

POLITICAL ISLAM AND CONSTITUTIONALISM

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ABSTRACT

The universality of Islamic principles and the extent to which they shape the modern state has been a topic of popular debate. Throughout the history of Muslim states like Pakistan, Islam has been used by the political elite to further their short-term political gains, creating the misconception that constitutions inspired by Islam result in political instability. This paper will explore how political Islam can lead to the establishment of stable constitutional systems by imposing limits on authoritarianism. By drawing comparisons between diverse Muslim states such as Pakistan, Saudi Arabia and Tunisia, this paper aims to prove that a thriving Muslim democracy is not a utopian concept; rather, under the right circumstances, conservative Islamic parties and secularists can co-exist and work towards bettering a state in the same political sphere.

KEYWORDS: Constitutionalism, Pakistan, Islamic Principles, Saudi Arabia, Tunisia, Hudood Ordinances, Shariah, Authoritarianism, Secularism.

1. INTRODUCTION

The impact of Islamic principles in the legal and political sphere varies amongst Muslim nation-states. Islamic countries such as Pakistan, Saudi Arabia, and Tunisia have pledged to be faithful to Islamic teachings in their respective constitutions. Their core values, political principles, and freedoms enshrined in their constitutions exist independently, but are not contradictory to the divine law. For example, Article 227 of the Constitution of Pakistan demands that all existing laws conform with the injunctions of Islam as laid down in the Holy Quran and Sunnah. As a consequence, laws repugnant to Islam are not legally valid.

Unfortunately, throughout history, Islam has been misused to bolster and validate the beliefs of certain groups of society. In Pakistan, the ruling political elite has persistently misused Islamic principles for short-term political gains since the country's creation in 1947. Political parties such as the secular Pakistan People's Party or the centre-right Pakistan Muslim League (which mainly comprises of Sunni Muslims) have brought Islamists to the centre of the State apparatus.¹ Similarly,

¹ Jayshere Bajora, 'Islam and Politics in Pakistan', < <https://www.cfr.org/backgrounder/islam-and-politics-pakistan> > accessed 11 October 2022.

the monarchy in Saudi Arabia has been known to act arbitrarily under the guise that the *ulema* is the dominant power in Saudi politics. Yet, Tunisia, one of the more progressive Islamic democracies in the Muslim world, demonstrates that Islam is compatible with democracy and can help bolster democratic principles. Following the Arab Spring, the 2014 Constitution of Tunisia separated religion and politics, intending to prevent officials from using faith-based appeals to manipulate the public. This paper will seek to determine whether ‘political Islam’, i.e., the invocation of Islamic principles in the political sphere leads to the establishment of stable constitutional democratic systems by curbing and controlling potential authoritarianism.

For this paper, I will limit the concept of ‘constitutionalism’ to a doctrine which determines whether the actions of a government are legitimate. This involves analysing whether officials conduct their public duties in accordance with the law.² Essentially, the mere presence of a constitution does not guarantee or secure constitutionalism; rather, constitutionalism refers to the degree to which the principles of the constitution are respected by state officials. I will first discuss Zia ul Haq's regime in Pakistan, marked by his authoritarian rule, during which he fundamentally altered the Constitution. I will then proceed with a discussion of Saudi Arabia's Constitution that entrenches the monarch's power to all aspects of society at the expense of the powers of the *ulema*, whose influence has been reduced to validating the actions and decisions of the King. Lastly, I will discuss Tunisia as the sole functional example of democracy in the Arab world to evaluate whether, as a democratic system, it has respected the constitution's primacy while maintaining Islamic influence throughout its political structure.

The constitution of a Muslim country is rooted in customs, conventions, and divine law. The primary sources of divine law in Islam are the Quran and Sunnah. ‘Sunnah’ refers to the teachings of the Prophet Muhammad (peace be upon him) that were handed down from the Companions of the Prophet.³ The Sunnah comprises statements called ‘Hadith’ that explain the teachings of the Quran, and provide additional rules and guidelines. Islamic tools of interpretation incorporate these into the legal system. Other than the two primary sources, secondary sources such as ‘*Ijtihad*’ and ‘*Taqlid*’ are utilised to reach a certain level of agreement amongst religious scholars interpreting the primary sources of Islam.⁴ *Ijtihad* refers to the exercise of independent reasoning to find

² Maru Bazezew, ‘Constitutionalism’ (Mizan Law Review 2009). Volume 3. Page 358

³ ‘What is the Sunnah’ (Islam Online) < <https://islamonline.net/en/what-is-the-sunnah/> > accessed 11 October 2022.

⁴ Lora Hadzhidimova, ‘Juridical, Religious And Globalization Perspectives On The Constitutions Of Egypt And Tunisia After The Arab Spring’ (*Masters, Old Dominion University* 2016). Page 52.

solutions to pending legal questions. However, it is controversial to a certain extent because of the diversity of opinions that exist among various Muslim Jurists regarding the subject matter. On the other hand, *Taqlid* decodes Quranic texts, and brings clarity and balance in the scholarship in the presence of long-lasting debates between different schools of thought in Islamic countries. Tools like *Ijtihad* protect divine and universal principles of Islam while simultaneously allowing for adjustments to be made such that the Quran and Sunnah fit better into the the changing traditions and social needs of the modern world. The use of these tools in Pakistan, Saudi Arabia and Tunisia, respectively, shall be discussed in further detail below.

