

Justice and Human Rights in Islam

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INTRODUCTION

Justice is a complicated concept because it comprises various characteristics. It is referred to in *Qur'an* under equivalent terms such as *adl* (fairness), *qist* (equity), *mizan* (balance), and *haqq* (right). It is, therefore, quite difficult to give a precise definition for justice. Perhaps this is a reason why one rarely could come across a standard definition in the classical teachings of Islam. The following definitions are examples of the attempts made by jurists to establish a general conception of justice in Islam.

Ibn Al-Rabi' views justice as the correctness of all actions, based on a harmony of the mental faculty and the animal nature in Man. According to this view, Justice is the highest function of government, and while no one doubts the need for its efficacy, there are differing views of its attainment, which nevertheless reveal certain key points of agreement about its goals. Broadly stated, it involves placing everything in its proper place and giving everyone his due. Justice entails a threefold set of rights - rights due to God, rights due to the living, and rights due to the dead.

Among, the rights due to the living are the repayment of debt, duties arising out of contractual relations, veracity in testimony, and certain ethical duties. The ruler is equally bound to do what is just,

* This is the last publication, in this Review, of an article of dear late professor M.T. Al-Ghunaimi, one of the most competent scholars of public international law and Islamic international law. By his absence, Egypt has lost a faithful, great and competent man (Ahmed Abou-EI-Wafa).

and justice in his case consists of keeping promises, being merciful, and giving everyone his share according to the law.

Objectivity and independence are among the qualities deemed necessary for a judge in the modern world, but despite our idealized conception of the judiciary, judges sometimes lack the integrity and independence which ought to be their chief merit, and we are forced to conclude that something is lacking in the standards set for judges were they to go astray. By comparison, Ibn Al-Rabi' set standards more than a thousand years ago which, were of a very high order indeed.

Ibn Al-Rabi'a states:

- 1- a judge should be God-fearing and dignified in demeanor,
- 2- he should have sound common-sense and be conversant with the best of judicial literature;
- 3- he should bear an absolutely impeccable character;
- 4- he should not deliver judgments before he is satisfied that full proof has been laid before him, nor delay judgment when sufficient evidence has been produced;
- 5- he should be fearless in awarding what is right and due;
- 6- he should accept no present nor hear any recommendations;
- 7- he should see no party concerned in private;
- 8- he should rarely smile, and speak little;
- 9- he should accept no favor from any party concerned;
- 10- he should take great care to protect the property of orphans.

A second perspective is provided by Muhammad Ibn Ka'b of Cordoba in response to a question from the *Caliph* Umar II (d. 720) for the definition of justice. In his reply, Ka'b stated that real justice was to deal with inferiors like a father, with a superior like a son,

and with equals like a brother, and to award punishment only according to the wrong done and the power to bear it. He quotes 'Ali, the fourth *Caliph*; that the best judge is one who is not prejudiced in his decisions by personal desires, nor by leanings towards any such relationships. He should neither fear nor hope, but take a natural attitude towards all that comes before him.

It is in this sense of strict justice, which prompted Abu Hamid al-Ghazzali (d. 504/1111) to insist on the absolute neutrality of the *Amir* (ruler) in all his acts or words. According to Ghazzali, the *Amir* should pay equal regard to all people, whether high or low, noble or downtrodden, and should put down lawlessness with a stem hand. He relates how someone once asked the great Sassanian minister, Buzurchimihir, which kings were the greatest, to which Buzurchimihir replied that the greatest were those who had the confidence of the good and were the terror of the wicked. He also relates the story of Alexander the Great, who asked the learned men how he could better his lot to which they replied that he should eradicate both undue likings and undesirable prejudices, that he should not make any decision hurriedly without counsel and should shun all personal prejudices, at the time of sitting in judgment over other people.

