

Concept of Justice in Islam with Special Reference to the Shari'ah Law - I

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Abstract

Justice is central to Islam. Allah is Just and governs the universe, including every affair of man's life, on the pattern of justice. In fact the whole creation is running on a balanced design, divinely set and constantly maintained by the Divine Will. The Divine Will has two aspects:

1. Physical law (al-Shari'ah al-Takwiniyyah)—the scientifically admitted laws operating in the physical world, and 2. The Islamic law (al Shari'ah al-Islamiyyah), meant for governing the affairs of man's life, mundane as well as spiritual.

The social and political order established by Islam at Madinah was the most just order human beings have ever experienced. Searching for the fundamental driving force behind that ideal prophetic order, one finds out that it is the Law of Islam that has primarily been responsible for the emergence of that just world order.

It is an admitted reality, both historically and religiously, that it is not the Islamic state that has produced the law but it is the law itself that in reality preceded the state and governed its affairs.

This paper, as such, attempts at highlighting some of the unique characteristics of the law of Islam, the Shari'ah, which distinguish it from man-made law. This description is preceded by a study of the definition and meaning of justice in a somewhat technical manner.

Justice—Definition and Meaning

The word *justice* means fairness, equity, quality of being just, the exercise of authority in the maintenance of right. *Do justice to someone* means treat someone fairly, or appropriately; show due appreciation of. *Do oneself justice* means do to the best of one's ability. Poetical Justice

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means nature's retribution etc; as shown in a poem or other piece of writing.¹

In Arabic there are three synonyms for the word *justice*: *al-'Adl*, *al-Qist* and *al-Insāf*. All the three words, according to *al-Mu'jam al-Wasīt* have the same meaning.²

Al-Qist means *al-'Adl*³. It also means *Al-Insāf*, which in turn means giving somebody his due and taking away from him what does not belong to him.⁴ *Ansfa al-Shay'a* or *Intasafa* means 'Adala i.e., 'he did justice'. *Intasafa fulānan*: 'Āmalahū bi al-'Adl means 'he treated him with justice'. *Ansafa fulānan min fulānin*: *Istanfā lahū haqqahū minhu* meaning to make somebody render to the other his due. *Rajulun nasf*, *Imra'atun nasf*, *Rijālun nasf*: *min awsātin al-nās* meaning moderate people.⁵ Literally it also means equity and in ethics, it amounts to impartiality, objectivity, integrity, in short a complete ethical code of the activity of the man of learning.⁶

One of the derivatives of *al-'Adl* is *al-I'tidāl* meaning moderation. *'Addal al-mikyāl wa al-mizān* means 'he did justice in measuring and weighing'. *I'tadala* means 'he brought about equilibrium (between two conditions)'.⁷ One more related word is *Wasat* which is defined: middle⁸ and as 'justly balanced', sober, free of all extravagances and intermediate.⁹ And in hadīth it is related to 'Adl.¹⁰ It also means best thing.¹¹ This implies that there is relation between 'Adl and *Ihsān*. In Hadīth *Ihsān* has been used to include worshipping Allāhﷻ as though one is seeing Him, and while one sees Him not, yet truly He sees him.¹²

Ihsān has a great religious significance and it is inadequate to give it a single meaning. It has therefore variously interpreted as: "right action", "goodness", "charity", "sincerity". Its root (*hsn*) also means "to master or to be proficient at."¹³

Thus 'Adl comes out to be a good and commendable action/quality based upon the sincerity to Allāhﷻ and to all His servants. When applied to governance, *al-'Adl* means the justice of ruler between people. *Al-'Adl* also means *al-I'tidāl* referring to moderate, between two extremes. It is because of this that some *Mufasssirūn* say that 'Adl exists when one's inner

intention and outer actions are same.¹⁴ To Ibn 'Arabi, *al-'Adl* means equity.¹⁵ *'Adl* has then many aspects:

One, *'Adl* between man's own self and his God which means man should always obey Allāh's commandments.

Two, that man should do justice with his own self by keeping away from all such actions and things that may destroy his life, spiritual and/or physical. Here *al-'Adl* and *al-Sabr* (patience) are related with each-other.

Three, *'Adl* between man's own self and rest of the creation. In this he should not cause any harm to others and should behave towards the whole creation with love and sincerity.¹⁶ Abu 'Abdullah Rāzī says that *al-'Adl* means *I'tidal* (moderation) of belief, action and morality.¹⁷

Imām Qurtabī says that *al-'Adl* means doing of all *hasanah* (commendable and excellent) actions and refraining from all *Sayyi'ah* (bad) things.¹⁸

In Mu'tazillī doctrine *al-'Adl* means the Justice of God and constitutes one of the five fundamental Mu'tazillī dogmas.¹⁹

In public law *'Adl* is one of the principal conditions for carrying out public functions, and in private law, it is a principal condition of a witness for the bringing of evidence.²⁰

'Ādil is one who is just. In law it is a person of good morals. In olden days the notaries in the judicial administration were called *'udūl* (singular: *'adil*)²¹.

