

Legal Frameworks of Islamic Theocracy: A Panacea to the Contemporary Administrative Setback

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ABSTRACT

This research investigates the status of Islamic theocratic system, the framework of Islamic administration, the role of the judiciary, the executive and the legislature and the mechanism of the protection of fundamental rights and freedom. The paper clarifies and justifies the ideological differences between theocracy and Shari'ah in terms of divinity, processes, and methods involved the constitutionalism and the varying degrees of supremacy reserved for Islam and its law. It identifies the roles religion plays as a source of law in the administration of justice, arguing the efficiency, efficacy, proficiency and effectiveness of the legal frameworks of Islamic theocracy as a system of government justifiably considered the only panacea to the political woes that pollute the air of global politics.

INTRODUCTION

It is an open secret that relatively little critical attention has been driven towards the application of the legal frameworks of Islamic theocracy across the globe. Most of the leaders have abandoned the glorious path to ideal leadership enshrined in their

scriptures. In its stead, they have adamantly agitated that administration be divorced from religion as if a tree can exist without its root. The force of globalization has greatly helped the West in accelerating her influence all over the world; today global issues are tailored towards the Western viewpoint. Islam as an all-encompassing religion has laid down impeccable legal and administrative frameworks. Sense of insight is, however, drawn and invited towards the system administered by Islam to have recorded such an enormous accomplishment.

Etymologically, the word theocracy originates from the Greek “theocratia” meaning “the rule of God”. This in turn derives from “theos”, meaning, “god” and “krateo”, meaning “to rule”. Thus the meaning in Greek was “rule by god(s) or human incarnation(s) of god(s). According to Oxford English Dictionary, theocracy is a system of government in which priests rule in the name of God or a god. It is a form of government in which a religious institution is the source from which all authority derives¹. Islam, however, is not a mere religion, it is a total way of life which fosters and embraces all mundane activities. Thus, legal framework of Islamic theocracy is principally based on a broad system of Islamic rules that govern and regulate decision making, agreements, laws, etc. It deals with a set of Islamic rules, conduct or procedural steps through which judgment can be determined in a given legal case and discipline maintained in an established society. Islam, in its sheerest capacity for observing and maintaining unprecedented, stern order, justice, probity, equity and equality, has exerted all efforts at making *Shariah* its guiding principles the like of which was

exhibited by the prophet and his rightly guided caliphs in Madinah. Since prophet and his noble companions are the archetype and the prototype of Islamic cultural heritage, necessity has it to catapult our reasoning portmanteau to the structure of government induced by the the prophet to have recorded such an illustrious achievement. After having concluded their findings in their research on legal framework of Islamic origin, Abu-rukba and Abu-ghanimah concluded as follows:

We are very certifying in sincerity that Islamic nations will never be able to rise up to a standard of competence in their systems of institutions except they apply this Islamic thought (of administration) in its spiritual ideals and values. The reason is that Islamic thought originates from their everlasting faith and from the instructions of the headquarters and the sunnah of the prophet (SAW). Additionally, the dictates/ideal of the Islamic thought is susceptible to every human development at all times. The Islamic thought, in other ways, also facilitates efficient participation of human thinking to the utmost peak of every possible development in human undertakings.²

Islam has come to the fore to promote a total way of life free from crisis- ridden, disillusioned governance such that it is apprehensive to the future all because its legal frameworks stem up from pristine primary sources of Islamic law throughout the golden age of Islamic administration. Substantiating the self-subsistent divine nature of Islamic legal system further, Umar bin Khattab (R.A) says: "We are a nation which Allah has exalted with Islam, but whenever we endeavour to attain honour through another means, we meet with humiliation from Allah."³

Contrary to the secular legal framework, it is Allah who entrusts and dethrones the position of authority on whoever He wishes. Hence, the person in the position of authority is accountable not only to the ruled but also to Allah. The prophet was quoted to have said: "Be a leader if you are so chosen by the people."⁴ This prophetic statement however frowns at imposition of a leader on a community through any means whatsoever. The prophet explicates further that whoever, by a way of coercion or intimidation, gains the position of authority will not succeed in his administration, as he will not be divinely assisted. Islamic legal framework is peculiarly divine in nature and stand out from others which are, largely, product of human disposition. Its theory is very comprehensive, all-encompassing and universal in nature just like the religion of Islam itself. It equally considers individuals and organizations to be very important.