2. PAKISTAN

For this section, I shall restrict my discussion to the post-independence period under Zia ul Haq's military rule to explain the shape and direction of political Islam in Pakistan. Existing academia on this subject has recognized the fluidity of Islamic Injunctions and their subjectivity to multiple interpretations. The Honourable Supreme Court of Pakistan demonstrated the inclusion of bias in the interpretation of Islamic principles in the landmark case of *Qazalbash Waqf v Chief Land Commissioner*.⁵ In this case, land reforms that were previously declared valid under Islamic law in 1980, were found to be invalid and in breach of the same Islamic injunctions a decade later by the Supreme Court.⁶ The use of *ijtihad* in this case can be seen as a tool to tackle reform in the spirit of juristic opportunism in Pakistan. Similarly, the Offence of Zina (Enforcement of Hudood) Ordinance 1979 was promulgated by Zia to introduce criminal penalties for *zina* (adultery) offences in accordance with the teachings of the Quran and Sunnah. However, some of its provisions were declared repugnant to the Quran and Sunnah by the Council of Islamic Ideology ('CII') in 2005.⁷ Thus, the inconsistency in judicial decisions based on Islamic teachings highlights the propensity for these teachings to be politically skewed to attain ulterior motives.

As Farzana Shaikh posits, Zia's political Islam was designed to give the *ulema* greater autonomy than previous governments, as their support made his authoritarian rule more effective.⁸ Zia's objective was to expand his political base; therefore, he employed a strategy of 'Islamisation' of

⁵ *Qazalbash Waqf and others v. Chief Land Commissioner and others* PLD 1990 SC 99.

⁶ Muhammad Zubair Abbasi, 'Judicial Islamisation Of Land Reforms Laws In Pakistan: Triumph Of Legal Realism' (2018) 57 *Islamic Studies*. Page 230.

⁷ Muhammad Khalid Masud, 'Modernizing Islamic Law in Pakistan: Reform Or Reconstruction?' (2019) 42 *Journal of South Asian and Middle Eastern Studies*. Page 80

⁸ Farzana Shaikh, 'From Islamisation To Shariatisation: Cultural Transnationalism In Pakistan' (2008) 29 *Third World Quarterly*. Page 597.

the State's economic, social, political, and legal institutions. He named this strategy 'Islamic Revivalism', and used it as a guise to legitimise his rule.⁹ It is important to note that Zia, who is referred to as the 'architect of Islamisation', was simply building upon the foundation already set by the previous democratically elected prime minister, Zulfikar Ali Bhutto. In the Constitution of 1973, Bhutto introduced Article 2, declaring Islam to be the 'state religion' of Pakistan.¹⁰ As a consequence, the army under Zia's rule identified itself as an 'army of Islam' as it transformed from an institution concerned with only the defence of the state's territorial borders to one dedicated to guarding the ideological frontiers of the Islamic nation.¹¹

Pakistan's legal framework is built upon the conformity to the *Shariah* (Islamic law as espoused in the Quran and Sunnah) as interpreted by leading entities such as the *ulema* (whom Zia wished to please to garner support).¹² While Islam as a religion is absolute and God's sovereignty is considered beyond human agency, the Islamic state acts as an agent to enforce the laws of the sovereign (i.e., God). However, it is important to understand that while this hierarchy of sovereignty and the role of God as the primary lawmaker makes sense at a theoretical level, the same does not necessarily materialise in the practical running of the state.¹³ The sovereign word of God can be skewed for political motives, as Pakistan's political history indicates. Indeed, God is sovereign, but the influential heads of the state also exercise a degree of sovereignty when determining which interpretation of specific Islamic rulings should apply as law. Therefore, it should be understood that practically speaking, sovereignty is exercised by humans even in an Islamic state.¹⁴ The lack of limitation on human sovereignty in Pakistan during Zia's rule is what makes a state vulnerable to tyranny and the authoritarian tendencies of those acting as sovereign agents.

Zia viewed the power of the *ulema* as one he could use to further legitimise and strengthen his rule. The *ulema*'s control over *madrasas* (religious schools) contributed to creating a citizenry inclined to accept Islamic ideology as an appropriate foundation for the conduct of politics. The influence of

⁹ Ali Shan Shah, Muhammad Waris, 'Islamization in Pakistan: A Critical Analysis of Zia's Regime', 1 (2016) <<https://grjournal.com/jadmin/Author/31rvIolA2LALJouq9hkR/YxFmikmkcM.pdf>> Page 267

¹⁰ Ibid, 600.

¹¹ Farzana Shaikh, 'From Islamisation To Shariatation: Cultural Transnationalism in Pakistan' (2008) 29 Third World Quarterly. Page 605.

¹² Ibid, 605.

