

Many readings of Sharia

By Ayesha Siddiq
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THE students of Jamia Hafsa want nizam-i-adl implemented in the entire country as a way out of the current crisis. They also want Taqi Usmani, their mufti, as chief qazi.

Their demands must have attracted plenty of attention and support, especially from those who feel that the new legal system in Swat is the best possible solution to the conflict there.

Some people support the Sharia in Swat for at least three reasons. First, it is believed that the Sharia alone will give ordinary people in Swat the speedy system of justice that they want. Second, since the Sharia is the demand of the Swat Taliban, they believe that it is a good idea to implement the system there while ensuring it remains disconnected from the rest of the country. Third, imposing the Sharia is not an issue because that's what is prescribed by the 1973 Constitution according to which all laws have to be in conformity with the Sharia.

But it is worth clarifying that the 1973 Constitution stipulates that all laws conform to the Quran and Sunnah, with no mention of the Sharia. This means that Sharia was not treated on a par with the Quran and Sunnah. This also indicates that the constitution gives the right of interpretation of laws of the state to legislators acting on behalf of the people rather than dogmatic ones of the past.

Those responsible for law- and constitution-making did not depend on the Sharia for both deliberate and inadvertent reasons. There was a conscious decision to keep the state from becoming a theocracy. A theocracy was certainly not the intention of the father of the nation Mohammad Ali Jinnah. Another critical factor pertained to the larger question of which interpretation to apply.

After all, the Sharia is an interpretation of the Quran and Sunnah. A quick reading of Islamic history amply demonstrates that the rulers and the socio-cultural environment of their time equally influenced interpretations by various individuals. For instance, it is said that the Abbasids directly influenced the process of the development of religious laws, during the latter's codification, to suit their own interests. According to Islamic scholar Tahir Wasti, some of the comparatively minor crimes then were punishable by the state. However, the bigger crime of murder was left out of this categorisation.

In Pakistan, the Sharia debate started under Ziaul Haq whose primary objective was strengthening his power rather than making society Islamic. Unfortunately, there were certain judges who helped the military dictator cheat the entire country by boosting his efforts to have in place Sharia laws that suited his interests. This in itself is indicative of the fact that the Sharia was open to interpretation.

The main purpose of any law is to bring peace and justice to society. A law becomes meaningless if it cannot do so. In Pakistan's case, as demonstrated by Wasti through his meticulously gathered data on the implementation of the law of Qisas and Diyat in the country, there appears to be a correlation between the imposition of religious laws and increasing crime in the country, especially homicide. Since the law of evidence makes the implementation of Qisas difficult, the state had primarily depended on using the law of Diyat. This essentially meant that a crime like murder, that can have far-reaching repercussions for society at large, was deemed a private matter that could be settled through compromise.

For those, who argue that the purpose of blood money and compromise denote the spirit of forgiveness encouraged by Islam, the implementation of this law in Pakistan proved to be better suited to the interests of the powerful and did not, in fact, reflect a sense of evenhanded justice and forgiveness for all tiers of society. In many cases, the poor and weak were forced to accept a compromise. Interestingly, the system was never strongly challenged by the legal community as a whole, perhaps because a compromise could mean less work while being paid the same fee in the case of some lawyers.

Referring to the peculiar situation in Swat, could one expect any better from Sufi Mohammad and his son-in-law Fazlullah than to implement the Sharia law in a way that suited their interests? The law of Qisas is also problematic because the conditions for a witness cannot be met by most including Sufi Mohammad, Fazlullah and the rest of their crew. It seems quite likely that those people whose loved ones have been murdered by the militants will be forced to accept a compromise in the name of the Sharia.

In fact, the Swati people have little choice in the matter because the state has abdicated the right to administer justice. This is certainly not in line with the instructions of the Quran and Sunnah, which, were these to be implemented in their true spirit, would require a fundamental re-negotiation of the legal regime in Pakistan and all over the Muslim world. Other Muslim countries including Saudi Arabia are not any safer even with the implementation of religious laws by the most powerful. Ultimately, any law has to have the inherent capability to protect the individual and society at large. It is a question of debate whether religious laws in the Muslim world have been able to achieve this.

The writer is an independent strategic and political analyst.
ayesha.ibd@gmail.com