

Freedom of Association: The Islamic Perspective

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Compared to other themes of Islamic constitutional law, the subject of fundamental rights and liberties has received little attention in the works of the early ulema. When we look, for example, at *Kitab al-Ahkam al-Sultaniyyah* of Abul Hasan al-Mawardi (d. 450 A.H) or *Al-Siyasah al-Shar'iyah* of Ibn Taymiyyah (d. 728 A.H) we find that they address subjects such as the rights of state over the citizen, powers of the state executive and judicial branches, taxation, crimes and punishment, *jihad*, and *hisbah* (i.e commanding good and forbidding evil) but references to the rights of the citizen are scanty and incidental. The notion of a fundamental or a basic right is absent in these works, which is of course to be expected of medieval juristic writings in almost any legal system. There is no separate chapter or section in either of these relating to the basic rights of the citizen. Issues pertaining to the Right of Man (*haq al-'abd*), a phrase which occurs in contradistinction with *haq Allah* (Right of Allah) are almost exclusively discussed in the context of criminal law such as the right to just retaliation and compensation for injury and torts.

As for the freedom of speech it is interesting to note that al-Mawardi who wrote his work in the mid-fifth/eleventh century during the reign of the Abbasid caliph al-Mu'tasim - a work which is, from our viewpoint, an almost totally uncontroversial exposition of the Shari'ah on constitutional

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themes - also left a will that he wished his work only to be published after his death. This is perhaps an indication as to how the prevalence of totalitarian methods of government under the Abbasids discouraged healthy development of free political thought on some of the most important themes of constitutional law.

The right to free and peaceful association is consequential to the freedom of expression both of which are upheld in Islam. The Shari'ah takes a firm and positive stand on the freedom of conscience; it also encourages free association for the achievement of beneficent and lawful purposes through peaceful methods. Indeed the Holy Qur'an enjoins mutual assistance and cooperation for valid purposes but forbids cooperation in transgression and sin.

The evidence in the Qur'an and Sunnah, although generally affirmative on fundamental rights, has nevertheless remained unconsolidated and has not been developed into a coherent doctrine to guide the theory and practice of constitutional law in contemporary Muslim societies. The somewhat belated efforts of Muslim writers on the various themes of Islamic constitutional law have on the whole been less than effective. This is partly due to colonialist domination of government and its institutions in Muslim territories. Even in the post-colonial period western domination continued in Muslim countries which have generally adopted the western theories of nation state and constitutional law. The formal constitutions that are now prevalent in these countries consist on the whole of a poor imitation of their western counterparts. This experience has had a negative effect on originality of thought and the development of alternative theories to those of the western constitutional law. The fact remains that Muslim masses in many countries are still governed by authoritarian regimes. This being the case, their academic writings on the subject are also treated, by their western counterparts at least, as having little reality in the practices of their respective governments.

With these introductory remarks I shall presently review the evidence in the sources of Shari'ah on the subject of our concern. But I do so with the awareness that it would be out of character with the Shari'ah to be treated in the style of a statutory enactment. For unlike modern statutory law the Shari'ah combines moral and religious teachings with juridical subject matter. Furthermore, the Shari'ah is mainly concerned with establishing the basic principles of law and less so with the procedural detail and methods of implementing such principles. This is due partly to the fact that the *juris corpus* of Shari'ah is the product largely of the

works of pious individuals who exerted themselves in their private capacities away from government involvement and control. They have on the whole addressed substantive issues and they are comparatively less elaborate on procedural themes which is characteristic of development within the context of government hierarchy and institutions.

The Shari'ah evidence on both freedom of speech and association is to be found under a variety of topics including the Qur'anic principle of *hisbah*, that is commanding good and forbidding evil, which takes for granted and subsumes the individual freedom of expression. For without the freedom of speech it would be inconceivable to command good or to forbid evil. Another topic of interest here is *nasihah* (sincere advice) which also subsumes freedom of speech for the individual and groups of individuals. The advice that is given by way of *nasihah* may be to any one, including persons in authority and government leaders. No prior authorisation is necessary for either *hisbah* or *nasihah* and in both cases the individual exercises his own initiative. Similarly the Qur'anic principle of consultation (*shura*) entitles the community and their leaders to be consulted on public affairs. *Shura* is the Islamic equivalent to democracy; but compared to democracy which is individualist in orientation, *shura* is more community oriented as it contemplates consultative judgment and decision, taken as a result of contact and association with those who may have something to say and contribute an opinion. And then the doctrine of *ijtihad* (personal reasoning by the qualified jurist), as well as the citizen's right to voice a constructive criticism over the conduct of government (*haq al-mu'aradah*) are all premised on recognition in the Shari'ah of the fundamental freedom of speech, expression and association.

