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Contemporary Islamic Law between Tradition and Challenges of Modernity: Some Examples Worth Consideration

Sodobno islamsko pravo med tradicijo in izzivi modernosti: nekaj upoštevanja vrednih primerov

Abstract: Islamic law is a perfect divine law; therefore, man cannot change it. This law was once and for all given to people to be fulfilled as something fixed and immutable. Man can only interpret and explain it. Shari'a is a collection of Islamic religious law written in the Quran. Islamic law covers all spheres of human life, precisely defining the duties of a believer towards the Creator. The changing world in modern times brings forth the notion that Islamic law must be modified. Thus, it is necessary to adapt Islamic legislation to the laws and legal norms of Latin tradition. This is due to the development of economic cooperation between Islamic countries and other parts of the world. That is why a civil code formalizing Shari'a was developed and implemented. Islamic law is also a source of controversy due to the severity of penalties for offences. This article also analyses the situation of women in the Muslim world, which, despite the changes, is still complicated and often tricky. This article offers an interdisciplinary approach; it combines various fields of knowledge: theology, politics, law, and religious studies.

Keywords: Islam, law, politics, Quran, Shari'a, modernity

Povzetek: Islamsko pravo je popolno božje pravo, zato ga človek ne more spremenjati. To pravo je bilo ljudem dano enkrat za vselej, da bi ga izpolnjevali kot nekaj vnaprej določenega in nespremenljivega. Človek ga lahko zgolj interpretira in razlaga. Šarija je zbirka islamskega verskega prava, zapisanega v Koranu. Islamsko ali šeriatsko pravo pokriva vsa področja človeškega življenja in natančno določa vernikove obveznosti do Stvarnika. Spreminjajoči se svet moderne dobe postavlja v ospredje prepričanje, da se mora islamsko pravo preoblikovati. To je posledica razvoja ekonomskega sodelovanja med muslimanskimi državami in drugimi deli sveta. Od tod izhajata tudi razvoj in uresničevanje civilne zakonodaje, ki šeriatsko pravo formalizira. Islamsko pravo je obenem vir nasproto-

vanja zaradi ostrine kazni za storjene prestopke. Članek analizira tudi položaj žensk v muslimanskem svetu, ki je kljub spremembam še vedno zapleten in pogosto težek. Članek ponuja interdisciplinarni pristop, saj združuje različna področja védenja: teologijo, politiko, pravo in religijske študije.

Ključne besede: islam, pravo, politika, Koran, šarija, modernost

1. Introduction

The law is a system of norms of conduct that arose with the existence and functioning of a state or other ordered social organism. Currently, there are various areas of state law, including secular and religious law, in the world. Islam is a unique religious system in which religious life is closely connected to everyday life. That is why religious law also applies to non-religious social life. The holy book of Islam Quran is the Word of God and a set of religious principles and a legal code and constitution for many Islamic countries. This is because there is no division between the sacred and the profane in Islam. All human deeds must be following God's will, as communicated in Quran.

An analysis of religious law in Islam has already been undertaken in *Bogoslovni vestnik/Theological Quarterly*. Historically, this topic was dealt with by Marjana Harcet (2008), Urška Flisar, and Mari Jože Osredkar (2018). Contemporary problems of the Muslim community in Slovenia analyses Urška Jeglič (2020). This article aims to analyze modern Islamic law, which must reconcile the hard-religious principles and moral norms arising from the Quran with the requirements of the contemporary world. In addition, Islamic law must adapt its principles to international relations (Ocvirk 2004) because Islamic World engages in lively economic and trade exchanges with the Latin world, in which state law is separated from religion.

The literature on the analyzed topic is rich, but due to the dynamically occurring changes in legal principles, it constantly needs updating research on modern Islamic law. Undoubtedly, attention should be paid to the publications: Mohamed Al-Nowaihi (1975), Jan Michiel Otto (2008), and Ann-Elizabeth Mayer (1995), in which researchers analyze the implementation of Islamic law in current conditions. This article also refers to Nedžad Grabus' (2012) analysis of changes in Muslim societies and Drago K. Ocvirk (2012) showing social changes in the Islamic world due to the Arab Spring. On this basis, a critical interpretation of the sources will be carried out.

