

MORAL SURVEILLANCE IN SHARI'AH LAW: BETWEEN THE MISCONCEPTION AND THE SIGNIFICANCE

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Introduction

Since the start of creation, man has never ceased to contemplate the moral question of good and evil. Morality basically refers to principles concerning right and wrong or good and bad behavior. It deals with human's character and conduct that to be governed by certain rules. In Islamic point of view, Islamic morality teaches the Muslim how to win the never-ending battle of good against evil as prescribed by Allah (s.w.t.). Morality is both an individual and social phenomenon. Thus, the relevance of morals to our daily life is so great that a lot of our present social, economic and political problems are the result of our ethical problem.

Of late, material advancement is peoples' main concern, but progress in the field of ethics and morals is rarely considered. Western civilization, and unfortunately gradually followed by some Muslim societies, scoff at the very mention of words such as morality, decency and modesty. These are regarded as old-fashioned and incongruous with today's culture of liberalism and unfettered freedom. Immodesty, immorality, shamelessness, liquor addiction and free-sex are regarded as progressive and fashionable. Yet the latter has been the very cause of the destruction and breaking down of today's family institution and thus society. It seems today that pornography and drinking liquor, for example, are no longer viewed as the deadly crimes and sins they really are, subjecting

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to problems such as free-sex and cohabitation. Muslims as if are condoning such sinful acts even though these lead to illegitimate and unwanted children who become a massive problem unto society due to lack of proper parental supervision.

In the name of "modernism," some people have excluded morals from their dealings. They claim that honesty is meaningless unless there is benefit derived from it. Others stopped worshipping God in the name of "liberation," and instead they worship false gods like worshipping wealth, power or expediency.¹ The country that prides itself in being the superpower of today's world and the leader of present day civilization, the United States of America is reeling under the impact of immorality. Today every other child in the U.S. is born out of wedlock. Thirty-eight percent of children now live without a biological father; 6.6 million children live with divorced single parents, mostly mothers whose ex-husbands tend to fade away from their children. This gruesome picture is the direct result of the absence of morality, decency and modesty in the U.S. and, unfortunately most of the Western world, and parts of Eastern societies.²

In the meantime, conversely, it has become apparent in the past years that some people in Malaysia started to question some injunctions of the Shari'ah law particularly that related to morality to the extent that there was a demand to repeal the Islamic moral laws in our country. This is due to assertions that such laws that policing the morality are unjust and thus invite vigilantism which denying

1 Jamal Badawi. 25 October 2005. "Main Ethical Questions". *Introducing Islam*. <<http://islamonline.net/english/introducingislam/Worship/Heart/article11.shtml>>

2 n.a. 6 February 2004. "Islamic Morality and Today's World". *Spot Light on Islam*. <http://www.islamonline.com/cgi-bin/news_service/spot_full_story.asp?service_id=684>

people their privacy, freedom of speech and expression. These laws are also claimed as violating the personal dignity of humans and their rights as citizens. They opine that how people dress and where, how and with whom they socialize are personal choices. They are prone to manipulate all the contentious "morality" issues which took place in our society to support their demand. Issues like the arrest of three Muslim women by Jabatan Agama Islam Selangor (JAIS) for participating in the Miss Malaysia Petite contest in 1997, the detention of 31 Muslims, 23 of whom were women by JAIS at 3 outlets serving liquor in June 2000, the execution of fine penalty of a 68-year-old Kelantanese for not attending Friday prayers in March 2005, the detention of a female pub singer by JAIS who was charged for insulting Islam by being in premises where alcohol is served in June 2000, and the JAWI raid on the Zouk nightclub in Kuala Lumpur and thus detention of some 100 Muslims on January 2005 are some instances of their interest cases.³

Besides, people start to make their personal comments based on what they read in daily newspapers without actually understanding the fundamental of Islam and what Islam is all about. Furthermore, there are so many concepts of Islam that are being misunderstood even by the Muslims themselves. This phenomenon actually may lead to pros and cons which somehow may add more complicated unresolved problems. Therefore, this paper is an attempt to tackle this issue by providing some light into the basic principles of Islamic morality and Shari'ah law, which are essential in order to understand the reality of moral control in Islam. It is expected that this will diminish any confusion and misconception regarding the moral surveillance on Muslim society in Malaysia.

3 Women's Aid Organization. 25 March 2005. "The State Has No Role in Policing Morality". *News*. <<http://www.wao.org.my/news/20050103moralresourcechrono.htm>>

Understanding Of Shari'ah Law

The word Shari'ah literally means the road to the watering place, the straight path to be followed.⁴ Shari'ah is then defined in technical term as the sum total of Islamic teaching and system, which was revealed to Prophet Muhammad (s.a.w.) recorded in the Qur'an as well as deducible from the Prophet's divinely guided lifestyle called the Sunnah. This definition implies that all the different commandments of Allah (s.w.t.) to mankind are part of Shari'ah. Each one of the commandments is called *hukm*.⁵ It is therefore the law for mankind that governs their lives assisting them to distinguish between good and evil.

