

Politics of Islamic Shariah in the Contemporary Muslim World

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Abstract

Islam around the globe is considered as the world's second-largest religion and conservative's Muslim desire Sharia (Islamic jurisprudence) laws, which is a contested and highly controversial concept. The idea holds variety of interpretative power but still beyond the implementation within Muslim countries. Sharia perceived to be moral and spiritual notion, have no legal mechanism and can lead to socio-cultural disequilibrium. The focus of this paper is to evaluate the fragmented nature and conceived scope of Sharia in a modern democratic age and assess the compatibility of Sharia with the developments of human rights and women empowerment. It differs significantly from its moderate opponents therefore it cannot be part of the present pluralistic legal systems. It is clear that the contemporary Muslim world is backward in numerous significant areas including the science, technology and economic development. Thus, there is indeed a need of radical reforms for Muslim societies and they must revitalize Islamic laws and human values. In short, Muslims scholars and intellectuals have to codify Sharia according to the contemporary circumstances because without that the survival, growth and development of Muslims will be difficult in the highly technologically advanced world.

Keywords: Islamic Jurisprudence; Status of Shariah; Diversity of Muslims; Stagnation; Local traditions and religion;

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Islam is the third most rapidly expanding religion in the world, and today there are approximately 1.6 billion heterogeneous followers worldwide. The 19th and 20th century expedited the spread of Islam under the powerful European imperial rule and is still spreading in Africa, Europe and America where in the number of Muslims has increased notably. It is a religion for all people based on diverse ethnic backgrounds and contributing to building of global civilization. It proved to be pivotal in development of intellectualistic and socio-cultural structure, and for more than eight centuries Persian and Arabic ruled the world as the languages of science and intellect of the world. It was golden age of Muslims and after the 14th century "decline of Muslims started due to foreign domination, stagnation in religion and sluggishness in the field of education, research and development"(Robert, 2010). So, the present Muslim

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society complete rely on fallacy and misconception and is not ready to face the ground realities.

The contemporary Muslim world is politically fragile, economically dependent, technologically backward, militarily vulnerable and educationally not advance and compatible element of society. The Western Crusaders have taken intellectual and economic leadership because of advancement in education, scientific know-how and technological advancement. Muslims have no contribution in the modern technology and have no significant achievements in state-building and nation building (Hoodbhoy, 1991; Segal, 1996). They have no capacity to impress the modern civilization and seem that Muslims cannot adapt themselves to the contemporary changing conditions and have failed to assimilate with modern knowledge and progress (Segal, 1996). Moreover, the end of the Cold War and tragic attacks of Twin Towers on September 11, 2001, also altered the world's perspective about Islam. M. A. Khan has described that present day interpretation about Islam is based on forced conversion which has no connection with Holly Quran and Prophet Muhammad's (PBUH) saying(Khan, 2009).Samuel P. Huntington highlighted the confines of Muslim in his article "*The Clash of Civilization*" when he divided the nations along cultural lines and defines "Islamic civilization is the most troublesome" within the existing civilizations(Huntington, 1993).He has given logic of Muslims' isolation that "they [Muslim] do not share the general suppositions of the Western world and their primary attachment is to their religion not to their nation-state"(Huntington, 1993).He thought that "Muslim culture is inhospitable to certain liberal ideals such as pluralism, individualism and democracy." He wrote that Islamic world's leading towards democratisation and a nature of the state which suppresses political activity, has led to a rise in fundamentalism, revolt against the west and Islamic resurgence in the Muslim world(Huntington, 1993). In this situation, it seems that Muslims have not only discarded their medieval respect of intellect and harmony irrespective of religious differences but also against the modern norms and values as well as domination of the West.

Origin and Development of Shariah:

In the early time of Islam, even at the age of Prophet Muhammad (PBUH) there was no word of *Shariah* is used these days and also there were schools of thoughts of *Shariah* sometimes conflicting that came into existence at least 200 years after Prophet Muhammad's death in A.D. 632.GamalSolaiman (Egyptian Scholar) argued that a large number of people who partake in *Shairah* debate are not aware of origin or the prescriptive denotations of *Shairah* and have no knowledge about its essentiality as a societal and spiritualistic growth of an individual development (Hussain, 2009).Edward

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William Lane argues in his monumental *Arabic-English Lexicon* that the *Taj al Arus*, the *Tadheeb* and the Arabic term *Shairah* refers to “any but (a watering place) such as is permanent and apparent to the eye, like the water of a river not water from which one draws with the well rope”(Lane, 1972).According to *Kareem Elbayar*,it is difficult to seek roots of *Shariah* which developed in course of history and has colossally influenced the future of Muslim world (Elbayar, 2012). The truth is that the primitive *Shariah* failed to address many issues of modern time and requires understandable changes in the first instance and without that implication its origin will be doubtful and uncertain (Elbayar, 2012).

