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Shariah Law and *Hudud*: Understanding Its Objectives and Spirit

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Synopsis

The Sultan of Brunei recently announced the introduction of the Shariah penal code or hudud as part of implementing Shariah law in the country. What do the terms Shariah law and Hudud entail and what are their objectives?

Commentary

THE ANNOUNCEMENT by the Sultan of Brunei of the introduction of Shariah penal code recently has received a mixed reaction. While there is support for the move domestically some human right groups criticised its introduction.

The Shariah penal code, which only applies to Muslims in Brunei, includes punishments such as death by stoning for adultery, flogging for abortion, severing of limbs for stealing and other offences which are prescribed in Islamic jurisprudence. The term Shariah law however has been widely misunderstood. Many people understand Shariah as merely *hudud* or penal code that regulates the punishments for criminal offences. It is important that this misconception be cleared.

Meaning of Shariah

The term Shariah in Arabic literally means a path or a way. The Quranic uses of the word Shariah with this meaning is revealed in Chapter Al-Jathiyah (The Crouching) verse 18: "Then we put you [O Muhammad] on a straight way (Shariah) concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know".

From this reading, Shariah generally means the way or path that Muslims take to lead their lives – be it as individuals, as a society or as a religious community. From the perspective of Islamic jurisprudence, Shariah refers to 'Islamic law' which many assume as consisting of mainly criminal laws and penalties. However, Shariah encompasses more than merely laws and includes moral, social and political codes of conduct for Muslims at the social and communal levels.

Essentially Shariah is a practical guide for Muslims to adhere to and live by. It is entrenched in the true teachings of Islam that relates to all aspects of human life. It has specific principles and objectives that aim to facilitate justice and harmonious living in the society.

Muslim scholars - both traditional and contemporary - have always emphasised the objectives or goals of the Shariah (*maqasid al-shariah*). While the Shariah itself has specified rulings and regulations for Muslims to lead their lives, understanding its objectives is key as it provides comprehension as to why these rulings are prescribed. Understanding these objectives is evidently important and yet somewhat neglected in many discourse on learning the Shariah.

Objectives of Shariah

There are many objectives of the Shariah which can be summarised as follows:

First, the Shariah protects basic human rights for all members of the community irrespective of race, religion and culture. This protection is important to preserve a harmonious living in the community. Traditional scholars have classified these rights as faith (*iman*), life (*hayah*), progeny (*nasab*), property (*maal*) and intellect (*aqf*). The protection of these five rights will ensure the freedom of faith and uphold the sanctity of life. It will also affirm and validate the importance of familial ties and protection of assets and uphold rational and true reasoning of the mind.

Second, Shariah aims to establish justice between Muslims and the rest of humanity. Indeed, justice is the true essence of Islamic teachings which has been repeatedly mentioned in the Quran. With justice on earth, people will live in peace and harmony. The Shariah teaches that all human beings are equal and that nobody is superior above the other because of religion, race, wealth and family. This equality is among the key messages of Prophet Muhammad in his Last Sermon.

Third, the Shariah aims to provide benefits (*maslahah*) for human beings and removing hardships (*al-usr*) from them. Bringing about benefits and removing harm is essential in establishing a harmonious society. Protection of the basic rights mentioned earlier, brings benefit and violating them will cause hardships in the society. For example, adultery is prohibited as it violates the sanctity of the family while alcohol consumption has the potential to damage a person's intellectual capacity that could lead to the abuse of other people's right.

Hudud: mercy and not punitive

Hudud is an Arabic term that refers to Islamic penal law or Quranic punishments. In traditional Islamic legal systems, *hudud* is implemented when certain proofs and conditions are met. *Hudud* offences as stipulated in the Quran include theft, brigandage, adultery and apostasy.

As perceived by many, *hudud* is not merely about amputation (hand-cutting) for those who steal and stoning for those who commit adultery respectively. It is about upholding justice in the society as mentioned by Brunei's Mufti Awang Abdul Aziz on the day when Sultan Hassanal Bolkhiah announced the introduction of Shariah penal code: "the Shariah guarantees justice for everyone and safeguards their well-being".

Although Quranic penalties such as amputation of the hand are stipulated in the Holy Book, there are strict conditions that must be fulfilled before these Quranic penalties can be applied. These strict conditions have been widely agreed by many traditional and contemporary jurists.

Shariah laws such as the *hudud* are not meant to be punitive. Their intention is to keep law and order in a Muslim society through clear deterrence.

Contrary to the widely accepted thinking, Islam enjoins its adherents to show tolerance and clemency over the application of *hudud*. Islam encourages its followers to repent and return to the right path when they commit vices. The Prophet never liked to punish his followers but rather preferred to educate them and encouraged repentance. In fact, many jurists are of the opinion that Quranic punishments such as the *hudud* cannot be applied to one who repents after the crime and before the execution of the punishment.

Importantly, Islam enjoins Muslims to be merciful even when applying the *hudud* as the Prophet has mentioned "Strive to be merciful one to another in the application of Quranic punishments". Hence, when the society avoids the application of *hudud* by mercy and tolerance, it acts in accordance with the spirit of Islam and adherence to the teachings of the Prophet.

As a peace-loving religion, the essence of Shariah is also characterised by mercy and compassion. The ultimate objective of the Shariah and *hudud* is to secure the well-being of mankind and establishing a righteous society. As an important social and legal system, the Shariah is designed to bring about benefit and justice to all mankind.

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