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Islamic Law in Malaysia:
How far does it Extend?

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Introduction

Islamic Law should not and should never be made a 'sacred subject in silken covers' where only certain group of people are entitle to touch upon it or to discuss over it. Nor should Islamic Law be regarded as an "ancient system" where its applicability is only relevant in ancient times with a different situations and circumstances. Islamic Law should not be taken "lightly" and should never be practiced or enforced "partly" (for example only Islamic Family Law is Applied in Malaysia).

Instead in upholding, applying and following the Islamic Law, it should be in the light of the true Islamic principles. The Quran provides;

"If any do fail to judge by what Allah has revealed, they are unbelievers".¹

"If any fail to judge by what Allah has revealed, they are wrongdoers".²

"If any fail to judge by what Allah revealed, they are those who rebel".³

"it is not befitting for a believer, man or woman, when a matter has been decided by Allah and His messenger to have any option about their decision. If anymore disobeys Allah and His Messenger, he is indeed clearly on a wrong path".⁴

"Then is it only a part of the Book that you believe in and do you reject the rest? But what is the reward for those among you who behave like this but disgrace in this life? And on the day of judgement they shall be consigned to the most greivous penalty. For God is not unmindful of what you do".⁵

The writer is aware that to some Malaysians the various State Enactment are Islamic Law and the procedures and practices of the Syariah courts are regarded as Islamic justice. The writer however does not share this view. Islam in a true sense means the surrender to the Will of Allah, as embodied in the Law (Shari'at), revealed through the Quran (Kitab) and the traditions (Sunnah) of the Prophet.

"The fundamental of Islamic jurisprudence were derived from the Quran and the Sunnah, but these were elaborated and developed, thereby creating an integrating principle which made of an agglomerate of varied elements on unique phenomenon".⁶

To a real Muslim, Islam is a 'din' or a complete way of life regulating every aspect of life and society. There would be, therefore, very little that did not fall within the ambit of the Islamic Religion. The Law is wrapped up in moral admonitions like the bones and the flesh. Morals subsist in the strict observance of the law and not apart from it. In upholding it "man is urged to develop the best, in his nature, participating fully in an affirmative manner in the life of this world. There is no renunciation,⁷ no withdrawal from or abhorrence of material life as such".

Though as the world turns and the days passed new situations will arise, calling for new rulings not explicit in the Kitab or Sunnah, the Law is not subject to change. Allah is the only Law-giver or Law-maker and has given the Law as final. But the law is dynamic and capable of growth and development without any limitation of time or magnitude. This is achieved through Muslim Intellectuals based on Kitab-Sunnah for deduction by Analogy (Qiyas) and the judgement inspired by a dedicated, thorough and the deep study of the revealed fundamental law. The effort of the intellect is termed, "Ijtihad" (the exertion to the fullest extent). It is concerned with the Divine will and not with the wishes of the people. As individual jurists exercise their skill upon Kitab-Sunnah, in course of time a "consensus" (Ijma) is arrived at, which is given the force of Law. Therefore in Islam the Law grows like a tree, where the taller it grows, the deeper goes its roots in the Kitab-Sunnah.

The very distinguishing fact about Islamic law is clearly stated by Anwar A. Qadri, "while all other systems have grown, run their course and passed away, or have at least altered their whole character in such a manner that only the students of antiquities can identify in the living form the traces of the past, Islamic Law still remains for all practical purposes the same as it was at its advent".⁸ The reasons for this is simple and lies in the fact that the prevalent systems are man-made, Man-made ideologies work through the method of imposition and, remaining external in operation, do not bind people together or are failure to the internal ways of thinking and manners; then other principles are imposed by the authority which believes in them. Whereas Islamic Law operates through external and internal manifestations, and having been ordained by the Almighty, its principles are inherent in human nature. It only binds human acts, but its preachings penetrate in the souls and spirits, and every Muslim feels what he is going to do, and religion guides his action from inside his mind and body.