

The Concept of Justice in Islam

Introduction

Justice is one of God's attributes in the three monotheistic religions. In Islam, it is listed as one of the ninety-nine most beautiful names of God. Also, a number of references in the Qur'an urge Muslims to adhere to Justice. Here are some examples:

- A) Truly God commands you to give back trusts to those to whom they are due, and when you judge between people, judge with justice (4:58).
- B) And act justly. Truly God loves those who are just. (49:9).
- C) And let not the hatred of others make you avoid justice. Be just; that is nearer to piety (5:8).

In the Qur'anic perspective, people's actions are either preordained by God or as the result of their free will, an issue that will be examined later.

There are also a number of Islamic traditions ascribed to Muhammad, such as:

Behold! The dispensers of Justice will be seated on the pulpits of light beside God on the right side of the Merciful, exalted and glorious (Muslim: 844).

But so many times Muslims use the terms justice and truth interchangeably, though in reality there is a great difference between the two terms. Giving the simplest definitions to these two terminologies, "Justice" is the quality of being impartial, especially in the art of judging, while "truth" is the quality of being honest in presenting the facts. But these definitions are hardly applicable to the Islamic concept of Justice. In many cases, Justice is subject to many considerations, whether they are religious, social, or personal. The incident of Ben Laden is a striking example. He attempted a coup de tat against the Saudi government, but he escaped the death sentence and was sent to exile because he belonged to an influential family and strong tribe. A person of lesser caliber may have been sentence to death. Also, the term "truth" in an Islamic society and within the court "has a variety of interconnected meanings. It means 'right,' 'duty,' 'truth,' 'reality,' and 'obligation.' In one context it can mean 'you are right,' in another, 'you are wrong,'" (Lawrence Rosen, Justice in Islam: 6). So what is 'true' or 'real' "is the web of indebtedness that links sentient beings to one another in a chain of obligations." (Ibid: 6). Moreover, "to speak the truth is, in short, to convey that sense of mutual obligations which bind men to men and men to God." (Ibid: 6). Therefore, relationships are highly contextualized and thus justice is contextualized, too. Remarkably, the Islamic law has to deal with elements that do not exist in Western laws of court such as differences between men and women, religious affiliations, and cultural diversity.

The Arab Before Islam

The Arabs before Islam lacked a common constitution to which they are obligated. They were ruled by their own local customs and traditions. The sheikh of the tribe exerted a tremendous authority as long as he did not violate the traditions of the tribe. Every tribe adopted its own traditions and precepts they believed best served the interest of the tribe. Some tribes practiced the hideous habit of wa'd (female infanticide) while others regarded it as taboo and endeavored to save the lives of the female born babies of the other tribes. Some of these customary laws were incorporated in the Shari`a and sanctioned by the wrath of God. Yet, in spite of the peculiarities, there were many common customs esteemed by all the Arab tribes, such as courage, hospitality, protection of a person who is seeking refuge from his enemies, and prudence.

Also, there were binding agreements among all the tribes to secure the safety of the caravans and the pilgrims during the three sacred months of the pilgrimage. The only segment of the pre-Islamic society that retained a sort of legal structure was the Jewish community that settled in Madina and other parts of Arabia and the Arab tribes that were converted to Judaism. They found in the O.T. laws a supply of instructions to regulate their daily life.

The Islamic State and the Inception of the Law

The first Islamic state was established thirteen years after the inception of Islam. During the first 13 years of Muhammad's commission, his mission was to convince his own tribe and the people of Mecca to relinquish the worship of idols and to believe in one God. As the Qur'an indicated, he was sent as a preacher and a warner. At this stage he did not claim to be a ruler or a military leader. His message was similar to the messages of many of the O.T. prophets. Very few heeded his message and he was forced to flee for his life to Madina where he was received by some of his followers who embraced Islam in previous years. In Madina, the first Islamic community was founded and Muhammad, who proved to be a skillful politician, recognized the need for a legal system to organize the primitive structure of the nascent society. To implement such legislation, Muhammad resorted to two sources of authority: His prophethood as the messenger of God and revelation. Such authority allowed him to "rule his community as an absolute monarch...He had no need of a code, for his own will was enough. He followed the customary law of the town...when it suited him and he judged that it was the best. If not, he left it and there was a revelation." (Duncan B. Macdonald, *Development of Muslim Theology, Jurisprudence, and Constitutional Theory*: 69).

