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Session 28: Observance of Values and Legitimate Freedom in an Islamic State

A glance at the state's raison d'être

We discussed the need of executive power in order to find out its characteristics, duties, and conditions to be met while discharging its duties. As we have said, one of the elements of the state or executive power's raison d'être is to guarantee implementation of laws. In the Islamic system laws are directly taken from the sacred code [*shari'ah*] or enacted by those who have been authorized by the Sacred Lawgiver. These laws must also be implemented. In the first degree, people themselves have to directly implement the laws, preserve each other's rights and perform their respective duties. In the collective scene, family sphere and realm of international relations, they have to behave within the framework of Islamic laws.

The performance of duties and observance of social regulations requires strong motivation. Common people primarily think about their personal interests and pay less attention to social interests especially if they cause a loss to them. Only those who acquire profound and noble training and education give priority to public interests over personal interests. As such, the reason behind most of the violations taking place in the realm of social responsibilities is a lack of motivation for social responsibilities. So, an individual or group of individuals needs to take charge of ensuring implementation of laws by persuading people to observe the law and punish them in case of any violation.

So, the existence of executive power which implements law by using force is necessary. Initially laws are made for the administration of its affairs. For example, punishments for aggression and encroachment upon the properties of others are determined. Then, if someone violates the law by encroaching upon another's property, the executive power punishes him.

In some cases, an ambiguity creates tension between two groups or individuals and a dispute arises

between them. It is even possible that none of the parties intends to violate the law but because of their ignorance of what is right, they do not know their own duty and status. In such cases, the judiciary expounds the cases according to the law and determines the rights of both parties and announces its verdict. If the conflicting parties are not satisfied and do not want to abide by the verdict, it is forcefully implemented by the executive. A legal official will also be necessarily involved and be part and parcel of executive power. According to the categorization of many political philosophies, however, judicial power is a separate branch of government distinct from executive and legislative powers.

Under this categorization, the special function of legislative power or legislature, is the ratification of laws, determining rights of individuals and specifying the type of punishment for every violation. For example, according to a certain law ratified by the same legislative power, it is clear whether a certain transaction is valid or not. If there is doubt whether a certain transaction is according to the relevant statutory law or not; whether it is valid or not; or there is a dispute between two parties; it has to be referred to a court of law because, as an integral part of judicial power, the court's function is to examine the conformity of statutory laws to actual cases.

If the announcement of the judge's decision says that Mr. "A" has to give a certain amount of money to Mr. "B" and the two parties accept the judge's verdict and abide by the law peacefully and willfully, the case will be closed; otherwise, the executive power interferes and uses the police force under its command to get the required amount and give it to its rightful owner.

Although one of the main functions of executive power is to guarantee implementation of laws and social decrees, it must be borne in mind that the implementation of laws is not a monopoly of executive power. Others are also expected to implement laws. Similarly, the function of executive power is not only to implement laws, but also engage in making laws in some cases. It is impossible to separate legislation from execution of laws, and their interrelation is more or less accepted by all forms of government.

It is true that the main function of the government or executive power is implementation of laws but in some cases it also engages in making laws and formulating rules and regulations. On the other hand, legislative power also engages in executive work and certain executive works have to be ratified by parliament; for example, signing of contracts with other states and foreign companies on the exploitation of natural resources such as oil and others. It is true that signing a contract is an executive function but without the ratification of parliament, it will never become binding.

So, it is not true that there is a redline separating the three powers from one another and one can not interfere in the others' business, i.e. neither the government issue any executive order nor parliament interfere in executive affairs. Still, each of the three powers has its own special function.

However, the Islamic system is different from others with respect to the issue of legislation. In the laic systems, the basis and pivot of law is material collective interests of people and in addition to their ratification, the execution of laws is also based on those interests. In Islam, however, the material and

worldly interests of people must be taken into account in legislation but not at the expense of neglecting their spiritual and otherworldly interests. In fact, in the codification of laws spiritual interests take precedence over material interests.

