Follow Islamic finance path in reforming Islamic law, says scholar

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Systematic Islamic law reform is possible, similar to the development and advancement achieved today in the field of Islamic finance, a forum was told today.

Asserting that Islamic law has been changing all along, University of British Columbia assistant professor of Islamic Law Dr Rumee Ahmed said it was no different from the Islamic finance sector, which would have been unrecognisable 50 years ago.

"This seems to violate lots of principles in the Islamic tradition and in the Quran and Sunnah.

"But Muslim scholars got together and redefined the terms of Islamic law so that today someone can have their Islamic credit card and feel they are operating in a world where using that card will help them achieve salvation," Rumee said, drawing laughter from the floor.

As such, he said that there was a need to look into Islamic law reform seriously, which should include the issues of amputation for the crime of theft and gender-based laws.

"There is nothing wrong with the Quran and the Sunnah but there is something different about the way we apply them today," he said at the public forum entitled Domestic Violence and the Islamic Tradition, held in Kuala Lumpur.

Rumee added that currently, gender was the biggest challenge to systematic Islamic legal reform because of the differences in gender-based Islamic law that covers prayer, inheritance, leadership, dress code, marriage and divorce among others.

He also said that while Islamic reform would sound wrong to the ears of some Muslims, the fact was it did not change the Quran or the Sunnah.

"Only the laws which were interpretations of the Quran and the Sunnah," he said.

"Muslims scholars get their legitimacy and authority from the fact that they uphold the law but they need us to help them uphold the law.

"The reality is Muslim scholars are representing less and less Muslims, nobody is listening to the ulama," he added.

Rumee said that the consensus was that laws enshrined today violated modern notions that Muslims hold about human dignity and human rights.

As such, he said that it was possible to come up with a different interpretation of the Quran and Sunnah as Muslim scholars have done it in the past.

He said that right now, the readings that are authoritative are very narrow readings of the Quran, the Sunnah and Islamic law, and do not represent the views of general Muslims.

As such, he hoped to come up with a new language where Muslims who are like-minded can get together and flesh out new arguments on Islamic law.

"If Muslims come together and have this shared language, they could push for new interpretations.

"The ulama represents this small strand, but they are strongly influenced by social factors. For example, the reason Islamic finance had such a big push is because there is money involved.

"And if Muslims are pushing at that same level that happened for finance and even slavery reform, they can gain authority by promoting certain interpretations," he said, adding that he was in the midst of coming up with an app where Muslims can propose law reforms.
Ratna Osman, executive director of Sisters in Islam, which is the forum organiser, said that while religious scholars refused to budge from Islamic tradition on issues pertaining to the relationship between husband and wife for example, they have broken away from tradition when it came to Islamic banking.
"We know that happened because the push was fueled by monetary gain.
"But whatever not related to 'Ringgit Malaysia', the ulama will say it cannot be changed.
"And so they stick to medieval definition when it comes to marriage, where the women are supposed to obey their husbands as he is their ticket to heaven. These things cannot change apparently," she said.
The second speaker, Dr Ayesha Chaudhry, University of British Columbia's assistant professor of Islamic studies and gender studies, said that Islam never says anything, adding it was Muslims that said things about Islam.
"Islam is not a person, you cannot go to lunch with Islam.
"Muslims are the ones saying many different things about Islam," she said.
Chaudhry added that while Islamic tradition was vast, complex and sophisticated on many other issues, it was not so when it came to issues related to gender.
"So we need to expand the way Muslims think about Islamic tradition to include the modern conversations.
"Because, if we expand the definition to include Islamic conversations, we add richness and complexity to the tradition in areas that was lacking in the pre-colonial period," she said.
She added that it was her opinion that progressive and reformist scholars were speaking authentically about Islam today.
Chaudhry also said that in Islamic tradition, the right of husbands to physically discpline their wives was considered a fundamental marital right.
She said there was authoritative dilemma in this area, however, where a traditionalist would say that it was ethically good to hit one's wife for disciplinary purposes while progressives and reformists argue that it was never good to hit one's wife, not even symbolically.
"Why can't Muslim scholars agree that it is categorically forbidden for husbands to hit their wives in any or all circumstances?
"I think that any law, be it religious or secular, which preserves human dignity, is best," she said.
Meanwhile, Ratna said that SIS had come across many Muslim women who related to them how the religious authorities would tell them to be patient when they complained about domestic violence.
"These women were told by the Islamic Department that their husbands beat them because they were not good wives, so they were advised to speak to their husbands nicely if they wanted the beatings to stop." she said.
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M.T.Karaan response to the above article:

MODERNISM'S ABORTIVE ATTEMPT TO RIDE THE WAVE OF ISLAMIC FINANCE

It with interest that I read an article about a forum on domestic violence and the Islamic tradition of recent held in Kuala Lumpur. A central theme at this forum was the reform of Muslim family law, with specific reference to areas of tension between Islamic law and modern notions of justice and gender equality. Of particular significance was the suggestion that the reform of Islamic law should be steered along the same trajectory as contemporary Islamic finance.

