

An Outline of Law from a Quranic Perspective

Authors(s):

Ayatullah Muhammad Taqi Misbah Yazdi [1]

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A paper analyzing the features of Islamic law from a Qur'anic perspective. It explains how, according to Islam, politics, morality and worldly affairs cannot be separated from religion.

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Quran [8]

Politics [9]

World Affairs [10]

An Outline of Law from a Qur'anic Perspective

Ayatollah Muhammad Taqi Misbah Yazdi

Summarized and Paraphrased by Karim Aghili

This paper is an attempt to partially delineate the salient features of Islamic law from a Qur'anic perspective. It seeks to clarify that every human society necessitates that there exist a system of rules without which there can be no public order but chaos. It also shows that in Islam, there is no separation of religion from morals, worldly affairs and from politics.

Islam is an all-embracing religion consisting of a set of laws and injunctions which are requisite for the establishment of an ideal society. Therefore, all the laws and injunctions which are of a practical character and which should be applied to human society can be subsumed under the general rubric 'law.' The paper continues by discussing the sources of Islamic law and its goals.

Introduction

The Qur'an is the verbatim revelation or the Word of God, revealed in Arabic through the archangel Gabriel to the Prophet Muhammad during the twenty-three-year period of his prophetic mission.

The practices of Muslims as ordained by the Shari'ah (Islamic Law) have their origin in the Qur'an. Although the foundations of the Shari'ah must also be sought in the Sunnah and the elaboration of the law depends furthermore, with respect to Shi'ism, upon reason ('aql) and consensus (ijma'), all principles of the Shari'ah are already contained in the Qur'an.

The scheme of life which Islam envisages consists of a set of rights and obligations, which, as already mentioned, have their origin in the Qur'an, and every human being who accepts this religion is enjoined to live up to them. Broadly speaking, the law of Islam imposes four kinds of rights and obligations on every man:

- (1) the rights of God, which every man is obliged to fulfill;
- (2) his own rights upon his own self;
- (3) the rights of other people over him; and
- (4) the rights of those powers and resources which God has placed in his service and has empowered him to use for his benefit.

These rights and obligations constitute the corner-stone of Islam and it is the bounden duty of every true Muslim to understand and obey them carefully. The Shari'ah discusses clearly each and every kind of right and deals with it in detail. It also throws light on the ways and means through which the obligations

can be discharged.

Social Phenomenon

Issues pertaining to human social life can be divided into two categories: those which deal with social phenomena irrespective of their goodness or badness, and those which are concerned with the value judgements on the various aspects of social life and through which the goodness and badness of each social phenomenon are judged.

In other words, there are certain issues which deal with 'is' and 'is not', whereas certain others deal with 'ought to' and 'ought not'. Most issues of the first category relate to sociology and the philosophy of history, while those pertaining to the second fall mainly into the category of morals and rights. The rulings pertaining to the former are called real and descriptive rulings, while those pertaining to the latter are called normative and prescriptive ones.

Religion and Worldly Affairs

The prescriptive rulings as mentioned above are divided into three categories:

A. The Divine and Religious Laws: These consist of the commands and prohibitions which are attributed to God Almighty and as in every religion, people are required to abide by them, such as keeping the daily prayer and performing the pilgrimage to Mecca, etc.

B. Moral Laws: That is, the laws which are comprehended by human reason, primordial nature (fitra) or consciousness to varying degrees and which are considered to be of value or validity irrespective of the Divine or human criteria, such as the goodness of truthfulness and the ugliness of oppressing others.

C. Legal Laws: That is, the laws which are made for safeguarding the best interests of human beings in their worldly life by a qualified authority in view of the relations of individuals with each other within a society. These laws have an executive backing, which is usually the government.

Over the years, there has been a tendency to separate these three groups of law from one another and to specify a distinct area for each group.. According to this view, the area of Divine laws is restricted to the rituals and rites which concern the followers of each religion in specific times and places, such as the religious ceremonies of the Hindus or the rites of idol-worship which are seen in various parts of the world.