Shari'ah law is holistic or eclectic in its approach to guide individuals in most daily matters. It also contains encompassing commandments of Allah (s.w.t.) which are classified into three fields: sanctions relating to beliefs (*al-I'tiqad*), sanctions relating to moral and ethics (*al-Akhlaq*) and sanctions relating to the sayings and doings of the individuals and his relations with others (*al-'Amali / al-Fiqh*). Hence, Shari'ah law controls, rules and regulates all public and private behaviour from the very basic and religious matters like rules for personal hygiene, diet, sexual conduct, prayers and fasting up to the most crucial ones like to settle border disputes between nations or within nations and to settle international disputes, conflicts and wars.

The primary objective of the Shari'ah is the realization of benefit to the people preventing harm from mankind, concerning

4 Ibn Manzur, Abu al-Fadhl Jamaluddin bin Muhammad. 1990. *Lisan al-'Arab*. Vol. 8. Beirut: Dar al-Sadir. p. 176.

5 Mohamad Akram Laldin. 2006. *Introduction to Shariah and Islamic Jurisprudence*. Kuala Lumpur: CERT Publications. p. 2-3.

to their affairs both in this world and the hereafter. Fundamentally, there are five indispensable values (*al-Daruriyyat al-Khams*) which are necessary to human life: the preservation of *din* (religion), the preservation of *nafs* (life), the preservation of *nasl* or '*ird* (lineage or dignity), the preservation of '*aql* (intellect) and the preservation of *mal* (wealth). The protection of these values include executing all the necessary measures in order to ensure the realization of these values, and at the same time ensuring that all the obstacles that will obstruct the implementation be removed.⁶

Apparently, Shari'ah is the law that governs the worldly life for the sake of the next life. As a divine law it has, inevitably, its own special features which differentiate it from other systems of law developed by mankind. Some of those features are:

1. Shari'ah is Divining Origin (*al-Rabbaniyyah*). Thus, it is free from discrepancies and shortcomings and it receives respect, honour and full submission and obedience from people. This is because Allah (s.w.t.) Who created man knows what is the best to suit all the need of mankind.
2. Shari'ah is universal, realistic and contemporary (*al-Waqi'iyah*). This is proven by its nature that propagates the protection of interest and rejection evil, contains exceptional principles in the implementation of its laws (*al-Rukhsah*), and contains flexible and universal principles.
3. The rewards and punishments in Shari'ah is in this world and in hereafter. This is very effective

6 Ibid. pp. 18-29.

to curb crime and to educate people and restrain them from committing crime or other actions deemed to be against the law.

4. The completeness of Shari'ah. It covers all aspects of life and fulfills all the needs of mankind. There are no matters which does not fall under the jurisdiction of Shari'ah. Islam as a very comprehensive way of life consists of a full system of life that is compatible for mankind of all ages. Its teaching is not only confined to the belief and moral systems but also includes the law that is appropriate to be implemented to heterogeneous people.⁷

Concisely, Shari'ah law is the law that regulates man's actions to be compatible with his purpose of creation on earth. A careful survey of the Islamic injunctions would reveal that Shari'ah's aim is ultimately to serve human welfare both in this world and hereafter. With this regard, the Shari'ah promotes its believers to behave accordingly and protects them from indulging in any immoral acts which may harm themselves and invite Allah's wrath.

Shari'ah law is very different from English Common Law or the European Civil Law traditions. Muslims are bound to the teachings of the Prophet Muhammad (s.a.w.) whose translation of Allah's will is found in the Qur'an. Muslims are held accountable to the Shari'ah law, but non-Muslims are not bound by the same standard. Muslims and non-Muslims are both required to live by laws enacted by the various forms of government such as tax laws,

7 Ibid. p. 35-54.

traffic laws, white collar crimes of business, and theft. Shari'ah law does have separate courts for Muslims for "religious crimes" and contemporary non-religious courts for other criminal and civil matters.

Relationship Between Human's Moral and Shari'ah

In order to show the connection between human's moral and the Shari'ah, it is appropriate to shed light on fundamental background and categories of moral attributes. Principally, there are two kinds of moral attributes; basic human morals and Islamic morals.⁸ Both are closely interconnected to achieve the ultimate bliss both in this world and hereafter.

Basic Human Morals

This includes all those qualities that form the basis of man's existence as a moral being, regardless of the religion, faith, purity of soul and good intentions; for instance strength of will, power of decision, ambition and determination, patience and perseverance, courage, discipline and restraint. These will lead to possessing some noble characteristics such as self-control, generosity, sympathy, empathy, purity and discipline that may lead to a strong community and form a strong and vigorous group. It is indeed indispensable in order to achieve the success in the earth. However, it is only based on reasoning and logical thinking (*al-'Aql al-Mahdh*), not related to the spiritual element, hence, all the deeds are considered worthless in the eyes of Shari'ah. Allah (s.w.t.) says in Al-Qur'an:

8 Al-Maududi, Abu Al-A'la. 1991. *The Islamic Movement: Dynamics of Values, Power and Change*. Khurram Murad (ed.). Delhi: Markazi Maktaba Islami. p. 95-99.

