

Good News

...And give good news to those who do good (to others) - HQ22:37

May 2018

A Publication of the Lahore Ahmadiyya Movement for the Propagation of Islam South Africa

Vol. 009 No. 005

So What Is *Shariah* Really?

By Ebrahim Mohamed

With the growth of the Muslim World approximately 100 years after the demise of the Prophet Muhammad (pbuh), the need for the codification of laws pertaining to public, private, and family life, arose. This gave birth to what we come to know today as *Sharia* which scholars say means laws based on the ‘revealed’ word of God.

To allay the fears of *sharia-phobes*, the literal meaning of the word *sharia* is ‘a **clear, open and unrestricted path to the drinking pool.**’ We know that in a hot desert there is nothing more important than water to survive. Therefore this analogy of people and animals in a desert that must be provided free, unrestricted access to water that sustains their well-being and livelihood is a good description of what *Sharia* in fact really entails. Yes, it has nothing to do with the cruel, oppressive

‘man made’ laws that are often falsely associated with it. Thus in its broader legal context it simply means *to provide free, unrestricted access to justice that supports basic human rights free of persecution for all regardless of race, religion, colour or creed.* This broad based moral principle of justice is laid down in the revealed word of God, the Holy Quran:

O you who believe, be upright for Allah, bearers of witness with justice; **and let not hatred of a people incite you not to act equitably. Be just;** that is nearer to observance of duty. And keep your duty to Allah. Surely Allah is aware of what you do. -5:8

So unless *Sharia* meets this lofty criterion of absolute, unconditional justice as stipulated here it is NOT and will never qualify as *Sharia* no matter in what part of the Muslim world it might be declared as such.

In Islam the codification of temporal laws for the benefit of humankind is based on the Holy Quran as its primary source. Only if there is no clear direction on a particular matter or details on its implementation to be found in the Holy Quran, then to proceed to the *Sunnah* (i.e. the practice of the Prophet Muhammad peace and blessings of Allah be upon him) and to accept only such prophetic guidance that are in line with the broader spirit of the Holy Quran. And if there is no clear guidance to be found in the *Sunnah* as well then to resort to *ijtihad* (i.e. to formulate independent judgements based on logical deductions and reasoning) in line with the broader spirit of the Holy Quran.

It is reported that the Prophet Muhammad (pbuh) gave the following guidance in this regard:

On being appointed Governor of Yemen, Mu'adh was asked by the Holy Prophet as to the rule by which he would abide. He replied "By the law of the Holy Qur'an." 'But if you do not find any direction therein', asked the Holy Prophet. 'Then I will act according to the practice (*Sunnah*) of the Holy Prophet,' was the reply. 'But if you do not find any direction therein,' he was again asked. 'Then

I will exercise my judgment (*ajtahidu*) and act on that,' came the reply. The Holy Prophet raised his hands and said: 'Praise be to Allah Who guides the messenger of His Apostle as He pleases' '' (Abu Dawud. 23:11).

The Process of Codifying Law

About a century plus after the demise of the Holy Prophet (pbuh) we saw the emergence of jurists who started a process of systematically putting together a legal system based on laws and principles from the Holy Quran and *Sunnah* as stated above, **to address the needs of the time.** There are four famous jurists who are recognized by all Muslims as having started the process of codifying law. These are: Imam Abu Hanifa, (b.80 AH¹) who was of Persian descent but was confined to Basra and Kufa in today's Iraq. Then we have Imam Malik, (b. 93 AH) who came from Madinah and Imam Shafi (b. 150 AH) came from Palestine, and Imam Ahmad ibn Hanbal (b. 164 A.H.) from Bahgdad, in Iraq. These jurists were righteous and honourable men who did a good job of codifying law for their needs. First they had to identify and extract particular laws from the Holy Quran and

¹ A.H. (After the Hejira , i.e. after the migration of the Prophet to Medina, which marks the beginning of the Islamic calendar)

Hadith (Authentic reports of the Prophet's sayings and actions) **and then interpret it** in the light of the needs of the time. This led to the science and discipline known as *usul ul fiqh* or jurisprudence. It also gave rise to the much abused concept of *fatwas* which by the way simply means 'a legal opinion' **and NOT a legally binding edict**. In situations that were not so clear cut 'black and white' from a Quranic or *Sunnah* perspective, jurists were compelled to resort to *ijtihad* within the framework of the broader spirit and tenor of the Holy Quran and *Sunnah*. This resulted in many differences of opinions arising among the jurists. Therefore the rulings, edicts and laws that were established by these jurists within this context **are not immutable and cannot be regarded as cast in stone for all times**.

It is very important to bear in mind that the Divine laws contained in the Holy Quran do not change but the interpretation and application thereof (*fiqh*) by jurists may change **with time from one scholar to another**. There is thus no immutable, monolithic system in Islam. These differences of opinion gave rise to different 'schools of thought', such as the Hanafi, Sha'afi, Maliki, and Hanbali that exist till today. In the beginning these differences were regarded as a healthy part

of the legal process of reaching solutions on matters of uncertainty and ambiguity. Such differences of opinion on these temporal matters were regarded as a blessing by the Holy Prophet Muhammad (pbuh) himself because it led to more credible solutions in the end and thus we find that as a result of the challenges these jurists faced to find the best solutions to existential problems, they welcomed these differences of opinion.