These rites and rituals are not connected at all with other social aspects of life but rather they consist of performing the duties which, according to the followers of each religion, are required by the natural or supernatural powers. Religious laws are neither connected to the moral laws nor are they connected to the legal ones.

In the Western world, after Christianity had become the official religion of the Byzantine empire, in spite of accepting Christianity, apparently on account of the exigencies of the time, some rulers planned to separate religion from all its worldly aspects including politics in order to gain the secular power totally, and to rule over the countries under their control as they wished and to exclude the divine commands and prohibitions from the domain of politics and law in their general sense. For this purpose, they used every possible means, even the distortion of the scriptures.

After the Renaissance, this attitude gained more momentum, to the extent that a large number of writers and intellectuals demanded the total separation of religion and law. Furthermore, they supported the total separation of religion from morals. The separation of religion from worldly affairs in general and from politics in particular as seen today in the Muslim countries is nothing but the acceptance of the current mainstream attitude in the Western world.

Such a separation cannot be deemed acceptable in any revealed religion. From the Islamic point of view, religion is a system of theoretical knowledge and practical laws, and its practical laws embrace all three areas of the relation of man to God, the relation of man to himself, and of man to others.¹

In the Holy Qur'an and the traditions narrated from the holy Shi'ite Imams, there is a huge collection of moral and legal laws, therefore the moral and legal systems of Islam are completely based on the fundamental religious principles consisting of the belief in Divine Unity, the Resurrection, etc. In other words, both morals and law are two main sections of the whole of the religion and are deeply rooted in the most fundamental theoretical religious sciences.

Law

In spite of the fact that there are a lot of uses of the word 'law' in legal terms, it does not have a definite and specific meaning and is used in different ways. Sometimes, it is used in a wide sense and includes any prescriptive ruling which should be practised in society whether it be legislated or non-legislated laws, such as social customs and conventions.

Thus, some of the law experts use the term "natural law", which refers to a type of moral theory, as well as to a type of legal theory, but the core claims of the two kinds of theory are logically independent. According to natural law ethical theory, the moral standards that govern human behaviour are, in some sense, objectively derived from the nature of human beings.

However, according to natural law legal theory, the authority of at least some legal standards necessarily derives, at least in part, from considerations having to do with the moral merit of those standards. The phrase "natural law" is sometimes opposed to the positive law of a given political community, society, or nation-state, and thus can function as a standard by which to criticize that law. Positive law in the strictest sense is law made by human beings.

The Main Differences between Morals and Law

The other point to discuss in this regard is that though there are cases where morals and law overlap with each other, there are some differences between them, the most important of which are as follows:

1. Legal precepts are just concerned with social behaviour, while moral rules cover all voluntary human behaviour.
2. Legal rules are based on an external guarantee of enforcement, while moral rules are not based on such a guarantee of enforcement but based on an internal guarantee of enforcement.
3. Ethical 'dos' and 'don'ts' are permanent, universal and eternal, while legal 'dos' and 'don'ts' are, more or less, changeable.
4. Legal rules are obligatory, while within the moral domain, there are both obligatory and recommended obligations.
5. The goals of legal dos and don'ts are to provide the happiness of people in their worldly life and to establish social justice, order, security and public welfare and the like, while the goals of ethical commands and prohibitions are to achieve spiritual perfection, which is nothing other than proximity to God.
6. Legal rules are just concerned with the external aspect of the act, but are not so concerned with the motivation for and intent of the doer of the action, while the moral rules are mostly concerned with the motivation for and the goal of the doer of the action.

Ethical and Legal Concepts are of Conventional Nature

Apart from the above-mentioned differences between legal and ethical rules, ethical and legal concepts are, however, i'tibari (conventional). For example, considering the concept of property, we see that even if it is applied to such metals as copper and silver, it is not because of their being metals of a specific kind, but because they are desired by people and can be used as a means for meeting their needs. In other words, the acquisition of property by a person signifies another concept called 'possession' without an external instance.