2. Analysis

2.1 Modern legal elements in Islam

Contemporary times in the Islamic world begins with the fall of the caliphate in 1924. During the National Assembly of Turkey, held on March 3, 1924, led by Mu-

stafa Kemal, the abolition of the caliphate was adopted. Thus, the separation from the old, hierarchical, and conservative power is closely connected with religion. In this way, a modern state was built - the Republic of Turkey (Shaw and Shaw 2012, 564–576). However, much earlier, in the dawn of Islam, changes were initiated regarding the law, its interpretation, and adaptation to changing international conditions and civilization development. These changes have had varying degrees of impact and often continue to influence the shaping of legal systems in countries with Islamic dominance.

The strengthening of the European countries in the international arena in the nineteenth century, while weakening the Turkish power, led to many reformist movements among Islamic scholars. They saw the need to renew Islam on the religious, legal, economic, and social levels. Muslim theologian Jamal ad-Din al-Afghani (1838–1897) questioned the closure of the possibility of creating law. He supported his concept by the fact that no historical scholar banned the creation of law. Only in the 10th century did most lawyers acknowledge this, but they did not issue a relevant, written document. Al-Afghani's demands meant that Islamic law regained the opportunity to develop and take advantage of Latin law patterns. Beginning with the mid-nineteenth century, European codes started to be introduced in the Ottoman Empire, including the „Commercial Code“ (in 1850), „Penal Code“ (in 1858), „Code of Commercial Procedure“ (in 1861), and the „Maritime Code“ (in 1863). Modernizing the Islamic world at the time of international and economic cooperation with European countries was extremely important. However, religious law could not cope with modernity (Hallaq 2009).

The response to Islamic law's westernisation was the „Ottoman Code“, known as *Mecelle*, first published in 1877 (Ayoub 2015, 121–124). The work on the code was led by Ahmed Cevdet, an Ottoman scholar and historian. This study was a civil code and was the first attempt to codify a part of Islamic law – Shari'a. He was recognized and valid throughout the Ottoman Empire. After the Empire's collapse, the „Mecelle code“ became the foundation of law in the countries founded on Ottoman debris. This code remains the basis of civil law in Jordan and Kuwait (Hallaq 2009). Another Muslim scholar, an Egyptian professor of law, Abd ar-Razzak as-Sanhuri (1895–1971), was the author of the Egyptian „Civil Code“, published in 1948, based on the French model primacy, which, however, possessed Shari'a. Abd ar-Razzak al-Sanhuri also wrote legal codes for Iraq, the Syrian Baath party, and Jordan and Libya. His vision of state law was criticized because he left much room for freedom in interpreting legal principles to a judge who could appeal to the principles of equity or natural law (Saleh 1993, 161–167). Despite many attempts to adapt local law to international standards, especially since the end of World War II, the top place still belongs to the holy Shari'a law (Otto 2008, 7–9).

The reform of modern Islamic law requires a change in how the message of the Quran is read. Christian theology is constantly developing biblical exegesis, interpreting God's message in modern times. This problem is more complex in the Islamic tradition. For centuries it was considered that the Quran should be read literally, without any human interpretation. Till today, conservative Islamic scholars

uphold this custom (Bhutto 2015, 310–314). However, modern times have naturally led to the necessity to interpret the Quran and read it in the light of the 21st century. The propagator of the contemporary reading of the Qur'an in the context of Islamic law was Abu Bakr Gumi (1922–1992), Nigeria's most prominent Sharia expert. He considered it necessary to restart *ijtihad* (Kausar 2017, 153–155), i.e., adaptation of sharia law to changing conditions, through an independent interpretation of the Quran and Sunnah. He emphasized that only in this way can a thorough reform of the law be carried out, which must be in line with the Quran but must also be guided by the good of the entire Muslim community (Harnischfeger 2008).

2.2 Islamism

Changes taking place in the Middle East, especially after World War II, contributed to the intensive search for Muslim identities. The ideology of Islamism has become an attempt to answer this search. Islamism is a political force in the Muslim world, deeply rooted in religious tradition and public awareness. The main assumptions of the ideology of Islamism primarily emphasize the importance of Islam not only as a religion but as a holistic socio-political system. It regulates various aspects of the functioning of the state, and above all, legal, economic and social. The fundamental source of proper conduct is the correct interpretation of the Quran and Hadith. Islamism aims to introduce and maintain a religious state governed by the principles of religious law, i.e., Shari'a.

