

Modern State And Sharia'' Basics, Contradictions And Their Solution'' (A Research Review Of Hallaq's Ideas)

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Abstract

According to Hallaq, the concept of the state¹ itself is a product of modern colonialism. The ideology of the modern state is devoid of morality whereas religion is in any case a collection of moral teachings. Therefore, when the modern state cannot be religious, how can it be moral? And when the state is devoid of moral philosophy, how can it be Islamic? As if there is only one concept of the state and that is secular. Also, the modern state does not have a historical existence but is a product of the colonial era. During the colonial period, especially, Islamic law was distorted and its status remained as a mere personal law. He has criticized those Muslim scholars who prove the concept of Islamic state with Quran, Hadith or Sunnah.² The necessity and importance of modern philosophy of ethics has also been explained and the brokers of the world's turn towards the philosophy of ethics in the postmodern era have been presented with the references of various philosophers. One thing is clear here that instead of taking Islam as a religion, he tends to take the importance of moral philosophy as a religion. In other words, the moral philosophy of a particular religion may be very important for him to include in the concept of a modern state, otherwise his theory of taking morality as law remains incomplete. If we look at the duties of the modern state and look at the essentials, requirements and properties, it can be seen that there is a big and fundamental difference between the Muslim concept of the state and the modern concept of the state. The Muslim concept of the state is an ideological thing on which practical life is based, while the modern concept of state is a linguistic, geographical and national concept, so its definition is also a collection of different opinions on the same basis. A modern state cannot be moral as long as it is based on color, race, nation, geography, colonial aims and personal interests. When it is based on a stable theory, it can be called a systematic and integrated human necessity, but also the purpose of life. And the foundation that Hallaq presents to the modern state as ethics is a new form of secularism from the Islamic point of view.³ As far as the law for the welfare of all

humanity and other creatures is concerned,⁴ Islamic law has a place for all of them.⁵The following article presents a critical analysis of the same ideas of Hallaq about the state.

Key Words: Islamic State, Sharia, Modern State, Colonialism, Morality.

Colonization of Muslim World

The colonial period begins with the arrival of the East India Company in the Indian subcontinent. The following are four areas where the effects of colonization have grown rapidly.⁶

1. India
2. South East Asia
3. Middle East
4. North Africa

Hallaq gave examples of selected countries in these areas. Here the change in Islamic law was brought up in view of modern western philosophy. Educational institutions were transferred to modern style and Islamic law was also transferred to modern style. For example, the establishment of schools, colleges and universities in British India. Also, in the name of Muhammadan Law (Anglo Muhammadan Law), additions of English judges were added to the translations and interpretations of Islamic jurisprudential books. This gave rise to the modern judicial system. The concept of lawyers and judges was born and then the old style of Islamic government was completely transformed into a modern one by adding the legislature, judiciary, administration and post-media in the style of modern state.⁷

Modern law has created a distinct division of civil and criminal law, focusing on two things in particular.

1. The limits and penalties of Islamic law

2. Family law (especially women's rights, inheritance, veil, marriage and divorce, etc.)

The above clauses were strongly criticized and attempts were made to amend them.

Under the influence of these efforts, the modernist scholars laid the foundation of new ideas and ideologies⁸.

Hallaq gives a brief overview of the so-called Muslim countries where the above-mentioned laws have been amended in the so-called following Muslim countries which came into existence after the annexation of the above four areas, by the colonization.

1. British India (Pakistan and Bangladesh)
2. British Malaysia
3. Netherlands
4. Osmania Legal System
5. Modernizing Egyptian law
6. Algeria
7. Morocco
8. Pakistan
9. Iran
10. Indonesia

From discussion we conclude that according to Hallaq the Islamic Law Politicization means the changes in the law are due to the effects of modernity and the notion of Hallaq is somewhat correct that Muslims have neither their own state nor law, but changed law and modern state.

Since the life of the traditional Muslim scholars and muftis has been cut off from the administration of the collective society and the

state, one aspect of this is that the law has been divided into public and private ambassadors.

However, according to the theory of relativity, in order to keep Muslim jurisprudence and sharia free from the effects of modernity, the traditional scholars continued to defend and apply sharia privately, individually and collectively.

