

Hudud: Central to Islam?

COMMENT The proponents of hudud laws have created the erroneous impression that hudud laws are central to Islam, that they define the character and identity of an Islamic state and society. If we examined the growth and spread of Islam, how Islamic civilisation sustained its dynamic spirit for centuries, and what led to its eventual decline, we get a different picture of the role of hudud in the religion.

The spread of Islam from Spain to China within one hundred years of Prophet Muhammad's death, more rapid than the spread of any other religion in history, was not due to some inherent attraction to hudud laws. Islam came as a liberator to all sorts of people suffering from oppression and persecution. This was how the religion was perceived by the Persians, for instance, just as it brought a measure of equality to the Egyptians who for centuries had been groaning under the yoke of unjust social structures maintained by the Greeks and Romans.

The promise of justice, equality and freedom, enhanced no doubt by the compassion and tolerance of Sufi saints, played a major role in the diffusion of Islam as a faith, an ideology and a way of life. Or, in the words of HG Wells:

"Islam prevailed because it was the best social and political order the times could offer. It prevailed because everywhere it found politically apathetic peoples, robbed, oppressed, bullied, uneducated and unorganized and it found selfish and unsound governments out of touch with any people at all.

"It was the broadest, freshest and cleanest political idea that had yet come into actual activity in the world and it offered better terms than any other to the masses of mankind."

It was primarily because of what it did for human dignity and social justice that Islam flourished as a great world civilisation between the eighth and fourteenth centuries. There was, however, another reason, too.

Hudud did not save Muslim empires from downfall

At its zenith, Islam exercised overwhelming command over all types of knowledge. A vast corpus of knowledge applied to commerce and the economy, science and education, the military and administration gave Islamic civilisation the strength and resilience to withstand various trials and tribulations. Hudud, understood today as modes of punishment associated with criminal law, cannot claim to have helped preserve the quintessence of Islamic civilisation.

Even the decline of Islamic civilisation has no direct or indirect link to the observance or non-observance of hudud laws. As distinguished Muslim thinkers like Shah Waliullah have pointed

out, elite corruption and oppression, apart from the devastation wrought by external invasions, were largely responsible for the downfall of Muslim empires in history.

It is worth noting that most of these empires and kingdoms faithfully carried out hudud ordinances. But this could not save them from decline and dissolution since they had ceased to be loyal to the fundamental spirit of justice embodied in the Quran.

In fact, there are a few examples of Muslim regimes today, which adhere strictly to hudud and yet their people remain trapped in poverty, ignorance and ill health. One of these hudud-oriented societies in West Asia has an incredibly high rate of illiteracy, in spite of its huge oil revenue. It is also totally autocratic, does not even observe minimal public accountability and denies the ordinary people any form of participation in government.

The ills of this and other Muslim societies cannot be overcome through the mere imposition of hudud laws. It is only too obvious that the colossal challenges confronting most Muslim societies today, ranging from poverty and exploitation to authoritarianism and foreign domination, cannot be resolved through the promulgation of hudud ordinances.

However, a significant segment of the ulama continues to believe that allegiance to these laws demonstrates fidelity to the faith. This is why they are even prepared to label as "murtad" (apostates) those who question the relevance of hudud the eternal Islamic mission of protecting human dignity and promoting social justice.

Muslim reformers and the hudud philosophy

Before we try to understand this attitude of some contemporary ulama, it is important to emphasise that by questioning the relevance of the modes of punishment prescribed in hudud, one is not challenging the notion of right and wrong that underpins Islamic law or the syariah.

For a Muslim, murder or theft or adultery or consuming liquor would always remain morally reprehensible. Preserving and protecting the basic moral structure of the Quran embodied in its eternal values and principles is essential to the defence of Islam's fundamental ethical foundation and framework.

Muslim reformers who regard various types of punishment in hudud ordinances as contextual have never been known to raise doubts about the validity and the authenticity of Quranic values and principles. Indeed, some of them would even argue that the obsession with meting out punishment in hudud legislation in various Muslim countries today is inimical to the spirit of encouraging the wrongdoer to repent and reform which is germane to the Quran and the example of the prophet (the sunnah).

After all, hudud itself is essentially a reminder to the human being of the importance of observing certain boundaries, certain restraints, in one's personal and social conduct. It is a way of persuading the human being to function within a moral realm.

Hudud, in its philosophical sense, is not a rigid, dogmatic set of rules and regulations. Unfortunately, an important section of contemporary ulama do not see hudud or Islamic law from this perspective. The vast majority, whatever their sect or inclination, adopt a legalistic, traditionalist approach to Islam.

Laws - not universal values or eternal principles - in their opinion embody the sanctity of the religion. It explains why laws - though only about 300 out of 6,666 verses in the Quran deal with various types of laws - are given so much prominence in the writings of the ulama. By overemphasising laws, the ulama, who alone exercise authority over interpretation, enhance their own power. It is a power derived to a great extent from their role as the custodians of the whole tradition of Islamic law.

And, in applying the syariah to the contemporary situation, the ulama invariably adopt an unthinking, uncritical approach. Consequently, the syariah in its entirety, and not just its Quranic root, is seen as divine and sacred.

