mechanisms of accountability must continue to be in place in political emergencies. Justices and principles of Amanah mean that public officers must be held accountable for their use of public power.
7. Islamic constitutional scholarship needs to be systematic with the modern constitutional experiences. The study of historical cases like Yahya Khan's regime can also provide empirical data for making contemporary theories of Siyasa Shar'iyyah and consultative governance.