

## THE *SHARIAH* AND LAW: AN ANALYSIS

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**Abstract:** *Although the scholarly discussions on Shariah has significantly been increased recently, many of these deliberations leave a distorted image of the Shariah. This paper attempts to explore scope and role of the Shariah by analyzing its etymology and historical conceptions in the light of the Qur'anic statements [5:48, 45:18 and 5:48]. It will also investigate the various intellectual reflections of scholars and exegesis. Contrary to the general perception of the Shariah merely as 'Islamic law, this paper makes a comparative analysis between the Shariah and law by highlighting the distinctive features of the Shariah. As a part of this analysis, some major higher universal principles of the Shariah which seem more significant to the multi-religious society will also be discussed in this paper. An approach of combining the conceptual and comparative analysis along with philosophical reflections and inter-textual reading of the various scholars have been employed in this research. The study presents the Shariah as a significant alternative dynamic system of life which seem more relevant in the multi-religious and multi-cultural societies.*

**Keywords:** *The Shariah, Law, Universal Principles, Higher Objectives, Multi-religious Society.*

### Introduction

Amongst many of the misleading concepts attributed to Islam, the concept of the *Shariah* is possibly the most distorted one. It has widely been misunderstood, misrepresented and abused in our age (Sardar, 1985: 64). The current lively discussion in academic and outer circles on the *Shariah*, occasionally in favor otherwise against, made it a hot subject of debate for the last few decades. Generally, the *Shariah* has been explained in terms of law by most of the so-called experts instead of a comprehensive system of life. This has contributed certain amount of misunderstandings on the *Shariah*. In the modern age, the word *Shariah* might not been unfamiliar even to laymen, but may not be in the true sense. For some, the *Shariah* is considered as the most

oppressive system of administration and rule whereas for some others, it is the most uncivilized pagan way of life. The proper understanding about the *Shariah* is supposed to be limited only to a small group of people. The misconceptions on the *Shariah* exist more or less among majority of people regardless of Muslims and non-Muslims (Jamila, 2011: 2). In this predicament, there is a need for afresh interpretation of its real meaning, understanding, scope and the role in contemporary context. Although many works have been done in recent years by Muslim and Western scholars on the *Shariah*, the misconceptions and distorted images still exist. Furthermore, some important socio-ethical dimensions of the *Shariah* which seem more relevant to the multi-religious and multi-cultural societies have not been dominant so far in scholarly discussions on *Shariah*.

The main goal of this paper is to address the prevailing misunderstandings on the *Shariah* and to place it in its proper perspective and to seek multi-dimensions of the *Shariah* to the contemporary social challenges especially in multi-religious societies. For this purpose, this paper makes an exploration into the original terms which have been used in the Qur'an for the *Shariah*. It will be followed by scholarly analysis incorporating the views of various scholars and experts in this field. Finally, it presents the proper perspective of the *Shariah* in line with its socio-ethical dimensions, people-oriented approach and universal outlook.

### ***Meaning and various connotations of the Shariah-***

#### ***Literal meaning and Qur'anic usages***

The word *shariah* was used by Arabs before the advent of the Messenger of God and the revelation of the Quran (Ashmawi, 1996: 67). The Arabic word *shariah* is derived from the root of *shirañayn* which literally means the road to the watering place, (al-Manzur, 2003: 177) or the path to be followed. It was used by Arabs for as *mashra'at al-ma'a* which means a place where water is stored for the use of people of that area. Such watery place was also intended for the cattle of the inhabitants (al-Manzur, 2003: 177-178). In the literal sense it means *mashrañat al-mÉ'* a way that leads to water (Abu Adam, 2008: 10). In legal sense, *shar'a* means 'to set the laws and to determine it' (al-Raysuni, 2013: 8). It means "a path apparently to seek felicity and salvation" (Kamali, 2011: 7). Qurtubi says: it is a path which leads to success (al-Raysuni, 2013: 8). Although the Qur'an has used various derivations of the word "*sharañNa*," in various occasions, but its meaning and contextual understanding varies from place to place. The word *shariah* was used in the Quran only at one place but not in the sense of law as we perceive it today. It was used in the sense of right path. Later on it was developed as a terminology by the scholars.

Thus we put you on the right way (*Shari'atan*) of religion. So follow it and follow not the whimsical desire (*hawa'*) of those who have no knowledge. (45:18).

Abdullah Yusuf Ali translated the word *Shari'atan* as "the right way of religion" (Kamali, 2011: 11). In the translation of Piktall 'road' is used (Jasser Auda, 2011: 57). This word is used in this context to distinguish between a completely whimsical path of lawlessness and a straight path bound by certitude (Hamid Khan, 2013: 44). Here the word *shariah* bears a general and wide meaning. Here, an allegorical meaning can also be assumed: as water becomes always the source of life for all living creatures so the *Shariah*. It certainly serves as the fountain head of guidance for human life. Although the meaning of this verse in the early period was not as comprehensive as it is was understood in the later period. In spite of that it carried a general and broad meaning

than its legal comprehension. The term the *Shariah* has to be understood in a comprehensive and wider meaning than law alone.

