

Role of Morality in Islamic Legislation

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Abstract

Legislation is the subject of philosophers and metaphysicians, and in the field of law, perhaps for the meta-lawyers, and meta-jurists, a species of extreme rarity. I am conscious that lot of classical literature has been written on the subject of Islamic legislation and concept of justice in relation to morality. As a student of Islamic studies I have preferred to highlight the Divine law and Sunnah of the Prophet Muhammad the blessing and peace of Allah be upon him through his mission altered the state of those unlettered ones to whom he was sent, his manner of reforming their conditions under the topic of legislation, facilitation, and ruling of religion. They used to accept the mission of the prophet and Sovereignty of Almighty Allah in all aspects of Islamic values and presented the best moral character to the world.

Keywords: Islam, Morality, Islamic Legislation

The emergence of alternative institutions implies not the acceptance but a challenge to the Western society. Rather than attempting to switch the Muslim world to its norms, the West should study Islam and its ruling system to promote intellectual discourse so as to understand each other better, and to hold together a just, humane world order. This paper examines the legal and moral hypothesis of those unlettered ones (*ummiyens*) and a brief analysis is investigated with the aim to focus on Divine Law and Sunnah of the Prophet Muhammad, may the peace and blessing of God be upon him in the framework of Islamic values within the structure of law and morality. It also highlights the influential role in legislation, facilitation and the rulings of the religion. There is a certain amount of overlap between law and morality as often law gives expression to the accepted norms of morality within the society, even if it does not directly legislate for it.

In the history of Muslim law Islamic legislation is based on four sources, (*Kitab ul Allah*) Divine Law, (*Sunnah*) *Hadith* literature

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(traditions) *Ijma* (consensus) *Qiyas* (analogical deductions) all that inculcate into *Sharia*. Prior to the full revelations of the Quranic injunctions, the Prophet of Islam followed the Sunnah of the earlier Prophets of God Almighty. As such they too constitute an essential source of Islamic Legislation and are in the some cases woven into the text of the Quran & Sunnah of the Prophet (PBUH). In Islam ultimate legal and constitutional sovereignty rests with none but Allah as Al Faruqi points out that *ummah* is not a legislative assembly. It does not make the law nor is the law an expression of the general will of people. The law is divine as it comes from God. As such, it is supreme.¹ *Sharia* defines the *Shura* with *Ijma* (consensus) *Qiyas* (analogical deductions) as the Islamic decision-making model². In Islam, law and morality both are part of the body of *Shari'ah*, with morality having an important place in maintaining the integrity of society. There is no inhibition for legislating morality to the extent that even what could be termed private morality is subject to law and is enforceable. This is because the danger of immorality in eroding the fabric of society and the need for adhering to a shared morality is well recognised.

As in the classical literature Shah Wali Ullah in *Hujjat ul Allah al-Baligha* explained that “If you want to know the method of divine legislation, and then study the case of a skilful doctor when he strives to treat the sick. He informs them of what they don’t know and orders them to do things whose fine points they do not understand. See how he takes physical symptoms and then traces them to hidden things such as associating red skin and loss of blood from the gums with an excess of blood. Afterwards how he considers the strength of the sick person his age, city, weather and after diagnosing he suggests the potency of medicine and all other factors. Thus he intuits the specific quantity of medicine which will be suitable for condition and then scribes it. Sometimes he formulates a general principle due to establishing anticipated source of cause, in short Shah Wali Ullah concludes that Allah, may He be exalted, wanted through the mission of the prophets to, “bring the people out of the darkness into light”. He therefore revealed to them his command and cast His light into them and inspired them with the desire to reform the world³.

