



Islamic Law, Blasphemy and the Concept of Freedom of Speech:

From Non-Traditional Security Perspective

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Abstract

Freedom of speech and personal freedom are the natural and constitutional rights of every citizen in any society. However, the interpretation of these rights varies from society to society according to their respective socio-cultural, politico-constitutional principles, and religious teachings. Human beings are confronted with paradox of blasphemy and freedom of speech. The misinterpretation of blasphemy and right to freedom of expression of opinion has created great stir in the circles of scholars at different periods and also resulted in the persecution of prominent scholars and other people. This paper highlights the status of freedom of speech, and its critical evaluation in Islamic Law so as to understand its concept of blasphemy, its teachings on freedom of speech, and on personal security.

Key Words:

Freedom of Speech; Islamic Law; Personal Security; NTS



Introduction:

Shariah is based on wisdom and achieving people's welfare in this life and the life hereafter. It teaches justice, mercy, wisdom, and virtue. It rejects the replacement of justice with injustice, benevolence with malevolence, common good with mischief, or wisdom with nonsense (Ibn Al-Qayyim, 1973: 3)¹. Every legal system guarantees some rights of its citizens, and expects its citizens to exercise those rights properly with duties to other fellow-beings. Every right including freedom of speech is conditional in nature with some duties or responsibilities. The statement that Islam does not believe in free speech (Ullah, 2016: 24)² is a hollow assertion based on lack of insight about Islamic system of law. Islam no doubt, not only approves free speech, but also encourages its exercise. However, the nature of this right is entirely different as understood and interpreted in the modern western parlance. Before reaching any conclusion, understanding of the underlying principles of this concept and other rights needs proper deliberation and study. Freedom of speech being socio-political in nature comes under the umbrella of the non-Traditional security paradigm instead of Traditional Security paradigm or simply military security.

A (i). The Theory *Maqasid al Shariah* (Purposes of Shariah):

The theory of *Maqasid* is associated with the goals and purposes of the law. Having its basis in the text, this theory took almost five centuries to develop after the birth of Islam. Jurists who have expanded this theory include al-Ghazali, al-Razi, al-Sarakhsi and Shatibi (Nyazee, 2000).³ In jurisprudence, *Maqasid* means goals, objectives higher objectives, intent, ends and purposes of Shariah or fruits that the implementation of Islamic law brings with it. *Maqasid al Shariah* or purposes of Islamic law are initially divided into three categories: Essential or primary interests (*Darurraat*), Complementary interests (*Hajjiyyat*) and Desirable interests (*Tahsiniyyat*). The first category is fundamental to religion, which consist of following five parts namely (Ashur, 2008):⁴

- a) *Hifzud Din* Protection (and preservation) of Religion
- b) *Hifz un Nafs* Protection (and preservation) of Life
- c) *Hifz un Nasl* Protection (and preservation) of lineage or family life
- d) *Hifzul Aql* Protection (and preservation) of Intellect
- e) *Hifzul Mal* Protection (and preservation) of Wealth

The first one is termed as *Dini*— the one associated with the Hereafter while the other four called *Dunyawi*, which are related to this world. This purpose of Shariah is also termed as *Masalih* (Sing. *Maslihah*): benefits, which the application of Shariah brings forth. It is very similar to the modern utilitarian concept. In the hierarchy, *Din* has precedence over life, life has precedence over *nasl*, *nasl* has precedence over *aql* and *aql* has precedence over *mal*. Each primary purpose may be divided into public and private purposes. The public purposes seek to preserve the interests of community as a whole, while the private purposes protect the rights of individuals. As a rule, public interest has precedence over the private one. As a result the scholars derive some

rules: a) Stronger Interest shall prevail; b) Public Interest is prior over Private; & c) Rights of God shall have Precedence.

A. Islamic History of Freedom of Speech:

The Islamic concept of freedom is neither an outburst of any socio-political struggle, nor an evolution but it is a divine principle revealed for the amelioration of people. The Prophet (S.A.W) used to consult his companions to seek their advice on matters that pertained to daily life, politics and wars. The companions used to express their views openly, and on many occasions they differed with the opinion of the Prophet, as it happened at the time of *Treaty of Huddaib'iyah* and many other battles (Kaldun, 1998).⁵ The sad demise of Prophet putted burden of leadership on shoulders of Abu Bakar. He, in his first speech after his inauguration as a Caliph, said: "O people, I have been entrusted with authority over you, but I am not the best of you; help me if I am right, and correct me when I am wrong" (Al-Qasimi, 1974: 106).⁶ He started his caliphate by granting people the right to speak freely, monitor his actions and criticize him whenever necessary. Muslims entered a new phase. A government was called "*Malukiyyat*" after the assassination of last caliph, Hazrat Ali (R. A). The departure of Caliphate opened the doors for totalitarianism (Ullah, 2016: 25).

