Regulating Human Conduct and the Role of Law- Views of Mawlana Amin Ahsan Islahi

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Abstract

Laws in a society are the instruments, which regulate human conduct in society. Formulating laws is that domain of human life where man can drift from the straight path due to his weaknesses such as forgetfulness, Jahul, Ajul, needs, desires and lust, too much inquisitiveness, negligence, ungratefulness and not having control over the result of his actions. Transgression of man takes place for securing needs, satisfying, desires and lusts. Human intellect is not capable to make laws for all people and for all times. How these human limitations can be addressed in the formulation and implementation of laws is the focus of scholarship of Muslim scholars including Mawlana Amin Ahsan Islahi (1904-97). Islahi opined that these laws should be based on the divine revelation, called sharia and not man-made laws. What are these divine laws in the episteme of Islahi is the focus of this paper. Islahi's contentions are primarily based on his interpretation of the Quranic text giving little attention to the conformist approach to the Quran and which sometime seems to be deviating.

Keywords: human conduct, Formulating, Maulana Amin Ahsan Islahi, shariah

Man's potential and strengths makes him quite capable to be influenced by institutions primarily entrusted with the task of socialisation. At the same time, certain weaknesses and shortcomings of man subvert all human efforts of socialisation. The act of sabotaging of one individual affects collective life. The encroachment of individuals on the fabric of social and moral set up should be obstructed at the earliest possible time. No individual should be allowed to thwart the growth and development of another individual in the attainment of success in this life and to salvation in the hereafter. Since humans started social and political life, need of certain rules were felt to regulate human life. At the earliest stages man-made laws evolved from the tribes and clans. The combination and unification of different tribes and clans in a state transformed these tribal laws into national laws. Solidarity and security were the two major factors, kept in mind during the adoption of tribal laws. It was not before the end of 18th century when legal structures were raised on the foundations of scientific and philosophical ideologies. The basis of these scientific and philosophical ideologies is the principle of justice, equity, compassion and universal humanitarianism. It is thus admitted that there is hardly any consistency between the past and present and, it is not possible to foresee what shape it is going to take in the future.[1]

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Unlike man made laws, *Shariah* law is not derived from clans and tribes. It remains constant and uniform since the birth of Adam. God modified this law after sending different prophets in different epoch of history till He sent Muhammad (pbuh). The Qur'an enunciated that these laws and commandments were all along uniform in their nature and spirit. However, expansion and improvement occurred as human society progressed. For this purpose, some of the previous commandments were either amended or abrogated. However, this evolutionary process ended after the death holy Prophet (pbuh).

Man-made laws depend upon sanction of tribal or clans chief or a court has enforced these after recognition by a government. If it lacks one of the sanctions, it loses its legal status. The divinely revealed law, however, does not depend upon any of these sanctions. A court or government would stand accused of disobedience and rebellion if it rejects Islamic law.[2] Contrary to man-made laws, Islamic laws are regarded highly sacred and revered, because it is based on divine revelation. Every Muslim believes that without bowing down to divine laws, it is not possible to obtain God's pleasure. It determines his good conduct in this world and ensures his salvation in the hereafter.[3]

Life, honour, property and peace and order have always been upheld in every human society. These human values occupy the highest place in divine law. Violation of this divine law is intolerable and punishment (prescribed by the *Shariah*) should be inflicted on the criminals.

There are certain penal laws of the Shariah, which are permanent and are not subject to change by any man or institution. However, these laws cannot be implemented unless the environment is conducive. 'Umar the second pious caliph of the Muslims halted the amputation of limbs (punishment for theft) as there spread a famine in the state and the people were facing enormous shortage of food.

According to Islahi, there are two categories of criminals; the one committing crimes like theft, murder, and fornication in ordinary way. The nature of these crimes does not become a nuisance for society or problem of law and order for the government. The second kind of criminals (e.g. gang rape) committing cases in individual capacity or in the shape of group, endangers the peace and order of the society.[4] For the ordinary criminals, the general law of punishment prescribed in the Quran will be applied while for the second category a series of exemplary punishment enumerated in the verses of *Surah Al Maida,* 33-34 can be applied by the state.