This is the essential and fundamental point that distinguishes the Islamic system from the materialistic, laic and secular systems. Naturally, in such a system, the burden of responsibility of the executive is heavier than that of other systems. That is, apart from urging the people to observe social rights and not oppress each other and prevent chaos and disorder, the executive must also observe Islamic values and implement them.

First principle of human conduct

An important feature of man is the power of will and choice that makes him distinct from animals and angels. Animals are motivated by their instincts and there is no room for choice and selection in them. The level of choice that sometimes exists in them stems from their instincts and they have no rational choice that emanates from intelligence and thinking. An animal which is trained to behave in a certain way and perform a certain action by the order of its trainer does so because there is a certain amount of choice within the limits of instinctive actions.

Angels, however, have celestial and heavenly attributes and they have no inclination or desire to do evil and deviate from truth. They are among the most holy and nearest ones to God and have exalted, pure and spotless stations, but they have no choice. In reality, their nature is based upon unconditional worship, obedience and submission to God. Man—this vicegerent of God [*khalifatullah*] and carrier of the divine trust—is a being that possesses the power of choice. There are always two ways in front of him and he has two masters and two sources of attraction, one leads toward God and the other toward Satan. He must have the power to choose and select one of these two ways. Once he is deprived of the power to choose and is coercively drawn to a certain way, it means that he is deprived of his humanity.

Therefore, the guiding principle with respect to man's training—whether in individual and family issues or social and international issues—is to pave the ground for choice and selection so that he selects the right path by his own choice and freewill, and not by imposition. Sometimes, however, social interests require that pressure must be exerted on man. In reality, the existence of executive power and naked force is based upon secondary, and not primary, interests.

To say that there must be executive power to implement laws and even compel violators to abide by them, in some cases, is contrary to the primary principle. The primary principle is that law must be at the disposal of people who act upon it willfully and volitionally, and no one violates it. No one cheats another, receives bribery, steals, and violates the lives and properties of people. Yet, violation of law is also committed in society and the existence of brute force to prevent any violation of law becomes necessary; otherwise, corruption will engulf the world and there will be no chance of improvement for those who want to choose the right path.

In order to keep the door of correct choice open for the majority of people in society, violators of law must be checked and punished whenever necessary, and thus, give others a chance to improve and evolve. If this is not done, some bullies will threaten the interests of entire society by using physical strength, intellectual power, or satanic ruses, and this will negatively affect the divine purpose in the creation of man.

It is true that in an atmosphere of freedom and liberty, man himself has to choose the right way, but this freedom is not unlimited. Individuals should not be given so much freedom that others' freedom of choice is closed—in the words of the Qur'an, to hinder others from treading the way of God.[1]

Thus, violators must be dealt with so as to remove the hindrances along the way of God. It must be borne in mind, however, that the prevention of violations and use of brute force in implementing law have certain conditions and limitations and must be carried out with precision. In the same cases in which Islam resorts to the use of force in order to secure social interests, it exerts utmost meticulousness and tries to keep the door of return (repentance) open for violators, except in so heavy a crime or offense that it is necessary to put an end to the life of the criminal so as to preserve collective interests and prevent the spread of corruption.

Islam's instructive approach in enacting penal and criminal laws

Islam has enacted capital punishments for certain crimes, but in order to establish and prove them, it has also laid down difficult conditions, thus making it very problematic to prove those crimes. In dealing with the philosophy of divine laws, the considered wisdom behind punishments and penalties is the lesson taken from it which acts as a deterrent and thus prevents the spread of crimes and offenses. In order to reach this goal, there must be penalty commensurate to the crime and for heinous crimes capital punishment must be taken into account.

For example, if a light punishment—an insignificant fine or short-period detention—is taken into account for a criminal act like robbery, robbery in society will not stop and the hidden wisdom behind divine punishments and penalties will not be realized.

