Islamic Legislation and Objectives of Shariah

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Abstract:
The Study of this deeply thought and compiled article is no doubt equal to the study of several bulky books regarding Islamic Legislation. First of all, the origin and definition of the word "Law" is a wonderful effort. The definition and detailed account of the objectives of Shari'ah occupies the status of the main plot of this article. This main plot has been well supported by Quranic verses and the sayings of the renowned scholar and the Jurists. The scholars, in the light of deep study, are of the opinion that there are three levels of the objectives of Shariah commands i.e. a) Objectives of necessity b) Objectives of need c) Objectives of excellences. Each of these objectives has been explained for perfection and examples from daily life have been added to support the idea. All of these objectives are based on expediencies and concessions for the convenience and the ease of mankind. It has also been described that these objectives (some of them) may be overlooked for the completion of the objectives prior to it. Although the language used is typical according to the content, yet it is not difficult to for its comprehension. Above mentioned features make it a wonderful and commendable piece of research writing.

I. Introduction:
No sensible human being can deny the importance possessed (occupied) by law. Law and its relevant matters have been a topic of discussion for a long time. The learned beings of every era expressed their opinions regarding law, its nature, its importance, the ways of legislation, origins of law, and superiority (rule) of law. Similarly, the objectives of shariah have also been a topic of research for the scholars as well as researchers,

Literally, the word Law has been derived from a Greek word Kanoon (Encyclopedia of Islam, 1927). It came into Arabic through Syriac (Mehmasani, 1971). In that language, it means "a straight bar" or a ruler (scale). Then it was applied (used) for the word "Qaida" (rule or regulation). Now a days, this word is used in the meaning of law of Church in European languages. Law is the collection of those principles which a country or a state possesses and implements to establish justice among general masses. In other words, Law comprises of such rules and principles that are universally admitted and the law courts implement these rules (Ibrahim, 1969). The rules that human actions are bound to abide by or an agreed set of commands for the actions of any group or sect of society (Waheed, 1975).

Law possesses two sided status, on one hand, it is purely a set of rules and on the other hand law is the name of such rules (regulations) of moral relations and values that
independent and sovereign governing bodies suggest for their subjects. Although this
definition is of all embracing nature, yet it does not reflect those ideologies that are of
great importance in the modern way of thinking about law.

In Islamic Fiqah, the words for Qanoon (law) are shara, shariah or a command of
shariah (Mehmasani, 1971). In Ottoman Kingdom the word “Law” was often applied for
those government commands issued by the rulers so that they might be distinguished
from the Shariah commands (Mehmasani, 1971). The commands given to us by shariah,
their cause and purposes are known as the objectives of shariah.

II. The Main Objectives of Islami Shariah

The real legislator (law-giver) is Almighty Allah. But the shariah given to us by
Allah has come through the means of the Holy Prophet. Therefore, the Holy Prophet
(PBUH) is also the legislator (law-giver), when learned people considered the religious
commands, they came to know that there lie some objectives and adjustments behind
each command and for Islamic legislation consideration of these objectives is
necessary in every era.

In fact, Islamic Shariah is the name of the set of beliefs and practical commands
that their implementation is the aim of Islam for the reformation of human society. In this
context, Islam has three basic objectives of reformation, and they are in a mutual order.
Each objective is connected closely to the other.

III. The First Objective:

Islam has freed human wisdom from imitation and mythologies through the
concept of belief and especially beliefs in oneness of Allah. Islam has gifted an
enlightened thinking through reasoning, argumentation and freedom of thought. That's
why Islam fought against duality and uprooted it because duality is an evidence of lack
and poverty of insight and wisdom. Mustafa Ahmad Zarqa (Historical Evolution of
Islamic Law, Vol. 1).

IV. The Second Objective:

It reformed an individual psychologically morally and made him interested
(inclined) towards good deeds. It insisted him to perform his duties (responsibilities) so
that his desires may not overcome his wisdom, and may not be a hurdle in his way. It
inspired the individual to worship only one God so that he may not forget His Creator and
The Lord. The concept of punishment and reward makes him to evaluate his deeds,
Mana-ul-Qitaan (1982).

V. The Third Objective:

It reformed human's social life collectively in such a way to ensure peace and
justice in the world, to protect certain human liberties and to attain the task of regards and
respect for human life. It is realized as the third and the last objective. Islam has
presented a comprehensive and complete system of law through the system of Medina
established by the Holy Prophet. In this system, the content relevant to each and every
necessary base is present for the formation of collective system of a state. In it the mutual
relationships of the individuals, the relationship between the individual and the
government and the rights of human society have been given due importance (Bhatti, 1973).

