

Session 14: The West's Materialistic Approach to Law

A review of the previous discussions

As stated before, according to Islam, the society is in need of law—law which guarantees man's prosperity in this world and the hereafter. Also, the law enforcer must be a person who is totally aware, concerned, pious, just, and capable of adapting laws to specific cases and circumstances—traits which are required of a leader. This is the essence of the Islamic theory on government which our society knows as the theory of *wilayah al-faqih*. In elucidating this theory, it is stated that man can possibly live alone in a jungle or cave, but there will never be any material and spiritual advancements except under the aegis of social life. All the emergent sciences, arts and technology are products of social life.

Even those who have been engaged in self-purification and moral refinement, and in constant spiritual wayfaring and mysticism, have attained such stations under the auspices of social life and learning at the feet of spiritual masters and moral teachers. So, had it not been for this relationship among people, there would never have been any material or spiritual advancement. Social life, therefore, is indispensable for man. For individuals to acquire the maximum benefits from this divine grace, rules and regulations must necessarily be established in their social life.

Obviously, if there were no rules and regulations, society would plunge into chaos, degeneration and disorder, and man's life would turn into that of animals. Of course, some people imagine that human beings are wolves for one another and must be regulated by means of brute force. Such an attribution to man, however, is an exaggeration. Nevertheless, there are inclinations in man which, if not controlled by the institution of rules and order, will drive society toward corruption.

The question consequently is: Which type of rules possessing which qualities can guide human society toward prosperity in this world and the hereafter? In brief, it is said that some believe law should only ensure security and order in society and it has no other function. Others believe that in addition to order

and security, law should also guarantee justice in society. Therefore, in defining law, different views are posed which were stated in brief. Along this line, some have said that laws should not be executed in society, believing that freedom is a manifestation of the natural rights of humankind and no law can deprive human beings of this natural right.

We have said that these views are being expressed by different figures with diverse motives, and I have no idea to which group the exponents of these issues belong, what motives they have and why they are raising these issues. As a student of Islam who is dealing with religious sciences for the past 50 years, I can only express views and talk about the philosophy of law or politics from the Islamic viewpoint. Maybe most people know that I do not belong to any political group, party, organization or faction.

I am dealing with subjects only because of my religious obligation. If some people want to bring about an unwholesome atmosphere, present wrong interpretations or sometimes distort issues, quote statements out of context and misconstrue and exploit them, we have no business with such people. Such individuals always exist in society and will exist in future, too. Of course, sometimes presentation of a view elicits both proponents and opponents which is but natural.

If you can remember, I have emphasized time and again that we sometimes use a term which has no specific and definite meaning. Everyone has his/her own understanding of it, and this leads to error and makes the listener fail to understand what the speaker means by it. In some cases, it ends up in a fallacy. There are times when a fallacy is unconsciously committed and there are also times when a person consciously commits a fallacy. Among such terms is “natural right” which is raised in this context. It is essential to know what “right” is and what is meant by its being “natural”.

Natural law school

Those who are familiar with the philosophy of law know that one of the schools of legal philosophy is “the natural law school”. Since time immemorial and since the beginning of the history of philosophy, a number of philosophers have engaged in this discussion.

Some philosophers of ancient Greece believed that human beings have rights which nature has endowed them with and no one can deprive them of these rights because human nature has affirmed them for the people. On this basis, they have arrived at certain conclusions which are apparently inconsistent with one another. As such, one of the notable fallacies known as “naturalistic fallacy” has emerged in the philosophy of law and ethics.

Some have also claimed that a human being has multiple natures; for example, the ‘white’ have a certain nature while the ‘black’ presumably have a different one. The black are assumed to be physically stronger while mentally weaker than the white. A similar view has been quoted from Aristotle. (One should not make a mistake about it. I personally do not accept these views; I am just quoting them.) He says that since the black are physically stronger, the only work they are supposed to do is physical

labor!

Since the white are mentally stronger, administrative jobs of society must be entrusted to them. In sum, some human beings have been created to render services to other human beings. As such, slavery is a “natural law”. At the moment we prefer not to engage in the discussion of whether or not the nature of black and white has any such standing. It is itself a lengthy discussion for which we will need more time.

