Family's Contribution towards the Establishment of Peace: Islamic Perspective

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Man is a soical being, or in other words he is civic by nature ever since, and dependent upon congregational life. Life is inconceivable outside the plae of social unit, for he has to bank upon his fellow beings for the fulfilment of his needs. The Creator of the universe has endowed man with the gifts of body, intellect and moral sensibility for the cumulative welfare of the human beings. He opens his eyes in a family, depends upon his parents, brothers, sisters and other relations for his sustenance and upbringing. As he grows in age, he comes across a family of brothers, people, a settlement, a community, a culture and a civilization and systems of Economics and Political Science. If we ponder a little, it becomes clear that life is interdependent by nature, and this principle of interdependence underlies all human activities of both groups, big or small. As for example, the smallest unit is family which consists of parents and kiths and kins. There runs a high feeling of mutual confidence and sense of service among them. This family unit is like the human body which feels the pang when any of its part is painful. We can put it like this. If any child of a family goes astray, the whole family gets deprived of all of its blessings. Or if the father is an addict, a drunkard or a gambler, this habit affects the whole family so adversely that its cultural, economic and administrative setup gets upset. Since family is a basic unit of any society, its good or bad effects are felt upon the whole social structure to which the family unit belongs.

Islam has a sound, balanced and well-set system of its own, which is enforced by permanent, enduring just principles and balanced codes. Since family is the primary and basic institution of human society, it has great importance in the social system of Islam. Family comes into existence by mutual communion of a man and a woman. This small congregational circle formed by these two humans, is the first step of the escalator of man's civic life and human civilization. This union of man and woman is brought abougt through a well enforced covenant called Nikah. This sermon (Nikah) serves as a strong bound that binds the pair with the free consent of the two parties that enter this contract. In view of its importance, the contract receives full publicity among the members of the families of the bride and the bridegroom and others ect. Any relationship of a conjugal nature without Nikah is condemned as an act of sacrilege of the worst order and a penal crime relating to Hudud laws. After

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The above mentioned principles are well defined and unanimously accepted by the classifical jurists. There is nothing strange and innovational about them. For instance, the theory of naskh, the division between usul and furu, muhkam and mutashabihat, and the idea of gradualaness in relevation, ect. In fact controversy starts among the modernists and traditionalists when the former challenges the authority of taqlid of the medieval manuals and dispute some of their ideas, considering them as old and out of date or not applicable to the new environment of the modern period. Again, the controversy starts when the modernists claim that they have also the right to interpret the sacred texts in the light of their own experiences and needs, when they argue that ninety per cent of the existing Shari'a law is the product of the systematic reasoning of the jurists in the light of the Qur'an and Sunna, and that the light provided by the Qur'an and Sunna can come down to us as well today.

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damma ahadahuma ila al-ukhra), but in fiqh terminology itis used for adopting or borrowing specific points or opinions from the other schools of law as a possible alternative to the already adopted opinion of one school. If one school causes inconvenience or hardship in some cases, and the other school provides a remedy for it, the view of the latter can be adopted. For example, if a girl was married without the consent of her Shafi'a father, the marriage is void according to Shafi'a fiqh. But, according to Hanafis the marriage would be considered as valid because an adult girl can marry without her father's permission. So, if such a case arises marriage could be considered as valid by adopting the Hanafi opinion. The principle of talfiq was much emphasized in Abduh's and Rashid Rida's writings. The use of it in their opinion is neither contradictory to reason not to the classicial concept of deducing law. It is a kind of ijtihad when it is used in a critical and rational way.[65] Hourani says: "The logical implication of this method was the creation of a unified and modern system of law".[66]

In short, the principle of talfiq was adopted by the modernists under the compelling circumstances of modern life. Though talfiq was defined by them as an adoption of the classical doctrines of other schools of law, gradually they gave a wider meaning to it and stressed a variety of purely rational and completely new ideas. It cannot be denied that it was new circumstances and modern challenges which necessitated this adoption.

9. "Necessity makes allowable things that are forbidden"

Another very significant principle of medieval jurisprudence which was reaserted and much used in modernist argument is: Necessity makes allowable things that are forbidden (al-darura tubihu al-mahzura).