Islahi considers the Shariah as necessary for harmony in society, as physical laws are vital for order in the universe. According to him, social fabric of humanity and political structures of states would be in a state of chaos, if the laws of Allah are not followed. Islahi terms such a situation as *fasad* (disorder) and *asraf* (transgression).[5] Order brings peace and security. Security is ensured when human life, honour and property is protected. It ensures the relations of person to person and person to things around him. Protection of human life is possible through collective

efforts of humanity. Therefore, the most effective security is collective security. It includes both internal and external security.

Anybody who endangers order and security of human beings is liable to be punished with severity. The order in the universe and security in society has divine sanction. Human society can only be perfectly organised on the divine principles. Nobody is allowed to upset the society organised by Allah and His *rasul*. Any external threat would be dealt with jihad while for the internal hooligans the Qur'an provides a complete law. Qur'an says,

> "The punishment of those who wage war against Allah and His Apostle and strive with might and main for mischief through the land is: execution or crucifixion of the cutting off of hands and feet from opposite sides or exile from the land: that is their disgrace in this world and a heavy punishment is theirs in the Hereafter. Except for those who repent before they fall into your power: in that case know that Allah is Oft-Forgiving Most Merciful."[6]

It is evident that Qur'an termed all such move *maharabah illallah wa rasul* (waging war against Allah and His apostle) and spreading disorder in a land where justice is established in the name of Allah and *rasul*. When a person or a group try to take the law in their own hands through their evil acts, they threaten peace and order of the locality. Life, property and honour of the people are at stake all the time. The evil acts of such people cause the problem of law and order for the government. According to Islahi in such a situation, the following four measurers as enunciated in the above verses can be taken against the culprits.

They can be slain in exemplary ways. Islahi said that Qur'an used the word *taqtil* instead of *qatala*. Under the linguistic rules the word is adjective noun and connotes severity in killing a person. It implies that the criminal should be executed in such a way, which becomes an example for others. However, certain ways of execution are not permitted in Shariah i.e. burning. A government is allowed to adopt any mechanism for the enforcement of this law. According to Islahi *rajam* (stoning to death) is one of the ways of *taqtil*.

Secondly they can be crucified. Qur'an use the word *taslib* like *taqtil*, which is also, implies that the criminals should be crucified in any exemplary way. All such means of fructification can be adopted which fulfil objective of the punishment.

The third mode of punishment of such criminals is the amputation from opposite sides. The stress on amputating hands and feet from opposite sides is to make the criminal as example for the rest of society. They are made unable to commit such crimes in the coming future.

The fourth punishment is the *nafi* (exile) of the criminals from their native place. Islahi does not agree with the opinion that confinement and imprisonment is included in the literal meaning of *nafi*. However, he did not exclude these punishments from its derivative meaning. According to Islahi, if the punishment of exile is not possible for the government then the criminal can be confined to a particular area or put under house arrest.[7]

A government faced with such crimes can implement all these punishments described in the Qur'an. The condition of the criminal will also be taken into account. The government is allowed to inflict any of the above mentioned four punishments as each one is separated with an article *waw* in the verse which connotes the same meaning.[8] In the award and severity of punishment priority is given not to the crimes committed individually but to the crimes perpetrated collectively and in an organized mode.[9] Moreover in all such cases, it would not be ascertained that some individuals committed the crimes, but each insurgent of the group will be considered as involved and thus would be treated accordingly.[10] Islahi interpreted some of the events in the Muslim history in the light of the law called law of *Maharabaha*. These events includes, the treatment of the prophet with Banu Qariza, Banu Nazir and Banu Qinqa', Abu Bakr's action taken against those who refuse to pay *Zakat*, the suppression of *fitnah* Musalma Kazzab and the expulsion of the Jews by 'Umar from the Arabia. Islahi explains all these events properly with legal credentials.

The implementation of this law also has a limitation. The law will be used against the insurgents till they are subdued to the political authority. However, if they repent for their actions and reform themselves before the arrest of the government, then they would not be treated under the law but would be put before the ordinary penal law of Shariah. Islahi said that, 'The Almighty is Merciful and Forgiving; if He forgives a person who repents before he comes under the grasp of the law, why should His servants adopt a different attitude'?[11]

The ordinary penal code of Shariah is confined to the cases of murder, theft, fornication or adultery and *qadhaf*. The murder of a man is declared in Islam as the murder of entire humanity and save a life is like saving the entire humanity.[12] No human society can tolerate the killing of people without any trial. However, the punishment for a murder varies. Islamic law clearly prescribes *qisas* for the cases of murder and physical injury. The literal meaning of *qisas* is following someone's footsteps: Doing to the criminal what the criminal has done to the victim of his crime. There are two forms of *qisas*; the equal physical punishment and secondly, the financial losses imposed upon the aggressor called *diyat*.[13] According to Islamic law, a murderer is required to be killed as a punishment if the crime is committed intentionally. If it is unintentional then specified money should be paid to the aggrieved party.