Many Muslim scholars from Asia and Africa follow developed Islamic jurisprudence as a legal system largely based on the traditional tribal law of pre-Islamic Arab society. It is a historical truth that there was no *Shariah*,in the way it came to be practiced, during the Prophet’s own life time(Bulliet, 1994; Esposito, 1991; Esposito, *Living With Islam*, 1995).There are number of interpretations of *Shariah*and fighting between proponents of one or another interpretation is not unusual in Islamic society. Each school placed different emphasis on the four sources of *Shariah* and every one, of course, denying the others. Five highly respected Islamic scholars Imam Abu Hanifa (699-767 CE), JafarIbn Muhammad (702-765 CE), Ahmad Ibn Hanbal (780-855), Al-Shaf’i (767-820 CE), and Malik Ibn Anas (711-795 CE), are perceived to be sound pillars of Islamic Shariah which represents the fruit of their labours from perusing through the available *hadith* literature to enunciate their respective views on how Muslim should led their lives in conformity with the Quran and a *hadith*. Each *imam* worked independently and distilled by devout followers as *Shariah* (the way), and some conservative Muslims consider it to be “mandated by Allah” which is not true. Moreover, each school is thus held equally valuable and proves more competent as compared to others and divergences among them are considered to be matter of illusion rather than reality. The immediate problem of today’s Muslim society is that there is no central authority in Islam for interpreting or enforcing the *Shariah*, nor has there been since the days of Muhammad and his caliphs (representatives) although there have been many claimants (Rahman, 1982).After the decolonization and the development of nation-states, including Muslim states, interpretation of *Shariah* is on a country-by-country basis. Each Muslim country has its own religious interpretations, and each has its own separate religious practices and laws(Levy, 1969). However, the formulation of *Shariah* is a significant development like any other illegal system in the history of Islam. The first three centuries of Islam were the formative period for *Shariah* and at that time the main historical determinants in the formulation of *Shariah* included the geographic and demographic kind of Muslim communal groups and their societal and political context(Hodgson, 1974).These demographic

and geographic factors regulated the socio-political nature of the states of Muslims and also furnished rudimentary content for the development of its institutions and policies during the pivotal three hundred years of Islam.

For majority of Muslims, *Shariah* can be the sole information source for guidance on Muslim daily living. Since the Prophet Mohammed (PBUH) is considered to be most sacred for Muslims, his sayings and deeds of life, compiled in the form of hadith, gained the status of a role model for all and were collected by scholars into what is known as the *hadith*. Hasan al-Turabi, the chief ideologist of the National Islamic Front (NIF), admits that *Shariah* is hardly a system of legal authority that can unite a heterogeneous and quarrelsome nation. To Muslims *Shariah* is the "whole duty of mankind" bucolic theology of righteousness and morality, grand divine pretension, elaborate and formal abundance of rituals. It encloses human life in entirety including private and public law, hygiene, etiquette and even good values (Vesey-Fitzgerald, 1979). Nevertheless, this study primarily shows that Muslims do not consider it divine because it is not a directly revealed tenet or message like the *Quran*, instead, it is derived, using interpretive and influential process, from the tenet of the *Quran* and *Sunnah* and other local conventions, values and norms.

Early history of Islam shows that *Shariah* neither provide the concept of responsible representative government (Durrani, 1988) nor furnish elaborate procedural protocol to public to select the caliph to make him accountable while in office and to remove him from the office in an orderly and peaceful manner (An-Najm). It failed to establish a regular and effectively enforced procedure for the appointment and subsequent accountability of the caliph or his equivalent, nor did it seek to impose legal limitations on his powers. The paradox of *Sharia's* failure of providing surety that government will materialize this idealistic state, invalidates this devout ideal. More being unable to ensure pragmatic remedies against the potentate's abuse of his assumed authority, it advocates approval of such misusage against the ruler's abuse of his recognized powers, it simply counsels acceptance of such abuse (Coulson, 1964).