“But the unbelievers their deeds are like a mirage (optical illusion caused by hot air conditions, esp that of a sheet of water seeming to appear in the desert or on a hot road) in sandy deserts, which the man parched with thirst mistakes for water, until when he comes up to it, he finds it to be nothing” (An-Nur 24: 39).

Again Allah (s.w.t.) says about the deeds performed by the unbelievers:

“And We shall turn to whatever deeds they did (in this life), and We shall make such deeds as floating dust scattered about” (Al-Furqan 25: 23)

According to the law of Allah man has to link between faith with action, struggle and striving. He has the capability to change and improve his life from bad to good that should be actualized within the Shari’ah boundaries. Man is unable to waive this duty, as it is a big fault to merely leave his life to his destiny (as he assumes) and put no efforts in ensuring his success in this world and the next. Allah (s.w.t.) clearly stresses this in Al-Qur’an by saying that:

“For Each (such person) there are (angels) in succession, before and behind him: They guard Him by command of Allah. Verily never will Allah change the condition of a people until they change it themselves (with their own souls). But when (once) Allah willeth a people’s punishment, there can be no turning it back, nor will they find, besides Him, any to protect” (Al-Ra’d 13: 11)

“Namely, that no bearer of burdens can bear the burden of another; that man can have nothing but what he strives for”
(Al-Najm 53: 38-39)

Therefore, to produce good crops and fruits, a farmer need to take a full account of the law that Allah (s.w.t.) has laid down for cultivation by applying a very firm and correct farming technique. This must have a balance and integral relationship between both. Similarly to the nature of mankind, he has to struggle to have both physical and moral elements in equilibrium. Man has these two distinct aspects which are different from one another but are complementary. The physical and animal side's efficiency and success depend on material resources and physical factors. Human efforts are as much subject to the laws of cause and effect, as the rest of the physical world. Whereas, moral aspect makes man a human being, to direct the physical along the right paths. In brief, the human life is governed by both physical and moral laws and he has to use the material resources physically, in the same time has the inner force to achieve the accomplishment.

Islamic Morals

This category is complementary to the basic human morals in many ways. Islam acknowledges human mind and does not deny human moral. Realizing that, the basic human moral qualities can be for both good and evil, like a gun in the hand of a robber and a true fighter, it must be perfectly blended with the Faith (*Tauhid*) and combined together in a harmonious way. The role of moral factors is to the service of the right cause and right direction. As such, the sole purpose of all human efforts, in actualizing his duty as the vicegerent and servant of God, is to seek the pleasure of Allah (s.w.t.) and fulfill His will. In Surah Al-An'am 6: 162 Allah (s.w.t.) says:

"Say: "Truly, my prayer and my service of sacrifice, my life and my death, are (all) for Allah, the Cherisher of the Worlds"

Therefore, the strength that emerges from the moral qualities is not exclusively devoted to the exaltation of oneself or one's family, people or country; rather it is directed towards the glorification of the God-ordained system. All the actions and sayings produced which are firmly rooted in *Tauhid* and are solely dedicated to God, not to worldly pursuits, are far stronger and enduring compared to which oriented towards materialism and worldly concerns. Thus, it is obvious to everyone that a person is willing to undergo a painful test and to endure a number of tough hurdles patiently; meanwhile, in contrast, he may not be able to resist the stirring of his carnal appetite when he has the opportunity to satisfy his lusts. A Hadith mentions the Messenger of Allah (s.a.w.) was asked, "One man fights to show off his valour, one out of hatred and rage, and one for ostentation; which of them is the way of God?" He (s.a.w.) replied, "*Only he who fights so that God's word may become supreme*". (Narrated by Al-Bukhari and Muslim)

Concept and Role of Islamic Morality (*Akhlaq*) In Shari'Ah Laws

Based on the above correlative notion of human's qualities, it is clearly understood that man and morality are interrelated; inseparably connected. In the Shari'ah point of view, the concept of morality is very vast; it encompasses the entire human's life from birth till death. Every actions of human being are considered as his morals, and thus are recorded and will be reckoned before his Lord in the Day of Resurrection. As a result, the concept of morality (or more precisely and comprehensively termed as '*Akhlaq*') is actually appeared; and it is, in fact, the sole reason of sending down the

Prophet Muhammad (s.a.w.) to man and Jinn; when he (s.a.w.) said in his famous tradition, "I have been sent to perfect the noble qualities of character" (Narrated by Ahmad and Malik).

Meaning of Akhlaq

Akhlaq is the plural of an Arabic word 'خُلُقٌ' and 'لِقَاحٌ' which literally means the religion, inborn character and innate disposition (والسَّجِيَّةُ الطَّابِعَةُ الدِّينِيَّةُ), temper, ethics, morality, nature and character.⁹ Among those meanings, the most notable one in English language is 'character'.¹⁰ It is understood that the Arabs refer *Akhlaq* to the firm character and unchangeable trait laid deep in the soul of man.¹¹ It signifies the moral character or the inner state of a man which is looked as his nature and peculiar qualities or attributes.

