

ISLAMIC CONCEPT OF SOCIAL JUSTICE: ITS POSSIBLE CONTRIBUTION TO ENSURING HARMONY AND PEACEFUL COEXISTENCE IN A GLOBALISED WORLD

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I INTRODUCTION

In the recent past, forces of globalisation have augmented the free flow of investment, goods, and technology. Globalisation is primarily homogenisation of goods and services, linking their production and distribution across borders and economies. In the process, it influences and justifies standardisation of needs and values. Globalisation benefits people and/or organisations close to political and economic power centres at the cost of those in the periphery, and creates havoc and fear for the latter especially when homogenisation of ideologies and values is emphasised. Ironically, however, factors of globalisation (especially the flow of information) have increased understanding of the exploitative nature of globalisation and how it can expand and perpetuate injustice. Adherence to and implementation of social justice for all thus becomes more important than ever before because only it can spread the benefits of globalisation to those in the periphery.

Justice, a set of moral rules that concern the essentials of human well-being, is of more absolute obligation than any other rules for the guidance of life.¹ Justice, as seen by al-Farabi,² like Aristotle, primarily is 'equitable distribution of common goods and honors, consisting security, property, and social standing'.³ A secondary

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¹ John Stuart Mill quoted in David M Smith, *Geography and Social Justice* (1994) 23. For more please see Samiul Hasan, *Philanthropy and Social Justice in Islam: Principles, Prospects, and Practices* (2007) ch 4.

² Abu Nasôr al-Farabi (870-950 CE), a Turkoman, regarded as 'the first system-builder in the history of Arab-Islamic thought', is the author of, among others, of 'Virtuous City' and 'Civil Polity' offering an 'elaborate metaphysical scheme in which the Qur'anic concepts of creation, God's sovereignty in the world, and the fate of the soul after death are interpreted in an entirely new spirit': Majid Fakhry, *Al-Farabi, Founder of Islamic Neoplatonism: His Life, Works and Influence* (2002) 1-2.

³ Ibid 100.

meaning of justice is human beings' 'virtuous actions in relation to others'-irrespective of the type of virtues involved.⁴ Thus in the ancient or medieval discussions on justice the social aspect was prominent. There is also the retributive aspect of justice. Social justice thus refers to relational (human relationships), distributive, and retributive justice.⁵ The principles of social justice provide a way of assigning rights and duties in the basic institutions of society and define an appropriate distribution of the benefits and burdens of social cooperation. Justice in general, however, means fairness and equity in the distribution of a wide range of attributes- not confined only to material things.⁶

This paper aims at analysing the various aspects of justice as defined and codified in Islam to see their applicability in the present world with respect to the economic, social, and political complexities resulting from globalisation. This paper will address relational justice, distributive justice, retributive justice and the concept of application of fairness and equity. It also aims to analyse the factors related to the implementation of social justice aimed at improving harmony and peaceful co-existence in a globalised world. The work is based on the author's major research work undertaken for a book titled *Philanthropy and Social Justice in Islam: Principles, Prospects, and Practices*.⁷

II RELATIONAL JUSTICE

Islam, a religion of peace through the submission to the will and laws of God, advocates the establishment of social justice in order to achieve peace. The Qur'an does not specify the basic features of social justice, but outlines the purpose and objectives of human life and human beings' inter-relationships and relationship to God. The Qur'an says, '[o] ye who believe! Fulfil obligations' (5:1)⁸. A translator of and commentator on the Qur'an, Abdullah Yusuf Ali, provides a long explanation of this verse, and suggests that these obligations are varied. According to Yusuf Ali, it includes interconnected divine obligations guiding the individual, social, and public lives of Muslims, mutual obligations of commercial and social contracts, treaty-based obligation as citizens of states, and tacit obligations living in a civil society.⁹ These obligations are the bases of human relationships in Islam.

Human being is created weak (4:28), thus the Qur'an emphasises on the *ummah* (community) solidarity and not on an individual's strength so that human beings can live a complete and effective life. Human beings cannot 'attain the perfection they are destined to attain, outside the framework of a political organisation', because, as

⁴ Ibid.

⁵ See, eg, Brian Barry, *Theories of Justice* (1989); Cf Smith, above n 1, 23.

⁶ Smith, above n 1, 26.

⁷ Hasan, above n 1.

⁸ The first figure in this parenthesis refers to chapter number and the second figure to verse number in the Qur'an. Afterwards in this essay only the figures are used while referring to the Qur'an.

⁹ Abdullah Yusuf Ali, *The Holy Qu'ran: Text, Translation and Commentary* (1938) note 682.

al-Farabi comments, 'they are constantly in need of the assistance of their fellows in the provision of basic needs and their survival'.¹⁰ Ibn Khaldun (1332- 1406 CE; claimed by some as the father of sociology) suggests Prophet Muhammad brought a complete social order based on the common good.¹¹ According to Ibn Khaldun, human society functions as a whole through cooperation¹² because human beings cannot live and exist without social organisations and cooperation.¹³ A united community could help the individuals follow the fundamental codes of Islam and in achieving personal goals, receiving divine support and thus spiritual solace. This cooperation creates a sense of belonging or social solidarity (*asabiyah*) ensuring social sustainability.¹⁴ *Asabiyah* binds groups together at different levels, family, clan, tribe, and kingdom or nation, ie society as a whole¹⁵ and influences relationships among God's creations.

God's best creation (*ashraful makhluqat*), mankind [sic], is created from a single couple, and made into nations and tribes, so that they know each other and do not despise each other, because the most righteous is the most honoured in the sight of God (49:13). The promise of Heaven to those involved in righteous things (4:57; 14:23) is the confirmation of the importance Islam places on righteousness. Islam emphasises good deeds and humanity, and since God does not love the arrogant, the vainglorious (4:36), the Qur'an commands the Believers to do good things to serve God in different ways because that is why human beings are created (51:6). Apart from submitting to the will of God and praying, the Believers are also advised to do good to 'parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer, and what your right hands possess' (4:36; also see 57:23) to serve God. The long list of people that a person can do 'good' to, in the final analysis, includes the whole of humanity (with some hierarchical preferences like the parents first), because 'neighbours who are strangers' and 'the wayfarer' are not qualified by ethnicity, religion, language, or race. If a person is commanded to do good individually, the collective responsibility of the individuals in a society is easily comprehensible.¹⁶

Since human beings are created with animal instincts they may not always be

¹⁰ Fakhry, above n 2, 101.