It is obvious that the Islamic state is a theocratic state. Muhammad was the only authority in both the religious and the socio-political affairs. His successors became the guardians of the faith and the decision makers in the political arena. So there was no separation between state and religion. Muhammad sought a legislative model to follow. The only theocratic model that was available to him was the O.T. model. He was deeply impressed with the personality of Moses and the role he played in the Israeli history. Moses is mentioned in the Qur'an more than any other biblical figure. In the view of Muhammad and the Qur'an, Moses was not only the founder of Judaism, but also the lawgiver. Moses was also the great liberator who delivered his own people from slavery. Muhammad was too the liberator of his people from the worship of idols. Thus, no wonder that the bulk of the alleged revealed Islamic law was in actuality adopted from the Law of Moses. That does not mean that the Islamic shari`a has not borrowed from the pre-Islamic era, Zoroastrianism, and other foreign sources, what fits the new Islamic society. Meanwhile, there were cases in which Muhammad needed the help of revelation to rescue him from some legal crises, as in the case when he decided to marry the divorced wife of his adopted son. Without the heavenly intervention, he would have committed a taboo against the conventional code of the Arabian traditions. Only a revelation could help Muhammad to satisfy his desire despite the objections of the community. The revelation became a law and since then Muslims were discouraged from adoption. In other cases, Muhammad did not need any backing from the revelation. He acted with absolute authority on the basis of his prudence and judgment.

Justice from the Theological Point of View

Muslims believe that the Shari`a is a revelation from God. It is as sacred as the Qur'an itself. Since God is Just then His is the source of the Islamic Justice. This is why radical Muslims strive to implement the Islamic law in their own countries, because it is the law of Allah, universal, and eternal, and the law of Allah is better than any man-made law.

In order to understand the nature of the concept of justice in Islam, we have to examine first the concept of God's justice. Among God's characteristics are the sovereignty of God and His absolute will. As a sovereign God, He can violate His own laws and contradict His own character. Humankind, as slaves of God, is not supposed to question God or to complain. He can send a wicked person to paradise and a righteous person to hell. According to a tradition ascribed to Muhammad, when God intended to create the human race He first predetermined their characters and decided their eternal destiny. The narrative indicated that God picked a handful of earth in His right hand and threw it aside saying, "All those who are created from this handful of earth will go to paradise." Then He picked a handful of earth in His left hand saying, "and those to hell." So no Muslim, as devout as he is, can have any assurance of salvation since his destiny depends on God's mercy. The Qur'an also provides us with another striking example.

When God created Adam, He brought him in front of the angels and ordered them to prostrate to Adam. All of them did, except one being, who was later called Satan. Because this being disobeyed God and refused to prostrate to Adam, God punished him and threw him out of heaven. If we study this incident carefully, we realize in reality, that Satan was the only one who glorified God. All the angels who prostrated and worshipped Adam gave glory to a created being instead of the creator. Satan, accordingly, was the only one who obeyed God's commandment that was revealed in the Bible and the Qur'an. In actuality, the angels who prostrated to Adam were the ones who should have been punished. We have here an invert Justice; a justice that contradicts God's nature. In Islam, the sovereignty of God is not limited by His own nature.

As we survey the Qur'an, we encounter a number of contradictory verses in relation to God and the free will of Man. Some verses emphasize that God is the one who guideth whom He wills and sends astray whom He wills. Other verses ascertain that man is the creator of his deeds and he is responsible for his actions. This issue split the theological Islamic community in the middle ages. The Mu`tazilites, who were regarded as the free thinkers of the time, taught the concept of free will of man and tied it with the concept of God's justice. The question that was asked: How God is going to judge those whom He predestined to be wicked and destined to go to hell? This is against God's nature and justice. The orthodox Muslims who preached the sovereignty of God and His absolute will objected to the teachings of the free thinkers on the basis that God is sovereign and he is entitled to do and to will whatever He wishes. By the end of this theological debate, the orthodox won the war and a sense of fatalism dominated the religious arena.

The concept of absolutism was manifested in the life of Muhammad even before the development of the jurisprudence system. It is significant here to give some illustrations since Muhammad's sayings and deeds became the second most important source of the Islamic law.

a) After the Jews of Madina surrendered to Muhammad and gave up their weapons, Muhammad ordered 800-900 of the men to be beheaded.

Before then he consulted one of his companions by the name of Sa`d who was dying from an arrow shot at him by a Jew. He was full of revenge and hoped before he died he would witness the destruction of the Jews. Muhammad knew about his wish and was elated when Sa`d gave his verdict that all the adult male Jews must be killed and their women and children taken as slaves. Muhammad told Sa`d, 'Your verdict, O, Sa`d is the verdict of God from beyond seven heavens,' and he claimed that he received at that moment a revelation from God confirming Sa`d's decree. Soon Sa`d died and Muhammad claimed that the archangel Gabriel appeared to him and informed him that the gates of heaven were opened to receive Sa`d, the throne of God was shaken for the death of Sa`d, the angels rejoiced to welcome the spirit of Sa`d and 70,000 of them attended his funeral. This is how justice was served in this case.

b) The story of Fatima daughter of Rabi`a and the way she died because she cursed Muhammad.

c) The death of poetess by assassination.

This is a justice of which Muhammad did not receive any revelation.