From the legal constitutional point of view, *Shariah* theoretical limitations on the caliph, or his modern equivalent, were not very meaningful because there was no regular and orderly way of enforcing them (An-Najm). Muslim scholars have debated for centuries whether it is permissible to depose the caliph once he has been duly appointed. Both sides in the controversy have cited *Quranic* and *Sunnah* texts in support of their positions (Al-Mehdi, 1980). In any case the right to depose a caliph who violates *Shariah* exists but there is no mechanism or procedure by which the issue could be resolved in peaceful and

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orderly manner (Al-Mehdi, 1980). It is precisely for this reason the *Sunni* religious institutions, each of the four schools of jurisprudence - developed its own rites and practices through a process known as *ijtihad*, by which qualified *muftis* were allowed to use independent judgment in interpreting the primary sources of Islam. In the first five decades, the period of independent reasoning and flexible interpretation of the law ended when a consensus developed to close the gate of *ijtihad*, presumably to forestall further adaptations and splintering (Marty & Appleby, 1992). *Shi'ais* the major divergent sect of Islam and this group is entirely distinguishable from the *Sunni* majority and it has its own laws, theology and system (Watt, 1988).

Myth or Reality of Shariah:

In Islamic Jurisprudence, *Shariah* (Sharia is the Arabic Word for Islamic Law, also Known as the Law of Allah (God)) is the body of Islamic law and a known concept for Muslims and non-Muslims. It means "way" or "path", comprised of injunctions that furnish guidance in every aspect of human life such as marriage, worship, legacy, crime, business and societal concerns. There is no strictly codified uniform set of laws pertaining to *Shariah*, but it can be called a systematic way of formulating laws derived primarily from the *Quran* (book of Islam) and the *hadith* sententiae, actions and preaching's (sayings, practices, and instructions of the Prophet Mohammed) including centuries of debate, interpretation and precedent. Abdul Mannan Omar argues that *Shariah* means "spiritual law and system of divine law; way of belief and practice in the Quran" (Omar, 2010). *Shariah* is administered by religious courts, classically the only courts in a Muslim society through the individual judge, *qadi* or *mufti*. Gamal Solaiman (Egyptian Scholar) defines that "the word 'shariah' literally means a way leading to a watering place where people have access to indispensable life ingredients" (Hassan, 2009).

It is generally accepted that the most authoritative source of constitutional theory in Islam is the *Shariah* as Fathi Osman (Egyptian Scholar), emphasises that the *Shariah* "meant to guard and protect the physical and moral purity and wholeness of the individual and society, not just to impose taboos and punishments" (Hassan, 2009). Osman explains that the primary aim of the *Shariah* is to facilitate life, its prime focus being on recognizing and protecting human honour bestowed on all human kind by Allah as related to Adam as stated in Sura 17: Al-Isra, verse 70 (Hassan, Dispelling Myths about Shariah, 2009). In addition, *Shariah* is used as a blanket term to refer to a code of law which regulates all aspects of a Muslim life. Shariah is a legal code of conduct that provides guidance to Muslims in every aspect of their lives. Apart from the literary definition of *Shariah*, its meaning in original Islamic law and theology is very different than the conservatives which have rigid, narrow and literal

understanding about the issue. The moderate believes that it is unsuited with contemporary values and not compatible with a modernistic and democratic armature of human rights, particularly it is failed to deal the issue of women empowerment (Elbayar, Reclaiming Tradition: Islamic Law in a Modern World, 2012). In reality, majority of people have no proper awareness about the origin of *Shariah* which grounded in normative Islamic ideas of universalism, rationalism, moderation, social justice and compassion. Many people ignore the fact that culture plays a vital role in the formation of *Shariah* because Arabs' *adaat* (traditions and customs) are an essential source of *Shariah* formations. The deceased Abdurrahman Wahid (Head of Indonesia's Islamic Party Nahdlatul Ulama), former President of Indonesia and majority of *ulamah* of the country supported the idea that Indonesian convention and practices should be part of *Shariah* as in Arabian society (Engineer, 2013).

In the days of Prophet Mohammad's time Muslim community was restricted to Arabian area but, with the spread of Islam to Asia, Africa and Europe then Muslims (Ummah) were no more confined to the Arabian Peninsula and many others cultural and linguistic groups embraced Islam. Riffat Hassan rightly argued that there are important reasons to educate young generation about the maiden meaning of the concept of *Shariah* its diachronic evolution and current relevance of *Shariah* (Hassan, Dispelling Myths about Shariah, 2009). Islam is a guiding system for more or less the entire Muslim Ummah including Pakistanis. The scholars must realize that *Shariah* is not as well established norm like the Holly Quran but its normative and institutional foundations have been laid to long time to become a central concept. Ahmad Naguib Roushdy rightly mentioned that *Shariah* has many faces based on different interpretations and it cannot be a delicate balance in the protection of true Islamic values. There are many things missing in present day *Shariah* and have many faces to legitimize the values (Roushdy, 2013). So, in the modern time *Shariah* should not be limited to penal laws but should also address all recently emerged fields of law including modernist laws such as national, global, administrative, customary laws, socio-economic, and other public and private sector areas.

