

Islamic *Fiqh* (Jurisprudence) and Public Life: A conundrum.

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Abstract

Globalization is today projecting the way and system of life in the contemporary world and a natural interaction among religious people, culture and in the public life. Appears as a secular system; where political or social philosophy rejects all forms of religious faith and worship in matters of civil policy. A philosophy that reject any element of religious jurisprudence at the public life.

As in the Western world, Muslim dominated countries are feeling the heart and impact of globalizations and its utmost influence at the public spheres. Among the Middle-East gulf countries, this influence is obviously visible as the Western countries culture, norms and ways of life has infiltrated their Islamic birth-right.

Islamic jurisprudence is no longer the system of public life but Western doctrine and system has taken over and profited at the expense of Islamic values, culture and norms. Despite this, there are shadows of Islamic oriented systems such as Islamic Financial systems and many others, alas, globalization has imposed identical rules of procedures and a common standard of all structures of public life. Islamic Jurisprudence is now a subject of personal life, academic studies and topics to be researched by whoever cares to know.

Finally, this paper tends to explains through descriptive analysis and explorative context, the challenges before adoption of Islamic jurisprudence as panacea to socio-economic problems.

Keywords: Globalization, Islamic Jurisprudence, Public life, Culture, and Systems.

Introduction

Islam to the Muslims is a tradition, cultural norms, and way of life that addresses every aspect of public life for gaining societal reputation. Ethics is very important in human life while ethical practices within the context of Islam is as important as the pillars of Islam which protect the rights of every human and the trusted value that the public needs for peaceful coexistence. While Islam protect public value, loss of innocent lives, destruction of properties, spreading

mischievous, terrorizing the innocents and destabilization are strictly forbidden and are horrible to the divine message of Islam.

It calls for values such as justice (*adl*), beneficence (*ihsan*), wisdom (*hikmah*), transparency and accountability which constitute core principles in public administrative strategies and framework for the will to live on earth in a state of harmony and peace with other living things. Looking into the events and happenings within the Muslims in this century, Islam has been tagged with nasty episodes of various atrocious and vicious vocabulary of most people writing about present-day problems and security as the world is now a global village which feature the contemporary world.

No doubt, the Muslim world feels the impact of globalization and its ambiguous influences leading to rejection of any element of religious jurisprudence at the public life. So far, various world ideologist such as Western Capitalism, Socialism, Communism and the Marxist movement has profited or misplaced the rest of the world that religion has no place in the world but secularism which has widen the gap between the people economically, Socio-Status and developed and underdeveloped regions.

While Islam advocate 'Islam and the State' (*Al-din wa Dawla*), the opponent is regularly protesting against the standards of Islamic jurisprudence for the existence of public life as outstretched by ALLAH and exemplified and hands-on by the last Prophet and Messenger to Mankind, 'Muhammad Mustapha' (May the Peace and Blessing of ALLAH be upon Him and all Prophets of Allah).

Had the West and its propounded ideologies allowed 'religion' take its place within the society and in public life, how nice and pleasant would our world be today?

Definition and Scope

The original sources of Islamic jurisprudence (Law) is the Qur'an and Sunnah. These two are divine sources stressing on moral obligations and duties besides the personal and domestic life of a Muslim. It's regulates family issues, socio-conduct, economic transaction, mutual relationship of individual, entail discipline and injunctions. Some earlier Islamic renowned scholars *Ibn Qayyim al-jawziyah* is always referred to as one who attaches great importance to public interest. It is said that he advocates the change in *Fatawa* (Religious verdicts or rulings), because of a change in time, place and conditions and this is based upon a story related to him by his teacher *Ibn Taymiyyah*.

He (*Ibn Taymiyyah*) is reported to have said: 'I passed with some of my companions in the days of the Tartars by a group of them who were drinking alcohol. One of my companions wanted to reprimand them, but I prevented him from doing so and said 'God has prohibited strong drinks as they divert people from God and prayer, but strong drinks here divert these people from murder, capture of children and plunder, so leave them alone¹'. Strong drinks, in this case, were overlooked not in the public interest but in view of the pressing need to save the people from murder and plunder.

Here it may be profitable to note that *Ibn Qayyim*, by using the word public interest, means nothing else than the needs of people and he has actually stated such interest to be '*hajar* or need in answer to which he says, even *riba fadal* becomes permissible.