The latter, went the claim, was unimaginable till a few decades ago. But the will to force change, underpinned by the avarice of the otherwise increasingly redundant and irrelevant ulama, brought about the desired result. If similar pressure were to exerted in other areas of Islamic law whose violation of "modern notions that Muslims hold about human dignity and human rights" was described as a matter of consensus, those areas of the law, too, will see similar seismic shifts of interpretation.

A comprehensive assessment of every claim made, approach suggested, and aspersion gratuitously cast at this forum lies beyond the focus of this comment. Its only concern lies with the suggestion that the rest of Islamic law--or at least as much if it as stands out as "problematic"--could be rehabilitated to the specifications of 21st century sensitivities given a set of circumstances similar to those that allegedly precipitated the rise of contemporary Islamic finance.

Inherent in this suggestion lie several assumptions:
-Firstly, the notion that Islamic finance in its contemporary incarnation came about when pressure was brought to bear upon the ulama.
- Secondly, the blueprint for legal change is ready and accessible, but is being held back by nothing other than the recalcitrance of the ulama.
- Thirdly, commerce as a division within the law is no different from family law or penal law.
- Fourthly, nothing in Islamic law is permanently cast in stone; everything is open to reinterpretation ; and to the human interpreter belongs unrestricted power to shape the law.

Let us begin with the last of these assumptions. Unqualified and unrestricted mutability has for decades been modernism's cornerstone. Spurred into absolute conviction in this tenet by what they perceived to be Islam's violation of human rights and its trampling underfoot of human dignity, the modernists have spent the past few decades in a feverish search for a solution. Radicals advocated total abandonment of legalism in favour of a Pauline type of antinomianism--conveniently overlooking how it was that very shift that eventually gave birth to canon law. A somewhat less radical approach suggested the distillation of a number of absolutes and the cancellation of all specifics against those absolutes. In a paradox of grudging conciliation, a third attempt saw the appropriation of principles culled selectively, subjectively and with psychological transparency from traditional Islamic legal theory.

When neither of these approaches found purchase within the broader Muslim community a scapegoat had to be found, for by no means could the fault lie with them or their theories. And finding a suitable scapegoat was never easier: who else could it be but the obscurantist, medieval and retrogressive ulama?

What consistently escaped their attention--or lay beyond the spectral horizon imposed by intellectual arrogance--was that perhaps, just perhaps, there was something so wrong with what they proposed that even the common lay believer was sent into revulsion by it. And perhaps, just perhaps, the fact that they operated out of ivory towers of Western academia with the blessings overt and covert of neocon imperialism had more to do with their dismal failure than comfort allowed them to admit.

In 2003, at the fourth annual conference of the Centre for the Study of Islam and Democracy held in Washington, Abdulaziz Sachedina, in a paper entitled "Why Democracy and Why Now" lamented the lack of impact he and his colleagues at Western universities have had upon the Muslim world, compared to that of the ulama.

"Our secure academic position in the Ivory Tower has made us oblivious of our moral responsibility to the people. Ironically, it is this indifference to the political empowerment of the average people on the streets of Cairo, Tehran, or Karachi that has provided the religious leadership – the Ulama – an opening to become the sole spokesperson for the contents of people's political and social education."

A decade later came the Arab Spring and liberal hopes surged for a democracy that would end medieval and obscurantist law. And then, horror of horrors, the people in their first exercise of democratic freedom, elected a party that championed those very same medieval laws. The much vaunted democracy had to be strangled at birth. In a macabre Orwellian twist, with the incarceration of democratically elected leaders, some animals have indeed become more equal than others. Meanwhile, back in the ivory towers, the once ardent but now sobered advocates of democracy in the Muslim world quietly added a postscript to their slogan: "Why Democracy, Why Now (or perhaps not just yet)."

So how does that connect with what was said at the Kuala Lumpur forum? Well, the modernist project suffered a series of setbacks. It's theoretical gymnastics failed consistently to impress. Coupled with its neocon alliances it turned repulsive. Its hopes for democracy to catalyze its program of radical reform of Islamic law were not only quashed; the very hands that were poised to applaud the birth of democracy now assisted in strangling to death the child who was to be its saviour. Do paradoxes ever get weirder?