As far as the amount of *diyat* is concerned, most of the jurists history that it is one hundred camels or equivalent money as practiced during the early Muslim period. Islahi however, does not agree with them. He let the *ma'ruf* (custom and tradition in a society) to decide that. Thus it can be changed according to the time and circumstances while keeping in mind the original spirit and objectives of the law of *Qisas*.[14]

The cases of intentional murders have far reaching consequences for the entire society. Therefore, all such instances imposed certain responsibilities upon the entire Muslim society and government. In the words of Islahi these responsibilities are,

> "Firstly, every such occurrence should create a tumult and commotion in the nation. Until and unless *Qisas* is taken from the criminal responsible for it, everyone should feel that he no longer has the protection of the law he formerly had. The law is the protector of all and if it has been violated, a single person has just not been slain, but the lives of all the persons are in danger.
> Secondly, to search for the murderer is not just the responsibility of the heirs of the murdered person, but of the whole nation as it is not that only one life has been taken -- rather all the lives have been taken.
> Thirdly, if a person sees someone in danger, he should not ignore the situation by thinking that he is interfering in someone's affair; rather he should defend and protect him as much as he can, even if he has to endure difficulties; for a person who defends an aggrieved and oppressed person, in fact, defends humanity of which he himself is a part.
> Fourthly, a person who hides someone's murder, bears false evidence in favour of the murderer or stands surety for him, or gives refuge to him or legally pleads for him, or intentionally excuses him, in fact, does so for the murder of his own self, his father, his brother, and his son because the murderer of one is the murderer of all.
> Fifthly, to help the government or the heirs of the slain person in taking *Qisas* is like giving a life to the slain person because, according to the *Qur'an*, there is life in *Qisas*".[15]

It is evident that the real responsibility lies with the government to address the case properly through investigation and arresting the culprits. However, the fate of the culprit finally lies in the hands of the heirs of murdered.[16] Usually in all such cases state becomes a party and the murderer became a criminal of the state. But Islamic law is different. On the one hand, the government is bound to use all possible means to bring the criminals into the court of justice. But on the other hand, government is also bound to uphold the views of the affected in treatment with the criminals. Islahi explained the divine law as,

> "In matters of *Qisas*, the importance which Islam has given to the will and intention of the heirs of the slain has many aspects of wisdom in it. Leaving the life of the killer directly at the mercy of the heirs of the murdered person compensates to some extent the tremendous loss caused. Furthermore, if the heirs of the slain person adopt a soft attitude at that moment, they do a big favour to the murderer and his family, which produces many useful results."[17]

In case of *diyat*, heirs of the murdered, especially, when they are poor, got financial assistance which soothed them a lot.[18] However, due to the disinterest or less interest on the part of heirs of the victim or their tacit support to the murderer,

Islahi empowered the government to adopt certain measures to safeguard the sanctity of the law of *Qisas*. [19]

According to some legal theorists crimes committed by criminals are due to imbalance in sentiments and intellect. This state of affairs depicts man's illness. In such a situation a man should be medically treated and reinstated instead of being punished. Therefore, inflicting punishments on criminals is inflicting punishment on patients.[20] These criminals should be treated psychologically and corporal punishment is not the solution of the problem. This philosophy of the causes of crimes is believed by people and consequently in some countries death penalty has become illegal. Islahi is aware of this. He sees no rationality in it. Islahi says that these theories are based not on rationality but sentiments.

