

The Concept of Ideal Islamic State

Islamic rulership

The idealised Islamic state is not utopian, in that it does not espouse near impossible themes that have little bearing to reality. Islamic states did once exist and can function again in contemporary times, provided the requirements of a contemporary Islamic state are understood and appropriately developed from the fundamentals that already exist within the Islamic polity.

A comparison between the modern secular state and the ideal Islamic state is unavoidable as an investigation of differences in the application of familiar themes in both systems is a useful way of understanding the basis of an Islamic state.

Potency of politics in Islam

It is a well-known fact that Islam has a value-system applicable to government and politics. This is a powerful theme that raises spontaneous opposition from the West due to the West's own historical experience of the renaissance when the state and church were painfully separated. However, there a number of reasons which compel Muslims, even those who are aware of the Western experience, to consider politics, even modern politics, as being part of practical Islam. These are:

Islam does not separate the secular from the spiritual. It is a comprehensive way of life. To this effect, it provides man with theoretical and practical guidance covering all aspects of life, of which the political aspect is but one. The world, in its view, is a place of preparation of the soul for the hereafter and that this preparation fulfils the purpose of creation of man. One cannot therefore consider parts of worldly life as having no meaning with regards to that final purpose.

The majority of Islamic injunctions apply to the Islamic ummah rather than the individual. The importance of society and laws governing social interaction in Islam therefore becomes obvious. The rulership of such a society requires Islam to provide guidelines for the establishment of a just government and the running of the state machinery.

When Prophet Muhammad established the first Islamic state in the city of Madinah, he personally laid down principles by which an Islamic state would run, including the unity of religious, political and legal institutions. The idea of that original Islamic state, governed by a perfect ruler enjoying direct communion with God has remarkable potency for the Muslim even after fourteen hundred years.

The Islamic world was ruled for at least five centuries by some form of Islamic government partly or fully based on the original idealised model. A vast amount of material for such governance thus exists in the classical literature. There is a great attraction in looking into these texts to find means of developing the methods then used into something that would be applicable in contemporary times.

Sovereignty & legitimacy

The most fundamental principle of Islam is tawhid, which means unity or oneness of God. This principle is the spirit behind all ideas and practices in Islam. Translated into political philosophy, it asserts that sovereignty belongs only to Allah. This means that the explicit commands of Allah, as laid down in the Qur'an cannot be changed and must be adhered to by all. The principle of oneness further asserts that the sovereignty of God is fulfilled by the vicegerency of a single person in each age, called the Imam. It is a principle of faith that such an Imam, a divinely appointed direct descendant of the Prophet, will always exist on the face of the earth. This is the source of the political legitimacy for the leadership of the head of state, who is charged to exercise divine authority within the limits prescribed by Allah.

Another principle that applies here is that of the khilafah, that is the representation of the lordship of Allah as His trustee. Humankind is the recipient of a lordship over other creatures of Allah and ultimately bears the responsibility towards Allah of how this duty is executed. This responsibility is epitomised in a complete and perfect way in the person of the Imam, who for that reason is also called the khalif. The later term, popularly written caliph, commonly denotes the Imam in his capacity as the successor of the Prophet and the head of the Islamic State.

Head of state

There can be no doubt that the type of government espoused by Islam is a form of theocracy in which the head of state has ultimate decision-making powers. It is not a theocracy of the kind that once existed in Europe, as the suzerainty of God is not translated to an arbitrary rule of a priestly class but is invested in a single head whose rule operates within the divine injunctions of revelation, that is the Qur'an and the practice of the Prophet. He is the final interpreter and guardian of religion and its very embodiment, one to be emulated and one who provides the moral basis for law. His predecessor through an act of designation can only make his appointment.

The very basis for government in Islam is God-given morality and the ruler has to be the embodiment of that notion. Such high standards are demanded of the ruler that only such men as Prophets or Plato's Philosopher King in the Republic would do the post justice. In the Shi'a Fatimi Isma'ili faith, the ruler, that is the Imam, is at once the sinless and inerrant religious head of the ummah (Islamic community) and also the khalif, its political ruler.

The Imam represents the Prophet and commands the same authority in so far as obedience to him is concerned. The Qur'anic verses

"So accept what the Apostle assigns to you and deny yourselves that which he withholds from you. And fear Allah; for Allah is strict in Punishment."(59:7)

"But no by your Lord they can have no (real) Faith until they make you judge in all disputes between them and find in their souls no resistance against your decisions but accept them with the fullest conviction." (4:65)

apply equally for the Imam. The Imam therefore provides the dynamics within religion and law. He interprets religion in accordance with the requirements of the time. The authority inherent in the Imam deals with the question of antiquity and irrelevancy of historical perspectives or of developing classical Islamic institutions for a new age. The Imam in an Islamic state would have the authority to adopt laws, even divine laws and to enact constitutions and choose the administrative system to govern with according to the prevailing circumstances and needs of the times.

