The Challenges of Islamic Law
and Muslim Societies

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AK: You've been working on many different topics, in many different areas. How would you describe your work as a whole?

MKM: Law has always been with me. I started working at the Islamic Research Institute in Pakistan, which was involved with the legal question. Islamic law, moreover, is a source for all types of questions, whether you are talking about society or human rights or culture.

AK: A theme that I pick up in your writing is the notion of change. How have you dealt with this notion, and more particularly within the context of modernity or modernization?

MKM: When I embarked upon my M.A. in Islamic studies, the questions that we were dealing with, the discussions that we had, always presumed a question of change. I have come to understand change, I think, gradually. In the beginning my own attitude was to be critical. For instance, questions about whether you should learn English or you should go to college, were my life questions which I had to debate when I was young. My father was not keen on my going to college; he wanted me to go to either Nadwa or to Deoband. When I was at university, I would come home and sometimes mention certain issues. For instance, one question that bothered me at that time was that according to the al-Hidayah, the testimony of non-Muslims may not be accepted. And the authority for that view came from the Qur'anic verse that God is not going to grant authority to non-Muslims over Muslims. The context in the Qur'an was the war of Badr, and I thought that that was not proper evidence. So I mentioned this and my father was so angry that I was critical of al-Hidayah.

AK: Was your father schooled in Islamic law himself?

MKM: No, he had no formal education in Islam. He was a qualified *tabib* (traditional medic), but he never went to a madrasa. During the freedom struggle, he spent months and years in jail with scholars like Mufti Kifayatulla. So staying with them, he knew all these discussions and religious debates.

AK: Do you think there is some special quality of change in modernity?

MKM: Until the 1960s modernity for me meant basically a westernized way of life. And, as a religious student, westernization was connected with the imperial tradition. So freedom meant also freedom from this modernity. Later, I thought of modernity as the challenges that Muslim society was facing. Modernity as I understand it now, as an enlightenment project, did not dawn on me at that time.

AK: What do you think has been the major engine of change? Where does the change come from in the way that it affects Muslims?

MKM: Looking back, my idea was that change was coming from the colonial period, and from Western institutions in power. Only later did I realize that it was a more dynamic process, and that change was coming from within society, within economic practices. As I thought it through, I began to feel that modernity and change were inevitable.

AK: You've mentioned modernity as a form of enlightenment, could you elaborate on this.

MKM: Perhaps I should first categorize myself among the Muslim modernists. Most Muslim modernists, at least in South Asia, were supporting reform and development, more in terms of what the West had brought. And I think that all of these ideas can still be justified. But living in the West, I started thinking that modernity was construed as a project which started with the Enlightenment and that it is basically a

Western phenomenon. I think, however, that modernity has come to all cultures, and it has come with a different focus, and different emphases. Not necessarily every culture will go into modernity with the same kind of problems and prospects that the West has experienced. I believe that the eighteenth century was as crucial in Muslim world, especially in the South Asia, as it was in the West. But in the eighteenth century, enlightenment or modernity in South Asia was local and it was coming from within the tradition; it involved a great deal of self-criticism. I don't know what shape it would have taken, but unfortunately colonialism gave it a different character. Getting rid of colonialism, and gaining freedom, meant for a large number of people opposition to all that colonialism had brought. Because of that earlier indigenous modernity, however, many supported the progressive modern values as well. Freedom, democracy, determination of local governments, reason – all these things also have Islamic roots. I don't know if Shah Wali Allah's critical thinking would have led to anything unique, but it was certainly moving away from tradition, towards self-criticism of tradition, and looking for new thought. So that's how the Enlightenment in the West and the Enlightenment in the East – or in the Muslim world – were not basically different, but the goals and the categories that have been associated with the Western projects are now taken for granted.

AK: Can you perhaps tell us something about people who have had a formative influence on your thinking?

MKM: There were so many people that I read and who influenced me. I think in the beginning it was Mawlana Abu al-Kalam Azad that I read with much fascination for a long time. Earlier at home, my father and I were very keen on Abu al-Kalam. Iqbal's thinking too, not so much his poetry, but his lectures have also meant a great deal to me. He was my star. Ahmed Amin (author of *Fajr al-Islam* and *Duha al-Islam*) fascinated me, and led me to read others.

AK: You've lectured in many different countries. Pakistan, Nigeria, North America, and the Netherlands seem to have benefited most from your work. What have been your experiences?

MKM: Nigeria was surprising: I found the students very keen and very responsive when compared with Pakistan. They took much interest; they read everything in the reading list; they asked questions; they went to the library. And the most surprising was that when I was teaching Islamic law, the students who were Christians were more receptive, more brilliant, and asked questions that really interested me. In the United States and the Netherlands, there was a different atmosphere. There they are interested not so much in the general subjects, but in their own research work and there own interests. So their interest can be considered very focused compared to what I found in Nigerian students.

AK: But if you were teaching a course on Islamic law, how would they be more focused?