Islahi draws similarity between society and human body, which can sometime suffer with certain disorder. Some diseases demand operation to be cured. Removing certain parts of the body becomes inevitable. If sympathy were shown with these affected parts, then the whole body would be affected.[21] In the words of Islahi,

> "If a murderer is executed because of his crime, it apparently seems as if a second life has been taken, but a little deliberation shows that this punishment is actually a guarantee of the life of the whole society. If this punishment is not carried out, the mental disorder in which a person commits this crime is actually transmitted to the society. The extent of various diseases differs: diseases which result in such heinous crimes as murder, robbery theft or fornication are like those diseases in which it is necessary to amputate some limb of the body to save the whole body. Amputating a limb may seem a callous act, yet a doctor has to be callous. If by showing sympathy to this limb he does not force himself to this cruelty, he shall have to bear with the patient's death.
>
> A society in its collective capacity is like a body. At times, its limbs get infected to the extent that the only option is to cut them from the body through an operation. If sympathy is shown by considering it to be the limb of a patient, there is all the chance that this would fatally effect the whole body."[22]

Human dignity and honour is second to the sanctity of human life. Protection of life on one hand ensures the physical existence of humanity; the protection of honour and dignity ensures social and moral existence of humanity. According to Islahi the most important factor in the disruption and disorder of society is fornication. Stability and strength of the society is dependent on the purification of *rahmi* (blood) relations and its safety from any intrusion. Fornication is detracting society to the disruption which culminates into human groups and society becomes a herd of animals. He cited disruption as one of the reasons of destruction of virtuous civilisation. All divine religions made fornication punishable. Islam prohibited all illegitimate relationships between men and women. Quran states,

'The woman and the man guilty of adultery or fornication flog each of them with a hundred stripes: let not compassion move you in their case in a matter prescribed by Allah if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment.'[23]

According to Islahi hundred strips is prescribed as punishment for the fornication. In the implementation of this punishment following consideration should be taken into account,

> "No leniency should be shown in the implementation of this punishment; softness should be shown to neither woman nor man, to neither rich nor poor. The limits set by Allah should be observed without granting any alleviation or showing partiality, for this is a requirement of belief in Allah and in the Hereafter. The faith in Allah and the Hereafter of those who show weakness in this regard cannot be trusted. A noteworthy point in the statement of this punishment is that the woman is mentioned before the man. One reason for this is that without a woman's consent fornication cannot take place; secondly there is a strong possibility that being the weaker sex, feelings of compassion may arise for her; the *Qur'an*, therefore, has mentioned her before the man so that it becomes evident from the style of the verse that in the Almighty's eyes no leniency should be shown to either woman or man."[24]

Muslim jurists in the past (in the entire Muslim history)[25] and in the present day (with few exception) restricted the punishment of fornication mentioned in the Quran[26] to the unmarried couples while a married couple is subject to *rajam* (stoning to death). The view of these Muslim scholars is based on the prophetic traditions and practice during the period of pious caliphs. Islahi expressed his dissatisfaction over the discrimination among the criminals on the bases of marital status.

Islahi's view first expressed in his exegesis in 1976 but it got little attention of the ulama. However, the issue became very serious when in 1980 the Federal Shariat Court declared one hundred strips punishment instead of *rajam* for the married couple.[27] The traditional ulama (belonging to different sectarian groups) voiced against the decision. Religious scholars held protest meetings showing their resentment and demanded the revision of the decision. On the other hand, a very serious discussion started among the religious scholars, having no comparison with any such discussion in the 20th century in the Indo-Pak Subcontinent. Islahi, Javid Ahmad Ghamidi and 'Umar Ahmad Uthmani[28] pleaded in favour of hundred strips while the rest of the ulama such as Mawlana Taqi Uthmani, Mawlana Mohammed Yousaf Ludhyanwi, Mawlana Tahir ul Qadri, Hafiz Salahuddin Yousaf, Mufti Wali Hasan and Ahmad Saeed Kazmi, wanted *rajam* for adulterers. The issue brought to surface some of the very basic questions regarding the sources of religion, the relationship of one source with another especially the precedence of Quranover the traditions and practice of the companion of holy prophet; the status of the views of the earlier jurists and the question of *ijma* and *ijtihad*. Though the issue was finally decided in favour of the traditional ulama as the government could not resist the

pressure of the ulama who could exploit the situation and create problems for the then military government of General Zia ul Haq. However, the discussion initiated from the views of Islahi contributed a lot to the religious, legal and political thought in Pakistan. Islahi stuck to his opinion despite serious threats to his life by the religious fanatics.