B (i) Freedom of Expression in Muslim Empires:

After the end of Caliphate, the rule of Caliph was replaced by rule of sultan. Now the head of the state was to be inherited to the office rather than elected. The situation of freedom of expression was not as good as it used to be in the time of Caliphs. A letter sent to a religious opponent by *al-Hashimi*; a cousin of Caliph *Al-Ma'mun* (786-833) gives us some clue of the situation that prevailed with regard to freedom of speech and free inquiry:

Bring forward all the arguments you wish and say whatever you please and speak your mind freely. Now that you are safe and free to say whatever you please appoint some arbitrator who will impartially judge between us and lean only towards the truth and be free from the empery of passion, and that arbitrator shall be Reason, whereby God makes us responsible for our own rewards and punishments. Herein have dealt justly with you and have given you full security and am ready to accept whatever decision Reason may give for me or against me. For "There is no compulsion in religion" (Qur'an 2:256) and I have only invited you to accept our faith willingly and of your own accord and have pointed out the hideousness of your present belief. Peace be with you and the blessings of God! (Ahmad, 2002)⁷

In the middle ages, Philosophical debates used to take place everywhere on a variety of issues that included jurisprudence, sciences, logic and philosophy (Kraemer, 1992).⁸ The Hanafi *Fiqh* was in fact, based on academic discussions publicly held in the academy established by Imam Abu Hanifa (Maududi, 2008).⁹ The government also supported intellectual prosperity of the citizens. Many Universities, Schools, academies and libraries were established in major cities. Baghdad became intellectual capital of the world

during that time. Later on it was shifted from Baghdad to Granada and Cordoba.¹⁰

B (ii).The Muslim Spain

The Muslim conquest of Spain in Eighth Century AD was different from any other invasion, which the history has ever recorded. It did not bring with itself any slavery, suppression and oppression; but brought progress, tolerance, peace and human dignity. María Rosa Menocal, a specialist in Iberian literature, has argued that “tolerance was an inherent aspect of Andalusian society”. It was their land of adaption and not the land of occupation. They absorbed the local culture and did their best for the moral, intellectual and material improvement (Menocal, 2009).¹¹

In the Muslim Spain, Shariah used to be the supreme law and all the state affairs were carried out under it (Qureshi, 2004).¹² The officials, even the rulers were not immune from public criticism, and free voice was never suppressed. Although the policy of tolerance remained almost unchanged through the time, among the tolerant rulers the Caliph, Sultan, and Al-Hakim is very prominent. Al-Hakim is also famous for promoting arts, literature and philosophy. The level of Al-Hakim’s tolerance for his subjects is reflected from the event when the newly converted Muslims rebelled against him for his liberal policies. At last the government got control of them, and they were arrested. Their leader was produced before Al-Hakim, who asked him about the reason of revolt. The person replied in a harsh and brutal manner: “In obeying the orders of God, I hate you.” The Sultan replied: “According to your statement the God for whose orders you hate me, for orders of that God I forgive you, go and be happy. God keeps you in His refuge” (Pool, 1984:93).¹³ This was the reason that the history saw prominent personalities in all fields of knowledge. They include Ibn e Khaldun, Ibn e Hazam, IbnRushd, Ibn e Arabi, Avicenna and many others.

B (iii).The Modern Times:

With the passage of time, Muslim rulers became more and more totalitarian. The situation of individual liberties and tolerance remained different from one Empire to another. In Ottoman Empire, the focus of liberty was on intellectual matters, including philosophy, law and jurisprudence. In Mughal Empire of India, the focal point of liberty was religious freedom, arts, poetry, and music, and in some instances on secularism (Alvi, 1989:95-119).¹⁴

The existing Muslim states present on the map of the world have almost recently secured their independence after a long wave of colonialism. These states are there not in a continuation of the States emerging in Medina and ending up in Muslim Spain, Ottoman Empire and Mughal Empire. These modern states are quite distinct from the earlier Muslim states. In a majority of the cases, their independence is achieved accidentally and inadvertently; as the colonial powers could not afford to keep them colonized after the devastations of Second World War. As a result, a degree of zeal and enthusiasm for freedom, democracy and human rights could not be seen in these countries, as it was seen in America after securing independence. The Muslim world has been the hard reality that they are too far from the true

dictates of their religion. One cannot deny the assertion that the state of affairs with respect to human rights is at its worst in the Islamic world. This is not because their religion enjoins them to be so, but because they have neglected its true principles.