Many modernists begin to emphasize anew that in the Qur'an itself, as well as in the traditional literature, not all commands and prohibitions are of equal strength or obligation. Medieval jurisprudance, as is well known, edicts: (1) fard, imperative, things that must be done; (2) mandub, recomeded, things that are praiseworthy and earn merit but the neglect thereof does not incur punishment; (3) mubah, permissible things that are completely indifferent, that may done or not done without entailing either approbation or reprehension; (4) makruh, reprehensible, thing that ought not ot be done, but entail no punishment, only blame, if they ar edone; and finally, (5) haram, forbidden, things which merit punishment if they are done. Modernists have argued that this medieval jurists classification of certain acts can be reconsidered in the light of changed conditions. So one can move tham from one category to another. For instance, to move a man's right to divorce his wife without cause, or have more than one wife without any genuine reason, from the fourth to fifth category. Even, the absolute commandments and prohibitions failling in the first and fifth categories may be suspended in times of necessity, according to the principle "Necessity makes allowable thing that are forbidden".[67]

time, and there is no way to confine them. But if only those means are recognized which have precedents in teh age of revelation, the people would have to stay within a narrow circle of activity and be prevented from thinking to improve their just purpose and lawful interests. And this could do great harm to them. Hence it is indispensable to liberalize legislation by taking into and no stopping at the particular evidence in it.

3. The prohibition of drinking and gambling has been explained as a protection against the harm occuring from these acts.

4. The Companions of the Prophet very often acted on this principle, and utilzied the general evidence in the Shari'a without resorting to qiyas from particular events.

A number of such instances are quoted. Abu Bakr collected the Qur'an which the Prophet had left unorganized. He waged war aganist those who refused to pay zakat (obligatory charity), and there were no precedents for it. "Umar stopped paying zakat to those whose hearts are made to incline to Islam, although their rights were established by nass (authority of the Qur'an) 9:60); he stopped also the punishment for theft, contrary to the nass (Q.5:41) and he raised the punishment for drinking from forty stripes to eighty, contrary to the previous practice[62].

Likewise many instances have been given from the practice of the jurists as well.[63] This principe was already accepted by the classical jurists but was given a new extension by Abduh and Rashid Rida. Traditionally this principle had been no more than a rule for the interpretation of the text in explaining the Qur'an and Sunna. The jurists should believe that God's purpose in making His revelation was to promote human welfare, so a jurist should choose that interpretation which, in his opinion, was most conducive to this purpose. Abduh and his school however made it a rule for deducing specific laws from general principle of morality.

Modernists generally have argued that the principal objectives of the Shari'a are also primarily based on this principle. They have held the opinion that its broad and liberal appication is necessary to create a workable and useful legal system in Islam. They have stessed that this is the only principle in legislation that can cope with the demands of a developing soceity. Modernists think that this is a revolutionary principle, that everything in the commends and prohibitions of Islam is conditional upon al-maslaha, that is public interest or the common weal. It has often been claimed in modernist treaties that this postulate along can be itself justify any change in jurisprudential opinion and jurisdicational decisions whernever it become manifest that it is in the public interest to enact such change.[64]

8. The principle of talfiq

The word talfiq signifies, piece sewn one to another (laffaqa bayna al-thawbayn aw

reprsentatives, try to solve the legal issues in the Shari'a in a collective way. He believed that the transfer of powr of ijtihad to a Muslim legislative assembly is the only possible form of ijma in modern times.[57] Sir Sayyid, Cheragh Ali and Muhsin Al- Mulk rejected the traditional concept of Ijma, saying that when the jurists are not inflallible in their individual interperetations, how can they be immune from error when they are agreed collectively? They argued that ijma of the 'ulma' cannot be an ultimate or indisputable source of law, it is analogical deduction or decision of a body of people who do not possess prophetic intuition, and therefore, cannot be considered infallible. They further said that decision reached by ijma can therefore remain valid only until an error of judgment in it comes to light.[58] Ijma, then, in fact is a collective reasoning, and not an independent source of law. This institution did not exist in the Prophet's time. It was established only after his death by the general practice of his Caliphs and later came to be regarded as one of the basic source of Islamic law. Modernists have argued that collective ijtihad is far superior to that of an individual. They have argued that the classical doctrine of ijma does not serve the purpose of the ever changing problems of the Muslim community in the modern age. They have emphasized that it is an important legal notion in Islam but it should march with time to solve fresh problems.[59]