Hisbah, is by far the broadest of all the principles referred to above. All of these, be it *nasihah*, *mu'aradah*, *shura* or *ijtihad* may be deemed, each in their respective capacities, to partake in the general concept of promoting good and of preventing evil. *Hisbah* in other words is a concept broad enough to accommodate both individual and collective action in pursuit of benefit or prevention of injustice, corruption and evil. *Hisbah* is, of course, like *nasihah* and *ijtihad*, a collective obligation (*fard kafa'i*) of the community as a whole. These are matters of common concern to the community, hence a fit subject on which they should associate and communicate with one another. We also note that the Qur'anic principle of *shura* can only be implemented as a result of association and consultation among the members of a community.

Both Muhammad Asad and ‘Abd Allah al-‘Arabi have observed that the basic recognition of the freedom of speech and opinion in the Shari‘ah requires that the people must also be accorded the freedom to group together, if they so wish, for the purpose of propagating certain sets of views as to what should be the policy of the state on this or that question. The Shari‘ah validates this and entitles the citizens to organise themselves in parties, groups and associations if they deem this to be a more effective way of realising their legitimate interests. ‘Abd al-Hamid al-Ansari has observed that realisation of the objectives (*al-maqasid*) of Shari‘ah and securing the various benefits (*al-masalih*) of the community, be it the essential (*al-daruriyyah*) on which the life of the community depends, the complementary benefits (*al-hajiyyah*) which aim at removing hardship, and the embellishments (*al-tahsiniyyah*) in our own time, require the formation of political parties. To this it may be added that although setting up political parties may be classified under the general category of unrestricted benefits (*al-masalih al-mursalah*), it is one which may constitute a means to securing some of the higher categories of *masalih*, in which case it would partake in the *shar‘i* value of the latter and thus be elevated to a higher category of *maslahah*.

Some commentators have, however, advanced a view which proscribe the formation of political parties in an Islamic state. It is thus suggested that the basic ground of unity among Muslims is their common allegiance to Islam itself, hence there is no need for further levels of unification and alliance. According to Kamal Wasfi, “Islam does not subscribe to any alliance other than unity in faith which is sufficient for the Muslims. When a section of the Muslim community enters a partisan alliance, it is bound to isolate others, and this would consequently lead to disunity.” The soundness of this view may, however, be questioned in that it tends to indulge in a measure of generalisation. Unity in faith does not necessarily proscribe differences of opinion on details and matters which may not have a bearing on the essentials of dogma. It is equally possible that people who subscribe to the same principle may differ in the details and methods of implementation thereof. The correct view should surely be that only harmful alliances which aim at destroying unity are to be censured, but not those which pursue beneficial objectives and aim at rendering service to the community.

The opponents of political parties have also quoted in support of their position some of the Qur’anic passages which are emphatic on unity and warn the believers against divisiveness and separation. Some of the passages thus referred to convey the following:

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- And cling to the rope of Allah all together and avoid separation (Al-i-Imran, 3: 103).
- As for those who divide their religion and break up into sects, you have no part in them in the least (Al-An'am, 6: 159).
- Obey Allah and His Messenger, and let not yourselves fall into disputes, lest you lose heart and your power departs ... (Al-Anfal, 8: 46).

Some Prophetic traditions on the theme of unity such as "the hand of Allah is with the community" are also quoted. But the relevance of all this to the formation or otherwise of political parties is not free of doubt. It may well be said for instance, that forming a party which commits itself to enhancing unity among people would derive positive support from the Qur'an and Sunnah. It is therefore avoiding disunity which the Qur'an advocates. This being the case the issue is not over the formation of any party as such. Moreover, the proponents of political parties have been able to quote certain other passages in the Qur'an in support of their position as we shall later elaborate.

