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Examining the practical dimension of questions

Session 9: An Examination of the Status of Laws in the Religious System

Principles of Islamic political theory

In relation to philosophy and the Islamic political theory, it must be borne in mind that there are some people who accept all its principles, some who acknowledge some of them, and, some who accept none of them. Nonetheless, in a bid to elucidate and establish this theory, it is imperative to explain these principles. Since some of these principles are self-explanatory, we shall mention and explain them briefly, and only explain other principles which require more space for discussion and examination.

1. Law

One of the principles and presumptions of the discussion is society's need for law. As it was said earlier, another principle in the Islamic political theory is that law must be sanctioned by God. Its implementer must also have the permission of God. To say that law must be divine is that God Himself enacts the law and reveals it in the Qur'an, or the Prophet (s) or an infallible Imam ('a) is given the authority to enact the law, or those who are vested with authority by the Prophet or an infallible Imam ('a) enact different orders in diverse circumstances.

Therefore, we shall have three types of divine law:

1. The law which God Himself has enacted; in which the Prophet (s) or any infallible Imam ('a) does not have any role;
2. The law which the Prophet (s) or an infallible Imam ('a) has enacted by the authority vested in him by God;
3. The variable orders which certain individuals enact with the permission of an infallible Imam ('a) and

will be binding for the Islamic society because their source can finally be traced to the will of God.

Thus, God Himself directly enacts the law and His decrees are mentioned in the text of the Qur'an. However, with respect to the implementation of the law, God is not the agent or implementer. The implementer must be the one who is present in society and can be seen by the people, bids and forbids, and implements the laws.

It refers first and foremost to the Prophet (s) or an infallible Imam (‘a), and at the second level, to the person who is granted executive authority by the Prophet (s) or an infallible Imam (‘a); i.e. those who at the time of the Prophet (s) or in the presence of an infallible Imam (‘a) were sent as governors and rulers to Islamic territories and provinces to implement those laws. During the period of *ghaybah*, the *fuqaha*, who are appointed through general designation, are responsible for implementing the laws.

What has been mentioned so far broadly deals with the macrocosm of the Islamic government viz. legislation and implementation. The judicial organ in reality is part of the executive body and because of its special importance it enjoys an independent status.

Status of natural laws and statutory laws

One of the principles and presumptions of our discussion is the need of codifying law for society. The second principle is, according to our view, the *binding law* is that which is directly or indirectly enacted by God. Those opposing this view say that society is not in need of law whether it is enacted by God or anybody else. This theory has no proponent today because nobody can deny this need of society. Nowadays, even in a village where only a few people live, the existence of laws and orders to be followed by people is regarded imperative.

In the past, however, when living conditions were simple, some believed that they were not in need of statutory laws. According to them, the intellect alone could discern a set of natural laws by knowing the natural law, and there was no need of special people to enact laws. In the past, the theory of natural right and natural law was initially presented to human societies in such a way that if they were asked, "Which law should we abide by?" they would answer, "Look at your self or look at the universe to learn which law is prevailing, and the same law will prevail in society," proving that even the theory of natural law has clearly accepted the principle of the need for law.

No thinker has ever claimed that mankind is not in need of any law, even natural laws. The bone of contention among philosophers is: which is sufficient—rational, natural, or divine law? That is, are laws which all people can discern by their intellect sufficient for society? Or, do we also need specific statutory laws?

As we have said, if ever it was imagined in the past that natural laws, rational laws, or 'rational independents' [*mustaqillat-e 'aqliyyeh*] were sufficient to meet the needs of society, today the said assumption is unacceptable. Neither is there any point of raising and examining it. Nowadays, by just

looking around, every person realizes that he needs hundreds of social and international laws in his complex domestic, external and international situation.

Among social and domestic laws are laws related to traffic and transportation. If there are no traffic laws what will be the state of transportation and traffic in every city and town? If the speed of a vehicle and its right of way (whether left or right) and all the other traffic and driving rules are not determined, what will happen? In which part of the world are a group of people leading a safe and sound life in spite of non-observance of these laws?

It is true that driving rules are not uniformly codified in all countries. In countries like Britain and Japan the driving seat is on the right side while driving on the left side of the road, while in all other countries including Iran, it is the opposite—but driving rules are codified anyway and the drivers are aware of the rules, knowing on which side of the road to drive. The above example is among the cases that shows the indispensability of law in society. Certainly, this necessity can also be felt in other issues such as family and international law.