7. Al-Masalih at-Mursala

When the Qur'an and Sunna are silent on any matter, jurists resort to ijtihad to discover a rule for it on the basic of qiyas (analogy). But when no analogical base is available, the question areies whether we are permitted to make a rule for it, assuming that the Prophet has neither approved nor disapproved of this matter in any manner whatsoever? Or should we ignore the problem, and pass no Shari'a judgment on it at all? There are many other questions, like this which have compelled modern Muslims to think over the problems and pass new rules which may be different or entirely new judgment on the matter.

The Maliki principle of masalih al-mursala is much emphasized by modernist scholars. They have made it almost a basic and fundamental source of the Islamic Shari'a, and the legal reforms in Muslim personal law are virtually based on it. They use this principle on the basis of the following arguments.[60]

1. God has given innumerable istances which show that the Shari'a has been devised only for the benefit of mankind. For example, regarding ablution (wudu) He says: "God does not want to place hardship on you, but He wants to purify you" (Q.5:6). About prayer (salat) He says: "And be steadfast in prayer; verily pryaer forbids sin and wrong" (Q.20;45). And about the Prophet He has said: "And We have sent thee as a mercy to the worlds" (Q.21:107). The Prophet has said: Neither do harm nor receive harm". (la-darara wa-la dirar)[61]

2. The means by which people secure their lawful worldly interests change with

influence in the every changing conditions of human life.[51] It is further maintained that the principle of ijtihad is not invented in history; it is embodied in the Qur'an and Sunna themselves. In support of their view, they cited the Qur'anic verses: "O Lord increase me in knowledge"(22:113); "So that they should ponder over manners of religion" (9:123); "God does not change the condition of a people until they change it themseleves" (13:12), Iqbal quotes a verse from the Qur'an and says: "The idea (of ijtihad), I believe has its origin in a well-known verse of the Qur'an, And to those who exert We show our path (29:69)".[52]

Hence they repudiate the idea that the traditional law is binding and argue that in light of these verses ijtihad should be considered as a valid and genuine source of Islamic law. Solutions to fresh problems should be sought by means of deduction (istinbat and Ijtihad). Again sacred texts, in the form of the traditions of the Prophet are cited to justify the argument. It is reported that when Mu'adh ibn Jabal was being sent as the governor of Yaman, the Prophet asked him how he would decide cases that came to him for adjudication. He said that he would first consult the Qur'an and then the Sunna; if a solution was not to be found in either of them then he would apply his own judgment to the case in hand. The Prophet was extremely pleased with the answer. Quoting this tradition, the point that has been emphasized by the modernists is that the Sunna does not provide well-defined rules for every conceivable human activity on this earth. But it certainly provides moral and judicial guidance that may cover any situation and solve any problem that may confront the social life of the umma. The Prophet, they argue, was charged with the duty of deducing judgments and regulations to meet the fresh demands and needs of his society. So the Prophet's example is enough in this regard.[53] For instance, the Prophet said: "One who makes an intellectual effort (ijtihad) and succeeds is awarded a double merit; one who makes an effort but fails is awarded a single merit".[54]

The modernists further have maintained that ijma (one of the four basic sources of Islamic law) itself, is deirectly dependent on a prior recognition of ijtihad. Indeed the sphere of ijtihad is very broad. In Islamic jurisprudence we find many principles, on the basis of which a mujtahid could proceed to exercise his judgment. These principes are acknoweldged by some schools but refuted by others. They are based on necessity, customs, and equity, and they included such devices as istihsan, al-masalih al-mursala, istiswab, istidlal, urf, etc. This shows that ijtihad was a cause for expanding legal provisions to cover new cases as well as a strong factor in the development of Islamic law according to the needs of different countries and conditions of changing times.[55]

Ijma, according to some modernists, is in fact the systematic ioinion of a jurist on which other jurists have agreed.[56] Iqbal gave it a very revolutionary definition. In his view ijma menas that the Muslim community should, through its proper