The explanation of the above mentioned three objectives provide the depth of Islamic Shariah. It makes known that Islamic shariah is based on three points a set of beliefs, spiritual worship and a law system. When it is remarked that Islam is a combination of "Deen" (religion) and state (worldly matters), it gives the same sense to us.

The recognition of cause, adjustment and the purpose of shariah commands given to us is known as the objectives of shariah. Man has been bestowed with the wealth of wisdom. This distinction of man is the orbit of his sufferings and the base of an addressed person of shariah commands. Islamic shariah possesses certain features that are found absent in any other religion and the law system. Some of such features are accounted here for instance.

VI. The Salient Features of Islamic Shariah:
(a) The first salient feature of Islamic shariah is the principle that Allah is the Real Creator and Ultimate Authority belongs to Him only. Numerous verses of Holy Quran explain this principle.

The command is for none but Allah, Al-Quran (12:40).
But who, for a people whose faith is assured can give better judgment than Allah? Al-Quran (5:50)

Because of the concept of ultimate authority of Almighty Allah and the alliance of Islamic shariah, the Islamic law does not serve as a lifeless law in the life. Muslims, rather it becomes active, alive and effective code of life.

(b) The concept of Oneness makes Muslims free of every other concept and thing except Allah. The concept of ultimate authority makes everyone to follow the commands of Allah and none is supreme in the eyes of Islamic law. Moreover the rule of a ruler is accepted on the term that he should perform his duty towards the state according to the commands of Allah and Prophet (PBUH) as Hazrat Abou Bakkar said:

As long as i am a follower of Allah and His Prophet (PBUH), you are required to obey me, but as i disobey Allah and His Prophet (PBUH), you are not bound to obey me, Bin Kaseer, (13797 A.H).

(c) Allah created human being as a responsible being and an honourable creature and has made him answerable as an individual by appointing him as a vicegerent and commanded him to follow divine commands in every matter of life.

Allama Shokani: has remarked in an impressive way:

The objective of shariah is to make human being an obedient servant to Allah almighty by freeing him from the clutches of his desires in such a way as he is bound to follow divine commands involuntarily, Shokani, Muhammad bin Ali, (1421 A.H).
Islamic shariah is based on wisdom, adjustment and philosophy. Its commands are logical and based on wisdom and surrounding all human adjustments. Even, belief in Allah and deep thinking (wisdom) have been addressed.

Behold! In the creation of the heavens and the earth, And the alternation of night and day, there are indeed signs for men of understanding. Al-Quran (3:190)

The importance occupied by ijtehad (exertion) and Qiyas (conjecture) in Islamic Jurisprudence is an evidence of Islamic shariah being in complete harmony with wisdom and intellect.

Islamic shariah is based on human relations and the submission to Allah. All humans are equal as the vicegerent of Almighty, and there is no discrimination of colours or creed, caste or country. An Arab is not superior to a non-Arab. Similarly, a non-arab is also not superior to an Arab. No nation, group or sect of society is superior to another. All humans are equal as a vicegerent of Allah and as an addressed person of divine commands. Ultimately they are equally answerable.

Islamic shariah consists of all aspects of human life. It is not confined only to mutual relationship of humans and not only describes (defines) the relationship of man and Allah, creature and Creator. But also builds the organization of mutual relationships of humans on the basis of human's relation to Allah. In this way, it forms a society where all members are true Muslims and the obedient slaves of Allah. This feature ensures the social security of Islam. The members of Islamic society, under the command of their own moral values and strength, avoid sins and pay the rights of other fellow beings. Every person performs his duties (responsibilities) that ultimately ensures the rights of others. The sympathy, cooperation and sacrifice take the place of struggle for survival.

Islamic shariah addresses all human beings equally. That's why its commands are general and perfect. Alama Shokani says:

The commands of shariah are based on adjustments and are general. It is not possible that a certain individual or a group remains unaddressed. For instance the command about prayer during travelling is curtailment of obligatory prayers. The base of this command is decrease in labour. But this command is not for labour. Journey will be considered a cause of curtailment whether there is labour or no labour. Similarly the permission to take loan is based on the condition that a needy person can fulfill his need through this money. But the permission for loan is not based on being needy. Rather a rich person who is not needy can borrow money as a loan. (Irshad-ul-Fahool).

A very vast circle of man's social life revolves around money consumptions and earning. Islamic shariah has given the concept of vicegerent about possession (ownership), according to Islamic shariah Almighty Allah is the Real Owner of everything.