Opposite of *'Adl* is *Zulm* which means misplacing a thing.²² *Zalama: Zalman wa Zulman wa Mazlimatan* means 'to misuse', 'to act wrongly'. *Zalamahū* : 'to wrong', 'to act tyrannically towards somebody'. With other derivatives it becomes 'to misplace', 'to deprive somebody of his rights; *Zālim* means an oppressor, a tyrant, *Zulmatun* means obscurity, darkness.²³ Thus all wrong doings are *Zulm*.

From the religious point of view justice means that God has given moral absolutes as a means of governing human relationships and structures and these are embodied in the concept of human rights, respect, equity, impartiality and advocacy. These five principles can be termed as the components of religions based social justice.²⁴

In Islam *‘Adl* (justice) assumes central place. It is one of the fundamental principles of the Islamic thought and practice. The following principle held by the Muslims unanimously testifies this:

وتحب اهل العدل والامانة ونبغض اهل الجور والخبثانه

“And we love the people who are just and trustworthy and hate those who are unjust and betray their trust.”²⁵

The Islamic system of social justice is based upon three fundamental principles of freedom of conscience, equality of human beings and mutual sharing.²⁶ These three elements can be respectively explained by the three basic principles of *Tawhīd* (Affirmation of the Oneness of God), Unity of mankind and Unity of Universe—the three-dimensional relationship between God, Man and Universe.

Tawhīd

In fact it is Allah’s *Tawhīd* which, within its boundless dimensions, encompasses the whole universe, including man, as a single unity.

God is One, the infinitely Merciful and absolutely Just. He is Justice in Himself.²⁷ He is the source of all good; all blessings and bounties come from Him. He has power over all things. The Qur’ān testifies:

الملك القدوس السلام المؤمن المهيمن العزيز الجبار المتكبر

(Al-Qur’ān, Al-Ĥashr 59:23)

“(He is Allah, than whom there is no other God)—The Sovereign Lord, the Holy One, Peace, the Keeper, the Keeper of Faith, the Guardian, the Majestic, the Compeller, the Superb. (59:23)

Allāh ﷻ is the Cherisher and Sustainer of the worlds.²⁸ Therefore He cares for all the worlds He has created.²⁹ He guides³⁰ His creatures, protects them, preserves them and leads them to clear light and higher life.

Thus all Praise is due to Him.³¹ And it is the demand of justice that He alone must be praised. At the same time the quality of thanksgiving is inborn in man to the highest degree as compared to other creatures. To worship Allah, to praise Him and to submit to Him is His right and the

demand of man's nature itself. This implies 'Adl (justice) is the foremost proof in favour of *Tawhīd*.³² That is why *shirk*, which accepts anything other than the True God to deserve man's gratitude and worship, has been termed in the Qur'ān as *Zulm 'Azim* (greatest injustice):

إن الشرك لظلم عظيم
(Al-Qur'ān, Luqmān 31:13)

“False worship is indeed the highest wrongdoing.” (31:13)

The concept of *Tawhīd* is an axiomatic precognition in man and his latent faculties are enough to teach him the distinction between good and evil, between *Tawhīd* and *Shirk*.³³ That is why Allāh ﷻ, in order to justify his 'Adl, punishes those who are unmindful of Him and reminds us of the primordial covenant He has taken from all:

وإذا أخذ ربك من بنى آدم من ظهورهم ذريتهم وأشهدهم
على أنفسهم الست بربكم قالوا بلى شهدنا إن تقولوا يوم
القيمة أنا كنا عن هذا غفلين ○ أو تقولوا إنما أشرك آبائنا
من قبل وكنا ذرية من بعدهم أفتهلكنا بما فعل المبطلون ○
(Al-Qur'ān, Al-A'rāf 7:172-73)

“When thy Lord drew forth from the children of Adam—from their loins—their descendents, and made them testify concerning themselves, (saying): “Am I not your Lord (Who cherishes and sustains you)?” – They said: “Yea! We do testify!” (This), lest ye should say on the Day of Judgment: “Of this we were never mindful”: Or lest ye should say: “Our fathers before us took false gods, but we are (their) descendents after them: wilt thou then destroy us because of the deeds of men who followed falsehood.”
(7:172-73)