These concepts are only based on the desires of groups or individuals without having a relation to objective truth independent of inclinations of social groups and individuals. These concepts, in spite of being conventional, are not without relation to external reality. Their validity is based on the specific needs of man to attain felicity and his own perfection. Consequently, the worth of these concepts, albeit dependent on convention, lies in their being a symbol of the objectively true relationship between man's actions and their results.

Consider the term “good”: one of its meanings is to achieve a purpose desired by a doer performing an action. The word "good" is contrasted with the result that an agent expects. Without a comparison and the relationship between the action and the goal of the action, it may not be possible to say if the action is good or not.

As is the case with the term 'right': one of its meanings in legal terms is an advantage which can be claimed and which must be observed by others. The word "right" in this meaning can be understood by considering a person having an advantage as well as others who have to observe this right. Therefore, the term "right" is predicated on the external benefit after a comparison and intellectual analysis. The word “right” is associated with duty, and they are two reciprocal concepts which will be further explained.

The Reciprocity of Right and Duty

Right and duty are two reciprocal concepts and the two faces of the same coin. When a person has the right to dispose of his property as he wishes, others consequently are bound not to dispose of it at all. Therefore, right and duty are reciprocally determined. That is, wherever a right is determined, a duty is also determined, and vice versa.

Of course, only one of the two is explicitly stated; however, the specification of one necessitates that of the other. It should be noted that right is of a voluntary nature, whereas duty is of an obligatory nature. One has a right against something and can use it or not, but with respect to duty, one is obliged to respect it and should not evade his or her obligation.

It is worth noting that the fundamental principle of Islamic Law is that man has the right and in some cases the bounden duty, to fulfill all his genuine needs and desires and make every conceivable effort to promote his interests and achieve success and happiness.

However, he should do all this in such a way that not only are the interests of other people not jeopardized and no harm is caused to their strivings towards the fulfilment of their rights and duties, but there should be all possible social cohesion, mutual assistance and cooperation among human beings in the achievement of their objectives.

In respect of those things in which good and evil, gain and loss are inextricably connected, the tenet of the law is to choose, for instance, the least harm for the sake of greater benefit and sacrifice a little benefit, in order to avoid a greater harm. This is the basis of Islamic Law. To what degree one should choose harm for the sake of a greater degree of benefit depends on the circumstances in which one is involved.

Islam attaches great importance to social life, and moreover Islam considers it incumbent upon all to attend to social problems and to struggle for the benefit of all human beings and for the establishing a just society on Earth.

Being indifferent to such problems is considered in Islam to be a major sin. Paying attention to such problems is so crucial that sometimes one feels obliged to spend all of one's property and even to endanger one's own life in order to save others from worldly and other-worldly afflictions and harms. It is unlikely to find any other school of thought other than Islam which has advanced this idea so far.

Of course, all of the revealed religions are unanimous on basic principles and rules; naturally they are in common with Islam in this regard.

The Word al-Haqq (truth or the True) in the Qur'an

In Islam, there appear to be three golden threads that run through all its aspects and these three golden threads are clearly intertwined. They are: truth, justice and equity. The words used in the Qur'an are al-haqq, al-'adl, and al-qist.

It is significant that each of these words is significantly used in the Qur'an several times; the word al-haqq is used about 247 times, al-qist 15 times and al-'adl 13 times. The word al-haqq incorporates the other two terms and has several meanings depending upon the context: truth, obligation, right and justice.

Al-haqq can be used as a name for God. For example, the Qur'an says:

That is because Allah, He is the True, and that whereon they call instead of Him, it is the false, and because Allah, He is the High, the Great. (22:62)²

At this point, it is worth noting that in many Qur'anic verses, the word 'haqq' is used in a sense similar to the technical meaning of law but not identical with it. Similarly in the Treatise on Rights (Risalat al-huquq) by the Fourth Shi'ite Imam, there are topics such as the rights of your womb relatives, the right of your self (nafs) and the rights of the tongue, hearing and sight.

Many of these rights are moral in their nature. It should be noted that the word haqq is not used in a legal sense in the above verses but rather it falls into the category of morals. However, in this paper, while dealing with law from a Qur'anic perspective, we are not concerned with law (huquq) in its moral sense but in its legal sense.