And with the sharp criticism of the government, there were clashes and even clashes.

This negates the Western concept of public and private ambassadors. Also, Muslim jurisprudence and sharia, which are free from all kinds of influences, are still being practically preserved in a private way. And it is a manifestation of the foresight, strategy and true love and adherence of Muslim scholars and muftis to Islam.

From the first point of view, the theory of evolution is absolutely correct, while according to the relativistic theory, considering its positive aspect, the argument of evolution is invalid.

When the state is the product of modernity, then the change and failure of anything at the government level will be considered as failure of modern concept of state, not of Islamic law or sharia.

On the contrary, the Shari'a even today demands the establishment of the Islamic Khilafah, which will be mentioned in the real concept of the Islamic State.

Islamic law is still evolving according to Sharia principles and is protected from the effects of modernity. On the contrary; modernity is moving forward by facing all kinds of problems and challenges and is proving its existence and immortality.

Hallaq's Concept of Modern State and Sharia

Hallaq's view of the modern state is clear that it is a product of the colonial era. It evolved in Europe and through the colonial system, the idea of the nation-state gained popularity throughout the

world. He considers these Muslim scholars to be wrong⁹, those who believe that the modern state is Islamic or believe that it can be made Islamic. There are two main reasons for this. One of the reasons is that the ancient Islamic state has no relation with the modern state. These two are contradictory things because the ancient Islamic state was based on moral philosophy, while the modern state is devoid of moral philosophy.¹⁰

The second main reason is that in the past, Islamic law, i.e. Shariah, interacted with the society and came into action while, Modern Islamic law i.e. Shariah has become a political puppet. Its original form has been distorted. The second main reason is that in the past, Islamic law, i.e. Shariah, interacted with the society and came into action while, Modern Islamic law i.e. Shariah has become a political arena.¹¹ Its original form is missing. As if there are huge challenges for Muslims now, one is that the era in which they are living is the era of nation-states, which Muslims consider a reality and it is impossible to avoid its changes and effects.

Secondly, their basic teachings have been changed under the influence of colonialism and its practical form is not available to them. It is clear from this, Hallaq's idea of bringing the modern state to the philosophy of ethics is not for this reason that the current form of Islamic law should be taken as a moral law. Rather, it is because he urges Europe to return to a new moral philosophy of its own making or at least connected with the moral philosophy of their religion. However, the reason for Hallaq's correct understanding of the moral philosophy of the Islamic law of the past and its practicability and influence is not its inspiration. Rather, it is to interact with the society and fulfill the social needs, while this attribute is no longer within the changed Islamic law. From above discussion it is

clear that the following questions are of great importance in order to take a research review of Hallaq's theory.

1. According to Hallaq, what is the complete explanation of modern Islamic law? And what is its relationship with the ancient Islamic perspective?
2. How did Hallaq explain the modern philosophy of ethics and compare it with the Islamic law, i.e. Sharia, and what is the relationship of this comparison with the current Muslim's point of view?
3. What is the difference between the Islamic law of the past and the modern Islamic law? Also, what are the possible contradictions, their causes and how can they be solved?
4. What is the difference between the features and characteristics of the modern colonial state and the ancient Islamic state and how can the modern state be changed into an Islamic state?

Here is a research summary of the above questions and research review of Hallaq's ideas about Sharia and Modern state.

What is Sharia?

Islamic law or Shariah refers to the moral law compiled by the jurists in the light of Usul al-Fiqh. It fulfilled the social needs of society.¹² This law united the people (public) and the nobles (authorities) from which an organized and orderly society was formed. According to the Islamic point of view, Sharia is a collection of the commands of Allah that reached the people through the last prophet and messenger, Hazrat Muhammad (peace be upon him). The details of these commands are explained in the Sunnah and Hadith. And in the light of the Quran o Sunnah,

Muslim jurists established principles for the guidance of society, which were called principles of jurisprudence (Usul al-Fiqh). And according to these principles, the Islamic law was written and the solution of new social problems was derived from the time of the Companions to the entire formative period.¹³

From the above statements, it is clear that there is a common value and a difference between the Hallaq's understanding and the Islamic point of view. The common point is that according to both points of view, Islamic law is a means of social reform and guidance. While the difference is that Hallaq is calling it a human effort¹⁴ while according to the Islamic point of view it is a divine message. This is the position of Hallaq regarding both the text of the sources of Sharia and its description.