At the time of the revelation of this statement, the *Shariah* was not understood in a legal code. For, it came into existence only in the Madinah period. (Kamali, 2011: 11). A considerable portion of legal rules that later became known as the *Shariah* were revealed to the Prophet (PBUH) only after his migration to Madinah. During the Makkan period, the revelation was basically focusing on the fundamentals of Islam (G. Ahmad Khan, 2009:1) God, being the Creator of universe and human beings, did not leave them without guidance. It is not only the spiritual and legal aspects but all aspects of life have also been included in His guidance. He made the right path of life known to us. This right path later on was introduced as the *Shariah* in the light of the above quoted statement of the Qur'an. Here, an important fact also be kept in mind that the One Who created us, has the right to show us guidance through a right path-*Shariah*- which can help us to maintain peace and security in life. Being His subjects we are under obligation to follow the path. He has the right to show us the right path or to give the guidance for the successful life both in this world and the hereafter. We are, therefore, bound to receive His guidance and put it in practice. This guidance for life as a totality is also known as the *Shariah*.

The second statement in which the word *shariah* is promulgated by God is in chapter 42:13. Here verbal form of the word is used.

The same religion has He enacted/established for you (*shar'a lakum min al-dĒn*) as that which He enjoined on Noah (42:13).

In the same chapter we can see the plural form of the verb *sharaĒa* as follows.

What! have they partners (in godhead), who have established for them some religion without the permission of Allah (42:21)?

According to the commentators, the word *shariah* in the statement 42:13 refers to the understanding of the Oneness of God, the most fundamental principle of Islam (Kamali, 2011: 7). God used this word in wider sense as a religion which he gave to all the Prophets (PBUT). Thus, here again, God used the word *shariah* not in the sense of legal rulings alone, rather in the sense of the core of the religion which determines all thoughts and actions of human beings. If this statement is understood as a legal code, it would be a mistake. For, it is an undisputed fact that the legal rulings and precepts of all Prophets [PBUT] are not the same, but with some differences. The external forms and structures of rituals and worships believed to have been varied from one Prophet [PBUH] to another. However, the essence and fundamental principles of religion as explained by all Prophets remain same from the Prophet Adam [PBUH] to the Prophet Muhammad [PBUH]. There is another statement from Surah al *Maida* number 48 which refers to:

To each among you have we prescribed a law and an open way 5:48

Abdullah Yusuf Ali translates *shiraatan* as law. Maududi also translates it as law but for the word *minhaj* he translates 'a way of life'. The scholars have unanimously agreed that the statement is revealed in Madinah. It was a time when the legislation process has already been started. But the word *shir'atan* in this statement is not about the specific legislation. (Ashmavi, 1996: 57). It is a general statement on the legislation which God has enacted for all communities. From this context, we can understand the words *shir'atan* and *minhaj* have been used here as complimentary to each

other in order to support one another. Thus the word *minhaj* as way of life, is the elaboration of the word *shir'a*.

In addition to the above mentioned statements and different derivations of the word *shara'a*, in a number of places, God employed several other terms as well to denote the *Shariah* in the same sense such as *Amr, hukum, faridah, wasiyyah and minhaj etc* . By using other terms He conveys the same concept and meaning as by the *Shariah*. God uses various terms to identify the limits set by Him and to provide specific instructions which are absolutely necessary for the development of civilized society. By the use of different connotations at various contexts He emanates a comprehensive system of life which is based on a comprehensive code of conduct which is started being called later as the *Shariah* by the scholars. Therefore, the admonitions, advices, rulings warnings and instructions He gives through the various statements, for example 7:29, 4:24, 6:151, which all comes under the domain of the *Shariah*. The words *Amr, hukum, faridah, wasiyyah and minhaj etc*. are the examples of some of the terms which are also used in the Quran in a sense of *Shariah* and in an interrelated manner.

The word *shariah* has been used by Christians and Jews in the sense of religion and the laws regarding the religious affairs. Old Testament translated into the Arabic in 10<sup>th</sup> century uses the word *shariah* to translate Hebrew word *torah* and the Christians had also referred the word *shariah* as a system of laws brought by the Prophets (PBUT) (Ashmavi, 1996: 57).

From the above analysis of the Qur'anic statements, it is clear that the *shariah* in the Qur'an bears different meanings in different contexts. The technical meaning of the *shariah* as we assume today in the sense of mere law is not employed anywhere in the Quran. The words used in the Quran also left the possibility of expanding the understanding of broad meaning from its formative usage to a wider and comprehensive perspective to the wisdom of scholars. In fact, the extraordinary richness and historical literary heritage of Arabic language and the divine selection of apt words in the Quran at various occasions enabled them to bear the additional and hermeneutical meanings where and when it becomes necessary. Although the Quran had used some words, at the time of revelation, in a limited sense but it has never been bounded forever in its constrained and restricted meaning. The Quranic words never check its inherent capacity of carrying alternative and complementary meanings to meet the future challenges. Hence, it is argued here that the word *shariah* bears a rich and wider meaning larger than what is generally understood in a limited sense. Hence, the later generation scholars developed this word into a terminology called the *Shariah*. As a matter of fact, over the years, the word *shariah* engrosses additional meanings and evolved as a comprehensive concept. Unreasonably, its meaning and scope have been confined to law and legal issues.

However, God used the term in a comprehensive meaning in the verses 45:18 and 42:13 where He emphasizes the fundamental principles of religion which usually share with other Prophets as well. The oneness of God, the prophet hood and faith in the hereafter have been the fundamentals of the *Shariah*, at any point, has never been used in the Qur'an in the sense of merely a legal system ignoring the socio-ethical universal dimensions of human life which are likely to be accepted by all people irrespective of their religions, ethnicities and races. The technical meaning and understanding of the *Shariah* ascribed in later period demonstrates the comprehensive meaning of the *Shariah* and its wide scope in multi-religious and multi-cultural societies.