Quite importantly, it is apt to mention that theocracy shares not semantic parallelism with Islamic Sharia – it is taken to be an adulterated term for Sharia. Theocracy implies the belief that the government is ordained by God or gods. That is, the leaders are God’s representatives. It is a term which was initially coined by Flavius Josephus in the first century A.D to describe the characteristic government of the Jews. In some creeds, however, the ruler, usually a king, was regarded as the chosen favourite of God (or gods) who could not be questioned but respected as God himself. An example of this can be seen in the character of a onetime king of France, Louis XIV who was quoted to have said “I am the state and the state is mine, when you have seen me, you have seen the state.”⁵ In equal measure is King James I (1603-1628) of both Scotland and England. This assertion recognized the fact and belief that kings are the representatives of God and that they were saddled with the responsibility of controlling human affairs in the society. Such ruling ideology, in turn, creates a free and easy atmosphere for the theocratic leaders to be irresponsible, tyrannical and autocratic.

Sharia, according to the Shorter Encyclopedia of Islam by H.A.R Gib and J.H Kramers, is defined as “ the path to be followed and the canon law of Islam.”⁶ It is the law that guides man to the attainment of Allah’s pleasure. In Islam, both the law and the ruler are subject to God. The laws emanate from Allah who decrees its main bases in the Qur’an in accompaniment with the divine understanding and interpretation of Prophet Muhammad, both of which are dogmatic.

Basically the aims and objectives of legal framework of Islamic theocracy is the same as objectives of *Shariah*. The *Shariah* is generally predicated on benefits to the individual and the community, and its laws are devised to protect and preserve these benefits so as to facilitate the improvement and perfection of human condition on earth. This is captured when the Quran expressly mentions the primary purpose of the prophet on earth. Allah says: “We have not sent you but as a mercy to the universe” (Q. 21:107). This can also be seen in the self descriptive feature or portrait of the Qur’an as “a healing to the (spiritual) ailment of the heart and “a guidance and mercy” for the believers and mankind” portrayed in (Suratul Yunus, 57) The objectives, however, include: Protection of faith/religion; protection of intellect; protection of life; protection of honour and protection of property. These are seen as the absolute requirements to the survival and spiritual well-being of individuals, to the extent that their annihilation or collapse would precipitate chaos and the demise of normal order in society. On the whole, *Shariah* seeks to protect and promote these essential values, and validates all yardsticks necessary for their preservation and advancement. Legal framework of Islamic theocracy covers a wider range than Constitutional Law. This is because while

constitutional law is the body of law that regulates the system of government and individual rights within a state, but for the fact that it does not serve as a Ground norm in the *Shariah*, its role is minimal as the *Shariah* itself takes precedent over it. *Shariah* is a complete system that contains minute injunctions and regulations relating to the human conduct in all spheres and circumstances of life.

It is important to mention that Islam sources its law from two principal frameworks which are Quran and Sunnah. The legal framework of Islamic theocracy is however expected to be in accordance with the provision of instructions inspired through the Holy Quran and the Sunnah of the holy prophet. The administration in Islam which comprises of its legal system is expected to take the following forms:

- i. Ummah- Islamic nations
- ii. Khilafah- Caliphate which is a replicate of the leadership of the prophet
- iii. Taqlid al-Wizarah- ministries of delegated powers.

Allah has made the Muslims one nation despite the differences in language, tribes and colours. He also enjoined them to unite themselves and forbid them from disintegration, controversy and disputes. Q. 23:52 says: "and verily, this your religion (of monotheism) is one religion, and I am your Lord, so fear (keep your duty to) Me."

In Islam, Khalifa or imam is the chief executive at the helm of the Muslim Ummah. He is the representative of the people from whom he derives his rights and privileges. He is responsible for the administration of the entire state of Islam in accordance to the *Shariah*. He is the trustee and custodian of public properties. Q.4:59 states "O you who believe! Obey Allah and obey the Messenger (Muhammad) and those of you (Muslims) who are in authority..." The prophet emphasized the fact that there will be caliphate and enjoined the Muslims as follows: There will be no prophet after me but there will be many Caliphs, and a lot of them. They (Sahabah) asked what will you instruct us to do with them O Messenger of Allah? He replied: fulfill the first allegiance and always give them their rights (i.e. obey them), verily Allah will interrogate them concerning their subjects. In equal measure, the prophet says: "verily it is part of the obedience to Allah that you obey me and verily it part of the obedience to me that you obey your imams".⁷