One of the instances which show the exigency of the enactment of international laws is the issue related to the Caspian Sea, which is a source of dispute on the exploration of its natural resources among littoral states. It cannot be accepted that every state can exploit the Caspian oil, gas and other resources without any law. In fact, there has to be a sort of regime that stipulates the extent of exploitation of Caspian air, sea and underground resources by every littoral state. The problems existing among the littoral states on account of the absence of a governing regime have paved the way for the need to enact laws and rules for the just division of resources.

So, the imperative of enacting laws and rules in the light of human needs is being felt. For example, there had been no conventions, agreements and laws on the seas, air space, deserts and others until recently, because mankind was not in need of them yet. However, as a result of more interaction among people, groups, nations, and countries, the need for such laws was felt.

Since law defines the extent of rights of every person and society, the Noble Qur'an has specially mentioned the need of law in social life. It should be noted that existence of law in a general sense is not confined to the social life. In fact, if a person wants to lead a humane life and achieve excellence in it, he needs law.

Moral laws are sufficient for personal life but social, national, international and political issues need laws to ensure justice between conflicting groups. For example, if a state takes more than its share of the Caspian, war and conflict will ensue, so the need to codify socio-political laws becomes clear. The collective need of law is thus axiomatic.

Every intelligent, sane person knows that in the absence of law, social life, human comfort, and human prosperity are endangered. In view of the instances we have mentioned, it is evident that natural law is not sufficient. We are in need of statutory laws because reason [*'aq/*] enjoins the observance of justice

and fairness, but, to determine an approach that will guarantee justice and fairness we need another law.

For example, reason dictates that the Caspian natural resources should be justly divided among the littoral states. The question will then be raised: How should one 'justly divide' them? Does 'just division' mean that a country with the largest area, littoral area, or most littoral residents along the Caspian have the lion's share? The reply to such questions should be given by a legal reference authority. In most cases, the existence of a legislator is necessary. Now, let us see who should be the legislator.

2. Laws possessing divine and religious source

The claim of Islam is that God has enacted laws and revealed them to the Prophet (s). So, after accepting the first principle which is the need for law, the second principle is to accept religion as the source of legislation. At this stage, there might be people in a Muslim country who do not accept Islam. In the same manner, there might be a person in a non-Muslim country who accepts the same.

A person who doubts the existence of God also does not accept His religion and law. In the first stage, it can not be proved for him that the law should be enacted by God and basically for a person who denies God, the idea that "The law should be divine" is unacceptable. We have to first prove the existence of God through scholastic and philosophical arguments and then the existence of the Prophet (‘a) and true religion theologically. Finally, we need to prove that a law which God directly or indirectly enacts becomes binding on the believer.

We have stated earlier that a person might believe in God and the essence of religion and apostleship [*nabuwwah*], but might not accept that social law has to be enacted by God. According to him, man has to engage in supplication, worship and litany with God and go to the mosque or any house of worship, but his social life has nothing to do with God for which He must himself enact a law. Such a belief is unacceptable in Islam. A person cannot claim that he accepts the basis of religion, viz. the Qur'an, sayings of the Prophet (s), authentic narrations, and the conduct of the Prophet (s) and the Imams (‘a), but not the social laws of Islam.

Need to acknowledge essentials of religion

Any set of ideas and beliefs has integral elements which are technically called "essentials" [*dharuriyyat*]. Anyone who is familiar with this set—whether he accepts it or not—knows that it consists of parts. In other words, hundreds of parts may be added to or taken from a set but its basic parts remain in order to keep it distinct from other sets. As such, whoever accepts religion as a set should accept it as having permanent, definite and fixed parts which distinguish it from other sets.

Regrettably, some people say that they accept Islam but do not accept it has a fixed principle, and regard all its parts as having diverse and different interpretations. They say that they do not oppose

Islam but its acceptance does not require that everybody should pray. They believe that prayer exists and some are used to performing it, but every Muslim does not necessarily have to pray and regard it a permanent part of Islam!

Regarding fasting and other social decrees, they believe that the Prophet (s), Imams (‘a) and other pioneering Muslims used to practice them. They do not accept, however, that the existence of Islam depends on them or that without them Islam will cease to exist. At this point, this question comes to the fore: If that is the case, what is Islam founded upon without which it will not exist? Do you accept that monotheism [*tawhid*] is a principle of Islam, and that whoever does not believe in it is not a Muslim?

In reply, they say that this interpretation, based on their understanding of Islam, is correct. Another person may have a different interpretation of Islam and we cannot say that only our understanding of Islam is correct! Another person may have such an understanding of Islam that there are two or a thousand gods, or that in Islam there is no god at all, and we cannot cite a proof to prove that our understanding of Islam is more correct! Even if we claim that our understanding of Islam is correct, we cannot say that others have no right to interpret Islam. At most, it can be said that “In my opinion, my understanding of Islam is better” and this is also true of the opinion of others.