In the light of this covenant “there is, therefore, no excuse for any individual to say, either (1) that he was unmindful, or (2) that he should

not be punished for the sins of his fathers, because his punishment (if any) comes from his personal responsibility and is for his own rejection of faith and the higher spiritual influences.³⁴

Shirk is, therefore against man's nature and conscience. It makes him slave of slaves and thus injustice takes place.³⁵

Allāh ﷻ has no special relationship with any people. His 'Adl demands that there should be no discrimination among people. Even His messengers عليهم السلام cannot escape His wrath if (at all) they commit any injustice:

وَمَا كَانَ لِنَبِيٍّ أَنْ يَغْلِبَ وَمَنْ يَغْلِبْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ ثُمَّ تُوَفَّى
كُلُّ نَفْسٍ مَا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

(Al-Qur'ān, Ālu-Imran 3:161)

"No, prophet could (ever) act dishonestly if any person acts dishonestly he shall, on the day of judgment restore what he misappropriated; then shall every soul receive its due whatever it earned, and none shall be dealt with unjustly."³⁶ (3:161)

Allāh's *Tawhīd* demands that He is the Supreme Sovereign.³⁷ Thus Allāh ﷻ is the Biggest Authority; in Him rests the authority of legislation:

إِن الْحُكْمَ إِلَّا لِلَّهِ أَمَرَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ ذَٰلِكَ الدِّينُ الْقَيِّمُ

(Al-Qur'ān, Yūsuf 12:40)

"The Command is for none but Allāh: He hath commanded that ye worship none but Him: that is the right religion." (12:40)

اتَّبِعُوا مَا أَنْزَلَ عَلَيْكُمْ مِنْ رِبِّكُمْ وَلَا تَتَّبِعُوا مِنْ دُونِهِ أَوْلِيَاءَ

(Al-Qur'ān, Al-A'raf 7:3)

“Follow (O men!) the revelation given unto you from your Lord, and follow not, as friends or protectors, other than Him.” (7:3)

ومن لم يحكم بما انزل الله فاولئك هم الكافرون

(Al-Qur’ān, Al-Mā’idah 5:44)

“And whosoever does not judge by what Allāh has revealed, such are the *Kāfirūn*

(i.e. disbelievers—of a lesser degree as they do not act on Allāh’s Laws)” (5:44)

Thus Allāh’s *Tawhīd* and His Sovereignty are inseparable. Belief in the Unity and Sovereignty of Allāh ﷻ is the foundation of the social and moral systems of Islām. Hence He is the real Law-giver and His Law cares for all.

Allāh ﷻ has laid down the absolute rules that govern the universe.

يدبر الامر من السماء الى الارض

(Al-Qur’ān, Al-Sajdah 38:5)

“He rules (all) affairs from the heavens to the earth.” (38:5)

The rules governing man’s life constitute the *Sharī’ah*. He has also set up the Balance—the absolute standard of justice. The Qur’ān testifies:

والسمااء رفعها ووضع الميزان الاتطغوا فى الميزان

واقيموا الوزن بالقسط ولا تخسروا الميزان

(Al-Qur’ān, Al-Rahmān 55:7-9)

“And the firmament has He raised high, and He has set up the Balance (of Justice), in order that ye may not transgress (due) balance. So establish weight with justice and fall not short in the balance.” (55:7-9)

Abdullah Yusuf Ali, taking these *Ayāt* both literally and figuratively, writes:

“A man should be honest and straight in every daily matter, such as weighing out things which he is selling: and he should be straight, just and honest, in all the highest dealings, not only with other people, but with himself and in his obedience to Allāh’s Law. Not many do either the one or the other when they have an opportunity of deceit. Justice is the central virtue, and the avoidance of both excess and defect in conduct keeps the human world balanced just as the heavenly world is kept balanced by mathematical order.”³⁸

The *Sharī‘ah*, frequently called as the Balance³⁹ in the Qur’ān is, therefore the foundation on which the *Absolute Justice* of God is based.

Allāh ﷻ governs the whole universe on the pattern of justice. Since He is Most Gracious, Most Compassionate and Merciful,⁴⁰ and He watches over all things in the universe⁴¹, His Law⁴² is therefore, the Law of Justice.

***Sharī‘ah* is fundamentally based upon Justice**

The peculiar characteristics of the *Sharī‘ah* intended to be discussed here are in accordance with the Islamic Concept of God, man and universe and the concept of divine justice manifest at all levels of the universe including man’s own life.