Before the dawn of Islam, Arabia was the land of antagonistic tribes, always busy in fighting and bloodshed. Due to their inter-tribal conflicts and disunity they had become an easy prey to economic and political exploitation of the contemporary great powers, the Persians and Romans. It was the dawn of Islam that removes the oppression to the weaker and knit them together strongly in the bonds of brotherhood and made them an irresistible force. Their arms soon held the sway over the

three continents and within a short span of three decades made them masters of one third of the known world. Islam has brought about a complete re-orientation in their attitude towards life and made tent-dwellers of the desert a cultured and civilized people. Prophet Muhammad (PBUH) was sent with *Hanif* religion of Ismael to straighten their crookedness and bring their distortion to an end, and to spread their light and this is His, may He be exalted saying “the religion (*millat*) of your father *Ibraheem*.⁴ (Al-Quran 22: 78) The Children of *Ismael* had inherited the codes of their father *Ismael*, and remained following that divine law until the time of ‘*Amr ibn Luhayy*’ for the interpolated things into it according to his worthless opinion. He was considered to be the founder of polytheism in Arabia who changed the *Ibrahamic* religion by introducing idols. It is said that he set animals free in their honour and this practice is denounced in Quran⁵ (5:103) so the religion was thereby falsified and the sound was mixed with the corrupt and ignorance, polytheism and unbelief overcome. Therefore God sent the Prophet Muhammad (PBHU) to straighten their deviations and to reform their corruptions. He (PBUH) examined their divine law and whatever in it agreed with the codes from rituals of God, he retained. Whatever in it was distorted or corrupted or adopted the emblems of polytheism and unbelief he nullified and recorded its nullification. When something happen under their cultural behaviour and so on, he explained its proper manners and reprehensible aspects in such a way as to avoid the disasters of conventions, and he forbade the corrupt customs and commanded the sound ones. The unlettered people of *Jahiliyya* at the time of the Prophet may the peace and blessing of God upon him, used to accept the possibility of the mission of the prophets, belief in requital, believed in principles of the types of piety, and put into practice. The teachings of the Holy Prophet Muhammad (PBUH) inspired the heart of his followers with a feel for knowledge and created a new sense of civility, culture, justice, piety, tolerance and brotherhood into a savage race which is an essential pre-requisite for cultural development of society. Culture is the off-spring of many factors; human potential, creative consciousness, intellectual and spiritual vitality, real achievement of progress, and freedom among others.

The most important aspect of the Islamic value is peace as the word “Islam” inter alia means peace. In Arabic the word ‘peace’ is derived from Semitic stem and Hebrew word ‘Shalom’ in Arabic *salam*, stands for peace and submission to God. “Considering the world as it is constituted today, there is no potent weapon to wage reconciliation than to fall back upon that age-old institution of mankind namely, religion, which even today, as Macaulay remarked, is capable of serving as last

restraint on earthly power and last solace of earthly misery. Our present predicament is due to the fact that we have discarded religion and pushed out God's consciousness from ourselves. If we aspire for reformation we have to reinstate our faith in God and in this behalf the responsibility of the Muslims are great, as they are peace-loving people".⁶ Islam alone is amongst major religions that strive for eradication of mischief and violence. It seeks to establish universal peace and to assure security to all peace-loving people. Christianity claims to be the most peace loving religion, which favours the policy of non-resistance to evil. The New Testament tells us that the proper answer to an act of violence is an act of love.

*"Ye have heard that it hath been said, an eye for an eye, and tooth for a tooth; But I say unto you, that Ye resist not evil; but whosoever shall smite thee on the right check, turn to him the other also. And if any man will sue thee at the law, and take away thy coat, let him have thy cloak also"*⁷

Certainly to do good in return for bad is said to be the best way to fight evil. No doubt, these are noble sentiments and in the personal lives of individuals may be praiseworthy. They do hold good in rare instances only, but these precepts as a universal code of conduct cannot be possible for mankind. The history of Christianity too negates their authenticity. Dean Inge's comment on it deserves consideration. He says:

*"The principle of non-resistance was laid down for a little flock in la hostile environment. But an organized security cannot abstain from the use of coercion. No one would suggest that a Christian Government must not suppress a gang of criminals within its own borders. Augustine held that was justified in repelling wanton and rapacious attacks and that in preventing such crimes we are acting in the true interest of the aggressor"*⁸.