Al-Ghazzali wrote a book, entitled *Tibru'l-Masbuk*, consisting of admonitions to the *Amir*. He sets out the qualities necessary for an ideal ruler - intellect knowledge, proportionality, chivalry, love for his subjects, diplomacy, foresight strength of will, and knowledge of current events and the history of his predecessors. Such an ideal ruler should also ensure that his magistrates, secretaries, viceroys and other officers did their work well. Ghazzali states that these are the fundamental qualities which make

a ruler the shadow of God on earth. He relates how a learned man once told the *Caliph* Harun al-Rashid (d. 809) to remember that he was sitting where the first *Caliph* Abu Bakr (d. 634) once sat and was truthful; where 'Umar, the second *Caliph* once sat and differentiated between right and wrong; where *Caliph* 'Uthman (d. 656) once sat and was modest and bountiful; and where 'Ali, the fourth *Caliph*, once sat and was knowing and just. He also refers to Muhammad, the Apostle of Islam, who fed his cattle, tied his camel, swept his house, milked his goat, sewed his shoe, patched his clothes, ate with his servant, ground his corn in time of need, and bought his own food.

Ghazzali goes even so far as to lay down the daily routine of the ruler which might lead to his success in administration, giving detail of his food and drink, and the hours of privacy and desk work which he considers necessary for him. After morning prayers he should go out riding in order to investigate any wrong done to his subjects. He should then sit in court and allow every one direct access to him so that he might have first hand knowledge of any complaints. He should make it a point of seeking the counsel of wise and experienced men and should make himself accessible to foreign envoys.

To summarize, justice is piety, taking care not to transgress limits ordained by God. "Do not exceed the limits of God, for those who exceed the bounds set by God are transgressors" (Q.II:229). It is noteworthy that Islam requires that believers should be just even with their enemies. "O you who believe, stand up as witnesses for God in all fairness, and do not let the hatred of a people deviate you from justice. Be just. This is closest to piety, and beware of God. Surely God is aware of all you do" (Q.V:8).

Justice is an all-embracing concept of the *Sharia'* which deals with almost all aspects of life; such as the following:

(1) Personal Affairs: *Polygamy*

The practice of polygamy is limited by considerations of justice. For example, if a husband is unable to achieve justice between his wives, he is allowed to marry only one woman. Consequently, there is no polygamy in Islam. The *Qur'an* clearly states that "If you fear you cannot be equitable to orphan girls (in your charge, or misuse their persons), then marry women who are lawful for you, two, three, or four, but if you fear you cannot treat so many with equity, marry only one, or a maid or captive. This is better than being iniquitous" (Q.VI: 3). Moreover, *the Qur'an* recognizes the difficulty of being equally just to two wives, stating that "Howsoever you may try, you will never be able to treat your wives equally. But do not incline (to one) exclusively and leave (the other) suspended (as it were). Yet if you do the right thing and are just, God is verily forgiving and kind"(Q.IV: 129).

(2) In Transactions: *The scribe should remember to act as if in the presence of God, with full justice to both parties.*

The art of writing should be seen as a gift from God. In an illiterate population the scribe has a higher ethical duty, both to the parties to the agreement as well as to the community as a whole. The *Qur'an* states that:

"O believers, when you negotiate a debt for a fixed term, draw up an agreement in writing, though better it would be to have a scribe write it faithfully down; and no scribe should refuse to write as God has taught him, and write what the borrower dictates, and have fear of God, his Lord, and not leave out a thing. If the

borrower is deficient of mind or infirm, or unable to explain, let the guardian explain judiciously; and have two of your men to act as witnesses; but if two men are not available, then a man and two women you approve, so that in case one of them is confused, the other may remind her. When the witnesses are summoned they should not refuse (to come). But do not neglect to draw up a contract, big or small, with the time fixed for paying back the debt. This is more equitable in the eyes of God, and better as evidence for avoiding doubt. But if it is a deal about some merchandise requiring transaction face to face, there is no harm if no (contract is drawn up) in writing. Have witnesses to the deal, (and make sure) that the scribe or the witness is not harmed. If he is, it would surely be sinful on your part. And have fear of God, for God gives you knowledge, and God is aware of everything (Q.II: 282).

