



The Association of
Muslim Lawyers (UK)

TRUTH, JUSTICE AND EQUITY IN ISLAM AND THE ROLE OF MUSLIM LAWYERS TODAY

(A speech delivered by Mr. Ajmalul Hossain QC to the Association of Muslim Lawyers at their
AGM in London on 24 October 1998)

All lawyers trained in the English legal system will remember the words of Viscount Sankey LC in *Woolmington v DPP* [1935] AC 462 about the “golden thread” in the English Criminal law, namely, the duty of the prosecution to prove the guilt of the accused.

In Islam, there appears to be three golden threads that run through all its aspects and these three golden threads are clearly inter-twined. They are: truth, justice and equity. The words used in the Qur’an are *Al-Haqq*, *Al-Adl* and *Al-Qist*. It is significant that each of these words is specifically used in the Qur’an several times; the word *Al-Haqq* is used 227 times, *Al-Qist* 15 times and *Al-Adl* 13 times. The word *Al-Haqq* incorporates the other two terms and has several meanings depending upon the context: truth, obligation, right and justice.

The starting point of the Islamic discourse on justice is gnosis - Allah is the Supreme Law-Giver and the Qur’an contains His laws. Allah is *Al-Hakim*, the supreme judge, the Master of the Day of Judgment. Allah is *Ar-Rahman*, the Most Merciful, for His mercy and justice go hand in hand, and so also, Allah is *As-Salam*, Peace. It is to establish justice and peace that Allah, out of his Mercy, revealed the Quran:

“And We have sent down to you the Book (this Quran) in truth, confirming the Scripture that came before it and as Mohayminan (trustworthy in highness and a witness) over it (old Scriptures). So judge among them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you. To each among you, We have prescribed a law and a clear way...”¹

Truth is associated with Allah and is the fountainhead of Qur’anic guidance. Allah declares Himself to be *Al-Haqq*, The Truth. “And the word of Your Lord has been fulfilled in truth and in justice. None can change his words. And He is the All-Hearer, the All-Knower.”²

Truth and justice are essential parts of Islam and are inter-connected, existing in tandem and inextricably linked. The suggestion that, whereas Christianity is primarily the religion of love, Islam is above all the religion of justice is a useful signpost to where the emphasis is placed in each religion, although this does not, of course mean that love is a stranger to Islam, or that Christianity is devoid of justice.³

Justice is the very core and essence of Islam itself: a cardinal Islamic objective, the ultimate goal of religion, prophethood and divine revelation.⁴ To refer to truth without justice is meaningless. Truth is established by justice and truth establishes justice. Without justice the path to truth is elusive and without truth, any notion of justice is rendered illusory.

Descending from the transcendental to the temporal, the Islamic imperative of justice rests firstly upon the individual. Unique to Islam is the divine command to do justice to oneself; the first object of any injustice

(*dhulm*) is one's very own self. The administration of justice is a devotional act placed next to piety, and it is as such that in Islam law and morality become merged.⁵ It then extends to others; the individual is required to do justice to his fellow human beings – “. . . when you judge between men, you judge with justice⁶ . . . O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents, or your relations, be he rich or poor; Allah is a Better Protector to both (than you). So follow not the lusts (of your hearts), lest you avoid justice; if you distort your evidence or refuse to give it, verily Allah is Ever Well Acquainted with what you do.”⁷

But Justice in Islam is above all a collective duty. “Everywhere one encounters in Islamic life the idea of justice . . . the Muslim concept of justice is thus one of those domains in which a host of social, political, and ethical ideas come into [un]easy coalescence. . . .”⁸ Every member of the community is involved in the upholding of justice and cannot stand apart as silent spectators if an injustice is committed. To command and counsel right and to forbid evil (*amr bil na'ruf wa nahi anil munkar*) – repeatedly emphasised in Islam – is rooted in this aspect of the community's responsibility to do justice towards the whole of mankind.⁹ “Thus justice in Islam is not only a static condition – obedience to fixed rules and a list of preceptions; it is a dynamic value and institution which keeps the *Ummah* moving higher and higher on the path to virtue.”¹⁰

Justice is to be established according to *Al-Mizan* (Balance): “Indeed We have sent Our Messengers with clear proofs, and revealed with them the Scripture and the Balance that mankind may keep up justice . . .”¹¹ The Shari'ah requires a balanced implementation of rights and obligations. Unique to the Shariah is its integration of these two concepts into the broader concepts of *Haq* (truth) and *Hukm* (ruling), without seeking to eliminate the distinction between them. This unitary approach towards the balancing of rights and obligations contrasts with the emphasis on the duality evident in most modern legal systems. Thus, the Islamic approach seeks to protect the rights of the individual and the community within the general framework of justice. The precise adjustment of rights and obligations in favour of one or the other may be open to other interests, for example, considerations of public policy and public benefit (*maslahah*).¹² This is the Islamic notion of equity.

