

## ISLĀM AND LAW

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Islām is the chosen religion of God. It is therefore, a complete way and a comprehensive system of life; and it is so, not in theory alone. Islām is comprehensive in its practicality. By the third century after the Hijrah, the Islāmic system of law was complete. The *sharī'ah* covered all the areas usually treated by civil law, criminal law, family law, commercial law, international law, etc. It will be difficult, if not impossible, to discuss in detail the contribution of Islām in all these fields. I shall, therefore, confine myself to the main landmarks of the contribution of the *sharī'ah* in these fields.

In civil law, Islām made a significant contribution when it commanded the Muslims to write down their business agreement and to record their business transactions. We read in verse 282 of the second *sūrah* of the Holy Qur'ān:

*"O ye who believe, when you deal with one another, in transactions involving future obligations, in fixed periods of time, reduce them to writing. Let a scribe write down faithfully as between the parties."*

This divine dictate is in the interests of the parties involved. If they abide by it, they would save themselves from much unnecessary trouble that could arise later between them. However, Islām did not make this law rigid but sufficiently flexible, so that in certain cases the merchants might be exempted from observing it. The law permitted them to conclude their business transactions by word of mouth or telephone where expedient provided that they abide by their words. But it warned them of God's greater wrath if they failed or cheated one another. Thus, trustworthiness of the parties played a significant role in business. Islām gave this privilege to the merchants 1400 years ago. A Muslim merchant

must honor his commitment made by word of mouth. He must uphold his pledge at all costs whether he made it in writing or he did it verbally. And no Muslim merchant or businessman may abuse or misuse this privilege which God has given him. In the event of dispute or disagreement between two parties, the *sharī'ah*, following a *ḥadīth* of the Prophet Muḥammad (ṢAAS), prescribed that "The burden of proof (evidence) devolves upon the plaintiff."

In the field of family law, the contribution of Islām is most significant. No other system of law in the world has done so much to improve and to elevate the status of women as Islām has done. It gave woman rights which she did not have before: the right to choose her husband, to inherit property, and to divorce her husband through a court. This was truly revolutionary. Before Islām, the condition of women was simply unspeakable: she had no status, no position, and no rights. She was treated as something less than a human being, a mere chattel, sometimes pleasing but more often a source of anguish. Many Arabs buried female infants alive, for fear of inviting ridicule or social disapproval in later life.

When Islām announced that a woman was the equal of a man; that she was an individual, and had her own personality, her own rights, the rest of the world was shocked and surprised. But Islām compelled its adherents to acknowledge women's rights.

Before Islām, one could marry any number of women. But Islām took this "privilege" away and restricted the number of women a man could marry to four, and that too, under special conditions. Men are not allowed to abuse this privilege. Islām also gave woman the right to inherit and to keep her wealth, and thus to be free from economic dependence upon her husband. She is free to sell her property without permission of her husband — a right which women did not have in Europe until the end of the 19th century. Indeed, Islām gave rights to women which have been denied in the Western society even today. It gave her the right to keep her maiden name after marriage. She does not have to use the name of her husband. This is a right which is still being sought in many parts of the world. Islām was thus the first emancipator of women.

In the field of administrative law, Islām gave people the freedom of expression and the freedom of assembly within the framework of law. A man may not abuse these freedoms and trespass on the rights of others. Islām takes very serious notice of libel, especially against women, and makes it a serious offence punishable by public flogging. The person found guilty of libel suffers loss of legal capacity to give witness during the rest of his life.

Islāmic law also introduced the right of "mutual consultation" or

*shūrā*. This was its way of banishing tyranny, whimsey and arbitrariness from Muslim life, whether at home, in business, or in government. All affairs, above all the highest affairs of state, are in Islām to be conducted by consultation between all parties concerned. The importance of consultation in Islam demanded that a whole *sūrah* of the Qur’ān be devoted to it.

*“The believers’ affairs are settled in consultation with one another ... Forgive the believers, O Muḥammad, pray for them, and consult with them on all matters”* (Qur’ān 42:38; 3:159).

Moreover, we find our Prophet Muḥammad (ṢAAS) himself seeking to consult with his companions. “O people, give me your opinion,” he used to say on so many occasions.” Islām did not omit to stress the importance of consulting, not the ignorant, but those who have knowledge. Allah says:

*“Consult or ask the people who have knowledge if you do not know.”* (Qur’ān 16:43).

Al Māwardī took care to elaborate the conditions under which people may give consultation or render advice when asked. They should satisfy three conditions, *viz.*, justice, knowledge and wisdom. Without these three qualifications, the person giving consultation is not only devoid of credit in the eye of God, but deserves punishment in hellfire.