The recognition of the purpose, adjustment and objectives of commands given to us by shariah is known as the objectives of shariah. Man has been blessed with the wealth of wisdom and intellect. This very distinction is the orbit of his sufferings and troubles as well as the base of the addressed person of shariah commands. It is our belief that Almighty Allah is Hakeem (Source of Wisdom) and no action of a Shariah is void of wisdom and adjustment. He is merciful as well. Therefore, the human welfare and success are wrapped in all what he commands. We can utilize their objectives fully in the
case of legislation. Some common and general verses of Holy Quran reflect this as well. It has been said about Holy Prophet (PBUH).

We sent thee not, but as a mercy for all creatures, Al-Quran (21:107).
Allah doth not wish to place you in a difficulty, but to make you clean, and to complete. His favour to yours, Al-Quran (5:6)
For prayer restrains from shameful and evil deeds, Al-Quran (29:45).
O ye who believe! Fasting is prescribed to you as it was prescribed to those before.
You, that ye may (learn) self restraint, Al-Quran (2:183)
In the law of Equality, There is (saving of) life to you, Al-Quran (2:179)

These verses and hundreds of other verses like these and Ahadith are such that give obvious indications towards these objectives lying in shariah commands. Those objectives which have been highlighted are the aim of Islam.

VII. The Objectives for Law Making:

The adjustments utilization of which has been made compulsory, the objectives that the law-giver desires to achieve have been categorized into three levels or three kinds by the scholars after great induction.

i) Necessary / compulsory
ii) Based on need (desire)
iii) Based on appreciation

Necessary objectives:

It means the matters on which man's worldly and spiritual life is based. Any disturbance in these causes trouble and dispersion not only in worldly and spiritual life but also spoils the life hereafter. A person becomes deserving of Allah wrath and sufferings instead of reward and peace. Under the heading of necessary objectives protection of five things is the aim of shariah commands. The success and safety of worldly life is also connected to the protection of these five principles. The success of hereafter is also dependent upon them.

Their hierarchy is given in the following.
1. Protection of faith (belief) religion
2. Protection of life
3. Protection of wisdom
4. Protection of children (off spring)
5. Protection of wealth and possession

(i) Protection of Faith (religion / belief):

Almighty Allah revealed a religion for the reformation and the welfare of humanity and the reminder about a perfect set of beliefs and worships for the power of thinking as well as actions. It has been made obligatory to be a follower of true religion and Jehad has been made obligatory for the protection of religion. Allah forbade the obedience and propagation of a fake (false) set of beliefs. The punishment for apostasy has been mentioned. There is also a punishment for revolt against a true religion. It means that according to principles a man is free and independent regarding his belief and thinking, but if this freedom becomes a hurdle for true religion, it is known as revolt and
tumult. The eradication of this tumult is necessary and has been commanded, Rasheed Raza (1973). So, for Islamic legislations this principle will also be focused.

(ii) Protection of life:
Allah created human beings on this earth and made nikah (wedding) lawful for the continuity and survival of human life. The consumptions of food, water and clothing are needed. For the protection of life has also been made obligatory. On the other hand, there is a reminder to avoid such activities that are a threat to life. Suicide is unlawful. There is a punishment for murder. Qisas (bloodshed) dayt and expiation have also been introduced to protect human life, (Al-Baghadi, Abdul Qaahir). This principle will also be focused on for Islamic legislation.

(iii) Protection of wisdom (intellect / reason):
Wisdom is such a blessing of Allah that discriminates humans from other creatures. It is the base of human being as the addressed person of shariah commands. Shariah has commanded to protect this blessing of wisdom. Knowledge has been made obligatory for the development of intellect and all such deeds have been prohibited that weaken or spoil it. Drinking has been made unlawful. There is a certain punishment for a drunkard. The punishment for drinking wine is whipping, Rafi-Ullah Shahab, (1984).

This principle will also be kept in mind for Islamic legislation.

(iv) Protection of children (offspring):
On one hand, nikah (wedding) has been made lawful for the continuity of human life. On the other hand, adultery has been prohibited to avoid the mixing of family and enmity. There has been set a punishment for this. Similarly there is a punishment for a person who culminates to stop the propagation of impudent and vulgar talks. In this way, human generation will be protected like human life, (Dr. Sajid-ur-Rehman Siddiqui). This principle will also be observed for Islamic legislation.

(v) Protection of wealth:
Wealth is also a great blessing of God. The survival and systematic of human life is connected to it. Therefore, Allah has commanded to earn living with labour and through honest means. On the other hand, Bay and shara (buying and selling) have been made lawful to keep the ways of earning money open. But Islam has declared earning livelihood through usury and conceited trade as unlawful means of earning. Similarly Islam has prohibited stealing, robbery and usurpation. The punishment of a thief is the cutting of hands to ensure the protection of money, Dr. Mustafa Sabaai (1410 A.H). So, for Islamic legislation this principle will also be kept in mind.