The Holy Quran describes the problems of life in a realistic manner and offers practical solutions for them. Like the New Testament, it admonishes us to do good in return for evil, for such actions are likely to have a wholesome effect on the evil-order." Return a bad act by one that is beautiful and good. It may be, that he between whom and you there is enmity, becomes your friend"⁹. (41:34) In another place, a *mu'min* is described as "One who repels wrong with right". However, those who are unjust and cruel to their fellow-beings are denounced by the Quran such men deserve punishment.¹⁰

Islam declares the whole of humanity with its diverse races, is originally one, deriving its very existence from one creator. All mankind are from one stock, they must respect God and the ties of blood relationship “O Ye mankind! Reverence your Lord who made you from a single being. And from that being He made its mate, from the twain He caused to spread many men and many women, And Reverence God”¹¹. Islam always focuses on brotherly feelings among the followers of all prophets. “The Messenger (Muhammad) believeth in that which hath been revealed unto him from his Lord and (So do) the believers. Each one believeth in Allah and His Angels, and His Scriptures and His Messengers.”¹² Islam teaches us to live peacefully with each other. Mankind cooperate with and help each other in the cause of justice, as is the sublime duty of Muslims. The Quran says: Help one another in goodness and piety and do not help another in sin and aggression.¹³ Justice in Islam seeks to attain a higher standard i.e. Absolute Justice and Fairness as suggested by the ‘Meezan’ or Balance. In Islamic concept of justice is far superior to the remedial justice of the Romans or of the Anglo-Saxons. The Quran Says: “We sent a foretimes our Apostles with clear signs and send down the Balance, that men may stand forth in justice.”¹⁴ “Be strict in observing justice and be witness for Allah, even though it be against yourself or against your parent or kindered.”¹⁵

*“Whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of mankind”.*¹⁶

One of the most distinctive features of Islam is Tolerance. A mere reference to humiliating terms of the Treaty of *Hudaibiya*, the Charter granted by the Holy Prophet to the monks of the monastery of St. Catherine near Mount Sinai, and his treatment of the *Quresh* on the day of the Victory of Mecca, bear ample testimony to the toleration in Islam. Dr. S. *Inayatullah* has provided historical data in this context: He Says: “The tolerance and protection which Christians and Jews enjoyed under the Muslim rule as ‘*Dhimmi*s enabled them to make valuable the Islamic intellectual and cultural life with which they were surrounded. “For instance, the translation of Greek works into Arabic was done mostly by Syrian Christians. The heathens of Harran contributed in no small degree to the diffusion of Greek science as Philosophy. The Jews contributed immensely in the financial field, and they were sometimes entrusted with responsible positions in the government”¹⁷. Due to catholic attitude of the Arabs, their civilization became cosmopolitan in character yet maintaining its Islamic traits. It is Islam which permitted men of all

racess-Arabs, Turks, Greeks and other-faiths, Muslims, Christians, Jews and Zoroastrians to contribute to the glorious civilization we call Islamic.

Bernard Lewis remarks:

*“Despite this diversity of its origins, Islamic Civilization was no more mechanical juxtaposition of previous cultures but rather a new creation, in which all these elements fused into a new and original civilization by the transposition into Arabic and Islamic forms recognizable and characteristic in every phase of its achievement.”*¹⁸

Sovereignty is the highest and most general power or administering the affairs which generally concern the safety and welfare of the soul and body of the members of the state. This power could be neither absolute nor supreme since it is limited by the laws of God. The law of nature, and the terms of the contract with the people, who remain the ultimate source of sovereignty.¹⁹ Because of this, political scientists have found it extremely difficult to fix sovereignty in any individual, a group of individuals or in any human society. Thus, they are justified in arriving at the conclusion that there is none among human being who could confidently be called a sovereign power.²⁰

The Holy Quran repeatedly pointed out to the fact that only Allah, the Almighty possesses absolute authority and unlimited power. The word “Aziz” in the Holy Quran means unchallengeable authority and as such there is none in the entire universe who can challenge Allah’s authority and power.²¹

- He is all powerful. He is the accomplisher of what He planneth.²²
- He is not answerable to anybody. None can question Him for His acts.²³
- He is the proctor of all. He protect all but is not protected by any²⁴.