Those who are opposed to the formation of political parties have further added that among the distinctive features of the Islamic state during the lifetime of the Prophet (s.a.w) and the pious caliphs, one was that the people enjoyed freedom of expression and liberty to voice an opinion in opposition. The caliphs were also easily accessible. Government leaders consulted the citizens and together they discussed and deliberated over public affairs. They did this successfully without establishing a particular party, either for or against the government. Since the opportunity was granted for all members of the community to take part in such discussions, they would participate as and when they had something to say without feeling the need to align themselves with any party. It is further added that references to parties in the Qur'an, in particular the chapter which carries the title al-Ahzab (e.g the parties, 33: 20-21) are expressive of disapproval of the alliances that were formed in opposition to the Prophet (s.a.w). And then it is suggested that much of the subsequent history of partisan activities has generally been divisive and brought disunity and conflict among Muslims.

But this line of argument is by no means conclusive. The reference, for example, to parties in the surah al-Ahzab, as already indicated, is to parties that were formed for the very purpose of challenging the

authority of the Holy Prophet (s.a.w). And then also the early experience of partisan activities, the Shi'ah, the Kharijites etc., is no proof against the validity in principle of parties for beneficial purposes. It is suggested on the other hand by the advocates of freedom of association that Islam validates the formation of political parties and associations. That many of the general principles of public law in Islam such as *shura*, justice, freedom, equality and *hisbah* are politically oriented and require the formation of political parties that can commit themselves to the enforcement of these principles. Some of these principles such as *shura* could only be effectively implemented if there is a majority opinion either for or against a proposition, which has to be identified. The formation of parties is on the whole conducive to this purpose and tends to facilitate organisation and discipline.

Moreover, in view of pluralism and complexity of public life in our own time, the sheer size of cities, their inhabitants and growth of governmental and non-governmental organisations, it has become exceedingly difficult to know the individuals who need to be consulted. Public life today necessitates organisation, lobbying, pressure groups and associations. This might mean that direct access to government leaders may not be as effective today as it might have been in the early days of Islam. We need to identify the locus of responsibility and commitment to a set of objectives. There is otherwise always the risk that consultation may not yield the desired result. Political parties and organisations are on the whole more effective in making *shura* purposeful; they also tend to have means at their disposal and are therefore more capable in combating a threat to the freedom of speech, especially when the speech happens to be critical of the government in power. They can, for example, in the last resort, declare no confidence in a government that persistently ignores sincere advice (*nasihah*) and is entrenched in misguided authoritarian methods. How can an individual act in conformity with the Hadith that "the best form of *jihad* is to tell a word of truth to a tyrannical ruler" without any assurance and support for his safety and the cause which he pursues! Even when the government permits openness and respects freedom of speech, affirmative action is still necessary, including the formation of political parties, to ensure progress in the pursuit of valid objectives. It is indeed stated that freedom of speech and *amr b. al-maruf* would hold little weight without acceding to the right of the people to form political parties; that this by itself is a test of a government's respect for the freedom of expression.

Furthermore, we find evidence in the Qur'an to the effect that differences of opinion and disagreement is natural to life in society. Note for example the text which provides "Had thy Lord willed, He would have made mankind into one nation, but they never cease to disagree" (Hud, 11: 118). The Qur'anic vision here is clearly one of pluralism which is premised in turn on the freedom of personal opinion and thought, differences of ability and experience among individuals and nations. The message here is further substantiated in another passage which reads to the effect "O mankind, We created you from a male and female and made you into tribes and nations so that you may know one another. Surely the noblest of you in the sight of Allah is the most upright and God-fearing among you" (al-Hujurat, 49:13). Peoples and nations benefit from knowing one another when they differ in experience and outlook, that is when there is diversity and difference as this can lead to enrichment and beneficial exchange. And yet the pluralistic vision of life on earth is not meant to interfere with the basic unity of origin and creation of man 'from a male and a female.' Pluralism in reality means allowing and tolerating differences; it is a fact of human existence and "a right therefore of those who differ that no one forbid them, or make them believe in something different."

