Religion & Violence—Postmodern Perceptions

Dr Mustafeez Ahmad Alvi *

Theoretical Position of Post-modernim

Before we discuss the postmodern discourse about violence & religion, it seems better to have a clear picture of theoretical positions on the background scenario of the post modernism itself. A thorough study of chronological sequence reveals that the Postmodernism is a corollary to Modernization & Radicalism, in 20th century.

Modernization Theory (Late 40's until the mid 60's) characterized, the inevitability of progress, the invincibility of science, and the desirability of liberal democracy. Nothing was considered higher than human reason; secular was preferred to religious & the rights of the individual were focused.

The Radicals (Late 60's until the late 70's) re-defined the modern, inverted the previous binary code; emphasizing repressive nature of Modernity; suspected its claims of being rational and liberating; considered capitalist democracy as source of alienation & marginalization. Therefore, they emphasized the public, the heroic, the collective and universal, and coined grand narratives of the struggle against capitalism and imperialism.

In the Post-modern Theory (Late 70's until the present), the qualities of Radical Theory were cast under suspicion. The post-modernists claimed that the difference, hybridism, heterogeneity and restless mobility were native to a capitalist global society, which focuses a consumer who is mobile, ephemeral and constituted by unstable desires(1). Therefore, postmodernism praises the playful, the hybrid, the contingent, and of a multiple, diffuse, and de-centered self.

According to Frederic Jameson, modernism and postmodernism are cultural formations that accompany particular stages of capitalism. The first stage- market capitalism (eighteenth to late nineteenth centuries) with particular technological developments (the steam-driven motor for example) is associated with a particular kind of aesthetics & that is realism. The second phase, monopoly capitalism (late nineteenth century until the mid-twentieth century) is associated with electric and internal combustion motors, and with modernism. The third, the phase we are in now, is multinational or consumer capitalism, with the emphasis placed on marketing, selling, and consuming commodities, associated with nuclear and electronic technologies, and correlated with postmodernism(2).

---

*Chairperson, Department of Islamic Studies, Women's Institute of Science & Humanities (WISH), Riphah International University, Islamabad, Pakistan

REFERENCES

1. Ibn Najaym, Fath al Ghaffār bi Sharh al Manār, Cairo, Mustafa al Bābi al Halabi, 1936, 1, 8 .
2. Al – Baydāwī, Nasir al Din, Minhāj al Wusūl ila' Ilm al Usūl, Cairo, Maktba'ah Kurdistan Ilmiyyah, 1326 A.H. P.3
3. Wahhab al Zuhaylī, Usūl al Fiqh al Islami, Damscus, Dar al Fikr, 1986, P.21.
4. Sadr al Shariah, al Tanqih, Cairo, Dar al Ahd al Jadid lil Tibā'ah, 1957, 1, 13-14.
5. Al Ghazali, al Mustafa, Cairo, Maktabaah, Mustafa Muhammad, 1937, 1, 48.
6. Abdur Rahim, The Principles of Muhammadan Jurisprudence, Lahore, P.L.D. Publishers, 1911, P.48.
7. Sadr al Shariah, al Tawdih, 1, 14.
8. Ahmad Hasan, Principles of Islamic Jurisprudence, Isalamabad, Islamic Research Institute, 1993, P.34.
9. Zaydān, Abdul Karīm, Al Wajīz fi usūl al-Fiqh, Beruit, Muassassah al Risālah, 1987, P.29.
10. Ibid.
11. Al Ghazali, Abu Hamid Muhamamd bin Muhamamd, Al Mustafa, 1, 93.
12. Do.
13. Ibn al Lahhām, al Mukhtaar fi Usūl al Fiqh, Makkah, Jami'at al Malik Abd al Aziz, 1980, P.67.
14. Abdul Aziz al Bukhari, Kashf al Asrār, 1, 258.
15. Al Taftāzānī, al Talwih, 11, 123.
16. Kashaf al Asrār, 1, 95.
17. Ibid.
18. Al Tawadih, 11, 123.
19. Al Kasānī, Bidā'i al Sanā'i, Beruit, Dar al-Fikr, 1996, 5, 201.
20. Salmand's Jurisprudence, Lahore, Civil and Criminal Law Publication, p.9.
21. Ibid
22. - Do.- P.10.11
24. V.D. Mahajan, Jurisprudence, Lahore, Sham Bank Corporation, P.196-197