Hallaq's concept of Morality

Modern moral philosophy has been explained by Hallaq in his book *Impossible State* as follows:

“a proper definition of morality is not simply to treat a person—who is unknown to you and whom you are not likely to meet again—as you would treat yourself, but, more importantly, it is being unable to commit or refrain from committing an act, not because you intrinsically cannot but because you cannot live with—or cannot allow yourself to face—its consequences. This latter definition, widely neglected, sums up the problematic of the modern project and one that constituted the paradigm of the pre modern world, including that of Islam.”¹⁵

According to the above definition given by Hallaq, the act of self-responsibility is the foundation of the welfare of the society. It is on this basis that Islamic law of the past is provided

as the rule of law for Muslim governments (not states)¹⁶. It is possible to agree with Hallaq in this matter.

Relationship between Modern state and Sharia

According to Hallaq, the modern state is a variable thing, so it has been defined by different philosophers in their own way. A few are mentioned here:

‘‘ It has often been noted that the state is different things to different people. A survey of the relevant literature immediately imparts the distinct impression that every original thinker has seen the state in a unique way, ranging from imputing to it an organic ethical impulse (Hegel, Otto Gierke) to founding it on natural law and a state of nature (Hobbes, Schmitt). Marx saw the state as a function of economic domination of one class by another, Kelsen as a primarily legal phenomenon, Schmitt as the embodiment of the political, Gramsci as a hegemonic system, and Foucault and the poststructuralists as significantly pervasive of the cultural. After Schmitt in the 1930s, the Hegelian viewpoint of the ethical has largely dropped out of the scene, but great controversy still rages over the definitional limits and analytical value of the state. Some commentators regard the state as ‘‘the central explanatory variable,’’ it being an actor ‘‘with interests of its own which do not necessarily reflect those of society.’’ Others take the position that the state cannot be understood on its own but rather as it stands in a relationship with the social order within ‘‘specific socioeconomic and sociocultural contexts.’’ Still others navigate a path in between, often emphasizing one over the other.’’¹⁷

To settle these differences of opinions, Hallaq presents his opinion as follows:

‘‘ It is therefore possible to approach the matter synthetically, weaving certain perspectives into a more or less coherent narrative. The Weberian bureaucratic, the Kelsenian legal, the Schmittian political, the Marxian economic, the Gramscian hegemonic, and the Foucauldian cultural can all be brought to bear upon a conception of the state. And we are not obliged to accept the delimitations of any of them. One can, for instance, accept much of Kelsen’s theory of law and constitutional theory but reject his condition that this sphere must remain uncontaminated by ethics, politics, or sociology. From our perspective, Kelsen fits within both a Schmittian theory of the political and a Foucauldian theory of power and culture. For our purposes, perforce also perspectivist, all these and several other theories remain highly useful and will therefore be drawn upon.’’¹⁸

According to Hallaq, the concept of state in the present era has become controversial despite of being devoid of ethics. He writes:

‘‘ It would then be no exaggeration to say that there are nearly as many ideas of what the state is as there are prominent scholars writing about it.’’¹⁹

From the above discussion, it is concluded that the theory of the modern state is variable and limited, but the formation of a stable, comprehensive, intellectual and practical system is very important for human well-being. Since we are limited to the discussion on the modern state and the Sharia, it is intended to review the views of Hallaq regarding the relationship between the

modern state and the Sharia.²⁰ This is explained in three contexts below.

1. Differences and similarities in the principles of the modern state and Shari'a.
2. Contradictions in the modern state and Sharia and their solution.
3. The modern state, Islamic law and the future of the Islamic state.

I. Differences and similarities in the principles of the modern state and Shari'a

Common factor in the modern state and Shariah is based on the fact that everyone has a special paradigm. While the difference is that the paradigm of the modern state is variable and limited as well as immoral and materialistic in nature, while the paradigm of Islamic law or sharia has a moral nature. It is also important to have a central domain and secondary domains in every paradigm. This is also a common characteristic of both i.e. Modern state and sharia, but naturally it is different in both of them. The central domain of Sharia is religious and moral whereas the central domain of the modern state is immoral, liberal, secular and materialistic. The modern state keeps the Shariah under its control, whereas in the Islamic state of fourteen years ago, the entire life and system of life was under the control of the Shariah.