The Age of Corruption

It was only generations later, however, that the free and open-minded spirit that existed in the time of the venerated jurists slowly degenerated into narrow-minded groupings from among the followers of the jurists, that now seemed more and more threatened by any differences of opinions. This finally led to the much loathed practices of petty nit-picking, personal attacks, character assassinations and eventually *takfir* i.e. dubbing fellow Muslims as unbelievers and heretics simply based on a difference of interpretation on a particular issue with another group. Thus we find that one group would pass an edict of unbelief on an opposing group and the latter in return would do the same. In the end the very fabric of the unity of the Muslim *Ummah* (Community) steadily disintegrated for all

the wrong reasons. We then saw the emergence of austere groups such as the Ahle Hadith from which emerged the ultra conservative puritanical Wahabi / Salafi School that later degenerated into ultra ideological extremists with a large presence and support in the Middle East, Pakistan and parts of Africa. With them came the introduction of a corrupt ‘clerical system’ - a system which was prohibited by the Holy Prophet Muhammad (pbuh) who clearly stated ‘There is no priesthood in Islam.’ This unsatisfactory situation gave birth to the politicization of the *Faith* as soon as these clerics, jurists and rulers of the day realised that religion could be used to keep the masses in a state of perpetual mental enslavement and obedience.

To keep themselves in power they soon developed a perverse legal system replete with un-Quranic man-made doctrines such as ‘apostates and blasphemers should be killed; that women should be veiled completely and confined to four walls; that sex-slaves or concubines are permissible; that *jihad* means war with infidels; that adulterers should be stoned to death; etc. Although none of these laws (now falsely dubbed *sharia* by these clerics) have any basis in the Holy Quran, it nevertheless instilled enough fear and intimidation in the ‘flock’ to secure unchallenged

obedience to these corrupt clerics on the payroll of the ruling entities. History shows that many of the original jurists such as Hanafi, Sha’afi for example, who refused to submit to the whims and fancies of the rulers were jailed, flogged and in some case banished.

Much of the ordinances of this corrupt legal system were invented during the **Abbasid rule of the Muslim Empire** more than a century after the demise of the Holy Prophet Muhammad (pbuh). The law calling for the execution of apostates, for example, was formulated to discourage revolt against the then imperial state. As for state-sanctioned blasphemy laws – now regarded as sacrosanct in Pakistan, Egypt and other Muslim countries – these were actually first introduced by the colonial powers, such as the British in the 19th century, to keep peace between different religious communities that they ruled. The intention might have been good then but it was severely abused by fanatical zealots with their own personal agendas. In Pakistan, for example, blasphemy became a crime in 1860, when the territory was still part of one, undivided India. In 1982 the statutes were expanded and their penalties made harsher by the military dictator Muhammad Zia-ul-Haq to bolster support from ultra-conservative religious parties. Now they are seen as divine

revelation! And today Muslims in those regions are made to bow to the edicts of these shamelessly ‘corrupt to the core’, self-appointed guardians of Islam.

In these countries concentrated attempts have been made, and continue to be made to stifle critical examination that might lead to differences of opinion. All attempts to rethink our understanding and interrogate beliefs based on much flawed interpretations; to bring reason back to Islam, are shunned – not just by the fanatics but by the vast majority of Muslims. The only solution is to be bold enough and re-introduce the proud tradition of critical thought in Islam, which is based on the repeated Quranic injunctions *to think, to ponder, to reflect*. It must be brought back from the periphery to the centre of focus. Everywhere in the world it should be made an essential part of the curricula of educational institutions. It would also help if a proper system of screening and certifying of religious scholars are introduced. These scholars clearly need much more than the usual outdated, traditional religious education that simply perpetuates uncritical, almost blind acceptance. Advanced subjects on humanities, socio-psychology, logic and the application of independent, critical thought etc. should be part of their curricula.

It is time the Muslim world return to the Holy Quran and *Sunnah* as the true basis of supreme law and NOT resort to the imperfect, much outdated interpretations that are erroneously and indeed shamelessly paraded as *Sharia*. Let us be absolutely clear! If it does not provide for absolute justice; unfettered human rights; freedom of expression and worship; unrestricted access to affordable, quality education and health-care, gender equality, etc. Nay, if it is not based on the same humane principle present in the noble act of ensuring ‘**free, unrestricted access to a water hole in the desert for all**’ then it is **not *Sharia*** and should be summarily discarded with the contempt it deserves!



We strongly condemn all acts of aggression and terror including all violations of basic human rights specifically those carried out in the name of Religion or State!

The Good News
 Editor : Ebrahim Mohamed
 Contact Details: P.O. Box 13744
 Goodwood Cape Town South
 Africa 7463
 Emails: aaiilsa@hotmail.com or
emuhamed@mweb.co.za