Universality

The *Sharī‘ah* is universal in nature. It is meant for all. It addresses the whole mankind as all human beings⁴³ have same parents — Ādam and Hawwa (Eve). That is why it sanctions the true morals which are common to all and discusses about the moral prohibitions against lewdness and all unseemly acts. Allāh ﷻ says:

لْتَعَالُوا اٰتِلْ مَا حَرَّمَ رِيكْمَ عَلِيكُمُ الْاِشْرَاكُ كُوَا بِهِ شَيْئًا وَاٰتِلُوا الدِّيْنَ اِحْسَانًا وَاَلْتَقْتُلُوا اَوْلَادَكُمْ مِّنْ اَمَلَقْ نَحْنُ
رِزْقِكُمْ وَاِيَاهُمْ وَاَلْتَقْرِبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنْ وَاَلْتَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللّٰهُ الْاَبْلَاحِقْ ذَاكُمُ وَاَكْمُ وَاَكْمُ
لَعَلَّكُمْ تَعْقِلُونَ وَاَلْتَقْرِبُوا اَمَالَ الْيَتِيْمِ الْاَبَالَتِي هِيَ اِحْسَنُ حَتَّى يَبْلُغَ اَشْدَدَهُ وَاَفْوَا الْكَيْلِ وَالْمِيْزَانَ بِالْقِسْطِ
تَكْلَفْ نَفْسًا الْاَوْسَعَهَا وَاِذَا قُلْتُمْ فَاَعْدَلُوا وَاَلُوْكَانَ ذَا قَرْبِيْ وَاَعْبُدُوا اللّٰهَ اَوْفُوا ذَاكُمُ وَاَكْمُ وَاَكْمُ تَذَكُرُونَ

(Al-Qur’ān, Al-An‘ām 6:151-152)

“Say (O Muhammad ﷺ) : “Come I will recite what your Lord has prohibited you from: Join not anything in worship with Him; be good and dutiful to your parents; kill not your children because of poverty – We provide sustenance for you and for them; come not near to *Al-Fawāhish* (Shameful sins, illegal sexual intercourse) whether committed openly or secretly; and kill not anyone whom Allāh ﷻ has forbidden, except for a just cause (according to Islāmic Law). This He has commanded you that you may understand. “And come not near to the orphan’s property, except to improve it, until he (or she) attains the age of full strength; and give full measure and full weight with justice. We burden not any person, but that which he can bear. And whenever you give your word (i.e. judge between men or give evidence), say the truth even if a near relative is concerned, and fulfill the covenant of Allāh ﷻ. This He commands you, that you may remember.” (6:151-152)

Allāh’s Messenger ﷺ has said:

“Avoid the seven great destructive sins.” The people enquired, “O Allāh’s Messenger ﷺ! What are they?” He said, “ (1) To join others in worship along with Allāh ﷻ , (2) to practise sorcery, (3) to kill a person which Allāh ﷻ has forbidden except for a just cause (according to Islāmic Law), (4) to eat up *Ribā* (usury), (5) to eat up an orphan’s wealth, (6) to show one’s back to the enemy and fleeing from the battlefield at the time of fighting, (7) and to accuse chaste women, who never even think of anything touching their chastity and are true believers.”⁴⁴

The universal character of the *Sharī‘ah* is clearly brought to light in this Āyah:

لَا إِلَهَ إِلَّا اللَّهُ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ
(Al-Qur’ān, Al-Nisā 4:58)

“Verily! Allāh commands you that you should render back the trusts to those to whom they are due; and that when you judge between men, you judge with justice.” (4:58)

In this Āyah the Muslims (especially the Muslim rulers) have been commanded to judge with justice when they judge between (not only the Muslims but) the whole mankind as the phrase used is *بين الناس* (between people) not *بين المسلمين* or *بين المؤمنين* (between the Muslims). This indicates that in the sight of *Sharī‘ah* all humans are same whether they are Muslims or non-Muslims, friends or foes, natives or “foreigners”; whichever language they speak and of whichever colour they may be, justice demands that judgment should be fair.⁴⁵

Unity

Islāmic *Sharī‘ah* stands for the unity in the system of law. That is why it does not separate trade law from civil law, departmental law from general law nor is its international law different from its national law⁴⁶; all these aspects of law are having the same essence and spirit. In Islām same law was applied for the ruler and the ruled.⁴⁷ There are no different courts for different sectors of society. The Islāmic practice to separate the cases where the defendant is the state or any of its officers and assign them to a special court called *mahkamah al-mazālim* (the court for acts of justice) is not meant for saving the ruling class from the common court, but the same laws, which, because of the influence of the rulers, could not be implemented in the common courts, were implemented through these special courts. The sittings used to be held in the Khalifah’s court generally under the presidentship of the *Khalifah* himself. It was only meant for providing the common man with free and fair judgment.⁴⁸