### ***Technical meaning and definitions of the Shariah***

Some terminologies of Islam conceive its technical meaning through a gradual process. From its literal meaning to the more comprehensive meanings are ascribed through the continuous usage of such words and their frequent currency over the years. Its literal meaning and linguistic origin used in the primary sources might have been different from its present meaning and technical conception ascribed later. For instance, the terms *fiqh*, *maqasid*, *thasawwuf*, *Sunnah* etc have been subject to evolution and have been absorbed comprehensive meaning over the years and consequently expanded its scope. Even though the term *Shariah* in recent years have been used by some scholars in its broad and comprehensive meaning, the concept has yet not been subject to expand more for ascribing the comprehensive meaning. It has also not been widened its scope and domain of operation in the newly evolved circumstances of pluralism. (It will be discussed later). The *Shariah* has variously been defined by the different scholars in somewhat excellent way. However, there is a room for further development as some new dimensions of life have come to surface such as the emergence of multi-religious and multi-cultural societies. How to create the relevance and need of the *Shariah* to these societies is a burning question to be addressed in the present age. Nevertheless, an analysis of definitions more or less confirms the need of a fresh look into the meanings and scope. The following discussion of the definitions elaborated by major scholars seems to be imperative for this paper.

During the early period, the intellectual legacy of Islam had been developed as a magnificent totality of legal rules, ethics and rituals. However, it has been divided into different categories of disciplines due to the development of new sciences dealing with different issues. Some circles were exclusively occupied with Qur'anic interpretations, while others were concerned with legal aspects of the *Shariah* (Hallaq, 2003: 23). At the same time, there were some other circles as well tend to occupy highly with the Prophetic tradition. It might led the *Shariah* gradually to be fragmented and eventually be confined in legal issues alone. Taking the historical evolutionary period in to consideration, the domain of the *Shariah* has been limited for a long time to the legal aspects of rituals alone. Its domain of operation was also limited in personal affairs. In the definitions given to the *Shariah* by different scholars have also been reflected this nature more or less. As a result of this the *Shariah* was defined in general sense as the body of laws and rulings extracted primarily from the Qur'an and Sunnah and the detailed rules of *fiqh* that jurists and scholars had developed through *ijtihad*. At any point of time, the primary sources of the *Shariah* namely the Qur'an and Sunnah, never had been excluded. The guidance Allah offers through the *Shariah* covers all aspects of human life; the relationship of man between man and man between God and society comes under the fold of *Shariah* (Zydan, 2011: 10). Ashmavi states the technical meaning of the *Shariah* in the following words: "All things which are legislated as religion, be it legal rulings and behavior" is the *Shariah*. (Ashmavi, 1996: 58).

Western writers have also rightly observed the nature of the *Shariah* and its wide applicability in all aspects of human life. Joseph Schacht, for instance, describes the *Shariah* in these words, "The sacred Law of Islam is an all-embracing body of religious duties, the totality of Allah's commands that regulate the life of every Muslim in all its aspects; it comprises on an equal footing ordinances regarding worship and ritual, as well as political and legal rules (Schacht, 1982: 5). Although he presents the *Shariah* in its comprehensive meaning, he approaches the *Shariah* as a law and he understands the *Shariah* for Muslims alone. This is how he used the word "sacred law of Islam" more than giving its applicability and compatibility to the public domain, the sacred is generally understood as something related to God or spiritual. Therefore, the lively nature of the *Shariah* and its adaptability and easiness have been missed in Schacht's deliberation. So mistakenly he

used the term ‘sacred law of Islam’ for the *Shariah*. In the same wave length, Noel J Coulson defines the *Shariah* in following words: “The comprehensive system of personal and public behavior which constitutes the Islamic religious law is known as the *Shariah*” (Coulson, 1969: 13). Even though Coulson as well demonstrates the *Shariah* properly, some important points are missing. Its adaptability and compatibility in all times is a major point to be highlighted. The *Shariah* as a comprehensive system helps to regulate the life and society along with their several structures and sub-systems. J N D Anderson explains the *Shariah* in a better and genuine way which differs from the previous writers’ definitions. For him, “Islam is a complete way of life; a religion, an ethic, and a legal system all in one. (Anderson, 1975: 26). Although he does not use the word the *Shariah*, he uses the term Islam in the sense of the *Shariah*. He also sheds the light to the social aspects of the *Shariah* as well (Anderson, 1975: 26). The definition of the *Shariah* given by Ibn al-Qayyim seem to be very comprehensive and noteworthy in this discussion. He says “*Shariah* is based on wisdom and achieving people’s welfare in this life and the afterlife. *Shariah* is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the *Shariah*, even if it is claimed to be so according to some interpretation.” (Ibn al-Qayyim, 1975: 10). Ibn al-Qayyim’s definition seems the most comprehensive definition which touches all aspects of the life. More importantly, he considered it for the people’s welfare and he never presented it is a legal system for Muslims alone, but as system of justice welfare mercy and good for all people. Imam al-Shatibi, an authoritative figure in Islamic jurisprudence, however, did not give a precise definition to the word *Shariah*. He used *waġy* (revelation) as the synonyms of the *Shariah* (Masud, 1995: 156).