¹³ United State Institute of Peace, 'Islam and Democracy' (2002), <<https://www.usip.org/sites/default/files/sr93.pdf>>. Page 5

¹⁴ Ibid.

religious scholars and their often archaic interpretations led to a regime that was undemocratic and predominantly discriminatory towards the rights of women and minority groups. For example, women were considered less competent than men in the law of evidence. A woman's testimony is considered half in value as a man's testimony. This is still part of the Pakistan legal system today, as seen in the Qanun-e-Shahadat Order, 1984 (which is the codified law of evidence in Pakistan).¹⁵ However, it is agreed by various scholars that the value of women's testimony is only half in value when concerned with financial matters - in other disputes, the value of a woman's testimony is equal to that of a man.¹⁶ Scholars recognize discriminatory laws as the product of societal traditions in Islamic culture being distorted in such a manner to repress women.¹⁷ Ideology is crucial in building a democratic Islamic state. A state must be cautious of the power and influence given to unenlightened scholars as it can have consequences on the social, political and cultural fabric of the state.¹⁸

The core of Zia's plans to 'Islamicise' Pakistan was the specialist court, the Federal Shariat Court ('FSC'), incorporated in chapter 3-A of Pakistan's Constitution.¹⁹ The FSC was an institutional mechanism independent from the Majlis-e-Shura, designed to examine any law repugnant to the Quran and Sunnah. However, its limitations, as stated in Article 203-B of Pakistan's Constitution, blocked its jurisdiction in many realms important to would-be Islamic reformers of Pakistan's legal system.²⁰ The term 'Muslim Personal Law' was broadly interpreted to prevent any petitions being heard against the so-called Islamic laws to be evaluated against the injunctions of Islam by the FSC. The FSC for example, refused to consider on merits many Shariah petitions challenging, for instance, standardized Ramadan fast timings or other laws openly discriminatory of women.²¹ This demonstrates the involvement of authoritarianism in the judicial sphere: only those petitions were allowed which did not challenge the Islamic framework of law being designed by those in power, which essentially defeats the purpose of such a judicial entity. Therefore, these human agents sitting on the FSC bench were elevated to the role of interpreters of what constitutes Muslim Personal

¹⁵ Ali Shan Shah, Muhammad Waris, 'Islamization in Pakistan: A Critical Analysis of Zia's Regime', 1 (2016) <<https://grjournal.com/jadmin/Auther/31rvIolA2LALJouq9hkR/YxFmikmkcM.pdf>> Page 265

¹⁶ 'The Testimony of Women in Islam' <<https://www.dar-alifta.org/Foreign/ViewArticle.aspx?ID=143&text=testimony>> accessed 5 December 2022

¹⁷ Lora Hadzhidimova, 'Juridical, Religious And Globalization Perspectives On The Constitutions Of Egypt And Tunisia After The Arab Spring' (*Masters, Old Dominion University* 2016). Page 44

¹⁸ Charles H. Kennedy, 'Repugnancy To Islam—Who Decides? Islam And Legal Reform In Pakistan' (1992) 41 *International and Comparative Law Quarterly*. Page 772.

¹⁹ *Ibid*, 772.

²⁰ *Ibid*, 772.

²¹ *Ibid*, 773.

Law. As a consequence, these human agents were also endowed with broad, unchecked arbitrary powers. The scope of discretion provided to persons sitting in the FSC contributed to aligning the concept of Islamic Law in Pakistan to their own personal understanding of Islamic principles. Such unchecked power makes a country vulnerable to political instability, as it is then subject to the whims of those in power at the time.

Zia was careful to maintain tight control over the bodies examining the validity of Islamic laws in order to use religion in a manner that would further his agenda. He personally appointed judges to sit on the Shariat Appellate Bench and reserved the power to revise impugned laws for his own CII appointees who worked in conjunction with the executive branch of the government.²² Judicial autonomy was never Zia's aim; the FSC was designed to be nothing more but a political tool of the executive.²³ Zia wished to further strengthen his authoritarian rule by formalising Article 2-A of the Constitution, which would endow supra-constitutional powers on his courts to strike down elements of the Constitution he found disagreeable.²⁴ Zia also promulgated his own Shariat bill, the Enforcement of the Shariat Ordinance, 1988, which attempted to effect a compromise on the issues of the supremacy of the *Shariah* and the jurisdiction of the superior courts to interpret the *Shariah*.²⁵ However, this bill never passed due to Zia's untimely death.

Nevertheless, the power exercised by Zia during his dictatorship resulted in monumental changes to the history of Pakistan and its Constitution. He established the FSC and introduced punishments under Islamic law. These interpretations of Islam as discussed earlier, were subject to the biases of those interpreting them to further the objectives of Zia's regimes.

3. SAUDI ARABIA

In Saudi Arabia, the State and religion are relatively more co-dependent than in Pakistan. While the *Shariah* needs the ruler's commitment and enforcement, the state requires *Shariah* to legitimize

²² Mathew J. Neslon, 'Islamic Law in an Islamic State' (*Eprints.soas.ac.uk*). Page 256.

²³ Ibid, 255.

²⁴ Ibid, 256.

²⁵ Charles H. Kennedy, 'Repugnancy To Islam—Who Decides? Islam And Legal Reform In Pakistan' (1992) 41 *International and Comparative Law Quarterly*. Page 772.

its rule.²⁶ Submission to God is inherently linked to obedience to the temporal rules.²⁷ Thus, the rulers are proactive agents of Islamic governance.