He is above all faults and short comings. “Allah is He, than whom there is no other God: the sovereign, the Holy one: the source of peace and perfectness; the Guardian of Faith, the preserve of safety, the exalted in Might, the irresistible and the supreme”, declares the Quran.²⁵

Sovereignty could be divided into two types: Legal and political and both are interdependent. Legal sovereignty does not mean anything without political sovereignty. If political sovereignty is not there at the back of legal sovereignty it has no worth at all.²⁶ There are numerous verses of the Holy Quran such as:

- The command is for none but Allah.²⁷

- Allah doth command according to His will and plan.²⁸
- When Allah commands, there is none to put back His command.²⁹
- The command rests with none but Allah. He declares the truth and He is the best of Judges.³⁰
- Follow (O Men) the revelation, given unto you from your Lord, and follow not as friends or protectors, others than Him.³¹
- He hath commandeth that ye worship none but Him: that is right way.³²

Holy Quran establish this fact with ample evidence that legal sovereignty belongs to Allah alone. Those who are not prepared to accept, this fact, the Holy Quran has called them rebellions, wrong doers and unbelievers: And if any do fail to judge by the light of what Allah has revealed, they are not better than those who rebel.³³ And if they do fail to judge by the light of what Allah has revealed they are not better than wrong doer.³⁴ And if any do fail to judge by the light of what Allah has revealed, they are no better than un-believers.³⁵

All these verses reveal the fact that legal sovereignty belongs to Allah alone. "The command is with Allah, Most High, and Most Great".³⁶

The representative of Allah's legal sovereignty are his chosen servants-the Apostles. He has revealed His commands to His Apostles through His special Envoy Angel Gabriel. The Apostles then have conveyed His message and explained it to the people. If a thorough study of all these commands is done one point comes out quite clear that every Apostle has put more emphasis on the point that:

- Fear Allah and obey me.³⁷
- If ye do love Allah follow me, Allah will love you.³⁸

In Holy Quran Allah has made this point abundantly clear that if someone claims to obey Me, he should follow My Apostle, which would mean that he loves Me. In other words, if someone does not follow His Apostle, it would automatically mean that he does not obey his commands. Thus, obey the Apostle and following him becomes obligatory for every Muslim. Without doing so, obeying Allah or loving Him is not comprehensible. Allah says in the Holy Quran: "We sent not an Apostle, but to be obeyed in accordance with the will of Allah".³⁹ In other words, obeying the Apostle in fact is obeying Allah. Thus there is no other way of obeying Allah except through obeying the Apostle. It is also worth mentioning here that Allah has not ordained the people to

obey the Apostle in some things and disobey him some others. He has ordained the people to obey him entirely in all the walks of life. The Apostle has to be followed in all matters.

*“But no, by thy Lord they can have no real faith until they make you Judge in all disputes between them, and find in their heart no resistance against thy decisions, but accept them with the fullest conviction”.*⁴⁰

Thus, the legal sovereignty of Allah means that His Apostle should be obeyed and his decisions considered as final and binding, there should be no compromise on this point.

In the western state model, law is there essentially to protect what is regarded by the state to represent citizen's rights. It provides a safeguard against exploitation and corruption protects the weak from the strong and maintains public order and decency. It is not for the law to legislate or interfere with personal morality as morality is relegated to the private life of the individual. Even public morality must not be enforced by law, though this is not always practical and the law, almost unwillingly, has to adopt a moral attitude. In so doing, the secular state has virtually no choice. If it considers religion as a personal matter and accepts the plurality of moral values, to legislate to satisfy the standards of one group could be detrimental to the other and to legislate to a perceived common morality acceptable to all (based on natural or human values) would be an administrative nightmare, if possible at all.

The complexity of this problem is demonstrated by the well known Devlin-Hart⁴¹ debate in which Lord Devlin supported the legislation of moral crimes (even when they may not necessarily be immediately injurious to society), came to completely unacceptable conclusions such as, the final arbiter as to what constitutes a moral value would, in the end, be left up to the thinking of the legislature. In this way, morality, one of the most powerful forces that has shaped civilised society, is almost unused by the modern secular state.

