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Item Type	Preprint
Authors	Engineer, Asghar Ali
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Download date	2026-11-09 10:53:32
Link to Item	http://hdl.handle.net/20.500.12424/188342

FATWAS CAN BE CHANGED

Asghar Ali Engineer

Recently a conference of Muslim Personal Law Board in India saw huge crowd of 200,000 Muslims from all over Maharashtra (a state in western India) and the chairman of the Board Maulana Rabe Hasan Nadwi made a highly emotional speech and said that shari'ah is divine and no change in it can be made and even if whole Islamic world changes shari'ah, Indian Muslims will not allow any change in it and will keep the traditional shari'ah close to their chest.

How appropriate is this stance? Today many women are agitating for certain necessary changes like triple talaq and unregulated polygamy etc. which cause suffering to them. Some concerned people including myself have taken initiative to codify Muslim Personal Law so as to minimize its misuses and give relief to Muslim women. To what extent shari'ah law can be misused can be judged from the fact that a well=known Islamic University from Hyderabad (Deccan) allowed a man to marry two young girls simultaneously on the assumption that Islam allows polygamy.

All this is based on the books written and fatwas issued hundreds of years ago and our ulama do not want to deviate from these written texts. Whenever any question is asked they simply consult these texts and issue a fatwa and again like court judgements these fatwas become precedent for subsequent fatwas and these fatwas are treated as universally applicable. Lay Muslims do not know that these fatwas are merely opinion expressed by as mufti and is not binding.

Should fatwas issued by eminent ulama be treated as unchangeable? Or can they be changed with change of time and place? Generally shari'ah is thought to be divine and immutable and no human being can make any changes in it. In fact shari'ah laws have been developed by eminent imams like Abu Hanifa and others to meet the requirements of their time and place. Thus shari'ah can be described as sincere human approach to divine intention. It is well known that Imam Shafi'I when he shifted to Egypt, he changed his opinion of several fiqhi (jurisprudence) matters.

Recently I saw a book by Allama Yusuf Qardawi, a well known 'alim highly respected in the Arab world. It is on the subject matter of fatwas and necessity for changes in fatwas. It has been published by a respectable institution Islamic Fiqh Academy. Yusuf Qardawi has invoked the principle of ijtihad in Islam to justify changes in tawas (Arabic plural fatawa). The Allama even maintains that the shari'ah cannot be useful for the ummah unless ijtihad (he indicates several forms of ijtihad) is exercised from time to time.

Shari'ah, it is important to note, must remain dynamic and relevant to the time and place where it is applied. Fundamental principles and values on which shari'ah is based cannot be changed but the laws based on these principles and values should and must change from time to time to keep them relevant and useful. That is why in most of the Islamic countries traditional shari'ah laws have been changed or codified to make them as useful as they once were.

Qardawi has given 10 grounds on which fatwas can be changed and all these grounds are highly relevant. First he gives four grounds on which fatawa should change i.e. change in time, change in place, change in conditions and change in what he calls 'urf (i.e. social practices or traditions). Qur'an also uses the term *ma'ruf*) in this sense. Then he gives six more grounds for desirability of change which are as under: 1) change in knowledge; 2) change in needs of people; 3) change in capabilities of people; 4) spread of calamity (when some acute problem becomes common); 5) change in collective political or economic condition and 6) change in opinion or in thought.

These ten grounds, in fact, capture all possible changes which can take place in a given society. This makes it amply clear that Islamic jurisprudence is by no means static or immutable as commonly thought of but it has enough space for change. It is altogether another matter if our ulama are rigid or incapable and try to hide behind divinity of shari'ah. In fact any law if it remains static cannot meet the requirements of the society.

Today personal laws as developed during medieval ages need many changes. It is also well known that shari'ah law then had incorporated many Arab customs and traditions as *ma'ruf* and triple divorce was one among them. The Prophet (PBUH) had denounced it as Qur'an intended to empower women and give them equal status and no one practiced it during his time but it was later on reintroduced for certain reasons.

Today women are highly aware of their rights and such practices are against principle of equality which is more fundamental than any Arab practice. Still it is practices in countries like India and even thought to be divine. Similarly polygamy is much misused and also thought to be man's privilege. It has to be regulated and should not be allowed to be used as per ones whim. No woman would accept it today as they did in the past. Medieval formulations in respect of personal laws were also influenced by patriarchal values and today patriarchal values are being challenged especially by women.

Polygamy is increasingly using its '*urf* i.e. social relevance and popularity. It should be allowed only in cases where it is very necessary. Similarly other personal laws could also be reviewed if needed. It will greatly benefit if our ulama keep these 10 grounds in mind while giving their opinion in matters of shari'ah laws.