Undoubtedly, such people have no intention but to deceive and beguile others; for, in no science or field of knowledge can the parts of two identical sets be distinguished from each other. Two sets are distinguishable from each other when the constituent parts of one set are different from that of another, or at least, some parts cannot be found in the other set. If all parts of a set can be replaced by that of another set—for example, element A in this set can be replaced by element A of that set; likewise, element B in this set can be replaced by element B of that set, etc.—the two sets cannot be regarded as distinct from each other.

If a set called “Islam” is recognized, it should have some distinctive features in order to distinguish it from other religions. That is, there should be fixed principles in it on which Islam is founded. Now, if we believe in such principles as *tawhid*, *nabuwwah* and *ma‘ad*, and the essence of prayer and worship [*‘ibadah*], but at the same time, regard all of them changeable and subject to diverse interpretations, we cannot prove any fixed element and claim that it is one of the principles of Islam. Therefore, we have to say that a specific set called Islam does not exist! In this case, what are we defending?

How can we invite others to Islam if we do not teach them how to become a Muslim and act upon Islam in whatever way or form they understand it? If you arrive at the conclusion that one should pray, you have to pray and if you arrive at the opposite conclusion, act accordingly. You are free to practice Islam according to your understanding! What is the difference between this kind of understanding of Islam and Christianity, or any other religion? What is the point in inviting people to Islam?

If everyone is supposed to practice Islam according to his or her own understanding and there is no definitive and permanent principle and axis, our invitation to Islam is actually only lip service. From this

perspective, it makes no difference if we invite people to Islam, Christianity, or even deny religion!

Islam's fixed principles and precepts

It is sheer deception and hypocrisy to say that one accepts Islam but believes that there is no specific interpretation of Islam and that all its principles are subject to change and various interpretations. As such, Islam may be interpreted the way Christianity is interpreted and a Muslim cannot be distinguished from a Christian. So, we cannot say so-and-so is a Muslim, or not a Muslim!

Every building is constituted of elements such as foundations, wall and roof, and can be distinguished from a ruined structure. It cannot be claimed that building has no constitutive elements. Neither can it be said that a building will remain a building with or without foundations, wall and roof. It will remain a building whether it is constructed in the ground, air or sea, and it has neither specification nor fixed elements. Similarly, assuming that Islam has no fixed and fundamental principles, we cannot say that a certain set is Islam while another set is not Islam.

Therefore, once a person accepts Islam, he ought to accept an array of specific elements as integral parts of the set. Of course, a set may also have suspicious and contingent parts, or an open-ended one to which parts may be added or subtracted. It is nonsense to say that a set has no specific parts, and yet remains a distinct set.

Friends and foes alike know the fundamental and essential elements of Islam. Apart from *tawhid*, *nabuwwah* and *ma'ad*, Islam has other fundamental elements which are known to all including those who deny God. For instance, ritual prayer and *Hajj* are recognized as basic elements of Islam. All people of the world know that during a certain period Muslims perform *Hajj* pilgrimage. Now, could somebody say that the "Islam" he knows has no *Hajj*? Everyone knows that there are ritual prayers in Islam.

Now, if someone says that he accepts Islam but, according to his understanding of the religion, ritual prayer is not an essential part of it, has he really understood Islam, or is he a deceiver who falsely introduces himself as a Muslim so as not to be deprived of the benefits of being a Muslim or be isolated from Islamic society? It is clear that *Hajj*, prayer and fasting are integral parts of this set and the essentials of the religion accepted by all Muslims.

If a person claims to know Islam, can he say that Islam has no penal law to prevent theft while the Qur'an explicitly affirms it in the verse, "*As for the thief, man and woman*"? ¹ The same is true in the case of others which are affirmed by explicit texts [*nass*] of the Qur'an. The essentials of Islam are fixed and there is no more need for us to sit together and prove them one by one. As such, if it is proved that the basis of Islam is the Qur'an, truly revealed by God, we have to accept that whatever the Qur'an states is right and that it encompasses an array of fixed, essential and definite elements.

Of course, some verses may have different interpretations but the mere existence of two different

interpretations of a verse does not suggest that no fixed and definite element can be inferred and deduced from the Qur'an, and that anyone can interpret it in whatever way he likes.