The word 'need' means 'constraint or compulsion' exercised upon or by persons. Need may also arise from the facts or circumstances of a case, so the above story related by *Ibn Taymiyyah* has its bearing upon the need arising from circumstances of a particular case. And it is in answer to this need and necessity that he allowed the Tartars continue drinking alcohol. It may also be said that in this case, 'the lesser of the two evils is preferred'. Thus allowance is given to need and necessity. *Ibn Taymiyyah* did not change the law but deviated from it under the Rule of Necessity and Need in interest of the public interest.

Muslims Public Life and Interest

Throughout the history of Islamic civilization, Muslim jurists have derived rules, regulation, norms and culture from the Qur'an and the practice of the Prophet Muhammad (SAW), on whom be blessings and peace, laws applicable to all aspects of the Islamic society, including rules of interactions with Non-Muslims and in engaging with hostile enemies are taken crucial and respectful to them; while Islam insists that believers exercise their critical faculties and not to be senseless in adherents, it strongly repudiates those who discriminates against the Non-Muslims and those who follows in the footsteps of their forefathers, blindly emulating without knowledge or understanding of what they are doing or practicing².

As Islam regulates the rules of human and resources regarding human-to-human relations, animals and all that Almighty Allah created are safe-guided as Muslim jurists formulate laws pertaining to these, as well as other aspects of public life and administration.

¹ *Mahmassani, S., Falsafa Al Tashri' Fi Al Islām*, p. 117

² Towards our reformation. From legalism to value-oriented Islamic law and jurisprudence, Mohammad Omar Farooq, IIIT books-In-Brief series, 2015.

After the fall of the golden age of Islam, Islamic civilization became suspended and the Islamic lands and territories became engulf and replaced by European models and systems, same was after the fall of Andalusia and the Ottoman empire. This and many more; and especially the colonization makes the present day Muslim forgetful and not ready to be associated with Islamic laws i.e. the *sharia* (a path to be follow) and making the Islamic jurisprudence and values unknown to the general public.

Public Life and interest cannot be a source of Islamic jurisprudence as it includes luxuries of all sorts and other abuses of the modern world. Life and Interest means something which one has concern such as benefit to life, profit or advantage. It is not pressing as the needs and necessities are. One has to bear in mind that Islam provides facilities to those who are subject to hardships and therefore Islamic law takes cognizance of needs and necessities which are genuine and legitimate. To satisfy such needs and necessities; the Muslims are allowed to overstep even the clear text of law but he must know his responsibility to God if he does so unscrupulously³.

Under the circumstances and in view of the ethical nature of Islamic jurisprudence, it cannot be possible to permit public life and interest as a source of law, for it will keep the door wide open to admit unlawful and what cannot be permitted under Islamic Law. To illustrate this point further is a clear examples of public same sex order to satisfy the sex urge of both same sex gender which is Man for Man and woman for woman for any reasons known to the propagator of such inhumane and unnatural act. Must same sex marriage be an instrument for humanity's development and not the other way round? Surely, globalising such order and law among the Muslims oriented countries must be seen as public peace disorder and chaos. Such laws of public life and interest in Islam is completely prohibited and unlawful.

Muslims and Muslim countries are faced with this kind of tremendous and frightening challenges in the name of globalisation. This is a global threat against Islam and the Muslims. Muslims should not vent their anger and frustration by mounting futile isolated violence, rather, they should plan and execute the development of our *ummah* so as to be empowered by information technology, economic development vision and be capable of handling the challenges of the modern age and world order.

³ Islamic jurisprudence and the rule of necessity and need, Mohammad Muslehuddin, Islamic studies (Islamabad) 12:3 (1973).