The role of Muslim Lawyers:

I turn next to the role of Muslim lawyers today. It matters not whether we are in a Muslim country or in the West. Islam is a religion that can operate easily in either and is designed to do so.

In some societies, lawyers as a class have a very bad name. Lawrence Rosen¹³ recounts an incident in an estate broker's shop in Sefrou, Morocco:

“In the corner were seated two old men who were following our conversation carefully. Much of the discussion turned on the fact that . . . unless the rains stopped very soon the entire crop for that year might be ruined . . . I mentioned that, among other things, I had completed a degree in law since my last visit to Sefrou. It was at this point that one of the two old men in the corner turned to the other and in a voice intended to be overheard by all said: “Six weeks of nothing but rain, and what does Allah bring us? Another lawyer!”

Historically, the Islamic legal system did not require any lawyers - the litigants were, almost without exception, litigants in person who pleaded their own case. Justice Rahman states:

“In disputes between Muslims, the Holy Prophet (peace be upon him) administered justice according to the Holy Quran but his decisions also became precedents for the future. . . .”¹⁴

In those days a litigant approached the Prophet (SAW) or later, the *Khalifa*, to decide upon a complaint that he had. This system also continued in later years when Governors and *Qadis* were appointed to dispense justice. Justice Rahman continues:

“It is during this [Abbassid (749-1258 AD)] period that the science of Islamic jurisprudence attained its golden age . . . A department of Justice . . . was set up with Qadi ul Quzzat as its head. Though appointed by the *Khalifa*, he was independent of executive control. The entire judiciary was under his supervision and control. Every city had its *Qadi* . . . The ‘*ifta*’ system of consulting specialists in the Shariah through *Muftis* or juriconsults was further developed. Litigants could also obtain their advice free of charge but later *Muftis* were permitted to charge a fee and still later to appear before *Qadis* and *Vakils* under the Islamic law of agency or mandate . . .”¹⁵

But do Muslim lawyers have a role to play at all considering the socio-legal framework set down by Allah within which every member of society has a duty to strive for justice? I have every reason to believe that there is. Whilst the obligation to do justice is upon every Muslim, I believe that for lawyers, it is an *a fortiori*. How can it be that persons who have training in gathering and analysing facts, in understanding the intricacies of the law, who are regarded as learned persons, not have a role to establish justice on this earth, in realising the “cardinal Islamic objective”, “the ultimate goal of religion”, “the very core and essence of Islam”.

The role, in my view, is firstly, to learn about our *Deen* for Allah has given one of His choicest Mercies to Muslim lawyers, the gift of knowledge. Secondly, what we learn must be put into practice in our own lives and in the lives of others around us so that we may set examples for others to follow.

As practitioners in the Common law we must be the torchbearers of truth, justice and equity and pursue these as golden threads of the English law in addition to Viscount Sankey LC’s golden thread of proving the guilt of the accused.

Finally, we must make this effort to please our Creator, Allah, the Lord of the Worlds. That is undoubtedly, the ultimate motivation for our actions.

¹ Al Qur’an, Surat Al-Ma’idah (5:48)

² Al Qur’an, Surat Al An’am (6:115)

³ Malise Ruthven, *Islam in the World* pp. 227-28

⁴ Kamali *An Analysis of Right* (haqq) *in Islamic Law*, The American Journal of Islamic Social Sciences (10:3) p.357

⁵ Justice Hamood-ur-Rahman, the former Chief Justice of Pakistan, *Reflections on Islam*, Islamic Book Foundation Chapter XII p. 122

⁶ Al Qur’an, Surat An Nisa (4:58)

⁷ Al Qur’an, Surat An Nisa (4:135)

⁸ Lawrence Rosen, *The Anthropology of Justice: law as a culture in Islamic Society*, Cambridge University Press (1989) p. 74

⁹ Khurram Murad, *The Concept of Justice in Islam* (unpublished)

¹⁰ Khurram Murad, *The Concept of Justice in Islam* (unpublished)

¹¹ Surat Al Hadid (57:25)

¹² Kamali, *An Analysis of Right* (haqq) *in Islamic Law*, The American Journal of Islamic Social Sciences (10:3) pp.356-358

¹³ *Anthropology of Justice* (supra) at p. 64

¹⁴ *Reflection on Islam* at p. 126

¹⁵ *Reflection on Islam* at p. 134