Once a person who is acquainted with the Arabic language refers to the Qur'an, he will find therein a series of specific themes which have nothing to do with different human interpretations and are not dependent on presumptions, mindsets and laws that we have learned from science. For example, regarding the verse on prayer or the amputation of the thief's hand, a person who lived at the time of the Aristotelian "four elements" and Ptolemaic "seven spheres" would have interpreted it just as the one who is living in this age of Einstein's law of relativity. It cannot be said that since Einstein's law of relativity is the order of the day, the meaning of the verse has also changed.

There may be a verse whose words are related to certain sciences due to the lexical development and other factors, but there are some subjects that their understanding has no thing to do with different sciences.

Fixed essential laws and decisive concepts of the Qur'an

Both Muslims and non-Muslims know that Islam has a set of fixed essential laws. A set of definite concepts can be deduced from the Qur'an and understood by a person, whether he believes in the Qur'an or not. Understanding those concepts depends on one's familiarity with the Arabic language and not on his being a Muslim. However, not all subjects of the Qur'an are of this kind. Some Qur'anic verses are such that different meanings can be inferred.

Another salient feature of the Qur'an is that it has many levels of meaning; explicit [*zahir*], implicit [*batin*] and esoteric [*batin al-batini*], but our focus is on the essentials of religion, on elements that never change and in spite of the difference in approach and interpretation, their meanings remain fixed, definite and unchangeable. For example, the passage "**And maintain the prayer**"² indicates the performance of prayer as *wajib* while this passage points to fasting as *wajib*: "**Prescribed for you is fasting.**"³

Regardless of the impending multiplicity of scientific theories and scientific investigations, the import of those verses will never change.

Whenever we talk about the essentials of religion, we regard them fixed, definite and unchangeable because they are among the most fundamental and decisive sources of Islam. That is, we consider the Qur'an and the *Sunnah* as authoritative with clear evidence. Those who deny the essentials of religion, saying that one cannot have a definite and absolute understanding of Islam are ignorant, erroneous, or egocentric, having no faith in Islam and only duping the Muslims.

Undoubtedly, one of the essentials and fundamental principles in Islamic political theory is that the law should be enacted by God. Those who deny divine law actually deny one of the essentials of religion. Just as the obligatory nature of prayer can be deduced from the Qur'an, the decree on the adulterer and

the adulteress can also be discerned.

With the same clarity that the ruling about prayer and fasting can be confirmed in the Qur'an, obedience to the Prophet (s) is also made obligatory, and in the religious law of Islam, the station of the Prophet (s) is recognized as a station that requires absolute obedience [*muftarad'ut -ta'ah*]. In this regard, God says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

“O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you.”⁴

God also says, thus:

﴿...وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾

“Take whatever the Apostle gives you, and relinquish whatever he forbids you...”⁵

Islam cannot be accepted without accepting the purport of verses that mention the essential features of Islam, or by acting upon them selectively. Such a superficial acceptance of Islam is the practice of those who are referred to by God in this verse:

﴿وَيَقُولُونَ نُوْمِنُ بِبَعْضٍ وَنَكْفُرُ بِبَعْضٍ﴾

“And they say, ‘We believe in some and disbelieve in some.’”⁶

Thereafter, regarding such people, God says:

﴿أُولَٰئِكَ هُمُ الْكَافِرُونَ حَقًّا﴾

“It is they who are truly faithless.”⁷

Thus, whoever has faith in Islam should accept the entire set of Islamic laws and decrees and believe that the essentials of Islam are independent of scientific developments or new scientific theories. As such, whoever regards the verse related to prayer as true also regards as such the verse related to the ruling on theft. In the Qur'an one can find allegorical and contingent cases as variable parts of Islam as well, but one must believe that the Qur'an and Islam must have fixed and definite parts that make it distinct from other religions.

Removing skepticism on the existence of contradictory interpretations of Islam

In Islam there are thousands of definite decrees about which all the Islamic schools of thought [*madhahib*] have a consensus of opinion. Many of the differences between the Sunni and the Shi'ah are related to secondary matters that constitute an insignificant part of Islamic laws. There is no difference between the two schools in most subjects of jurisprudence [*fiqh*].

Similarly, in the Shi'ah school of thought the difference among the religious edicts of jurists [*fuqaha*] on some laws does not mean difference of opinion on all cases. In the same vein, the difference of prescription of two doctors for the treatment of a specific ailment does not imply that there are no fixed and definite elements in the science of medicine.

