

Appendix 27:

Human and Other Rights

Taken from

Shariah: The Misunderstood Legal System

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(Pages 8-10)

Having dealt with sharia sources and some related issues, I now have to talk on its scope; in reality, the scope of sharia is wider than what an ordinary lawyer may regard as law simplicities. The law simpliciter could be akin to what in sharia is called *Figh*, i.e. jurisprudence. Sharia, in addition to the above, embraces other things like morals, acts of worship etc. In a real sense, Islamic law can be classified into the following sections:

Spiritual law (*Idadat*) such as testimony, prayer, fasting, *zakat*, *hajj*;

Personal law – marriage, divorce, child’s custody, paternity, guardianship, succession, bequests, will, gift, endowment (*waqf*).

Contract and Transaction – property, ownership, possession, sale, hiring, pledge, trust, partnership, mortgage, pre-emption.

Criminal law – crimes, punishment (*hadd*), retaliation (*qisas*), theories of punishment, torts (*jinayat*)

Judicial Administration – courts, procedures, evidence, ombudsman, constitutional law, concept of *umma*, concept of sovereignty, rule of law, administrative law, fundamental rights.

However, all these laws are subsumed under certain rights and obligations, i.e. the rights of Allah, the rights of self, the rights of other human beings and the rights of other creatures. I shall briefly consider these rights.

The Rights of Allah

As the Creator, Nourisher, Cherisher, Provider and Protector of every human being, Allah has a right upon every person that he should have faith in Him alone, associate none else with Him, obey Him and His prophets, worship Him in offering prayers (*salat*) paying poor their due (*zakat*) keeping fasts of Ramadan, performing Hajj and being prepared to sacrifice everything, even his life in His cause.

The Rights of Self

In order to have poise and balance in his own life, a man's self has rights upon him that he should keep his body clean, have good food, decent dignified dress, rest and cleanliness, and not to consume blood, intoxicants, carrion, or flesh of pig and other prohibited animals, not to indulge in celibacy and so avoid marriage and not to commit suicide or torture his body.

The Rights of Other Men

As an important step to make people live in peace and harmony and to save the society from conflicts and tension, sharia makes it a duty of every person that he should respect the rights of other persons, requiring him not to commit against them any crime (e.g. theft, robbery, murder, hurt, forgery, cheating, adultery, fornication, sodomy, slander or calumny) or other injurious activities, e.g. gambling, speculation, telling lies or backbiting or harm them through exploitative commerce, e.g. hoarding or black marketing. His wife and children have the right to receive kindness and necessities of life from him. His near relatives also have rights over him to be generously treated; his friends, neighbours and acquaintances have the right to receive courteous and good treatment. Non-Muslims of course have the right from every Muslim to be fairly and equitably treated and not to have his religion or religious leaders slighted or insulted. Furthermore, when there is war, neither their women, children, religious leaders, nor weaker males are to be fought.

It was sharia which laid down from its inception the law against genocide and crime against humanity. It laid down rules guiding that in the execution of war, no children, women, religious leaders or the weak should

be killed nor those who surrendered and lay down their arms. It further laid down that no crop should be destroyed and that soldiers could only take from the enemies' farm what they wanted to eat. People who surrender are never to be killed. These are the rules laid down from time immemorial which the world has just begun to practicalise through setting up tribunals to try some of such crimes, e.g. genocide.

The Rights of Creatures and Objects

Even these animals, creatures and things which have been harnessed for man to serve his need, possess rights upon him that he should not recklessly or wantonly harm or destroy them or make them an object for his sport. For instance, no animal should be killed by continuous pain, no bird be caged for harming it, no tree be cut without purpose, no vegetable or fruit be destroyed or allowed to rot, and no water or electricity be wasted.

Whatever a man does in relation to these four categories of rights mentioned above shall be put on the scale of punishment or reward to be awarded by Allah as well as by the civil authorities. That is why if a man keeps a domestic animal but fails to feed it, the authorities shall force him to feed it or dispose of it by sale to someone who can do that. The ultimate objective of Islamic law is the universal common good of all created beings, encompassing both our immediate welfare in the present and our ultimate welfare in the hereafter. This objective of the universal common good is a distinctive characteristic of Islamic law. That means that no species or generation may be excluded from consideration in the course of planning and administration and issuing of rights which belongs to every segment.