In response to a question as to the permissibility or otherwise of political parties, Ibn Taymiyyah has held the view that parties which invited the people to truth and beneficence (*khayr wa haqq*) and worked for realisation of benefit to the people were lawful. Ibn Taymiyyah added that this was the proper understanding of the Qur'anic text which provided in reference to true believers that "They are the party (*hizb*) of Allah and truly the party Allah shall achieve felicity" (al-Mujadalah, 58:22). In contradistinction with this the Qur'an has designated as Party of Devil (*hizb al-shaytan*) those who were hostile to God and to His Messenger, who disobeyed the Prophet and were engaged in conspiracies against him (al-Mujadalah, 58:19). A party of this kind, indeed any party or association that defied the teachings of Islam, Ibn Taymiyyah added, fell within the meaning of *hizb as-shaytan* and therefore clearly forbidden. Muhammad al-Ghazali has stated that Islam permits plurality of political parties provided they did not seek to destroy the unity of the *ummah*, but that plurality was unlawful if it aimed at dividing the *ummah* and sowing the seeds of disunity among Muslims.

The history of scholastic developments of the *madhahib* is premised on the validity of disagreement and pluralism in matters which are open to interpretation and *ijtihad*. The Blessed Prophet has declared it as an act of merit for one who attempts *ijtihad* with the purpose of attaining

the truth even if he does not actually attain it; but if he does attain the truth, he merits a double reward. In Islamic juridical discourse, *ijtihad* is another name for juristic disagreement and plurality of views on matters which have not been determined by the Qur'an and Sunnah. "The history of Islam from the political and social angle" as al-Awa points out "is the history of parties and groups." Ever since the era of Companions, factions, parties and sects have never ceased to emerge and no one has proscribed them for the mere fact of being a party. The critics of such partisan developments have always looked at the ideas, activities and objectives of the parties in question and have evaluated them accordingly. Furthermore, the fact that a distinctive discipline of Islamic learning, namely the *'ilm al-ikhtilaf* (science of disagreement) has flourished in the midst of the scholastic teachings of the *madhahib* is itself testimony to the reality of pluralism and tolerance in the history of Islamic scholarship.

While the Qur'an and Sunnah validate freedom of expression, interpretation and *ijtihad*, they also enjoin cooperation (*ta'awun*) in good and beneficial works as one of the cardinal teachings of Islam. Cooperation, in order to be effective, may well require unity and organisation. The Qur'an explicitly addresses the believers to "cooperate with one another in the pursuance of virtue and beneficence, but cooperate not with one another in fostering hostility and transgression" (al-Ma'idah, 5: 2). The text here is related to our preceding themes in the sense that cooperation in good work (*al-birr*), like *hisbah*, is a broad concept which could apply to all forms of beneficial cooperation, be it in the form of a political party, a professional association, or a workers' union which aims at ensuring fair practices in trade and equitable treatment of workers.

Among the instances of illicit cooperation that amounts to transgression and violation of fair trade one is for producers of essential commodities to stop selling their goods in order to push up the prices. This form of cooperation among the producers or suppliers is manifestly detrimental, even hostile, to the public. The government is therefore within its rights, as Ibn Qayyim al-Jawziyyah points out, to compel the suppliers to offer their goods against fair market price (*qimah al-mithl*). The government would in this case be only acting in accordance with the dictates of justice which Almighty Allah has demanded. The same would apply to the suppliers of essential services, such as transport workers, or funeral managers, who might decide, in collaboration among themselves, to stop their services to the public in pursuit of a demand for higher prices. They may be compelled by the market controller (*wali al-hisbah*) to offer their services for fair market prices.

We also find a specific passage in the Holy Qur'an which the commentators have quoted as textual authority for the formation of political parties. The text at issue provides in an address to the believers:

Let there arise from among you a group (*waltakun minkum ummatun*) that invite others to good work (*khayr*); enjoining what is right (*al-maruf*) and forbidding what is wrong. They shall indeed be granted success (Al-i-'Imran, 3: 104).

The text here requires that the community should set up one or more parties for the expressed purpose of conducting *hisbah*; and taking effectively upon itself the responsibility of devising ways and means of securing the moral and material benefits of its members. As will be noted the emphasis in this text is laid on the formation of a party, and not on the execution of *hisbah*. Indeed the passage begins on this note and this is the only new element which differentiates this from a number of other Qur'anic passages on the subject of *hisbah*. The principal theme of the text under consideration is therefore that at least one party must be formed among Muslims to take responsibility for the tasks that are spelled out in the subsequent portion of the *ayah*. The word '*umma*' here means a party, a multitude or *jama'ah*, and not the larger community of Muslims as the word is normally used for. This level of distinction in the meaning of *umma* is once again supported by the wording of the text which requires that there must be a party of Muslims, not that the Muslims must become a party. Furthermore, the text begins with the phrase '*waltakun*' (let there be) which is a command and it therefore creates an obligation, according to the majority of ulema, for the community at large with respect to creating such a party.