The Source of Right and the Legal Goal of Society from the Islamic Point of View

At the same time, it should be noted that the social laws and injunctions which make up the legal system of Islam should be based on a goal which directly results from that system and which secures man's felicity in social life.

The question is: Is there another goal beyond this goal which can be used as a means for the attainment of that goal or not? In other words, the question is: Is providing for man's felicity the ultimate goal or the intermediate one?

In answer to these questions, it should be said that the legal system of Islam is distinct from other ones. The other legal systems based on a secular world view know no goal beyond that of providing for man's felicity in social life, and consequently, this very goal is considered to be the ultimate goal and the desired object per se.

In other words, in such systems, only those interests and benefits which can be actualized and attained in this world are taken into consideration. In this regard, God says in the Qur'an:

They know only some appearance of the life of the world, and are heedless of the Hereafter (30:7).

Then withdraw (O Muhammad) from him who fleeth from Our remembrance and desireth but the life of the world (53:29).

Islam does not restrict man's felicity to this world only but rather the goal of man's creation transcends this world. The ultimate goal is to get spiritually closer to God. Man's felicity in this world can be desirable only when it is consistent with attaining the ultimate goal.

Islam is a religion which encourages the qualities of purity, beauty, goodness, virtue, success and prosperity which Allah wants to flourish in the life of His people and to suppress all kinds of exploitation and injustice. As well as placing before us this high ideal, Islam clearly states the desired virtues and the undesirable evils. Therefore, the members of society should have the right to use all the God-given potentialities and abilities for the attainment of their ultimate goal.

The legal goal of Islam is to prepare the ground and context for the spiritual growth and eternal felicity of the people. At the very least they should not be inconsistent with spiritual development, for, in the view of Islam, the life of this world is but a fleeting phase of the entire human life which despite its short duration, has a fundamental role in human destiny.

It is in this phase that with his conscious behaviour the human being prepares for himself his everlasting felicity or wretchedness. Even if a law could maintain the social order in this world but would cause eternal misfortune for humans, it would not be, from an Islamic perspective, a desirable law, even if it were to be accepted by the majority.

The Necessity of Law and Legal Rules in Society

Islamic law is based on a realistic view of things which are on one hand related to God Who created the universe and man based on a definite goal, and on the other hand to Resurrection, because it is the last

phase of human existence and the ultimate station of his journey towards God. Finally, it is connected to Divine Wisdom, because the best created order is built upon the most Sublime Divine Wisdom.

Since the members of a society are not equal in terms of understanding, and since all the members equally do not seek right and justice, thus, for the establishment of order and for the prevention of chaos, it is necessary that there be some highly qualified institutionalized powers representing the whole society for taking responsibility for the crucial functions. These powers consist of the legislature, the executive and the judiciary.

The functions of the legislature are to be exercised through the Islamic Consultative Assembly, consisting of the elected representatives of the people. Legislation approved by this body, after going through certain stages, is communicated to the executive and the judiciary for implementation.

The judiciary is of vital importance in the context of safeguarding the rights of the people in accordance with the line followed by the Islamic movement, and the prevention of deviations within the Islamic nation. Provision has therefore been made for the creation of a judicial system based on Islamic justice and operated by just judges with meticulous knowledge of the Islamic laws.

This system, because of its essentially sensitive nature and the need for full ideological conformity, must be free from every kind of unhealthy relation and connection (this is in accordance with the Qur'anic verse: ***“When you judge among the people, judge with justice”*** [4:58]).

Considering the particular importance of the executive power in implementing the laws and ordinances of Islam for the sake of establishing the rule of just relations over society, and considering, too, its vital role in paving the way for the attainment of the ultimate goal of life, the executive power must work toward the creation of a just Islamic society. Consequently, the confinement of the executive power within any kind of complex and inhibiting system that delays or impedes the attainment of this goal is rejected by Islam.

