

The Concept of Siāsa Shar`iyyah As a Basis of Applying Sharia Law

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Summary:

The purpose of this paper is to clarify the concept of Siāsa Shar`iyyah—the foundational principle of the application of Islamic law—and the occasion and methodology of the Muslim community in the implementation of Sharia. The paper deals with two important issues in terms of the impact of Sharia implementation. The first is the impact of applying Siāsa Shar`iyyah in terms of detailed rulings in Sharia. The second is the overall impact Siāsa Shar`iyyah has on the application of Sharia as a country's political system.

Keywords:

law, Siāsa Shar`iyyah, Sharia law, Islamic law, Sharia implementation.

1. Introduction

As there have been countless misrepresentations of the Islamic political system, it is important to clarify certain concepts before delving into the details of this topic. Due to the complexity of Sharia implementation, many have committed serious methodological errors while describing the Islamic political theory.

Therefore, this paper comes to clarify the basic norm - Siāsa Shar`iyyah- on which the application of Islamic law is based, and when and how Muslim community is required to apply Sharia, away from contemporary circumstances, polemics and contradictions between different political spectrums.

2. The concept of Siāsa Shar`iyyah and the impact of its application in terms of detailed rulings in Sharia

2.1 The concept of Siāsa Shar`iyyah

In Islamic jurisprudence, the science that is concerned with the process of properly applying the holy texts regarding political issues is called Siāsa Shar`iyyah, or legal policy¹. The process of applying texts for aspects of worship and issues in which the state does not directly interfere is called ijtihād, or striving.² These two sciences both rely on a mediator science, Uṣūl Al-Fiqh, to ensure the authenticity of understanding the holy texts. There are three stages related to the political system that both Siāsa and Ijtihād must follow:

1. Knowing the Islamic texts relating to the intended incident. The sources of Islamic texts have already been described as well as their legal value.
2. Knowing the tools of understanding and interpreting the Islamic texts properly (Uṣūl Al-Fiqh)
3. Properly understanding the issue in question and knowing its consequences, roots, and causes. This final step is roughly similar to the work of a judge in court, without a plaintiff or defendant. It is a case, a law, and a judgment. The judge tries to grasp the facts accurately, then looks at the legal texts regarding the case, and then makes a judgment.

¹ Ibn Taymiyyah. The Sharia Policy on Reforming the Ruler and Ruled "Al-Siāsa Al-Shar`iyyah fi Iṣlāḥ al-Ra`ī wal-Ra`īyya": 7

²John L. Esposito. The Oxford Dictionary of Islam. Oxford University Press (2014):134

Academically, *Siāsa* has a precise and general meaning. Some scholars argue that the jurisdiction of the science of *Siāsa Shar'īyyah* is to apply the holy texts to all matters relating to public order, whether the Islamic texts explicitly state the intended issue or not³ Some of them use *Siāsa Shar'īyyah* more precisely to mean the implementation of holy texts in a case not explicitly mentioned in a specific text. Rather, it is broadly mentioned in the holy texts through its general rules.⁴ The latter, undoubtedly, shows the complexity and difficulty in this science. The general application is simpler than the precise meaning. Let us look at an example of each: Preventing interest is proven in the Qur'ān and Sunnah explicitly, and scholars agree upon it unanimously.

Although this is a matter of *Siāsa Shar'īyyah*, Islamic governments can do nothing but enforce the rule. They can, however, formulate legitimate alternative formulas as they desire. Regarding the precise definition of *Siāsa Shar'īyyah*, let us look at the Islamic position towards nationality. Nationality is an issue that emerged from the birth of the nation-state a few centuries ago.⁵ Islamic texts do not explicitly deal with this issue. Citizenship, which branches off nationality, gives citizens equal rights, regardless of any religious consideration. Non-citizens may be deprived of some levels of freedom, such as the freedom of work and movement. A citizen may also have many forms of duties, such as loyalty to the state, conscription, defense, etc. In its texts, Islam does not address the relationship between the people and the state on this basis. It is the task of the policymaker and lawmaker to formulate policies and laws addressing the thorny issues in this field. They must understand how Sharia deals with this new matter, whether Sharia rejects it completely or could reconcile with it. They must understand what areas of this matter Sharia welcomes and what areas Sharia refuses. Numerous issues surfaced with the birth of the nation-state. But what is important here is not to answer all these detailed questions; it is not a research problem. The substantial point is recognizing the dynamic nature of *Siāsa Shar'īyyah*. By recognizing it, we can understand how Islam deals with every emerging issue. It is the basic step to answer the researcher's question: What is the impact of *Siāsa Shar'īyyah* on Shariah implementation.