The party in question needs to be a political party which represents the community at large and exercises its authority to monitor the government and take its officials to task. By way of elaboration it is understood that invitation to *khayr* which is one of the two themes of this text under consideration can be undertaken by an association, a party or an organisation and it need not necessarily be political in character. But the second theme of the *ayah*, which is to implement *hisbah* implies that the party in question must be a political party. For one of the most important aspects of *hisbah* is to encourage accountability in government and take to task those of its officials who indulge in deviation and evil, and this can only be done by a political party.

We also note that the text under discussion does not stipulate that there should be one party or more. The formation of at least one party is a requirement but there is nothing in the text against the setting up of more than one political party. This is because the word '*ummah*' occurs in the form of an indeterminate noun, which validates a concept and not a particular number. The grammatical usage here is similar to the Hadith, again on the subject of *hisbah*, which provides in an address to the believers, "If anyone of you sees something evil he should set it right by his hand, but if he is unable to do so, then by his tongue, and if he is still unable to do that, then let him denounce it in his heart: but this is the weakest form of faith." This particular Hadith has also invoked many comments which may have bearings on our discussion, but I shall not go into detail and suffice by saying that the word evil (*munkar*) therein occurs in singular but its meaning is not confined to a single form of evil. The word '*ummah*' in the Qur'anic text I quoted likewise applies to any party, one or more, without any qualification. It is therefore equally valid to form one party or a number of parties, but the collective duty (*fard kafa'i*) of the community to do so is discharged by the formation of one. If one party is formed and there are individuals in the community who wish to set up a second party, in pursuit of valid objectives, no one has the authority to stop it.

There is further recognition of pluralism in the Qur'an in the sense that some people understand and eagerly follow correct guidance when it is given to them but there are others, as has always been the case, who do just the opposite, and there are still others who might take a middle course. The text thus reads to the effect :

Then We allow some of Our servants whom We have chosen to inherit the Book (and be its custodians). But there are among them some who may harm their own souls, some who follow a middle course, and some who vie in performing good deeds with God's permission. (Fatir, 35:32).

Just as mankind was collectively chosen to be vicegerents of God Most High in the earth and custodians of His revealed guidance, they vary in their understanding of that trust and the degree of their commitment to it. Those who are enlightened and devoted are therefore in a position to lead others, to appeal to their good conscience and to muster their support for the right cause. This is the subject of yet another Qur'anic passage where we read to the effect :

If a group of people from every division devoted themselves to the teaching of religion and warned their folk when they return to them, so that they learn (how) to guard themselves (against evil) (al-Taubah, 9:122).

Teaching, warning, and reminding is very much the task of those who are devoted to a cause they consider worthwhile and beneficial. To carry this out effectively and be able to protect the community against harm, they may form groups, committees and associations for promotion and advancement of religious knowledge, or for similar other beneficial objectives.

When the Qur'an addressed the Blessed Prophet, after his migration to Madinah, and formation of the state of Madinah, to consult the community in affairs of their common concern (Al-Imran, 3:159) *shura* was meant to be a general principle of Islamic government, a requirement to which even the Prophet himself had to comply. Since *shura* is based on free exchange of opinion over issues, and people tend to vary in their views especially over matters on which no clear injunctions are found in the sources, it is only natural that they should be able to marshal themselves behind plans and ideas which they consider beneficial. Issues of constitutional concern, the type of government, its policies and objectives in socio-economic educational and cultural spheres in modern times and approaches that could be taken toward legislation and so forth can be the basis of unity and success, or of divisiveness and defeat, depending on organisation, good leadership, and public support. To put all of this in just one context, namely that of religious belief, and say that Muslims are expected to be united in Islam and the idea therefore of party organisation and association is unacceptable - is to over-simplify matters. If we look at the history of Islam, a passive attitude even in matters of the faith, an attitude which is oblivious of the importance of effective and purposeful leadership could hardly be supported by the normative example and precedent of Islam.