law should be easy to be enacted [24]. As discussed earlier, the commands of Shariah are not ambiguent. Because classifications of hukm shar'ī covers the maximum situations and matters, enactment of those commands does not need to determine one meaning from two or more meanings. Every term is complete and expressed in itself. Having wider and comprehensive classifications, the Shariah is easy to be enacted. It is stated that Hanafī fiqh has been enacted in the most parts of the Islamic world because Hanafī fiqh was the state law. The question is that why was Hanafī fiqh the state law. Answer is that Hanafī fiqh is more comprehensive and easier to be enacted at state level. Not only at state level but also for a common man it is easy to under stand it and to apply it on individual and collective life. Perhaps that why the majority of Muslims in the world are Hanafīs.

Seeing some similarities, the orientalists claimed that the fiqh Islami had been derived from the Roman law. On basis of classification of hukm shar'ī, we can easily reject this claim. As we know the subject matter of the fiqh is hukm shar'ī. The classification of hukm shar'ī highlights the main and structural difference between law and the fiqh. There is basic and natural difference between the both. Roman law can not be the source of fiqh. I must say beside other arguments, the classification of hukm shar'ī is a strong sign of that the fiqh is a revealed law, God gifted law, not a man made law.

It is concluded that as compare to the law the Shariah is well expressed, easy to understand and a complete law to be enacted at individual and collective level easily. The major basis of all is the wider classification and comprehesiveness of hukm sharī'. Enforcement of the Islamic law specially Hanafī in transaction is easy. The Islamic law is inambiguous, self expressed and complete, the basis of which is detailed description of hukm shar'ī.

those who claim that the Shariah or Fiqh has mainly been derived from Roman Law. No society or civilization has precedent of that which the Shariah has in the shape of hukm Shar'ī.

Subject matter of Islamic law is hukm shar'ī and Islamic law in totality and comprehensively addresses all spheres of life, rituals, family matter, transactions and crimes. No doubt the Islamic law has been classified into different laws such as fiqh al Ibadat, fiqh al Usrāh, fiqh al-Muamlāt and fiqh al-uqubāt. But according to Islamic jurisprudence, Islamic law is a unit and deals with all spheres of life comprehensively. This discussion shows that the Shariah differs to the modern law regarding structure and enforcement. There can not be any similarity because the Shariah is gifted by Allah called revealed law while the law is made by human beings.

Classification of Hukm and Law of Contract:

As discussed earlier, on the basis of classification of shart into in'iqād, sehāh, nifādh, luzūn, the classification of contract in Shariah becomes more wider and comprehensive like sahīh, bātil, fāsid, nāfidh, moqūf, lāzīm, ghayr lāzīm, mun'aqad. The modern law classifies contract into only three kinds:

1. Valid Contract
2. Void Contract
3. Voidable Contract

Law has divided contract into only three kind. While the Shariah has classified it more widely. Maximum modes of transactions in the form of contracts can be determined according to Islamic law to apply suitable hukm shar'ī on those. Only from the title of a contract, we can know about a particular contract what it lacking and weather it can be repairable or not and what is its legal status as for as hukm shar'ī and what effects it has. Only title can tell us no more clarification or further detail is not needed. Specially Fiqh Hanafī has described hukm Shar'ī in more detail and they have give a specific title for a certain category of contract. For example 'aqd al-fāsid is that which lacks shart sehāh init and it will be revoked but has some effects. Law has only three categories while the forms of contract are more and not be accommodated by those three. So, describing a certain form under a category requires further detail and elaboration. This shows the defect of a law on the other hand the Shariah is comprehensive and easier to be enacted.

Characteristics of a Complete Law:

Aminent jurists Salmond described that a law should not be ambiguous. Description of law may be such that instead of having one meaning, it may be possible to put two or more meanings on the same word. It reflects the defect of a law. There should not be inconsistency in law. The different parts of the law may be inconsistent with one another. A law should be complete in itself. There may not be any lacuna in the law itself and should be fully expressed. A

is legitimate by its nature but not legitimate by its attribute and what is not legitimate by its nature nor by its attribute is called bātil [17].