On the other hand, if it is easy to prove a crime and individuals can easily be punished, execution of punishments and penalties will spread in society because many deserve punishments, and thus the honor and reputation of many families will be tarnished. It is for this reason that Islam has made it difficult to prove a crime. For example, in case of the abominable act of fornication, Islam has considered heavy punishment and even ordered that the fornicators, man and woman, must be punished in public, and social considerations and human feelings must not cast a shadow on the implementation of the divine punishment.

In order to prevent moral corruption in society and family the punishment for fornication must be given in public and one must not shirk executing the punishment under the pretext of a Muslim's reputation. On

the other hand, however, Islam has set difficult conditions for proving such a crime. As a result, very few cases of the crime are actually proven and only a few among the fornicators are punished.

In proving that crime Islamic law has stipulated that four just witnesses must testify that they have personally seen the performance of the immoral act. If only three will testify, even if they are the most just and famous of people in society, not only will the crime not be proven and the accused be exonerated, but the judge will order the punishment of the three and penalty for calumny and false accusation against others will be exerted on them.

The existence of such meticulousness and strictness in the implementation of all laws of Islam, the penal codes in particular, shows that Islam pursues the realization of its lofty goals and aspirations, observes sublime values, but insists on ground realities and is not contented with mere idealism. In fact, the method of Islam in administering society is between idealism and realism and contains elements of both. Islam considers it necessary to observe lofty values and does not allow them to be tarnished in society just as done in non-religious and non-Islamic societies that have brought about widespread corruption and ample ignominy.

With the aim of keeping Islamic society free from this corruption and pollution, Islam has stipulated capital punishment for corruptors. On the other hand, however, Islam is realistic and accepts the fact that some people engage in corruption and violation of law for more than one reason. As such, it has laid down difficult conditions for proving a crime.

The purpose is the implementation of law by its guarantor using force and compulsion in case of violation, while observing that the action of man is conscious and done out of freewill and choice. On the other hand, the collective interests must be observed and one should not allow individuals to threaten the interests of society by misusing unlimited and unrestrained freedom.

The state's fixed and alterable duties

Once we take a look at the laws we will find that some pertain to people who are obliged to abide by them, and the role of state in this context is to monitor their activities and present practical policies that invite them to respect law and confront violators. Others pertain to the state which is bound to implement them. These are related to needs of citizens, important economic activities, investment, and services which cannot be rendered by people and even if they are capable, there will be few volunteers to do so, and without them public interests will not be served. Thus, there is need for an organized, cohesive and systematic organization called "government" to render services such as defending the territorial integrity of a country against foreign invasions; administering war and procuring necessary military equipment and armaments; undertaking vaccination programs against contagious and epidemic diseases like polio, which can only be undertaken nationwide and at its opportune time with the government's management and facilities; maintaining public health and providing medical services and facilities for all citizens; and effectively campaigning against the trafficking, distribution and use of ominous narcotics and drugs and

punishing the merchants of death (drug traders).

It is true that by enjoining what is good, forbidding what is bad, not consuming narcotics, and preventing its distribution, people can play a role to a certain extent, but it is beyond their capability to launch an extensive and grand campaign against the ominous phenomenon and their limited facilities are insufficient for this campaign. The same is true in the case of moral corruption which has become rampant. Only the state or government is capable of combating them.

Some laws are concerned with needs that can be met by both government and people, but changing circumstances of time and space as well as social development create different ways of meeting them. Some social activities can be undertaken by people themselves in a simple form and to a limited extent at a given period of time, but with the emergence of new conditions and social development, they become complex and people can no longer undertake them. It is at this juncture that the state has to interfere and undertake the social activities that become complex. For example, rearing, training and educating children is the duty of all parents or citizens who must strive hard in this connection, but today the situation is such that if there was no strong “Ministry of Training and Education” in the country and laws related to compulsory education were not implemented, the percentage of literacy in our country would fall.