In short, the *Shariah* cannot be defined or understood as a set of civil or criminal or personal and public laws alone as it has been conceived by many in the modern age, rather it is a conglomeration of comprehensive set of fundamental truths, socio-ethical legal percepts and higher principles and a practical way of life. The *Shariah* can easily be defined as an ideal, comprehensive way of life which constitute all aspects of human life. In other words, it is a code of conduct and a way of life with universal guidance for human life that would have much wider scope and extended meaning than it has generally been understood. The *Shariah*, in fact, meant for regulating the relationship of man with God and with man (A. Rahman, 1984: 28) and with nature. By regulating man’s actions and mind in accordance with the *Shariah*, man ultimately achieves a sense of peace and self-conviction. Here what exactly happens is; the rules of regulating actions will automatically control one’s mind too. In other words the *Shariah* is not separated from ethics which basically comes from the inner feelings of mind. As we have seen in the statement of the Qur’an as quoted above 45:18. It is now clear that the *Shariah* manifests the true spirit of the relationship of man with God, other human beings, society and nature. But it does not mean that the *Shariah* is free from its juristic nature. Juristic part is an integral part of the *Shariah*. It is, however, not the whole. In order for the *Shariah* to be understood properly a small comparison between the *Shariah* and law is noteworthy in this regard. The discussion is as follows.

### ***The Shariah and law: a comparative analysis***

The comparison between law and the *Shariah*, as a major part of this paper is very significant to this discussion. Before the comparative analysis it would be significant to give a brief idea regarding law. Since the paper obviously highlights on the *Shariah*, the detailed elaboration on law seems unnecessary.

The law is basically originated through a process of long studies on the customs and systems prevailed in the various societies. Primitive tribal custom is considered as the earliest origin of the laws. The contemporary laws of more advanced civilizations today is the final result of the gradual progress. (Rane, D. 1985: 4) It shaped its current form through an evolutionary process over the centuries by giving and taking the legal elements from other sources of legal systems and from established practices and customs of various religions and societies. (Konard, 1998: 2). It still continues to evolve and is being shaped in various forms in respect to the various societies (Konard, 1998: 2).

In the comparison of law it would be imperative to mention the standard definition for the law. Merriam Webster dictionary defines law as follows: “A binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority”. (Merriam W. Dictionary, 2017). Secondly the word also carries the idea of “the whole body of such customs, practices, or rules. With slight differences Cambridge dictionary defines law as “a rule, usually made by a government, that is used to order the way in which a society behaves” (Cambridge University). From the above definitions we would be able understand the law is an accumulated rules in a certain society for its smooth functioning.

The discussion on the difference between law and the *Shariah* starts with their basic nature. The differences by nature exists which comes from these two contrasting ideas. The most outstanding distinction of the *Shariah* from the law point of view is this; the *Shariah* is divine in character since it is revealed from God which can never be claimed to be equal to law as the idea of law is a human construct. It is now clearer that the former one is derived from human thought whereas the latter one basically comes from the divine sources or revealed knowledge which are the Qur’an and Sunnah. The core and essence of the *Shariah* comes from God and man would be the agent of its understanding, interpretation and application at various levels. However, it does not mean that human reason has no role in the *Shariah* at all. As Noel J. Coulson called it: “God proposes: man disposes.” (Coulson, 1969: 4). It means that the *Shariah* contains the fundamental principles which remain permanent and their understanding, interpretations and even the nature of their application is subject to change and modification according to the changes of time and space. The rulings on particular issues by the jurists and the conclusions they often arrived through their analogical reasoning and deduction depending on the primary sources are the result of exercising human reason significantly in the interpretation of the *Shariah*. This area is generally called as *fiqh* which means the human understanding and knowledge about life and society based on the Qur’an society (H. Kamali, 2011: 9). Whereas the *Shariah* retains its uniqueness in its fundamentals and its details, the law cannot be claimed as unique in its originality as it does not genuinely own a specific and precise source of law.

Human interpretations and juristic views on new issues extracting from the primary sources the *Shariah* are reflections of various aspects of life and society. It is an open reality that the jurists of the *Shariah* in the past were not isolated scholars of law as understood in modern times. They were experts in various disciplines such as Qur’anic exegesis, Prophetic tradition theology and Islamic history.

Another important difference between the *Shariah* and law is identified as; the comprehensiveness of the *Shariah* which touches all aspects of human life from beginning to the end with its richness and depth than law. Unlike the *Shariah*, the law never manifests a comprehensive meaning and wider scope of operation, rather it is limited in the legal and juristic aspects alone. It looks at external perfection of an action or it judges the actions through the external factors alone. The soul or essence of an action is beyond its capacity. It does not want to look at the inner dimension of any action at any point. The action, therefore, in the case of law, does not emerge from within itself. In general sense, the intentions and ultimate motives for the actions may not be the subject of law. It means that law has nothing to do with inner aspects of life and actions.

