

THE QUR'ĀN AND ḤUDŪD LEGISLATION IN THE PAKISTANI SOCIETY: –SOME REFLECTIONS

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ABSTRACT

The Divine is perfect but our interpretations have been so imperfect. Again, one of these historical imperfect interpretations has been to include *irtidād* (apostasy) in the category of *ḥadd*. Apostasy is qualitatively different from treason and cannot be considered as an offence. It is the free choice of a person to accept or repudiate Islam. There is no compulsion in religion. We must be courageous enough to accept that our human interpretation of the Divine has been manifestly in error on many accounts. It is high time to realize that we are not pleasing God but appeasing ourselves by becoming oblivious of the spirit behind the forms. The need of the hour is to revisit the Qur'ān and frame *Ḥudūd* laws in consonance with the will of Allah.

The legislative vigour of a society is measured in proportion to its responsiveness to the needs of the common man. We need to be highly committed about alleviating the sufferings of humanity. Islamic spirituality teaches us that it is by sharing the sufferings of people that we tend to serve Allah. But this primordial vision can only be realized when our religiosity gets transformed into spirituality.

Islam is in conformity with the Nature of things. It does not super add anything but reveals the fundamental nature of the human receptacle. Every thing in the heavens and the earth is subservient to Allah. All things, willingly or unwillingly, are absolutely subject to His inexorable law. He is the Absolute Sovereign whose 'disobedience' in principle is not possible since 'disobedience' to Him is again a given possibility of His universal will and there can be nothing over and above it. Man, in exercise of his freedom, chooses for or against his ideal human nature, which is identical with obeying or disobeying Allah and His Prophet. In other words, there is supreme

identity and simultaneity in realizing the will of God, following His Prophet and living in consonance with one's ideal human nature.

The bounds of Allah are in the ultimate interest of man. They are not superimposed but arise from the inner depths of his being. Any person who transgresses these bounds, in fact, transgresses against his own self. Thus, in obeying Allah and His Prophet, one essentially obeys the laws of being. In other words, he realizes the genuine demands of his own higher self. It is pertinent to note that Allah has imparted knowledge regarding the effects of man's ideas, feelings and actions on his self. A set of ideas, feelings and actions integrates human personality and is called good while another set of ideas, feelings and actions disintegrates human personality and is called evil. Thus, good and evil are in reference to the integration and disintegration of human personality, respectively. Iqbal says: "A wrong concept misleads the understanding; a wrong deed degrades the whole man, and may eventually demolish the structure of the human ego ... Life offers a scope for ego-activity, and death is the first test of the synthetic activity of the ego. There are no pleasure-giving and pain-giving acts; there are only ego-sustaining and ego-dissolving acts. It is the deed that prepares the ego for dissolution, or disciplines him for a future career."²²⁶ The Qurānic concept of crime and punishment takes its roots from the ultimate nature of the self— individual and societal— for community is the society of selves. Allah forbids all that is harmful to the human both in his inwardness and outwardness. He does not wreak vengeance on man when he commits crime but prescribes punishment essentially as a corrective measure for the healthy development of his individuality. This reformatory factor coupled with a certain element of deterrence is instrumental in saving the social fabric of human society as well. This is precisely the reason that a greater significance is attached to confession. A person who confesses his crime and undergoes punishment, as a consequence, essentially saves his own soul and creates a positive impact on society. However, such an ideal situation is not always possible. A person may commit crime and refuse to confess. In such cases, the accused is brought to the doors of justice. It is not vengeance but Divine mercy that the criminal is punished for the wrong he has committed, so that the

²²⁶ Allama Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, edited and annotated by M. Saeed Sheikh Lahore, Pakistan; Institute of Islamic Culture, p. 146.

disintegrating effects on his personality are effaced and he succeeds in achieving an integrated personality and thereby saving the structure of his ego from breaking down. Punishment is likened to the treatment of a sick soul. If the sick soul is not treated in this world, then it will have to undergo a more painful process of treatment in hell, which is the ultimate occasion of corrective experience. Allah and his Prophet enjoin justice not merely for the sake of it but for the ultimate benefit of man. Thus, love is the edifice on which is built the Islamic concept of crime and punishment.