The concepts of '*Maslahah*' and '*Siyasah*' legitimise the laws concerning the well-being of the public. *Siyasah* is 'the act of the ruler on the basis of *Maslahah* [protection of the objectives of the law], even if no specific text [of the Quran or the Sunnah] can be cited as the source of the act.'²⁸ If this power is used by rulers within the general principles of Islam, it becomes binding on their subjects. Therefore, the doctrine of *Siyasah Shari'ah* (rules passed by a ruler in accordance with the *Shari'ah*) is an effective tool for the smooth functioning of the country's justice system within the ambit of the general principles of Islamic law.²⁹

Examples of *Maslahah* and *Siyasah Shari'ah* are employer/employee relations and traffic regulations. Articles 55 and 67 of the Saudi Constitution of 1992 enshrines *Siyasah Shari'ah* as the most essential tool at the monarch's disposal to conduct state matters under the protection of the *Shari'ah*. Frank Vogel suggests that the religious definition of *Siyasah Shari'ah* in Saudi Arabia offers the widest possible basis for royal legislation.³⁰ A 'fatwa' is a formal ruling by a qualified religious scholar on a point of Islamic law. It is important to note that a fatwa is authoritative but not binding. This means that, unlike decrees passed by Judges, a fatwa itself is non-obligatory in nature. The Saudi monarch either validates an existing fatwa by passing it as a royal decree or alternately, passes new legislation based on an existing fatwa. A famous example of a fatwa turned law concerns women driving in Saudi Arabia, whereby a fatwa was passed in 1990 prohibiting women from driving alone because it was seen as a threat to their safety.³¹ The Saudi Ministry of Interior later turned this fatwa into law.

The monarch also legitimises political measures by employing fatwas to validate their actions. For example, the Saudi monarch passed a royal decree prohibiting women from practising certain

²⁶ Muhammad Al-Atawneh, 'Is Saudi Arabia A Theocracy? Religion And Governance In Contemporary Saudi Arabia' (2009) 45 Middle Eastern Studies. Page 727.

²⁷ Ibid, 727.

²⁸ Muhammad Mushtaq Ahmed, 'The Doctrine of Siyasa in Hanafi Criminal Law and its Relevance for the Pakistani Legal System' (2013) 52 Islamic Studies. Page 29

²⁹ Ibid, 30

³⁰ Frank Vogel, 'Islamic Law and Legal System: Studies of Saudi Arabia', (2000), Page.169-70, 341-3

³¹ Muhammad Al-Atawneh, 'Is Saudi Arabia A Theocracy? Religion And Governance In Contemporary Saudi Arabia' (2009) 45 Middle Eastern Studies. Page 730

'inappropriate' professions, which included jobs involving interactions between men and women.³² This decree led to the cessation of existing positions for women working in clerical or managerial jobs, which led to confusion and disarray. As a consequence, the Saudi monarch passed another fatwa to clarify the *Shariah's* stance on this subject by stating the permissible conditions for women's employment in the work sphere.³³

The Saudi monarch is aware of its religious façade and seeks validation of political decisions, particularly those liable to contradict the Shariah.³⁴ An example of this is the fatwa issued in 1979 affirming the use of weapons in the al-Haram al-Sharif premises.³⁵ This fatwa validated the use of physical force against certain fundamentalists who had taken over the Ka'bah. However, this action was in blatant violation of the *Shariah's* prohibition. This was a way for the Saudi Government to legitimise its decision by rooting it in Islam.³⁶ Therefore, it can be seen that the *ulema's* supposedly central role contributes to the theocratic façade of the state. As a consequence, the divine law is used to advance the positivist authority of the state.

The Saudi Constitution further cements this observation by explicitly acknowledging that Islam and the state are inseparable. Islamic law is recognized as the source of both political and legal powers.³⁷ The monarchy secures its authoritarian rule by including provisions in the Saudi Constitution that endow on it the power to confiscate private property³⁸ and practice censorship.³⁹ The government is structured in a manner that the King also occupies the office of the Prime Minister which empowers him to appoint Deputies and members of the Council of Ministers.⁴⁰ As a consequence, the King can exercise influence in the execution of judicial judgments; command of the Armed Forces; declaration of emergency measures and the state of war; and adopting measures capable of removing dangers threatening the Kingdom or its interests.⁴¹ The King has broad unfettered powers in Saudi Arabia, thereby allowing authoritarianism.

³² Ibid, 731

³³ Ibid, 731

³⁴ Ibid, 732.

³⁵ Ibid, 732

³⁶ Ibid, 727.

³⁷ The Constitution of the Kingdom of Saudi Arabia (1992). Article 1, article 48, article 67.

³⁸ Ibid. Article 19.

³⁹ Ibid. Article 40.

⁴⁰ Ibid. Article 44.

⁴¹ Ali M. Al-Mehaimeed, 'The Constitutional System Of Saudi Arabia: A Conspectus' (1993) 8 Arab Law Quarterly.