Sources of Islamic Law

The Islamic law today derives its authority from four major sources. They are:

Originally

- The Qur'an
- The Sunna or Islamic Tradition

Later

- Consensus of Muslim scholars
- Analogy

Justice and Practice of Law Today Against Ethnic Non-Muslim Groups

- Non-Muslim men are not allowed to get married to a Muslim girl, while a Muslim male can get married to a Christian or Jewish girl.
- Non-Muslims are not allowed to witness against a Muslim.
- The indemnity for a Christian or Jew killed by a Muslim is one third of the indemnity paid for a Muslim.
- The indemnity paid for an infidel killed by a Muslim is one fifteenth of the indemnity paid for a Muslim.
- When a non-Muslim married woman is captured as a prisoner of war, her previous marriage is immediately annulled and she belongs now to her new master.
- Non-Muslims who became the people of the covenant have to pay the poll tax with humiliation.
- Non-Muslims are encouraged and warmly welcomed to embrace Islam, but if a Muslim is converted to any other religion he must be killed.
- Muslims can criticize the holy books of non-Muslims, but non-Muslims are not allowed to do so.
- A non-Muslim father cannot give away his Muslim daughter.

Read also pages 11-13 from the rights of non-Muslims...

Against Women

- The indemnity paid for a woman who is injured or killed, even if she is a Muslim, is half the indemnity paid for a man.
- The testimony of two women is equal to the testimony of one man.
- A woman inherits half of what a male inherits.
- In case of divorce, the children belong to the father.
- A man has the right to beat his wife as a last resort, if she continues to disobey him.
- A woman cannot leave home even to visit her parents without the permission of the husband. The right of divorce is in the hand of the man.
- A man is allowed to get married to four women at the same time and own as many concubines as he wants, while a woman is not allowed to do so.
- The majority of people in hell are women.
- Women in paradise are for the pleasure of men.

Against Slaves

- No indemnity is paid for a slave killed by his master.
- A maid slave is subject to the whims of her master.

Against Converts

- An apostate is subject to the penalty of death.
- There is no retaliation against a killer who kills an apostate because he is doing that for the sake of God.
- A father who hinders his son or his daughter from becoming a Muslim must be punished.
- If a Muslim is converted to any other religion, his wife has to divorce him, his children will be taken from him and all his property will be confiscated.

Justice and Jihad

Jihad is ordained by God.

In a tradition ascribed to Muhammad he said:

I have been commanded to fight people until they testify that there is no God but Allah and that Muhammad is the messenger of Allah and perform the prayer of almsgiving...

Also, the Qur'an asserts:

Fight those who do not believe in Allah and the last day and those who forbid not what Allah and His messenger have forbidden-who do not practice the religion of truth, being of those who have been given the Book-until they pay the poll tax out of hand and are humiliated. (9:29)

The Jihad in Islam against the infidels is a communal obligation even if Muslims have to march their countries to fight with them.

War Against Oppression

Muslims must challenge any political authority that refuses the free exchange of ideas or prevents people from freely professing or practicing the religion of their choice: And fight them until there is no more persecution and religion is only for Allah (2:193); and: Why should you not fight in Allah's cause and of those who, being weak, are oppressed-men, women, and children, whose cry is:

Our Lord, rescue us from this town, whose people are oppressors; and raise for us from You one who will protect; and raise for us from You one who will help. (4:75)

Oppressiveness is not determined by comparing a regime's values and conduct with Islamic norms and standards, but by its tolerance of Muslims interaction with its subjects and the propagation of Islam to the general public. Corruption and mismanagement should not be considered the criteria that define a particular regime as oppressive, because Muslims are commanded to invite humanity to Islam through friendly means and effect social and political reform through education and moral reformation. Only when their peaceful efforts are frustrated and met with violence can they resort to violence to subdue the aggressive party.

War in Defense of Muslim Individuals and Property

When a Muslim is wronged in his or her person or property, the Islamic state must ensure adequate compensation, either for the individual or the family, and uphold his or her rights. The Islamic state should ensure that justice is done, even if that involves declaring war, provided that a suitable time has passed after making a formal complaint: Whoever acts aggressively against you, inflict injury on him according to the injury he has inflicted to you. Be careful (of your duty) to Allah. Allah is with those who guard (against evil) (2:194).

War Against Foreign Aggression

A military attack on the Islamic state or its allies is a clear example of this. Muslims are not obliged to wait until they are attacked. Rather, the Islamic state can initiate war and carry out a preemptive strike if Muslim authorities are convinced that the enemy is mobilizing its forces and is about to carry out an offensive, or if a state of war already exists.

If aggression is committed against the Islamic state's ally or a state that has signed a treaty of military protection, the Islamic state must provide the needed military support. The conquest of Makkah was precipitated by the Quraysh's attack on Khuza'ah, an ally of Madinah, which violated a provision of the Treaty of al-Hudaybiyah.

Jihad is to propagate Islam

Jihad and paradise