Similarly, in the light of new developments and conditions, issues such as public hygiene of cities and their lighting facilities are assigned to the government. In the past, they were not part of government duties. Some of them like radio and television were never an issue to be assigned to the government. With the emergence of social transformations new duties are assigned to the government—duties which if the government will not discharge will damage social advancement, and as a result, Islamic society will lag behind in the fields of science, technology and industry. Once training and education is weakened, the spiritual dimension of people will also be weakened because spiritual perfection is possible through knowledge and learning, and a society deprived of knowledge is also deprived of spirituality.

In view of what we have said, one can reexamine the status, fixed structure and elements of state. The elements and constituents of state in the absence of which the state will cease to exist are the following:

1. Guaranteeing the implementation of civil and legal laws in society such that in case of violation, they are imposed upon the people by use of force and violators are punished.

2. Securing permanent interests of society under all circumstances which remain unchanged by change in social conditions, and can be secured only by the state. For example, establishment of peace and order in society is the responsibility of government. Whether small or big, the government of a country must assume this important responsibility.

But the alterable interests and duties which are not assumed by the government in all situations, and which the people can also assume, and which are assumed by the government with the emergence of new conditions, cannot be considered part of the constitutive elements of state.

Difference in manner of implementing laws between Islamic and other states

After stating the station of the state and its responsibilities, it is appropriate to mention briefly the difference between the Islamic state and other states. In general, the Islamic state is different from secular states in the realm of laws. The realm of laws is broader in the Islamic state than in other political systems for they also ensure spiritual interests. They also differ with one another in the manner of implementing laws. In playing their roles and discharging their duties, all states are in need of financial resources which are partly procured through taxes collected from the people.

With the permission of *wali al-faqih*, the Islamic state may also approve and implement a law authorizing collection of taxes from people. The difference between the Islamic state and other states in the implementation of laws that ask for a certain amount of money from the people is that in implementing these laws Islam has taken into account the philosophy behind the creation of man.

In other words, Islam maintains that the actions of man must be done out of his own freewill to contribute to his spiritual growth and advancement. In tax collection the state may possibly resort to the use of force and collect taxes from the people. Of course, in order to minimize the pressure of imposed taxation upon people and avoid their protest, diverse approaches have been adopted in advanced countries of the world through which the people's sensitivities and complaints are mitigated. One of these approaches is that taxes are to be levied for public needs and primary goods which the people buy on a daily basis. In addition to the original cost of an item which must be given to the seller, a certain amount of tax must also be paid to add to the government's budget.

Naturally, by paying taxes in the manner mentioned above, no one gets any profit or gain, but even here Islam wants the people to grow spiritually. For this reason, in some cases Islam has not compelled the people to pay taxes and does not dispatch any collector to collect *khums*[2] which is one of the Islamic taxes.[3] Even in case of *zakat* which is obligatory upon the Islamic state to collect, the liberty of people in paying it must be observed. As such, when collectors of *zakat* refer to people, they neither assess the assets liable for *zakat* nor determine the amount of *zakat*.

Rather, the person concerned voluntarily mentions the extent of his yields and the *zakat* for them is calculated and received. Here pressure, compulsion or investigation is not used to know the truth—whether he is telling the truth or not—except in cases where violations (*zakat* evasions) are so evident and obvious that the Islamic state would incur heavy losses, or where certain individuals formally declare their defiance in paying *zakat*. In such cases the Islamic state has to pursue its collection of taxes by all means.

Thus, one of the distinctions of the Islamic political system in comparison to other systems is that even in the manner of implementing laws it has taken Islamic values into account. It is appropriate for advocates

of freedom, personal choice and human values, to note that in Islam the utmost rational freedom has been considered for individuals and they are expected to discharge their duties freely to attain nobility, growth, and advancement.