An Islāmic government is bound by the *Sharī‘ah* to stick to certain fundamental values. The Muslims cannot violate these morals even if they sometimes go against their national interests. They do not fulfill such commandments of the *Sharī‘ah* merely to fulfill their agreements with other nations or to return good for good but they are enjoined to do good

and stick to justice even in a situation when they happen to face enemy from the other side:

ولا يجرمكم شنان قوم على الاتعدلوا اعدلوا هو اقرب للتقوى

(Al-Qur'ān, Al-Mā'idah 5:8)

“And let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety.” (5:8)

Thus according to this Āyah justice has a close relation with *taqwā* implying thereby that the *sharī'ah* is fundamentally based upon justice and *Taqwā*.

Justice and Taqwā

The commandments of *Sharī'ah* are all based upon justice. Allāh ﷻ says:

وانا حكمتم بين الناس ان تحكموا بالعدل

(Al-Qur'ān, Al-Nisā' 4:58)

“And when ye judge between people that ye judge with justice.” (4:58)

يا ايها الذين آمنوا كونوا قوامين بالقسط شهداء لله ولو على انفسكم

او الوالدين والاقربين ان يكن غنيا او فقيرا فالله اولى بهما فلا تتبعوا

الهوى ان تعدلوا وان تلوا او تعرضوا فان الله كان بما تعملون خبيرا

(Al-Qur'ān, Al-Nisā' 4:135)

“O ye who believe! Stand firmly for justice, as witness to Allāh, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allāh can best protect both. Follow not the lusts (of your hearts) lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allāh is well-acquainted with all that ye do.” (4:135)

Since *Sharī'ah* denotes the Will of Allāh ﷻ, man's every desire against *Sharī'ah* is *al-hawā* (lust). “Islamic justice, therefore, searches out the innermost motives, because we are to act as in the presence of Allāh ﷻ, to

whom all things, acts and motives are known.”⁴⁹ And since justice is also the attribute of Allāh ﷻ, and to stand firm for justice is to be a witness to Allāh, we should therefore show no least favoritism when it is the matter of justice. The Muslims are commanded to be just, in all cases, without fear of the rich or favour for the poor, for both poor and the rich are under Allāh’s protection.⁵⁰ That is why giving a false witness is a grave sin.⁵¹ The following Āyah throws more light on this:

يا ايها الذين آمنوا كونوا قوامين لله شهداء بانقسط ولا يجرمنكم
 شنان قوم على الا تعدلوا اعدلوا هو اقرب للتقوى
 (Al-Qur’ān, Al-Mā’idah 5:8)

“O ye who believe! Stand firmly for justice, as witness to Allāh and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety.” (5:8)

Only two things can stop a man from doing justice: (1) his own *nafs* (self interests), (2) his kith and kin. Both have been dealt with in (4:35). And then bias and prejudice can also stop one from doing justice when it is the case of an enemy. This is dealt with in (5:8).⁵²

“To do justice and act righteously in a favourable or neutral atmosphere is meritorious enough, but the real test comes when you have to do justice to people who hate you or to whom you have an aversion. But no less is required of you by the higher moral law.”⁵³

It means that the Muslims ought to be fair and just in their affairs whatever the provocation; no indignation, howsoever righteous, against any person should make them depart from the path of truth, justice and equity.⁵⁴

This Āyah clearly indicates that to establish justice and to act on it is not only the duty of the Islāmic government but every Muslim is responsible to act justly and to strive for others act justly. The rulers have one special duty i.e., to crush obstacles in the way of justice.⁵⁵

Therefore, *Taqwā* demands that the Muslims mustn’t do justice and righteous deeds for pomp and show but should do it for fear of Allāh

alone.⁵⁶ It is in Bukhārī and Muslim narrated by Na‘mān b. Bashīr that once his father gave him a gift about which his mother did not show her satisfaction without making Rasūlallāh ﷺ witness over it. So they (Na‘mān’s parents) went to Allāh’s Messenger ﷺ and told him about the fact. He asked the father whether he had given such gift to any other of his children. He denied. Then Allāh’s Messenger ﷺ said to him: “Do justice between your children; go back; I do not act as witness over injustice.”⁵⁷ The Holy Qur’ān further says:

قل امر ربي بالقسط

(Al-Qur’ān, Al-A‘rāf 7:29)

“Say: “My Lord hath commanded Justice.” (7:29)

The *SharĒ‘ah* Islām stands for justice in every sphere of life without any discrimination. The Muslims are commanded to stand firm on justice in the individual as well as collective fields of their life. This commandment was repeatedly revealed in the Makkan period.⁵⁸ The following Āyah is considered as the most important and comprehensive Āyah of the Holy Qur’ān:

ان الله يأمر بالعدل والاحسان وايتاء ذى

القربى وينهى عن الفحشاء والمنكر والبغى

(Al-Qur’ān, Al-Nahl 16:90)

“Allāh commands Justice, the doing of good, and giving to kith and kin, and He forbids all indecent deeds, and evil and rebellion.”⁵⁹ (16:90)

To explain *‘Adl* and *‘Ihsān*, let us refer to ‘Abdullah Y. ‘Ali who explains this Āyah in the following words:

“Justice is a comprehensive term, and may include all the virtues of cold philosophy. But religion asks for something warmer and more human, the doing of good deeds even where perhaps they are not strictly demanded by justice, such as returning good for ill, or obliging those who in worldly language “have no claim” on you; and of course *a fortiori* the fulfilling of

the claims of those whose claims are recognized in social life. Similarly the opposites are to be avoided; everything that is recognized as shameful, and everything that is really unjust, and any inward rebellion against Allāh's Law or our own conscience in its most sensitive form."⁶⁰

The Rasūl ﷺ has been commanded thus:

و امرت لاعدل بينكم

(Al-Qur'ān, Al-Shūrā 42:15)

"And I am commanded to judge justly between you." (42:15)

The purpose of sending Messenger's ﷺ and divine Books has been to establish justice:

لقد ارسلنا بالبينت وانزلنا معهم الكتاب الميزان ليقوم الناس بالقسط

(Al-Qur'ān, Al-Hadīd 57:25)

"We sent aforetime our messengers with clear signs and sent down with them the Book

and the Balance (of Right and Wrong), that men may stand forth in justice." (57:25)

And the Islamic government is fundamentally required to establish justice in society:

وانزلنا الحديد فيه بأس شديد

(Al-Qur'ān, Al-Hadīd, 57:25)

"And We sent down Iron, in which is great might." (57:25)

In this Āyah, *Al-Kitāb* (Book) stands for revelation which commands good and forbids wrong, *Al-Mīzān* (balance) stands for *justice* which gives to each person his due and *Al-Hadīd* (Iron) stands for the strong arm of law, which maintains sanctions for evil-doers.⁶¹ The

responsibility of the Muslim ruler is more clearly explained in the following two Āyāt:

وان حكمت فاحكم بينهم بالقسط ان الله يحب المقسطين

(Al-Qur'ān, Al-Mā'idah 5:42)

"If thou judge, judge in equity between them. For Allāh loveth those who judge in equity." (5:42)

انا انزلنا اليك الكتاب بالحق لتحكم

بين الناس بما اراك الله ولا تكن للخائنين خصيما

(Al-Qur'ān, Al-Nisā' 4:105)

"We have sent down to thee the Book in truth, that thou mightiest judge, between people by that which Allāh has shown thee; so be not an advocate for those who betray their trust."⁶² (4:105)

Revelation and Reason

An important characteristic of the *Shari'ah* is that, while on one hand it is fundamentally divinely revealed, on the other, it gives full recognition to reason.

The *Shari'ah* law is formed of two components: one being revealed remains unchanged and the other subject to time change and human needs involves human hand and is thus always resolved through the process of *Ijtihad*—the inner dynamism of the law of Islam involving human reason to derive legal guidance in the light of *Nass*, the holy *Qur'an* and the *sunnah*.

But, since human reason is fallible, it has, hence, been subordinated to *ijma'* (consensus), the collective reason of the *ummah*. *Ijma'* has fully been established by the hadith: My community will not agree upon an error.

Hence an individual opinion of a jurist, no matter how highly qualified he is in his field, cannot amount to law unless it is accepted by majority of legal experts.

The Islamic law gives primary importance to the *maslahah*⁶³ (public interest). This fact is substantiated by the knowing that the *Shariah* is principally based upon the benefit of beings; it takes into consideration general human weaknesses and basic needs.⁶⁴ That is the reason why it is generally hold that *Shari'ah* is fundamentally based upon the benefit of human beings. Hence it holds that originally and essentially all beneficial actions are legitimate, all harmful ones illegitimate.⁶⁵

Note: The article is divided into two parts. The second part will be produced in the next issue, *Insha Allah*.