The driving force of an action in the domain of the *Shariah*, would be generated primarily out of motives or intention of the doer which ultimately determines the validity and acceptability of an action. "Verily, deeds are only with intentions. Verily, every person will have only what they intended. So whoever emigrated to Allah and His Messenger, then his emigration is for Allah and His Messenger. Whoever emigrated to get something in the world or to marry a woman, then his emigration is for whatever he emigrated for" (Bukhari, Muslim). This hadith of the Prophet [PBUH] narrated by Umar al-Faruq is the back bone of the *Shariah*. The philosophy rooted in this hadith permeates all the teachings of the *Shariah*. On other words, actions are not neutral in the *Shariah* perspective, but associated with the intentions or motives behind the actions. An action without intention would not be weighed on scale in the *Shariah* point of view. For example, a man who performs his prayer can make his rituals perfect by doing his external actions properly. According to the law, it would be perfectly right and correct but, in the *Shariah* perspective, all external acts must be accompanied by good intention going beyond the external perfection alone. The *Shariah* perceives the actions both internally and externally. In addition to the external affairs and their perfection, it looks on what is the motive behind the action and what is beyond the external perfection of his action is the most important aspect which finally determines the validity and acceptability of his action. This is why Ashmawi defines the *Shariah* in one occasion as a state of mind. He says; "the first principle declares that the *Shariah* to be more than a magnificent totality of rules and penalties; first and foremost, the *Shariah* is a state of mind. It presumes the existence of a generous and loving spirit that pervades society, for without such as a spirit the rule of law would not be sustained by a genuine desire to conform of both the letter and lofty aspirations of the law." (Ashmawi, 1983: 38). Contrary to many other definitions Ashmawi mainly focuses on the comprehensive aspect of the *Shariah* especially the internal dimension of an individual realizing the fact that the primary seeds of the *Shariah* has to be sprout out from the heart and mind and it always be connected integrally to the state of heart and mind. At any moment, the human actions would not be cut off from the *Shariah* rulings. The actions will emerge in accordance with the rulings of the *Shariah* and would always be associated with the heart and mind. Without this, the law remains as merely a body which has no essence and soul just like a dead body without soul. A man has to abide the traffic rules even though he does not like it. His obedience comes not out of his love and loyalty to the law, but only for the sake of law. However, the *Shariah* rulings and regulations could be done by a faithful out of his love and devotion to that ruling. A law without spirit cannot transform an individual fundamentally though his actions may correspond in accordance with the law seemingly. In short, the *Shariah* is not a body of laws which has no relation with human aspirations and thoughts. Inner feelings and state of mind have also equally be manifested in the *Shariah*.

Despite of the fact that the *Shariah* is a totality of legal, ethical, spiritual guidance for humankind, at the present scenario of societies, the notion rests in theoretical level alone. Its practical manifestation incorporating all elements of the *Shariah* has yet to be realized everywhere especially in multi-cultural and multi-religious societies. The ossified structure and incompetency of the existing system of law in the name of the *Shariah* do not seem to be in line with the modern world and its frequent changes which made the lives of people more complicated and left them with complex problems. Many of the problems of modern societies currently face are the result of either the complete rejection of the *Shariah* or its restriction in legal domain alone. (Sardar, 1985: 56). What is more pathetic is; the principles and goals of the *Shariah*, for which the *Shariah* is ultimately sent to the humanity, have greatly been ignored. Instead, its forms and names have been given much emphasis and leave the real attributes and spirits of the *Shariah* unattended (Sardar, 1985: 56).

The categorization of the *Shariah* in to various water tight compartments is a strange idea incompatible to the real spirit of Islam. The *Shariah*, as we demonstrated here, comprises all aspects of human life in its totality with its comprehensive nature. A few Western scholars comprehended the difference between the *Shariah* and the Western perspective of law. *Shariah* has never been a carbon copy of the Statute law (Kahlmeyer, 2006: 31). For example as Coulson pointed out, “The Islamic *Shariah* is, in our terminology, both code of law and a code of morals. It is a comprehensive scheme of human behavior which derives from the one ultimate authority of the will of Allah: so that the dividing line between law and morality is by no means so clearly drawn as it is in Western societies generally” (Coulson, 1969: 4). Thus, the fragmentation of the *Shariah* in to various categories and putting much emphasis on some particular areas like devotional and rituals overlooking the other areas of socio-ethical dimensions of the *Shariah* and ignoring its higher objectives is a great malady of people of our time. There is a tendency even in academic field which demonstrates Islam as a law-based religion which severely stresses to the conformity to rules and statements ignoring the meaning and purpose of Islam and integration of values (Kamali, 2011:6).

It is crystal clear in theoretical level; the concept of the *Shariah* is comprehensive. Its area of operation and scope cannot be confined any of the compartmentalized arena of human life as it has been perceived in general. Conceiving the *Shariah* merely as a body of law consisting of civil and criminal law is a grave mistake. The *Shariah*, in theory and practice provides guidance and laws to all aspects of human life; personal, social, physical, mental, spiritual and intellectual. The *Shariah* deals with the entire span of human life and interactions (Sardar, 1985: 111) and it has been defined as everything that has been given by God to His slaves or everything either rituals creeds or manners legislated and guided by God (al-Raysuni, 2013: 21). The norms and regulations, mostly in the form of rulings derived from the *Shariah* certainly occupy entire areas of human affairs material and non-material aspects such as the human thought and emotions. In short, the *Shariah* serves as a driving force and dominant guiding principle of all human actions, life, society and thought (Sardar, 1985: 109). Its fundamental principles are more than sufficient to guide the needs of societies in time space context. The details and elaborations through the various interpretations by different scholars as well embedded in the spectrum of the *Shariah*. These interpretations may appear often different or contradictory to another opinion. This gives room to every scholar to interpret in the context of his time and place. In this way a big role is assigned to the experts of the *Shariah*. This also demonstrates some sort of diversity that becomes as an outstanding feature of the *Shariah*.(Kamali, 2011:2).

In order to comprehend the contrasting features of the *Shariah* and law the classification of the characteristics in the given table would be beneficial. See table 1.

