

The Sharia: a solution to contemporary problems?

Symbolic Attachment

Abu Lilia Sulani

THE most cruel sign of the disarray of our Islamic civilisation is the status of the Shari'a today. It has ceased to be the life-giving moral elixir of Muslim society. It no longer supplies the religio-political worldview/way-of-life for the Umma, nor does it act as the jugular vein of the Muslim body-politic, the heart of hearts of Muslim piety and the holy of the holiest of Islam. Our attachment to the Shari'a today is more symbolic than real. We pay lip service to its sanctity, authority and sovereignty but exert no effort to make it the moral, intellectual and religious focus of our living reality. The debate about the enactment of the Shari'a is symptomatic of this hypocrisy. Knowing full well that this infinitesimal part of the Shari'a is legal, ie is enforceable in an earthly court of law, we clamour for its 'implementation' only for the sake of appeasing our guilty conscience. Governments and Islamic pressure groups both are guilty of this duplicity: the former for the hope of gaining 'legitimacy', the latter because of the intellectual poverty of their vision of Islam.

Looking at recent developments in the Muslim world, we are thus brought face to face with the grim reality that wherever and whenever any unscrupulous Muslim ruler wants to 'discredit' the Islamic political option, he merely invites the 'fundamentalist' Islamic groups - despite the anathema of the clergy, the self-acclaimed champions and spokesmen of Islam - to 'enforce Islam', and they accomplish the rest, strangling the living faith of the community with their legalistic snare of the Shari'a. All that comes out of their bag of 'Islamic' tricks are a few penal injunctions that

possess a highly symbolic and emotionally incapacitating appeal but which leave the societal fabric of the community untouched and make no impact on its cultural, political and moral life. The earnest-minded believer, with much fervour and devotion for the sacrosanct tradition but with little insight into its historic manifestations, is left aghast at the skeletal model of polity and rule that proves to be 'our glorious heritage'. The non-Muslim too, even the one who is sympathetically inclined, wonders at the humanity of a religious tradition the core of which appears to be an arbitrary and erratic corpus of 'medieval punishments'. Surely, in our bid to resuscitate the Shari'a in its legal variety we have shown far too much sensitivity to the letter of its text rather than to the spirit of its universal moralism. Or, more charitably, one could say that for the sake of our symbolic attachment to the sanctity of a historically frozen consensus - whose authenticity and practicability, moreover, has only been demonstrated, for the past few hundred years at least, only within the precincts of madrassas - we have been willing to forfeit the very truth of our faith, not to speak of our self-imposed ostracisation from the rest of humanity because of this symbolic tower of our identity.

Let no one, however, conclude from the above that the concrete legal injunctions of the Shari'a have become outdated in our 'civilised' age or that any covert plea is being proffered here against their implementation in contemporary political contexts. Far from it! Inasmuch as the legal injunctions of the Shari'a derive their legitimacy from the undisputed principles of the Qur'an as manifested in

the consensus of the community through its scholars and learned men, these are incontrovertibly 'Islamic' - and hence have a binding authority on every Muslim. No, what is being questioned here is not the reality and the authority of the Shari'a but its politically expedient 'enforcement' which amounts to its desecration as it were. What is under dispute is the sincerity of the Muslim rulers and the authenticity of the Shari'a vision in its 'fundamentalist', more righteous than the community as a whole, variety. What must, under all circumstances, be challenged by every sincere and thinking Muslim is the reductionist - spiritually insensitive, morally facile, intellectually bankrupt and religiously idolatrous interpretations of 'Islam' that today are gaining currency under the highly emotive 'back to the Shari'a' slogan.

The truncated reality that is the Shari'a today, let there be no mistaking it, is the result of some seven centuries' of intellectual stupor of the Muslim Umma. It results in no way from any inadequacy of the original vision but from the beclouding of the mind that comes from the 'con-fusion' of the real with the symbolic. In place of treating the Shari'a as a set of *intellectual* tools for the elucidation of the normative behaviour of the Community, a divinely guided *criterion* of arbitration between good and evil, an ever-stable yet ever-mobile moral anchorage in the welter of history, the Shari'a has been reduced to the dead rulings of early jurists. Confined to the voluminous traditions of the four to five schools of jurisprudence, the Shari'a vision has been arrested in an intellectual trap, and has been made

to serve all forms of political suppression. Instead of being the living *spirit* of Islam, in short, the Shari'a has become the dead *letter* of history.

Saying yes to the 'back to the Shari'a' movement involves more than a mere symbolic show of sentimental loyalty. Submitting oneself to the authority of the Shari'a entails the application of its *method* within contemporary realities; seeking its guidance imposes the obligation of *ijtihad*; and, claiming its sanctity obliges one to follow its moral worldview in all spheres of human life - not merely the political. The uncompromising universalism of Islam and its *de facto* global community further stipulates

that the derived rulings and injunctions of the Shari'a be as human as its moral ideals are eternal.