Therefore, the system of bureaucracy, the result and product of old forms of government, will be firmly cast away, so that an executive system that functions efficiently and swiftly in the fulfilment of its administrative commitments comes into existence, goal of life, the executive power must work toward the creation of a just Islamic society.

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The Separation of Powers

During the past three centuries, there have been a lot of disputes between the philosophers of law and other social scholars. Today the issue of separation of powers has been stressed so much that it has been accepted as an indisputable principle of the philosophy of law and of the basic law.

In the newly-established Islamic society in Medina, the holy Prophet of Islam had responsibility for the three powers, and there occurred no problem in this regard. During the occultation of the twelfth Shi'ite Imam, according to the Shi'ite jurisprudential principles, the leader has responsibility for all the three powers.³ Therefore, the powers of government in the Islamic Republic of Iran, for example, are vested in the legislature, the judiciary, and the executive functioning under the supervision of the supreme Leader.

The Basic Law

Most of the social regulations are legislated and approved by a legislature, but there is another law called basic law which should be specified and validated before the formation of a legislature and which deals with such questions as why it is necessary that there should be a legal system in every society, and why law needs three basic institutions of legislature, judgement and execution, and so on.

The basic law consists of a set of rules which should be validated before the legislation and codification of the social regulations.

In the democratic systems, in order to give credence to the basic law, first the people should elect the members of the constituent assembly by voting for them. Then, the elected members of the constituent assembly will legislate and approve the code of the basic law which is called constitution, and which is offered to be voted for by the people.

The term basic law is used in some places as an alternative to "constitution." A Basic Law is either a codified constitution, or in countries with constitutions which are not codified, a law given to have constitutional powers and effect. The term basic law is used in some places as an alternative to "constitution." A Basic Law is either a codified constitution, or in countries with constitutions which are not codified, a law given to have constitutional powers and effect.

The Sources of Law in Islam

Each and every legal system consists of a set of legal rules which are usually derived from one or more sources. In other words, in order to build a legal system, some of these sources, and the elements or constituents which are extracted from them, should be used.

To date the Muslim juristic rationalists (usuliyyun) have never used the term 'the sources of law', and instead they have used the expression 'the jurisprudential proof', though the meaning of the latter

expression is not the same as the former.

The Shi'ite juristic rationalists (usuliyyun) rely on four proofs called the juristic proofs, which consist of: the Book (the Qur'an), the Sunnah (the Tradition), consensus, and reason. Some of the other juristic rationalists also add some other proofs or sources which consist of: analogical reasoning (qiyas), juristic preference (istihsan), public interest (masalih mursalah), opening and blocking the means (fath wa sadd al-dharaai'), convention, and so on.

Having said this, it has to be noted that the only source of law in Islam is the Divine Legislative Will. That is, a rule is valid in Islam only when it can be attributed to the legislative Will of God Almighty. Attributing to any other source can never give validity to the legal ruling. Firstly, the unique importance of the Qur'an and secondly of the Sunnah (the Tradition, that is, the sayings, actions and silent assertions of the Prophet and the Imams) is due to the fact that these two proofs derive from the Divine Legislative Will.

That is, if we wish to know about the rulings of God, we will have no choice but to refer to these two proofs. These two are not sources themselves but guide us to the original source. A consensus is binding if it can be a means for discovering the Sunnah (the Tradition) of the holy Prophet or of the Imam

As previously stated, the religion of Islam accepts reason as one of the fundamental proofs of the religious rulings and attaches great importance to it, if it can be a means for discovering the rulings of God. The Book, the Sunnah, consensus and reason are binding simply because they are means of discovering the Will of God, and never are they considered to be independent sources vis-à-vis the Divine Legislative Will.

1. Based on the religious teachings and the consensus of all the religious scholars, the goal of religion is to provide man with a comprehensive felicity in this world and the next. Islam as a revealed religion is both the path and the guide which will lead to man's eternal happiness. It is composed of three elements which are intertwined:

- a) Doctrine;
- b) Ethics;
- c) Law.