Accordingly, the Imam or Caliph is the sole Chief Executive of Islamic State and he has the power and the authority to appoint Ministers upon ministries that he may establish for the smooth running of his administration. Parts of his power can be delegated to anybody he feels fit for the appointment. As he delegates his power, he is vicariously liable for the wrongs of his

appointees. These appointees are his direct representatives in order to promote the administrative system of the Muslim Community. The Muslim Jurist substantiated this process with a verse of the Qur'an and with the practices of the prophet and the rightly guided caliphs. Quran 20:29 states "And appoint for me a helper (Wazir) from my family, Harun, my brother, increase my strength with him and. And let him share my task."¹⁰ Interestingly, the prophet, despite his role as a prophet, jealously combined the administration of the Ummah with the prophetic assignments. The prophet was enjoined to dispense justice and equity without fear or favour. Allah says:

O ye who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all ye do."¹¹

Models could, however, be drawn from the ways the prophet wielded effectiveness on the application of rule of law and dispensation of justice. The prophet's reaction to the intercession of one of his noble companions, Usman Ibn Zaid in respect of a woman from the tribe of Makhuzumi who was found guilty of theft serves a convincing instance. The prophet stood up and said:

"Verily what destroyed those who came before you was that when the noble among them stole, they granted them pardon; but when the weak stole, they amputated him. I swear by Him in whose hand is my soul, if it was to be Fatimah, daughter of Muhammad that steals, I would cut her hand."¹²

The contemporary administrative frameworks have witnessed various fiascoes in their operative systems as a result of several factors such as the fallibility of the nature of man which gives rise to ephemeral productivity or inadequacies of human strewn legal frameworks, lack of dedication and will on the part of their operators, unjust socio-political and economic arrangement in the country, inordinate quest for power and a host of others.

The companions of the prophet who succeeded him, especially the rightly guided caliphs also took after the prophet. On his assumption of office as the religious and political

leader of Islamic theocratic state, Sayyidna Abubakar gave an inaugural speech, which demonstrated a true spirit of Islamic governance. He says:

O people, I have been appointed as your ruler although I am not the best of you. If I am right, obey me. If I am misguided set me right. Obey me as long as I obey Allah and His Messenger (SAW). If I disobey Allah and His messenger, you are free to disobey me..."¹³

In a similar manner, the second caliph, Umar, has displayed a very high standing in political and legal leadership. His simplicity was unequal in the human history. Unlike the contemporary leaders who draw mere ludicrous solace from fleet of flashy sordid boons, scarcely could 'Umar be recognized as the head of State. He could not afford taking what he felt his subject could not take and was extra careful on how public funds were expended. He ones said:

I have no more authority over the Baitul-mal (public treasury) than a custodian has over the property of an orphan. If I would be well to do, I would not accept any honorarium; if not, I would draw a little to meet the ordinary necessities of life. Brother! I am your servant and you should control and question my actions.¹³

One of these is that the public money should neither be unnecessarily hoarded nor wasted. I must work for the welfare and prosperity of our people. Quite surprisingly, as the chief Executive of the Muslim empire, Sayyidna Umar appointed some judges, yet he did not influence their functions. No immunity prevented him from appearing as a plaintiff before the court of law when occasion called for such. 'Umar once attended the court of Qadi Zaid Ibn Thabit as a litigant. The scenario is presented thus:

There was a dispute between 'Umar and Ubay b. Ka'ab, may Allah be pleased with both of them. They appointed Zaid b. Thabit to resolve it for them as adjudication took place in his residence. As they went to Zaid's house, he welcomed them and pointed to a conspicuous place where 'Umar would sit. 'Umar told him, "This is the first injustice you have committed. I will sit

in the same place where my co-litigant will sit. So they both sat in front of Zaid.¹⁴

His fair treatment equally extended to his son who was found guilty of taking alcohol and having illicit sexual intercourse with a lady. He ordered his son to be flogged accordingly and died in the process, yet he (Umar) insisted that the remaining stripes be administered on his corpse. His successor 'Uthman bn Affan also defended himself against allegation of extravagance, nepotism and favouritism in his appointment and invited complainants to come and prosecute their complaints. Nobody however came with any representation.