These five matters have been declared as the basic aims (objectives) of a true religion. Other religions of the world have also set some guided principles for these. The comprehensiveness that Islam has described regarding these principles is a distinction of Islam. It must also be kept in mind that if the existence of man (human being) in this world is only for the protection of life, wisdom and wealth, this idea is of no avail. These things in Islam are related to the life in hereafter. The existence of man in this world is needed to fulfill the duty of obedience to Allah and make himself prepared for the success of life hereafter. But the guarantee for safety of life, wealth, honour and wisdom is present in the commands of shariah given to us by Islam.
It is also a matter to consider that among these five principles the least important of less important thing will be sacrificed for the most important thing. For example there should be no hesitation in sacrificing one's life for the protection of religion. Similarly, if life can be protected by usurping other's wealth, the life protection will be superior to the protection of wealth. A scholar of shariah commands. Ibn-e-Qayyam says:

There are five purpose of shariah regarding creatures, and these are protection of one's religion, life, wisdom, generation and wealth. So, every such thing which ensures the protection, of these five principles will be considered as adjustment (expedience) and every such matter that is a threat to these five principles will be considered as disturbance and only expedience can amend it, Ibn-e-Qayyam Al-Jozia (1993).

VIII. Objectives Based on Need (Desire):
The second level of objectives of shariah is to remove labour and suffering from human life. Life does not base on these objectives but for human ease and convenience certain concessions are necessary. For example the permission regarding the curtailment of obligatory prayers during journey, the concession of not observing fast during Ramadan for a traveler and a sick, permission to offer prayer in a sitting position if one can’t keep oneself in standing position, command for offering no prayers for a woman suffering from menses and permission for wiping during journey. These commands come under the heading of second level of objectives of of shariah. Similarly, the business of loan, the permission for being a supporter of someone’s rights, permission to cancel an agreement of deal and through divorce putting an end to marriage relationship also come under this head. The heir of a murdered person has been given the right to forgive Qisas, or to reduce Dayt, or in some cases dayt applies to the relatives of murderer rather than to the murderer. All these things have been made lawful to reduce (decrease) labour from human life. Ibn-e-Qayyam writes. Needs (desires) are those expediences that are needed to remove trouble and labour without concessions the life will be full of hard labour. But there should be no such tumult that is caused by overlooking these objectives of need. The concessions given here are also common and general for all. The example of these concessions in obligations are those exemptions that are given to save human from labour caused by illness or travelling. The examples of these concessions for habits are lawful hunting and eating only lawful food items. The examples for dealings are Mazrarbat, Masaqat and salm, (Aadam-ul-Moqaeen, Vol. 4).

IX. Objectives Based on Appreciation:
The third level of objectives and expediencies are objectives based on appreciation (skill) and excellence. The concession for these does not make life suspended or dismissed and life is likely to become hard if these concessions are removed. These are related to morality and ethical manners of life. In other words, it is a demand of human intellect that these expediencies must be available and good nature demands these features to exist in society and human life must be ornamented with these features. Imam Ghazaali Says:

The third level of expediencies is not under the head of need or desire but they are included in those matters which are assumed for excellence and ornamentation. These concessions are considered better for human life, Al-Ghazali (1410).
The examples of these concessions in obligations are super derogatory prayers, fasting and alms etc. The command for cleanliness and not exposing the private parts also come under this head. Prohibition of trade of unlawful items, avoiding sins and prohibition of cutting of a dead body, avoiding the murder of women and children are also included in this level of objectives.

X. Allama Ibn-e-Qayyam Writes:

"Excellences means adopting what are the good habits and avoiding those what are disliked by a good human nature. A collection of them is called morality. Its examples regarding worships (obligations) are the removal of uncleanliness and reaching cleanliness. Not exposing the naked body to women and an effort to be close to Almighty through supererogatory prayers and obligations also come under this head. Manners for eating food, avoiding impurities and unlawful deeds, and abstaining miserliness as well as lavishly spending of money dealing in unlawful items, selling of water and fodder and prohibition of killing children, women and monks during the Jehad are examples of these objectives", Aalam-ul-Moqaean (Vol 4).