While all of this was happening, one area of Islamic law was experiencing phenomenal interest, growth and increasing success. From tentative beginnings in the 70s the Islamic finance industry has grown into a trillion dollar sector with a phenomenal growth rate. It was just a matter of time before the secrets of its success were probed, especially by an interest group that for all its intellectual firepower and political connections failed to register a significant advance. Having failed at its own projects and even aborted its saviour,

modernism was now out to thumb a lift. In order to reform Islamic law, all that needed to be done, says the KL forum, was to follow the path of Islamic finance.

Instead of asking uncomfortable questions at this point about the extent to which legerdemain has become acceptable in academia, it might be more appropriate to interrogate the credentials of the claim. Was it truly a willingness to implement a no-holds-barred radical reform that set Islamic finance on its stellar trajectory?

There is much to learn from early controversies over commercial interest. A would-be radical reformer like Marouf Dawalibi tried to differentiate between productive and consumptive loans, deeming only the latter as the riba prohibited by the Qur'an and leaving the way open for industry and commerce to leverage off credit at interest. Muhammad Abduh's alleged fatwa on the permissibility of returns on post office savings, later echoed by Shaltut; Khallaf's view on fixed returns on bonds--all of these were attempts to revolutionize the very concept and definition of Qur'anic riba, and all subjectively motivated by the apparent insurmountability of the problem of interest. And all of these were met with summary rejection, for no reason other than the fact that in seeking a solution they crossed inviolable lines.

Had any of these attempts at reform succeeded, contemporary Islamic finance would probably never have come into existence. It was exactly in their rejection, premised as it was upon the acknowledgment of inviolable parameters beyond which even reform may not proceed, that the space was demarcated within which contemporary Islamic finance would be born and eventually flourish. So rapidly and successfully did it develop that Tantawi's 1989 abortive and self-incriminating fatwa on the permissibility of bank interest, reiterated later by Ali Gomaa, had no more effect than a fly hovering around the nose of a rising colossus. The only distinction this fatwa achieved was to become the most universally condemned fatwa of modern times.

Having set its parameters and proven its viability in the Mit Ghamr project, the Islamic finance industry set about expanding its base and diversifying its offerings. Independent Islamic banks were joined by conventional counterparts whose recognition of merit and value in this new version of banking motivated the opening of windows. But beneath all the expansion and sophistication operated a methodology founded on the one hand hand upon acknowledgement of the inviolability of certain parameters, and then making full, innovative and effective use of the ample latitude provided within those uncrossable boundaries.

An eclectic approach in drawing from the existing fiqh legacy provided many ready solutions. Eclecticism between madhahib in matters commercial was, after all, a principle well ensconced in fiqh centuries before the rise of contemporary Islamic finance. Its reiteration by jurists as loyally committed to madhhabism as Mawlana Rashid Ahmad Gangohi and Mawlana Ashraf Ali Thanwi decades before Islamic finance came into its own is certainly not without significance. It wasn't uncommon for the search for precedent to transcend even the four popular madhahib.

Where the letter of the fiqh legacy fell short of providing solutions, its maxims and legal theory were brought into play--not in modernism's deceptive manner of using usul to erode Shari'ah, but with the responsibility of jurists who believe in their role as interpreters and not fabricators of the Divine Will.

A good part of what came from all of this was innovative. Forms of contract unprecedented in our fiqh legacy were brought into existence. But modernists observers who imagined that innovation in the law of contract justifies innovation in the rest of the law miss one essential point. The law of contract has always been one of custom and innovation within broadly prescribed prohibition, whereas family law and the penal code are areas of specific prescription. No amount of cleverly worded sophistry will set the innovation of sukuk al-ijarah on par with the legitimization of same-sex marriages--the perceived violation of human dignity notwithstanding.

The results of scholarly thought and innovation in Islamic finance have not always been homogeneous or approved by consensus. Differences of opinion have and will continue to come about. Contentious issues there certainly are, and they will continue to be debated with fervour. But then again, that is exactly how Islamic law has always been for a thousand years and more. What it has never been, and, Allah willing, will never become is the unbridled, unfettered and totally relentless secular construct which modernism wishes to pass off as the law of Islam.

If there is, in any way, something that modernism can learn from Islamic finance, it is certainly not how the rejection of Shari'ah could be camouflaged as its reform. The most important lesson it could ever learn from the story of Islamic finance is that success can only begin with the acknowledgement of inviolable parameters. As long as those limits remains unacknowledged, modernism will continue to bark up the wrong tree.

M.T.Karaan

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