In any case, the most rational, sensible and wholesome subject on natural law ever been discussed throughout history is that if there were something called natural need of all human beings in general, then it must be met. Man must not be deprived of the general need of his nature. Up to this point, this subject is acceptable.

We also believe man must not be deprived of the natural needs of all human beings. In confirming this point, there are also rational arguments that presently we are not going to state them. Yet, the question is: What is meant by this need? All human beings are in need of food. Therefore, no man must be deprived of eating food. He must not be deprived of speaking; that is, his tongue must not be cut off, or let him take a medicine that would deprive him of speaking, or similar other acts. It must be noted that they have particular aims in churning out such logic.

Scope of human rights in the West

We all know that in recent times an issue called the (Universal) Declaration of Human Rights was brought up. At the outset, this declaration was signed by the representatives of 46 states. Later on, other countries joined them by signing the same, and as a result, the declaration became a “universal” declaration. In this declaration, rights for man have been enumerated, such as the freedom of expression,¹ freedom of choice of residence,² freedom of choice of occupation,³ freedom of choice of religion,⁴ freedom of choice of spouse,⁵ and others.

Concerning this declaration, there were discussions raised by legal experts who were familiar with the philosophy of law (Muslim legal experts in particular). Among questions raised were the following: What is the philosophical foundation of rights of human beings being regarded as absolute and believing that no one should limit them? What are the arguments in their favor? Is there a specific limit, or not? Are these rights absolutely above law, and is no law authorized to set a limit on these rights?

Is there any law permitted to determine the limit of freedom of expression? Is there any law permitted to impose a limit on freedom to choose one's spouse? Is there any law allowed to state that you have no right to choose your residence beyond the established limit? Is there any law permitted to determine the specific limits of these rights?

When we say that such and such a subject is a natural right and natural need of man, does it mean that this right has no limits? If there is a limit, who is the one determining its limits. The truth of the matter is

that as far as I know, most of the authors of the declaration themselves and those who have interpreted avoid giving succinct answers to these questions.

Finally, what is meant by saying that freedom is above law? Is there any freedom, which no law has ever been authorized to impose a limit on? Are we not supposed to ask, "What is the end point of this freedom"? Does freedom of expression mean that anybody can say whatever he wants to say?! We can observe that no country has ever granted such permission. In fact, every country is of the opinion that freedom of expression has limits. For example, insulting anyone is unacceptable in all parts of the globe.

Emergence of contradictions on scope of freedom

The question on the scope and limits of freedom and on who determines it has a general answer, and that is, once it is said that freedom is above law and should not be limited, it is referring to legitimate freedom. Some add, "Legitimate and rational freedom," while others have added other terms.

In some paragraphs of the Human Rights Declaration, the expression "moral" exists, which focuses on the observance of rights along with moral standards. These paragraphs more or less contain ambiguous concepts. It is obvious that what they mean by "legitimate" is not as Islam has prescribed it. It is true that linguistically speaking, the words *mashru'* [legitimate] and *shari'ah* [religious law] have the same root. However, *mashru'* [legitimate] in the legal and political context means *qanuni* [legal] and that which is regarded by the government as authoritative and valid [*mu'tabar*], and not that it is definitely religiously permissible.

This subject should not confuse some of the believers, and mistakenly suppose that when we say legitimate rights or legitimate freedom, we mean those determined as such by Islamic law. Instead, what is meant by "legitimate" are the legal [*qanuni*], authoritative and valid [*mu'tabar*] laws [*huquq*], while "illegitimate" [*ghayr-e mashru'*] are laws that infringe on the rights of others.

But this question arises: Which are the legitimate and rational rights and which are the illegitimate and irrational ones? Who is supposed to determine them? The only reply is: The law determines the details and limits related to freedom, and it is exactly here that the initial contradictions and inconsistencies can be detected. On the one hand, they say these rights and freedom are above law and no law is supposed to limit them. But when we inquire as to whether freedom is absolute or limited, they say that it is not absolute and since they can not give a correct response, they say that what they are referring to is legitimate freedom.

When asked, "What is meant by 'legitimate'?" They reply that "legitimate" is anything that the law has approved. It is this law that determines the limit of freedom. They forget they just said that freedom is above law. Confused, they assert that all human beings and rational individuals know what is meant by legitimate and rational freedom.