It is interesting that Islahi is commonly depicted as a person who negated the punishment of *rajam* but it is not true. He did not deny the punishment of *rajam* awarded to the sex criminals during the time of the holy prophet and pious caliphs as pleaded by the traditional ulama. However, this punishment was not on the basis of marital status. In fact the punishment was awarded under the law of *Maharabaha* which is prescribed in the Qur'an i.e. killing of the culprit in an exemplary manner.

The illicit relationship between a man and woman has been discourage by all possible means including taking precautionary steps (*pardah*) when both the sexes meet each other because of unavoidable circumstances. The sex criminals lost their due place in society. It is instructed in the Qur'an that such people would not be allowed to enter into marriage with the nobles of the society. A fornicator female would marry a fornicator male and vice versa. Honour and dignity has been placed so high in the Islamic law that a person who charged on a chaste citizen of fornication has to prove it with four eyewitnesses. In case of failure to produce four eyewitnesses, the complainant is to be punished with eighty strips. Qur'an says, 'And those who launch a charge against chaste women and produce not four witnesses (to support their allegation) flog them with eighty stripes: and reject their evidence ever after: for such men are wicked transgressors. Unless they repent thereafter and mend (their conduct): for Allah is Oft-Forgiving Most Merciful.'[29] It shows the gravity and intensity, which Islam gives to the preservation of character and chastity of all of its citizens. The law is called *qadhaf*, which means false accusation of fornication. The criminal in the *qadhaf* law would be permanently debarred in appearing as eyewitness in any court of law. Islahi attached great value to this punishment, because the whole Ummah is declared a witness over the entire humanity. The debarring of someone from testimony means that he is excluded from the Ummah in carrying out such a duty.[30]

In the law of amputation of limbs, property of each citizen is protected. According to this law a theft is liable to be amputated of hands. Qur'an says, 'As to the thief male or female cut off his or her hands: a punishment by way of example from Allah for their crime: and Allah is Exalted in Power. But if the thief repents after his crime and amends his conduct Allah turneth to him in forgiveness; for Allah is Oft-Forgiving Most Merciful.'[31] Islahi explains the words *sariq* used in the verse and *saraqa* in the morphology context. He opines that every theft could not be brought under this law. The word *sariq* and *saraqa* are adjectives, which indicate to an act which qualifies as theft, and its doer can be called thief. Wayfarers who plucking some fruits from a tree or some vegetable from a farm or taking some wood from a wood store or some edible from someone's kitchen are unsociable acts and the doers should be warned with some minor punishment. However, it is not theft and amputation of hands cannot be awarded. Islahi endorses the opinion of earlier

jurist who imposed certain conditions on the enforcement of this punishment. It concludes that stolen articles should be valuable. There is a difference among jurists in the determination of value. Consideration should also be given to facts such as; the articles should have been safeguarded; the offender has share in the stolen property; was given in the offenders custody as a trust or for protection; the offender is immature or mentally retarded; the offender is a close relative such as wife and children or servant of the victim; that the offender committed the theft in state of *idtirar* (dire need).[32]

Why the penalty for theft is so harsh? Quran 'says, 'Their wish will be to get out of the fire but never will they get out therefrom: their penalty will be one that endures. As to the thief male or female cut off his or her hands: a punishment by way of example from Allah for their crime: and Allah is Exalted in Power.'[33]
Islahi answered this question in the light of Qur'an as,

> (In this verse) two reasons have been stated for the amputation of hands: firstly, it is the punishment of the crime, and secondly, the punishment has to be given in an exemplary way, which is a means of a severe warning to others. The *Qur'an* uses the word *Nakal* for such a punishment. Since both these reasons are stated adjacently without any conjunction between them, they must be regarded as essentials in carrying out the punishment i.e., a means of retribution of the crime and as a means of a severe warning for the society. Those who do not simultaneously take into consideration both these aspects often end up thinking that the punishment is severer than the crime itself. The actual fact is that this punishment is not only the retribution of the criminal act, but it is also a means to putting an end to the many crimes which may be triggered as a result if the criminals are not totally discouraged by treating them harshly. Like the craving for sex, the lust for wealth is equally intense in a person. If this lust is allowed to thrive and prosper, the consequences, which arise, may well be observed in our own society by any keen eye. If a list of crimes committed in the most civilised of countries in one year only because of theft is prepared, it will be enough to open the eyes. The faint hearts of these civilised societies are deeply moved if hands are amputated because of theft, yet the horrendous crimes which result directly or indirectly through theft fail to rouse any feelings of concern in them. Theft is not a simple crime: it is a source of many crimes. If this crime is eliminated, these crimes shall automatically be taken care of. Consequently, it is a matter of experience that the amputation of hands on account of theft has not only reduced instances of these crimes it has also gone a long way in reducing other crimes as well. If by amputating a few hands, the life wealth and honour of thousands of people are safeguarded, then this is not a bad deal at all; in fact, it is a very lucrative one. Regrettably our intellectuals fail to appreciate this. [34]