(3) In Court:

a. In giving testimony

Justice is an abstract concept which is better illustrated in the human rights context. A comparison of the Muslim conception of human rights and the Western approach therefore is instructive.

An unbiased, truthful witness is necessary for the implementation of justice. The *Qur'an* states that "O you who believe, be custodians of justice (and) witnesses for God, even though against yourselves or your parents or relatives. Whether a man be rich or poor, God is his greater well-wisher than you. So follow not the behests of lust lest you swerve from justice; and if you prevaricate or avoid (giving evidence), God is cognizant of all that you do"(Q.IV: 135).

b. In adjudication

The Qur'an admonishes judges to always consider Justice when adjudicating a case. "God enjoins that you render to the owners what is held in trust with you, and that when you judge among the people, do so equitably. Noble are the counsels of God, and God hears all and sees everything"(Q.IV: 58).

(4) Justice and Human Rights

Justice is an abstract concept, which is better illustrated in the human rights context. A comparison of the Muslim conception of human rights and the Western approach therefore is instructive.

Individual human rights in the Western world are protected primarily by virtue of the following instruments:

- a: Universal Declaration of Human Rights;⁽¹⁾
- b: Convention on the Prevention and Punishment of the Crime of Genocide;⁽²⁾
- c: International Covenant on Economic, Social and Cultural Rights⁽³⁾
- d: International Covenant on Civil and Political Rights;⁴ and the Optional Protocol to the International Covenant on Civil and Political Rights⁽⁵⁾

(1) *Universal Declaration of human Rights*, G.A. Res. 217A(III), U.N. Doc. A/810. at 71 (1948).

(2) *Convention on the Prevention and Punishment of the Crime of Genocide*. Dec. 9, 1948, 78 U.N.T.S. 1021.

(3) *International Covenant on Economic, Social and Cultural Rights*. GA. Res. 2200A (XXI). 21 U.N. GAOR, Supp. No. 16, at 49. U.N. Doc. A/6316. 993 U.N.T.S. 14531 (1976).

(4) *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 1466 8 (1976).

(5) *Optional Protocol to the International Covenant on Civil and Political Rights*. 999 U.N.T.S.14668 (1976).

- e: International Covenant on the Elimination of all Forms of Racial Discrimination⁽¹⁾ General Assembly Resolution 2106-B(XX) 19 January 1965.
- f: Some of the regional conventions concluded in implementation of the United Nations Declaration of Human Rights, such as the European Convention, the African Convention⁽²⁾, and the Universal Declaration of Human Rights promulgated by the Islamic Council on 19th, September 1981.

In fact, human rights and fundamental freedoms are considered part of natural law. "The pressure of necessity stimulates the impact of natural-law and of moral ideas," said Lord Wright, which "convert them into rules of law deliberately and overtly recognized by the consensus of civilized [nations]."⁽³⁾

Human rights may be viewed conceptually as either individual rights or collective rights. In the Western model, human rights concepts, as defined in the relevant international conventions are intended to benefit only the States party to that instrument whereas in the Islamic model, the benefit of human rights protections extend to all humankind. In both concepts, for every right there is a corresponding duty, and in the concept of human rights, the duties fall upon the State. It follows that duties are the outgrowth of rights, and the fact that human rights are owed to the individual by the State as well as that "human duties" are owed by the individual to the State. But the State has always had other means at its disposal

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- (1) International Covenant on the Elimination of all Forms of Racial Discrimination. 660 U.N.T.S. 195.
 - (2) African[Banjul] Charter on Human and People's Rights. June 27. 1981. OAU Doc. CAB/LEG/67/3 rev. 5.
 - (3) Lord Wright *War Crimes Under International Law*; 62 L.Q.R., 51 (1946).

to ensure that duties are fulfilled. The whole movement for the protection of human rights arose as an attempt to redress the balance between the power of the State to impose duties on individuals and the powerlessness of the individual to ensure a correlative respect for his rights.