In the meantime, the word 'khuluq' is derived from the word 'خَلَقَ' means creation, origination, molding and formation which denote the outer fashion of a man as clarified by Qur'an in Surah Al-Sajadah 32: 7 as Allah (s.w.t.) says:

"He Who has made everything which He has created most good: He began the creation of man with (nothing more than) clay"

Composition of a man is basically consisted of body (which is related to the physical constitution that created from clay) and soul or spirit (spiritual feature of man which is connected with the

9 Ibn Manzur, 1990. *Lisan al-'Arab*. Vol. 10. p. 86.

10 Hornby, A.S. 2000. *Oxford Advanced Learner's Dictionary*. 6th ed. Oxford: Oxford University Press. p. 195-196.

11 Al-Asyqar, 'Umar Sulayman. 1996. *Nahwa Thaqafah Islamiyyah Asilah*. 'Amman: Dar al-Nafa'is. p.157.

Creator). Consequently, human beings are accountable to make their efforts to keep their body healthy and hygienic, similarly to put their full efforts to purify their soul.¹² Allah (s.w.t.) mentions in His book:

“By the soul, and the proportion and order given to it; and its enlightenment as to its wrong and its right; truly he succeeds that purifies it, and he fails that corrupts it!”

Surah Al-Syams 91: 7-10

For the technical meaning of *Akhlaq*, it is actually consistent with its literal meaning. Al-Imam al-Ghazali in his *Ihya' Ulumiddin* defines *Akhlaq* as “an established state (of the soul) from which actions proceed easily, without any need for reflection and deliberation”. He proceeds to say that “if this state is such that good actions – i.e. those which are praised by reason and the Shari’ah – proceed from it, it is called good character. If the actions which proceed from the state are evil, the state from which they derive is called bad character”.¹³

Here, we can understand that character must fulfill two requirements i.e. stability and spontaneous. Human’s character therefore refers to the inner disposition and the outer disposition. However, al-Ghazali clarifies that the character refers to man’s inward form (الباطنة الصورة) and denies the action, power of man and knowledge of virtue and vice as meaning of *Akhlaq*. *Akhlaq* is differentiated from knowledge, ability and action. Knowledge is usually concerned with a person’s information and understanding of good or bad. Despite of his knowledge of good and evil may not

12 Haron Din et. al. 2001. *Manusia dan Islam*. Kuala Lumpur: Dewan Bahasa dan Pustaka. p. 2-3.

13 Al-Ghazali, Muhammad Abu Hamid. 1994. *Ihya' Ulumiddin*. Beirut: Dar al-Khair. Vol. 3. p. 177.

necessarily exhibit good *Akhlaq*. A man may not have the power or ability to do action, but the willingness to do it could be well-established in his '*nafs*' (soul) and proceed from it easily. Spending money for a particular reason is a good action, but one may not necessarily be a generous man. Generosity may not have been well-established in his soul/nature; therefore it is not spontaneous or natural outcome.¹⁴ *Akhlaq*, therefore, refers to and deals with the condition of the soul. *Akhlaq* of a person to be good or bad depends on the nature or condition of the soul. The analogy may be between steel in a sword; if the steel is strong, so will the sword be. The Prophet (s.a.w.) said: "*The best among you in Jahiliyyah (the pre-Islamic period) are also the best in Islam, if they understand Islam*". (Narrated by Muslim).

How the Shari'ah Calls Muslims for Acquiring the *Akhlaq*?

Human's character is divided into two: the good and bad, known as virtues or praiseworthy characters (المحمودة الأخلاق) and vices or blameworthy characters (المذمومة الأخلاق).. The Shari'ah urges all Muslims to purify and cleanse their souls in order to acquire the virtues. These can be seen from the importance and role of *Akhlaq* as shown by the Qur'an and the traditions of Prophet Muhammad (s.a.w.) that explain how the Shari'ah is concerned on this matter; some of them are as follows:

1. The sole objective of Prophethood is the perfection of *Akhlaq*. This is proven by the Hadith which the Prophet S.A.W said: "*I have been sent to perfect the high moral standards*". This statement notifies that if the position of a person's soul is good all of his actions, reactions, behavior and conduct

14 Muhammad Abul Quasem. 1975. *The Ethics of Al-Ghazali: A Composite Ethics in Islam*. Petaling Jaya: Central Printing. p. 79-80.

would automatically be good and in conformity with the Shari'ah.