Indeed, there are rules and regulations in the syariah, including some pertaining to the hudud, which are not consonance with either the letter or the spirit of the Quran. For instance, the Quran does not prescribe any specific punishment for sukr (intoxication) but hudud laws do. Similarly, the Quran does not lay out any punishment for apostasy, though it condemns it in the strongest terms. In hudud, it is punishable by death.

Why legalist Islam has a greater grip on Muslims than the Quran

It is significant that most Muslims today accept these hudud punishments as divinely ordained. It goes to show that in reality, legalist, traditionalist Islam has a more powerful grip upon the Muslim mind than the Quran itself.

This is not an accident. It is a product of both history and contemporary developments. As the compassion and egalitarianism of early Islam slowly declined, Muslim rulers sought to legitimise their power through the manipulation of Islamic forms, symbols and laws. Very often, the ulama who served these rulers helped to buttress the latter's authority by formulating harsher modes of punishment for certain crimes or by providing more rigid interpretations to existing laws which often went beyond what the Quran, the primary source of legislation in Islam, and the sunnah, its ancillary source, had intended in the first place.

Consequently, a certain rigidity began to develop vis-à-vis the syariah and public administration.

The situation was exacerbated by a catastrophic event which has had a profound impact upon the entire development of Islamic civilisation after the thirteenth century. This was the wanton destruction of Baghdad in 1258 by the Tartars led by Hulagu Khan. Baghdad was not only the greatest centre of learning in the Muslim world. In its time, it was undoubtedly a beacon of knowledge for the whole world.

According to the Sri Lankan jurist and scholar, CG Weeramantry, "the great House of Learning (library) in Baghdad accommodated 800,000 volumes." But once the devastation took place, the spirit of learning and inquiry, of research and scholarship, began to wane. For it was not just Baghdad which was destroyed ; the Tartar in an earlier wave of attacks had annihilated other illustrious centres of art, culture and learning like Bukhara, Khwarizm, Samarkand, Balkh, Merv and Nishapur.

As a result of these invasions which "shook the world of Islam to its very foundations," a conservative mood took root within Muslim communities in that part of the world. Because they had lost so much of their intellectual and cultural heritage, they were determined to preserve and protect what was left. They became afraid of reform and change. They were reluctant to question the wisdom of certain laws in the Shariah formulated by their ulama.

Another major setback occurred a few centuries later. The colonization of almost the entire Muslim world by Western powers starting from the sixteenth century onwards, further strengthened the conservative trend within the religion. Having lost control over their lands and their destinies, Muslims became very cautious towards ideas and practices from alien sources which might erode their collective identity as a religious community.

This fear of losing their identity has become even more pronounced in the post-colonial period. It is a fear which is not without justification, for Western domination and control of Muslim societies continues unabated. Indeed, Western cultural and psychological penetration of Muslim and other non-Western societies today is so much deeper than what it was at the height of colonialism.

A huge portion of the Muslim populace has chosen to respond to the challenge by re-asserting what it perceives as its Muslim identity via attire, food, laws and so on. Adhering strictly to hudud and syariah as they had evolved in the early centuries of Islam is part of this re-assertion.

‘Rigid interpretations lead to decay’

While it is important to re-assert one's identity as a way of protecting Muslim autonomy and independence, it does not follow that this should lead to an unthinking, uncritical acceptance of each and every aspect of hudud and syariah. Such an attitude will be disastrous for the Muslim community.

For there are elements in the syariah connected with basic human rights, the roles and rights of women, the rights of non-Muslim minorities and international relations which have to be re-appraised in order to bring them into some harmony with the eternal, universal Quranic commitment to human dignity and social justice.

Hudud laws and other aspects of criminal justice should also be seen in that light. This is a position which has been taken by some of the most outstanding thinkers in Islam. Shah Waliullah, for instance, argued that "every age must seek its own interpretation of the Quran and the traditions." He believed that "one of the major causes of Muslim decay was rigid conformity to interpretations made in other ages."

Muhammad Iqbal was also of the view that "each generation, guided but unhampered by the work of its predecessors, should be permitted to solve its own problems in accordance with the level of its consciousness and the demands of the time." For Iqbal such an approach to the Shariah was important since the Quran itself teaches that life is a process of progressive creation.

Like Waliullah and Iqbal, Ali Shariati was also very critical of "traditional, formalistic Islam." He wanted to liberate the religion from the grip of those Ulama "who had imprisoned Islam by monopolizing it." Another twentieth century thinker, Mohammad Arkoun, had often lamented in his writings that "the general Islamic consciousness remains content with dogma."

It is because of this consciousness that the ulama and their followers insist upon the implementation of hudud laws as they are.

But, as another recent thinker, noted for his brilliant scholarship, the late Fazlur Rahman, points out: "To insist on literal interpretation of the rules of the Quran, shutting one's eyes to the social change that has occurred and that is so palpably occurring before our eyes, is tantamount to deliberately defeating its moral-social purpose and objectives. "It is just as though, in view of the Quranic emphasis on freeing slaves, one were to insist on preserving the institution of slavery so that one could earn merit in the sight of God by freeing slaves. Surely the whole tenor of the teaching of the Quran is that there should be no slavery at all."

It is this sort of fundamental re-thinking that is urgently needed in the Muslim world today.

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