Classification of Shart (Condition)

The Hanafīs describe that shart is of four kinds, shart in'iqād (constitution), shart Sehāh (condition validity), shart nafādh (execution), and shart luzūm (bindingness) Sadr al-Shar'iah explains that in'iqad means combination of parts of the disposition of a transaction as required by the Shariah. Nafādh means the effect accuring from in'iqād and luzūm means the stage of a contract where it becomes binding and indissoluble [18].

The Hanafīs on the basis of above mentioned classification of condition, have divided a contract into many kinds which are sahīh, bātil, fāsid, Sahīh contract is that which has all essentials and conditions in it and bātil contract neglects a rukn or shart in'iqad in it. A contract turns to a fāsid contract when it neglects shart Sehah. On the fulfillment of sharāyt nifādh a contract becomes nāfidh otherwise it will remain moqūf. Fulfilment of sharāyt luzūm makes a contract lāzīm which means the contract is binding and indissoluble or can not be revoked and ghayr lāzim is that which is dissoluble or can be revoked. [19]

Hukm Shar'ī and Modern law:

As we have come to know from the classification of hukm shar'ī that the commands of Shariah are not having the same status, some commands are obligatory and some are demanded indecisively while some others give permnissions to perform an act and these are permissive commands. On the other hand modern law does not have such classification.

Austin defines law as "a law is a rule of conduct imposed and enforced by the sovereign [20].

Another eminent legal writer Hobbs says "The commands of him and them that have coercive power" [21]

Both definitions expressed that the modern law basically comprising of that rules which are to be enforced decisively as the word of sovereign and coercive power have been used. We do not see any kind of resemblance in the classification of law and hukm shar'ī. Modern law has been classified into positive law, imperative law, physical or scientific law, natural or moral law, customary law and conventional law etc. The term law is applied to the general rules having some authority behind it enforced by superior power and called imperative law. Austin says, "A law is a command which obliges a person or persons to a coarse of conduct" [22].

So the law is only combination of obligatory commands. To satisfy other departments of life, they have created different laws such as natural law, conventional law etc. The law is totally deprived of the classification which the Shariah have in form of hukm shar'ī. This point is a great evidence against

Kinds of Hukm Wad'ī:

The word means to place, put down or lay down. Technically, it stands for the declaration of a thing by the lawgiver to be a cause (sabab) or condition (Shart) or an impediment (māni'). There are basically three kinds of hukm wad'ī, Sabah, Shart and Māni'.

Sabab (Cause):

It is the cause on the basis of which a hukm taklīfī is invoked or is established [(11)].

Shart (condition):

Shart literally means an inseparable sign. Technically shart means a thing by whose nonfulfilment the object of condition (mashrūt) does not come into existence but its fulfillment does not necessarily entail the existence of the thing [(12)].

Māni' (Impediment):

Māni' is one whose existence entails the non-existence of the command, such as a father is not killed in retaliation for killing his son [(13)].

There is another classification of hukm wadi, Sahih, Fāsid and Batil.

Sahīh (valid):

Sahīh is one whose essential elements and conditions are combined together in as much as they are recognized by the Shari'ah with respect to the command. Hence prayer, fast and sale are valid when the essential elements and conditions of each of them are present [(14)].

Bātil (Invalid):

Bātil is one which neglects the objective in all respects despite the existence of the form, either by nonfulfilment of the object of the right of disposition on account of incapacity of the person [(15)].

Fāsid (Irregular):

Fāsid is defined as that which is legitimate by its nature but not legitimate by its attribute. [(16)] The majority of the jurists have divided an act, whether a ritual or a transaction, into Sahīh and bātil. Fāsid is synonymous with bātil. The Hanafīs divide the act into three kinds: sahīh, bātil and fāsid. According to them sahīh act is that which fulfils arkān, wājibāt and all the conditions. Bātil is that which neglects any rukn or fard or condition of rukn which is called Shart Ineqād and fāsid is that which neglects wājib in rituals or shart Sehah (condition of validity) in contracts. Bātil can not be enforced and has no effect but fāsid has some effects and such an act become valid if the cause of the irregularity is removed.

Abdul Aziz al-Bukhari described the difference between the three as sahīh is that which is legitimate by its nature and attribute, fāsid is that which

certain things or it provides him with the choice between two or more options.The communication also declares a thing to be the cause of a command or its condition or impediment to it. It shows that there are two kinds of hukm Shar'ī.