B. Freedom of Speech and *Fiqh* (Law)

Unlike the modern concept of freedom of speech, in Shariah, one could not find the notion of freedom of speech and freedom of expression as a separate concept. Here one comes across different notions of the concept, which are freedom of criticism, freedom to hold opinion and freedom to express one's opinion. Many writers have attempted to highlight the notions of freedom of speech and freedom of expression on the modern pattern (Ullah, 2016:).¹⁵ Further, these writers have justified and validated the freedom of expression from the texts of Quran and Sunnah. Even without any support from the texts, the principle would have been declared as valid on the basis of permissibility.

C (i) Permissibility and Affirmative Evidence

According to the 'Theory of Permissibility', everything is permissible unless prohibited (El-Awa, 1982).¹⁶ This fundamental principle implies that all things are lawful for mankind except what have been explicitly prohibited by Allah in the Quran and by the Prophet Muhammad (SAW) in his Sunnah (that is his instruction, action or consent). As far as freedom of speech is concerned, Shariah gives us a general prohibition. The following verse of Quran gives us the general guideline of prohibition:

God does not like any expression of evil speech to be mentioned openly except by one who has been wronged (thereby). And God is indeed ever Hearer and All-knowing. If you do good openly or in secret, or pardon others for evil (done unto you), God is indeed an absolver of sins, infinite in His power. (Al Quran. 4:148-149)

The general prohibition on free speech is the "public expression of evil speech". This is a broader term which may cover all the modern concepts pertaining for instance; offensive speech, hate speech and many hinges like blasphemy libel and slander. The Article 18 of *International Covenant on Civil and Political Rights in international law*, the same analogy extends to Shariah; even if there would have been no text in favour of freedom of speech, (although this has not been the case) the single principle that "evil speech" is prohibited, implies that the rest of the speech, which is not "evil", is permissible. Along with the principle of permissibility, various modern writers rely on some affirmative evidence in favour of free speech. The evidence is adduced from the Holy Quran and Sunnah (Ullah, 2016:28-29).

C (ii).The Principle of *Hisbah*:

This principle (*al-amrbi'l-ma-rufwa' nahi anal-munkar*) obliges the Muslim Ummah to command good and forbid evil. Al-Ghazali regards it as "the greatest pole in the religion" and "the most important of all the objectives of religion." It is the essence of religion and a negation or avoidance of *hisbah* "would bring about the collapse of religion and widespread corruption and ignorance" (Al-Ghazali, 1984).¹⁷ To command good and forbid evil is the main premise of many Quranic verses: "Let there be among you a group that

calls others to good, commanding good and forbidding evil. Those are the successful ones (Al-Quran III: 104).”

The significance of *hisbah* is evident from a number of instructions of the Holy Prophet ﷺ. In Narration No. 177 in Chapter 20 of The Book of Faith كتاب الإيمان, Narrated *Abu Saad* stated: “If any of you sees something evil, he should set it right with his hand; if he is unable to do so, then with his tongue, and if he is unable to do even that, then (let him denounce it) in his heart. But this is the weakest form of faith (Muslim bin Al-Hajjaj, 2007:143-144).”¹⁸

C (iii). Sincere Advice (*Nasihah*):

In Quran, in a number of places the significance and importance of *nasihah* can be found. Even the Book itself has been termed as the “*Nasihah*”. The same is for Sunnah. Both the sayings and conduct of the Prophet May peace be upon him give enormous importance to the concept of *nasihah*. Another notion that is close to the concept of *nasihah* is the *Shura* or consultation. It requires the state and its authorities to conduct community affairs through consultation with community members. Apart from giving the right to speak, this principle is usually put forward as affirmative evidence in support of democracy (Abu al A’ala Maududi, 2000).¹⁹ In Islamic Law, no doubt there is an overlap between the doctrine of right and responsibility. The concept of rights and duties go hand in hand. The Islamic concept of *Haq* covers both the right and responsibility. The affirmative evidence produced in support of freedom of expression by contemporary writers is enriched with some other notions, particularly to note *Hurriyyat al-Mu’aradah* (Freedom to criticize), *Hurriyyat al-Ra’y* (Freedom to express an opinion), *Al-Hurriyyat al-Diniyyah* (Freedom of religion), *Ijtihad* (Juristic reasoning) and Freedom of association.