2.2 The impact of applying *Siāsa Shar'īyyah* in terms of detailed rulings in Sharia

Holy texts are finite and limited, and cases are infinite and unlimited. So, the process of *Uṣūl Al-fiqh* alongside with *Siāsa Shar'īyyah* – by which policymakers extrapolate laws through the Qur'ān and Sunnah – is the only guarantee that ensures that Sharia covers all aspects of state policies and laws in a legal manner.

There are three working parts here: The new matter or case to judge; The Sharia ruling (which can be one of the five types of rulings: prohibited, obligatory, disliked, encouraged, or permissible); And the policymaker and lawmaker (*Walī Al-'amr*)

Let's say, for example, the government faces a growing dilemma of increasing unemployment, and government officials claim that one of the reasons for the increase in unemployment is the large number of children each family has. They propose to solve this problem by enacting a law prohibiting families from having more than two children. This is the first part, the matter or case. To determine the legal ruling, we must ask: Is preventing a family from having more than two children in this case (according to the Sharia perspective) prohibited, obligatory, disliked, encouraged, or permissible? Is it permissible to enact a law like this or not? Accordingly, by following the previous mechanism, all modern legislations that are intended to be enacted by the legislative power shall pass such a mechanism to ensure that the implementation of Sharia in all details has been achieved.

3. The impact of *Siāsa Shar'īyyah* in terms of applying Sharia as the system of society

Sharia primarily considers the condition of those who adopt the Islamic system before applying it⁶. The implementation of the Islamic political system depends on the political condition and strength of Muslims in a region. Therefore, the Islamic jurists have divided the conditions of Muslims generally into three cases, each case having its own provisions:

³ Ibn Taymiyyah. *Majmū Fatwas of Ibn Taymiyyah*: 35/7

⁴ Id

⁵ See for more information: *Basis of Nationalism from the Viewpoint of the Quran and Tradition*:

<https://www.al-islam.org/islam-and-nationalism-dr-ali-mohammed-naqvi/part-eight-basis-nationalism>

⁶ Ibn Taymiyyah. *Al-Ṣarīm Al-Maslūl 'alā Shātim Al-Rasūl*. Dar Ibn Hazm: 1/245.

1. When Muslims are subject to a non-Islamic system and cannot practice their religion and ritual. They are persecuted.
2. When Muslims are subject to a non-Islamic system, but this system enables them to practice their religion and rituals. They live under the system based on a charter and agreement.
3. When Muslims have domination, political independence, and sovereignty in a territory. Non-Muslims are under the protection of this Islamic state.

These three situations are slightly similar to the stages that the Prophet and his companions passed through during his life, ending with the formation of an Islamic state with their own rule. Each of these three situations has particular provisions that cannot be mixed with the others.

3.1 case 1:

In the case of oppression, where Muslims cannot defend themselves and cannot practice their religion, Muslims must emigrate to a land where they are governed by the law of God or a land in which its people allow Muslims to practice their rituals. If they do not find such a place to practice freely, Muslims have no option but to be patient and claim their rights peacefully as much as possible.⁷

This was the case during the Meccan period, where the companions were tortured in Mecca by Quraish and prevented from performing the rituals. This was the first period of prophecy, and there was no land to resort to. Therefore, the companions were commanded to be patient, to pray secretly, to give charity, and to do other types of righteous deeds. Companions were prevented from fighting, war, and any kind of confrontation. In the holy book: "Have you not seen those who were told, "Restrain your hands [from fighting] and establish prayer and give Zakāh"[charity]? But then when fighting was ordained for them, at once a party of them feared men as they fear Allāh or with [even] greater fear. They said, "Our Lord, why have You decreed upon us fighting? If only You had postponed [it for] us for a short time."⁸

⁷Id.