In the early days of Islam, there was no source of preservation of *ahadith* (ahadith or Sunnah) which has led to many misunderstandings about Islam. That time the science of narration, collection and criticism of *ahadith* was unknown to the world prior to the era of the Prophet (PBUH). It was due in part to the absence of reliable scientific sources that the messages of the prophets became lost or distorted in the generations that followed them. Therefore, it may be said that many version or the final message of Islam has been lost its original purity and contemporary Muslims divided it in many forms. So, due to lack of proper preservation, doubts and allegations arise in Islamic history

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(Nadawi, 1998). A majority of Muslims around the globe immutable across the world have misunderstanding that laws of *Shariah* are unchangeable and are representative of divine will; however, it is not true and *Shariah* cannot be immutable (Engineer, 2013). This misperception has been created by the ultra-conservative school of thought who refused to confess any change in *Shariah* and maintained that *Shariah* being divine cannot be changed. The conservative claims that *Shariah* is irreversible rules and norms underlying *Shariahi. eusul al-fiqh*. Despite of the fact, many varying interpretations about *Shariah* can be incorporated into political systems relatively. Laura Vriens argued that “great controversy exists in Sharia particularly about the rights of women in an Islamic society. Despite official reluctance to use had punishments [sic], vigilante (Muslim Scholars Defines that Vigilantism is not a part of the Islamic Legal and Judicial System) justice still takes place. Honour killings, murders committed in retaliation for bringing dishonour on one’s family, are a worldwide problem” (Vriens, 2009). Adultery is the only case that encourages both Muslims and non-Muslims to unlawfully claim the right of awarding nemesis to the alleged culprits (In Islam Four Eyewitnesses to the Act of Adultery or An Unforced Confession are Necessary before and Punishment is meted out).

The moderate Muslim scholars argued that usual based laws must undergo revamp taking into considerations the socio-cultural development in the society. Islamic history witnessed that when Imam Shafi shifting from Hejaz to Egypt, a confluence of Coptic and Arab cultures, Shafi realized this and revisited his thought on different issues (Ahmad, 2012). In this context, *ibadaat* (Prayer), concerns related with worship, the life hereafter and *mu’amalaat*.e interpersonal relations such as inheritance, nuptial issues, divorce, and other socio-economic issues normally deal according to the spirit of religion but most of the time treated under the local cultures and values rather religion. It is a reality that the present Muslim society polarizes particularly in term of interpretation of *Shariah* because one section of society believes that the *Shariah* performed impeccably and some have an idea that *Shariah* in letter and spirit is relatively not applicable or neglected (Nasr, 1988). The moderate scholars claimed that conservative impose *Shariah* on Muslims and consider it to be the ultimate law, even if not fully practiced by everyone (Nasr, 1988). Nonetheless, *Shariah* seems to be more than religious law because its scope is not limited to religious concerns, instead it extends to the worldly concerns of individuals everyday life.

Muslim History of Stagnation:

The culture of stagnation within Muslim world started when Abbasids dynasty destroyed by the Mongols of Central Asia (1258) and Muslims perceived that

not only its glory devastated but the state security became severe matter. Some degree of Islamization have taken place during the Umayyad era but the Abbasids, who later failed to pursue rigorous Islamization, have applied *Shariah* in a more comprehensive and strict fashion (Goldziher, 1981; Schacht, 1964). In the initial time of the Abbasid rule the practical commitment with *Shariah* was undeniable and that commitment accounted for the establishment of the sources and techniques of *Shariah* and the formulation of its fundamental concepts and general principles.

In such uncertain situation conservative class felt unsecured and endangered about loss of the status of religion and claimed that practiced customs and convention sought not to be altered. They argued that primitive conventions underwent a diachronic evolution and are the pragmatic wisdom of various generations and their erudition, thus, they deserve preservation. However, alteration is not impossible if it is not done at the cost of status quo (Ali, 2013). It was a time when Ibn Taymiyyah issued *fatwa* on *jihad* and closed the doors of *ijtihad* and enlightened concept (*ijtihad*) replaced by rigidity. *Sunni* schools of thought (*Hanafi, Maliki, Shafi'i* and *Hanbali*) agreed to stop further research in Islam and closed the doors of *ijtihad*. As a result, religious conservatism had become a major influence in Islamic world and Muslim left large part of the intellectual heritage of Islam. Thus, since the days of Crusades and fall of Baghdad by the Mongols, moderate Muslims demanding that *shariah* should be “thoroughly revised and all basic principles of Islam should proceed for reinterpretation according to the needs of modern times” (Controversies about Sharia, 1994; Loewentheil, 2013).