The King reserves the right to amend or revise the constitution via Royal Orders, which is also the same legal instrument used to promulgate it in the first place.⁴² Resultantly, the Constitution is easily amendable by the King, which makes it vulnerable to frequent changes. The King also has the final say on issues the *ulema* identifies as 'harmful' to religious values. As a consequence, throughout Saudi Arabia's history, the *ulema* has been used as a tool to legitimise the monarchy. The *ulema* occupies offices in the government such as the Ministry of Education and Justice but their power is limited because it is subject to the prime minister.⁴³ The *ulema*'s judicial authority is also limited because of the creation of the Ministry of Justice in 1970, which subjected all religious courts to the government's political authority.⁴⁴ The role of the Ministry of Justice is to regulate the legal sphere of the country which is rooted in Islamic law. The Ministry supervises the courts and also regulates and improves judicial and documentary services. This means that the Ministry is responsible for documenting final rulings of cases. The publication of judgments and cases greatly contributes to the consistency of judgments in the practical life of the law.⁴⁵ Therefore, the publication of judgments is recognized as a successful attempt by Saudi Arabia to strengthen Islamic law.⁴⁶ However, it is important to note that Saudi law does not formally recognize precedent without legislative text.⁴⁷ This means the *ulema*'s status has been reduced to no more than a rubber stamp for the Saudi monarch's decisions.⁴⁸

4. TUNISIA

In light of the discussion above, it is evident that in Pakistan and Saudi Arabia, political Islam is being used as a tool by those in authority to strengthen their rule and further their agendas. Constitutions are revised and legislations are passed under the pretext that it is to align the country to Islamic principles further, when in fact, religious scholars and the *ulema* are not the dominant powers. Religion is subservient to politics as faith-based appeals are commonly employed to manipulate the public into obedience. However, the possibility of successful Islamic democratic

⁴² Ibid.

⁴³ Alexander Bligh, 'The Saudi Religious Elite (ULAMA) As Participant In The Political System Of The Kingdom' (1985) 17 International Journal of Middle East Studies. Page 43.

⁴⁴ Ibid, 43.

⁴⁵ Chibli Mallat, 'Saudi Law Coming Of Age' (2017) 65 Al-Abath: Journal of the Faculty of Arts and Sciences American University of Beirut. Page 148.

⁴⁶ Ibid, 153.

⁴⁷ Ibid 153.

⁴⁸ Alexander Bligh, 'The Saudi Religious Elite (ULAMA) As Participant In The Political System Of The Kingdom' (1985) 17 International Journal of Middle East Studies. Page 47.

states should not be ruled out entirely. Blueprints of states inspired by Islam can lead to the establishment of stable political systems by curbing authoritarianism.

Tunisia is a modern example of an Islamic democratic state where the interests of politicians are being enforced without the involvement of religion to manipulate the public. An example of this can be seen in the structure of Ennahda, a self-defined Islamic democratic political party in Tunisia. Ennahda no longer identifies with the label of 'Islamism' because of the negative connotation associated with it in light of the past acts of radical extremists.⁴⁹ Ennahda's evolution to a party of Muslim democrats shows that Islamic movements can play a vital, constructive role in fostering successful democratic transitions.⁵⁰ The Ennahda movement had originally begun as a social movement fighting against repression and dictatorship. It began in 1960 in response to fears of Westernization in post-independence Tunisia.⁵¹ However, seeing the need of the time, the party, guided by pragmatism and transactional politics, later decided to distance the movement from ideological principles.⁵² This Muslim democratic party is inspired by Islam while simultaneously observing the fundamental principles of secular democracy.⁵³ The Ennahda evolution proves that democracy and Islam are compatible and that Islamic movements can play a vital role in fostering successful democratic systems.⁵⁴ In Tunisia, both secularists and Islamists made concessions to guarantee and consolidate their part in Tunisian democracy.⁵⁵

While Islam still guides the actions of the Tunisian government, the age-old ideological debate about Islamisation and secularisation is no longer considered necessary or relevant. Therefore, under Article 1 of its 2014 Constitution, Tunisia accepts the role of religion in its legal system, but it is not as determinant a source of law as it is in Pakistan or Saudi Arabia. Tunisia recognizes the vagueness of the *Shariah* legal process, its lack of standardisation, and its consequent arbitrariness.⁵⁶

⁴⁹ Rached Ghannouchi, 'From Political Islam To Muslim Democracy: The Ennahda Party And The Future Of Tunisia' (*J stor*, 2016). Page 59

⁵⁰ *Ibid*, 60.

⁵¹ Hamza Meddeb, 'Ennahda's Journey From Preaching to Politics' (2019) Ennahda Uneasy Exit From Political Islam. Page 3

⁵² *Ibid*, 7

⁵³ Grewal Sharan, 'Where are Ennahda's competitors?'(2018) Issue Brief no.04.26.18 Rice University's Baker Institute for Public Policy.

⁵⁴ Rached Ghannouchi, 'From Political Islam To Muslim Democracy: The Ennahda Party And The Future Of Tunisia' (*J stor*, 2016). Page 60

⁵⁵ Hamza Meddeb, 'Ennahda's Journey From Preaching to Politics' (2019) Ennahda Uneasy Exit From Political Islam. Page 7

⁵⁶ Malika Zeghal, 'The Implicit Sharia: Established Religion And Varieties Of Secularism In Tunisia' (*Nrs.harvard.edu*, 2017) <<http://nrs.harvard.edu/urn-3:HUL.InstRepos:34257917>> accessed 28 April 2021.