If ever in some cases Islam acts decisively, and in the words of the gentlemen, it acts violently, it is meant to protect the freedom and spiritual perfection of the rest of humanity and keep the way of God open. As a result, society might better be able to tread the path of truth and perfection. In any case, individual liberty is not absolute in Islam. Once this liberty arbitrarily affects material and spiritual interests of society, they shall be restricted. Individuals may receive lashes; a bodily limb of a person may be amputated; or while observing special conditions in very rare situations, a heinous criminal may be executed. These punishments and severe measures must be regarded as a warning to violators of law.

Naturally, once Islam orders the hand of a thief to be amputated, others will see the result of committing theft and the number of robberies will decrease and fewer opportunities for such a disgraceful act will remain. But if lighter punishments for them are stipulated, like imprisonment or monetary fine, the number of thieves will increase. There are even cases where prisoners who are not thieves learn how to steal on account of their interaction and mingling with thieves!

We are not afraid of telling the truth and we declare that in Islam there is severe measure and punishment, and in the words of our opponents, “violence”. There is also harshness vis-à-vis criminals and evildoers as well as the faithless and enemies of Islam. As God says,

﴿ ...محمدٌ رسولُ اللهِ و الذينَ معهُ اشدّاءُ عَلَى الكفّارِ رحماءُ بينهم﴾

“Muhammad, the Apostle of Allah, and those who are with him are hard against the faithless, and merciful among themselves...”[4]

In some cases, Islam also regards the humiliation of a criminal as necessary for the people to learn a lesson:

﴿وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ...﴾

“...And let their punishment be witnessed by a group of the faithful.”[5]

We can see that in some cases Islam and the Qur’an explicitly regard violent actions and even humiliation of a criminal as necessary, and we cannot omit these verses from the Qur’an. Now, if some people consider such actions as repugnant to human dignity, we would like to say that in some cases, acting against the dignity of evildoers and even humiliating them is necessary for the protection of collective interests. In reality, these kinds of severe punishments are not actually violent, rather an

arrangement and creation of opportunity for people's enjoyment of rational social liberty.

1. "Those who are [themselves] faithless and bar [others] from the way of Allah—He has made their works go awry" (Surah Muhammad 47:1). ﴿ الَّذِينَ كَفَرُوا وَصَدُّوا عَن سَبِيلِ اللَّهِ أَضَلَّ أَعْمَالَهُمْ ﴾
2. Khums: literally means one-fifth. According to the Shi'ah school of jurisprudence [fiqh], this one-fifth tax is obligatorily levied on every adult Muslim who is financially secure and has surplus in his income out of annual savings, net commercial profits, and all movable and immovable properties which are not commensurable with the needs and social standing of the person. Khums is divided into two equal parts: the Share of the Imam [sahm al-Imam] and the Share of the Sayyids/Sadat (descendants of the Prophet) [sahm as-Sadat]. Accordingly, the Share of the Imam is to be paid to the living Imam, and in the period of occultation [asr al-ghaybah], to the most learned living mujtahid who is the giver's marja' at-taqlid [source of emulation]. The other half of the khums, the Share of the Sayyids/Sadat, is to be given to needy pious Sayyids who lack the resources for one's year respectable living in consonance with their various statuses. For more information, see Sayyid Muhammad Rizvi, Khums: An Islamic Tax (Toronto: Islamic Education and Information Center, 1992), http://www.al-islam.org/beliefs/practices/khums.html [1]. [Trans.]
3. As stated in Shi'i jurisprudence, the Islamic state is not supposed to forcibly collect khums from the people, particularly khums of legitimate wealth mixed with illegitimate wealth [arbah makasib]. In such cases, khums is obligatory but individuals have to voluntarily and willfully assess their own annual financial accounts and pay the required khums.
4. Surah al-Fath 48:29.
5. Surah an-Nur 24:2.

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[1] http://www.al-islam.org/beliefs/practices/khums.html