The enlightened intellectuals want to transmute society according to modern norms and thus free from the antiquated system. They claims that Muslims should come out of stagnation and discard conservative approaches because it is not applicable in the contemporary time and must follow the living *sunnah* (Marie, 1995). Allama Iqbal says, “Islam is not a departmental affair: it is neither mere thought, nor mere feeling, nor mere action: it is an expression of the whole affairs. It is not a religion in the ordinary sense because it is a philosophy of life which seeks to ensure the harmonious development of the individual and the transformation of humanity” (Martie, 1966). Thus, renaissance desires great economic resources and literacy and Muslim scholarship in the areas of chemistry, physics, biology and economics are far less in number. The Islamic world today is illiterate in science and has no competent theologians and has subdued the contemporary Muslim world. In any case, Islam is facing grave problems and is deemed as an intolerant and violent religion (Dickey, 1995). The majority parts of Muslim world have volatile climate where are more extremists and a rich breeding ground for hate. They did not make an explicit effort to formulate a method of panoramic and

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organized interpretation of *Shairah* to guide the moral and legal teaching of Islam and overcome some of the short comings in the classical systems of Islam. The critic claims that there is no detailed concept of state and government, except warnings for the elite and peoples and equally *Shariah* did not elaborate a detailed constitutional theory (An-Najm). For this reason, Muslim society is lacking effective administrative and executive system for the services of society but it could not happen in the past and has not happened even in the modern time(Assad, 1961).

Multiple Legal Systems in Muslim Countries:

Islam is victim of ignorant, illiterate and emotional followers and becomes most neglected, badly taught and severely misinterpreted discipline in the world. The lack of awareness of universality in rudimentary injunctions of Islam is found especially among Muslims and particularly amongst non-Muslims. It seems that Islam is steeped in ignorance in which the mind and spirit of human had become benighted and high standards and values of life debased. As Sayed Qutub said, Islam is prevailing in the age of political tyranny and intellectual slavery in which the very roots of humanity are being corroded by elites of society and ultimately religion become the symbol of hopelessness and frustration. In addition to this, clouds of skepticism and agnosticism and infidelity are hovering overhead and the religion seems to be helpless to dispel them (Nadawi, 1998).

The religions that claimed themselves pure spiritual have fallen and are victim to interpolations, disintegration and lost their prestige and become bodies of devoid of all spirit. It is perceived that there is no life, no vitality left in them and they has become a depository of certain rituals and symbols and lost validity of meaning and pertinence. According to Fazlur Rahman(Professor Fazlur Rahman, arguably one of the most important thinkers of 20th Century Islam, was the Harold H. Swift Distinguished Service Professor of Islamic Thought at the University of Chicago at the time of his death in July 1988) (Chicago based Muslim Scholar), Islam and Muslims are two different elements and both cannot be together because Islam and Muslims have different direction and perception (Rahman, Islam and Modernity, 1982; Rahman, Revival and Reform in Islam, 1999). This matter has been explained by Allama Muhammad Iqbal in an absolute manner and correctly put that “at critical moments in their history it is Islam that has saved Muslims and not vice versa”(Sir Muhammad Iqbal’s 1930 Presidential Address to the 25th Session of the All Indian Muslim League at Allahabad (India), 1930). Fazlur Rahman has rightly mentioned that “there is no need that Muslims to reform Islam but to reform themselves and must review their social contract (traditions and values) which have nothing to do with Islam”(Rahman, Revival and Reform in

Islam, 1999). G. A. Perwez also mentioned that Islam is a living force that will keep on upraising morality and political and socio-cultural awareness of public. Moreover it will persist on contributing to the culture and erudition of humans which is not possible without revolutionary changes in existing traditions(Parwez, 1968).

Muslim countries have 'dual' or 'triangular' systems such as English law, local traditions or values and religious (*Shariah*) laws. They failed to adopt one procedure as a governing system and their society has no uniform culture to present to the world. Most of the Muslims follow traditions and religion because both sustain their dominance as compared to law of the land. They use religion as far as matters of family relationships, nuptial concerns and matters pertaining to familial property concerns and like to stay with tradition due to social status. Muslims are split on the matter of *Shariah* and an opinion prevail that these are not implacable values in the modern age(The Express Tribune, 2013).In many Muslim countries, homosexuality, harlotry, dipsomania, alcohol consumption and suicide are considered unethical by a great majority of people in several Muslim countries but an individual act, and have sharp differences on issues such as polygamy. In the same manner, a huge number of people articulated that there is no justification for all time notorious honour killing.