The phenomenon of crime and punishment is dynamic and integral to a society. But the real thing is to bring structural changes in a society by establishing the values of freedom, equality and justice. A society bereft of real changes cannot even sustain functional adjustments. All forms of human oppression— religious, political, economic, social and cultural— tend to enter the process of legislation in a very subtle way. The individual and class interests successfully struggle to find a heaven in the codes of law. Reason has its inherent limitations in discovering the ultimate interest of man. It is intellect (the faculty having direct knowledge of the transcendent), which reaches the heart of reality. Reason can only see perfectly in the light of intellect (revelation or *wahy* in the religious sense). The Divine law thus, rises above the vested human interests and limitations of reason and directly captures the ultimate nature of things. It ends the exploitation of man over man. It identifies with Truth itself.

The Qurʾān is both immanent and earthly. It is neither a penal code nor a code of criminal procedure. The Qurʾān bestows knowledge of the universal principles and, among other things, integrates family and social life. One can understand the significance of this point against the perspective of Christianity, which makes a sharp cleavage between spirit and matter or between the church and the state. The purpose of including certain offences and punishments in the Qurʾān is not an end in itself but is a means towards incorporating the interactive life of a community in the realm of all pervasive spirituality. Iqbal says:

The primary source of the Law of Islam is the Qurʾān. The Qurʾān, however, is not a legal code. Its main purpose...is to awaken in man the

higher consciousness of his relation with God and the universe. No doubt the Qurān does lay down a few general principles and rules of a legal nature, especially relating to the family – the ultimate basis of social life. But why are these rules made part of a revelation, the ultimate aim of which is man's higher life? The answer to this question is furnished by the history of Christianity which appeared as a powerful reaction against the spirit of legality manifested in Judaism. By setting up an ideal of other-worldliness, it, no doubt, did succeed in spiritualizing life, but its individualism could see no spiritual value in the complexity of human social relations....Thus, the Qurān considers it necessary to unite religion and state, ethics and politics in a single revelation.²²⁷

It is exceedingly imperative to bear in mind that the Qurānic concept of rightness and wrongness is final and is permanently, universally and absolutely binding on all generations. The Qurān discerns between sinful and virtuous actions. It further declares certain sins as crimes. No age, within the Islamic system, can change the wrongness of offences such as *zīnā* (adultery including the shade of fornication), *sarqah* (theft), and *qadhaf* (falsely accusing a person of unlawful intercourse) into rightness or remove these from the list of punishable acts or penal offences. In other words, no generation can change the concept of sin as enunciated by the Qurān. However, it can extend its scope in the light of changing requirements by the principle of analogy. This is the essential meaning of *Hudūdullah* (bounds of Allah). However, the Qurān does not term every sin as a crime or a penal offence. The Qurān, for example, considers *shurb al-ḵhamr* (drinking wine) as *ithmun kabīr* (grave sin)²²⁸ and in another verse declares every type of *ism* (sin) as *ḥarām* (forbidden)²²⁹ thereby forbidding drinking of wine by implication but it does not declare it as a crime. It leaves for the community to carry out legislation in consonance with the spirit of the Qurān and the requirements of the times.

²²⁷ *Ibid.*, pp.131-132.

²²⁸ Qurān, 2:219.

²²⁹ *Ibid.* 7:33.

It is necessary to understand Qurānic methodology in dealing with different shades of an offence. The Qurān demonstrates the essential meaning of an offence and leaves its other shades to be determined, obviously in light of its prototype, in consonance with the necessities of the times. It talks of adultery, for instance, but does not delve on rape. The Ḥudūd law, on the other hand, resorts to miscarriage of justice by failing to maintain the subtle distinction between adultery and rape. It must be borne in mind that rape is qualitatively different from voluntary sexual intercourse and it has to be treated differently in all its aspects.

Islamic legislation in all its dimensions is both principled and pragmatic. The Qurān always manifests principled stance but with due considerations to the social and cultural realities of a society. The quintessence of the Qurān has always to be kept in view while endeavouring on the legislative process. Heavens provide unified concepts and the earth provides multiple precepts. Legislation in Islam is building a bridge between the heavens and the earth.