¹¹ Common good is whatever contributes to the proper ordering of the various ends of humankind and, contributes to the well-being of the soul as well (For more see, Ann Katherine Swynford Lambton, *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory- The Jurists* (1981) 162).

¹² Often brought about through coercion 'if people are either largely ignorant of, or ignoring, the interests of other human beings' (Fuad Baali, *Society, State and Urbanism: Ibn Khaldun's Sociological Thought* (1988) 29-33) by organisations- the state being the largest of its kind authorised to use force to implement its wishes.

¹³ Ibn Khaldun, *The Muqaddimah: An Introduction to History* (9th ed, 1989).

¹⁴ Baali, above n 12, 29-33.

¹⁵ Akbar S Ahmed, 'Ibn Khaldun's Understanding of Civilizations and the Dilemmas of Islam and the West Today' (2002) 56 *The Middle East Journal* 39.

¹⁶ In fact God is so appreciative of and interested in the Believers' good deeds that the Qur'an says if someone mixes a good act with an evil, and acknowledges their wrongdoings perhaps God will turn unto them in Mercy 'for God is Oft-Forgiving, Most Merciful' (9:102).

involved in beneficial deeds- intentionally or unintentionally. Nonetheless human beings should not look for not-so-good deeds and faults of others because 'kind words and the covering of faults are better than charity' (2:263). Kind words, at a time of pain and sorrow, give the people concerned courage to endure and comfort to face the hard times with patience, and brings the deliverer a great reward- a path to the Heaven (14:24).

The Islamic code of human relationships encourages good manners, and emphasises on sustaining mutual respect among people. Human beings are not supposed to be judges of the goodness of another- God is the only judge. A 'bad' person in a Believer's judgment can be a good person in God's judgment, because only God knows what is in people's hearts (2:235). The Qur'an specifically warns the people not to laugh at others nor to defame, be sarcastic to each other, nor call each other offensive names because the others may be better in the eyes of God (49:11) due to the unseen goodness in their hearts.

Many Muslims impinge on others' rights of not being wronged and fabricate bad things to justify their own views and assumptions (prejudice?) about others. Talking about and suggesting false or evil things about others or finding faults of and criticising others with ill-motive are not accepted behaviour for a Believer, and will bring misery to the person involved in this (51:10). At the same time it is a right of a Believer not to be the subject of scandal-mongering or back-biting by others (104:1). These things create conflicts in human relationships, and destroy respect for each other, disintegrating social harmony and thus need to be handled with caution.

There are people who lack respect for others and are involved in wrongdoings against others. The situation becomes worse in dealing with people of other religions. Yusuf Ali suggests that Islam does not teach an exclusive doctrine, and is not meant exclusively for one people¹⁷ because the Qur'an is 'a confirmation of (revelations) that went before it, and a fuller explanation of the Book- wherein there is no doubt- from the Lord of the Worlds' (10:37). That is why any believer or follower of any of the Scriptures, the believers in God and the Last Day, and doers of righteous deeds should not fear or have any need to grieve (2:62).

The Qur'an suggests universality of law of justice, and application of justice even with people of other religions as long as they do not harm Muslims or are out to destroy Islam. The Believers are rather bound to deal with people of other religions kindly, justly, and equitably. Muslims are suggested to be respectful to other religions and to deal cautiously with those who are hostile to Muslims or Islam. The problem is thus not with other religions, but rather hostile people of other religions (60:8-9). The Qur'an does not want the Believers to exploit others in the name of, or deprive people of other religions of, justice, because there should be 'no compulsion in religion' (2:256). Compulsion is actually incompatible to religion,

¹⁷ Yusuf Ali, above n 9, note 77.

because religion depends upon faith and will, and would be meaningless if induced by force.¹⁸

Unlike other prophets or architects of religions, who have been only spiritual leaders, Prophet Muhammad took the responsibility of administering socio-economic and security issues of the people and framed the first written constitution of the world, the *Medina Charter*, in the year 622 CE.¹⁹ The *Medina Charter* rejected nepotism (Article 11), offering protection to the non-Muslims: treating the local religious minority (Jews) as a 'community with the Believers' (Article 30-34), promising to help the signing parties in the event of outside attacks (38), mutual advice and consultation (Article 39), and no liability for misdeeds of anybody's ally (Article 41). The Prophet further pledged security to the non-Muslims, after conquering new territories.²⁰

In fact, in Islamic philosophy, the state must ensure adequate 'space' for all its citizens, irrespective of 'their diversity in faith and social characteristics'.²¹ The Prophet pledged security to the non-Muslims, after conquering Najran, for their lives, religion, and property. He assured them that there shall be no interference with observances of their faith, changes in their rights and privileges, nor shall any bishop, monk or priest be removed. Further, the Prophet said, 'whoever torments the *zimmi*²² (or *dhimmi*) torments me', and 'whoever wrongs a *zimmi* and lays on him a burden beyond his strength I shall be his accuser'.²³

Caliph Umar at the capitulation of Jerusalem in 638 CE granted to all the non-Muslims, 'security for their lives, their possessions, their churches and their crosses, and for all that concerns their religion'.²⁴ Just in case any injustice was inflicted on the non-Muslims or any act was mistaken as a deliberate method of oppression, no Muslims were allowed to dispossess any non-Muslims of their property, even by purchase, during the time of the first Caliphs. Islamic law suggests that if a *zimmi* is killed by a Muslim the killer has to face the same punishment as it would be in the reverse case.²⁵ Thus in the early days of Islam tolerance and freedom of religious life was the norm. No extreme behaviour, against any religion, was encouraged or approved by the Qur'an or by the first Muslim leaders, including the Prophet. Some

¹⁸ Ibid note 300.