The American Declaration on the Rights and Duties of Man⁽¹⁾, adopted in 1948, consists of ten articles setting out the duties of man, 'including the duty to support, educate and protect his minor children; to acquire at least an elementary education; to vote; to obey the law; to pay taxes; and to work.

The Universal Declaration of Human Rights states that, "Everyone has duties to the community in which alone the full and free development of his personality is possible." Subsequent statements and conventions on human rights contain the stipulation that all States, bodies and persons have the duty to abstain from any act, which abrogates any recognized human right.

International protection is achieved whenever the State is made responsible to some international body or authority for the implementation of its obligations in the field of human rights. Consequently, the distinctions between civil and political rights, and economic, social and cultural rights become important, because measures appropriate to the protection of each are quite distinct.

Human Rights in Islam

(1) The Physical Freedoms (Self and Body)

In comparison with the treatment of physical freedoms in the international instruments on human rights, Islam recognizes the

(1) American Declaration on the Rights and Duties of Man, May 2, 1948.

sayings of the Prophet that "all of the Muslims are forbidden to the other Muslim: his integrity, property and blood" and that "The Muslim is the man whom people are safe from his hand and his blackened tongue." Similarly, the *Qur'an* mandates the protection of human life by stating: "That is why we decreed for the children of Israel that whosoever kills a human being except (as punishment) for murder or for spreading corruption in the land, it shall be like killing all humanity"(Q.V: 32), as well as the verse "Any one who kills a believer intentionally will be cast into Hell to abide there forever, and suffer God's anger and damnation. For him a greater punishment awaits"(Q.IV: 93).

There is a certain societal value, recognized by Islam, in allowing a victim to retaliate against the wrongdoer. "In retribution there is life (and preservation). O men of sense, you may happily take heed for yourselves" (Q.11: 179). Islam also prescribed immigration for those who are persecuted and cannot defend themselves. In fact immigration in such case is both a right and an obligation. "As for those whose souls are taken by the angels (at death) while in a state of unbelief, they will be asked by the angels: 'What (state) were you in?' They will answer: 'We were oppressed 'in the land.' And the angels will say: 'Was not God's earth large enough for you to migrate?' Their abode will be Hell, and what an evil destination!"(Q.IV: 97).

If immigration in the case of oppression is a right of the oppressed, it also gives rise to a duty for those who are able to assist such refugees. "Those who came to the city and to faith before them, love those who have taken refuge with them, and do not feel for themselves any need for what is given them, and

give them preference over themselves even if they are indigent" (Q.LIX: 9).

For the same rationale, Islam adopted the practice of providing "*jiwar*" (self-protection) to those who seek it, even if they are not Muslims. "If an idolater seeks protection, then give him asylum that he may hear the word of God. Then escort him to a place of safety, for they are people who do not know"(Q.IX: 6).

(2) *Freedom from Want*

Islam exhorts the Islamic State to provide at least the minimum required for a man to keep respectable, rather than to merely exist. This is the reason why a part of the *zakat* is paid for contingent debts, while another is designated for the poor and the needy. The Prophet says that, "any group among whom someone spends the night hungry is deprived of God's *dhimma* and his Prophet's." Moreover the *Qur'an* emphasizes that "Piety lies in...disbursing your wealth out of love for God among your kin and the orphans, the wayfarers and mendicants..."(Q.H: 177). Indeed, the act of providing for those less able is seen as a duty toward God. "And feed the needy for the love of Him, and the orphans and the captives, (Saying): 'We feed you for the sake of God, desiring neither recompense nor thanks'"(Q-LIWI: 8-9).

Islam is concerned with the health of the individual and urges Muslims to be clean to the extent that cleanliness is considered one of the fundamental characteristics of believers. The Prophet condemns gluttony and advises believers to care for their health. Muslims are required to keep healthy and active and to offer help to the sick.