Islamism does not have one ideology. Two main branches have developed—unification of the *umma* and establishment of the caliphate, and therefore the pursuit of theocracy. An example of this is the Islamic Liberation Party Hizb ut-Tahrir, founded in 1953 in Jerusalem. Currently, it is an international Islamic party proclaiming the reconstruction of the caliphate covering the entire Muslim world. He postulates the overthrow of pro-Western rule in Arab states, such as Saudi Arabia and pro-Russian. At the same time, he rejects the possibility of violent solutions, believing that postulates can be achieved through peace and dialogue. Hizb ut-Tahrir believes that an essential element in economic development is promoting the free market and private activities, while the state ownership and control of public transport, health care, public buildings and gas, and oil deposits. The party operates in Denmark, Sweden, and the United States. In Germany, its activities are prohibited (Wali 2017, 102–105).

However, the second view of Islamism is a democratic system represented by Muslim Brothers. He postulates staying with current states, but an essential element is emphasising private property on the economic level. Islamism has taken three types of action. The first is universal suffrage, enabling the people to speak, but it is not always true that they respect freedom and justice. Bottom-up social initiatives, known as *dawa*, are an essential activity. *Dawa* in Arabic means a call and is a kind of missionary activity aimed at spreading religion among non-believers and calling them to accept Islam. This activity is now called *dawa islamijja* and means the mission of spreading Islam. Undoubtedly, this element is increa-

singly becoming a severe impediment in Christianity-Islam relations. Opponents of Islam see every kind of gesture or behaviour directed by Muslims towards Christians, hidden aspirations for Islamization. Currently, *dawa* in the Muslim world also defines political organizations (Danecki 1997). The last, most controversial type of action present in the ideology of Islamism is armed struggle (Kepel 2002).

Given the above, two currents can be distinguished in Islamism: extremist and modernist. The leading representative of extremist Islamism was Sayyid Qutb, who, as a fundamentalist ideologist, postulated the complete Islamization of social and political life, and only a caliph, who holds the leader's dignity of all Muslims, can guarantee proper social attitudes. He proclaimed the necessity of fighting against all manifestations of ungodliness and apostasy. Sayyid Qutb believed that the world of the twentieth century was again in the time of *Jahilijah* (Calvert 2010). Therefore, just as it was in the time of Muhammad, ignorance must be destroyed so that God's rule on the earth will triumph again. Extreme Islamism of Sayyid Qutb sought to establish an Islamic regime based on four levels.

Restoring the original order was God's rule on earth; with the reservation, it is not to be a theocratic rule because Islam does not know the state and class of the priesthood. The establishment of such governments is inseparably connected with the resignation from the current state law and the introduction of sharia. The third postulate was to restore the office of caliph, although the thinker did not demand the establishment of a new Arab State. However, he believed that the very awareness of supreme authority in the person of the caliph would guarantee a sense of community and belonging to one political organization, and thus the abolition of a multi-party political system (Khan 2001, 221).

The representative of modernist Islamism is Tariq Ramadan, the grandson of the founder of The Muslim Brotherhood. Tariq Ramadan was born in Geneva; he is a Muslim theologian and preacher. He lives in Switzerland and is a professor at the University of Oxford. The scholar propagates the idea of being a loyal citizen of European countries while maintaining a complete Muslim identity (Grabus 2012, 541). He founded the Swiss Muslim movement, which organizes various seminars and lectures on interreligious subjects. He actively participates in many actions for the dialogue between Islam and other religions. While remaining a Muslim, he perceives the misconduct of members of the religious community (Ramadan 1999). He is critical of human rights violations in many Muslim countries. For this reason, he has the status of an undesirable person in Saudi Arabia, Egypt, Tunisia, and Syria.