In many Muslim countries judicial system is a unique admixture of residual imperial judicial system and *Shariah*, the latter working as supplementary guidance. Many Muslim states prohibit any legislation that contradicts with Islamic teachings. In the situation, the Muslims must remember that continue living in the past will not leave a positive mark on civic life style and societal stability regardless of its importance for nation building and state building. Thus, Muslim should accept modernization which is essential to ameliorate human life and will be necessary to conserve conventional cultures. However, there is indeed a need to reform and revitalize *Shariah* in order to meet present day demands. According to *Kareem Elbayar*, "*Shariah* is not a rigid and immutable and not based on unchanging texts, and let's makes *Shariah* imminently flexible and dynamic jurisprudence that would fully compatible with the modern human rights framework"(Elbayar, American Muslims Launch Campaign to repair Sharia's Reputation, 2012)(Elbayar, Reclaiming Tradition: Islamic Law in a Modern World, 2012).So, modern and liberal body of *Shariah* will promote respect for human rights and create soft image and respect in the West.

Absence of Renaissance in the Muslim World:

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The most tragic part of Muslim annuals is that conservative Muslim scholars become rigid and likes to maintain its connection with past and practices a policy of persistence without any rupture and change. According to renowned historian Mubarak Ali, “conservatism means rejection of new interpretation and believing in primitive text. They desire to assert inequality and continue to justify and hold valid, old and outdated traditions and customs”(Ali, 2013). It became essential aspect of conservative oligarchy to stay with the conversation of prevalent conventions since their boons depended on these customs. They try to maintain the status quo in the name of religion and culture and only revolution can abolish these values instead of an evolutionary process. In the situation, the socio-economic and political supremacy of the West have created dependency in all fields of life and has psychologically changed mentality of the Muslims and generated inferiority complexes in them. The present Muslim society does not believe in concept of renaissance or “rebirth or revival” and have no ambition of exploration or growth of science and invention. It seems difficult to ignite renaissance in Muslim world, and consequently it could not be brought about even in the 19th century when the situation of was likely for it to happen did not happen, if not outright congenial.

In fact, conservative forces with the backing of ruling elites working in society and are against any kind of change. Since long humanistic philosophies are prevalent and no concept of free expression exist in the Muslim world(Engineer, Is Renaissance Possible in Islamic World Today, 2012). It seems that conservatives claim high authority and levy several social restrictions; therefore, intellectual revival to usher ideas is not possible as a consolation for creative intellectuals, writers, scientists, and architects. According to Asghar Ali Engineer, “the conditions are very different in Islamic world because Islam came to create a new consciousness, almost revolutionary in approach with great emphasis on justice and equality. It brought an end of era of ignorance and darkness in an Arab society where hardly had knowledge of philosophy or science or arts and architecture”(Engineer, Is Renaissance Possible in Islamic World Today, 2012).There was no possibility of renaissance, as far as Arab traditions were concerned, but some development can happen if the Muslim society spent great fortune to transfer knowledge from developed world to their societies. They acquired scholarship and learning from indigenou as well as from foreign sources to utmost possibility of knowledge and sources. As Ashgar Ali mentioned, that Muslim should test and verify the good and the bad on the touchstone of reason and not simply *Shariah*. However, the traditionalists argue contrarily, believing that *Shariah*is the sole benchmark to decide about what is good and what is bad(Engineer, Is Renaissance Possible in Islamic World Today, 2012).

It was Abbasid time when heated debates took place, and the great theologians such as Imam al-Ghazzali, Ibn-e-Rushd and IIm al-Kalamwrote a remarkable books like *Ahya' al-Ulum*, *Thafut al-Falashifa*, (i.e. The Incoherence of the Philosophers) and *Tahafut Tahafut al Falasipha* (i.e. *The Incoherence of the Incoherence*). It is revivification of knowledge and the response to growth of knowledge. It was the only time of renaissance in Muslim world and after that the door closed permanently because it is most challenging task(Engineer, Islamic Contemporary World, 2007).According to Mubarak Ali, “when a society is in decline, it takes refuge in the past providing a sense of satisfaction in lost glory, linking itself to the past in order to build an identity and dignified niche for itself. This concept appeals to backward societies which cannot compete with progressive nations”(Ali, Gilt-Ridden, 2011).As M. J. Akbar argued that the Muslim world travelled diachronically from renaissance to darkness and ignorance while the Western world progressed from ignorance (*Jahiliyyah*) to intellectual rebirth (Renaissance) till 16th century and is still advancing with the same, and once it launched its renaissance, continued with it and does not need another one(Akbar, 2004).