The subject of administrative systems allowable in Islam is vast and includes structure of government, taxation and wealth distribution, security etc. and will not be dealt with in this dissertation. This dissertation will limit itself to the judiciary, the philosophy of law and its ethics, the role of morality, human rights and democracy in an Islamic state, as these are also the principles upon which a contemporary secular state is based.

Essentials of a modern secular state

Almost all models of government all over the world follow the models that exist or once existed in Europe, whether they are dictatorships, monarchies or democracies. Western Europe defined nation-states and developed ideas that have shaped world governments, international politics and virtually all machinery required to run a contemporary state. There are a number of themes that such states aspire to. These can be classified as follows:

Government should be based upon an elected parliament.

The judiciary should be independent of other centres of power.

A degree of egalitarian participation of the people in the running of the state, that is, a form of democracy.

The protection of individual human rights and civil liberties.

This dissertation will investigate the role of each of these themes in an ideal Islamic State.

One should note that these themes are not always fully applied even in the most ardent of liberal democracies. Often, even a democratically elected government acts against the wishes of the people for selfish or paternalistic reasons. In other cases, as in the case of the trade union acts in UK, the judiciary gives extreme interpretation to law and overrules the intent of parliament. Prejudices sometimes allow different interpretations of the same law to be applied for different sets of people. Democracy often produces undesired governments and protection of one set of rights often lead to violation of others.

The Shari'ah

Islam is most known through its application of the Shari'ah, which is commonly interpreted as Islamic law and popularly associated with criminal law. This is an

inadequate definition as the Shari'ah is much more than that. There is undoubtedly a pre-eminence of law in Islam, which stems from its view of revelation. This it regards as the manifested Will of Allah. The proper response of humankind is therefore to submit to this Will, accept the trusteeship inherent in this submission and be judged by it. Thus, every act, however humble or private, whether sacred or not, becomes charged with "legal" consequences. This judgement is based on a moral measure by which there is, in Islam, the approved (halal) and the forbidden (haraam) for almost all aspects of life.

The Shari'ah is however much more than law. It defines the way in which the submission to Allah is to be done in every conceivable human situation. It provides a means of understanding the Divine Will and a means of enacting that Will through an action-based system, both for the individual as well as the society. It encompasses, for example, the whole body of ethics and morality, rules of prayer and fasting and all other aspects of religion to the extent that it is sometimes confused with religion itself. The word literally means "way" and denotes an actualisation of Divine Will. Some scholars correctly regard it as the most powerful theme in the genius of Islamic monotheism precisely because it is a process by which the concept of tawhid in Islam is given form.

There can therefore be no doubt that an idealised Islamic state would derive its features almost entirely through the Shari'ah. In a short dissertation, the discussion of Shari'ah has been limited to only to ethics and criminal law as it would take too long to investigate all its aspects.

Shari'ah Ethics

There is an over-riding importance of ethics⁴ in Islamic law. So much so that the core of Shari'ah is often described as nothing but ethics. The Qur'an repeatedly uses the phrase "those who believe and do righteous works" to denote those who are to achieve salvation, thereby showing that what is desired of man by God is not simply belief and worship but also righteous deeds.

The 10th century encyclopaedic work, *Rasa'il Ikhwan al-Safa*, makes ethics virtually the paramount purpose of existence of humankind⁵. There is no road to paradise except this world and to pursue this world for itself is the height of ethical evil, but to seek to realise value in this world is the height of ethical goodness. One of the remarkable features of the single-minded striving of ethics is the definition of what constitutes moral value. This is defined as the whole body of values, whatever they may be. A definition of evil is to promote one set of values at the expense of another. The realisation of the purpose of creation itself is the struggle to raise oneself to embrace all value. The importance of this philosophy cannot be underestimated. It means that moral values have an objective existence, which the Muslim is required to seek out and adhere to without regard to its source. This is pluralism right at the core of the Shari'ah, despite the supercedary status

of morality themes revealed in the Qur'an. Such is the importance of ethics in Islam that it would form a natural cornerstone of the ideal Islamic state. It is conceivable that institutions of ethics and morality would form part of an ideal contemporary Islamic state and the force of morality would be relied upon much more than law for the running of society.

An important fact about Islamic ethics is that the theological and philosophical theories that were constructed to support ethics during the classical phase of Islam were based on Greek rationalism rather than any other eastern philosophy. This relationship of Islam to western intellectual history has not been recognised in the West and modern studies of ethics have largely ignored this period of its development. This also means that ethics of state espousing Islamic values would be amenable to analysis using contemporary tools developed by the West from Greek philosophy.

Shari'ah Law and crime

The Sharia'h law encompasses all laws pertaining to inter-personal and society relations, from marriage and inheritance to distribution of wealth and army etiquette. In effect, it has the potentiality of dealing with all that is the purview of the law in a contemporary state and more. Here, we shall deal with some aspects of Shari'ah law that can be regarded as criminal law.

