

HOW SHARIAH, AN INTENDED COMPASS FOR PEACE BECAME A TOOL OF OPPRESSION

by

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What is *Shariah*?

Shariah is the set of principles and rules outlined in the Holy Qura'n. The Holy Prophet Muhammad, may peace be on him, further elaborated and illustrated these rules and principles through his deeds also called *Sunnah* (ways of the Holy Prophet) and his words also referred to as *Ahadith* (oral traditions of the Holy Prophet). Like the Holy Quran, *Sunnah* and *Ahadith* are considered primary sources of *Shariah* by Muslim scholars. But in order of importance, the Holy Qura'n outranks *Sunnah* and *Ahadith*. This is because the Holy Qura'n is the Divine word. It has been preserved in its original form as the Quran itself states and also as history bears witness and is thus considered authentic. The authenticity of *Sunnah* and *Ahadith* is sometimes subject to the test of authenticity. Such dissection is not required in all situations. *Sunnah* and *Ahadith* are deemed inauthentic, when in conflict with the Holy Qura'n simply because the actions of the Holy Prophet cannot be in conflict with Divine principles. In the West today, *Shariah* is identified as a source of oppression, violence and tyranny. This misconception of *Shariah* stems from actions that arise from an out-of-context reading of the Holy Quran and reliance on inauthentic traditions of the Holy Prophet. A study of the Holy Quran suggests that the Holy Quran preaches justice, freedom of conscience and compassion. For instance, the Holy Quran says:

O ye who believe! Be strict in observing justice, and be witnesses for Allah, even though it be against yourselves or against your parents or kindred. Whether he, against whom witness is borne, be rich or poor... (4:136)

It is not righteousness that you turn your faces to the East or the West, but truly righteous is he who believes in Allah and the Last Day and the angels and the Book and the Prophets, and spends his money out of love for Him, on the kindred and the orphans and the needy and the wayfarer and those who ask for charity, and for ransoming the captives; and observes prayer and pays the Zakat... (2:178).

There should be no compulsion in religion. Surely, right has become distinct from wrong...(2:257)

Granted that some teachings of *Shariah* are not in line with liberal western values but the truth is that *Shariah*, in its essential form, helps Muslims to observe justice, tolerance and charity. The gap between *Shariah* and western liberal values, however, is often portrayed larger than it really is, thanks to out-of-context reading and distortion of the teachings of the Holy Qur'an and the traditions of the Holy Prophet. The out-of-context reading and distortion occurs due to a variety of reasons. For example, in Pakistan, clergy wants to radicalize Muslims to increase their own street and electoral power. It is easier to create blindly obedient followers when the teachings of the Holy Qur'an are presented in black-and-white manner. The ordinary Muslims find themselves too powerless to challenge the twisted interpretation of clergy out of fear and/or ignorance. In some cases, the ordinary Muslims are inclined to believe in twisted interpretation of clergy because such interpretations give legitimacy to centuries-old local customs, which might give these ordinary Muslims power over vulnerable segments of society. For example, President Zial-ul-Haq in 1980s introduced discriminatory legislation against women such as the set of Hudood Ordinance. This feudal-based ordinance ensured the lashing of raped women while acquitting their rapists. The ordinance, which represented twisted interpretation of Islam to preserve local customs, intended systematic subordination of women in Pakistan.

Similarly, the blasphemy laws in Pakistan are often used by some Muslims to settle personal scores. The blasphemy is not punishable in Islam as per the teachings of the Holy Qur'an and traditions of the Holy Prophet. Nonetheless, the clergy fights hard to defend laws that prescribe punishment for blasphemy because such laws give them power over minorities as well as control over those Muslims who might be considered a threat to the authority of clergy by insisting on Quranic teachings of religious tolerance, political peace and human dignity. All in all, in today's Muslim world, *Shariah* is rarely a source of justice, tolerance or charity. Instead it has become the chosen tool of oppression and savagery. In the earlier centuries of Islam, it was *Shariah* that had fostered religious tolerance, socioeconomic justice, legal excellence and scientific achievements. Simply put, it is not *Shariah* but its twisted interpretation by Muslim clergy that is the real problem.