Islam also encourages marriage to the extent that the Islamic State, under the *Ummayed Caliph Umar Bin Abd al-Aziz* (d. 720), used to pay the dowry for those who could not afford it. The Islamic view of linking the family with social development may be based on the *Qur'anic* verse "O Lord, give us comfort in our spouses and children, and make us paragons of those who follow the straight path"(Q.IV: 74). Umar used to pay an allowance for the children of needy families. This act might be considered a precedent for the modern system of social security."⁽¹⁾

Islamic philosophy is quite concerned about the condition of orphans and considers any harm done to them as a crime. "Give to the orphans their possessions, and do not replace things of your own which are bad with things which are good among theirs, and do not intermix their goods with your own and make use of them, for this is a grievous crime"(Q.IV: 2).

(3) *The Right to Work*

Labor is both a right and an obligation of the Islamic community - man should not be a burden on society. The Prophet considered work to support one's self or needy parents as a *jihad*. The *Qur'an* says that "(Give to) the needy"(Q.H: 273) and further admonishes "O believers, you should not usurp unjustly the wealth of each other ... and do not destroy yourselves"(Q.IV: 29).

The State is required to make available the opportunities for everyone who has the ability to work and to guarantee his rights. It is reported that the Prophet once gave two *dirhams*, to a man and advised him to buy food with one *dirham* and buy an axe with the other to use as a tool for work. Al-Ghazzali said that the State

(1) Al Balladhuri, *Futuh Al Buldan* (Radwan Muhammad Radwan ed. 1959). pp. 438. 445.

should provide the needy with tools and equipment necessary for work. The *Qur'an* condemns those who abuse workers: "there was a king after them who used to seize every ship by force"(Q.XVIII: 79). Moreover, the *Qur'an* tells believers not to "keep back from people what is theirs, and do not corrupt the land after it has been reformed"(Q.VII: 85).

The *Caliph Umar* was keen to pay all of his agents salaries which were sufficient to live up to their responsibilities. The *Muhtasib* (public controller) used to supervise the labor market and make sure that women and children were not abused. Islam guarantees the rights to work, as the *Qur'an* states: "Men have a share in what they earn, and women have theirs in what they earn"(Q.IV: 32)

Nor were human rights and security neglected for non-Muslims, as such rights were acknowledged in the agreements concluded between the Prophet and the "Peoples of the Book" (Christians and Jews), who possessed their own revealed scriptures.⁽¹⁾

(4) *Just Laws*

All people tend to seek a just society where no innocent is punished and no criminal is released.⁽²⁾ "We have surely sent apostles with clear signs, and sent with them the Book and the Balance, so that men may stand by Justice..." (Q.LVII: 25). The pursuit of justice was seen as a sacred obligation under the *Qur'an*. "God enjoins that you render to the owners what is held in trust

(1) Mustafa Al- Siba'i. *IshtiraqiyatullIslam* (Cairo), p. 136.

(2) Note that consistent with Western Jurisprudence. Islam recognizes the principle of the presumption of innocence.

with you, and that when you judge among the people do so equitably" (Q.IV: 58). It is reported that *Caliph* Umar issued a declaration stating that his agents were not nominated to torture them or to do them injustice and he urged those who suffer from ill-treatment to submit a complaint to him. Amr Bin al-As, the viceroy of Egypt replied to the question as to "what if one of his people were subjected to force, would you retaliate for him?" Umar answered: "By Allah I do because I have seen the Prophet retaliating for himself."

Islam considers even the mere glance at the interior of a house to constitute in effect a breach of privacy, which the Prophet is reported to have admonished against. The Prophet also said "He who keeps the company of a grieved person until he proves his right shall find his feet steady on the day when feet are shaking." For example, the people of Samarqand complained to *Caliph* Umar Ibn Abd ul-Aziz that the Muslim army entered their city without prior warning. Umar appointed a judge who found that their complaint was valid. Consequently Umar ordered the army to leave the city. Impressed by the *Caliph's decision* in their favor, they accepted Islam as their religion.⁽¹⁾