The punishment of amputation is only for this world. As far as the next world is concerned, the salvation is possible only if the offender repents for his crimes. Islahi says that arrest of a criminal by the political authorities and his repent does not exempt him from the punishment under the *Shariah* law in this world.[35]

The penal law supported by Islahi cannot be implemented unless the government is organised on the principles of Islam. In fact these verses were revealed at the time of the establishment of the state of Madina, headed by the holy Prophet. Secondly, only an adult is liable to be brought before the court. Minors and mentally retarded cannot be trialled in court. Thirdly, the law is applicable to all citizens of the state, irrespective of their religion. Some of the earlier jurists exempted non-Muslim citizens from Islamic law. Islahi does not exempt them from *Hadud* and *Ta'zirat*, because it is related to peace and order in the society. The non-Muslims are exempted only in their personal law.[36] If non-Muslims are exempted that would mean issuing a licence while for the same crimes Muslims are liable to be punished. It is logical and the enforcement of such laws on these citizens has been carried out in the earlier Muslim history also. In fact this is the only way when society can be safeguarded from the incursion of the unwanted elements.

Society as visualised by Islahi, cannot come into being without economic activity of individuals and groups. The salvation of man in the hereafter does not necessitate negation of this world as expounded by the mystics. Islahi's individual can play an active part in all worldly affairs, including his material uplift and that of his group. No doubt, freedom in any economic activity is ensured in Islahi's *episteme*, which will give way to competition among the people in society. There are certain restrictions upon the economic activities of Muslims such as businesses related to alcohol etc certain moral principles such as honesty should prevail in the business. Within certain limits each individual is allowed to carry out economic activity. The competent will not only survive but would supersede others. The wealthy section of the population has a responsibility towards the poor and destitute. Allah expressed it so in the Qur'an. The wealthy community is instructed and ordered to spend their money upon the poor in the society. *Zakat* a very important pillar of Islam fulfils this aspect of human life. The state is required to collect *Zakat* from the qualified people and distribute it among the destitute. Qur'an says, '(They are) those who if We establish them in the land establish regular prayer and give regular charity enjoin the right and forbid wrong: with Allah rests the end (and decision) of (all) affairs.'[37]

The philosophy of *Zakat* is to impose a fixed amount upon the wealthy for the uplift of poor in the society. However, the earlier jurists (including all the four schools of thoughts) made certain conditions upon the payment of *Zakat*. According to these scholars *Zakat* is necessary to be given in complete possession of the receiving hands. The exclusive possession, as claimed by these jurists, is not only a condition but they also made it a fundamental part of the *Zakat* law.[38] Islahi draws the following inferences from this point of view; the *Zakat* cannot be used even in the collection of *Zakat* money, no project for the collective welfare of the poor with the money of *Zakat* such as construction of mosques, religious schools, libraries,

dispensaries, water supply schemes and lodging for the travellers, because in these cases no person became the exclusive possessor of the Zakat.[39] *Zakat* money cannot be used for the burial of a poor person, because the dead body cannot become own the money. The religious institutions are not entitled for *Zakat* because of the same reason.[40] The only way left for the payment of *Zakat* is to find out a deserving person by a wealthy person and then make him the possessor of the *Zakat* money.[41]

Islahi is not convinced with the arguments forwarded for the explanations of the above view of the jurists. The main argument is the use of *lam* as a preposition in the relevant verse in the holy Qur'an. Qur'an says, 'Alms are for the poor and the needy and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to truth); for those in bondage and in debt; in the cause of Allah; and for the wayfarer: (thus is it) ordained by Allah and Allah is full of knowledge and wisdom.'[42]

Islahi discusses in detail the use of this preposition in the relevant context and concluded that the *lam* in this place is not *lam-i-tamlik* (putting in possession) as pointed out by certain jurists. According to Islahi, in this context the *lam* is used for 'entitlement or jurisdiction or for the utilisation and benefit from' and never in the meaning of *tamlik*.[43]

Islahi elaborated all those categories of people who are entitled to receive *Zakat*.[44] *Zakat* can be used for the uplift of destitute and those who became disabled from any economic activity due to one reason or another. The money of the *Zakat* can be transferred from one place to another.[45] In case of failure of the collection of *Zakat* by the government certain other collective efforts can be launched for its collection and spending for the welfare of the poor.[46] Islahi's view removed a lot of confusion regarding the law of *Zakat* and its implementation in contemporary Muslim society.