Flexible Nature of Shariah: *Ijtihad*, *Ijma* and *Qiyas*

How did *Shariah*, which should be a source of justice, charity and tolerance, become a form of oppression? Ironically, it is the flexibility embedded in *Shariah* that led to its distortion. The primary and earliest sources of *Shariah* are the Holy Qura'n, *Sunnah* and *Ahadith*. With the passage of time, however, new sources of *Shariah* emerged such as *ijtihad* (independent rational analysis) supported by *ijma* (consensus of scholarly opinion) and *qiyas* (analogy). The purpose of these new sources was

to find suitable responses to challenges posed by ever-changing social conditions and scientific progress in light of the Qura'nic text, *Sunnah* and sayings of the Holy Prophet (saw).¹

Ijtihad is the use of reason and judgment to decide which course of action is most in keeping with the spirit of Qura'n and *Ahadith*. To be more precise, *ijtihad* refers to exercising independent juristic reasoning to provide answers where the Qura'n and *Sunnah* are silent.

The basis for *ijtihad* comes from a conversation between the Holy Prophet and Hadhrat Muadh ibn Jabal upon his appointment in Yemen as a judge. Prior to his departure, the Holy Prophet asked him, "According to what shall you judge?" Hadhrat Muadh replied, "According to the Book of God." The Holy Prophet then asked, "And if you find nothing therein?" Hadhrat Muadh went on, "I shall judge according to the *Sunnah* of God's Messenger." The Holy Prophet further asked, "And if you find nothing therein?" Hadhrat Muadh answered, "I shall not fail to strive (*ajtahidu*) to reach an opinion." Satisfied, the Holy Prophet concluded, "Praise be to God who has guided God's Messenger's messenger to what pleases God's Messenger."

According to this *Ahadith*, the legal methodology of referring to the Holy Qur'an and then the *Sunnah* and then engaging in *ijtihad*, was a result of God's guidance to Hadhrat Muadh.

In addition to *ijtihad*, *ijma* is also a source of *Shariah*. *Ijma* refers to the collective judgments and consensus of Muslim scholars. Together, *ijma* and *ijtihad* enable the Muslim community to elaborate on the teachings of Holy Qur'an, *Sunnah* and *Ahadith* with a rational and collective effort. *Qiyas*, which is a restricted form of *ijtihad*, assists Muslims in carrying out an authentic interpretation of the Holy Qura'n, *Sunnah* and *Ahadith*. *Qiyas* is reasoning by analogy. *Qiyas* is defined as "establishing the relevance of ruling in one case to another case because of a similarity in the attribute (reason or cause) upon which ruling was based."² For example, the Holy Qura'n prohibits wine because it can cause intoxication. By analogy, if wine made from grapes is forbidden, wine made from dates must therefore be forbidden as well since it too can cause intoxication. By the same token, a ban on narcotics can also be based on the Qura'nic injunction against wine-drinking.³ Interpretation of the Holy Qura'n and *Sunnah* through the use of *ijtihad* and *ijma* gives rise to Islamic *Fiqh* (Islamic

¹ Qadri, Anwar Ahmad, "The Sources of Law", Islamic Jurisprudence in the Modern World, N.M. Tripathi Private Limited, First Edition, 1963, p. 68-69

² Mashhour, Amira. *Islamic Law and Gender Equality: Could There be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt* Human Rights Quarterly - Volume 27, Number 2, May 2005, pp. 566

³ Janin, Hunt & Kahlmeyer, Andre, "Fundamentals of Islam", Islamic Law, McFarland & Company, 2007, p. 21

jurisprudence). Under the concept of *ijma*, when a particular *Fiqh* ruling has been unanimously agreed upon, it becomes part of *Shariah*.

Distortion of *Shariah*

The *ijtihad* along with *ijma* and *qiyas*, historically, have been a double-edged sword. On one hand, *ijma*, *ijtihad* and *qiyas* have enabled *Shariah* to be flexible and respond to changing circumstances and allow room for independent human reasoning on those matters where the primary sources of *Shariah* are silent. On the other hand, with the passage of time, *ijma*, *ijtihad* and *qiyas* have been instrumental in the enactment of legislations that do not truly reflect the spirit of the Holy Qura'n, *Sunnah* or *Ahadith*. In other words, *Shariah* in its current form is not entirely Divine in origin. *Interpretations* of the Holy Qura'n, *Sunnah* and *Ahadith* have introduced the element of human reason into *Shariah*, making it susceptible to mistakes.

