



Islamic Traditions' Practical Application: Applying Sharia In The Context Of Western Democracy

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Abstract

The connection between Islam and rights for human beings, particularly Islam and human rights, is a crucial issue considering the context of current international conflicts. For the majority of Muslims, Islam is a faith that upholds and promotes tolerance, democracy, and free expression. Many states or nations, such as the nation of Israel, Indian, Malaysian, and Nigerian, strike a balance between the rights of religious communities and other rights by permitting religious communities to control some aspects of the lives of their citizens. Only throughout the fields of private as well as familial law, like marriage, divorce, and the distribution of assets, where people prioritise their right to religious independence and confidentiality, does religious law prevail in these nations. According to the European Court of Human Rights, a system in which

h Muslim personal disputes were decided by Islamic religious courts in an Islamic nation could never be consistent with democracy or the defence of fundamental human rights. The crucial question of whether Islamic religious courts actually effectively defend fundamental

human rights was left unanswered by this case. But an even more crucial question is whether Islam is even consistent with global notions of human rights, particularly as Muslims attempt to exercise their rights to religious freedom and self-determination throughout the world. While much of the rest of the world, including the Islamic world, seems to value group rights more than individual rights, the Western world is obsessed with individual rights.

Key Words: Islamic Philosophy, Human rights, European Court, Islamic courts, Western secularism.

Introduction

The fact that Western and Islamic communities have somewhat different ideas about what constitutes fundamental human rights makes it difficult to combine Islamic principles with Western conceptions of democracy ¹. Human rights can be divided into two categories: individual rights and group rights, from a broad, basic perspective. Individual rights are those that safeguard a person's autonomy and freedom, such as the freedom of expression, the freedom of conscience, and the freedom to carry out regular daily activities. Group rights, such as the right to self-determination and the rights of minority groups, are those that safeguard a particular group of people. Although these rights are inextricably linked to one another, as one can easily imagine, general governmental trends depend on which type of right a given community emphasizes ². In particular, West democracy systems frequently coincide with an overwhelming belief in the significance of individual rights, viewing such rights as "inherent in man's existence." Some Western intellectuals argue that a liberal democracy that prioritises individual rights is the only way for a society to truly realise human rights. On the other hand, according to a traditional Islamic concept, the main goal of human rights is collective—that is, the welfare of all people. Individual obligations to society as a whole and freedoms as individuals are thus linked ³. Whether a theocracy can ever become democratic is a key issue. It can be, as evidenced by British history since Henry VIII founded the Church of England in 1531. The English theocracy was democratically transformed first by strengthening democracy and then by weakening theocracy. Major democratic reforms didn't occur until the nineteenth and twentieth centuries, when new social classes and, eventually, women were granted the right to vote. Although the Islamic Republic of Iran is less than 20 years old, there already appear to be indications of a theocracy that is waning and the beginnings of liberalization. We must not ignore Muslim monarchies that have begun the process of liberalization. Jordan has taken more steps than most to legalize opposition organizations. The Islamic idea of shura (consultative assembly) has started to be used as a model for democracy, even in Saudi Arabia and the Gulf states.

A Religious Court System's Implication for the balance of group and individual rights

But even to Western nations people who are individualist the Islamic concept of freedom shouldn't be alien. While the concept of freedoms as an individual may be fundamental to