The process of Shariat courts was disorganised because there was no codification process to compile the law into a single standardised form that could be understood by all concerned parties - accessible to both judges and litigants.⁵⁷ The Tunisian government does not question the content of *Shariah*, but viewed the *ad hoc* process that characterized Shariat courts as disorganised, corrupt, and unjust.⁵⁸ This view stemmed from the procedures in place for the law's implementation. There was simply a compilation of legal judgments and opinions written by mediaeval jurists that a few specialists could only understand. As a result, the law was neither accessible nor easily understood by those affected by it, leaving it to the arbitrary interpretation of the jurists implementing it.

Today, a *quid pro quo* relationship exists between the Government of Tunisia and the *ulema* because of actions taken during the authoritarian rule of Bourguiba in the mid-19th century.⁵⁹ In the 19th century, parties reached a compromise whereby the Bourguiba satisfied the *ulema* by making Islam constitutive of the State under Article 1 of their constitution. In return, the *ulema* overlooked and accepted violations of Islamic law.⁶⁰ Repression of political and civil liberties, the endorsement of social inequality and the spread of corruption marks the authoritarian Bourguiba regime.⁶¹ Islam is constitutive of the state even today. Article 1, declaring Islam Tunisia's religion, and Article 2, declaring the supremacy of the law, cannot be amended.⁶² In return for Article 1 of the Tunisian Constitution, the *ulema* overlooks violations of Islamic law in the Personal Status Code, which is of equivalent legal value to the Constitution in Tunisia.⁶³ The Tunisian Constitution does not recognise *Shariah* as a source of legislation because that would increase the role of political Islam in the legal regime.⁶⁴ However, under Article 6 of the Constitution, the State has taken the 'guardian of religion' role, making it the protector of the sacred, prohibiting incitement to hatred.⁶⁵ This role as guardian is alarming because it exposes the accused to violence and empowers state representatives to stifle freedom of speech and religion.⁶⁶

⁵⁷ Ibid

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid

⁶¹ Rached Ghannouchi, 'From Political Islam To Muslim Democracy: The Ennahda Party And The Future Of Tunisia' (*J stor*, 2016). Page 60

⁶² Tunisia's Constitution of 2014

⁶³ Malika Zeghal, 'The Implicit Sharia: Established Religion And Varieties Of Secularism In Tunisia' (*Nrs.harvard.edu*, 2017) <<http://nrs.harvard.edu/urn-3:HUL.InstRepos:34257917>> accessed 28 April 2021.

⁶⁴ Evylyn Aswad, 'The Role Of Religion In Constitutions Emerging From Arab Spring Revolutions' (2015) 16 *Georgetown Journal of International Affairs*.Page 165.

⁶⁵ Ibid, 165.

⁶⁶ Ibid, 165.

Tunisia protects freedom of conscience and the right to freely exercise one's religious practices in Article 6 of its Constitution but fails to comment on other aspects of religious freedom. While Tunisia has taken steps to establish a democratic framework, it is not yet ready to accept all the consequences of religious freedom. Tunisia still views the state as the most potent restrainer and governing body of religion.⁶⁷ However, Tunisia remains the most liberal Muslim country in its efforts to acknowledge liberal values such as freedom of conscience, civil liberties, social justice, religious tolerance, belief and gender equality.⁶⁸ The Tunisian government understands that there should be separation of mosque and state, and that a political party should not represent a specific religion. Neutral institutions should deal with religion because religious places like mosques should be a place to bring people together not endorse divisions.⁶⁹

The separation of state and mosque is also crucial because the restriction on *imams* from holding positions of power in political parties and the requirement of them being trained as specialists garners them the skill and credibility required by a learned religious leader.⁷⁰ Tunisia recognises Islamic society as free from human authority and understands that the key to legitimacy is continued consent. Liberal Islam is founded on the concept that all humans are free and any acts towards suppressing this freedom contradicts the divine will.⁷¹ Islamic tools such as *Ijtihad* which bridge the gap between contemporary texts and religious texts is the foundation of liberal Islam.⁷² *Ijtihad* can be considered a philosophy of renewal because it allows access to the reservoir of Islamic wisdom in guiding life in the here and now, making a place for Islam in the modern world.⁷³

Tunisian rulers such as Ghannouchi recognize the existence of the concept of the Islamic state. He views Islam as a code of conduct and set of principles for a systematic government.⁷⁴ He identifies the following principles as the foundation for a modern Islamic democracy: *kehalifa* (the belief that man is a vicegerent on earth); freedom and responsibility; justice; legitimacy; *Shariah*;

⁶⁷ Malika Zeghal, 'The Implicit Sharia: Established Religion And Varieties Of Secularism In Tunisia' (*Nrs.harvard.edu*, 2017) <<http://nrs.harvard.edu/urn-3:HUL.InstRepos:34257917>> accessed 28 April 2021.

⁶⁸ M.A Muqtedar Khan, 'Radical Islam, Liberal Islam', 102 (2003). Page 417.