The threefold elements play an effective role in providing man with happiness when all three are combined together just as a single organism is composed of its inseparable organs. These three elements in combination facilitate man's eternal felicity. The texture or combination of these three elements is such that they should never be separated from one another, and if they are considered separately, they will lose their own essential qualities.

Therefore, if anyone believes only in God, the Creator, the all-Wise, the all-Knowing, the all-Powerful, the all-Compassionate, the all-Rich, and the Lord of the Universe, who created man and Who wills both his good and perfection, and who knows his needs, interests and harms or if he observes an ethical discipline only for the purification of the soul and the acquisition of good traits of character or if he only abides by the religious commands and prohibitions, he will never attain to that comprehensive this-worldly and other-worldly felicity, which will be actualized through the three elements mentioned above.

The Islamic intellectual and transmitted sciences (al-‘ulum al-‘aqliyyah wa’l-naqliyyah) are comprised of an extensive scope dealing with different major issues. However, based on the same threefold elements mentioned above, the religious sciences are comprised of Islamic theology, that is the discipline relating to the beliefs, and ethics, i.e. the discipline relating to the purification of the soul, and moral conduct, and jurisprudence, the discipline concerned with the laws and injunctions relating to man’s individual and social needs.

Of course, acquaintance with these sciences entails being familiar with certain disciplines which are considered to be their preliminaries and which can be called religious sciences in one sense.

2. For further study, refer to the following verses: (30:8), (2:61), (38:21), (38:22), (38:26), (21:112), (40:20), (40:78), (39:69), (39:75), (10:47), (10:54), (2:282), (24:48), (24:49) (51:19), (70:24), (70:25), (6:141), (17:26), (30:38), (2:180), (2:236) and (2:241).

3. According to twelve-Imam Shi’ism, Abu’l Qasim Muhammad ibn al-Hasan al-Askari, the Proof (al-hujjah), the righteous descendent (al-khalaf al-salih), the promised Mahdi and the twelfth Imam, peace be upon him, was born in Surra man ra’a (Samarrah) in the midnight of Sha’ban in the year 255. When his father died, he was five years old and he became Imam through Divine Command as was the case with Yahya (John) as He, the Exalted, says:

“O Yahya! Take hold of the Book with strength, and We granted him judgement while yet a child” (19: 12).

God made Yahya a prophet while he was a child as He made Christ a prophet while still a little child. God, the Exalted, says through Jesus when he addressed his people:

“He said: Surely I am a servant of Allah; he has given me the Book and made me a prophet” (19: 30).

The Muslims are agreed on the appearance of the Mahdi at the end of the time for the obliteration of ignorance, oppression and tyranny and for dissemination of the signs of justice and the exaltation of the word of truth and the manifestation of Religion in its entirety even if the polytheists may be averse.

By the permission of God, he will deliver the world from the disgrace of servitude to other than God and abolish evil morals and customs and abrogate the irreligious laws as established by whims and break the bonds of national and racial prejudices and eliminate the causes of hostility and hatred which have given rise to the division and disunity of the community, and God, the Exalted, will keep through his appearance His promise which He made to the believers as He says:

“Allah has promised to those of you who believe and do good that He will most certainly make them rulers in the earth as he made rulers those before them, and that He will most certainly establish for them their religion which He has chosen for them, and that He will most certainly, after their fear, give them security in exchange; they shall serve Me, not associating aught with Me, and whoever is ungrateful after this, these it is who are the transgressors” (24:55).

“And We desired to bestow a favour upon those who were deemed weak in the land, and to make them the Imams, to make them the heirs” (28:5).

“And certainly We wrote in the Book after the reminder that (as for) the land, My righteous servants shall inherit it” (21:105).

The Occultation of the twelfth Imam has two distinct stages: the Lesser Occultation and the Greater Occultation. In the Lesser Occultation, which began in 260/872 and ended in 329/939, lasting about seventy years, the Hidden Imam continued to communicate with humanity through his special deputies.

The second, the greater occultation which commenced in 329/939 and which is continuing as long as God wills it. According to the Shi’ah, the Mahdi is alive but hidden. He is the axis mundi, the hidden ruler of the Universe.

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