Knowledge of the objectives of shariah is useful and necessary for every individual. If one knows the expediency or wisdom behind a command, it results in the increase of faith and freshness of spirit regarding the religion and beliefs. An individual reaches the position of the highest (perfect) level of faith above the level of knowledge of faith. This is the reason that Imam Ghazali, Allama Moezez-ud-Din bin Abdul Salam, Ibn-e-Qayyam, Allama Shahtibi, Hazrat Shah Waliullah and Allama Muhammad Qasim Nanotvi make the secrets of shariah as their topic of discussion and tries to make humans aware of the knowledge and depth of shariah commands.

For scholars and the jurists, the knowledge of objectives of shariah and principles of shariah is even more necessary and important, so that they may get guidance from these objectives in the coming problems. It is also important for them to make the verses coherent (alike) if they seem apparently objectionable. It helps them avoid making mistakes as a result of neglecting the objectives of shariah commands while looking a command for indefinite matters, Abdul Waheed Khan (1975).

As long as the matter of outmoded questions (points) is concerned that the commands (actions taken) by Almighty are void of objectives or not? And while laying stress on these objectives, there will be no demerit attributed to Allah? This discussion belongs to (scholastic Philosophy) rather than to jurisprudence. Although Imam Raazi has claimed that commands of Almighty Allah are not void of objectives similar to his actions, but this claim of his is not acceptable by all and as a scholar Ibn-ul-Hamam wrote that majority of jurists is agreed on the fact that in shariah commands revealed by Allah concessions convenience and case of humanity have been given due importance.

Ashaarah and the followers of some other school of thoughts have a belief that Allah can command for any such action that has no logic. Yet they emphasize that the commands given have a certain level of expediencies and concessions (logic), (Abdul Maalik Irfani).

Among Hanfia and Shaafia, the people who consider the expediencies as the cause of commands explain that cause means a symbol or sign of that command. It does not
mean a cause that provokes Allah to issue a command like that and not any other command.

The people, who think expediencies as cause, are of the opinion that Allah Almighty is merciful about His Creatures. He dislikes disturbances and mischievous acts. He removes the sufferings for the ease of humanity. Therefore, none of his command is void of wisdom. To conclude we may say that as it is not possible to consider that Allah is bound to command this. Similarly, it is inappropriate to say that any of his commands is useless and to no purpose. So, Mautazallah and other followers have become a victim of either of extremes. The most appropriate thinking is what has been supported by Ibn-e-Hamam and other jurists. Allama Anwar Shah Kashmiri used to say that we should not regard commands of Allah as based on interests rather we should regard them as based on purposes, (Dr. Jamal-ud-Din Atya).

In any case whatever is the dispute of words, the cause of verses is a fact and all discussions of conjectures based on this. Therefore, the scholars have written texts consistently on this topic. The most notable book is Talee-ul-Ahkam by Dr. Muhammad Mustafa Shilbi. He has declared the opinion of Matureediya as moderate and free of either extremes.

XI. Conclusion:

i. These objectives can be fully utilized for Islamic legislation. So, for all laws making processes in Islamic state these objectives must be kept in mind.

ii. Some commands of shariah are such that they can be given the status or titles of necessary, needs. For example, the consideration of similarity in Qisas is for the completion of objective of soul. Similarly, the unlawfulness of even a small quantity of wine is for the expediency of wisdom because even the least quantity of wine leads to more drinking. Similarly, it is prohibited to stare an unknown (private) woman and accompany her. The significance of Azan and congregation for prayer is for the completion of expediency regarding the strength of religion so that religion may be nourished (protected) fully.

iii. Similarly a restriction of similarity regarding usurped money and unlawfulness of Rabwa is for the objective of protection of wealth.

iv. For the completion of second level of expediencies the things declared lawful are the nikah and consideration of dower, prohibition of trade of unknown item and the condition of knowing or checking the trade item are the expediency of second objective.

v. For the completion of expediency of excellence spending money from lawful earning and selection of superior animal for sacrifice and for party on child's birth on the 7th day are the examples of this.

vi. These expediencies which are regarded as necessities have the status of principles of religion according to Imam Shatibi. They are always prior in all cases. Of excellence may be neglected for the completion of either of top 2 expediencies i.e. necessary and need. The expediency of not exposing private parts may be overlooked for the operation or diagnosis of disease.

vii. In case of need and compulsion eating the flesh of dead will be lawful and the expediency of avoiding unlawful food items will be overlooked. Same is the case with Bay-e-Salam and Istasna.
Regarding necessities the mutual superiority and inferiority will be considered. For the protection of religion (faith) the life will be sacrificed. For the protection of life, the wealth will be overlooked.

Imam Ghazali and some other scholars have declared the protection of offspring prior to the protection of wisdom, while some others are of the opinion that wisdom is prior to offspring.

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