¹⁹ Prophet Mohammad took the initiative of framing and signing rules of engagement and peaceful co-existence with local Jews. Signed by the concerned parties in 622 (almost 600 years before the *Magna Carta*) it is known as the *Medina Charter* and claimed to be the first written constitution of the world.

²⁰ This paragraph is based on and the quotations are from Syed Ameer Ali, *The Spirit of Islam: A History of the Evolution and Ideals of Islam* (1964) 273f.

²¹ M Raquibuz Zaman, 'Islamic Perspectives on Territorial Boundaries and Autonomy' in Sohail H Hashmi (ed), *Islamic Political Ethics: Civil Society, Pluralism and Conflict* (2002) 79, 85.

²² Initially referring to the 'people of Books' living in a Muslim community/country, having the promise of protection from the Muslim authority (often in return for a tithe as a tax). Now the term refers to include non-Muslims in general living in Muslim countries.

²³ Ameer Ali, above n 19, 489.

²⁴ Ibid.

²⁵ For some historical examples see *ibid* 275.

commentators suggest that tolerance should be a problem only for the non-Muslims because Islam offers a timeless precedent of 'peace, harmony, hope, justice, and tolerance, not only for the Muslims but also for the whole of mankind'.²⁶

Lewis shows that the Islamic civilisation, relative to other civilisations, treated religious minorities well. Religious harmony and openness continued in the Muslim states during their rise and prosperity and as a result, in the medieval period, non-Muslims preferred living in Muslim lands than any other places.²⁷ This fact is evidence that over the years Muslim countries, following the Qur'an, did not dispute with the People of the Book because Muslims are supposed to believe in all the Revelations (29:46). The fact that one Revelation (the Qur'an) names the 'rival' Christian and Judaic traditions as authentic is, regarded by many analysts, as an extraordinary event in the history of religions, and vindicates 'the Qur'anic liberalism'.²⁸

Yusuf Ali comments that in order to achieve the Muslim's purpose of being the true standard-bearers for God, Muslims shall 'have to find true common grounds of belief, as stated in the latter part of this verse, and also to show urbanity, kindness, sincerity, truth, and genuine anxiety for the good of others' to prove that the Muslims are not cranks or merely seeking selfish or questionable aims.²⁹ Therefore, the problems of minority are supposed not to exist in any Muslim countries should the people there follow the commands of the God. These virtues will establish human relationships desired by the fundamental tenets of Islam and lead people to establish distributive justice.

III DISTRIBUTIVE JUSTICE

The Islamic principle of property suggests that the needy people have a right in the wealth of a rich person because everything belongs to God³⁰ and He gracefully has bestowed some property on some so that they can be grateful and help others in charity. The Qur'an does not approve the wealth to 'make a circuit between the wealthy among you' (59:7), and encourages the Believers to spend in charity in different forms. In Islamic ethics the right to private property has less importance

²⁶ Discussed by Dale F Eickelman, 'Islam and Ethical Pluralism' in Sohail H Hashmi (ed), *Islamic Political Ethics: Civil Society, Pluralism and Conflict* (2002) 115, 122, quoting Syed Othman Alhabshi and Nik Mustapha Nik Hasan, *Islam and Tolerance* (1994) introduction.

²⁷ Muslim rulers showed rigidity and indifference only during their decline and defeat (see Bernard Lewis, 'State and Civil Society under Islam' (1990) 7(2) *New Perspectives Quarterly* 38). Consequently, zealots and extremist groups during the era of foreign occupation and humiliation found fertile ground, as simple and extreme concepts of Islam appealed to their unsophisticated minds (see Abbas J Ali, Robert C Camp and Manton Gibbs, 'The Ten Commandments Perspective on Power and Authority in Organizations' (2000) 26 *Journal of Business Ethics* 351).

²⁸ Aryn Sajoo, 'The Islamic Heritage in Pluralist Perspective' in *Pluralism in 'Old Societies and New States': Emerging ASEAN Contexts* (1994) 14, 14.

²⁹ Yusuf Ali, above n 9, note 3472.

³⁰ For a good discussion, see, the section on 'Ownership' in Zaman, above n 21, 81-5.

'than the duty to ensure social justice'.³¹ Islam is socialistic in its approach in encouraging distribution of wealth but is opposed to Bolshevism (rejection of individual rights to property),³² and definitely does not call for redemption of property.³³ According to the Qur'an 'righteous' people, who will enjoy the Heaven, are those who 'lived a good life' and among others remembered in 'their wealth and possessions' the 'right of the [needy]' (51:15-19).³⁴ The social and environmental responsibilities of economic managers and entrepreneurs relate to the Islamic dictum of the social support system (*takaful*; mutual guarantee and solidarity) in four areas of cooperation (within the family, within the community, among groups and associations, and through giving and endowments) seeking to ensure equitable distribution of wealth.³⁵

Zakat ul mal (obligatory charity of wealth; *zakat*), one of the five pillars of Islam, is the most important aspect of *takaful*. *Zakat*, derived from the root word *zaka*, 'to be pure', is an instrument of ensuring the doctrine of distributive justice, to 'purify and sanctify... goods' (9:103). Muslims are supposed to pay 2.5 per cent of their savings or income³⁶ as *zakat* in charity, annually. The Qur'an provides specific guidelines in the distribution of *zakat* to the poor, the needy, those employed to administer the *zakat* fund, new converts to Islam, those in bondage; those in debt; anything in the cause of God; and the wayfarer (9:60). Thus the doctrine of *zakat* introduced the first system of social security.³⁷

Many *fuqaha*³⁸ suggest that it is better to give enough *zakat* to one person by pulling the person out of poverty instead of giving smaller portions of *zakat* to individuals that do not bring long-term economic benefit for the recipient.³⁹

³¹ Hasan Hanafi, 'Alternative Conceptions of Civil Society: A Reflective Approach' in Sohail H Hashmi (ed), *Islamic Political Ethics: Civil Society, Pluralism and Conflict* (2002) 56, 67.