We say that if all people and rational individuals know a certain subject, dispute concerning it is inconsequential because we and all Muslims of the world who constitute a population of over a billion, are among the rational ones. And they say that in Islam some forms of freedom have been recognized, but some have not been recognized. In the end, keeping in view the knowledge and research that we have, this question has remained unanswered. The philosophers of law have no categorical answer as to what or who sets limits on freedom.

Scope of freedom in human rights

The commentators of the Human Rights Declaration and philosophers of law have written on the philosophy of law about the limits of freedom. The first thing setting a limit on individual freedom is the freedom of others. That is to say, an individual is free as long as he does not disturb the freedom of others and does not infringe on the rights of others. This is the most important argument that philosophers of law have ever advanced and insisted on.

In fact, in the Human Rights Declaration, which is like the gospel of Western law philosophers, it has been emphasized that any person is free as long as his freedom does not interfere with that of others. However, if the freedom of a person creates disturbance for others, he is deprived of such freedom. And it is at this point that freedom is limited.

At this juncture, many questions can be posed, among which are the following: Firstly, in which areas and categories do you conceive of disturbance on the freedom of others? Are these disturbances confined only to material affairs or spiritual affairs are also included? Is opposition to religious sanctity equivalent to opposition to their freedom, or not? Western liberal thought states: limitation of freedom does not include spiritual affairs, for opposition to spiritual affairs does not impose limits on freedom.

Thus, when it is said that Islam regards the one who insults God, the Prophet (s) and the sanctity of Islam as an apostate [*murtad*], and for instance, declares the killing of Salman Rushdie for acts of blasphemy against the sanctity of Islam, it does not accept this stance and states that one is free to express one's opinion. He is an author and can write whatever he wants; you can also write whatever you like. Our question is: Are the subjects of this book (The Satanic Verses) not an insult to the sanctity of others' religious feelings? Certainly, you cannot say that they are not an insult.

Is freedom of expression so broad that a person in that part of the world can afford insulting the religious sanctity of over a billion Muslims who love their Prophet (s) more than they love themselves and are ready to sacrifice hundreds of their loved ones for his sake? Do they consider this act as freedom of expression?! If what is meant by freedom of expression in the Human Rights Declaration is such a thing, then we straightforwardly and unhesitatingly do declare that we do not acknowledge this declaration.

Problems of categorizing freedom in the West

Our fundamental question to those who consider as valid this declaration and regard it as equal to the venerable gospel is this: From where has this declaration gained validity? Does it have a rational basis? You have to argue with reason. It cannot easily be said that freedom is above law and it cannot thus be limited. If you say that it earned validity because the representatives of countries have signed it, then it becomes clear that its validity depends upon our signature. Now, what about those who have not signed this declaration, or have signed it on conditional basis? Are they also obliged to unconditionally abide by it?

Every society has a particular culture, things considered sacred, and laws, and in one of the provisions of this Human Rights Declaration it is stipulated that every person is free to choose his own religion. Well, once the person chooses his own religion, he is supposed to observe its decrees. Choosing one's religion does not mean that he has to merely utter a statement but he must be free to observe the precepts of his chosen religion.

Now, we freely chose Islam; Islam states that anyone who insults the holy personages of Islam is sentenced to death. Western culture states that these decrees of Islam are against the natural rights of human beings, because every human being has the right to say whatever he likes. It is clear that these two items (freedom of expression and religious freedom) stipulated in the Human Rights Declaration contradict each other.

Let us return to the first issue: on what basis does anyone have the right to say whatever he or she likes? In your own countries why do you not permit anyone to say whatever he or she wants to say? If a person makes an insulting remark, you sue him in a court of law. If he says that it was an exercise of his freedom of expression and he can express whatever he likes, on what grounds should he not utter such things? So, it becomes obvious that the freedom of expression is not absolute and certain things must not be uttered.

All reasonable persons acknowledge that freedom is not absolute; otherwise, no society will remain for a law to govern and rights to be observed. Thus, no one accepts that freedom is absolute, but the question at this point is: what is its extent? Freedom of expression is mentioned as an example and you cannot claim that it is without restriction and neither has anyone claimed so. In practice, no state accepts that anyone may utter or write whatever he or she likes, be it an insult or calumny, misleading others, or, against national security. Verbally, however, they say that it is debatable.