The exercise of *ijtihad* during the eighth and ninth centuries led to the development of four schools of jurisprudence, which are followed till today by the vast majority of Sunni Muslims: Hanafi, Maliki, Shafie, and Hanbali.⁴ The process of *ijtihad*, that is independent juristic reasoning that culminated into these four schools did not continue for long:

*“As Shariah matured as a legal system, and the need for developing fresh principles and rules was perceived to be diminishing, room for ijtihad was seen to be narrowing to the point of extinction. This phenomenon is known in the history of Islamic jurisprudence as the closing of the gates of ijtihad. The gates are believed by the majority of Muslims to have been closed since the tenth century A.D. Some recent and contemporary Muslim scholars have been demanding the reopening of the gates of ijtihad.”*⁵

No doubt, these four schools of jurisprudence reflected the historical realities and social customs of their times. Since the gates of *ijtihad* were closed in the eighth and ninth centuries, today's *Shariah* reflects centuries old realities. For instance, more than fourteen centuries ago, Islam had introduced a procedure of divorce that made it incumbent on a Muslim to carry out personal reflection before finalizing divorce. According to the Holy Qura'n, the husband utters a single pronouncement of divorce and then abstains from sexual relations with his wife for a period of three months (*iddah*). This pronouncement is revocable during the whole period of *iddah*. This *iddah* time provides a room

⁴ Mashhour, 567

⁵ Mashhour, 567

for reconciliation and reconsideration of the husband's decision. At the end of this *iddah* period the divorce will be irrevocable.⁶

But *ijma*, *ijtihad* and *qiyas* in combination with local customs have turned divorce into an emotional and comical affair. In many Muslim societies, the husband may pronounce the three formulae (that is, the three pronouncements of divorce: I divorce you, I divorce you, I divorce you) at one time. The separation then takes effect definitively after the woman has fulfilled her *iddah*. This method of divorce has no support in Qura'n or *Sunnah*.⁷ John Esposito, an Islamic scholar, writes, this reflects the power of social custom and its infiltration into Islamic law.⁸ This small case study of divorce reveals how man-made *Shariah* can often override Qura'n, *Sunnah* and *Ahadith*.

If *ijma*, *ijtihad* and *qiyas* introduced unwanted elements into *Shariah*, the tradition of *taqleed* (conformity) made it worse. The concept of *taqleed* binds Islamic jurists to make legal decisions that do not contradict the rulings of earlier jurists instead of focusing on the teachings of Quran *Hadith* and *Sunnah*. Furthermore *taqleed* places conformity with *Fiqh* (*historical Islamic Jurisprudence*) before conformity with Holy Qur'an, *Sunnah* and *Ahadith* (in order of preference). According to *taqleed*, a jurist is to blindly follow and apply previously established *Fiqh* rulings. He will refer to the Qur'an only if an applicable *Fiqh* ruling cannot be found.⁹ For example, the doctrine of *jihad* as espoused by Osama bin Laden, Syed Qutb and Maulana Maududi has no basis in the Holy Qur'an, *Sunnah* or *Ahadith* but is actually derived from the *Fiqh* of Ibn Taymiyya and others.¹⁰ The founder of Ahmadiyya community, Mirza Ghulam Ahmad Qadiani, who claimed to be the Promised Messiah in 1889, rejected the notion of *taqleed* and reestablished the Holy Qura'n and *Sunnah* as the primary sources of *Shariah*.¹¹ In situations where traditions of the Holy Prophet are found to be in conflict with the Holy Qur'an, Mirza Ghulam Ahmad Qadiani, argued that Muslims must seek guidance in the revealed word of God that is the Holy Qura'n. Whereas he has defended the primary sources of *Shariah* and clarified their role, he has also exercised his jurisdiction to establish that Imam Abu Hanifah's school of jurisprudence was most consistent with *Sunnah*.¹² He also held that no aspect of *Shariah* should contradict the teachings of Holy Qura'n and *Sunnah*.

⁶ Mashhour, p. 572-573

⁷ Mashhour, p. 573

⁸ Mashhour, p. 573

⁹ <http://www.ahmadiyyagazette.ca/article/54/the-promised-messiah-as-and-the-sources-of-Shariah>

¹⁰ *ibid*

¹¹ *ibid*

¹² *ibid*

Conclusion

Shariah today in Muslim countries, unfortunately, is based on the findings of *ijtihad* of the eighth and ninth centuries and the *taqleed* of those findings by later Islamic scholars in the light of existing social customs. With time, people in authority in league with the clergy have used this distorted version of *Shariah* to achieve their personal and political ends. The need of the hour is to rediscover the original teachings of Islam. The Muslim world must pay heed to the call of the Messiah, Mirza Ghulam Ahmad Qadiani, who held that no aspect of *Shariah* should contradict the teachings of the Holy Quran and *Sunnah* and that the teachings of the Holy Quran outrank all other sources. Paying heed to his call is the only way to rid Muslims world of terrorism and intolerance.