³² Cited in Sulayman Nyang, 'Religion and the Maintenance of Boundaries: An Islamic View' in Sohail H Hashmi (ed), *Islamic Political Ethics: Civil Society, Pluralism and Conflict* (2002) 102 from the discussion of Maulana Muhammad Ali, a champion of Indian Muslims' emancipation.

³³ Discussion in Zaman, above n 21, 85 based on the works of a prominent Muslim philosopher of the 20th century, Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (1986) especially ch 4.

³⁴ The full text of these verses: 'As to the Righteous, they will be in the midst of Gardens and Springs, Taking joy in the things which their Lord gives them, because, before then, they lived a good life . They were in the habit of sleeping but little by night, And in the hour of early dawn, they (were found) praying for Forgiveness; And in their wealth and possessions (was remembered) the right of the (needy,) him who asked, and him who (for some reason) was prevented (from asking)' (51:15-19).

³⁵ Mohammad Hashim Kamali, *Freedom, Equality and Justice in Islam* (2002) 191.

³⁶ Nevertheless, many countries, for example Malaysia, by developing a payroll deduction system to pay *Zakat ul mal*, encourage *zakat* payment on income; though it is left to individual payer's choice.

³⁷ See Jonathon Benthall, 'Financial Worship: the Quranic Injunction to Almsgiving' (1999) 5 *Journal of the Royal Anthropological Institute* 27.

³⁸ Plural of *faqih*- experts and/or authorities in Islamic jurisprudence.

³⁹ For discussion see Mohammad Musa 'Zakater Tatparja O' Bidhan' (in Bangla) in Islamic Foundation Bangladesh (ed), *Islamay Zakat Babostha* (2003) 99. The discussion includes, among others, quotation from Caliph Umar bin Khattab.

Actually, there is an open-ended distribution category of *zakat-ul mal*- ‘*Wa fi sabilillah*’ (in the way of God)⁴⁰ to establish Islamic doctrine and the Prophet’s tradition of strategic philanthropy. If a person wants to pay *zakat* to a craftsman the best approach would be to give the person enough money to establish a craft or buy tool(s) for the craft. Similarly, if farmers are the target people, *zakat* payers should supply the agricultural tools, fertiliser, seeds, etc ‘to the farmers to the extent that they can cultivate and build up strong economic footing’.⁴¹ Thus poverty alleviation programs must be a part of distributive justice in Islam. The wealthy people and relevant government organisations are required to identify these people for the provision of philanthropy, because purposeless acts of charity are unacceptable.⁴²

The Believers are also advised to be proactive in philanthropy by using their wisdom to ascertain needs and to give to the needy instead of waiting for them to ask for it. Some philanthropic activities, especially the ones targeting poverty alleviation, may have other spin-off effects in the society and for the religion. Alleviating poverty may help enhance poor people’s *taqwah* (remembrance of God) and commitment to religious duties. The givers will earn rewards for giving, for relieving others from pains caused by poverty, and for helping the receivers earn rewards being involved in religious duties.

In the recent past, improvements in different countries in the collection and distribution of *zakat* has seen much increase in the quantity of *zakat* collection and improvement in the distribution and use of *zakat* funds. The methods like professionalisation of *zakat* collection, the use of private companies for *zakat* collection, simplification of the collection through the payroll system, twining of *zakat* with the tax system, tax benefit for *zakat* payment, community participation in needs auditing and distribution planning, financial reporting and minutes recording have elements to improve immensely *zakat* collection and distribution systems for providing education, health, and other social services in Muslim countries and/or communities.⁴³

There are some unresolved issues hindering the possible benefits flowing from *zakat* like subjecting all goods and produces to *zakat*, that were not known about in the 7th century when *zakat* was introduced, for example petroleum. Since crop producers have to give *zakat* (*ushr*) on their crop (even after bearing the cost of implements), many scholars argue that income from non-renewable resources (eg petroleum) should be subject to the same code. Five percent *ushr* (or *nishful* ie a-

⁴⁰ ‘Discussants Comments’ by Dr Monzer Kahf on the presentation ‘Role of Zakat in Reducing Income Inequality’ in Shah Abdul Hannan et al (eds), *Zakat and Poverty Alleviation* (2003) 298.

⁴¹ M K Jafree and M R Amin, ‘Administering Zakah: State of the Art and Looking Beyond’ in Shah Abdul Hannan et al (eds), *Zakat and Poverty Alleviation* (2003) 80.

⁴² Yusuf Ali, above n 9, note 322.

⁴³ Hasan, above n 1.

half *ushr*)⁴⁴ on crop (grown with the use of agriculture inputs like irrigation) should also apply to the petroleum producers (ie the states). Many analysts also argue that items like diamonds (rare in the 7th century and thus not listed as a *zakat-able* item) should be brought under *zakat*,⁴⁵ so that people cannot convert their golds, silvers, or other wealth to diamonds to evade *zakat*.

Zakat is not, however, an exclusive type of charity. The Qur'an suggests that the Believers who rehearse the Book of God, establish regular Prayer, and spend in charity, secretly and openly, out of what is provided to them can hope for eternal rewards (35:29). The Qur'an advises Believers to give good things from the earnings and the fruits of the earth in charity (2:267) or anything they want to parents, relatives, orphans, the poor, and the wayfarers to receive God's rewards (2:215). It is worth noting that the list of recipients of charity is also open and wide and is not qualified by ethnicity, race, religion, or color, or blood or marital relationships. This is a fundamental principle of philanthropy in Islam.