Islahi acclaimed the laws specifically mentioned in the Qur'an and *Sunnah*, such as the penal laws, Zakat laws, law of inheritance, matrimonial laws, and laws ascribed for worship. He also upheld the law of the rise and fall of nations, the law of *Risalat* as explained in the holy Qur'an. His concept of law and its derivation is primarily based on divine guidance, presently available in the shape of Qur'an. The weightage Islahi gave to Qur'an based laws may lead to the conclusion that Islamic law is static. Islahi ridiculed this view and elaborated the origin and development of Islamic laws in a different manner. According to Islahi, Islamic law is not completely static and rigid. Islamic law is unique in its nature. It [apparently] posses simultaneously two contradictory qualities, on one hand it is static and unalterable while on the other is elastic and changing.[47] For example Islamic law sanctify purification of body but man is allowed to adopt methods suitable to his environment and time. The second quality does not indicate a passive elasticity for most of the time i.e. every expected change in life bend Islamic law to its own folds. Rather Islamic law has the potential to mould the changing environment into its own fold. [48] Islahi explained that if a person has insight in Qur'an and Hadith, he couldn't deny that these sources do not cover all the details of life. In fact, it demarcates boundaries of each aspect of human life. Within these limitations, humans are free to live

according to the nature and expectations of Islamic law. However, this limited freedom opens a vast area for the dynamism of Islamic law.[49] Islahi substantiated his view by citing certain cases such as edibles, dresses, marital life and political life; Islamic law provides only some fundamentals. And all the rest of the details have been left to humans. Man is instructed to regulate all activates in the light of *Shariah* and make laws to suit the changing pattern of life.[50]

Conclusion:

Sharia remained a very controversial topic not only for the scholars but also for the rulers as there was a growing tendency for Islamization of state institutions in Pakistan and elsewhere in the Muslim world in the last quarter of 20th century. Islahi's system of thinking allows him to agree with other *ulama* while at the same time the same does not allow him to stand and support the traditional *ulama* on the question of Islamic *Sharia*. He considers the Islamic Penal Code usually known as *Sharia* as inevitable for the state and the smooth running of society. These laws are compact and applicable in all circumstance if extricated from the juristic holds and comprehended in a textual contextual interpretation of the holy Quran and Hadith. As human life cannot be taken without sanction from God therefore the *rajam* punishment for the married couple is not valid a very important point of deviation of Islahi from the jurists. The jurists' stress of making personal possession of zakat as condition restricted the spending of zakat. Islahi's treatise on the issue make it possible in enfold many of the heads previous prohibited by the *ulama*. The case of *diyat* and *tamlik* treated by Islahi make the Islamic law more dynamic and consequently leaving little room for those vices to change according to the changing situation the contemporary world.

References:

[1] Amin Ahsan Islahi, *Islamic Law: Concept and Codification*. Tran. S.A. Rauf (Lahore: Pakistan: Islamic Publications, Ltd., 1979), pp.2-3
[2] Ibid, p.7
[3] Ibid, p.9
[4] Amin Ahsan Islahi, *Tadabbur-i-Qur'an*, vol. 2. 5th ed. (Lahore: Faran Foundation, 1994), pp.505-07
[5] Ibid., p.504
[6] Al-Qur'an, Al-Maidah:33-34
[7] Islahi, *Tadabbur-i-Qur'an* vol. 2, pp.506-07
[8] Ibid., p.506
[9] Ibid., p. 507
[10] Ibid.
[11] Ibid., p. 508
[12] Al-Qur'an, Al-Maidah:32
[13] Amin Ahsan Islahi, *Tadabbur-i-Qur'an*, vol. 1, 5th ed. (Lahore: Faran Foundation, 1993), p. 431
[14] Islahi, *Tadabbur-i-Qur'an*., vol. 2, p.361