If the discourse is free, we will also engage in a dialogue. If permitted to ask a question, our questions will be: What is the basis of man's freedom to say whatever he likes? If freedom is indeed absolute, why do you yourselves not accept it? Regarding insults, calumny and defamation, do you yourselves accept that there is absolute freedom? You accept that freedom is limited. Now, to what extent is it limited? So long as you like?

When you say that one should not infringe upon the freedom of others, our question is: What is the extent of the freedom of others? Do you regard the scope of freedom only to the extent that it does not harm the property, life and honor of others? Is harming their soul, spiritual life, ideals, and sanctity, forbidden or not? If these are forbidden, then we have no point of difference in this matter. We also say that the freedom of expression has limitations. One should not insult religious sanctity for this is a violation of the rights of others.

Islamic law's concern for spiritual and material interests

Continuing the discussion, the question now is: What is freedom according to the Islamic perspective and what is its scope and limit? The existence of law in society is meant for the attainment of objectives in social life. Without social life, the material and spiritual interests of individuals cannot be ensured. One of the blessings of social life is that man can benefit from God-given material blessings such as scientific, technological and technical know-how, as well as gnosis and spiritual aphorisms under the supervision of spiritual masters and teachers.

Acquisition of this knowledge and gnosis is possible only in social life. As such, law should guarantee human progress along material and spiritual lines, for merely establishing social order is not enough. For example, if two persons, without harming any one else or disturbing social order, agree to kill each other, are they doing a good thing?

If you can remember, sometime ago, in an American city, a group of people burned to death, and it was reported that these people were members of a religious sect who regard suicide during their rites as the way to perfection! Of course, there is room for question and doubt about this issue. There is a possibility that as this group was regarded antagonistic to the government, it was the American authorities who exterminated them all. Assuming that this group really committed suicide according to their religious conviction, was the act proper?

Can it be said that since it brought no harm to others and they agreed to commit suicide together there is nothing wrong with what they did? Should the government tolerate such a practice? Should law allow it? If the only criterion is the maintenance of order and security, then this order and security can be established through mass suicide! And law has no other function.

According to the liberal perspective, the only function of the state is the establishment of order and law is only meant to prevent chaos and nothing else. The outcome of this mindset is what can be witnessed in Western countries such as moral, sexual, social, and other corruptions. This predicament is the result of their belief that the state has no right to interfere in the rights and lives of individuals. It has to establish order only.

The state maintains that only a policeman should carry arms inside high school campuses so that students do not kill their fellow students or their teachers. The establishment of order and security only

demands that. Is this the only function of law? Or, does law perform other functions such as fostering an atmosphere that leads to the advancement and exaltation of man? Should it also prevent moral corruption?

We conclude that law should also take into account spiritual interests. All that harms spiritual interests such as honor, divine guidance, viceregency of Allah, and humanity, and material interests such as the wellbeing and security of people, should be forbidden. Is society not formed for the advancement of humane goals? Is it meant only for the attainment of mere animalistic objectives?! The law should guarantee both the material and spiritual interests.

As such, drug addiction or injecting anything poisonous is forbidden because it makes man sick, annihilates him and harms his material interests. Now, if a person becomes addicted to this stuff without showing animalistic acts and is apparently healthy but loses his senses and understanding, should he be permitted to do so? And if there be another evil practice leading to a loss of faith and spiritual sanity, should it not be forbidden? Does it not destroy the humanity of man? If certain people create an atmosphere in society that keeps the people away from religion, should they be free?

﴿وَصَدُّ عَنِ سَبِيلِ اللَّهِ وَكُفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ﴾

“But to keep [people] from Allah’s way, and to be unfaithful to Him, and [to keep people from] the Holy Mosque.”⁶

That which obstructs the path of spiritual evolution, advancement and acquaintance with the truth of religion and negatively portrays religion in the sight of the youth is forbidden because it is harmful for humanity at large. How comes that whatever is harmful for his physical aspect is forbidden but whatever is detrimental for his soul is allowed?! The (Western) world says, “Yes” but Islam says, “No”. We believe that law must consider spiritual interests as more noble and important than material interests. (We should bear in mind that what we are talking about is related to an academic discussion and may not necessarily have actual manifestations. Thus, it should not be misconstrued that in my opinion, the economy should be neglected.)