The Qur'an encourages openness in associating with others and it disapproves of secret talks and conferences in matters of public concern. The text quoted in translated version below also provides some guidance as to what constitutes the legitimate basis of forming an assembly or association:

There is no good in most of their secret conferences (*najwahum*) save those that are charitable, promote welfare, and strengthen peace; whoso does that, seeking the pleasure of Allah, We shall soon bestow on him a great reward (al-Nisa', 4: 14).

This text approves of three types of associations, namely those which promote charitable work, secure welfare, and develop peaceful relations in society. The Qur'an commentators elaborate by saying that of the three virtues that are stated in this passage, it is the last which is highest in order of merit. In this way associations that aim at promoting friendly relations among people are highly recommended, especially when a rift which leads the people to corruption is feared to be taking place. There are a number of *ahadith*, as al-Alusi elaborates, which are emphatic on the merit of attempting to bring people closer together at a time when they are moving apart. Promotion of public welfare in turn applies to associations and societies which promote knowledge in all fields including arts and sciences, as well as associations that aim at peaceful settlement of disputes and advancement of peace among mankind at any level, domestic, national or international.

Conspiracies are severely condemned in the Qur'an; all associations and assemblies must be for promoting lawful benefits. This is the subject of the following passage, which addresses the believers to the effect:

When you confer together in private confer not for the commission of sin, wrongdoing and disobedience to the Messenger, but confer for promotion of virtue and self-restraint ... Holding secret counsels for evil purposes proceed from Satan (al-Mujadalah, 58:9-10).

Furthermore when people gather together for a common purpose, they should observe order and discipline. The Qur'an associates discipline here with faith and knowledge and elevates to distinction those who are mindful of discipline in public gatherings. This is the subject of the next *ayah* in the same chapter and it addresses the believers to the effect:

When you are told to make room in the assemblies, then spread out and make room. Allah will help you to do so (Allah's earth is spacious) and when you are told to rise up, rise up. Allah will elevate in rank those of you who believe and those who have been granted knowledge (al-Mujadalah, 58: 11).

Participants in public assemblies and associations are thus required to respond to reasonable requests made of them in the interest of order and peace. Those who use public places must also take care that no undue inconvenience is occasioned to others using the same, nor should any one be exposed to risk or injury in public assemblies. In a commentary on this text it is also stated that even when a great leader comes to an assembly, the participants are not to press forward without discipline, as it causes inconvenience to him and detriment to public order. Nor is it allowed to shut out other people who have equal right to be in the assembly. On the basis of yet another Qur'anic *ayah* when people are gathered together for a purpose they ought not to depart without the leader's permission. The text thus provides to the effect:

True believers are those who believe in Allah and in His Messenger, and when they are with him on a matter requiring collective action, they do not depart until they have asked for leave ... So when they ask thy leave for any of their affair, grant them leave ... (an-Nur, 24: 62).

Assemblies must therefore observe correct discipline from beginning to end. They should be purposeful and terminate only when the purpose is achieved, and it is the leader's responsibility to determine when it should come to an end and disperse.

CONCLUSION

The balance of evidence I have reviewed clearly validates formation of both political parties and non-political associations that aim at securing benefit for the community. This is perhaps true of all affirmative action in pursuit of such objectives that are upheld in Islam. If the objective in question is one that partakes in the accredited interests (*masalih mu'tabarah*), which are those that have been clearly recognised by the Shari'ah, then the shar'i value of the means toward their realisation is elevated in order of merit to the same level as the value which they pursue. The merit or demerit of a party, association, or society is therefore to be judged on the basis of the objectives that it seeks to realise. If a party or association seeks to protect and promote any of the five essential values of Shari'ah, namely life, faith, property, intellect, and lineage, there should be no question of validity in principle and all affirmative action in their pursuit are presumed to be valid. The statement of objectives that a party or association may issue can also be evaluated in light of

the general goals of Shari'ah (*maqasid al-Shari'ah*) and the unrestricted interests (*al-masalih al-mursalah*) of the community. The latter are by definition unrestricted and cannot be predicted in advance. These are ascertained in the light of circumstances, new developments, and issues that need to be considered as and when they present themselves.

A party or association that is established in pursuit of questionable, partisan, and prejudicial objectives which cause disunity and conflict is likely to be covered by the rules of law that applies to *fitnah* and sedition. Activities of this nature will be deemed to constitute an offence and would therefore fail to qualify the criteria of validity under the Shari'ah.