Islamic Jurisprudence and Public Peace

Peace in Islam is a state of physical, mental, spiritual and social harmony; as Muslims want to live their faith to the best of their ability without confrontation with other faiths; Islam teaches Muslims to struggle for social-economic justice, be disciplined (*aklaq*), social responsibility, perseverance and self-sacrifice, and the belief in the unity of the Muslim community and the oneness of humanity with the understanding that human lives are all parts of ALLAH's creation and are purposeful and sacred. Islam places emphasis on fundamental human dignity (each human as a person, not an object or commodity). Allah has sanctified each one of us at the human level, and Muslims should be at the forefront in upholding the fundamental right of human dignity. (*Surah al-Nisa*; Q4 V1)

Imam Abu Hamid Al Ghazali stated that: "The very objective of the *Shari'a* is to promote the well-being of the people, which lies in safeguarding their faith (*Deen*), their self (*Nafs*), their intellect (*Aql*), their posterity (*Nasl*), and their wealth (*Mal*). Whatever ensures the safeguard of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable⁴.

Islamic jurisprudence reflects its values and principles as explained in the following illustrations⁵;

1. Justice

Islam's emphasis on justice (fairness) is unequivocal. It sets a standard that is much higher compared to any other ideology or religion, exhorting its adherents to stand forth for justice even if this entails acting contrary to one's own interest (*Surah al-Nisa*, Q4:135).

2. Equality (and Non-Discrimination)

Whether in terms of Muslim or non-Muslim, male or female, black or white the value-oriented norm of Islam is equality. In this world, human beings all are equal, especially in terms of those rights relating to life, honour and property. Whatever good or virtue Muslims possess is rewarded by Allah in the life hereafter. At the human level though, each must regard the other as equal.

⁴ Bedoui, M. H. E., (2012). *Shari'a*-based ethical performance measurement framework. Universite Paris.

⁵ Ibid, pg 4.

3. Freedom

That the edifice of Islam is based on free choice not coercion is one of the pivotal aspects of the value-orientation approach. If Islam is to become relevant once again there must be recognition of the foundation of free choice for those who embrace the belief. When the Prophet and his nascent community faced severe and persistent persecution Allah emphatically reminded the Prophet to cherish freedom. Subject to the usual parameters that apply in any healthy and functional society, no-one has the right to remove the fundamental right to choice and freedom. Probably the biggest and broadest area relating to choice and coercion involves the role of the state in Islam. In light of the experience with Islamic law and its incorrect application, many Muslims, as well as most non-Muslims, now have tremendous reservations about Islamic law, or the mixing of political power with religious authority. Muslims need to present a better, functioning model of state and governance in accordance with the values and principles of Islam.

4. Universal Moral Values (*Maruf*)

You are indeed the best community that has ever been brought forth for [the good of] mankind (*al-nas*): you enjoin the doing of what is right (*maruf*) and forbid the doing of what is wrong (*munkar*), and you believe in God. Now if the followers of earlier revelation had attained to [this kind of] faith, it would have been for their own good; [but only few] among them are believers, while most of them are iniquitous. (*Sarah Al 'Imran*, 3:110)

The Qur'anic call toward *maruf* and away from *munkar* relates to moral values in the universal sense. Both *maruf* and *munkar* have a broad range of meanings and a clear understanding of these two concepts is critical to a Muslim's life.

5. Humanity-Orientation and Global Belonging

At one level all humans belong to a family. At another they belong to a nation or country. On a quite different level the Muslims belong to the Muslim Ummah. At yet another level all belong to humanity. None of these senses of belonging necessarily need conflict with each other. One's family and nation are often not choices of one's own; individuals are born into them, belonging to a family and circle of relatives through biological and other bonds. National belonging is becoming more fluid at this juncture with the greater global mobility of people.

Nevertheless, it is quite possible to maintain ties to the part of the world one originates from without conflict while remaining loyal to the place of permanent residence. Muslims need to make this clear to the people of the countries to which they emigrate. Muslims must seek common ground concerning worthy causes. Muslims should be at the forefront of fostering the spirit of global belonging.

6. Representation and Participation (*Shurah*) of the People in Public Affairs

Consultation or *shard* is a vital process and important institution in Islam and critical in a value-oriented context. Different levels of relationship in Islam are based on consultation rather than on coercion or imposition. Thus, the concept of governance, administration and leadership is participatory meaning that those who are affected by the decision have the right to be duly consulted.

7. Rule of law

The essence of the rule of law in Islam is summarized according to four points:

- (a) Equality of all before the law, with no-one being above it, where the laws are based on objective, accessible rules;
- (b) An independent judiciary;
- (c) Enforcement of the law is civil and non-partisan;
- (d) Conflict resolution occurs either through the legal system, the political system or both without involving violence on the part of the citizens or State.