**Table 1: Comparison between the *Shariah* and Law**  
**Contrasting Features of the *Shariah* and Law**

<b>The <i>Shariah</i></b>	<b>The Law</b>
Divine in Character	Human Construct
Revealed knowledge in principles	Human reason
Human reason in positive laws	Human reason
God Proposal and man disposal	Proposal and disposal by men
Fundamental principles are permanent	Basics and subsidiaries are temporary
Application subject to change according to time and space	Application subject to change according to time and space
Enacting jurists and Jurisconsult	Lawyers, legislators
Comprehensive which touches all aspects of human life	Incomprehensive touches only civil, legal & criminal laws
Concern about internal and external perfection of an action	Concern is limited only to external affairs
Motive of the action is accountable	Motive of action is not accountable
It deals with mind and action	Deals with only action
Compliant to all societies	Limited in certain societies
It is interconnected to various walks of life	Law has been compartmentalized
No dividing line between law and morality	Law never deal with morality
Rigid in fundamentals and flexible in details	Flexible

In spite of these, the bifurcation of *Shariah* into personal and public leaving the public at men's disposal is an alien idea for Islam. The personal status of the *Shariah* is assumed to have been emerged in Muslim lands only after the European colonization. (The term "personal status was first used by Muhammad Qadri Pasha, then Egypt's minister of justice, in 1893 in his book *Shariah provisions on personal status*.) The concept seemed to be copied and applied from European legal context where the law has dual character. The Law, in European context especially after the reformation and renaissance, has been divided into two; one is public and the second is private. The constructed bifurcation is to share the affairs of state for Caesar and the affairs of religion for God (Kahlmeyer, 2006: 31). As a result of this bifurcation, the principles and ethics of religion has no longer role in the domain of public life. The religion or the *Shariah* in particular has started being perceived as confining in private life of people. In some countries such as India, the *Shariah*, by the constitutional safeguards has been confined to some specific areas of life of Muslim community. For example, "Muslim personal law"<sup>3</sup> in India deals with personal issues of Muslim life. The rulings and principles concerning the public affairs are not taken into consideration by the constituent assembly of the Constitution of India due to the limited and distorted understanding of the *Shariah*. Muslim community in India also became victim of these distortions and due to the loss of political power accepted the limited role of the *Shariah* in the form of Muslim Personal Law. Instead of struggling and providing intellectual discourse on the concept, role, and place of

<sup>3</sup> Muslim Personal Law is a body of law came in to existence in 1937, by which the Muslims in India are governed. Muslim Personal Law (*Shariat*) Application Act in the constitution providing for the application of the Islamic Law Code of *Shariat* to Muslims in India in personal affairs. The All India Muslim Personal Law Board (AIMPLB) is a non-government organization constituted in 1973 to adopt suitable strategies for the protection and continued applicability of Muslim Personal Law in India.

the *Shariah* in modern world they started defending the limited role of the *Shariah*. As the name refers, it deals with the law concerning personal affairs alone. Its scope of operation is significantly limited to the Muslim personal issues like marriage, divorce and inheritance. Beyond these particular areas, the socio-ethical principles are not allowed to be articulated and to be materialized as the norms of the *Shariah*. The socio-ethical dimensions of the *Shariah* are not allowed to entertain in the public sphere. In short, the public dimension of the *Shariah* has completely been divorced from its operation mainly due to its projection as ‘law’.

### ***Universality and people-oriented nature of the Shariah***

The *Shariah* is only for Muslims and it has nothing to do with non-Muslim communities is a common misconception about the *Shariah* by Muslims themselves (G. Attia, 2007: 141). The *Shariah*, in fact, besides its rulings and guidance for private life has equal significance for all walks of life especially in socio-ethical dimensions which all members of society can collectively share. The outstanding characteristic of Islam by which it is distinguished from other religions and worldviews is; its universal people-oriented nature. The teachings, principles and values the Qur’an always upheld are for all people in time space context. The universal and people-oriented nature of the *Shariah* can apparently be evident in its rulings and admonitions which seem to be acceptable to all people of all time. In many occasions, therefore, the Qur’an addresses the humanity as a whole “O Mankind” or “O man” which reinforce the importance of considering the humanity for receiving its universal message. In such occasions, the Qur’an calls the humanity for the universal principles, one’s response to which depends on reason, logic and public interest. (G. Attia, 2007: 141). The people are tending to receive those principles since they are being addressed on the basis of their innate nature. Inclination towards the principles of the *Shariah* come out from the natural disposition of human being.

It is quite easy to bring ample evidences from the Qur’an for the attestation of the *Shariah* for whole humanity. For example Allah says: Now (as for you, O Muhammad,) We have not sent you otherwise than to mankind at large” (34:28). Say (O Muhammad): O mankind verily, I am an Apostle to all of you. (7:158). In a Prophetic tradition, the Prophet [PBUH] is reported to have said: I have been given five things no one before me was given” and he counted among them: An apostle used to be sent specifically for his own people, while I have been sent to all of mankind.” (Bukhari). The guidance that God offers through the last revelation, never been reserved exclusively for the community of believers rather it has been offered to all humanity (2:185). The Prophet [PBUH] was sent as a mercy to the humanity. “We sent thee not, but as a Mercy for all creatures” (21:107). The mercy which was disseminated by the Prophet [PBUH] was not limited to the believers alone, but for all. These evidences specified by the Qur’an and Sunnah endorse the fact that the *Shariah* is meant for all humanity. The principles and values it upheld are genuinely valid and relevant to all people in all times.

The universality of the *Shariah* and its inclusiveness and accommodation of people of other faiths is distorted by limiting the *Shariah* to the Muslim community alone. In addition, the Qur’an presents a challenge to all mankind to test and verify its validity. Therefore, we argue that as a matter of fact the principles and values of Islam are the most suitable principles for human beings in all times and places (Ibn Ashur 2006: 142). As Ibn Ashur stated, “One of the most important aspects of the universality of the *Shariah* is that its rules and commands should apply to all human beings as much as possible” (Ibn Ashur 2006: 134). It is also a matter of fact that the universal principles mentioned in the *Shariah* are considered important more or less by every community.