Further in all Muslim societies *waqf* (pl. *awqaf*; religious endowment) has been existent for a long time and has survived through the ages and through the colonial periods and secular governments. *Awqaf* have great social significance in the society concerned, and have been providing many services that are the principal or sole responsibility of the state.⁴⁶ Prior to even the 20th century a broad spectrum of public or municipal services in many Muslim communities were set up, financed and maintained almost exclusively by *awqaf*.⁴⁷ Experiences from different communities show that *waqf* funds, in many countries, have been used mostly for three main purposes related to social and human development: urban services, education, and health and hygiene.⁴⁸

Over the years, many countries, for example Egypt, have endeavoured to practice philanthropy for public benefits. In Egypt, in the 1990s there were more than 2,000 *zakat* funded health clinics (including 300-350 in Cairo). In these health clinics, the best doctors are hired, irrespective of religion or gender, and service is offered to the local needy, again irrespective of religious background. According to a study,⁴⁹ on an average, almost 35 per cent of the patients served by these clinics are Christians. The most striking fact about these clinics is that they are located often

⁴⁴ *Ushr* (one tenth) or one-twentieth (a half *ushr* or *nishful ushr*) of the produce, respectively, is payable depending on whether the land is non-irrigated or irrigated. See Masudul Alam Chowdhury, Kabir Hassan, Sharif Hussain, 'Zakat in an Islamic Macro-Economic Model' in Shah Abdul Hannan et al (eds), *Zakat and Poverty Alleviation* (2003) 95.

⁴⁵ Jafree and Amin, above n 41.

⁴⁶ Lewis, above n 27, 38.

⁴⁷ Miriam Hoexter, 'Endowment, Rulers & Community: *Waqf al-haramayn* in Ottoman Algiers' (1998) 6 *Studies in Islamic Law and Society*; B Baskan, 'Waqf System as a redistribution Mechanism in Ottoman Empire' <<http://cas.uchicago.edu/workshops/meht/PapersWeb02>> March 2004.

⁴⁸ Hasan, above n 1.

⁴⁹ Reported in *Al Ahram* (4 April 1990): see Janine A Clark, 'Islamic Social Welfare Organisations in Cairo: Islamization From Below?' (1995) 17(4) *Arab Studies Quarterly* 11.

times within or beside the local mosques and are run with local religious sanctions.⁵⁰ Thus some people's presumptions that *zakat* fund cannot be used for non-Muslims does not have any valid basis in Islamic code.⁵¹

In Islam, quality of charity is more important than the quantity. In order to achieve righteousness people have to be able to give the thing one loves most in charity (3:92). This type of charity at the end equals to sacrifice. A mind ready to sacrifice cannot be involved in wrong or unjust acts. If a person or a community achieve this stage there cannot be any social injustice. Actually the intention to share one's belongings in order to show gratitude to God is important in the offering of charity.⁵² Everybody, rich or poor, can show this intention and gratitude, and establish distributional justice in Muslim societies.

IV RETRIBUTIVE JUSTICE

The establishment of justice and the rule of law have been emphasised in the Qur'an repeatedly, because God loves those who judge in equity (5:45). God commands the Believers not to take life, open or secret, except by way of justice and law (6:151), to do justice, be involved in doing good, and to show kindness or open-handedness to kith and kin (16:90) but within the limit of the law and ethics. A wronged person can catch the wrongdoer but 'no worse than they catch you out', but the showing of patience, is the best course (16:126). The Qur'an ordains for '[l]ife for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal' (5:45). In these cases it is the limit that God has determined- not more. The observation of this limit and the equality of the retribution are, however, so important God is actually encouraging self-restraint and forgiveness.⁵³

The most important point in this discussion is the difference between 'standard' and 'maximum limit'. 'Standard' can be achieved, but 'maximum limit' cannot be, or expected to be, the standard. Retaliation for wrongdoing is allowed, but the wronged person cannot do more harm than that received, better still to have patience and forgive, because God does not love the wrongdoers and will reward those who reconcile (42:40). In case of retaliation, equality is the limit- injury inflicted must not 'exceed the injury received'.⁵⁴ The observance of this limit is, however, so important that the Qur'an encourages forgiveness. The wronged people can take equal action, at best, against the wrongdoers or to forgive the wrongdoers. Worth noting, though, if the wronged person remits the retaliation by way of charity that will be an act of atonement, and if they fail to judge by what God has revealed

⁵⁰ Ibid.

⁵¹ Hasan, above n 1.

⁵² The Qur'an thus ordains, people of righteousness are '[t]hose who spend (freely) whether in prosperity, or in adversity.... for God loves those who do good' (3:134).

⁵³ It will be an act of atonement for the wronged person if he/she remits the retaliation by way of charity. 'And if any fail to judge by what God hath revealed, they are wrong-doers' (5:48; also 2:179) so 'ye may restrain yourselves' (2:179).

⁵⁴ Mohummad Umaruddin, *The Ethical Philosophy of al-Ghazali* (2003) 231.

they will be wrongdoers (5:45). In al-Ghazzali's ethical guide forgiveness is better than retaliation because 'it is not humanly possible to adjust absolutely accurately the injury inflicted to the injury received' and also one should be 'more decent in his dealings with the man whom he wishes to reform',⁵⁵

In the case of retribution, the victim's family has the final say, and if any remission is made, 'then grant any reasonable demand, and compensate him with handsome gratitude' (2:178). If forgiven, the feelings of greatness and gratitude towards the victim that may be created in the mind of the perpetrators may help in the creation of a peaceful world free of injustice. 'The blame is only against those who oppress men with wrong-doing and insolently transgress beyond bounds through the land, defying right and justice: for such there will be a penalty grievous' (42:42).