MKM: Well in the Netherlands, for instance, it was disappointing for me that when teaching in Islamic law two or three students would be interested in the subject itself. Others would be more keen about their marks, what type of exam to expect, and this kind of thing. In Pakistan, too, my experience with students was not stimulating. For instance, I remember in one of my classes, when I was explaining how the pre-Islamic societies in India and Pakistan were relevant for studying Islam,

or how the artefacts or art and painting and all these things are helpful, one student stood up and asked me: 'Islam has forbidden all these things, why are you teaching all this?' I came across this kind of reaction in Pakistan very often.

AK: You started with the Islamic Research Institute, so you were dealing with questions of application. In the Netherlands, did the applied dimension of Islamic law still interest you?

MKM: In a sense, yes. Applied law is still interesting in the Muslim world, but the application of Islamic law becomes interesting in the Western world as well. Muslim communities here may not be in great number, but there is an increasing number who believe in Islamic law in their lives. In the beginning, it was thought that ways could be found to temporarily evade Islamic law. But now an increasing number are asking really how to apply these laws, and are finding that some of the laws are not applicable. They are not simply looking for expedient ways, but in a way they are asking broader and deeper questions about how to apply these laws. And in a way this is also a question that is coming up in the Muslim world.

AK: What do you see as the responsibility of Muslim intellectuals like yourself in the light of recent developments in the resurgence of Islam.

MKM: If the renaissance or self-criticism that had started in the eighteenth century would have continued, it would have been simpler. But the problem now is that, first of all, there is too much sacredness attached to the past. Again and again, Muslims are forced into taking emotional positions. Because of the encounter with colonialism, many Muslim thinkers thought that the first priority was political strength, political control, political power, and military strength. Later, from the 1950s to the 1960s, some thought that political strength was not the only thing. We should have information, freedom, technical knowledge and scientific knowledge. And then again, from the 1990s to the present, the West is showing its strength, and the tide is swinging against the early trend. I think that Muslim intellectuals have to take a very critical stand that military or political strength is not the ideal.

But the second challenge is this: for a long time, during the medieval period, there was a type of built-in hatred against common people – *awamm ka-l-anam*. This is a fictitious dichotomy between the élite and the masses. In the modern period, a greater role is being recognized for common men and women, so the intellectuals should recognize it also. You cannot just sit in your armchair and think about solving things. You should be discussing these things with the people.

AK: Could you perhaps elaborate on this point in the field of Islamic law?

MKM: Although we say that it is a divine law, Islamic law is based on whether it is accepted by the people or not. And acceptability must be built, which means that there should be a communicative process. Scholars cannot just say that this is the law of God that must be applied and obeyed. In the development of Islamic law, this idea was already there. Just to give you an example, in early Islam opinion was very much against social stratification within marriage contracts. And yet in practical terms marriages could not be stable when cultural and social differences were not taken into consideration. So the jurists came to realize that marriages were better founded on a degree of equality in social status, and that the guardians of the parents have a right to refuse their charges to marry people of incompatible social standing. Jurists had realized that for practical reasons, social stratification was difficult to ignore.

In short, if there is a legal question in Islamic law, we simply cannot approach it like a mathematical question and get an answer from the Qur'an and *sunna*. In fact, what I observe is that whenever there is a question there are already solutions. Often there are one, two, three, four solutions that the society has thrown out, and muftis solve the

problem by saying which one of these is closer to Islamic teachings. So again it is the common people, society, who are experiencing Islamic law, and experiencing these questions, and who are offering solutions from which to choose.

AK: Has your work taken a turn in recent years, from legal theory to the social construction of *shar'ia*?

MKM: When I started talking about the *maqasid* of *shari'a* or the goals of *shari'a*, there was a very limited response and acceptance. Some people were even opposed to it, because it appeared like something against the Qur'an and *sunna*. But gradually the idea has been taken up in various forms. The idea of the *maqasid* of the *shari'a* is now commonly accepted. Even in *fatawa* one cannot just answer questions by analogical reasoning; one has to look at the philosophy of law and the *maqasid*. But, I feel that there is a need to develop a concept of history of Islamic law. Nowadays, Islamic law is still being disembodied, hovering throughout the past. I think a better understanding of the history of Islamic law shows that it is something that has been developing and changing over time and should continue to develop.

AK: Do you have any comments on recent developments in Europe?

MKM: The second and third generations of Muslims living here are now localizing Islam. It may not be substantive enough as yet, but I think it has clearly begun. I noticed a trend in the *fatawa* – the *fiqh al-aqalliyyat* – which started by saying that you cannot treat Muslims living in these countries as diasporic communities. Islamic law here has different interpretations than in the Muslim world. What I think is lacking thus far is the full implication of citizenship. This is realized neither by the host countries nor by the Muslims themselves. For Muslims this would mean a different interpretation of Islam, more dynamic, more active, and one that could contribute to the local civilization, local culture, and make Muslims active participants in European societies. Muslims living here are not to be cut off from the Muslim world but they should in some ways be vanguards of the new world. I think that type of thinking is in the making.

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> **MUHAMMAD KHALID MASUD**

Muhammad Khalid Masud with L.E.H. Vredevoogd, former president of Leiden University and Chair of the ISIM Board.