[15] Islahi, *Tadabbur-i-Qur'an*., vol. 2, p.503, (trans. Shezad Salim, *Renaissance*, August, 1999), p.13
[16] Islahi, *Tadabbur-i-Qur'an*., vol. 1, p. 432
[17] Islahi, *Tadabbur-i-Qur'an*., vol.1, p.433, (trans. Shezad Salim, *Renaissance*, August, 1999, p.14)
[18] Islahi, *Tadabbur-i-Qur'an*., vol. 1, p.434
[19] Ibid., p. 433
[20] Ibid., p. 437
[21] Ibid., p. 437
[22]Islahi, *Tadabbur-i-Qur'an*, vol. 1, pp. 436-7. (trans. Shezad Salim, *Renaissance*, August, 1999), p.14
[23] Al-Qur'an, Al-Nur:2
[24] Amin Ahsan Islahi, *Tadabbur-i-Qur'an*, Vol. 5. 4th ed. (Lahore: Faran Foundation, 1992), p. 362 (trans. Shezad Salim, *Renaissance*, August, 1999), pp.21-22
[25] Except the *khwarij* who rejected the punishment of *rajam.*
[26] Al-Quran, Al-Nur:2
[27] Verdict of the court was primarily based on the views of Islahi. All arguments produced for the case were those of Islahi.
[28] Primarily a Deobandi scholar from Karachi whose father Mawlana Shabir Ahmad Usmani was also a great religious scholar.
[29] Al-Qura'n, Al-Nur:4-5
[30] Amin Ahsan Islahi, *Tadabbur-i-Qur'an*, Vol. 4. 5th ed. (Lahore: Faran Foundation, 1994), p. 376
[31] Al-Qur'an, Al-Maidah:38-39
[32] It is a state of duress or compulsion arising out of situation of fear of death due to extreme hunger and thirst. (Islahi, *Tadabbur-i-Qur'an*, vol. 2, pp. 511-12)
[33] Al-Qur'an, Al-Maidah: 37-38
[34] Islahi, *Tadabbur-i-Qur'an*, vol. 2, p. 512-13((trans. Shezad Salim, *Renaissance*, August, 1999), pp.27-28
[35] Islahi, *Tadabbur-i-Qur'an*, vol. 2, p. 514
[36] Islahi, *Tadabbur-i-Qur'an*, vol. 4, p. 364
[37] Al-Qur'an, Al-Hajj:41
[38] Amin Ahsan Islahi, *Masala-i-Tamlik awr Zakat say Muta'aliq baid doosray Masail*,n.d, n. p., p.8 (It was originally an article written by Islahi and appeared in *Tarjuman ul Quran* in 1940s.)
[39] Islahi, *Masala-i-Tamlik*, pp.2-5
[40] The management of the present day religious institutions adopted a unique solution of the problem to spend the money of *Zakat* on the running of these institutions. The poor students are first given the possession of the money from the donors and then they are compelled to deposit the money in the account of the institute (Islahi, *Masala-i-Tamlik*, p.6).
[41] Islahi, *Masala-i-Tamlik*, p.7
[42] Al-Qur'an, Al-Tauba:60

[43] Islahi, *Masala-i-Tamlik*, p.15 (*Mughiniullabib* by Ibn Hisham is one of the most important books on Arabic syntax. The writer had given twenty meaning for the preposition *lam*. The writer is extensively citing examples from the Quran to explain meaning of words. In the case of *lam* he mentioned nineteen uses of the word having only three examples from the none-Quranic text. In the case of *lam* in the meaning of possession the writer would definitely bring the relevant verse for the explanation but he did not (Sheikh Jamaluddin Ibn Hisham Ansari, *Mughaniullabib `an kutabf al a`arib*, (Lahore: Dar ul Nasharal Kutabal Islamiya, 1979), pp.228-45

[44] Islahi, *Masala-i-Tamlik*, p.39-60.

[45] One locality may not need the use of *Zakat* thus it can be transferred to another deserving area.

[46] Islahi, *Masala-i-Tamlik* p., p.37

[47] Islahi, *Islamic Law Concept and Codification*, pp.17-18

[48] Ibid., p. 26

[49] Ibid., p.27

[50] Islahi, *Islamic Law Concept and Codification*, pp.19-22