2. The best model of the best *Akhlaq* is the Prophet (s.a.w.) himself; due to this he was praised by Allah (s.w.t.) in Surah Al-Ahzab 33: 21. 'Aishah (r.a.) was once asked about the *Akhlaq* of the Prophet. She answered, "*The Akhlaq of the Prophet was the Qur'an itself*" (Narrated by Muslim). Since that, whatever commands, in imperative and negative forms, have come in the Qur'an, the Prophet (s.a.w.) put them into practice and therefore the Muslims have to follow him as perfect as they can.
3. The best person and believer is who possesses the best *Akhlaq*. The Prophetic statement with regard to this fact is quoted from these Hadiths: "*The best among you is he, who has the best Akhlaq*" (Narrated by Al-Bukhari) and "*Among the Muslims, the most perfect, as regards his faith, is the one whose Akhlaq is beautiful*" (Narrated by Abu Dawud).
4. Good *Akhlaq* makes dearest and nearest to the Prophet (s.a.w.) as it is reported that the Messenger of Allah said, "*On the Day of Judgement, the dearest and closest to me, among my companions will be those possess the best Akhlaq*" (Narrated by Ibn Majah).
5. *Akhlaq* is the way to enter Paradise; as reported by Abu Hurairah (r.a.) the Messenger of Allah (s.w.t.) was asked about a thing which would cause most of the people to enter into Paradise, the Prophet (s.a.w.) said, "*It is the fear of Allah and a beautiful Akhlaq*" (Narrated by Al-Tirmizi).

Characteristics and Purposes of *Akhlaq* According to Islamic Shari'ah

There are numerous features of *Akhlaq* in the eyes of Shari'ah which make it special and distinct from the other moral systems, amongst those features are¹⁵:

1. Emanation of Islamic *Akhlaq* from Islamic 'Aqidah and its very close connection with the faith and *Muraqabatullah*. *Akhlaq* is based on *taqwa* (Allah's fearing) which means to obey all His commands and injunctions and get rid of all His forbiddances wholeheartedly. Therefore, *Akhlaq* and *Aqidah* are inseparable elements. The Qur'an is the main source of human's character, and any reform on an individual or social level must start with moral transformation. Due to this, a man once came to the Prophet (s.a.w.) from before him, and asked, "O the Messenger of God! What is religion?" the Prophet (s.a.w.) replied, "*Good character*". Conversely, the secular concept of morality is based on interest and opportunism; they think that faith and morals may not necessarily be related. Hence, its sole aim is realization of interest by any means, even though it is not in harmony with the interest of God.
2. The Islamic *Akhlaq* is comprehensive in nature encompasses the whole dimensions of inter-relationships of human being. It relates man to his self, to his fellow family and society, to the environment that he is living and to his Creator. And the last is the ultimate priority of man to be concerned on, which distinguish between Islamic *Akhlaq* from the other

15 'Uqlah, Muhammad. 1986. *Al-Nizam al-Akhlaqi Fi al-Islam*. 'Amman: Maktabah al-Risalah al-Hadithah. p. 39-73.

moral systems; which are more concentrate on self interest and individualism.¹⁶

3. Islamic *Akhlaq* is stable and constant. This refers to the stableness and constancy of the fundamental virtues of a society, for instance patience (برّالص) , truthfulness (دقّالص) , trustworthiness (الأمّانة) , sacrifice , modesty (الايثار) and abstinence (الحياء) . (ةالعرف) These virtues are constant and unchangeable even though the customs and circumstances are changing. This is because the natural disposition of human being is stable and also the nature of *Akhlaq* comes out of the religion itself that Allah the Omniscient is the Law-Giver. Some people believe that various moral codes should be changed or updated in accordance with new circumstances. In Islam, this approach is refused if the meaning of “updating” is to change fundamentals or principles of its moral code. But change is acceptable if it entails the adaptation of the applications, and not the principles of the moral code so as to suit the circumstances of people. Islam teaches that the source of moral principles should come only from God, and that people should be elevated to these moral standards, instead of degrading the moral standards to human defects.¹⁷
4. The values of Islamic *Akhlaq* conform to the nature of human being; it is neither a complicated and philosophical concept nor a myth and fantasy. Everyone can purify himself and

16 Al-Maududi, Abu Al-A'la. 1990. *Towards Understanding Islam*. Kuala Lumpur: A.S. Noordeen. p. 102-115.

17 Jamal Badawi. 15 September 2005. “Characteristics of the Islamic Moral Code”. *Introducing Islam*. <<http://www.islamonline.net/English/introducingislam/Worship/Heart/article09.shtml>>

beautify his character with the virtue introduced by the Shari'ah. For that reason, the Prophet (s.a.w.) was a human being and not an angel in order to be the best example to be followed by all.

5. Islamic *Akhlaq* is a moderate and balance morality system in all aspects. It rejects all sorts of excessiveness, remissness and negligence (والتفريط والإفراط). It is a mean between idealism and fantasy and between angelic state and animal state. Man is more to be unjust to his self than to any other. He has the tendency to go extreme such as overpowering his desire and gratification which may lead to maladjustment and disequilibrium in his character. He is fond of eating and drinking but this may lead him to gluttony that endangers his health and life. On the contrary, if he suppresses his genuine desire and refuses to satisfy the physical and physiological needs, he will put himself in trouble alike. Islam stands for human's welfare, asking him to be balance in life. That is why the Shari'ah clearly declares that our own self also has certain rights to be fulfilled. Shari'ah forbids all things which are injurious to man's physical, mental or moral existence. Allah (s.w.t.) mentions in His Qur'an:

"Make not thy hand tied (like a niggard's) to thy neck, nor stretch it forth to its utmost reach, so that thou become blameworthy and destitute". (Al-Isra' 17: 29)

Elsewhere Allah (s.w.t.) says:

"Those who, when they spend, are not extravagant and not niggardly, but hold a just (balance) between those (extremes)". (Al-Furqan 25: 67)

Based on the above explanation, *Akhlaq* in the Shari'ah law is aimed at forming the aspired Muslim individuals whose characters are in agreement with the original purpose of human's creation. The aims can be classified into individual aims and societal aims.