(5) *Moral Freedoms*

Freedom of thought and religion in the Islamic state is mandated by the *Qur'an*: "There is no compulsion 'in matters of faith"(Q.II: 256). The use of force is tolerated only in two instances: as a warning to enemies and to establish peace and order. The *Qur'an* states: "Are you going to compel the people to believe, except by God's dispensation?"(Q.X: 99). It also states that "Surely

(1) Al Balldhury, *supra note* 11. at 411.

the believers and the Jews, Nazareans (Christians) and the Sabians, whosoever believes in God and the Last Day, and whosoever does right, shall have his reward with his Lord and will neither have fear nor regret '(Q.II: 62).

Allah exhorts people to think and contemplate their surroundings. The *Qur'an* states: "Verily there are signs in this for those who reflect"(Q.XLV: 13). The attitude of *Caliph* Ali towards the Khawarij is a case in point for the tolerance of the ruler. However, Islam does not tolerate apostasy, as the adoption of Islam is not imposed by force, consequently the subsequent renunciation of Islam is inconceivable. Such acts of apostasy are seen by some as high treason worthy of capital punishment.

(6) *Freedom of Association*

Freedom of association is a logical extension of the freedom of the individual. This freedom was first expressed by the Khawarij during the time of *Caliph* Ali, who tolerated their existence so long as it was peaceful. It was brought to the attention of *Caliph* Umar Ibn Abd al-Aziz that an opposition group named "*Harrouriyat Al Mawsil*" wished to dwell in a certain area. Umar answered that they were free to do whatever they wish so long as they did not hurt anybody, whether Muslim or non-Muslim.

(7) *Minority Rights: The concept of dhimma*

The concept of "*dhimma*" is implied in the agreements reached between the Muslim authorities and non-Muslims of the conquered countries in which their rights and obligations were defined. These people were referred to as the "*dhimmis*". In Spain

the term *dhimma* was given to the Sephardic Jews, while Christians were called "*mu'ah'd*".⁽¹⁾

The dhimma covenant had its origins in the concept of *jihad* which, in the classical sense, divides the world into two spheres; the abode of Islam and the abode of war. According to this doctrine, the abode of war along with all its inhabitants and property are destined to belong to the Muslims, or as the Latin maxim says "*Qucee ab hostibus capiuntur Statim capientive fiunt.*"⁽²⁾ In case the abode of war, or part of it comes under Muslim control, its fate depends on how the territory came under the control of Islam, whether by force or by capitulation. The act of conquest, therefore, presented Muslims with the problem of how to deal with the non-Muslims of the conquered territories. The system of *dhimma* provided the solution to the problem, which was fundamentally a legal rather than religious one concept. The *dhimmis*, consisting of Jews, Christians, and Sabians, apart from pagans, were permitted to keep their religions. The *Qur'an* states: "God will Judge between those who believe and the Jews, the Sabians, Christians and the Magians and the idolaters, on the Day of Judgment" (Q.XXII: 17)

Individual, Collective and Group Rights

It is useful to distinguish individual rights from collective rights, and individual and collective rights from group rights. Individual rights are inherent in man existence. Collective rights are those which an individual acquires as a result of his living in a society, such as the right to marry, the freedom of association, to join a trade union, and the right to vote, *inter alia*. Group rights are

(1) Provencal. *Histoire De L'Espagne Musulmane* (Paris 1944), Vol. 1, p. 56.

(2) Things taken from enemies immediately become the property of the conquerors.

those which do not exist in relation to the individual but only in relation to the group, such as the rights of minority groups and the right of a people to self-determination. Whereas individual rights are basic, irrespective of the level of development of the state, collective rights may well take a lower priority in less-developed states if it is thought that the rapid achievement of individual rights requires strong government.

Before there can be any question of group rights, a group must be shown to exist. While objective criteria exist to demonstrate the existence of a minority group, the same does not always apply in relation to a "people". This fact, plus the absence of anybody capable of deciding the question with authority, renders the existence of these rights somewhat tenuous.