2. Contradictions in the modern state and Sharia and their solution.

The modern state and the central domain of Shariah are separated from each other, due to which differences occur in secondary domains as well and each of them reacts to this difference by staying within its scope.²¹ Here, it is necessary to

explain the basic natural contradiction between the modern state and Sharia. What we call central domain means the supreme power of any paradigm. In the modern state, this authority is with the state itself, while in Sharia, this authority is with Allah Almighty.

Hallaq describes it in Schmitt's words as follows:

“ All significant concepts of the modern theory of the state are secularized theological concepts not only because of their historical Development—in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God Became the omnipotent lawgiver—but also because of their systemic structure”²²

Hallaq describes the following five basic characteristics of a modern state.²³

1. Declaring the state as a historical product²⁴, he also defines its constitution as historical, experiential, and local, whereas this is not the case in Islamic law. The modern state creates its own system according to its essence, so when Sharia wants to change it and tries to bring its own system, a clash between the two is necessary²⁵. And this is a gradually developing historical process.
2. The second attribute is the concept of sovereignty, which in the modern state is considered sacred as metaphysical, but the creator of its sanctity is also man himself, and named as parliament. While in Sharia, sovereignty belongs to Allah. Quranic words are here:

إِنَّ الْحُكْمَ إِلَّا لِلَّهِ²⁶

According to Hallaq, the concept of sovereignty of Legislature has become exactly the same as the concept of Tawheed in Sharia, as if it is the most powerful idol of the present age, whose worship continues imperceptibly. Hallaq agrees with Paul Kahn in this case he quotes his words as given below:

‘‘ First, it is omnipotent: all political forms are open to its choice. Second, it wholly fills time and space: it is equally present at every moment of the nation’s life and in every location within the nation’s borders. Third, we know it only by its product. We do not first become aware of the popular sovereign and then ask what it has accomplished. We know that it must exist, because we perceive the state as an expression of its will. We deduce the fact of the subject from the experience of its created product. Finally, we cannot be aware of this sovereign without experiencing it as a normative claim that presents itself as an assertion of identity. We understand ourselves as a part, and as a product, of this sovereign. In it, we see ourselves’’.²⁷

3. The third characteristic of the modern state is the monopoly on legislation and the use of coercive violence in the implementation of laws. Whereas in the ancient Islamic state, this disposition of the Sharia did not exist.

Although this approach has been adopted in national Muslim states, it is against the Islamic philosophy of ethics.

4. The fourth characteristic of the modern state is to protect the interests of the rationalist bureaucracy and promote the slavery of the people in a modern way. In the past, the Sharia in the Islamic state

never liked it, but self-accountability was always given importance.

5. To promote a political culture that is the basis of a unique society as compared to the past and modernizes all moral values. In which the protection of the political interests of colonialism gets priority. This is also against the Islamic law developed in the light of Sharia.

The above-mentioned five attributes are the basis of the contradiction between the modern state and Islamic law. Therefore, Hallaq is right in claiming that the modern state cannot be an Islamic state.

How to make the modern state an Islamic state? Now this question is extremely important and it is necessary to include it in the formation of the modern project which can be defined as the law of separation of powers and Hallaq is also a supporter of it to some extent. And He invites Muslim thinkers to shape the modern project. According to us, the possible cases of its solution are given below.

