

Consideration for 'Want' and 'Necessity' in Shariah♦

The Islamic Shariah is binding and obligatory as on Muslims who live in countries governed by non-Muslims as it is on those who are governed by the Muslims. The extent of government's governance today has not remained restricted to only a few areas, as it has assumed for itself the right to make laws, plan and oversee all aspects of human life. Millions of Muslims living in the system and atmosphere raised on Western non-Islamic style (especially those who live in non-Muslim countries) are in acute suffocation and constraint as the observance of Islamic Shariah has been rendered more difficult for them due to governmental legislation. If they give up observance of the Islamic *injunctions* their heart censures them. If, on the other hand, they strictly abide by those Islamic *injunctions* they are put to severe constriction and restriction.

Under such circumstances it is badly needed to identify those basic guidelines in the light of the principles of *Raf-e-Haraj* (Elimination of Constriction), *Daf-e-Zarar* (Removal of Harm), *Zaroorat* (Need) and *Izterar* (compulsion) on which grand theologians ('*Ulemā*') and the people responsible for passing edicts (*Ifta*) may take proper decisions on general problems and needs of the present age so that the Ummah can be relieved of acute restriction and constriction where there exists any possibility and probability in this regard in Shariah, providing with ease and amenity to the Muslims, within the precepts of Shariah and the serious danger posed by unrestricted use of the principle of *Haajat* and *Zaroorat* could be prevented. Therefore, the Seventh Fiqh Seminar of Islamic Fiqh Academy considered the pertaining issues and the following decisions were made.

Resolution I

- 3.1 Basically there are five *Masaleh* (exigencies) whose achievement is the object of the Islamic laws: Protection of (a) Religion (b) Life (including chastity and honour) (c) Intellect, (d) Wealth and (e) Race. The thing, which is so imperative that its want causes strong presumption, rather surety, of the loss of these expediencies, is called 'Necessity'. Necessity is a permanent terminology of the jurists, which includes 'Want' as well. However, comparatively 'Want' contains vast and general connotations of 'Necessity'.
- 3.2 Want is a state in which man indulges to achieve the above noted five expediencies and in doing so falls prey to such toil and harm from which

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Shariah aims to protect. However, the jurists sometimes interpret 'Want' as 'Necessity' and vice-versa.

- 3.3 'Want' and 'Necessity' both are basically related to toil and labour. To a certain degree toil is obligatory in all precepts of Shariah and it cannot be used in any change of the precepts. Sometimes the toil becomes so rigorous that if no leniency is made, it surely causes grave harm. This stage is called 'Necessity'. Sometimes the toil is comparatively less severe but in comparison to the toil made obligatory by Shariah for the human beings it is of extra ordinary nature. This state is 'Want'. Hence, the basic difference between 'Want' and 'Necessity' is only the fluctuation of labour.
- 3.4 The jurists have differentiated in the provisions of 'Want' and 'Necessity' as well, which, in short, is that under 'Necessity' there can be room for exemption from such definite and categorical orders, which are irrevocably prohibited. But if Want is not of prohibitive nature it can have the room of exemption only in such orders which are not required to be prohibited by themselves but for the remedy and prohibition of other forbidden things.
- 3.5 In case the Want is of general nature and people are in general exposed to it, such Want falls under the category of Necessity and causes exception and singularity in the Categorical Sources (*Nusus*).
- 3.6 Toil is the foundation of Want and Necessity. Since toil is a relative thing there can be differences in the determination of Want and Necessity in view of the place, area, prevalent situation, the people's capacity of endurance; and the political status of the Muslims should also be taken into account, i.e. in countries where Muslims are in minority. Therefore, while determining Want and Necessity the countries like India where the Muslims are not in a position of playing effective role in legislation, this angle should also be taken into account.
- 3.7 Determination about something whether it has the status of Want or Necessity under prevailing circumstances requires deep insight, careful screening of facts and deep contemplation. Therefore, it is the duty of jurists and theologians in every age to determine which matters have come under the category of Want and Necessity, which can be efficacious on the provisions, keeping in view the condition of that age. It is also very necessary that the individuals should not take such delicate and important decisions but a body of authentic and prominent jurists and theologians of the age should take the lead so that the door of libertinism may not be opened in the name of the prevention of harm to the Ummah.
- 3.8 If some special condition of a forbidden thing has been exempted from prohibition by any of the prime sources (*Nusus*) of Islam either explicitly or through guidance, in that case it no longer remains prohibited and it is

necessary to take advantage of this exemption. Apart from this, where exemption or relaxation is proved through contemplation or collective deliberation of the jurists or by some categorical order (*Nas*), it is only for the removal of sin.

- 3.9 The facility provided on account of Want or Necessity is exceptional in nature as per principle.

Resolution II:

The injunction of permission and indulgence on the ground of Necessity will be applicable to nearly all the chapters of jurisprudence with the exception of '*Haram-le-ainehi*' like the rights of persons such as murder of *Nafs* (Person) and *Zina* (Fornication), etc. and the limits of its influence will be different according to the details noted below.