C (iv). *Hurriyyat al-Mu’aradah* (Freedom to Criticize):

Shariah gives its citizens the right and freedom to criticize and monitor the function and performance of government. It is also known as *Hurriyyat al-naqd al-hakim* or freedom to criticise the head of the state. It is done by way of advice, constructive criticism and in some circumstances even by a refusal to obey the government if it is guilty of violating the law (Kamali, 1997).²⁰ Some scholars even argue that it has been made obligatory on the community to monitor the conduct of those who are in authority with a view to rectifying those who deviate and cautioning those who might be neglecting the responsibilities with which they are entrusted. One of the eminent scholars of the present period, Yusuf al-Qaradawi holds:

Islam also guarantees freedom of speech and criticism and even considers obligatory when it concerns the interest of the entire Ummah, or affects other Islamic morals or general ethical values. In cases like these Islam make mandatory upon every Muslim to speak out, revealing the truth, fearing none but Allah; it makes it incumbent upon a Muslim to enjoin what is good and set right what is evil; and to encourage whoever does good deeds and blame whoever does evil deeds (Al-Qaradawi, 2002).²¹

Hurriyyat al-Mu'aradah and freedom of speech are inter-linked. In fact, *al-Mu'aradah* serves as a natural instrument of the freedom of expression as derived from the Holy Quran, Sunnah and acts of the companions of the Prophet. In Narration No. 4011 in Chapter 20 of Enjoining What is Good and Forbidding what is Evil, Narrated *Aishah*: "The best form of jihad is to utter a word of truth to a tyrannical ruler" (Al-Qazwini, 2007:217).²²

It is evident that Islamic law neither gives any sort of divine rights to rulers, nor leaves any room for totalitarianism. It encourages the participation of ordinary citizens in the state's affairs. History has recorded the fact that the caliphs were too much vulnerable to criticism that sometimes led to an insult, which they faced with tolerance.

C (v). *Hurriyyat al-Ra'y* (Freedom to Express an Opinion):

Scholars and jurists of Islamic law have consistently used this principle to denote the meaning similar to the freedom of speech. From the linguistic perspective, *Ra'y* is applied to things that are not seen, but are known through the application of reason and intuitive judgement. Ibn Qayyim al-Jawziyyah holds that *Ra'y* refers to an opinion that is achieved as a product of profound consideration and self-exertion by a person searching for knowledge. *Ra'y* is intrinsic to knowledge and it must take its lead from information open to inquiry and rational conclusions (Al-Qayyim, 1973).²³ Highlighting the importance of *Ra'y* in promoting knowledge and free inquiry, Kamali holds:

A person may express an opinion, arbitrary or otherwise, and so long as he does not violate the law concerning blasphemy, sedition and so on, he is free to advance an opinion. Just as the law tolerates an arbitrary opinion, the latter has a role to play in the development of ideas, and in the quest for knowledge and truth. Often, a sound opinion is evoked and stimulated by a weak, provocative or misguided one (Kamali, 1997: 62).²⁴

The concept of *Hurriyyat al-Ra'y* is of utmost importance in defending freedom of speech in Shariah. This principle covers many modern consequentialist justifications of freedom of speech including truth discovery, dignity of man, promoting tolerance etc. *Hurriyyat al-Ra'y* is about the free inquiry, a gift whose exercise has been encouraged by Islamic Law.

Another concept that is put forward by scholars in support of free speech, and which is related to *Hurriyyat al-Ra'y* is the notion of *Ijtihad* or juristic reasoning. The only difference between the two concepts is that the former one is general, while the latter one pertains to the *fiqh*. This concept also gives a degree of liberty and freedom to the scholars of law to give their views on a question of law. Islam has not only made it permissible, but has rather recommended to those having knowledge of jurisprudence. This implies that it is better for Muslims to think and to reason together even if they disagreed over something that it was all in the pursuit of knowledge (Sana, 2016:32).