The Qur'an also promises 'forgiveness and a great reward' to those 'who believe and do deeds of righteousness' (5:10) and do not 'depart from justice' due to hatred for others because being just is 'next to piety' (5:9), and retaliation out of hatred a sin (5:3). Hatred is a creation of emotion, and an emotional person cannot be guided by reason or legal limits and may end up committing other offences. In order to stop the Believers from being involved in such acts God warns them of harsh divine punishment for these sins or hatred-based retaliatory action. Thus the Qur'an pledges divine rewards for those 'who avoid the greater crimes and shameful deeds, and, when they are angry even then forgive' (42:36, 37). Some people may tend to consider that dealing with wrongdoers could not be a right thing, but the righteous deeds could easily be lost should the person lose objectivity and deviate from justice as a result of emotion and antagonism against the wrongdoer. The importance of universality of and objectivity in justice is reflected in God's promise for worldly and heavenly rewards to the upholders of justice. Taking time to deal with wrongdoers until the anger is diminished or even forgiving the wrongdoer, should there be any chances of losing objectivity, would be better than doing injustice to the wrongdoers in haste. In any event, compassion is 'better than hostility' and attainable by those 'who has lost sight of the "many" except "the One"',⁵⁶ and strives to please only Him.

The formation and functioning of a fair institution of justice is most essential for ensuring retributive justice. In the absence of such institutions, on many occasions individuals or the persons wronged take the charge and this creates unwanted inconsistencies. The problem is that the people advocating the establishment of the Qur'anic rule in the administration of justice tend not to notice these aspects. In the present governmental system in many countries the moral principles of political and administrative leaders are never questioned or made subject to scrutiny. This purposive and biased application of the Qur'anic laws has developed apathy about it among people within and outside Muslim countries. In any event, fairness and equity, which are discussed below, must be established in the application of

⁵⁵ Ibid.

⁵⁶ Ibid 291.

relational, distributive and retributive justice.

V FAIRNESS AND EQUITY

The most important aspect of the Islamic principle of justice is adherence to the 'Law' and the subjugation of the interpreter, the implementer, and the adjudicator of the law to God and His commands. The ruler then cannot make-up new laws or ignore the basic principles of the law. In order to make an exemplary dogma of integrity and fairness, the Qur'an makes the Prophet subject to law, and suggests that a Believer can disobey the Prophet should he deviate from just matter (60:12). This is a lesson and command for all the rulers of the Muslim world- nobody is above the law.

The Qur'an suggests universal applicability of justice irrespective of the social and economic status of persons being subject to any decision or the relationship between the decision-makers and the clients. The Qur'an specifically orders to give full measure with correct tools (17:35) and full justice (6:152), and warns the Believers to be very watchful while administering justice and not to indulge in nepotism. Nepotism or favouring the kith and kin in the deliberation of justice or distribution of benefits is against the rule of God.⁵⁷ The Believers must stand out firmly for justice, as witnesses to God, even 'against yourselves, or your parents, or your kin', and against rich or poor (4:135). The Qur'an also suggests that the deliverers must not follow the lust of their hearts and deviate from justice. The deliverers may think of bringing benefits to themselves and their favoured clients by distorting and declining justice, but at the end it is not possible, because 'verily God is well-acquainted with all that ye do' (4:135).

Justice has to be done for everybody- the weak, the women, and children. The Qur'an warns the Believers not to go near the orphan's property except to improve it, until he attains the age of full strength (17:34). The Believers are responsible for helping and being just to the orphans- the weakest segment of God's creation. No law can be more open and straight forward in guiding the principles of justice and promoting universality and objectivity in justice and disapproving nepotism, favouritism or cronyism.

The importance of fairness is implied in the fact that the Believers are advised to write any promise or contract that they commit to when dealing with each other, in transactions involving future obligations (2:282), so that they do not indulge in any falsehood. Further, if a thing is deposited on trust with another, the trustee must discharge the trust faithfully and fear God (2:283). Thus the 'social contract' of people has given human beings an organised social system or state. The failure in the protection and dissemination of truth may then result in the destruction of this social system and goodwill. A person once admitted into confidence and intimacy

⁵⁷ The Believers are commanded to speak justly, even if a near relative is concerned, in order to fulfil the covenant of God (6:152).

must be trusted all along even when he or she has gone astray; separation may be expedient but retention is rational and godly because it involves compassion and may turn an individual from sin to purity.⁵⁸

God has given much importance to the integrity of oaths and on people's keeping of their respective promises. The Qur'an commands Believers not to break oaths after they have been confirmed.⁵⁹ Despite sincere efforts, people may not be able to keep all the promises, but one is not to account for futile oaths, but rather is accountable for deliberate failing of oaths (5:92). The Believers are thus required to keep oath, honour the truth and ensure justice. Accountability to God and thus to humanity for one's economic and social actions is thus a fundamental tenet of Islam.

God warns the Believers not to conceal evidence of any contract or promise, for whoever conceals it, his heart is tainted with sin (2:283). The establishment of truth is so important to God, that Believers are asked not to believe all information they come across without checking and ascertaining the truth. It may harm people unwittingly, and then may require full repentance to the person concerned (49:6). This responsibility of judging correctness of any fact does not only depend on the user of the fact it depends on the communicator of the fact (media) and also the deliverer of justice. It is thus implied that a fair system cannot be established without the availability of trust or the free flow of truth in a society. The existence of a responsible and free media in the establishment of justice is an Islamic concept propounded 1400 years ago. In many developing countries, however, lack of transparency in public affairs is a major problem. If Muslim societies have to follow the Qur'anic principle those societies must establish a transparent system based on truth and integrity of governmental promises and actions.

VI CONCLUSION

Islam does not allow any intermediaries between the Creator and the creation, and rejects hierarchies of ranks or of special holiness among individuals.⁶⁰ Individuals as such have more responsibility and obligation in understanding, analysing, and applying the fundamental principles of Islam. Islamic law has transformed over the years within the basic frames of the Qur'an through Prophet Muhammad's *sunnah* (tradition), analogical deductions, human reasoning, independent analyses, and consensus. Among all the sources⁶¹ of Islamic jurisprudence (*fiqh*) *istihad* (or *ijtihad*; independent analysis)⁶² is the most important. A significant factor in *istihad*,

⁵⁸ See Umaruddin, above n 53, 293.

⁵⁹ 'Indeed ye have made God your surety; for God knoweth all that ye do' (16:91)

⁶⁰ See Ameer Ali, above n 20.