We argue that the *Shariah* in general is laid down for the protection of certain basic necessities of our existence such as preservation of religion, life, progeny, property and intellect. For example, in the context of the objectives of the *Shariah* Al-Shatibi refers to the universals in to the above mentioned five categories which, according to him, are acceptable to all people of all time. This character of the *Shariah* has been approved and particularly emphasized by some contemporary scholars. Ibn Ashur, for Instance, emphatically pointed out; the “*Shariah* came as a universal law requiring the adherence of all human beings” (Ibn Ashur 2006: 134). And he incorporated a chapter in his monumental work *Maqasid al-Shariah al-Islamiyya* entitled *Universality of Islamic Shariah*. Hashim Kamali says; “*maqasid* are concerned with protection of basic values of interest to all human beings” (Kamali, *Maqasid*, 2012: 2). The *Shariah* is not specific to particular group, place, sex or time. It is universal and is meant to be for eternity” (Saeed: 2015). This fundamental nature of the *Shariah*, is not to confine any particular group of people and age. Its fundamental values and principles surely transcend the limits the human often creates. Despite of this fact, the universal characteristics of the *Shariah* and its collective principles have not been given due attention to the public especially in multi religious and multi-cultural societies of our time.

Essentially, all the principles of the *Shariah* are based on an important consideration that is the proper reconstruction of society in a positive way. Introducing the *Shariah* with universal objectives will definitely help towards the realization of common goodness and welfare to the whole members of society. In doing so, a great number of benefits and welfare can be attained by all people. Consequently, the benefits generated by the *Shariah* would not be confined to a particular community alone; rather the whole humanity will greatly be benefited at large. In short, the *Shariah* in one way or the other way make them feel that it is a source of mercy and welfare for the whole people. The responsibility of seeking the answers to the problems of society rests on the shoulders of scholars and leaders of Muslim communities since they are, according to the Qur’an, responsible for the wellbeing of humanity, “Ye are the best community that hath been raised up for mankind” (3:110). Leading the humanity to the right path and giving them good and easiness in their life is a responsibility on Muslim community by God.

### ***Inclusiveness rather than exclusiveness***

The world is increasingly becoming a small global village as the result of pervasive communication facilities and technological advancements that enable us to know and communicate with each other, though we are biologically quite far away from each other. The advanced communication facilities enabled us to share our thoughts and ideas with others. The isolated kingdoms and remote villages do no longer exist nowadays. People always get involved in connecting to each other and get communicated through the phones and other modes of communication. They keep engaging in talks, discussions and sharing their thoughts and ideas to which they want to share. Their nation, culture, religion, tastes, emotions and stuffs are being shared to many. This age became an age of diversity where different ideas, cultures and religions are being brought together and get involved in exchanging. It created a situation of plural, multi-religious and multi-cultural ambience in the world in general. The multi-cultural society is prevalent not only in particular nations, but it equally and importantly, exists more or less in almost all societies in one way or another. Moreover, many of the contemporary societies, which were isolated and in monolithic nature earlier, are in the transformation process towards the plural nature in accommodating different religions, races, ideologies, ethnicities and culture live side by side in this global village knowing and making known to each other. However, this global phenomenon

has become mechanical. This modern mechanical world opens up a wide array of opportunities for people of different culture and religions. Here no community is likely to be separated or secluded from the mainstream society. Seeing some as other is now derogatory quality that Islam never encourages. Rather Islam promotes the notion of peaceful co-existence with everyone as long as people remain friendly and neutral to each other. The Qur'an clearly states; "Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just." (60:8). This Qur'anic statement is a general and universal principle that Islam promotes or ever against the specific verses which revealed in the context of war.

According to the meaning of the above statement, the notion of living at *dar al-harb* (land of Islam's enemies) and *dar al-Islam* (Islamic Land) is no longer significant to the present global socio-political context. Such kind of legal opinions and classifications have been inferred by the jurists in a particular context where the political rivalry and tension between the kingdoms were very common in the past (Auda, 2011: 165). There is no wonder to make such opinions by the then jurists. Some contemporary scholars, however, have pointed out that such kind of classifications is no more relevant for us. Tariq Ramadan, for example, challenges the old age traditional notions of Jurists (T. Ramadan, 1999: 268). According to him, the Muslims live today in Western societies cannot be attached to *dar al-harb* or *dar al-Islam*. According to our understanding, such categorization is no more valid not only in western society but also elsewhere in the world. The newly evolved situation in the world is entirely different from that of the past in which jurists had experienced differently. Underpinning the above notion, Jasser Auda calls for the interfaith dialogues, mutual cooperation and co-existence as they are the important principles to be upheld in the current socio-political context rather than the old notions of *dar al-harb* and *dar al-Islam* (Auda, 2011: 165). It is noteworthy that some scholars did not want to keep this division as it is, rather they chose to replace the *dar al-kufr* with the phrase *ummah al-da'wah* and *dar al-Islam* with *ummah al-ijabah* (Attia, 2007: 134). In short, the socio-political situation has drastically been changed and continues to change in the last few decades. All communities and societies became more open and subject to expose their ideas and culture to each other. The nature of inclusiveness is more likely to be appropriate for all of those who uphold the *Shariah* notions. In fact, Islam has a long and profound history of recognizing and keeping the diversity within in the community. It has always been consolidated with the diverse and different elements in to a body of which is however united with diversity. It primarily started from the differences of early interpretation of scriptures and resulted to differences in societies and cultures. (Bowen, 2010: 163).