In the field of criminal law, Islām introduced the most important concept of “equal compensation.” In the Qur’ān Allah (SWT) says:

*“O ye who believe! The Law of Equality is prescribed for you in cases of murder; the free for the free, the slave for the slave; the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude. This is a concession and a mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty”* (Qur’ān 2:178).

*“In the Law of Equality there is (saving of) life to you, O ye men of understanding; that ye may restrain yourselves”* (Qur’ān 2:179).

*“No bearer of burden can bear the burden of another”* (Qur’ān 6:164).

The first two quotations are called the “Law of Punishment.” Islām stands for absolute justice. If a man has been wronged, he must receive what is due. And the man who has wronged another person without reason must pay for his crime. Justice is a lesson to all members of the community. No one stands above or beyond the law; and no one may escape the consequences of his crime. The third quotation stresses the principle of personal responsibility. Every man will answer for his own

deeds, and no one will be held answerable for the deeds of another.

Islāmic law prescribes capital punishment for voluntary manslaughter, unless the heirs of the slain forgive the criminal. If the killing was not voluntary, the criminal must compensate the survivors of the slain, or the heirs, according to the traditions and customs of the country. The law of capital punishment is based on divine wisdom, and is in the best interests of the society. The alarming crime situation in our present time finds murders becoming ever more frequent and murderers being allowed unwarranted leniency. There is a need for Qur'ānic law today; it constitutes the only answer to our contemporary problem. It is intolerable that our society must live in constant fear of murderers, robbers and other criminals. The secular penal codes and courts of the present day seem to be more concerned for and sympathetic to the murderer than to the victim, his relatives or to society.

For the crime of theft, Islāmic law prescribes the punishment of severing the thief's hand. On the face of it, this looks very severe. However, such punishment is enforced only if the society is not suffering from deprivation. Where the conditions are abnormal and people commit theft due to extreme poverty and suffering, such a punishment will not be enforced on the grounds that the government has failed to provide the basic necessities to its people, and has therefore lost the right to enforce the punishment. The punishment of theft was once suspended by Caliph 'Umar ibn al Khaṭṭāb (RAA) in the year of general drought and near famine.

It is not out of place to mention here the average annual rate of crimes in the United States of America. The frequency of crime is as follows:

murder	one every 27 minutes
larceny	one every 5 seconds
motor vehicle theft	one every 33 seconds
violent crime	one every 31 seconds
forcible rape	one every 8 minutes
robbery	one every 78 seconds
aggravated assault	one every 5 minutes
burglary	one every 10 minutes

In international law, Islām gave us a totally new perspective of world order. Time permits us but a bare mention of two of its highlights. First of these is the duty to maintain peace with every other state or group which has not perpetrated aggression against the Muslims. Allah (SWT) says in the Qur'ān:

*“Allah forbids you not with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them; for Allah loveth those who are just.”* (Qur’ān 40:8).

Second among highlights is that, wherever and whenever it is given the choice, the Islamic state must choose peace and not war. In this connection Allah (SWT) says:

*“If your enemy prefers peace, you have to prefer peace, and put your trust in Allah”* (Qur’ān 8:60).

Third is the obligation of the Islāmic state to seek a world order wherein every other state is Muslim by free choice or a covenant with the Islāmic state to co-exist with it in peace. The purpose is to enable everyone to hear the word of God and to accept or reject it freely.

The fourth is the recognition by Islamic law of non-citizen individuals and groups as legal persons entitled to covenant with the Islāmic state on all matters concerning them. Islāmic law grants non-resident non-citizens to take their complaints against citizens as well as the state to the nearest *sharī‘ah* court.

The fifth is the absolutely equal status Islāmic law grants to the transient non-citizen in the Islāmic state. If he is a Muslim, his life is governed by the *sharī‘ah* like any other Muslim citizen; if non-Muslim, by the law of his co-religionists if there are any, or by the law of his own religion if there are none.

The sixth point is the ideological basis Islām has given to man’s definition of man and his relation with other men. The *sharī‘ah* recognizes human beings by their religion, i.e., by the highest ultimate truths and values they hold, not by the real estate they occupy, or the race to which they belong.

The seventh is that the Islāmic law of nations envisages a united world-order in which the peoples of the world live in peace, a world in which there are neither customs, frontiers nor immigration laws, where humans and wealth are free to move, where humans are free to convince and be convinced of the truth, where every human is at once student and teacher, guarded and guardian, agent and patient of the command of the good and the prohibition of evil. This is not a utopian dream; nor the wishful thinking of an idle, speculative thinker. It is law, with courts, executive machinery and the better conscience of over a billion souls to support it.