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Pakistan's constitution conundrum

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Recent talks between the Pakistani government and the Tehreek-e-Taliban Pakistan (TTP) have ignited a discussion regarding the Islamic legitimacy of the country's constitution. The TTP's claim at the start of the talks that the constitution is not Islamic and the government's assertion of the opposite have spawned debate in talk shows and in living rooms throughout Pakistan this topic has been dissected.

The present discussion is framed within the context of bringing an end to the violence plaguing Pakistan since the United States arrived in the region post-9/11, and the topic is of interest not just to the parties involved in the talks but to those who have a genuine concern for the Islamic nature of the country.

The chief defense of the constitution's Islamic credentials is that it cites Islam as the state religion and has provisioned for the Federal Shariat Court (FSC) to examine whether all laws are in accordance with Islam.

This logic implicitly assumes that the process of developing laws within the democratic framework as afforded by the constitution is nearly identical to that of extracting laws from

Islamic texts in the process of jurisprudence, with a little something on top to "Islamicize" the democratic process. Yet the reality of both procedures produces stark contrasts.

In a democratic process, elected lawmakers come together to develop laws as they see fit. There are no constraints as to what they can legislate for, with only a majority of some sort required to pass any particular law. There is no requirement for the legislators to have previous legal experience, nor that they be experts on the subject matter at hand, though technical advice can be sought if required.

In Islam, many matters are clearly defined as being legal or illegal, such as the consumption of alcohol, adultery and interest-based transactions. In areas where definitive rulings do not exist or new realities are encountered, a legal expert is required to extract a ruling from Islamic texts. If the legal expert does not possess technical expertise in understanding a particular subject matter, then he or she is allowed to call upon the help of specialists to apprise them of the reality - for example, a doctor to explain the technical aspects of human-cloning. This process is known as *Ijtihad*.

In a situation where a numerous legal experts have extracted an array of opinions on the same matter, based upon either a variation of their understanding of the technical reality or use of different principles in accessing non-definitive Islamic texts, it is then up to the ruler of the state to adopt one opinion for it to become the sole reference point in law.

A problem therefore is apparent in the Pakistani law-making process: legislative chambers that are filled with individuals unqualified to extract laws from Islamic sources from a jurisprudential perspective are enacting laws for the country to follow simply according to their own limited knowledge and experience rather than turning to divinely revealed guidance.

Further, the powers of the executive are ill-defined between the president and the prime minister, while according to Islam these should be vested in a single ruler and thus enable him to adopt laws extracted according to Islamic texts. This is crucial, as under the current democratic system even if both legislative chambers of the National Assembly and Senate were filled with qualified jurists, the mechanism to enact an extracted legal opinion into law would be missing, leading to confusion and potential conflict.

Additionally, political parties enact laws upon the basis of populism, pragmatism and imitation of the West rather than looking to Islam for solutions. The political context of law-making cannot be ignored, as laws are made by the corrupt to serve their own personal interests, without the restrictions that divine Islamic texts would impose, as well as to serve the economic, military and political agenda of foreign colonial powers.

This political backdrop, combined with conceptual deficiencies within the constitution, has created a secular state in Pakistan that goes against the beliefs of the people and their desire to live by Islam. A cursory look at some key areas of governance reveal how different Pakistan is to what an Islamic state should be.

The economy

Whether it is banks that serve the individual or businesses with loans, political parties that promise micro-finance schemes for the poor or the government that borrows from home or abroad, interest is a key component of all major financial transactions. Yet the Islamic prohibition of interest is clear:

Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein. TMQ 2:275

At the behest of foreign lenders such as the International Monetary Fund and World Bank and as a result indoctrination in capitalist economic theory, governments of all political hues have set upon a program of privatization for decades in areas such as energy, telecoms and other key infrastructure. In a *hadith* narrated by Imam Ahmed and Ibn Maja, Muhammad (saw) states, "The Muslims are partners in three, water, pastures and fire."

While private ownership is permitted in Islam public resources such as mines, energy utilities and infrastructure are to be owned by the state to enable the people to benefit, rather than the private sector to profiteer. The result of pursuing this policy under various governments has led not only to rising prices in all areas of the energy sector but shortages due to the greedy pursuit of higher profits.

Foreign policy

Pakistan's alliance with the United States post 9/11 is an example of policy making devoid of Islamic guidance. Pakistan has not only harmed itself economically and militarily as a result, but it has facilitated the killing of tens of thousands of Muslims civilians on both sides of the Af-Pak border. Muhammad (saw) said as narrated in Sahih Bukhari:

A Muslim is a brother of another Muslim, so he should not oppress him, nor should he hand him over to an oppressor. Whoever fulfilled the needs of his brother, Allah will fulfill his needs; whoever brought his (Muslim) brother out of a discomfort, Allah will bring him out of the discomforts of the Day of Resurrection, and whoever screened a Muslim, Allah will screen him on the Day of Resurrection.

The provision of bases and supply lines to America, the tacit approval of drone strikes and the conduction of campaigns by the Pakistan military all stand as contradictions to this guidance.

The legal system

The legal system is based upon British common law. Regardless of some incorporation of Hudood, it is inconceivable that justice as an Islamic concept could be established within Pakistan when the judiciary judge according to other than that what Allah has revealed:

And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed

to you. And if they turn away - then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient. TMQ 5:49
Pakistan is being ruled on a non-Islamic basis, backed by an Islamically deficient constitution. The laws and policies that are created as a result of this situation benefit the corrupt elite and foreign powers immensely, as it leaves the people and resources of the country open to exploitation and abuse.

The fact that stakeholders in the existing system benefit from such a set-up and are attracted to it due to the potential to profiteer means that change cannot be expected to occur from within, no matter how long the masses wait.

This situation has arisen over a period of decades under the rule of various parties and military dictators. It stands as the greatest negation of the argument of gradually implementing change by working within the existing system; almost 70 years after its creation Pakistan not only remains un-Islamic as a state but is hurtling further in the direction of liberalism and decay. Surely the requirement of the times is to bring comprehensive and swift change to the political set up?

The Islamic nature of Pakistan is not the preserve of any one group or organization, nor is it restricted to certain political issues. It is related to the belief of people from all walks of life. It is therefore incumbent upon all to engage in the discussion of how meaningful change can be enacted to enable Pakistan to be a true Islamic State.