⁶¹ Other important sources are *Isma* (consensus), *Qiyas* (Sunni only- analogical deductions), *Aql* (Shiia only- human reasons), and local customs (*urf*). See Shah Abdul Hannan, *Law, Economics, and History* (2003).

⁶² *Istihad*, opposite of *taqleed* or imitation, is a jurist's independent analysis and decision about an issue not covered by the Qur'an, *Hadith*, or *Isma*. After the compilation of the major *Ahadith*, during the Abbasid dynasty, it was thought that the principal legal issues had been settled and there was no need to have this authority continued to be enjoyed by the legal

is the concept of *istihsan* (equity), which has a prominent role in the adaptation of the Islamic law to the changing needs of society.⁶³ It is a method of exercising personal opinion (*ra'y*) in order to avoid rigidity and unfairness that might result from literal application of the law. The decision of Caliph Umar bin Khattab (634-44 CE), to suspend the *Hadd* penalty of amputating a thief's hand, during the famine, is an example of *Istihsan*.⁶⁴

Political instability of and increasing pressure from the Abbasid rulers forced the Islamic jurists toward 'greater conservatism in their legal interpretation'.⁶⁵ As a result, in order to frustrate the political rulers' efforts to destroy pluralism, Sunni jurists, in the 10th century CE closed the *istihad*, curtailing the advancement of Islamic law.⁶⁶ The gap had to be filled anyway due to the advancement of science and complexities in human faculties, progress of society, expansion of Islam, and for adopting to local customs (*urf*), and was filled by incompetent individuals or self-serving state bureaucracy. Muslims in a globalised world with complex relationships with other individuals, and economic, social, and political institutions need to reinvent themselves and glorify pluralism and flexibility codified in the fundamental tenets of Islam.

The Qur'an provides solutions for and rulings on different historical issues with explicit and implicit rationales for those from which general principles are deduced; thus it favors flexibility within the fundamental principles of laws.⁶⁷ Islam calls for the establishment of social justice in order to achieve peace- a literal meaning of the term 'Islam'. As a manifestation of submission to the will and laws of God, another meaning of the term, the Believers need to '[f]ulfil obligations'- as divine children, commercial and social beings, citizens of states, and members of a civil society.⁶⁸ These obligations are the bases of human relationships, and highlight duties to all economic, political, and social groups.

Yusuf Ali suggests that Islam does not teach an exclusive doctrine, and is not meant exclusively for one people⁶⁹ because the Qur'an is 'a confirmation of (revelations) that went before it, and a fuller explanation of the Book- wherein there is no doubt- from the Lord of the Worlds' (10:37). In Islamic philosophy, the state must ensure adequate 'space' for all its citizens, irrespective of 'their diversity in faith and social characteristics',⁷⁰ and become vanguards of social justice.

experts. So in the 10th century CE (around 200 years after the compilation of the *Ahadith*), the Sunnis closed *Istihad*. For the Shiites, highly educated jurists still have *Istihad* authority.

⁶³ Hanafi, Maliki, and Hanbili jurists have accepted, while Shafii, and Shii jurists have rejected *Istihsan* as a method of '*qiyas*' (analogical deduction).

⁶⁴ Hannan, above n 61.

⁶⁵ George Hourani, cited in Sohail H Hashmi, 'Islamic Ethics in International Society' in Sohail H Hashmi (ed), *Islamic Political Ethics: Civil Society, Pluralism and Conflict* (2002) 148-72.

⁶⁶ Cf *ibid*.

⁶⁷ Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (1982).

⁶⁸ Cf Yusuf Ali, above n 9, note 682.

⁶⁹ *Ibid* note 77.

⁷⁰ Zaman, above n 21, 85.

A major tool of ensuring distributive justice in Islam has been the *zakat*. However, the doctrine of *zakat*, despite being the first system of social security in the world, has received only a marginal position in the institutional form of Muslim states.⁷¹ This is mainly due to the preoccupation of the states in worldly affairs and a low support-base resulting from political failure, and the threat of discontent and resultant agitation from the vested religious groups benefiting from the distribution process of *zakat*.

The failure of some governments also has made their retributive justice systems ineffective. Punishment for crimes is essential but then if the crime results from the government's policy and programs failures then it requires a fundamental overhaul of the system and not just individual punishment for petty crimes. In the case of dealing with crime, Islam prefers moderation and charity, and definitely not extreme actions. One thing must be noted is that the Qur'an does not ever encourage retaliation or say that God loves retaliation. Thus the deliverers of justice should cautiously think what is better- receiving a penalty for excessive retaliation or a reward from God by forgiving, because 'if any show patience and forgive, that would truly be an exercise of courageous will and resolution in the conduct of affairs' (42:43). The Qur'an repeatedly reminds the Believers about the importance of patience, establishment of justice, and avoidance of over-reaction, just in case the Believers cross the limits in the name of justice. Thus before anyone's hand is chopped off, 'the Islamic state must ensure that every citizen, Muslim as well as non-Muslim, has economic, social, and political protection and security',⁷² because the fundamental tenet of Islamic law is that no duty (liability for punishment, in this case) can be imposed on anybody without granting a corresponding right (freedom to work, from hunger, or access to social security).⁷³

It can of course be argued that, globalisation hinders poorer societies' (or countries') ability to decide citizens' well-being. Globalisation also thus creates many losers, introduces (forces upon) inappropriate and grossly damaging economic systems on poorer nations for the benefit of the industrialised countries, advancing material values. It is also seen as Americanisation of economic policy and culture and thus causes resentment.⁷⁴ Globalisation encompasses, among others, global civil society.⁷⁵ In a globalised world system the strengths of civil society stretch beyond borders. But then a strengthened civil society could be understood as one of the 'mechanisms through which bourgeois rule legitimised itself', and as Gramsci opines, represents 'a more secure state and a more stable form of

⁷¹ See generally, Benthall, above n 37.

⁷² Zaman, above n 21, 85.

⁷³ Discussed in Zaman, above n 21, 85 from the commentary (nos 149 and 150) by Muhammad Asad, *Message of the Qur'an* (1993), on the corresponding verse in the Qur'an.