End Notes

- ¹ *The Oxford English Reference Dictionary*, 2nd Ed., edited by Judy Pearsall and Bill Trumble, Oxford University Press, 1996, word *Justice*. See also *Advanced 21st Century Dictionary*, Educational Publishing House Delhi, 2003, word *justice*.
- ² *Al-Mu'jam al-Wasīl*, Deoband Kutub Khana Husayniyyah, n.d., Pp. 588 and 743.
- ³ *Ibid*, P.743.
- ⁴ *ibid*, P. 588, وهو اعطاء المرء ماله وأخذ ما عليه.
- ⁵ *Ibid*, P. 926-27.
- ⁶ Lent J. Van, *The Encyclopedia of Islam*, Glossary and Index to technical terms, ed. By P.J. Bearman, Brill, The Netherlands, P. 132.
- ⁷ *Al-Mu'jam*, loc. cit. توسط بین حالین فی کمر او کیف او تناسب.
- ⁸ Wahid al-ZamĒn, *Al-Qamūs al-JadĒd*, word *wasat*.
- ⁹ A.Y. Ali, commentary of the meanings of the Holy Qur'ān, Saudi Arabia, ex. no. 143.
- ¹⁰ *Jā'izah al-Sha'wudhī* Tr. and explanation of *Jāmi' Tirmidhī* by Badī 'al Zamān and Wahīd al Zamān, Delhi, I'tiqād Pub. House, 1983, chap. ما جاء في الاحسان والعفو Vol. 1, P. 717-18.
- ¹¹ Mufti M. Shafī, *Ma'ārif al-Qurān*, Delhi, Vol. 1, P. 309.
- ¹² Imām Nawawīyy, *Al-Arba'īn al-Nawawīyyah*, Eng. Tr. Ezzeddin Ibrahim and Denys Johnson-Davies, Kuwait, International Islamic Federation of Students Organizations, 1984. No. 2, P.30.
- ¹³ *Ibidem*.
- ¹⁴ *Ma'ārif al-Qur'ān*, vol. 5, P. 389.
- ¹⁵ *Ibidem*.
- ¹⁶ *Ibidem*.
- ¹⁷ *Ibid*, P. 390.
- ¹⁸ *Ibidem*.
- ¹⁹ Lent J. Van, op. cit., P.5.
- ²⁰ *Ibidem*. However, in Islamic *Sharī'ah* there is no such division of private law and public law.
- ²¹ *Ibidem*.
- ²² (Wortabet, John and Harvey Porter, *Wortabet's Pocket Dictionary*, Beirut, Maktabah Lebanon, n.d., P. 247.
- ²³ J. G. Hava, *Al-Farā'id al-Durriyyah (fi al-lugatayn al-'Arabiyyah wa al-Injilīziyyah)*, Delhi, Cosmo Pub., 1990, P. 446-47.
- ²⁴ F. Brain Cox, *Reconciliation Basic Seminar*, The Gandhian edition, Santa Barbara, USA, 2000, P. 83.
- ²⁵ Imām al-Qādī al-Dimashqī, *Sharh al-'Aqīdah al-Tahāwiyyah*, Berūt, 1993, P. 546.
- ²⁶ Shahīd, Syed Qutub, *Islam Ma'yn 'Adl-i-Ijtimā'ī*, Urdu tr. by Naja-tullah Siddiqi, Delhi, Maktabah Islami (MMI), 1981, P. 90-91.

²⁷ *Al-'Adl* is one of the *al-Asmā' al-Husnā'* (the beautiful divine attributive names of Allāh ﷻ see (7:180) and (17:110). See also *Tirmidhī* Where 99 such names have been mentioned.

²⁸ Al-Qur'ān 1:2.

²⁹ A. Y. Ali, op. cit., Ex. n. 20.

³⁰ Al-Qur'ān, Al-Nūr 24:35.

³¹ Al-Qur'ān, al-Fātihah 1:1.

³² Islāhī, Amīn Ahsan, *Haqīqati Tawhīd*, Delhi, MMI, 1990, Pp. 50-51.

³³ See Islāhī, op. cit., P. 92. See also, *Ma'ārif al-Qur'ān*, op. cit., vol. 4, P. 108.

³⁴ A. Y. Ali, op. cit., Ex. n. 1148.

³⁵ Qutub, op.cit., P.97.

³⁶ Justice includes that trusts must be restored to their owners. Thus the prophets as chosen by Allāh ﷻ, are the most trustworthy people among mankind. It is, therefore impossible for a prophet of Allāh ﷻ to act dishonestly. But in order to explain the justice and impartiality of Allāh ﷻ, it is said that even if His prophets acted dishonestly, He would not spare them.

³⁷ See "Supreme Sovereignty of Allāh ﷻ" above.

³⁸ A. Y. Ali, op. cit., Ex. n. 5178.

³⁹ Khurram Murād, *Shariah the way of Justice*, Delhi, New Crescent Pub. Co., n. d., P.5.