1. Hukm Taklīfī
2. Hukm Wad'ī

The communication of the lawgiver which demands to do or not to do a thing or gives an option to do or not to do a thing is called hukm taklīfī. The communication which declares a thing to be a cause or condition of a rule or an impediment to it is called hukm wad' ī [(7).]

Prof. Ahmad Hasan termed hukm Taklīfī as defining law or the law which defines rights and obligations and hukm wad'ī as declaratory law [(8).]

Categories of Hukm Taklīfī:

Hukm taklīfī has been divided by the majority of the jurists (jumhur) into five categories [(9).]

1. Ijāb (declaring an act obligatory)
   It is the communication which absolutely demands the performance of an act.
2. Nadb (recommendation):
   It is the communication which indecisively demands the performance of an act.
3. Tahrīm (declaring an act forbidden):
   It is the communication which demands absolutely to refrain from an act.
4. Karāhah (disapproval):
   It is the communication which indecisively demands to refrain from an act.
5. Ibāhah (permissibility):
   It is the communication which confers a choice between the performance and omission of an act.

The acts to which above mentioned communications are related are called Wājb, mandūb, harām, makrūh and mubāh respectively. The Hanafī jurists have divided hukm taklīfī into seven kinds. They have made difference between fard and wājib and between harām and makrūh tahrīmī. The absolute demand to do an act on the basis of a decisive evidence (dalil qat'ī) is called fard and the absolute demand to do an act on the basis of a probable evidence (dalil Zannī) is called Wājib. The absolute demand to refrain from an act on the basis of a decisive evidence is called Harām and the absolute demand to refrain from an act on the basis of a probable evidence is called makrūh tahrīmī. Hanafiyyah named makrih as makrih tanzīhī (disapproval by way of religious scruple) [(10)].

Classification of Hukm Shar'ī and Comprehensiveness of Shariah

Dr. Muhammad Ijaz *

Subject and goal of Fiqh and Usul al Fiqh is Ahkām Shar'iyyah. Usūl al-Fiqh means knowledge of principles by the acquaintance of which one has an access to the derivation of legal rules (Ahkām Shar'iyyah)(1) And Fiqh is defined as the knowledge of the commands of the Shariah (Ahkām Shar'iyyah) relating to the conduct of man derived on the basis of their detailed proofs(2).

Above mentioned definitions show that the subject matter of Fiqh and Usūl al-Fiqh is Hukm Shar'ī. Fiqh is the name of the knowledge of Ahkam Shar'iyyah itself and Usul al-Fiqh is the knowledge of those principles which are essential to have access to Ahkam Shar'iyyah. So subject matter of Usul al-Fiqh and Fiqh is Hukm Shar'ī. This discussion reflects the importance and position of Hukm Shar'ī in Shariah. In this article, it is aimed to explain Hukm Shar'ī and its classification to determine the comprehensiveness of Shariah and to show how the Shariah differs and dominates the other man made laws.

Hukm:

Hukm means "the judging of a thing to stand to another thing in relation of an attribute to its subject, affirmatively or negatively, such as the judgment that the moon is rising or not"(3). The fact of rising or not rising has been attributed to the moon. So, it stands as a hukm (judgment) about the moon.

In Usūl al-Fiqh, the word hukm technically has been defined as:

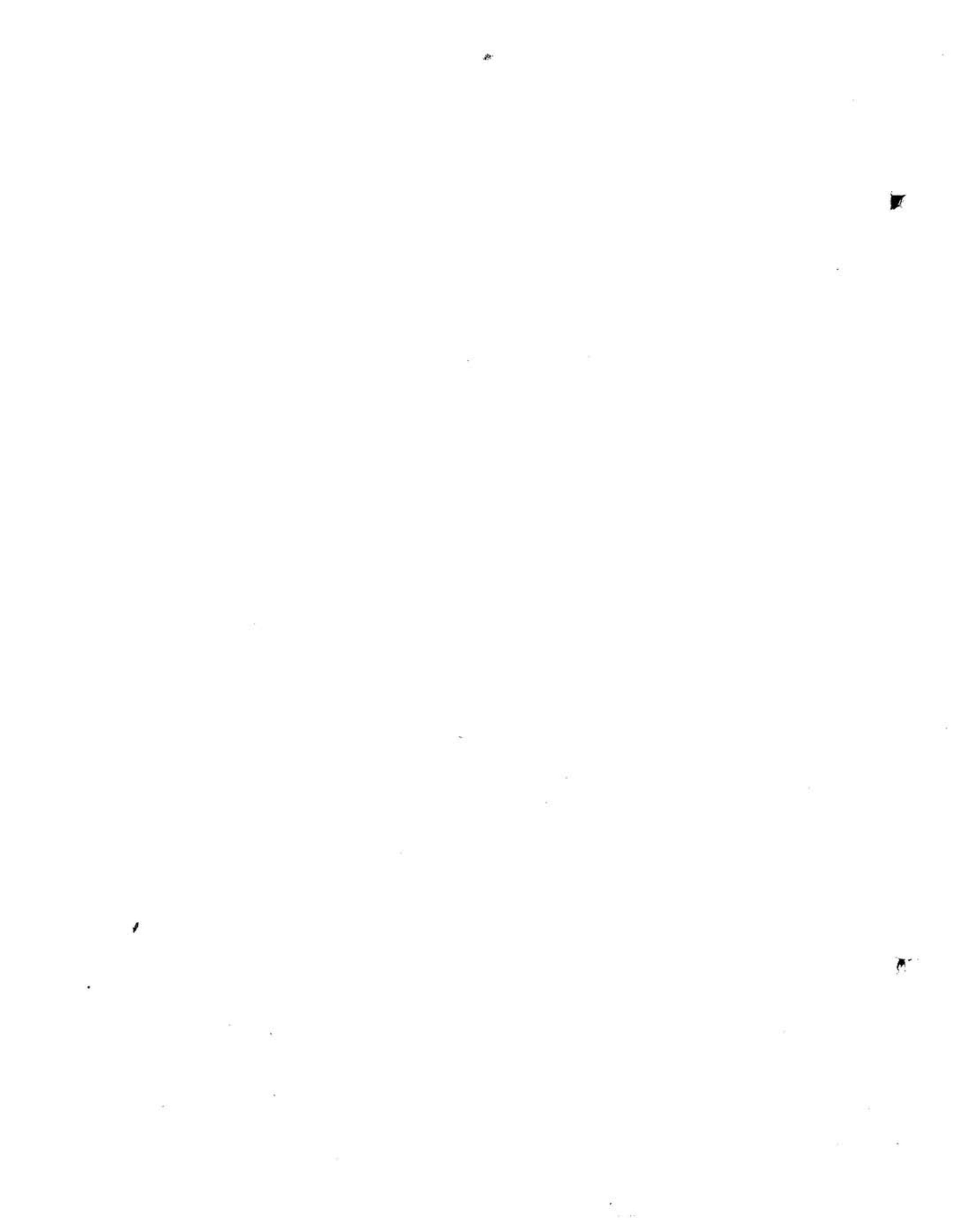
"The communication of God relating to the acts of Mukallafeen demanding to do or not to do an act or giving a choice for its performance, or declaring a thing to be a cause or a condition of a command, or an impediment to it(4).

Mukallafeen is the plural of Mukallaf. Mukaffaf is the person who is subject of law. Technically taklīf means legal obligation. Taklīf means to demand of whatever involves inconvenience(5). Abdur Rahīm described hukm as law. He stated "Law (hukm) according to Muhammadan jurists, is that which is established by a communication (Khitāb) from God with reference to men's acts, expressive either of demand or indifference on His part, or being merely declaratory"(6).

Classification of Hukm Shar'ī:

Hukm Shar'ī means the communication of the lawgiver. The communication either demands of the person under legal obligation to do or not to do

* Associate Professor, Sheikh Zayed Islamic Centre, University of the Punjab, Lahore



CONTENTS

1. **Classification of Hukm-e-Share and Comprehensiveness** **1**
Dr. Muhammad Ijaz

2. **Scope of Religious Freewill in Islamic Realm** **9**
Dr. Muhammad Hammad Lakhvi

3. **Religion & Violence —Postmodern Perceptions** **19**
Dr. Mustafeez Ahmad Alvi

4. **Spirituality at Workplace** **31**
Dr. Muhammad Ehsan Malik
Basharat Naeem

5. **Civil Religion and the Revitalization of Secularism in Postmodern Age** **41**
Dr. Hafiz Muhammad Abdul Qayyum

Abstracts of all Articles **63**