If the Muslim community wants to enforce the Shari'a, it will have to stop worshipping it as the idol of Muslim history and start living by the eternal authority of the Revealed Truth which is blissfully encapsulated in its moral vision and intellectual method. The Umma will also have to exert a lot of mental effort to restore the integrity of the Islamic vision which has been blurred by the community's symbolic attachment to the intellectual torso of the Shari'a of Muslim history. ■

the Sharia.

If *fiqh* is not external, Muslims of today are evidently wrong in according the schools of law the attributes of finality, immutability and eternity. I think contemporary Muslims are not doing any justice to great men like Imam Malik or Imam Shafi'i by regarding them as all-knowing. Never did these men claim to have the capability to prescribe solutions for every conceivable problem for all times.

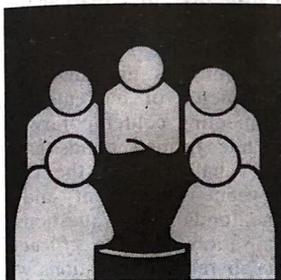
All that they did was to stand up steadfastly and find what they believed were the solutions to the problems of their age. The same task lies before Muslims today. The point here is that every age, every people have a responsibility before God to look at the Sharia afresh, with the aid of the cumulative knowledge of their time, their history as well as the nature of the problems and issues before them, with the aim to developing their own modality for applying the law.

If this is so, there are two imperatives before Muslims in this crucial moment, when the signs of recovery from the blows of imperialism and stagnation have become very apparent. There is the need to make a clear-cut distinction between the Sharia and *fiqh*; and to widen the conception of *fiqh* to include other aspects of human understanding. The Sharia cannot do without the support of science; nor can the law be applied in isolation from the historical and cultural experience of a given people. The Sharia cannot but manifest itself in different lights and forms in accordance with the diversity in people's economic and social conditions, as well as, background. Diversity is always an asset. The *fiqh* of Pakistan cannot surely apply as the *fiqh* of Mauritania or Senegal; otherwise God would not have asked the different communities scattered all over the globe to seek out their own road.

The other imperative before Muslims is to discard the long-standing, but utterly damaging dependent attitude, which has forced them to look always to the past, as though the present does not exist, let alone the future.

The obligation to make the present work rests squarely on our shoulders.

The future calls not for past thoughts, past experiences or past wisdom; it calls precisely for the maximum utilisation of what we have here and now in terms of knowledge, wisdom, intellectual energy and the will to move forward. We know what the Sharia is; to make it work we must find our own open way, the *minhaj*. ■



The Open Way

Ibrahim Sulayman

'TO each among you', God states in the Qur'an, 'have we prescribed a law and an open way. (5:48)'. The law of course is the Sharia. But the precise nature of the 'open way' is unspecified but God implies that it is absolutely vital to the application of the Sharia; perhaps it is intended as a partial-scheme without which the operation of the Sharia will ever remain imperfect.

The Sharia is the corpus of law embodied in the Qur'an and Sunna. It is immutable, external, unalterable precisely because it is the Law of God, whose knowledge is infinite and total. The Sharia contains the principles, precepts and laws upon which Islamic civilisation can be built. It therefore contains only such rules and regulations as can serve the universal human condition at all times without the need for change or alterations. The Sharia, needless to say, is also the basis for the regeneration of the Islamic communities.

As a rule therefore the Sharia is not intended to operate on its own without the support and cooperation of other aspects of human experience. The Sharia in other words is not the only valid form of human knowledge. Culture is another, and so is science. Another important source of law is human nature itself, which, in the

words of the Qur'an, is 'imbued with moral failings as well as with consciousness of God' (91:7).

To operate the Sharia successfully calls for a whole range of conceptual tools and helpers. What is called *fiqh* developed from this pressing need to augment the application of the Sharia with a large measure of human input. But *fiqh* is a matter of human effort. It is an aspect of *minhaj*, though in a very limited sense. I think the whole problem which has acted as an inhibiting factor in the successful operation of the Sharia is the confusion which has arisen in the exact delimitation of the boundary between the Sharia and *fiqh*.

Fiqh is man's attempt to understand the Sharia and working out the best method to apply it. Man's knowledge is severely limited, and is continuously changing and expanding, discarding as untenable some of its parts once thought to be immutable. Thus what may be understood a hundred years ago to be the intention of the Sharia, or the best principles, methods to operate it, may prove, with the advance of knowledge and the march of collective human experience to be quite otherwise. This is the natural reality of life: new frontiers of knowledge and experience emerge almost daily, calling for new understanding of