The Shari'ah aims at changing a Muslim individual towards an utmost level of Faith and character which is distinguished and distinctive. He is a moderate, decent; well-brought-up being who possesses a very close relationship with his Creator with a full conscious that Allah (s.w.t.) is always watching all his deeds, openly or secretly (*al-Muraqabah* and *al-Taqwa*). He understands very well the purpose of his creation and his existence in this world, hence, accomplishes as best as he can all rights and responsibilities that he is shouldering.¹⁸

On the other hand, in the societal context, *Akhlaq* aims at establishing a strong, well-mannered and ethical society, thus, creating a harmonious and peaceful neighbourhood and country. On this reason, a good *Akhlaq* is vital to ensure the eradication of social ills and the development of human spirit and guarantee the social and economic justice as well as strengthening solidarity among the *Ummah*.¹⁹

The Need and Essential of Moral Surveillance in Muslim Society

By understanding the aforementioned concepts of Shari'ah and Islamic morality or *Akhlaq*, it is easier to look into the problem of moral surveillance under the Shari'ah law. In order to protect

18 'Uqlah, Muhammad. 1986. *Al-Nizam al-Akhlaqi Fi al-Islam*. p. 79-89.

19 Ibid. p. 91-95.

the five important indispensables in Islam, namely religion, life, intellect, lineage and property, Shari'ah law has provided worldly punishments in addition to that in the hereafter. Islam has, in fact, adopted two courses for the preservation of these five indispensables: the first is through cultivating religious consciousness in the human soul and the awakening of human awareness through moral education; the second is by inflicting punishments that are educative, preventive and mainly deterrent, which is the basis of the Islamic criminal system. Therefore *Hudud*, Retaliation (*Qisas*) and Discretionary (*Ta'zir*) punishments have been prescribed according to the type of the crime committed. Both are very significant in creating a well-mannered and determining a peaceful and harmonious place to live.

As far as morality is concerned, Shari'ah law is mainly used in guiding an individual's behaviour. As we have pointed out earlier, man has certain rights to be preserved. Specifically, there are two main categories of rights: Rights of Allah (*Huququllah*) and Rights of the Servants (*Huquq al-'Ibad*). Unlike the concept of morality in common law which proceeds on separation between religion and law, the Shari'ah law gives the most priority to the religion and thus the preservation and protection of Allah's rights has preference over the preservation and protection of the servants rights. In this context, there are the duties of the state to safeguard the *Maqasid al-Shari'ah* (purposes of the Shari'ah); the establishing of *Din*, the creating of conditions for the healthy flourishing of life, the strengthening of the family system, the creation of conditions for the development of mind and the striving for the growth of communal and individual wealth.²⁰ Thus, a Muslim individual must adhere to the principle that Allah's rights in the matter of protecting the five

20 Imran Ahsan Khan Nyazee. 2003. *Islamic Jurisprudence (Usul al-Fiqh)*. Petaling Jaya: The Other Press. p. 105.

fundamental values of Shari'ah shall prevail and cannot be violated even though it is inconsistent with his private interest.²¹ It is clearly mentioned in Surah Al-Hujurat 49: 1, Allah (s.w.t.) says:

"O ye who believe! Put not yourselves forward before Allah and His Messenger. But fear Allah: for Allah is He who hears and knows all things"

Further, one should be highly conscious that not all things that he assumes beneficial to his part is necessarily his right and thus should be defended, it may turn otherwise because Allah (s.w.t.) knows best what is the best for him. The Qur'an cites:

"Fighting is prescribed upon you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allah Knoweth, and ye know not" (Al-Baqarah 2: 216).

Institution of Hisbah and 'Amal Ma'ruf Nahi Munkar

The principal characteristics of moral right are the feeling of guilt, remorse and shame under secular percepts of morality. In Shari'ah law, it could be equally true but here it is not only the psychological feeling of an individual but also his fear of God's wrath and punishment in the hereafter.²² This is due to the nature of the Shari'ah as a divine order which makes it having the sense of respect and honour from the believers in obeying all its injunctions as well as is deeply concerned about the issue of maintaining good *Akhlaq* in its true sense. To protect Muslim's behavior and morality

21 Al-Zuhaily, Wahbah. 1998. *Usul Al-Fiqh Al-Islami*. Dimasyq: Dar Al-Fikr. Vol. 1. p. 152-157.

22 Mohammad Tahir Haji Mohammad. 2003. *Rights and Duties*. Petaling Jaya: Ilmiah Publishers. p. 283.

is to make him behave according to the revelation's guidelines and to take the Shari'ah law as the benchmark and boundary.