However, Tariq Ramadan is controversial among Muslims and European columnists, especially in France and often also in the academic community. Sometimes accused of double morality, and thus conducting hidden Islamization of Europe. He is also often seen as an emissary of The Muslim Brotherhood in the Western world. Opponents of Tariq Ramadan also accuse him of practising *taqiya*, allowing in Islam, concealing actual views in their activities to protect themselves from imminent danger.

The Muslim world has established the following documents: „Universal Islamic Declaration of Human Rights“ (1998) adopted by Islamic Council in Paris on 19 September 1981 announced at the headquarters of UNESCO, „Cairo Declaration on Human Rights in Islam“ (2012) adopted by Conference of Foreign Ministers in Cairo on 5 August 1990 and „The Arab Charter on Human Rights“ (2006) established in 1994, but no country has ratified it. The current version of the Charter was adopted by the Council of the League of Arab States on 22 May 2004. The Charter came into force in 2008 after seven of the League of Arab States members had ratified it. These documents highlight the universal principles of human life on earth, such as the equality of all people, non-discrimination on the grounds of sex, race, and language, and religious freedom. At the same time, these documents highlighted the values arising from Islam’s religion, thus being in line with Shari’a laws. It should also be emphasized that all the rights and freedoms provided in these documents are subject to Islamic Shari’a law. It is also a source of interpretation for individual paragraphs. Furthermore, although most Muslim countries have recognized these documents, they are still not always and not in all parts of the world dominated by Islam; their provisions are applied and respected (Ocvirk 2004, 328–329).

2.3 Controversies regarding Islamic law

It should be remembered, however, that despite the changes taking place in the Muslim world, including on the legal plane, there is a constant struggle between what is religious, originating from Islam, and what is secular, and therefore foreign elements, imposed in a way by the Europeans on the Muslim world. Subsequent reforms of the law and attempts to adapt it to the requirements of modern times meant that secular laws entered areas reserved only for religious laws. Despite the partial adaptation of French or English legal systems to the conditions of the Islamic world, Shari’a has always dominated over foreign-derived patterns of Latin law. On this plane, the most significant misunderstandings in the interpretation of the law by the Muslim world are created, and at the same time, the fear of Islam is intensified. Often, the drastic steps taken by Islamic legislation are highly controversial in the Latin world. In Sunnis, theological schools emerged, whose representatives were considered the only source of the true faith and teaching the Quran and the prophet’s Tradition (Flisar and Osredkar 2018, 1081–1082). Departure from this path was treated and is often still heresy - *bid’a*. Traditionalists believe that man must follow God’s direction. Theological schools made it possible to learn about religion thoroughly. Scholars belonging to a given school promoted a specific way of interpreting the principles of faith and law. Over the centuries, many different theological schools were established. The most popular include Mutazilite, Asharic, and Wahhabite (Marchand 2004, 22–29). It is Wahhabism that has aroused the most significant controversy, especially recently. All Islam is identified with this ideology, and the entire Muslim world is perceived through the prism of the strict laws in Saudi Arabia.

The ‚eye for eye‘ principle still applies in the Saudi kingdom. A verdict was carried out to remove the eye of a man who had spilt acid on another man, due to

which the victim lost an eye (Rosenbaum 2013, 154). In addition, a vertebral cord rupture was carried out in a man who hit a pedestrian in a car, injured his spine, and was paralyzed. In addition, other controversial punishments are imposed by Saudi courts, such as public flogging, amputation of fingers or hands for theft, stoning for adultery, and beheading for murder. Humanitarian organizations estimate that in Saudi Arabia, more than 100 penalties of this kind are carried out each year (Penal 2015, 15).

Despite such drastic penalties for offences, Saudi law is also subject to the requirements of modernity. A special symbol of the strictness of the law in Saudi Arabia was the ban on women driving a car. King Salman issued a decree lifting this ban, and thus, from June 2018, women will be able to hold licenses and officially drive cars (Krane and Majid 2018).

In a significant part of Muslim countries, there is a dual legal system: religious and state. Shari'a covers the Muslim community in three areas: religion, family life, and inheritance. On the other hand, other aspects of *umma's* coexistence are governed by civil codes, which refer to Koran law to varying degrees. Religion and morality in many Muslim countries take precedence over statute law. In connection with this, regulations are introduced which are following belief.