C. Status of Freedom of Speech in Islam:

Coming to the freedom of speech as a legal principle in Islam, it has already been maintained that the principle of permissibility is sufficient alone to approve the principle of freedom of speech. However, certain categories of

speech are impermissible. Like the modern concept of freedom of speech, Islamic law never treats this right in an absolute and unqualified manner. As stated in the beginning, Quran gives us a general guideline about the restrictions that can be placed on speech. The phrase used in the verse of Quran (IV: 148-149) '*al-jahrbi'l-su' min al-qawl'* denotes the speech, which is evil or hurtful, and which is uttered publicly. This is the general restriction that has been placed on this right. The details and boundaries of this principle can be found in other verses of Quran, in Hadiths, sayings of the companions of the Prophet and their acts, *Ijtihad* and general principles of the Shariah. This general principle of public utterance of evil or hurtful speech although working as universal guideline; still the details of "forbidden speech" could be found in Quran. However, every form of restricted speech is not justiciable; there are moral restraints as well as legal restraints. Without going into details of every legal restraint at this stage: Quran prohibits *Sabb Allah waSabb al-Rasul* (Blasphemy), *Iftira* (Libel), *La'n* (Curse), *Takfeerul-Muslim* (Declaring a Muslim to be non-believer) and *Qadhaf* (Slandorous Accusation) (Sana, 2016:33). These restraints are also offences in Islamic Criminal law, and their details have been explained in detail by jurists and criminologists. The contribution of modern day writers like Hashim Kamali in highlighting the notion of freedom of speech in terms of Islamic law is praise worthy; nevertheless, there are many aspects that still remain unsolved. The only way to resolve and fulfil the above-mentioned lacunas is to resort to *Usul al-Fiqh*. Understanding the concept of rights and a proper place of each right is not possible without resorting to some basic rules of *Usul al-Fiqh* (Jurisprudence) (Ibid).

Some modern writers have worked on the concept of rights in Islamic law. Much of this literature loops around distinguishing between the fundamental rights and other rights. This approach is alien to Shariah, as its concept of rights is totally dissimilar to the modern differentiation (Sana, 2016).²⁵

The precise translation of the term "right" in Shariah is *Haqq*. It may better be translated as the combination of rights, duties, obligations or responsibilities. Many modern scholars of Shariah argue that basically there are two classes of rights: rights of God and rights of man (Ahmad, 2006:103).²⁶ This classification though simple, is not able to resolve many complexities and it leads to many irrationalities. Classical jurists, especially the Hanafies have classified the right into three: rights of God, rights of community/society or state, and rights of man. Another phenomenon that is intrinsic in this respect is the theory of *Maqasid al Shariah* or purposes of the Shariah. Application of *Fiqh* is normally not sufficient to yield juridical results, unless the theory of *Maqasid* is applied (Sana, 2016:34).

D. Conclusion:

The concept of rights in Islamic Law and the notion of purposes of law help to find a suitable place for the right of freedom of speech. While categorizing a right or interest, one has to look at the predominance of a certain element, and secondly, taking speech as a right, every verbal communication is not a speech. For a communication to qualify as a free speech there must be some

elements of reasoning, creativity and criticism and so on. Now it is not difficult to draw the boundaries of free speech in a manner that is more systematic as compared to the modern concept. As a result some rules of secondary nature are derived that are peculiar to speech. i) Freedom of speech is a right whose development is encouraged, and it is closely associated with the intellect; ii) The rights of God being superior; freedom of speech always gives way to the rights of God in all categories and at all times; iii) In the category of primary rights, it falls within the fourth category, so it is subordinate to the protection and preservation of Din (religion), Nafs (life) and Nasl (lineage). While it is of superior degree to *Hifz al Mal* (protection and preservation of wealth); iv) Being an individual right, when it is in conflict with the collective interest within the same category, the latter one shall prevail. However, when a collective right of inferior category clashes with it, the former will prevail as a general rule. *Hifz al mal* being the only category inferior to it, this means that freedom of speech will prevail over the right of property, notwithstanding the principle of *Istihsan* or public good &; v) The other two purposes of secondary nature that are *hajyat* and *Tahsinyat*, they being subordinate to the primary purposes will automatically give way to this right.

For freedom of speech, Islamic law gives us a general guideline to establish its boundaries, while Islamic jurisprudence determines its proper place in the system of rights. The theory of Maqasid gives us logical results in determining boundaries of not only freedom of speech but other human values as well. A Maqasidi approach takes juridical issues to a higher philosophical ground. It has already been observed that in modern secular jurisprudence, boundaries of human values particularly that of freedom of speech are determined without philosophical and logical basis, and one value supersedes the other arbitrarily.

In short, the main difference between the two systems, nevertheless, is that of priorities. In the West civil liberties, national interest and wealth are the interests of primary nature as compared to religion and family life. As a result blasphemy, violation of privacy and many other interests are not given that much importance, as it is given in Islamic law wherein religion and lineage are considered superior than the intellect.



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