It is glaringly obvious that the art of governance has been divided into three organs in the West, but quite surprisingly this has been established in Islamic State since the emergence of Islam. A reference to the Holy Quran and the Sunnah of the prophet suffices convincing evidence on this. Q.4:59 says:

O you who believe! Obey Allah and obey the messenger and those of you who are in authority. And if you differ in anything amongst yourselves, refer it to Allah and His Messenger if you believe in Allah and the Last day that is better and more suitable for final determination.”¹⁵

As a result, the verse is the foundation of the fundamentals of faith, its law and its government. The sources of legislations therefore are the Holy Quran, the Sunnah and the consensus of Ahl al-Ahl wal Aqd. i.e those charged with authority. According to the author of *Mu'alim al-dawlah al-Islamiyyah*, Islamic state is constituted from a group whose duty is to explain the *Shariah* which is known in the contemporary society as the legislative body; a group whose duty is to adjudicate the *Sharia* rules among people especially the litigants. This is acknowledged as the judiciary today. And a group whose duty is to execute the laws and the policies of a state is well known as executive today. It becomes obvious from the aforementioned that three arms of government originated from Islam itself. The Legislative Body is to lay down statutes which are deduced from the primary source of *Shariah*. The judiciary is to dispense justice among people without fear or favour. The executive is to carry out rules and orders as well as implement policies already formulated in a strict compliance with *Shariah*.

In the modern world, the legislative authority has been preserved for the parliament or the House of Assembly or Representatives. These Houses promulgate ordinances and statutes. It equally exercises some authority on issues which are primarily for the executive branch of

government. This includes giving consent to the ministerial appointments, treaties and declaration of war. In Islamic state, on the contrary, the legislative authority originates from the Holy Quran which was revealed to the Holy prophet, who in turn explained it and promulgated from its ordinances on which the establishment of Islamic state was founded.

The judicial authority administers justice among the citizenry without any discrimination. Al- Quda (adjudication) is defined under the *Shariah* as “an enforceable pronouncement passed by a public authority.”¹⁶ This is to establish an orderly society through the dispensation of justice among the litigants and claimants of rights. Thus, a distinctive status is accorded the judiciary under the *Shariah* and the appointment of judges is based on piety. The prophet averred this when he divided the judges into three and said: “Judges are three kinds; one kind is to enter paradise, while the remaining two kinds are hell bound. The judge that discovers the correct situations of the case before him and adjudicates accordingly; he is to enter paradise. But the judge who discovers the rightness of the case and adjudicates otherwise is to enter Hell-fire. Likewise, the judge that adjudges people out of ignorance of the case and the law is to enter Hell-fire.”

The Executive Authority is to execute the law promulgated from its primary sources and the adjudication of the judiciary as well as the policies of the state. Thus the coherence among the three authorities of government is evident and attained. The head of Islamic State is responsible for the Executive Authority and his ministers, each in his ministry are in proxy responsible to the tune of their jurisdictions respectively. Furthermore, within the legal frameworks of Islamic Theocracy is Shura which an Islamic State is bound to establish. This is because it is one of the two indispensable prerequisites that qualify a state to be Islamically theocratic. The other is the thorough and complete application of the provisions of the *Shariah* in all spheres of life. The textual authorities that substantiate the obligatory nature of Shura abound in both the Holy Quran and the Sunnah. Any system of Islamic government that is fall short of Shura is not an Islamic State., even if it draws its rules from *Shariah*. Among these textual authorities are: Q.3:159. Allah says:

And by the mercy of Allah, you deal with them gently. And had you (Muhammad) been severe and harsh-hearted, they would have dispersed from around you; so pass over (their faults), and ask (Allah’s) forgiveness for them; and consult them in the affairs. Then when you have taken decision, put your trust in Allah, certainly, Allah loves those who put their trust (in Him).” Equally is the verse that states: “And those who answer the call of their Lord and

establish regular prayer and whose affairs are a matter of counsel and who spend of what We have provided for them.”¹⁷

CONCLUSION

So far, this work has discussed the legal framework set up and exhibited by pristine Islamic theocracy. It is however a complete dichotomy of Islamic theocracy, the democratization system introduced by the West imperialists. While the modern administrative system has fallen short of meeting the holistic requirement of infallible regulatory policies, we contend that a lot has been adopted from Islamic theocratic system to enrich the contemporary Western procedural pattern. On the whole, the legal frameworks of Islamic administrative system has stood up, among others, not only as the most appropriate administrative system but also as a fruitful odyssey in the vast history of human legal system.

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