- 3.10 If the injunctions belong to the category of the commanded ones and their non-compliance afflicts only rights of the Legislator, like uttering words of blasphemy, etc. in such a case although these are themselves unlawful but will be allowed to one who is in the state of helplessness and constrain, i.e. in spite of its illegality it will not be considered a sin.
- 3.11 If the injunctions belong to the category of the forbidden things and their violation affects only the rights of individuals like consumption of pork, dead/carrion, drinking of wine, etc. in an involuntary state, such things becomes permissible only in case of compulsion and coercion, hence these afflict no sin.
- 3.12 If the injunctions are in the category of forbidden things but their disobedience afflicts the rights of other people, e.g. culpable homicide, rape, adultery, destruction of the property of a Muslim, etc. the matter it will be dealt in two ways.
- a) If it is possible to compensate the right of people, e.g. the destroyed property of a Muslim can be compensated by payment or support, it will be permitted in that case of duress.
 - b) But if it is not possible to compensate the destroyed right of the people as can be in the case of murder or rape, it will not be permitted even if it is committed under duress, and it will be illegal to act upon it.

Resolution III

Sometimes 'Want' also plays an effective role like 'Necessity' in the permission of the prohibited and sometimes under certain conditions 'Necessity' is made replacement to 'Want'. But there are certain conditions and limitations, which should be kept in mind positively.

- 3.13 Prevention of harm should be the motive in allowing the prohibited things for the sake of 'Want', and not the acquisition of any benefit. No prohibited thing can be permitted for the sake of benefit.
- 3.14 When the motive is to avoid the unaccustomed labour on account of 'Want', such labour cannot be counted as reliable Want, which is generally associated with human actions and in the injunctions of Shariah.
- 3.15 When there is no other legal alternate is available to achieve the end or if there is such a way, it is accompanied with unbearable difficulties.
- 3.16 Any order granted on account of 'Want', shall be consonant to the degree of 'Want' and no extension will be permitted in it.
- 3.17 No greater harm should emerge from avoiding a harm.
- 3.18 The 'Want' should be genuine and not a fancied one.

Resolution IV

The following conditions should be positively found regarding genuine 'Necessity' in order to permit the prohibited things.

- 3.19 The Necessity should be present and not presumed or surmised to occur in future.
- 3.20 There should be no other legal alternative available.
- 3.21 Danger of death or loss should be definite or it should be very strongly presumed one.
- 3.22 There should be surety that use or commission of the prohibited will ensure revocation of any grave harm and in case of non-usage the grave harm will positively occur.
- 3.23 The prohibited should be used only in accordance to Need.
- 3.24 Its commitment will not cause any other mischief either greater than it or equal to it.

Resolution V

- 3.25 There are several reasons in the background of the cases wherein the Shariah due to "Want and 'Necessity' grants permission. The theologians and jurists call these reasons as "reasons for exemption" and "reasons for remission". According to a well-known statement these reasons are seven in number:

Journey, ailment, abhorrence (duress), forgetfulness, ignorance, distress and general harm, out bleak and deficiency.

- 3.26 Very often, Want, Necessity and avoidance of harm is involved in the orders based on 'common and general usage', although, from juristic point the field of common usage and the orders derived from it are somewhat more vast.

Resolution VI

- 3.27 It is unanimously agreed that in case of general harm and distress in some matter, it is sometimes given the status of Necessity and Exigency, and illegal things are permitted if there is an extra-ordinary harm and distress to the society.
- 3.28 If general necessity, general harm and distress occur in matters whose prohibition is established by the Categorical Sources (*Nusus*), it is a delicate matter of great responsibility to exempt them from prohibition in the case of Necessity. All the collective and social Necessities are not of the same degree and their sphere and inevitability is also different from one another. Therefore, it is imperative to study each of them deeply before taking juristic decision regarding collective Necessities.¹
- 3.29 When a Collective Necessity assumes so much importance that it could hardly be avoid it and there may be no legal and feasible alternative of it, or there may be no way out due to the local legal coercion, in such cases justification can be found for the remission in that matter, in spite of its categorical prohibition but only till such a Necessity lasts.
- 3.30 Very deep and detailed examination of the collective Necessity is very necessary before taking a decision of this serious nature and the help of legal and social experts should be requisitioned according to the need, in this regard. After consulting experts of the field in which the collective Necessity arises, and having obtained necessary details of the issue, the God- fearing prudent theologians and jurists can conclude which collective Necessity has reached the stage where the *Millat* will be gravely harmed either immediately or in near future if this necessity is over looked, hence, decision of its justification should be adopted.
- 3.31 The theologians and jurists should not take the decision through their individual efforts about specification or exemption in the categorical orders on the ground of collective Necessity. Instead, the decision should be taken by a large number of theologians and jurists through their individual efforts. Instead, the decision should be taken by a large number of theologians and

¹ **Note:** Mufti Shabbir Ahmad Qasmi of Moradabad dissents in the remission on the ground of public Necessity in the categorically prohibited matters.

jurists after collective deliberation in the light of juristic principles keeping in view the injunctions of Shariah and the reasons behind them. Only collective decisions in such delicate matters are proper and satisfactory.