It is a well-known fact that Islam has a value-system applicable to government and politics. It has a complete code of life and as a consequence, it provides man with theoretical and practical guidance covering all aspects of life, of which the political aspect is but one and focal point. The world, in its view, is a place of preparation of the soul for the hereafter and that this preparation fulfils the ultimate purpose of the creation of man. One cannot therefore consider parts of worldly life as having no meaning with regards to that final purpose. Life does not end with death but continues towards higher and higher elevations. The importance of society and laws governing social interaction in Islam

therefore becomes obvious. The ruling of such a society requires Islam to provide guidelines for the establishment of a just administration of the state mechanism.

Shah Waliullah, in the *Hujjat Allah Al-Baligha*⁴² points out that the *Hadd* punishments were applied to offences of three kinds;

- (i) Those subversive of public order and disturbing to the community
- (ii) Such as, if not prevented early, could be repeated so as to become habitual
- (iii) Such that the victim could not get redress for him.

For disloyalty and sedition, the most severe punishment was prescribed and mitigation was prohibited. For theft, the punishment was prescribed in the Holy Qur'an, namely, hand-cutting, the offence being one easy to commit, and therefore apt to become both habitual and widespread. The Holy Prophet (peace be upon him) as a lawgiver is reported to have imposed this punishment only where the value of the stolen property was more than a quarter of a dirham. He also laid down the principle that for applying this punishment, the taking must be from actual safe-custody, or under protection, besides being of the requisite value. So, for plucking fruit from a tree or taking animals that were straying in the hills, lesser punishments were given, including a fine of double value of the thing taken. Cases of crimes which cannot be required by the victim are outraging the modesty of respectable women, highway robbery, and false imputation of unchastely, and for these the *Hadd* punishments were halved. The Holy Prophet (peace be upon him) said-'if a female slave commits offence, beat her; if a male slave commits theft, sell him'. Another tradition is to the effect that when a complaint was made against a slave by his owner, that he committed theft, the Holy Prophet (peace be upon him) said 'both belong to you; one is merged in the other'.

There are traditions also with reference to the *Hadd* punishment for adultery that qualified mitigation was applied, according to the facts. With regard to intoxication through drink, the Holy Prophet (peace be upon him) strengthened the *Qur'anic* injunctions by declaring it to be *Haram*. He ordered the punishment of forty lashes to a drunken person. Here too, the offence is one easily committed, and apt to become habitual so that full severity in punishment was justified. Later, it was increased to eighty lashes. A very impressive instance of the Holy Prophet's (peace be upon him) inclination towards mercy is to be found in the tradition that when a man brought before him, as an offender who had incurred a punishment of hundred lashes, proved to be a sick and a cripple, he said 'take a branch with a hundred twigs and give him one blow with it'.

During the period when the Holy Prophet (peace be upon him) was the sole arbitrator of his period, he enlarged the jurisprudence of Islam in several directions. The record of his decisions and dicta is contained in the *Ahadith*. It was he who laid down the rule that in the trial of suits, the obligation of producing evidence to support his claim is on the plaintiff; the defendant must take an oath that his case is true. The reason given was that if relief were always given to plaintiffs on evidence alone, unjust result could follow. Another rule that he laid down is that in cases of doubt, the antecedents of witness should be checked. Supplementing the rule of the Qur'an that one who has proved to have made a false charge of indecency against an honourable woman is forever disqualified as a witness in judicial proceedings, the Holy Prophet (peace be upon him) disqualified also persons who have committed breach of trusts or adultery, as well as those who were enemies of a party.