It is, therefore, recommended in today's societies especially multi-religious communities that the scholars as well as laymen to be involved in the fundamentals and universal principles of the *Shariah* in public sphere than engaging in unnecessary legal issues. It is, however, very common in multi-religious communities like in India, Philippine, America and elsewhere, due to some known or unknown reasons, some Muslims in the name of religion engage in conflicts in trivial juristic issues which certainly disseminate a negative image of the *Shariah* to the public. On the other hand, they neglect the common issues related to the public and engage themselves in the issues which are not supposed to be relevant to common people. Many societal and ethical problems suffered by all members of those societies have been blatantly ignored by the *Shariha* scholars. They do not take any initiative to overcome those issues and to guide society into the right direction. The domain of their thinking and thoughts has confined to the rituals, trivial legal issues. They are not looking at those social issues which are common to everyone and not dealing

with them seriously. The removal or elimination of societal problems under the purview of the *Shariah* are not supposed to be the scholars' intellectual duty. The crux of the problem lies in unawareness of the true nature of the *Shariah* and its principles and objectives. The erudite scholars should take the responsibility to seek the solutions to the problems of the society, such as illiteracy, poverty, lack of health facilities etc. from the *Shariah* point of view. The scholars of the *Shariah* are the people who have been raised for serving the humanity at large. If we look at the general purposes of the *Shariah*, we can easily find out that its rulings and guidelines for imparting benefits to the people are outstanding. Those principles constitute the essence of the *Shariah*.

Similarly some rulings and injunctions address particularly on juristic issues should not be outweighed the universal values such as peaceful co-existence and inclusiveness. For example, a Prophetic tradition says; "whoever resembles a people or society, is one of them" (Albani, 1979: 2691). The apparent meaning of this hadith is about maintaining the Muslim identity and keeping away from imitating other societies. Imam Ibn Taymiyyah, for example, views this hadith through the *maqasid* prism. According to him, any Muslim living in a multi-religious society is not recommended to follow the literal sense of the *hadith*, particularly at a context where his life is being in adverse condition. Rather he is either recommended to take part in the society along with the majority of people as long as their customs and practices do not contradict to the teaching of Islam. He is not required to keep a clear distinction in his dressing and appearance from others if it is beneficial for his religion. By doing so, they can educate the people about the *Shariah* guidance and make them aware of its values and principles most efficiently (al-Mansur, 2006: 417). Sticking to the Identity, however, does not mean sticking to traditional dress or accepting a particular Muslim appearance.

In short, people should understand the wisdom behind the *Shariah* and should give many priorities to those higher principles and objective which are dealing with the welfare of people in general rather than focusing on the trivial issues pertaining to Muslim community alone. Unfortunately, human welfare and goodness has often been absent in *fatwas* and juristic rulings concerning to the mundane affairs. Major issues like poverty, environmental problems, pollutions of which all members of the society suffer equally, have sadly been ignored by the scholars of the *Shariah*. In societies where Muslims are minorities, should be free themselves from being engaged in the controversial debating issues pertaining to the Muslim community alone. Rather, the universal general principles of the *Shariah* such as justice, peaceful co-existence and tolerance, inclusiveness and equality and so on should be given uttermost importance in their deliberations and be sufficiently disseminated to the public.

## **Conclusion**

The misconception on the *Shariah* and its teachings prevalent in society can be removed significantly, as this paper argues, through a systematic and scientific approach to the *Shariah* in a wider perspective, which is contrary to the common understanding of the *Shariah* as a merely juristic system. Besides the legal provisions of the *Shariah*, a vast arena of socio-ethical principles and values of the *Shariah* are remaining stagnant and unarticulated theoretically and practically. The socio-ethical universal principles of the *Shariah* and its higher objectives have recently become noteworthy in the contemporary plural society where the image of the *Shariah* has been badly misrepresented.

The *Shariah*, by its name itself bears a wide range of possibilities of including everyone in the fold of the *Shariah* irrespective of religion, ethnicity or language. About the spectrum of the *Shariah*, many of the Qur'anic statements address the humanity collectively is a fact that the *Shariah* stands for whole humanity. Although the *Shariah* consists of a set of rulings and laws related to the various spiritual and mundane affairs of an individual Muslim, it equally possess a wide range of principles, values and instructions to guide the humanity at socio-ethical and civilizational levels as well. In other words, the *Shariah*, in no way leaves either individual or society as granted, at any point of time, without giving the proper guidance and adequate instructions in regulating their life and its schemes in a most sophisticated way. Hence, reducing it to the level of mere law is a grass root injustice to the *Shariah*. The socio-ethical higher principles of the *Shariah* have uttermost importance in presenting the *Shariah* as a system of life and welfare of all people. Giving those principles and objectives of the *Shariah* more considerations and avoiding the juristic and legal intricacies to the public are indispensable. This paper presents the *Shariah* in a positive way as it is highlighted and recommended in this paper. The universality and inclusive nature of the *Shariah*, which have unfortunately been unnoticed and abandoned by the majority of scholars over the years, have begun to appear recently to be the most significant alternative to the present multi-cultural society as a proof of the *Shariah*'s adaptability and competency even in the modern age. The principles and values upheld by the *Shariah* themselves are the conclusive evidence for the dynamic nature of the *Shariah* as an alternative system of life not for Muslim community alone, but also, and equally important, for the whole humanity at large than any other life style and man-made law prevalent in the contemporary society.

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