Western culture, it is widely accepted that an individual can only exercise those rights to the extent that doing so does not violate the rights of others. In addition, throughout Western culture, a person's ability to realize their own rights depends on how they interact with the world around them. By failing to consider both human rights frameworks, society as a whole cannot attain justice. There isn't a perfect combination of the two, though. There is a zone of acceptable legislation where, notwithstanding disparities in the exact equilibrium, society as a whole can attain justice, anywhere between the excessive emphasis of either or both of these rights. Each country should strive to strike an appropriate equilibrium between its own unique morality and the betterment of the group as a whole ⁴. The biggest and most powerful country in the West, the United States, has never had a female president. The two most populous Muslim states, Pakistan and Bangladesh, on the other hand, have both had female prime ministers: Benazir Bhutto presided over two governments in Pakistan, and Khaleda Zia and Hasina Wajed both held that position concurrently in Bangladesh. Tansu Ciller served as prime minister of Turkey. Muslim nations are at the forefront of female empowerment but lag behind in terms of female liberty. A Roman Catholic served as president of the approximately 95 percent Muslim Republic of Senegal in West Africa from 1960 to 1980. Léopold Sédar Senghor never had to cope with anti-Christian protests in Dakar's streets during his years as leader of that generally open society. His political adversaries called him a variety of pejorative titles, including hypocrite, tool of the French, dictator, and political prostitute, but they hardly ever labeled him an infidel or kafir. On the other hand even through secularism, the West has attempted to defend minority religions. It hasn't always been effective. The worst case was the Holocaust in secular Germany. Anti-Semitism in Eastern Europe and anti-Muslim attitudes in France remain troubling even now.

The Constitution of the United States has guaranteed the separation of church and state for more than 200 years, yet American politics are far from being entirely secular. The voters has only ever picked a non-Protestant president once, and John F. Kennedy, a Roman Catholic, won with such a slim margin and amid such widespread charges of electoral fraud that we will never know for sure whether a majority of Americans genuinely supported him. However, all throughout the course of its history, Islam always has made efforts to uphold multicultural principles in order to defend minority religions, faith, religious liberty, speech liberty, fundamental all kinds of rights, property and life. From all of this, it may be inferred that Westerners are much less politically secular than they believe they are. Another is that historically speaking, Muslim communities have been more ecumenical and humanitarian than their Western detractors have acknowledged. In certain cases, Islamic ecumenism has proven to be a more effective safeguard for religious minorities than Western secularism.

Safeguarding human rights

A nation's or community efforts to uphold human rights will never be successful unless it considers its own unique principles and lifestyle and culture, or morality. Only a moral

foundation can sustain power in any society. Constitutionalism and stability can be attained by constructing the government on the existing morals. Positive law, which upholds what is right to the extent that it affects the connection of an individual to society, is based on public morality, or what is just and proper. The public opinion can therefore intervene to push for changes and make the law more in line with the present prevalent morals when tension between law and morals does arise in a democratic government, in the ideal sense ⁵. Governments that allow public morals to guide positive legislation abide by the principles of human rights more closely than those that impose morality from above. Personal moral judgment is required for human dignity. For instance, although while the traditional Western paradigm respects individual freedom even when such freedom does not advance group interests, individual freedom frequently manifests itself through the collective activities of political parties and other interest groups. Democratic liberties are informed by group desires ⁶.

In the outside the West world, any country can only decide how to strike the correct balance between both collective and individual rights by considering its own unique history and set of conditions. The Muslim world's response to the movement for human rights has been conflicted and occasionally antagonistic. While some legal scholars contend that Islamic law is indistinguishable with international law and the Universal Declaration of Human Rights, others counter that nothing prevents Muslims from adopting international norms because there is no agreement among Muslims. Islamic customs and religious tenets establish a "rich network of rights" under Islamic law, some of which coincide with those recognized by current international law. The difficulty underlying the adoption of Islamic values into the contemporary nation-state is brought on by conceptual conflicts between Islamic law and international law. Since the creation of the Universal Declaration of Rights of Human Beings, this issue has existed at all. The world community must "take into account what Islamic laws and Muslim countries define as rights, be they human, political, or social," and the Muslim community must reflect on whether current interpretations of Islamic law remain true to the universality of the Prophet's communication and whether Islamic law can learn and draw from the guidelines and requirements established by international respect for human rights ⁷.