Perestroika for Shariah:

History is witness that once a society attached itself with its conventions, societal and cultural norms, its basic structure might not accept any reform or alteration. Consequently, it suffers stagnation and sterility. Ibn Khaldun and Arnold Toynbee are agreed that “if a society cannot alter itself at a time when it needs reforming of its traditions and institutions, all efforts for reformation become useless and after some time the roots of its institution become corrupt and any step to reconstruct them will fail”(Ibn Khaldun, 1969; Toynbee, 1987).Revolutionary and reformative societies are by nature progressive whereas static societies adhere to antiquated wisdom for resolving their problems. So, alteration glasnost (pleasant air) is welcomed in futuristic societies while the same is considered agonizing ordeal in the static communities which is torturous and painful experience.

In Asia, Africa and Europe people perceived Islamic religious law a threat to multi-cultural and pluralistic society. The demand of *Sharia* has a code of conduct by the conservatives has created panic fear in all societies. The West is not willing to recognize *Shariah* for courts because it is “totalitarian in character” and incompatible with their constitutions(Ali, 2013). Some conservative scholars have consensus that *Shariah* is evolving, and its exercises and usages have undergone alterations and will still develop with the passage of time. Different Muslim modalities interpret *Shariah* differently. It is considered as a paragon of divine law which is elucidated by Muslim theologians over a span of many centuries aiming to ensure mercy, justice

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and fairness (Ali, 2013). Critics of *Shariah* argue that the “constitution of the country guarantees freedom of religion and respect of human rights but *Shariah* does not provide psychological and moral sense of security” (Moysey, 2013). They claimed that *Shariah* can be personal religious law and moral guidance but cannot be alternative or substitute of the law of the land or constitution. The conservatives who are demanding Sharia enforcement, have no respect for the law of the land (Ali & Duss, Understanding Sharia Law, 2012). Their approach put the country’s constitution in subordinate position and people divided in sectarian and ethnic lines. Thus, it is nonsensical for *Shariah* to be superior to the constitution and to operate two sets of contradictory laws in any country, even if most of the country residents want *Shariah*.

The code of *Shariahs* spawns many problems, specifically regarding the issues concerned with women. It is hard to argue that women and men across the Muslim world are not treated equally with respect to privileges and legal rights. Scholars have serious observation that existing *Shariah* laws undermine women specifically due to cultural prejudices of middle ages (Venkatraman, 2009). Some Muslim countries like Egypt, Indonesia, Malaysia, Turkey, Indonesia and others remove gender biases but the countries like Pakistan, Bangladesh, Middle Eastern and North African countries still considered this deviation from ‘divine’ law (Engineer, Is Renaissance Possible in Islamic World Today?, 2012). According to Naguib Roushdy, “Ulama from different fictions can review *Shariah* in matters which not treated by the *Shariah* law and to amend rules of the spirituality that have become archaic or unjustified under changes of circumstances” (Roushdy, 2013). Moderate scholars also reject the very concept of conservatives and argued that the past is the hurdle for advancement and profess that better future necessities both removal of past conventions and reformation of current norms are customs. Conversely, progressive communities never feel nostalgic, antediluvian bells époque in past living in the present, they attempt to improve it and also strive for development and progress in future (Ali & Gilt-Ridden, 2011).

It is interesting to note that each Muslim country has its own *Shariah* interpretation and problem of uniformity is a common matter. It is required that certain laws of *Shariah* be codified ensuring more flexibility and suitability of every land. It is necessary to reform *Shariah* because it has to accommodate other areas traditions and values and to make the laws more obvious to the masses (Roushdy, 2013). The reform will be vital because most of the *Shariah* laws come or are borrowed from the Arabs’ traditions. Some jurists and judges propose that it is a high time to revisit *Shariah* and combine with the native country’s traditions and circumstances (Roushdy, 2013). Abdel Raziq Al-Sanhouri (legal scholar and the author of Egypt’s Civil Code) was the great

supporter of change and claimed that it would not be a toilsome task to codify it.¹ He was the head of the committee that reviewed the civil code which was legislated in 1948 and was implemented on October 15, 1949. The new code resembled Egyptian legal systems. Diachronic social developments that took place over a period of five decades have influenced and affect some regulations of Islamic *Shariah* and different states modern legislation. Privately Mohamed Kadri Pasha, a well-known Egyptian Jurist, had brought *Shariah* provisions as these related to domestic affairs, transactions, and *waqf*(religious endowments). Turkey has also codified the *Shariah* in its Al-Mejallah code (1877, 1926 and 1974) and majority *ulama* has given consensus because of the people's benefits. Turkish parliament went a step further by reforming family law and declared "gender equality in the country.