For this reason, Kuwait introduced a ban on the sale of mother-of-pearl oysters because this activity, according to local law scholars, is related to gambling banned in Islam. There was a custom on the market for taking bets as to the content of shells taken. Due to the concerns of the alims regarding the improper behaviour of traders and buyers, the authorities closed the market, and gamblers were threatened with a curse (Hallaq 2009).

An autopsy is problematic and difficult to reconcile with Shari'a. Islam prohibits the destruction of what God has created, which is why, in most cases, an autopsy is forbidden. It is also forbidden to donate someone's own body after death for scientific purposes. At the same time, in the event of a justified necessity to carry out an autopsy for judicial and trial purposes, it can be performed, subject to the consent of the deceased's relatives (Klöcker and Tworuschka 1995, 110). It should be emphasized that the ban on autopsies halted the development of medicine in the Arab-Muslim world.

At present, most Arab countries with Islam dominance are seeking change in civil law. Undoubtedly, the increasing number of countries in which citizens can enjoy relatively broad civil liberties speaks in favour of these changes. This is even the case in Lebanon, Tunisia, and Morocco. At the same time, the death penalty is still in force in Morocco, and those on death row are sentenced to death. The death of people in judicial and extrajudicial executions remains taboo in Morocco (Hood and Hoyle 2012, 65–67). In Egypt, the death penalty still applies. In many Muslim Middle East countries, non-governmental organizations and media freedom remain under the strict control of state administration offices in Arab-Muslim countries.

Islam knew the institution of the court in which an independent judge, called Kadi, gave the judgment. However, during classical Islam, no appeal was known,

so the sentence passed was final. There is a possibility of appealing against the sentence to a higher instance in the judiciary of Muslim countries. An essential element of the proceedings was and still are the testimonies of at least two witnesses. At the same time, it should be clearly emphasized that the testimony of a woman, in many regions of the Muslim world, is still half worth a man's testimony to this day.

2.4 Women in modern Islamic law

Contemporary Islamic law remains in the spotlight because of the position and status of women who profess Islam. Dominant patriarchy in the Islam religion and culture of the Middle East assigns considerable privileges to men; thus, the role of women in society was and in many places in the Muslim world remains limited. Therefore, Islamic law contradicts the modern idea of equality between women and men (Przybyszewski 2010, 119). It should be noted, however, that this restriction resulted from cultural conditions and constitutional law. The Quran emphasizes the equality of all people towards God. Islam guarantees numerous rights for women, which may vary depending on the country or region. Of course, the most numerous groups of rights and privileges, and at the same time many restrictions, are those regarding married and family life. However, most emotions are caused by rules imposed on Muslim women. The most prominent issue is the clothing of women professing Islam. According to Islamic principles, the characteristic women's dress raises many emotions in a world with Latin roots, seeing it as a symbol of the enslavement of a woman, striving for her elimination from society. This happened in Afghanistan during the Taliban regime in 1996–2001.

The principles of Muslim dress are set out in the law because the fashion of the Islamic world is a synthesis of Shari'a and regional customs. The basic rule is to recommend a woman's outer clothing, which cannot emphasize her body shape, so Muslim women usually wear loose dresses or long coats. The order regarding the woman's dress is written in the Quran: »Tell believers to look down modestly and keep their purity, and to show only those decorations that are visible on the outside and to impose curtains on the chest /.../«(Quran An-Nur, 31). The above words have become the primary recommendation for clothing, permanently inscribing in the Muslim tradition. This veil, called the hijab, has become synonymous with the enslavement of a Muslim woman. Perpetual discussion about the positive and negative meanings of the headscarf in Islam has been going on for centuries. Some see her as slavery and the ongoing objectification of a woman, which is still a manifestation of religious conservatism. In contrast, others see in hijab as a sign of respect and protection.