According to the above discussion of rights, a society is more likely to succeed in striking a balance between collective and individual rights if it bases that balance on its own distinct morality. Combining Islamic principles with Western concepts of human rights can be challenging because individuals who want to do so frequently try to change things by applying Western concepts to Islamic traditions that already exist rather than developing new concepts of human rights drawn from Islam. A system of rights governance would only persist if built upon the dominant values of the people it rules, even if it is undoubtedly conceivable for traditionally Western concepts of democracy to be consistent with Islamic

beliefs. Islamic academics would therefore be better off looking at their own morality than only studying Western ideas of democracy. In this part, the significance of rights and the function of the state are examined from an Islamic perspective ⁸.

Islam starts off with the premise that people have obligations to one another, without which individual rights are impossible to achieve, in contrast to the premise of modern Western democracy, which is the idea that self-governing individuals are a "necessary, though not sufficient, condition for the basic institutions of liberal democratic politics." The ability of individual and collective rights to reinforce one another means that an individual can carry out his or her responsibility to uphold others' rights without jeopardizing their own. Islam holds that human rights are a divine endowment that humanity has enjoyed since its inception, which is the basis for the link between rights and obligations. Humans were given not only these rights at the time of their creation, but also "a code of social conduct which contained a clear concept of...obligations." This code of conduct stipulates that Muslims have a responsibility to reflect "justice in its noblest form" through caring for everyone. If this "right of Allah" conflicts with a person's personal interests, the welfare of society as a whole and other people come first ⁹.

The state's goals and responsibilities

The state seeks to prioritize the public interest while minimizing interference with individual liberties. Every Muslim has a responsibility to help the state realize both categories of rights. Islam rejects the idea of a conflict between morality, law, and human rights. In the idealized Islamic state, "justice" is a goal attained by laws and other regulations that "promote the spiritual and material requirements of society," rather than "an ethereal and theoretical mental concept." Justice also depends on whether a particular action is consistent with or in conflict with Islamic principles. Divine revelation is regarded as a more trustworthy source of information than imperfect human reason because God has perfect knowledge and wisdom. Laws "are based on convincing public reasoning and aim at the accomplishment of a fundamental, communal purpose: the well-being of humans ¹⁰." Even though Islamic society places a strong emphasis on morality, it is debatable whether an Islamic state is necessary for "the establishment of a coherent relationship between religion, ethics, and law to achieve justice". While it is widely believed that Muslims need such a state, some scholars contend that such a regime is unnecessary and even at odds with Islamic ideas of justice and law. Many times, attempts at Islamic theocracies have led to fewer individual freedoms, but not because Islam itself is flawed, but rather because purportedly pious leaders have prioritized their own rights over the welfare of the community ¹¹.

In any case, in order for the community at large to adhere to divine enlightenment someone must decide what constitutes revelation and how to interpret the communication received. As a result, various interpretations of Islam have developed, and different Islamic nations

have different views on how to strike a balance between law and morality. This diversity just demonstrates Muslims' capacity for religious debate. Islamic law's ability to uphold human rights standards rests on both human reason and Islam's capacity to combine traditional principles into contemporary public ethics. Islam actually has a lot in common with Western views of justice, including the value of the human person, basic human rights, natural justice, and the rule of law. Despite the fact that the developed, Western world currently appears to protect individual rights more effectively than the Islamic world, one could argue that this protection is not attributable to the Western countries' interpretations of human rights but rather to the stability of their respective constitutional regimes ¹². In every circumstance, Islamic nations cannot become democratic until their moral principles are examined and incorporated into a framework that safeguards the rights of both communities and people. Even Muslims who oppose the establishment of an Islamic state "insist that society includes more than independent people[;]... [it includes a type of] democratic which encourages individuals to be considerate of other people's freedoms as well as appreciate their own freedoms.

Revelational Tribunals in the non-Islamic countries

The application of religious law to regulate the private affairs of religious adherents has met with varying degrees of success in nations where Islam is not the dominant religion. One persistent issue in these nations is that by giving religious organizations the freedom to control the private lives of its followers, religious coercion that violates the rights of the people is likely to occur. While religious organizations claim that their right to self-determination requires that they be permitted to create their own legal systems with regard to matters of personal status, some members of the community could feel under pressure to uphold religious norms in which they do not completely believe ¹³.