The two essential prerequisites for pioneering intellectual revival movement for *Shariah* are scholars' futuristic vision and their awareness of the current progress in the domain of erudition. The challenges of the modern advance world can only face after a struggle to eliminate past myths and traditions. According to Asghar Ali Engineer, "we are living in the 21st century but conservative does not allow people to prepare a lunar calendar and insist on sighting a moon with naked eye." In general, conservative *ulama* consult antiquated texts for issuing *fatwas* and do not consider novel problems in their respective modern content. The conservatives in Muslim countries including Pakistan ardently repel any endeavor of contemporizing madrassa education even on assurance of retaining theological educations concerned it will not be touched. Hundreds of *madrasas* in South Asia are working as sectarian nurseries and each sect maintains its own network of mosques and madrassas. The worst result appeared in the recent past when the anger spread because of US film depicting the Prophet Muhammad (PBUH) in a manner not acceptable to the Muslims sparked angry protests across the world particularly in Pakistan. On 20th September 2012, thousands of protesters damaged civil-public properties, broke windows, torched vehicles (unaccountable Coaches/buses, Cars, Bicycles and Motorcycles and etc),ransacked cinema buildings, vehicles parked and burned the US flag..In addition, billions of rupees can be added to this loss if the values of torched banks, petrol stations, CNG (compressed natural gas) pumps, cinema houses, shops, offices, hotels and restaurants are counted.

Conclusion

The term "*Shariah*" and the expression of "Islamic Law" interchangeably donot capture the complete association that the word *Shariah* contrives for the Muslims. *Shariah* in its proper understanding is not simply a set of laws. For devout Muslims it means more than that having ethical and spiritual

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connotations and metaphysical purpose. The core matter is that *Shariah* proposes the notion of subjecting both the individual and the government to justice as per law. But the tragedy is that the *Shariah* which meant to be flexible and compatible by nature, has manifested inflexible rigidity in laws for Muslims. In this context, religion has been used in most Muslim countries not to liberate but to entrench inequality. It is often linked with amputating limbs, lashing, stoning to death and other penalties practised in middle ages. Consequently, it is considered as a draconian code. Some western consider it is an obsolete legal system and its imposition in the *Shariah* controlled states is believed to be an unjust action. Thus, the Islamic jurisprudence has currently become an abyss, particularly they want of fundamental human right protection that has been given prime importance in the advanced world.

Moderate scholars are agreed that some laws of *Shariah* are in dubiously antiquated and onerous. Gender discrimination is common in Muslim countries and there is no equal treatment for men and women as well as for poor and rich. It reprobates the vigilatory honour killing that even now being practiced in many Muslim states. The conclusion is that Islamic legal system has permitted much freedom for doing things as per one's vocitton since its inception. The upshot is that the system of Islamic law as it came to exist allowed a great deal of leeway. The conservatives, partly due to their pseudo-scholarship, lack will power to revive scholars' old juristic role to counter poise the executive as a constitutional requisite. Moreover, conservatives like other ideologists, seek to acquire state power; additionally, they want to transmute society on antiquated ideals that lack clear directions. It has been proved that application of *Shariah* in the courts would remain impossibility unless the *Shariah* code is regulated and implemented by an elected parliament as per current needs.

Nonetheless, the implementation *Shariah* in its present form may be bringing the Muslim countries to the verge of autocratic rule and disorderliness in the name of Islam. The only acceptable *Shariah* code is the one which is developed in accordance with novel situations and alterations in conventions and customs and must cater for the socio-economic circumstances in most of Muslim countries including Pakistan, where about majority of its population is illiterate and destitute and joblessness has become an uncontrollable giant to unprecedented level. The problem with the conservatives is that they are applying the Machiavellian philosophy of controlling people, the conservative have allowed every means to control individuals on the pretext of individuals' brutal nature. It follows that rulers are permitted to use any means which helps sustain their authority. They are not aware of the fact that Machiavelli himself professed "the ends justify the means." But this is a malison for Islam. Islamists obtained power prior to planning for ruling people and want to

impose *Shariah* just to apply Islamic penalty of amputating the hands of larcenists, confine women freedom, restricting human rights and stressed tolerance for other religion. That is why present day moderate scholars recommended to reform *Shariah* with radical changes because old fashion of *Shariah* has failed to achieve the objectives. So, at the dawn of 21st century revolutionary reforms are necessary in *Shariah* to integrate with the fundamental tenets of democratization of the system, scientific development, modern education, and respect for the universal human rights. On the whole, it shall have to create a society in which all the people shall have to be well positioned and to live in harmony.

Note

ⁱ Egyptian legislature had already codified some rules of the *Shariah*, referring to the enactment by the Egyptian government in 1929 of a new law on marriage and divorce that required a minimum age of 16 for girls and 18 for boys and annulled some form of divorce that were considered legal before the codification, such as the divorce of an insane person or a person married under duress or under intoxication. Even today Salafis in Egypt are demanding for a reduction in the minimum marriage age for girls to nine years if the girl has reached puberty.

End Notes

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