Rules were laid down as to the taking of oaths-the formula of words, the time and the place. The words should bring to mind the total power and the total knowledge of Allah; the time should be the 'Asr prayer; in Mecca, the place was within the precincts of the *Ka'ba*, and Medina, at the mosque of *Tayyaba*. The Holy Prophet (peace be upon him) greatly disapproved litigious persons saying that in the view of Allah these were the most troublesome, but those who avoided contention were praised as magnanimous. False evidence and false case were regarded with a very severe eye; they show disrespect to Allah, who loves not trouble-maker and desires that social order should be maintained. The holy Prophet (peace be upon him) said 'he who makes a false case to get another's property is not of my people; he should find his place in hell'. A judgment does not make that lawful which is itself unlawful and the Holy Prophet (peace be upon him) added great emphasis by saying:

"Remember that I am like one of you. If a clever litigant, by artful words, convinces me so that I decide a case in his favour, right if a brother Muslim, such a litigant will go to Hell".

In his decisions, the Holy Prophet (peace be upon him) always up-held the principles of public good. Thus in a case of damage to a garden by a stray camel, he laid down that if it happened in the daytime when garden-owner should have guarded his property. There was no blame to the camel owner, but if it happened at night, when the camel-owner should have kept his animal secure, the camel-owner was liable.

The maxim '*al-khiraj biz-zaman*', meaning that the profit from a thing belongs to him who is responsible for its existence, from which is

derived the corollary '*al-uzm bil-ghunum*' meaning he who pays for a thing is entitled to the benefit from it, comes from the Holy Prophet (peace be upon him) himself, and in his time was laid down the salutary principle that all transactions that pre-dated the advent of the Islamic state to be left as they were, untouched by the new order of things. The rule favouring the person in possession, where the ownership of property is involved, and the evidence is either doubtful or equal on the two sides was applied by the holy Prophet (peace be upon him) in a case be decided. With regard to property of which no owner could be found, he laid down that its disposal should be governed by the element of benefit to all Muslims as well as to the thing itself, and secondly, by the element of prior possession; failing these, by the casting of lots. He held that contracts should be enforced to the letter, unless anything agreed makes that *Halal* (lawful) which religion declares *Haram* (unlawful). Where the parties are not agreed as to the terms of a contract, it should be declared void, and in a particular case, the holy Prophet (peace be upon him) said- 'When seller and buyer are not agreed, and the word of neither can be accepted, if the thing allegedly sold be there, the word of the seller should be accepted, but if the buyer does not agree, the contract should be void.'

Many cases are recorded in which the Holy Prophet (peace be upon him) laid down canons of justice of general application. The paternity of the child of a slave-girl being contested, one party claiming that his brother, when dying said the child was his and should be looked after his family, and the other declaring, it is the child of my father's slave, and was born in my father's house, the Holy Prophet (peace be upon him) pronounced as follows: 'the child belongs to the owner of the house in which it was born; for the adulterer there is stoning'. He decided that in a built-up area, where trouble had arisen through the paths encroached upon by builders; the minimum width of the path should be seven cubits; so a public nuisance was removed. In a case where a person had cultivated land belonging to another tribe than his own, without authority, the holy Prophet (peace be upon him) decided that the man had no right to the produce, but should ask for payment of his expenses of cultivation. He laid down the principle in a pre-emption case, that the 'right of pre-emption exists only so long as partition has not been effected, so that rights remain joint; when every field has been demarcated, and each owner has his separate way, no right of pre-emption remains'.⁴³

Kitab ul Allah and Sunnah of the Prophet may the blessings of God be upon him considered all these deeds, practiced and acted upon. He(PBUH) made the acts of worship precise for them by legislating the

causes and time, conditions, pillars, proper behaviours, the ruling leading to their invalidation, the special consideration, the strict interpretations, the (timely) performance of and making-up for missing obligations. He (PBUH) specified the acts of disobedience and legislated the ruling of *Hadd* punishments, deterrent punishments, and atonements. Islamic values are absolute and morally binding upon the believers. As justice is very near to piety and righteousness therefore they should not transgress the limits of justice.

Islam is brought about by a conscious resolve on the part of a politically free nation to renounce all claims to sovereignty in favour of God Almighty. Islam considers no discrimination whatsoever on ground of race or colour and is not bound by any linguistic or geographical barriers as such ensures the Islamic values throughout the world. Allah is the legal sovereign. His law (the Holy Quran) is the final and binding argument. His Apostles must be obeyed and loved by following them. Their guidance is another landmark of Allah's legal sovereignty.

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