Therefore, in Islam we have an array of certainties [*yaqiniyyat*] in which there is neither dispute nor doubt. The existence of difference in some cases should not make us skeptical about the definite principles, and set Islam aside. Regrettably, nowadays, whenever Islam is talked about, the sick-hearted who, in the language of the Qur'an are "*those in whose hearts is deviance*,"⁸ say: "Which Islam? Islam of the Shi'ah or Sunni? Islam of the *fuqaha* or the university-educated intellectuals?"

Notwithstanding the existence of one set of unanimously agreed upon moral precepts, personal decrees and social rules in matters of beliefs and fixed principles and commercial and international laws, why do they focus on the disputable and debatable issues? Whenever it is said that the university must be Islamic, why do these sick-hearted and crooked-minded ask, "Which Islam?"

In reply to them, it is the same Islam which says that God is One; it is the same Islam which enjoins prayer; it is the same Islam which forbids the violation of others' rights and promotes the implementation of justice. Are these points disputable among Muslims? Implement in the university the same indisputable tenets about which the Sunni and Shi'ah have consensus of opinion, and you will earn the utmost pleasure of all. It is natural that whenever they do not want to follow the dictates of Islam, they find excuses such as "Who says that the Islam of the *fuqaha* should be implemented and not the Islam of the intellectuals?"

Questioning Islam's capability of meeting all human needs

After proving that Islam has social laws and decrees, certain skeptical questions are raised: Is it rationally possible for all human needs in different eras to be contained in a single set? Can Islam whose sources are the Qur'an and authentic traditions, encompass all the elements needed by mankind throughout the different epochs and periods? The above questions have both theoretical and practical aspects and can be examined in both ways. Of course, it must be acknowledged that these questions are worthy of consideration. At the outset, it seems that answering them is not easy. However, in view of

the explanations we have presented before, replying is not that difficult.

1. Examining the theoretical dimension of questions

The reply to the theoretical dimension of the question, “How can a set of laws be responsive to all human needs in all aspects of life?” is this: Certainly, human beings cannot enact a set of perfect laws for mankind in different epochs and periods because on account of their defective knowledge and intellectual limitation, they cannot examine all the facets and dimensions of human life and take into account an appropriate law for every case.

However, the One who has created human beings, knows “what was” [*ma kana*] and “what will be” [*ma yakun*], to whom yesterday, today and tomorrow are the same, is Omniscient of thousands of years before and after, it is possible to enact such a code of laws. Thus, it cannot be said that it is impossible to enact a code of perfect laws for all humanity throughout history that encompasses all aspects of human life, because the One who has full knowledge of the past and future and is well informed of all dimensions of man’s existence throughout history can do so.

2. Examining the practical dimension of questions

The practical dimension of the questions is this: “How can the essential elements attributed to God as mentioned in the Qur’an and authentic traditions—given their limited magnitude—meet all human needs throughout these epochs and periods?” The reply is this: It is impossible for us to present a specific law for every case in which all particular conditions of time and space are perfectly observed. This is because legal cases do not need limited laws. They favor laws of a general nature.

We cannot determine all legal cases as special and definite cases. It can thus be said: “Innumerable cases do not have innumerable categories.” Every set of these cases can have a general heading and the said heading can have a specific decree. So, “The general decree is fixed and limited but its cases are innumerable and varied.”

A case at a particular time may consist of a decree and assume a different form in a different time and condition and the ruling for it may change. So, issues and changes that take place in them are diverse and numerous, but the limited general headings are fixed. It is true that the aspects of human life are vast and regularly increasing on a daily basis. With the advancement and progress of human civilization and social living, new issues and concerns emerge all of which are in need of specific laws which address all needs. Yet, all these variable laws can have specific criteria. With the permission of the One who has sent down the general laws and taught their general criteria, those who recognize these criteria in fixed expressions can enact specific laws on specific cases.

By saying that the laws of Islam must be implemented in society, we do not only mean laws directly revealed by God in the Qur’an because these laws in the Qur’an are mentioned in general and absolute terms. What we mean is that the Prophet (s), the infallible Imams (‘a) and those who are acquainted with

the spirit of these laws, are well-informed of the criteria and can distinguish the general laws from particular cases and determine the manifestations, ways of application and rulings of these general divine laws.

- [1.](#) Surah al-Ma'idah 5:38.
- [2.](#) Surah al-Baqarah 2:43.
- [3.](#) Surah al-Baqarah 2: 183.
- [4.](#) Surah an-Nisa' 4:59.
- [5.](#) Surah al-Hashr 59:7.
- [6.](#) Surah an-Nisa' 4: 150.
- [7.](#) Surah an-Nisa' 4: 150–151.
- [8.](#) Surah Al 'Imran 3:7.

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