The Qurān is eternal but its expression is temporal. It is timeless but it has been revealed in time. The Prophet belonged to the Arabian culture, which had its own set of values. The Qurān kept all those values intact that were in consonance with the law of things and only brought changes in those that were inconsistent with the essential reality. It brought the greatest transformation in the history of man by integrating the elements of permanence and change. It is our failure to integrate these elements in a unified whole that is creating complexity in our individual and social life.

It is to be borne in mind that the traditions of the Prophet having a legal import are not binding on future generations because they are changing, particular and provisional. They are the reflections of the actual conditions of a society. They mirror the concrete situations of life. Each generation has its own unique set of conditions and its vocation is to use the most efficacious piece of legislation in order to promote rightness and curb wrongness in consonance with the law of things. Thus, each society, like the Arabian one, can legitimately legislate according to its own special requirements without regressing into any form of imitation. Iqbal says:

The prophetic method of teaching, according to Shāh Walī Ullāh, is that, generally speaking, the law revealed by a prophet takes especial notice of the habits, ways and peculiarities of the people to whom he is specifically sent. The prophet who aims at all embracing principles, however, can neither reveal different principles for different peoples, nor leave them to work out their own rules of conduct. His method is to train one particular people, and to use them as a nucleus for the building up of a universal Shari‘at. In doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of the specific habit of the people immediately before him. The Shari‘at values (*ahkām*) resulting from this application (e.g. rules relating to penalties for crimes) are in a sense specific to that people; and, since their observance is not an end in itself, they cannot be strictly enforced in the case of future generations. It is, however, impossible to deny the fact that the traditionists, by insisting on the value of the concrete case as against the tendency to abstract thinking in law, have done the greatest service to the Law of Islam. And a further intelligent study of the literature of traditions, if used as indicative of the spirit in which the Prophet himself interpreted his Revelation, may still be of great help in understanding the life-value of the legal principles enunciated in the Qur‘ān. A complete grasp of their life value alone can equip us in our endeavour to re-interpret the foundational principles.²³⁰

The traditions of the Holy Prophet including those that have a legal import have to be understood in their real sense. They manifest the earnestness of the Prophet to transform his spiritual vision in concrete cultural terms. It is incumbent upon every generation to take its light from the Qur‘ān and solve its problems accordingly. This is essentially the meaning of following the Sunnah. It never means merely a ditto copy of the Arabian culture. Otherwise, it shall tantamount to missing the very spirit of the Sunnah. Thus, we have to distinguish between the universal elements of the Sunnah and the relative elements that were exclusive to the Arabian community in a certain spatio-temporal reference. And, we have to study these objectively since a number of things have been falsely imputed to the

²³⁰ Allama Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* edited and annotated by M. Saeed Sheikh Lahore, Pakistan; Institute of Islamic Culture, pp.136-137.

Prophet in the course of history. It is our duty to critically scrutinize the historical record and not assent to it as part of faith. Since we are accountable to Allah for holding each and every belief, therefore it is within our right to know whether a certain thing was actually said or done by the Prophet and what was the real purport of his saying or action. We must interpret the Sunnah in consonance with the genius of the Qurān. We need to realize that an uncritical acceptance of the past including belief in the finality of Schools has not only kept the Law of Islam stationary but has also compounded our problems.

The application of the legal principles to concrete situations brings out the dynamic aspect of Islamic law. But it, at the same time raises a number of issues as well. The jurists' dichotomy between *ḥadd* and *taẓīr* is being used to deal with the varying situations arising in Muslim societies on the spectrum of time. If conclusive evidence of adultery, for example, is not coming forth, then it is conveniently transferred to the realm of *taẓīr* with a corresponding change of mode and quantum of punishment. This understanding of *ḥadd* and *taẓīr* has created insurmountable problems. We have constantly to take the sense of the Qurān in view while dealing with everything including legislative matters. We need to construe *ḥadd* as dealing only with the nature or ingredients of an offence and *taẓīr* as dealing solely with the mode and quantum of punishment. The former is relatively universal and permanent while the latter is particular and changing. Thus, both *ḥadd* and *taẓīr* as fundamental aspects of Islamic legislation manifest legislative unity and oneness.