Preeminence of spiritual and religious interests over material interests

If we were put in a situation where we would have to choose between two options: economic progress with religion at stake: and advancement in religion with our economy being affected to some extent—which option would we choose? We believe that the advancement of Islam also guarantees economic progress in a long-term program provided it is implemented perfectly.

Nonetheless, it is possible that it negatively affects the economic interests and puts individuals in a difficult situation for a short-term. Now, if the situation be such, with regard to the raised arguments, which one should be given preeminence over the other—religious interests or worldly interests? For us religious interests are preeminent, as stated in this verse:

﴿فَإِنْ عَرَضَ بَلَاءٌ فَقَدِمَ مَالِكَ دُونَ نَفْسِكَ، فَإِنْ تَجَاوَزَ الْبَلَاءُ فَقَدِمَ مَالِكَ وَنَفْسِكَ
دُونَ دِينِكَ﴾

*If your life is in danger, sacrifice your property for your life. If you have to choose, between remaining alive in unbelief and being slain in faith, sacrifice your life and property for religion.*⁷

At this point, if man is killed, there is nothing wrong.

﴿قُلْ هَلْ تَرَبَّصُونَ بِنَا إِلَّا إِحْدَى الْحُسَيْنَيْنِ﴾

“Say, ‘Do you await anything to befall us except one of the two excellences?’”⁸

What is wrong with a person being slain in the path of religion? He will go directly to heaven. But if he supposedly lives without religion for another hundred years, what does he get besides a daily increase in suffering? Thus, for Muslims, religious and spiritual interests are better than material interests.

Therefore, Islamic law has to give priority to spiritual interests. Our discussion is based upon reasoning and we do not impose our reasoning upon anyone. One may accept it if he wants to or reject it. None of these arguments are based on anything but logic.

Difference between conditions and scope of freedom in Islam and liberalism

In our opinion, therefore, freedom is restricted, as all reasonable people in the world say. The difference is that for them the limit of freedom is infringement upon the freedom of others while for us it is infringement of any social interest. The people are free to talk, eat, work, engage in trade, make a living, discuss, travel, sign a contract, do whatever they want, to such an extent that it does not jeopardize the material and spiritual interests of society. Whenever freedom is harmful to the material interests or the spiritual interests of society, it is forbidden. In both cases, freedom is prohibited. This is our reason and logic. If there are those whose logic is better than ours, we are ready to listen and benefit from it.

As far as we know, no philosopher has so far been able to give a logical dimension to the scope of

freedom. If there are allegorical expressions in our Constitution, common laws, words of distinguished ‘*ulama*’ or even the sayings of the eminent Imam (*q*), they should be referred to the authorities so that they can interpret them. We also support the rule of law. Our adherence to laws in the Islamic country is stronger than that of others. Our distinction is that we regard laws as binding because the *wali al-faqih* has approved them. As the Imam said, “To obey the [injunctions of the] Islamic state is *wajib*.” Meanwhile, some say that these laws are binding because the people have approved them. Now, which logic is stronger? Which one is convincing and has the upper hand?

When they say to a person that since the people have approved a certain law, it is incumbent upon him to act upon it, he may possibly say that he has not voted for the representative (who was among those approving the law), or that he is not pleased with the law! But when the Imam said, “When the Islamic state gives an order, or if the Islamic Consultative Assembly ratifies something, one should obey it as a religious obligation,” you have to see which basis will work better. Do we have a more “modern” law, or do they? Freedom among all nations and all rational people is limited, but according to Islam, all people are free as long as they do not harm the material and spiritual interests of society.

-
1. Article 19 (Freedom of opinion and information). [Trans.]
 2. Article 13 (Right to freedom of movement and residence in one’s own country and to leave and return at will). [Trans.]
 3. Article 23 (Right to work and fair pay for work). [Trans.]
 4. Article 18 (Freedom of belief and religion). [Trans.]
 5. Article 16 (Right to marriage and protection of family). [Trans.]
 6. Surah al-Baqarah 2:217.
 7. Ibn Abi’l-Hadid, Sharh Nahj al-Balaghah, vol. 8, p. 250.
 8. Surah at-Tawbah 9:52.

Source URL:

<https://www.al-islam.org/islamic-political-theory-ayatullah-misbah-yazdi-vol1/session-14-west%E2%80%99s-materialistic-approach-law>