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## Justice central to Sharia law

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# Justice central to Sharia law

*By Asghar Ali Engineer*

MOST of our ulema insist that Sharia law is divine and hence there is no question of any flexibility in its application. It is supposed to be immutable. This does not bear scrutiny though.

Imam al-Shatibi, a Spanish imam of great eminence in the 13th century, discusses in his writings on the Sharia in *Al-Maqasid al-Sharia* as well as *Al-Masalih al-Sharia* the purposes and welfare of Sharia laws. The law is obviously devised to serve certain purposes and is meant for the welfare of the people. If it becomes rigid it can neither serve the purpose nor can it aim at the welfare of the people. Even Imam Ghazali who tends to be orthodox in his views, always discusses the purpose behind every Sharia provision.

The Quran says in verse 5:48 that we have appointed a law and a way for everyone, which means that the Sharia is supposed to serve the purpose of every community and it has to keep the welfare of various communities in mind. There is unanimity among the ulema that customary law (*adaat*) also becomes an integral part of Sharia law. That is why Arab customary law (*Arab aadat*) became an integral part of the Islamic Sharia. If Arab customary law had not become part of the Sharia it would not have been acceptable to Arabs.

When Islam spread to different parts of the world the local customary laws also became part of Islam in their respective cultures. In Indonesia a great controversy erupted among the ulema whether Indonesian customary law should be part of Islam, and a majority of the ulema accepted Indonesian customary law as part of Islam as practised in that country.

It was for this reason that in early Islam a provision was made for *ijtihad* (creative interpretation through utmost intellectual exertion). Allama Iqbal called *ijtihad* the dynamic spirit of Islam. However, our ulema closed the doors on *ijtihad* in the 13th century. And Sharia law has become stagnant ever since, because this law was based on *ijtihad* up to that point in time. The argument given by the ulema for not undertaking *ijtihad* was that no one was qualified to do so anymore. However, the fact is that the real reason for abandoning *ijtihad* is the stagnation of society that has prevailed since then.

As time passes new challenges arise, and it is only the spirit of ijtihad which can keep the Sharia dynamic and enable it to meet new challenges. A stagnant law becomes a burden for the people rather than resulting in their welfare. That is why reform movements became necessary from time to time. In the 19-20th centuries radically new situations arose and many eminent Islamic thinkers launched reform movements. Jamaluddin Afghani, Mohammed Abduh, Sir Syed Ahmad Khan and Mohammed Iqbal were among them. What is most important in the Sharia is the principles and values given by the Quran. If we keep that in mind and protect these principles and values the real spirit of Sharia would not be injured even if certain necessary changes were made to applicable laws. However, we have often ignored these principles and values and made mediaeval formulation more central and rigid in their application. It was like throwing the baby out with the bathwater.

Among the Quranic principles and values justice is most important. Justice is the very basis of Sharia law. If we protect the mediaeval formulations rather than the Quranic value of justice, it will result in more injustice, thus defeating the very purpose of Sharia law. One of the examples is polygamy. The Quran permitted polygamy subject to the rigorous condition of doing equal justice to all four wives; and the Quran also made it clear in verse 4:129 that even if one wanted to, one could not do justice.

Despite such a rigorous condition of justice, somehow the number of four wives became more important than the value of justice. It is only in modern times that some Muslim intellectuals are emphasizing justice rather than the number of wives that can be taken at a time. But even today conservative ulema think that marrying up to four wives is a man's privilege even if it seriously injures the value of doing justice to all four, which the Quran says is not humanly possible.

Some even go to the extent of saying that it will promote prostitution if a man is not allowed to marry up to four wives. Many more examples can be given wherein orthodox formulations have become more important than the value of justice in the Quran. Justice should be restored to its central position in the application of Sharia law. This is only possible when the Sharia is not treated as a stagnant law and Muslim intellectuals come forward to attempt comprehensive ijtihad.

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