On account of this, in Shari 'ah law, the system of *Hisbah* (ombudsmanship) is an integral part of the Shari'ah Judiciary (*Al-Qadha'*) whose jurisdiction is based on the principle of enjoining good and forbidding evil. *Hisbah* is a religious duty and considered as a *fard* (obligatory) on those who administer the Muslims affairs and hence he has to appoint those who are qualified to perform the duty. The *hukm* is *Fardh al-Kifayah* (communal obligatory act) but it may turn to *Fardh al-'Ayn* (universal obligatory act) if there is only one person to rely on to perform this obligation or if a person is appointed as a *Muhtasib* by the ruler.²³ Its legitimacy is based on numerous Qur'anic ayah and the Hadith of the Prophet (s.a.w.) that stress on the importance of enjoining what is virtuous and forbidding what is vicious. For instance, Qur'an cites:

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity" Surah Ali 'Imran 3: 104.

And in Surah Al-Nahl 16: 90 Allah s.w.t says:

"Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition"

The Prophet (s.a.w) also said, *"Whoever of you sees an evil (anything that is disapproved of by Allah) must change it by his hand. If he cannot, then he must change it by his tongue, and if he cannot, then he*

23 Zaydan, Abdul Karim. 1998. *Nizam al-Qadha' Fi al-Syari'ah al-Islamiyyah..* Beirut: Muassasah al-Risalah. p. 265-266.

must change it by his heart - and that is the weakest manifestation of faith" (Narrated by Muslim).

In another Hadith, the Prophet (s.a.w.) said, *"Help your brother where he is the oppressor or the oppressed"*. The Companions stated that they knew how to help him if he was the oppressed, so they asked the Prophet (saw) how they shall help him if he is the oppressor. The Prophet (s.a.w.) replied, *"Prevent him from committing oppression. That is helping him"*. (Narrated by Al-Bukhari).

The Prophet (s.a.w) further said, *"The example of the person abiding by Allah's order and restrictions in comparison to those who violate them is like the example of those persons who drew lots for their seats in a boat. Some of them got seats in the upper part, and the others in the lower. When the latter needed water, they had to go up to bring water (and that troubled the others), so they said, 'Let us make a hole in our share [part] of the ship (and get water) saving those who are above us from troubling them.'* So, if the people in the upper part left the others do what they had suggested, all the people of the ship would be destroyed, but if they prevented them, both parties would be safe." (Narrated by Al-Bukhari).

In another Hadith the Prophet (s.a.w.) said, *"Religion is nasihah"*. Upon this the companions said, *"For whom?"* and he (s.a.w.) answered, *"For Allah, for His Book, for His Messenger and for the Imams of the Muslims, and the generality of them"*. (Narrated by Muslim).

Therefore, *Hisbah* is basically a question of sheer morality. Certainly, the aim of such ethical principle is to establish justice and maintain it as well. Besides, it is also to secure the interest of

man that pertains to Hereafter which is considered as the primary purpose of the Shari'ah law.²⁴

Al-Muhtasib and/or his deputies as authorized judge(s) must enjoy high qualifications of being wise, mature, pious, well-poised, sane, free, just, empathic, and learned scholar (*faqih*) or at least well-equipped with the knowledge of vicious or forbidden (*Al-Munkar*) that are agreed upon. He has the ability to ascertain right from wrong, and the capability to distinguish the permissible from the prohibited.²⁵ Hence, *Al-Muhtasib* is entrusted to secure the common welfare and to eliminate injuries to society as a whole even if such honourable task requires him to take a stance against the ruling governance.

The nature of *Al-Muhtasib's* tasks is comprehensive; to check, control and correct. He takes decisions on the spot, in any place at any time, as long as he protects the interests of the public and in accordance with the Shari'ah law, order, norms (*urf*) and socially accepted practices. His responsibilities are almost open-ended in order to implement the foregoing principle: commanding the good and forbidding the evil of wrongdoings. The duties of *Al-Muhtasib* permeate throughout every aspect of human, animal and environmental life. With regard to human's aspect, it comprises practically all aspects of society as well as everything in day-to-day life and one of the most important aspect is concerning to morality and manners.²⁶

24 Imran Ahsan Khan Nyazee. 2003. *Islamic Jurisprudence*. p. 204-205.

25 Zaydan, Abdul Karim. 1998. *Nizam al-Qadha' Fi al-Syari'ah al-Islamiyyah*. p. 272-277.

26 Ibid. p. 283-288.

Regarding the degrees of *Hisbah* actions Al-Ghazali had outlined eight degrees of *Al-Muhtasib's* actions which should be applied gradually with great care and consideration which are as follows:

1. Seeking knowledge of the *Munkar* without spying nor forcing others to solicit secret information unless there was a report made by two rightful persons in advance. Here *Al-Muhtasib* is not a trespasser.
2. To inform the violator of the forbidden lest he/she is then ignorant about the wrongdoing. The right to know is imperative before applying any punishment.
3. To obstruct the forbidden through preaching, advise and fearing the punishment of Allah.
4. To chide or to scold with strong wording, not vulgar, this may be practiced after *Al-Muhtasib* being a kind and discreet reminder.
5. To affect change manually, like forcing a man not to wear silly clothing, or breaking a jar of wine, or pulling the aggressor out of a house which is not his and so forth. The purpose here is to get rid of the forbidden physically.
6. Threatening with things may become worse in the near future, if the aggressor is not reprimanded.
7. Applying physical punishment without using any weapon so as to avoid any damage or any bleeding.
8. To use suitable weapons indicating that serious actions that might take place.²⁷