Israel serves as an excellent example, where religious tribunals have ruled on individual cases since the Ottoman era. Not all religious communities in Israel have their own autonomous religious tribunals or are even acknowledged by the State. Because there is no secular law governing marriages, no secular Officials have the authority to perform marriages, and civil courts have little or no jurisdiction over marriage and divorce, non-believers and those who do not belong to a recognized religious group experience hardships in matters of personal status, with some exceptions ¹⁴.

Second, and perhaps more significantly, injustices can even exist inside certain religious communities. Even though Judaism in Israel is very diverse when compared to other Israeli religions, non-Orthodox Jews in Israel specifically oppose the authority of Jewish rabbinical courts because they are under the control of the Orthodox Jewish community. Furthermore, non-religious Jews dislike being liable to the rabbinical judiciary' exclusive authority over specific matters because they view it as an instance of religious force ¹⁵.

The Possible of Inequity

Islam tolerates followers of other religions at least as well as the West has historically treated non-Christian minorities, despite what contemporary events might have one believe. The Qur'an states that there should be no coercion in religion and that in the Day of Resurrection, God will decide who is a believer and who is not. The issue of how to treat non-Muslims in their conquered areas arose throughout the Islamic state's period of conquest. By establishing the dhimma (Jizzia) legal system, it found a solution to the all kinds of social, property and economic issues. The monotheists known as dhimmis, who did not include pagans but did include Jews and Christians, were permitted to practise their religions and adhere to their own local laws "throughout the time as they consented to a tributary, politically inferior status." Islamic law took precedence when it conflicted with non-Muslim law ¹⁶.

Non-Muslims did not have political or legal equality with Muslims under the dhimma system. In modern times, however, the adoption of a system of separation based on religious beliefs could reinforce the historical disparities between Muslims and non-Muslims by implying that someone's righteousness can serve as a justification for unfair treatment. The drawback of such separation might be that it would prevent non-Muslims from achieving equality in a society that practices Islam and has a system of religious discrimination. Some Muslim nations have laws requiring that the political leader be Muslim. Even if one accepts that such a constitutional clause safeguards the sovereignty of the Muslim community, it also serves to serve as a warning to non-Muslims that their leadership abilities and other traits are inferior to those of a Muslim ¹⁷. So, it is true with authentic proofs and practical experiences of East India Company and then Indian British Governmental loose performance at Sub-continent during their long stay and ruling (1757-1947) and at least British Crown geographical and political decline at Sub-continent as well as from all over the Asian, African and special Muslim world. Even in 21st century when nations have become civilized but western are not changing their inherited uncivilized and inhuman nature; and are continued their monopole strategies under both brutal and cold war systems and policies in the shape of different kinds of World Orders.

The creation of an Islamic community that unites all people, who are all equal before God, in a society based on God, is one of Islam's main goals. This community will transcend material divides like race and politics. "Islamic law attempts to compensate for this disharmony by developing over time a precise relationship between the Muslim state and Zimmi (non-muslim citizens of a Muslim state) communities drawn from both the sources of Islamic law and the assimilation of local, traditional practices," says the author. By outlining rules to strengthen ties between Muslims and non-Muslims, it may be argued that the Shari'a really supports the involvement of non-Muslims in state matters ¹⁸.

Although Muslims and non-Muslims possess the same fundamental freedoms such as the right to life, property, and religion, under traditional conceptions of the Shari'a, there are distinctions in political administration and other areas. For instance, Shari'a law mandates Muslims to pay a special fee in exchange for providing military protection to non-Muslim residents. Non-Muslims may also trade in and eat wine and pork, both of which are prohibited by Islamic law, albeit they cannot do so in public. However, "Islam is very much built on a principle of human equality; and in almost every respect, a dhimmi's legal capacity is intended to match that of a Muslim peer ¹⁹."