The ultimate question that arises in our context is that is it piety to glorify *Hudūd* laws as such or piety consists in understanding the essential nature of law for solving the problems of our community? And we must sincerely concentrate on bringing a creative transformation in our society and raise the moral consciousness of our people to curb criminal activity. All attempts to go against the spirit of the times prove nugatory. We have to understand the Islamic concept of crime and punishment in its wholeness. It is the principle of *Ijmā'* or Consensus that can, ultimately decide the road to be taken by a

Muslim society. Our primary concern is regarding wrongful entry through back doors? The Qurān symbolizes rightful entry through front doors.

The ambiguity of *Hudūd* legislation has mainly arisen, as we have seen, due to the fact that these laws have not succeeded in maintaining the distinction between the universal and the particular. They have not succeeded in manifesting the real essence of the Qurān and have been enforced in contravention of the temporal context or actual conditions of our society. How can anything succeed, in our times, in utter disregard to modern sensitivity, which is equally a mode of Allah's Manifestation? It is our duty to legislate by integrating the vision of the Qurān and the concrete realities of the times. Each generation has an inherent right to legislate for itself keeping in view the broader framework of the Qurān.

The clerics were instrumental in the enactment of *Hudūd* laws, 1979 in obliviousness of the spirit of the Qurān and the ground realities of the times. Such regressive human interpretation of the Divine has faltered both in principle and in its practical ramifications. It maintains an uncalled for distinction between offences under *hadd* and offences under *taẓīr* whereas all offences fall under the category of *hadd* and there is no dichotomy between them as such. There is enough evidence on record to prove the magnitude of cruel injustice it has brought to the Pakistani society especially to women. It has become oblivious of the spirit of the times too by depriving women of their right to evidence. There are also numerous anomalies in *Hudūd* laws like the meaning of adulthood and valid marriage, which are merely human interpretations and can be rightly understood according to the cultural traditions of a community. The instrument of *taẓkiyah-al-shubūd* of witnesses as an essential requirement for imposing *hadd* punishment has been made so stringent that it envisages a more difficult, if not impossible, set of conditions. Furthermore, our administrative system of justice, in the process of administering justice, has created difficulties in the lives of so many simple and innocent citizens. The enactment has also failed to do justice with the non-Muslims who have been forced to submit in varying degrees to these laws.

The Divine is perfect but our interpretations have been so imperfect. Again, one of these historical imperfect interpretations has been to include *irtidād* (apostasy) in the category of *hadd*. Apostasy is qualitatively different from treason and cannot be considered as an offence. It is the free choice of a person to accept or repudiate Islam. There is no compulsion in religion, says the Qurʾān.²³¹ A man can enter and leave the fold of Islam at his will. There is no spiritual significance of compelling a person to remain within the pale of Islam by using the instruments of inducement or threat. Renunciation of a religious faith is no crime. An apostate is entitled to all those rights, which are enjoyed by non-Muslims in an Islamic state. However, if the apostate resorts to treason then, like any other non-Muslim or Muslim citizen who commits treason, the State is authorized to punish him in correspondence to the quantum of his crime. We must be courageous enough to accept that our human interpretation of the Divine has been manifestly in error on all these accounts. It is high time to realize that we are not pleasing God but appeasing ourselves by becoming oblivious of the spirit behind the forms. The need of the hour is to revisit the Qurʾān and frame *Ḥudūd* laws in consonance with the will of Allah.

Man should strive for a crime-free human society by genuinely practicing the higher values of life permeated by the universal principle of love. Our primary concern should be with the health of a society and not with its sickness. Sickness is an accidental affair and need not be blown out of proportion. The absence of health constitutes sickness. Why not take measures to increase the health of a society?

The legislative vigour of a society is measured in proportion to its responsiveness to the needs of the common man. We need to be highly committed about alleviating the sufferings of humanity. Islamic spirituality teaches us that it is by sharing the sufferings of people that we tend to serve Allah. But this primordial vision can only be realized when our religiosity gets transformed into spirituality.

²³¹ Qurʾān, 2:256.