27 Al-Ghazali. 1994. *Ihya' Ulumiddin*. Vol. 3. p. 33-39.

Although the above measures are carried out by *Al-Muhtasib*, he is required not to choose a stronger punishment unless a milder one is either ineffective or seems to carry no weight to the person already admonished. This is because *Al-Muhtasib* operates in a system of checks and balances. His actions should not involve a greater mischief than the one he wants to forestall.²⁸ However, as previously mentioned some of these steps may vary subject to circumstances, setting and position of the *Muhtasib*. If the *Muhtasib* is appointed officially by the government therefore he possesses more authority in enforcing the *Hisbah* like having the authority to disclose the wrongdoing by spying after receiving reports and to enter the respective premises without asking for permissions.

Concluding Remarks

Islam is not just a religion which only deals with all sorts of rituals, but it is much more than that. In fact, Islam is an all-embracing socio-politico-religious principle that encompasses every field of human endeavour. Furthermore, Islam is a basically two-dimensional creed: vertical (towards Allah) and horizontal (commensurating with all peoples). These two aspects are always complementary, be here in this life, or in the hereafter on the Day of Judgement. Thus, this doctrine of the mean introduced by Islam entails a balance concept of human's character that calls for physical and spiritual well-being.

Due to this respect, Islam sets the highest possible standard of morality. This is bound to provide limitless avenues for the moral evolution of humanity. The main objective of the Islamic moral code is to create an "Islamic personality" that lives by its deep faith of loving, conscious submission to God and is nourished by His

28 Ibid. Vol. 3. p. 39-41.

divine love. These features motivate the actions of this personality and help it restrains itself from temptation, due to its fear of displeasing God. It also understands and accepts the dignified role that has been given by Allah (s.w.t.) to man as His trustee on earth, which gives it a meaningful feeling of its existence.

To have profound and sustainable moral elevation, it must be concurrent with the moral code that is revealed by Allah (s.w.t.) which in itself is not temporary due to certain circumstances or basic benefits. By making Divine revelations as the primary source of moral code it gives permanence and stability to the moral standards which afford reasonable scope for genuine adjustments, adaptations and innovations that make everyone obey the moral law even without any external pressure. This does not mean that Islam is against dynamic changes in society. Rather, it proposes a balance: divine principles should not be tampered with, as this would lead to the damage of the foundation of the moral code revealed by Allah, which is the base for all human actions.

Although Islam advocates a free-will-based of life system, its code of morals and ethics are a built-in concomitant to safeguard disciplining human behavior lest it goes astray. The Shari'ah law is therefore needed to regulate all human actions and characters as it contains a comprehensive set of dogmas, legal and ethical doctrines. Recognizing Shari'ah law as the ultimate law revealed by Allah (s.w.t.) Muslims must first and foremost obey and submit to Allah's will. They should acknowledge that Allah (s.w.t.) is the One Who knows everything what is the best for His servants.

If people were to meet these ideal criteria, they would be able to constitute a community which would ordain good and forbid injustice and evil in society. In this regard, the Shari'ah law constitutes a *Hisbah* system, which one of its duties is responsible

for the sustenance and control of Muslim's behaviour and character, purporting to establish a polite and decent Muslim society in order to maintain a peaceful living for all, including non-Muslims. In short, the moral surveillance in Shari'ah law is vital to conform Muslims character to the Islamic code of conduct that both should always be in agreement regardless of time and place they are in.

In Malaysian context, looking at the nowadays scenario of the deteriorating immorality of Muslim teenagers especially, and the accelerating number of Syariah crimes and social ills, we are therefore in a very high need to a vigorous enforcement of such moral surveillance. Though there are voices of dissatisfaction heard from many parties including the non-Muslims on this issue, to the extent that there is a demand to repeal the Islamic moral laws in our country, as a country that Islam is the constitutional religion, the government has the right to retain the enforcement of existing moral vigilance teams and play its role in defining and controlling the morality of its Muslim citizens. Any objections to the enforcement of the Islamic laws of morality on Muslims will be to undermine the morality of the Muslim community. To prevent any such a development, all citizens in this country must understand very well this Shari'ah matter or be forced to respect such laws. It should be borne in mind that some matters related to Muslim affairs such as justice, moderation, public interest, personal right and morality are should be defined in the realm of Shari'ah, not other laws. It needs to be stressed that the matter concerns Muslims only, as only Muslims are the subject of the Shari'ah laws under the Syariah Criminal Offences Act/Enactment. It is unconstitutional for a non-Muslim to interfere in the religious rights of Muslims or for that matter, for anyone to question the teachings of a religion he does not belong to.

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