3. The modern state, Islamic law and the future of the Islamic state.

The task to be done for the Muslim Ummah is that in view of the requirements of the modern era, instead of developing the main and secondary domains of the Islamic state and sharia in the context of modernity, the ancient Islamic state and the Islamic law i.e. sharia should be made the basis. And without neglecting the modern project we must abandon its methods altogether. In my opinion, Hallaq’s invitation to participate in the creation of a modern project is irrelevant for us. The problems that the western society has created for themselves, we cannot get them out of these problems together with them, they should walk

with us, we will not benefit from walking with them. We will return to the same place on which we stood in the time of the Messenger of God, peace and blessings be upon him, and this voice, although it has been coming from different sides, in which regular organizations and movements are active in Muslim countries. Investigations are also being presented but one important thing must be included in these investigations. That is, such questions should be posed to modern theorists of development, just as they take on the Shariah philosophy, law and code of conduct of the past. And the fact is that the holders of the modern theory of development are unable to give a long-lasting and satisfactory answer or model of action. While the Shariah has a long-lasting, intellectual and practical solution to all problems. The Shariah is neither a historical product nor a human effort. Rather, it is the given system of nature to lead a peaceful life. That is why we have to return to it. Unfortunately, Muslim societies have failed to show its true side to Western societies. The main reason is the oppression of the colonial state. Now it is necessary to organize the philosophy of ethics (Sharia) according to its stable foundations in line with the requirements of the modern age and abandon the support of modernity. Globalization itself requires a single global state. At the same time, it is actually paving the way for the establishment of a global Islamic state. The use of which is indispensable for the Muslim Ummah.

And regarding the concept of the Islamic State, it is also a fact that it is impossible to establish any Islamic state without the application of the basic principles of Islamic law from the concepts of the modern state alone. Because the central domain of the two types of states is different. Therefore, these two are contradictory. The "modern state" cannot be Islamic. And the Islamic state cannot be established according to

modern state concepts. The real problem of modern Muslim states is the understanding and application of Islamic legal concepts. Whenever a true Islamic state is established, it will be universal. And there will be an ideological state instead of a national state. And this Islamic state will be based on the supremacy of "Islamic law" it is based on argument that Islam is a superpower in the first twelve centuries and that Islamic law is applicable Compromise with Customer Law.

Later, especially in the colonial era, the change in Islamic law was due to the modern state concept. Islamic law was restricted to personal life or the limits of severe punishments imposed for the implementation of Shariah, but the implementation of Shariah did not work. Because it did not create reconciliation with the customer law, i.e. the modern world. It would have lost its basic moral philosophy.

Thus began the debate over the state, with some calling it Islamic and some un-Islamic. Those who declared it Islamic gave arguments from the Qur'an and history and those who proved it to be un-Islamic also put their arguments from sharia. Muslims still dream of the state of Madinah.

The modern state can never be Islamic and the Islamic state can never be modern. The modern state is devoid of moral philosophy. And the Islamic state is based on the philosophy of morality.²⁸

Here Hallaq acknowledges that it is by no means correct for the modern state to be devoid of moral philosophy. It must be aligned with moral philosophy. And in the postmodern era, he quotes Western philosophers as saying that the postmodern state will be based on morality. Now the question is what is the moral philosophy on which the modern state will be based? By the fundamental difference between Islamic philosophy of ethics and the modern state mechanism, he proves that the formation of an

Islamic state in this way is a contradictory matter and a madman's dream. It is also called utopia.

However, the question remains as to what moral philosophy the state must be based on in the postmodern era.²⁹ What I am saying is that apart from Islamic philosophy of morality and law, there is no welfare of humanity, but since Western scholars have a blind hatred of Islam, instead of thinking about this aspect, they will formulate their own fabricated philosophy of morality and dream of a madman himself.³⁰ They will continue to seek the state but will not find welfare, because their heart, mind and eyes have become blind to understand the Islamic system. If some Islamic philosophies are written on morality by them, then coating and deception is obvious. The real Islamic system is not digested by them. Their hearts are locked. They have been wandering for years and have not been able to achieve stability and prosperity. They have to learn from the past. In Quranic words, it is:

أَفَلَا يَتَذَكَّرُونَ الْقُرْآنَ أَمْ عَلَى قُلُوبٍ أَقْفَالُهَا³¹

Islamic law still encompasses both public and private ambassadors. It was not politicized, but the modern state, as a purely Western thought, and the post-colonial system of maintaining power and subjugating independent states was a modern national state concept. And since the modern state was a purely Western product, the collective application of Islamic law was not seen in any of the states established under this concept. Attempts to divide Islamic law into public and private concepts have not worked, but to this day, the sound of Sharia enforcement has been heard from every Western-style state, and people have moved away from the state to conduct their affairs individually and collectively in accordance with Islamic law. Although the governmental institutions and courts of modern nation-Muslim states have failed to apply Islamic

law, the constitution considers Muslim law to be superior to regular Islamic law.