Right of Groups in Islam (Self-Determination)

The most important of the group rights is the right of a "people" to become a State. Self-determination in the Islam has a strong religious connotation in the sense that self-determination is only permitted on a religious basis and is recognized under two circumstances. If exercised by an Islamic community, the *Qur'an* encourages those in the community to "lose not heart, nor be grieved, for you will surely prevail if you are believers" (Q.III: 139). The *Qur'an* also provides that "Permission is granted those (who take up arms) who fight because they were oppressed. God is certainly able to give help to those [w]ho were driven away from their homes for no other reason than they said 'Our Lord is God'" (Q.XXII:39-40). The issue of self-determination is more problematic if exercised by a nation of the Book under pagan control - because the people of the Book are not alike - some of

them are "a section upright, who recite the scriptures in the hours of the night and bow in adoration and pray, and believe 'in God and the Last Day....."(Q.III: 113).

In both cases, Islam permits resorting to force in the exercise of self-determination. The *Qur'an* says in this respect "What has come upon you that you fight not in the cause of God and for the oppressed, men, women and children, who pray; "Get us out of this city, O Lord, whose people are oppressors; so send us a friend by your will, and send us a helper"(Q.:IV: 75).

But what position should an Islamic State take towards a nation of the Book in its struggle to exercise the right of self-determination against a pagan State? In my opinion, the Islamic State should lend its support to the nation of the Book in such a case, because such a nation is described in the *Qur'an*, as a nation upstanding (Q.III: 113). Allah describes them as "among the upright and doers of good"(Q.III: 114). These are people of the Book fighting leaders of unbelief, and Allah says "fight these specimens of faithlessness, for surely their oaths have no sanctity" (Q.IX: 12).

The legitimacy of self-determination is controversial in Western legal theory, whereas, subject to these limits, it is considered a "right" in Islamic legal theory. Perhaps this difference is because the criteria used to distinguish between self-determination and secession are rather vague in the Western model. In the Islamic theory, this distinction is clear-cut. Any movement that is directed to enhance Islam or to consolidate the unity of the believers could be viewed as a legitimate exercise of self-determination. Hence, the secession of an Islamic group from a larger Islamic group is unacceptable under Islamic law, and may be

classified as either apostasy or civil war⁽¹⁾. Originally, this classification of illegitimacy referred to those who challenged the *Caliph* Ali after his acceptance of the decision of the arbitration that took place between him and Mu'awiyah. Later it was expanded to cover any group that challenge their legal-government. If they remain within the State and conduct their challenge peacefully they are to be treated as an opposition party. But if they dominate a territory and create trouble for the Islamic State, they are to be considered rebels and if they resort to force, then their action is considered to be civil war. As the *Qur'an* states, "If two groups of believers come to fight one another, promote peace between them. Then if one of them turns aggressive against the other, fight against the aggressive party till it returns to God's authority." (Q.XL: 9).

Conclusion

The acts of the Prophet demonstrate that justice was more than a mere theoretical concept - it was state practice in the history of Islam. As the *Qur'an* states, "We have sent down to you the Book containing the truth, in whose light you should judge among the people as God has shown you, and do not be a contender for deceivers"(Q.IV: 105).

The Commentators explain this passage with reference to the case of Ta'ima Ibn Ubairaq. It was suspected that he had stolen a suit of armor, and when the trail was hot, he planted the stolen property into the house of a Jew, where it was found. The Jew denied the charge and accused Ta'ima, but the sympathies of the Muslim community were with Ta'ima because of his nominal profession of Islam. The case was brought before the Apostle, who

(1) *Ahlul Baghey*.

acquitted the Jew according to the strict principle of justice, as "guided by God." Attempts were made to prejudice him and deceive him into using his authority to favor Ta'ima. The story illustrates that the Islamic concept of justice is to be applied impartially, and the obligation to be just should never be sacrificed.

*We are grateful to God for guiding us here.
Never would we have been guided, if God had not shown us
the way (Q.VII. 43)*