⁴⁰ The Qur'ānic Āyah *بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ* containing two Arabic words "*Rahmān*" and "*Rahīm*" are translated as "Most Gracious" and "Most Merciful" respectively. Therefore Mercy and Compassion being divine attributes, constitute soul of the *SharĒ'ah* Allāh.

⁴¹ (Al-Qur'ān, al-Mulk 67:19)

⁴² Allāh's Law is always the same but it has two aspects: one *Sharī'ah*, which man has to follow out of his own volition and the other Natural Law which the rest of the creation (except the Jinn who are also accountable like man) follows involuntarily. Since man is *Khalīfah* (vicegerent) on earth, and therefore, the whole universe has been made subservient to him, it is he whose actions are responsible for justice or injustice in the system of the universe. As such it seems adequate to discuss here only the *Sharī'ah* Law which directly governs man's life and indirectly governs the whole creation.

⁴³ See (Al-Qur'ān, Al-Hujurāt 49:13).

⁴⁴ *Bukhari*, vol. 4, Hadith no. 28, P.

⁴⁵ *Ma'ārif al-Qur'ān*, vol. 2, P. 448.

⁴⁶ Jamal al-Dīn al 'Itiyya, *Islāmī Sharī'at Kā 'Umūmī Nazariyyah*, Delhi, P. 62.

⁴⁷ France is the first country which resorted to this kind of discrimination. The council of state was established for the purpose to safeguard the ruling class from appearing before the law and to give the ruler superiority over the common man.

⁴⁸ I.R. Al-Faruqī, I et al, *The Cultural Atlas of Islam*, Osmania Printing Works, Secunderabad, India, 1969, P.269. See also *Islāmī Sharī'at Kā 'Umūmī Nazariyyah*, P. 65.

⁴⁹ A. Y. Ali, op. cit., Ex. n. 644.

⁵⁰ Ibn Kathīr, *Tafsīr*, vol. I, part v, P. 114. See also A. Y. Ali, Ex. n. 644, 45.

⁵¹ *Bukhari*, vol. 3, no. 821, P.

⁵² See *Ma'ārif al-Qur'ān*, vol. 3, P. 68.

⁵³ A. Y. Ali, op. cit., Ex. n. 707.

⁵⁴ Daryabadi, Abdul Majid, *Tafsīr al-Qur'ān*, vol. 1, P. 409.

⁵⁵ *Ma'ārif al-Qur'ān*, vol. 2, P. 572-3.

⁵⁶ Ibn Kathīr, vol. I, part 6, P. 69.

⁵⁷ Ibidem.

⁵⁸ Sultān Ahmad Islāhī, *Madhhab Kā Islāmī Tasawwar* (Urdu), Delhi, Idārah Tahqīq wa Tasnīfī Islāmī, 1991, P. 517.

⁵⁹ 'Abdullāh b. Mas'ūd ؓ says that this is the most comprehensive Āyah of the holy Qur'ān. 'Uthmān b. Maz'ūn ؓ says that his *Imān* attained great strength only after this Āyah was revealed to the holy Messenger of Allāh ﷺ. And when Rasūlullāh ﷺ recited this Āyah to Walid b. Mughīrah, he addressed the Quraysh thus:

والله ان له لحلاوة وان عليه لطلاوة وان اصله لمودق واعللاه لمثمر وما هو بقول بشر

"By Allāh it has great sweetness; there is great fascination and brightness on it; its roots are to give rise to branches and leaves and its branches are to bear fruits. It can never be the word of a man." See *Ma'ārif al-Qur'ān*, vol. 5, p. 388, 89. Also see Ib. Kathīr, vol. 3, part. 14, p. 53 Since this Āyah encompasses the whole Islāmic teachings which are based upon *justice* and *'Ihsān*, it has therefore, been recited in the Friday *Khutbah* (Sermon) throughout the Islāmic history till now.

⁶⁰ A. Y. 'Ali, op. cit., Ex. n. 2127.

⁶¹ A. Y. 'Ali, op. cit., Ex. n. 5313. See also *Ma'ārif al-Qur'ān*, vol. 2, P. 571-72.

⁶² In this Āyah taking part of a *Khā'in* (one who betrays trust) is against justice. Since *Khiyānah* is opposite to *Amāna* and (see under peace), it therefore, once comes out that *Amāna* and justice or in other words peace and justice are closely interrelated.

⁶³ Yusuf Hamid al-Alim, *Al-Maqasid al-Ammah li al-Shari'ah al-Islamiyyah*, Saudi Arabia, 1994, P.123

⁶⁴ Ibidem

⁶⁵ *The Cultural Atlas of Islam*, P.269.