⁶⁹ Rached Ghannouchi, 'From Political Islam To Muslim Democracy: The Ennahda Party And The Future Of Tunisia' (*J stor*, 2016). Page 63

⁷⁰ *Ibid*, 63

⁷¹ Radwan A. Masmoudi, 'What is Liberal Islam?: The Silenced Majority', 14 (2003).Page 40-44

⁷² M.A Muqtedar Khan, 'Radical Islam, Liberal Islam', 102 (2003). Page 420

⁷³ *Ibid*, 420.

⁷⁴ Nazek Jawad, 'Democracy In Modern Islamic Thought' (2013) 40 *British Journal of Middle Eastern Studies*.Page 326.

and *shura* (a council for consultation).⁷⁵ The findings of many scholars support Tunisia's division of the political and religious spheres. Upon strict analysis, the legal subject matter is dealt with in only 80 Quranic verses.⁷⁶ Therefore, Ghannouchi is correct in his claim that the political sphere was left vacant on purpose so that *Ijtihad* could be used to deal with issues in a manner appropriate to the societal circumstances of the time.⁷⁷ A nation's constitution enshrines its core values, and the framework of national covenants and declarations should exist separately from the divine sources of law.⁷⁸ While religious sources should influence a nation's political sphere, they must not dictate it.

The restriction of religious influence on a state is essential because the separation of state and religion prevents officials from appealing to the religious sentiments of the masses and manipulating them to further their political agendas.⁷⁹ This separation of state and religion accompanied by effective governance of religious institutions by learned religious scholars contributes to better religious education, as well as more moderate and progressive Islamic thinking in Tunisia.⁸⁰ Even the regular curriculum taught in public schools in Tunisia is designed to develop universal values of cooperation, equality, responsible freedom and social justice.⁸¹ Islamic education in public schools is taught as 'Islamic Thinking,' and its objective is to encourage analytical thinking amongst the youth which does not contradict the main pillars of Islam.⁸² Tunisia treats Islam as a blueprint for human rights that prioritises the will of the public and their freedom over the interest of a sole individual, which is the crux of the concept of democracy.⁸³

The Government of Tunisia is a direct result of dialogue and consensus between both political and religious spheres, and representatives of the former regime, nullifying any democratic debate.

⁷⁵ Ibid, 328.

⁷⁶ Lora Hadzhdimova, 'Juridical, Religious And Globalization Perspectives On The Constitutions Of Egypt And Tunisia After The Arab Spring' (*Masters, Old Dominion University* 2016). Page 52.

⁷⁷ Nazek Jawad, 'Democracy In Modern Islamic Thought' (2013) 40 *British Journal of Middle Eastern Studies*.Page 329.

⁷⁸ Lora Hadzhdimova, 'Juridical, Religious And Globalization Perspectives On The Constitutions Of Egypt And Tunisia After The Arab Spring' (*Masters, Old Dominion University* 2016). Page 52.

⁷⁹ Rached Ghannouchi, 'From Political Islam To Muslim Democracy: The Ennahda Party And The Future Of Tunisia' (*J stor*, 2016). Page 64

⁸⁰ Ibid, 64

⁸¹ Muhammad Faour, "Religious Education and Pluralism in Egypt and Tunisia" (2012, Carnegie Endowment of International Peace. Page 8

⁸² Ibid, 9.

⁸³ Nazek Jawad, 'Democracy In Modern Islamic Thought' (2013) 40 *British Journal of Middle Eastern Studies*.Page 328.

The Government of Tunisia endorsed a compromise of policy choices and negotiated contentious issues on the nature of the country's emerging democracy.⁸⁴ This national dialogue was essential to finalise the Tunisian Constitution in 2014. The discussion was regarding compromises between the parties and concessions from Islamists on important matters of concern such as blasphemy, equality of genders, the role of *Shariah* as a source of legislation, and lastly, freedom of belief and conscience.⁸⁵ These concessions on the part of Islamists guaranteed a neutral state that is neither secular nor Islamic. The concessions are the result of the Ennahda Government's efforts to organise workshops and meetings with its more militant members to convince them that doctrinal demands were untenable in the existing regional and national context.⁸⁶ Moreover, the affirmation of religious freedom and Muslim identity in Tunisia marked rebuilding society according to principles inspired by Islam.⁸⁷ As a result, Tunisia's durable and robust democratic structure has stood practically alone in the Arab world since 2011. While Tunisia has much to desire in the economic sphere, it has made progress in securing liberal values for its people, including (but not limited to) the freedom of speech and establishing the principle of political inclusion. The Government of Tunisia has also shown great signs of hope for women's rights.

Hence, those who argue that the Muslim world cannot embrace democracy and liberty do a great disservice to both Islam and democracy by this assertion.⁸⁸ Ghannouchi, the president of the Ennahda movement, adopted a stance which set him apart from more conservative Islamic movements. Ghannouchi garnered a wider support base for himself by collaborating with similarly oppressed secular opposition.⁸⁹ While Ghannouchi accepted Western-style multi-party politics, he did so only on the condition that it did not marginalise or reject religion. The Government of Tunisia has shown a great willingness to put its country before its political interests.