Criminal law in any society has just one ultimate purpose, which is to protect the society from activity that society deems unacceptable for whatever reason, principally the causing of injury to others. The process of meting out justice to the crime may have a variety of reasons. The most liberal attitude would take the view that human nature is itself not criminal and that crime is only a symptom of an inequitable or unjust society. The criminal should therefore be punished only for rehabilitation purposes as the real cause of crime is the society itself. The view at the other extreme would be that crime is the responsibility of the perpetrator alone and the first function of criminal law is to protect the innocent society from the criminal. This group would favour capital punishment and jail sentences to prevent the criminal from repeating the crime. Latent in both procedures is the requirement that the aggrieved party should feel that justice has been done. Another element, especially found in religious societies is that each crime itself should attract an equivalent punishment in the objective sense, in which justice is seen to have been done in the eyes of God alone, regardless to its consequences to society.

The degree to which crime and punishment are to be viewed as being objective shapes the type of criminal law implemented in a particular state. Where the liberal and objective viewpoint outweighs the preventative, the state has necessarily to expend heavy resources in proving the crime and meting out justice accurately as its ultimate

purpose is to identify the crime and deal with it accordingly. In a system where the primary purpose is prevention of crime, the emphasis is on the punishment that will have the highest deterring effect. The latter system is concerned more with the pragmatism than of attaching a value to the crime and accepts that the punishment may not always be commensurate with the crime. Although the former appears more humane and the latter more regimental, in practice it is almost impossible to practice the former which can lead to complicated and inefficient systems that still allow mis-carriages of justice.

One would think that a religious law would be inclined to define crime and punishment intrinsically; however Islam appears to do the opposite. What the Shari'ah does is leave the choice of criminal activity, indeed any sinful or merit worthy activity, to the individual by including ethics and morality within itself. The ideas of sin and retribution put justice and the objectivity of crime and punishment firmly in the spiritual domain, where Allah alone will apportion infallible justice. Punishing a crime on earth is therefore a social activity rather than a spiritual one and thus Islam attaches more importance to a practical and deterrent purpose to punishment than to its rehabilitating value. This is done by a rigid code of punishment attached to each crime, which is then deliberately rarely applied because of the following reasons:

The crime is made difficult to prove. For example, in the act of fornication, which is punishable by public flogging or even death for the married fornicator, there needs to have four witnesses to the act of sexual intimacy for it to be proven⁶. Showing only that a couple live together or that they were found alone in a room from which sexual sounds were heard or that three people saw the act being done would render the crime unprovable and unpunishable. The effect of the system would therefore be to castigate only prostitution and blatant sexual promiscuity as that would be the only type of sexual crime that would be provable.

There is an in-built reluctance for a Muslim to judge even by a God-given law. When a judgement is to be made, man does so reluctantly mindful of his own fallibility. This reluctance is best demonstrated by the Prophet when someone unaccused, came to him to admit to the crime of fornication. He refused to acknowledge it until the person repeated his admission freely four separate times⁷.

The Islamic criminal system therefore relies heavily on ethics and moral teachings, makes crime a private matter between the individual and his Maker, prefers not to punish even those who would otherwise be found guilty and considers punishment necessary for its deterring rather than rehabilitating value⁸. Thus even when the crime is proven, the judge is instructed to look for mitigating circumstances or throw doubt upon the evidence that would allow the commuting of the sentence. Moreover, the sentence can be avoided if the injured party forgives the crime prior to taking the matter to court or through some restitution. Besides that, the Imam has the absolute authority to grant pardon. All these

are overtures of mercy that are built-in within the Islamic Shari'ah. The sporadic application of severe laws in modern times by some regimes aspiring to implement Shari'ah law is not normative, goes against the very ethos of Islam and is a by-product of the local political and social upheavals.

Miscarriages of justice are accepted in Islam as a manifestation of human weakness. However, the believer does not see such miscarriages as miscarriages in the grand scheme of things. An apparent miscarriage is considered to be the result of a different previous crime that may have been committed by the perpetrator in secret, thereby validating the impeccable justice of Allah and assigning an objective value, albeit in the spiritual sense, to the crime⁹. Punishment, when applied is to be viewed by the criminal as not only rehabilitative but also redemptive as crime punished on earth shall not be punished in the hereafter. In this sense, mercy is in-built even in the application of punishment.

Conclusion

In summary, the themes pertaining to crime in Islam have the practical effect of limiting society's right to judge and attach stigma to crime and severity of punishment carried out in public provides a powerful deterrent to crime. In a secular state, the purpose and practical effect of the criminal law system is often unclear.

In a contemporary Islamic state, the courts could possibly operate with a system close to the Western magistrate court model, allowing each side professional support, with the exception that crime would be provable only upon the availability of the prescribed witnesses and secondly, the decision as to whether a crime was committed or not would not be delegated to a lay and dubious jury. The judiciary and police and all other institutions connected to the criminal law system would probably be highly streamlined, not only because crime instances would be fewer but also because the stringent witness requirement would reduce the number of cases that can reasonably be brought to court.