⁷⁴ Joseph E Stiglitz, *Making Globalization Work* (2006) 9.

⁷⁵ Stiglitz opines that globalisation encompasses the international flow of ideas and knowledge, the sharing of cultures, global civil society, and the global environmental movement, *ibid* 4.

bourgeois rule'.⁷⁶

Rich countries, in a globalised world, gain from this bourgeois rule, restrict access to trade, and offer aid. In order to meet the UN Millennium Development Goals ('MDG') to halve extreme poverty, end hunger, reduce child and maternal mortality, and reverse the spread of diseases like malaria by 2015, the rich countries promised to increase their aid budgets to .7 per cent of their GNI (Gross National Income). Estimates show that the amount of aid required by the poor countries to achieve the MDG targets is US\$135 to US\$195 billion per year for the period of 2005 to 2015 which is about .44 to .54 per cent of the rich-world GNI.⁷⁷ Unfortunately, the donor countries, in the recent past, have reduced their aid budget. Total gross foreign aid from all donors to all developing countries in 2002 was US\$76 billion. The richest and largest donor, the USA, contributed .1 per cent of its GNI in 2000 which increased to .16 per cent in 2004 (or to US\$18b). Thus the winners of globalisation have not prioritised compensating the losers or spreading prosperity, comments *Human Development Report 2005*.⁷⁸

What the poor of the world need is fair trade- equal access to markets, investment, and technology. Stiglitz, following John Rawls, suggests 'fair trade' will entail putting ourselves in others shoes asking what would we see as fair and right if we were in their position. Commenting on some verses in the Qur'an Yusuf Ali comments that allegorically these verses are the statements of the Golden Rule- 'do as you would be done by'.⁷⁹ Thus Islam condemned double injustice- where people exact a higher standard in their own favour than they are willing to concede as against themselves.⁸⁰ The Believers are thus commanded to 'establish weight with justice and fall not short in the balance' (55: 9) that is, to be straight, just, and honest in all the highest dealings, not only with other people, but with oneself and in one's obedience to God's Law.⁸¹

Thus there seems not to be any conflict and/or contradiction between what the Islamic principle of social justice propagates and what humanity needs in the age of globalisation. Muslim societies need to ponder about the future. Kamali contends that the progress of Islamic civilisation in the future depends on *istihad* by competent scholars.⁸² A prominent Muslim philosopher of the twentieth century, Muhammad Iqbal, proposed to accord the legislative assemblies of the Muslim states the authority of *isma* (consensus) and *istihad* (independent analyses). In his

⁷⁶ Iain Ferguson and Michael Lavalette, 'Another World is Possible' in Iain Ferguson, Michael Lavalette and Elizabeth Whitmore (eds), *Globalisation, Global Justice and Social Work* (2005) 212.

⁷⁷ Jeffrey Sachs, *The End of Poverty: How We Can Make It Happen in Our Lifetime* (2005) 299.

⁷⁸ See United Nations Development Program, *Human Development Report 2005* (2005).

⁷⁹ There will be 'woe to those that deal in fraud' (83:1) who insists on justice ie 'exact full measure', but inflict injustice by giving less 'when they have to give by measure or weight to' others (83:2, 3).

⁸⁰ Yusuf Ali, above n 9, note 6011.

⁸¹ Ibid note 5178.

⁸² Kamali, above n 35.

opinion, this is the only possible form of *isma* in the modern world.⁸³ In many countries, parliaments create an independent body (eg Islamic council) to deal with modern issues. Professor Abdullahi An-Na'im argues that Shari'a addresses the conscience of the individual Muslim. Each Muslim is in theory entitled to follow whatever view is acceptable to his or her private conscience. One is entitled to choose not only from among the various views available within his or her school of thought, but also from those views available within other schools.⁸⁴

Due to its holistic character and due to the absence of any central spiritual authority, Muslim states without being theocracies can play important roles in influencing human actions. Muslim countries and communities are at liberty to introduce their own laws and regulations within the basic framework of Islam to administer different aspects of human lives, including social justice. However, this apparent strength of Islam, due to the ill intentions of some Muslim leaders, has become its weakness. The political and economic elites in many Muslim countries are afraid of introducing the Qur'anic principles of social justice for fear of losing unlimited access to power, resources, economic activities and benefits. Instead of establishing the basic principles of social justice, often in many Muslim countries the establishment of the Qur'anic law pertains to governing the individual's behaviour within the context of a certain code of conduct. Many enforcers of Islamic laws use or elude Qur'anic laws as it fits to the particular matter to maximise personal or group benefits.⁸⁵ This targeted application without universality hurts the cause. There also have been suggestions for disentangling Islamic ethics from medieval Islamic law, to understand the Qur'an and the *Sunnah* in their historical contexts, and to elaborate new principles of *shari'a* on issues relating to globalised society by treating the Qur'an as a complete ethical system.⁸⁶ Thus the problems in the establishment of social justice in Muslim societies seem to be related to the process and approach of its implementation, and not with the concepts and dicta. The authorities in these polities need open minds and should take a social benefit (*mafasil*) approach with strong political will and commitment to analyse Islamic concepts with a modern frame required by a globalised world to construct and execute a social justice agenda.

⁸³ Sajoo, above n 28.

⁸⁴ Ibid 23.

⁸⁵ For example, women in Pakistan continue to be deprived of inheritance to parent's property with reference to the local customary law despite the Qur'an's approval of such an act. On the other hand, in terms of divorce, oral repudiation is accepted with reference to the Qur'an though the formal law rejects oral repudiation (For a good discussion on this and many other related issues in Pakistan, please see Farida Shaheed, 'Constructing Identities: Culture, Women's Agency and the Muslim World' (1999) 51 *International Social Science Journal* 61). For an elaborate discussion of the Family Law in Pakistan as well as in many other Muslim countries, please see Abdullahi an-Naim, *Islamic Family Law in a Changing World: A Global Resource Book* (2002).

⁸⁶ Hashmi, above n 65, 148.