5. CONCLUSION

A closer analysis of Tunisia's political structure illustrates that it is possible for political Islam to successfully contribute to establishing stable, democratic political systems while keeping

⁸⁴ Hamza Meddeb, 'Ennahda's Journey From Preaching to Politics' (2019) Ennahda Uneasy Exit From Political Islam. Page 7

⁸⁵ Ibid, 7

⁸⁶ Ibid, 8

⁸⁷ Ibid, 8

⁸⁸ Mark Green & Hallam Ferguson, 'Islam and Democracy' (2015) 39 Fletcher F World Aff. Page 27

⁸⁹ Helen Haft, "Political Islam in Tunisia: The History of Ennahda" (2019) 52 NYU J Int'l L& Pol. Page 329

authoritarian elements in check. While their society is still inspired by Islamic principles, they are more concerned with building an inclusive and democratic system, rather than simply focusing on the role of religion in the country. The separation of religion and state is crucial to checking authoritarianism and the abuse of faith-based appeals to manipulate the public. This separation of mosque and state in Tunisia rebukes secular tyrants and violent extremists alike. It restores the independence of religion as the state no longer interferes and represses religious activities. Tunisia is a democracy that promotes social and economic rights, and respects individual rights. Tunisia is not a dictatorship like other Muslim countries. This means it has the freedom to focus on a practical agenda and economic vision, instead of fighting against repression and authoritarianism. The education system in Tunisia is designed in such a manner as to foster analytical thinking, and promote pluralism and democratic values while ensuring there is no contradiction to the main pillars of Islam. Whereas, in other Muslim countries like Pakistan and Saudi Arabia, the unchecked powers of rulers combined with controlling religious leaders threaten the delicate balance of their political systems.

As discussed earlier, in many Muslim-majority countries like Pakistan, the stability of their political systems is threatened when extremist Islamist groups and entities influence legislation. These parties can exercise such power as the heads of the state consider it necessary to legitimise and strengthen their rule. For example, authoritarians like Zia ul Haq's decisions were influenced by his desperation to seek the support of the ulema to legitimise his rule. This desperation stems from the fear of their political and personal survival, given the looming threats of assassinations, revolts, and military coups. Zia exploited the nation's desire for an Islamic system to strengthen his dictatorial rule for 11 years. He worked towards 'correcting' the liberal nature of Pakistan's Constitution and Islamising the nation. As a result, Islamists were given a seat in all matters of the nation. Their influence extended from the educational sphere to the affairs of the government, where particular institutions were created for them. His ideal Pakistan was devoid of any aspect of liberalism, namely liberal political groups and activists.

Similarly, the political system of Saudi Arabia is an example of authoritarian rule leading to political instability. In Saudi Arabia, power is centralised. The King reserves essential positions in the government like the Office of the Prime Minister, allowing him to influence the structure of the rest of the government as well. When one person controls such influential areas of law, it is not easy to check the exercise of authoritarianism. At the same time, the *ulema* is commonly considered representative of Islamic scholars who guide the government in Islamic issues, but that is not the

case in Saudi Arabia. The *ulema* gradually lost their power to the King, and now act as a rubber stamp of approval for the King's decisions.

Consequently, it can be seen that the powers of state and religious institutions considerably overlap in Pakistan and Saudi Arabia. Although, on the face of it, a party is seen to be in control, there is, in fact, another party operating behind the scenes who holds the authority to make decisions. For example, in Pakistan, while Zia was thought to be in control, in reality, every decision of his was dictated by the opinions of Islamists. Likewise, in Saudi Arabia, the *ulema* is believed to be representative of religious features, but over time their power has slowly been lost to the King. Institutions, like the government in Pakistan, and the *ulema* in Saudi Arabia, depend on the party that is actually wielding power behind the scenes. For example, Zia in Pakistan depended on the *ulema*, and the *ulema* in Saudi Arabia depended on the monarch to secure their place and role in the running of the state. Fundamental rights in Pakistan were curtailed when it was thought to be necessary to further the political agenda of Zia, who was subjected to the whims of the *ulema*. The FSC was provided with a scope of discretion sufficient to align the concept of Islamic Law in Pakistan to their understanding of Islamic principles. Similarly, the King of Saudi Arabia rooted his decisions in existing Islamic fatwas to legitimise them while endorsing fatwas to turn them into binding laws that aligned the state's values to his concept of what an Islamic state should be.

Therefore, a close analysis of Muslim democracies illustrates that under the right circumstances, conservative Islamic parties and secularists can co-exist and work towards bettering a state in the same political sphere. Political instability results from no consensus between political and religious groups and an existing blatant imbalance of power and influence. A stable constitutional system results from compromise and concession by both secular and religious parties. For example, the Constitution of Tunisia is the product of debate, compromise and discussion on every article, which was made possible only because all involved parties prioritised their country over their ideologies and political interests.

A thriving Muslim democracy is one where the state is neutral, and is neither secular nor Islamist but simply the torchbearer of freedom of thought, religion and belief. Neither party should have the power to influence the other. Consequently, strict checks are necessary on the powers of both religious and political groups to maintain a balance. Stable constitutional systems result from the checking of authoritarianism in constitutional frameworks. No party should have the power to monumentally change the blueprint of a nation or the way it is run based on popular whims for

their short-term political gains. Hence, Tunisia's emergence as the only functioning Muslim democracy is attributed to its foresight of allowing religion to inspire Tunisia's Constitution without overpowering or overriding it.