The constitutional state cannot be free from the effects of the modern state as it is a product of purely modern Western thought. The concept of the state is not an Islamic product. Rather, the universal concept is the Islamic Khilafah concept. Therefore, according to modern requirements, only a universal Islamic state based on the Islamic Khilafah method can be a practical application of Islamic law. The non-Islamic style of institutions of modern Muslim states is not a failure of Islamic law but the success of modern state concept. The success of modern state concept is due to its editorial system. The modern editorial system is devoid of philosophy of ethics. Therefore, the modern state is also devoid of philosophy of ethics. It is possible to form a government based on Islamic philosophy and ethics instead of the modern state, otherwise it is impossible to make the modern state Islamic. This is an imaginary thing.

Since the central domain of the two is separate. If the modern state adopts the Islamic philosophy of morality, it will not remain modern. Similarly, if Islamic law makes compromise with the modern state, it will not remain Islamic; both are contradictory with each other.

Now the real problem is to understand the central domain of both. There is such a consensus with Hallaq here that the modern state concept, after the colonial system, the institutions developed to maintain Western domination over the United Nations were created for the same purpose. Since the modern state is a Western concept, it is not possible to make it Islamic. There is disagreement that the concept of modern state has influenced the Islamic law. It is divided into public and private spheres of life. This is not correct. This is the biggest problem of modern Muslim states and the basic element of unrest has

increased. The state is not deviating from its foundations and Islamic law is not abandoning its foundations. Efforts for mutual understanding and compromise are not working. This conflict of truth and falsehood continues and is moving towards the final confrontation. Proponents of Islamic law are facing a number of challenges

While the modern state is facing only this one thinking, the majority of the people want the implementation of Sharia; on the other hand, they are unable to get out of the domination of the modern state. One class is dreaming of making the modern state Islamic and the other class is dreaming of an old Islamic state. But in practice it has failed. The religious class, which dreams of turning the modern state into an Islamic state, is beset with problems in two ways. On the one hand, the traditionalist religious thought has no interest in the government at all, so they are reluctant to support it. On the other hand, the ruling class itself is making the same claim as the religious class.

The main difference between the two is that one thought wants to make the modern state Islamic But it is devoid of understanding. The second thought seeks to modernize Islamic law. It is also not possible. The religious class is reluctant to do so. Although in between there has been a coating of such people as a form of compromise between the two, but understanding between truth and falsehood is against nature. Separation of truth and falsehood is a divine command.

The supremacy of truth is inevitable, but it is a matter of time, and the proponents of Islamic law must examine their thoughts and feelings, not their emotions, but their senses.

Conclusion

The above discussion proves the fact that the scenario is changing with time and thoughts and actions are changeable. From which the global state is indispensable for humanity. The role of the Muslim Ummah is very important in its

establishment and formation of the system and it has to decide its future soon. The day when Muslims realize the fact that they do not have to follow Europe and America i.e. the Western world, but organize their own world on their own, that era will prove to be the basis for the establishment of a global Islamic state. This is the only way to avoid being used for colonial purposes and change in Islamic law, but this is the biggest challenge. In the modern world, colonialism has control over the resources. Every change that occurs in the modern state affects the entire Islamic world, even the Islamic law i.e. sharia, which Muslims recognize as the most secure reality in their lives, has also been changed. It is that the Muslim world is neither in a position to decide to leave the side of the Western world nor can it make a final decision to follow them.

This is why the West feels somewhat at ease in the world it has created itself, because west is the creator of all modern revolutions and changes, and west is not even unaware that it is going to be destroyed by its own immoral philosophy, but apparently there is no solution before them. Therefore, it is necessary that in order to save it from destruction, the Eastern society has to organize itself so that the Western society can take shelter of the stable Eastern ethics and traditions in difficult times. And Islam as a philosophy of morality and religion can regulate laws for the welfare of humanity. As if determining the future of the modern state has given a great responsibility to the Islamic nation and Muslim thinkers. And fulfilling this duty is the religious and moral responsibility of the Muslim Ummah.