8. Seeking Common Ground for Mutual Good

It is a common human tendency to emphasize and exaggerate differences more than commonness. Muslims are no exception to this. Islam invites people to the pristine truth, and whenever appropriate and possible, it also seeks to identify and build on common ground. According to Islam a person has three major types of responsibilities according to which he/she will be judged by God: (1) responsibility towards Allah to be fulfilled through the performance of religious duties faithfully; (2) responsibility to oneself by living in harmony with oneself; (3) responsibility to live in harmony and peace with other fellow humans. Deeds are central in measuring the person's obligation in meeting these responsibilities. Similarly, the emphasis on "actions and doing" is central in peacebuilding, particularly when parties attempt to go beyond the dialogue and exchange of opinions. Believing in the importance of behavioural changes and

implementation of values through specific actions is a central factor that promotes peacebuilding and change. Moving the other by persuasion and allowing him the free will to make a choice are two important principles in Islam. Both indicate that individuals carry the responsibility of their own actions⁶.

9. Rejection of Violence as Normal

In Islam peace and non-aggression are the norms. Islam rejects violence in the form of unjustified aggression, but does not proscribe violence in the form of justified use of force. However, the only form of violence permissible is in self-defense, without its initiation, without committing excesses, and subject to strict guidelines as part of the rule of law. Otherwise, it is never permissible for Muslims to engage in violence, especially in a vigilante manner.

10. Non-judgmental

As Allah's judgment will be in place in the life hereafter it is important that all verdicts concerning matters of worship should be deferred to Allah alone and Muslims must not judge their fellow human beings in this regard.

11. Emphasis On Substance Over Form

‘Faith’ has become a mere figure of speech, a mere empty word devoid of that spark of enthusiasm which in the early days of our [Islamic] history inspired the Muslims to imperishable deeds of cultural and social achievement. No doubt, Islam is still alive as an emotion. It is alive in the instinctive love of countless millions of people who vaguely feel its principle are ‘right’; but only very few of them grasp those principles intellectually and are able, or genuinely prepared, to translate them into terms of practical life⁷.

Conclusion

Today Islam faces a number of challenges in the Muslim world. The people of some Muslim countries are facing a horrible conflict as part of an international power play involving oil and globalization. There was a time when Muslim countries dominated the world. Then

⁶ A Framework for Nonviolence and Peacebuilding in Islam, Mohammed Abu-Nimer, Journal of Law and Religion, Vol. 15, No. 1/2 (2000 - 2001), pp. 217-265. Journal of Law and Religion, <http://www.jstor.org/stable/1051519>. Accessed on 16/08/2018

⁷ M. Asad, This Laws of Ours, pp.30-31

there was a decline. The decline was because we were preoccupied with bickering amongst ourselves regarding the interpretations and explanation of Islamic creed and principles. Muslim governments are forever being attacked by extremists Muslims. Busy trying to defend their Islamic credentials, Muslims and their countries missed completely the Industrial Revolution which was taking place in the European world. They took no part in it as a result we retrogressed, unable to gain anything from it. Muslims became poor not just in terms of wealth but also in industrial capacities, the invention, design and production of the instruments of progress. They have become totally dependent on others even for most simple needs, and the needs of their defence.

In other parts of the Muslim world, occupation or effective control by unfriendly forces persists. Illiteracy, instability, authoritarianism, exploitation, injustice, economic inequalities, violence, human rights deviations, women's rights deficiencies, and poverty are particularly rampant in Muslim-majority countries.

At a global level, sectarian violence continues; in general, the physical abuse of women is common; though not exclusive to Muslims alone and in the heartland of Islam, women recently gained their freedom to drive. Many of these issues are matters, which concern the prevailing sociocultural-political environment. However, the Muslim mind and the present culture are entrapped in the current dysfunctional and stagnant situation, because of the deeply conditioned traditional religious understanding and devotion that exists, made possible by inappropriately projecting back to textual sources in general therefore making Islam the sources of world chaos and pandemonium. Had Islamic jurisprudence taken its place in public sphere despite all the challenges, and its principle for societal hegemony supersede the society and public life, how nice and pleasant would our world be today?

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