⁸See: <http://quran.ksu.edu.sa/translations/english/90.html?a=568>

⁹ Abū Al-Mālī al-Juwaynī. Rescuing Nations from the Perplexity of Darkness "Ghiyāth al-Umam wa Al-Tiyāth Al-Zulam": 323

¹⁰ Al-Suyūfī. Al-Itqān fi 'Ulūm Al-Qur'ān.

In this case, Muslims shall not establish a political system or force anyone into this system. This is not only because it is not commonly possible, but also because its negative impact will outweigh the likely benefits.

Confirming this, the Prophet was given the option to establish his political system under religious oppression. It was narrated that the polytheists of Mecca offered the Prophet the option to establish a consensual political system and become their president, provided that he renounced some of his beliefs. The Prophet refused strongly.

The preservation of belief is more significant than establishing a political system that lacks legitimacy and contradicts the foundations of governance in Sharia⁹. Therefore, in the Meccan period, none of the laws that were necessary for the State – including relations between States, such as the provisions of war and peace, or within society, such as the penal laws – were enacted.¹⁰ However, among themselves, Muslims followed the provisions of Islam, such as sales laws, marriage laws, and other civil provisions. This was their form of religious self-commitment without the force of a state¹¹.

3.2 Case 2:

In this case, Muslims are subject to a non-Islamic system, but that system enables them to practice their religion based on a mutual agreement. This was the situation in Abyssinia, when the Muslims lived under the rule of the Christians. In the sixth year of the Prophet's mission, the Prophet commanded his companions to emigrate from Mecca to Abyssinia, saying: "In Abyssinia is a man who does not oppress anyone." A group of companions, both men and women, lived in this land for a few years.¹²

In this situation, Muslims must fulfill the duty of the covenant and agreement between them. Muslims subject themselves to the authority in the land and do not rebel against the regime, fight it, or violate the covenant between them. Sharia does not require Muslims in this case to establish a political system. Rather, they must establish their religion and their laws among themselves with self-commitment and work within the limits available.

¹¹ Abu Ya'la Ḥusayn. The Ordinances of Government. "Al-Aḥkām al-Sultāniyya wal-Wilāyāt al-Dīniyyah": 44

¹² Al-Mubārakpuri. Al-Raḥīq Al-Makhtūm.

3.3 Case 3:

The third case is when Muslims have political independence and sovereignty. In the Prophet's last years in Mecca, a delegation came from Medina to Mecca and met the Prophet secretly. The delegation was composed of members of Medina's twelve clans. They invited the Prophet to come to Medina and serve as the chief arbitrator for the community. For the past 100 years, before the Prophet's emigration, there was fighting in Medina involving all its people.¹³ The delegation pledged themselves to accept the Prophet into their community and to protect the Prophet as if he was one of them.¹⁴ After the emigration to Medina in 622 CE, the Prophet drafted a constitution known as the Charter of Medina. The constitution established alliances and federations composed of the Qurayshi migrants, eight tribes from Medina, and eight Jewish groups (the Jewish groups were recognized as part of the Medina community). The constitution also:

- Clarified the rights and duties of all citizens, and specified the relationship of the different communities in Medina, including the Muslim community, the Jews, and other communities.
- Enforced the collective responsibility of constituent tribes for the actions of their members.
- Established Prophet Muḥammad as the mediating authority between tribes.
- Forbade the waging of war without the Prophet's authorization.
- Created the basis of a multi-religious Islamic state. It assured freedom of religious beliefs for all citizens.
- Ensured that representatives of all tribes, Muslim and non-Muslim, should be present to consult in cases of foreign affairs.
- Worked to end the bitter fighting between the rival tribes and to secure peace and maintain co-operation among all of them.¹⁵

With the conclusion of this constitution and the approval of all tribes, Medina became a consensual state. The Prophet was the president of the state, and Islamic law became the supreme authority of the land. Jewish tribes practiced their religion freely and had their own courts. The document consisted of 52 articles, 25 of which related to Muslim relations

among themselves and 27 related to the relationship of the Muslim community with non-Muslim communities.