The use of traditional clothing by Muslim women is also being discussed in a world dominated by Islam. Different views apply to his presence in the modern world; some women do not look for this specificity for centuries and present their dressing lifestyle as terrible. On the contrary, you can hear the following defence about the hijab: »I am a respected woman. I am not watching, touching or talking to any man. I am protected like a precious pearl, which when touched by every-

one becomes black and dirty.« (Saleh 1972) Muslim countries indeed have far fewer sexual crimes against women than in other countries. However, it is difficult to state clearly to what extent the outfit has a significant impact on this. It should be remembered that Islamic law severely punishes all those who commit sexual offences. The lightest punishment is public flogging, while in extreme cases, a crime against morality is punishable by death. Opponents believe that, of course, the Muslim style of dress fulfils some protective functions. However, it is equally proof of the weaker sex of men who cannot control themselves at the sight of a beautiful woman (Amin 2002, 43–44).

The Quran contains the following instructions regarding women's clothing: »Tell believing women /.../ to put curtains on their breasts and show their decorations only to their husbands or fathers.« (Quran An-Nur, 31) On the other hand, in the Quran, we read: »O Prophet! Tell your wives and daughters and women believers to cover them tightly with their garments. This is the most appropriate way for them to be known and not to be offended.« (Quran al-Ahzab, 59). It should also be noted and clearly emphasized that none of the above texts requires covering the face. The obligation nowadays among orthodox Muslim women to cover their faces from unrelated men probably originates from pre-Islamic times.

Muslim women do not have the freedom to choose a candidate for a husband because he must be an Islamic believer. Still, in many places of the Arab-Muslim world, marriages are arranged. A form of discrimination against women is also an unequal way of inheriting property. Shari'a emphasizes that the man is obliged to support his family, so he is responsible for a more significant proportion of the inheritance than the woman.

The many rights guaranteed to women in the Quran are often disregarded. Women from the Arab-Muslim world are most often discriminated against in the following areas: violence against women, reproductive rights, treatment in the family, integration into society, their place in politics, and the economy. After social changes known as the Arab Spring (Ocvirk 2012), Egyptians are in the most challenging situation, as they are sexually molested in the Middle East and victims of public rape. This happened at Tahrir Square in Cairo, during protests against President Muhammad Mursi (Johansson-Nogués 2013). In Egypt, despite the legal prohibition, there is a practice of female genital mutilation called clitoridectomy. This custom is not derived from the Muslim tradition and, in the past, was not known and practised in the Arabian Peninsula. In addition, Egyptian women are victims of human trafficking and are victims of domestic violence (Marroushi 2015). A problematic situation also affects women living in Iraq. With the overthrow of Saddam Hussein's regime, the situation of women has deteriorated significantly. Many more women are forced into prostitution and are victims of violence. Due to warfare, the number of widows also increased, which entails the need for resettlement, and thus women become victims of human trafficking, kidnapping, and rape (Tawfik and Moety 2017).

3. Conclusions

Islamic law regulates the life of a religious community, and in many cases, affects social relations, known as civil or administrative. This is because Islam, as a religious and legal system, strives to embrace the whole person and to answer and meet all his needs. Referring to the history and tradition of law derived from the Quran shapes believers in the sense of community and the continuity and permanence of Islam. The practice of religion and the behaviour of believers have a legal dimension because improper human conduct may result in criminal sanctions. An offence against God's recommendations is seen as breaking the established order also for the whole community. Therefore, part of religion is law because it provides the guidelines necessary for the proper spiritual existence of man. The intensively transforming modern world also requires Muslim scholars to introduce changes in legislation.

Furthermore, although God's law is immutable and inviolable, the regulations regarding community members' daily lives are subject to modification. Therefore, the modern scientific community of Islamic lawyers and Muslim theologians calls for the reopening of the door of *ijtihad*. New interpretations of the texts are critical concerning the status of women, relations between Sunnis and Shiites, relations between Muslims and non-Muslims, the role of Muslims in non-Muslim societies, and Islamic economic theories. Updating activities in Islamic law is necessary because old interpretations no longer provide suitable answers to the difficult questions facing the Muslim world. A new opening of the interpretation of the Quran should be the liberation of religious establishments from the influence of political regimes. Contemporary Shari'a contains several bans that apply to residents of Muslim countries. However, Islamic law should not be seen only in terms of restrictions. It brings numerous privileges and facilities for followers, even though these rights are difficult for Europeans to understand. Misunderstandings about sharia are the result of different cultural conditions of the Middle East and Europeans and the place and importance of religion in the life of modern man.

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