Western notions of equality and equal protection are somewhat of a foreign concept to Islam, and for those Muslims wishing to uphold traditional hierarchical systems; equality simply means that Shari'a law should apply equally to all persons. Therefore, whether an Islamic nation could create an environment where all people are truly equal, both by the law and by cultural norms, regardless of religious affiliation or gender, depends on how the country interprets the Shari'a. Islamization has the ability to have an impact on Muslims just as much as it does non-Muslims, which is one reason why many Muslims favour protection for non-Muslims. Muslims may be categorised as non-Muslims or heretics if their beliefs conflict with "the version of Islam endorsed by governments and allied religious establishments."

The fact remains that many Islamic countries have adopted constitutions that reflect international human rights values and contemporary notions of citizenship that forbid discrimination based on religion, despite the fact that some modern Islamists may argue for the restoration of the Shari'a rules governing dhimmi status. Islamization proponents who call for the adoption of Islamic forms of government and the enactment of legislation that discriminate against non-Muslims must contend with other political forces within their own communities that support adhering to contemporary norms. Whereas Muslims have traditionally demonstrated tolerance for differences among themselves, one well-known but frequently misunderstood aspect of Islam is its disapproval of and punishment for conversion to other religions. A significant issue if Shari'a law were to rule in an Islamic nation would be whether Muslims would be able to change their beliefs to other faiths and benefit from that faith's individual regulations ²⁰.

Even Muslims who support equality and tolerance between believers and non-believers find it considerably harder to accept a Muslim's decision to convert to another faith. This challenge results from the value of both individual and group responsibilities to others and society. An Islamic community owes it to its members to keep them safe from harm, which includes apostasy. Since Islam is the only true path to Paradise, it is in the Muslim's best interests to stay loyal to Islam, and it is also kind of them to stop other Muslims from departing from it. Thus, any earthly notion of personal freedom is subordinate to the moral obligation Muslims have to one another. Non-Muslims may not proselytize among Muslims, and Muslims who have been blessed by their faith may not choose to convert. However, the

definition and repercussions of apostasy under Islamic law are not entirely clear. Apostasy is defined as "turning away from Islam after becoming a Muslim" and can "occur either through statements or actions which put an end to one's allegiance to Islam, such as a denial of the basic principles of faith," according to the theological definition ²¹.

Conclusion

It should be highlighted that Islamic principles do not always preclude the defence of both individual and collective rights. It seems plausible that an Islamic state could best defend democratically held human rights by enticing followers of all faiths to uphold their own tenets with greater fervor. Furthermore, rather than excluding all religious traditions from public discourse, the democratic protection of human rights will also be accomplished through permitting variations of opinion with regard to religious principles. "We must recognize the universal nature and significance of Islam as an element in the daily lives of the Muslim individuals if we are capable of comprehending anything at all about what has taken place in the past and what is taking place currently in the Muslim globe. Comparing Islamic civilizations to their own educated, secular democracies, Westerners frequently perceive them as being inhumanely controlled, backward-looking, and enslaved by religion. The cultural gap between the West and Islam is shorter than they think, but measuring it is a difficult task. Islam is more than simply a religion and most definitely more than just a political extremist movement. Although it differs from Muslim country to Muslim country, it is a civilization and a way of life that is driven by a common spirit that is much more compassionate than the majority of Westerners realize. Furthermore, people in the West don't always understand how their own societies fall short of the liberal ideals they hold dear. Furthermore, Islamic societies may only lag behind Western ones by a few decades in terms of social and technological advancement. Many Islamic aspects of culture that Westerners consider to be mediaeval may have been prevalent in their own societies until relatively recently. In the end, the question is which course avoids the worst abuses and results in the highest quality of life for the average citizen. The Western ideologies are unable to provide all the solutions of issues; and Islamic principles merit careful attention.

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which a community can be formed and through which justice can be realized"). See *id.* at 23-24., See *id.* (discussing the QUR'AN 60:8, which discusses showing kindness and justice to those of other religions, as one of the bases for improving relations between Muslims and non-Muslims).

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