In the third case, Muslims shall have their own legislation and sovereignty among themselves, and they must establish the Islamic political system if they are able. Rejecting the establishment of God's law in such a case without an acceptable excuse is considered apostasy according to the scholars of the four Islamic schools¹⁶.

Finally, it could be argued that there is a fourth case, in which a strong non-Muslim community refuses to agree with the Muslim community and prefers to face them instead. This is not a stable state in which interior public policies will be formulated; rather, it is a case of conflict and war between two communities. Therefore, such a case was not included in this paper. The provisions of this case should be discussed in the war, peace, and international relations field under Islamic jurisprudence.

4. Conclusion

According to the aforementioned, it is evident that the implementation of Sharia is not an indefinite, abstract idea. Rather, the mechanism of Siāsa Shar'iyyah acts as a safety net that protects communities from repressive groups who use Sharia to break the unity of societies and sow discord and divisions. Furthermore, the concept of Siāsa Shar'iyyah develops a rational perception in the minds of Sharia adherents, protecting them from entering unbearable battles and crises.

References

- [1] John L. Esposito: The Oxford Dictionary of Islam. Oxford University Press (2014)
- [2] Al-Māwardī, Muhammed: The Ordinances of Government "al-Aḥkām al-Sultāniyya wal-Wilāyāt al-Dīniyyah". Dar Alhadeeth. Alqahirah. (2018)

¹³See for more information: 'Alī ibn al-Athīr. Al-Kāmil fī Al-Tārīkh.

¹⁴See for more information: Ibn Kathīr. Al-Bidāya wal-Nihāya.

¹⁵Id.

¹⁶ Al-Māwardī. The Ordinances of Government "al-Aḥkām al-Sultāniyya wal-Wilāyāt al-Dīniyyah": 76

- [3] Abū Al-Mālī al-Juwaynī: Rescuing Nations from the Perplexity of Darkness "Ghiyāth al-Umam wa Al-Tiyāth Al-Zulam". Imam Alharamain library. (1981) Second Edition.
- [4] Ibn Taymiyyah: The Sharia Policy on Reforming the Ruler and Ruled "Al-Siāsa Al-Shar'iyyah fi Iṣlāh al-Ra'ī wal-Ra'ṭyya". Saudi Ministry of Islamic Affairs, Dawah and Guidance. (1997)
- [5] Abu Ya'la Ḥusayn. The Ordinances of Government. "Al-Aḥkām al-Sultāniyya wal-Wilāyāt al-Dīniyyah". Dar Alkutub Al-ilmīyyah. Beirut (2000). Second Edition.
- [6] Abu Ya'la Ḥusayn. The Ordinances of Government. "Al-Aḥkām al-Sultāniyya wal-Wilāyāt al-Dīniyyah". Dar Alkutub Al-ilmīyyah. Beirut (2000). Second Edition
- [7] Ibn Taymiyyah. Majmū Fatwas of Ibn Taymiyyah. Saudi Ministry of Islamic Affairs, Dawah and Guidance. (2004)
- [8] Ibn Taymiyyah. Majmū Fatwas of Ibn Taymiyyah. Saudi Ministry of Islamic Affairs, Dawah and Guidance. (2004)
- [9] Ibn Taymiyyah. Minhāj Al-Sunnah Al-Nabawiyyah fī Naqd Kalām Al-Shiyah Al-Qadriah. Imam Muhammad ibn Saud Islamic University (1986)
- [10] Al-Bāqillānī Abū Bakr. Taḥmīd Al-Awāyil wal-Talkhīs Al-Dalāyil. Cultural Books Association - Lebanon Edition (1987)
- [11] Dr. Abdullah bin Ibrahim Al-Ṭarīqī. Obeying Those of Authority. "Ṭā'at Walī Al-'Amr." Dar Almuslim. (1999)



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