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 الله كورحميه الله عمر الزهيف الامين العام للرابطة العالم الاسلامى
 من المولى ادهبى النورى
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وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

And when ye judge
 Between man and man,
 That ye judge with justice:

IV : 58

**ISLAMIC LEGAL PHILOSOPHY
AND THE
QUR'ĀNIC ORIGINS OF THE
ISLAMIC LAW
(A LEGAL-HISTORICAL APPROACH)**

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گر تومی خواہی مسلمان زیتن نیست ممکن جز بقراں زیتن

از شریعت احسن التقویم شو

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SYED HABĪBUL HAQ NADVĪ 1989

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THE BOOK

Law in Islam is an integral part of Revelation. It is a sensitive barometer of Islamic culture. The four Schools of *Fiqh* (Jurisprudence) are the revealing mirrors of the legal culture of Islam. God, being the Creator and the Sustainer of the World, is the Law-Giver, and man, being His vicegerent (*Khalifa*), is obligated to enforce them on earth. This has been the *modus operandi* of Islamic legal philosophy. Since Islam projects an ontological and religio-philosophical concept of the universe, of man and his culture, it aims at promoting revelational culture through the enforcement of *Shari'a*. Violation of *Shari'a* Law is not only an offence committed against the State or the community alone, but is also a sin against God, punishable in the Hereafter. It is this transcendental consciousness in Islamic legal philosophy that provides a deterrent against crimes and evils. Islamic Law is deeply embedded in the Holy Qur'an and the *Sunna*. It precedes both the society and the State, controlling them and is not controlled by them. Divine Law is beyond the sanctions of either the tribal chiefs or the parliamentary legislations. Since man-made law has no ontological foundation, it suffers from anarchy of interpretations and instability. The teleological school claims that law is merely the product of human reason and it has nothing to do with metaphysics. The sociological school of law is involved in the material and social needs of humanity. The historical school of Law accepts customs alone as the source of law. Some schools argue that Jurisprudence has nothing to do with morals, goodness or badness of law. They disown God and the spirituality of Law. Some legal philosophies advocate utilitarian doctrines and claim that morality of action is determined by the concept of utility and the greatest happiness of the greatest number should be the sole end of legislation. They preach the hedonistic principle of happiness as the chief objective of Law. The instrumental approach pleads that law is merely an instrument of State power used as a passive tool by the ruling class. It does not derive its effectiveness from cultural mores. These are the basic limitations of man-made laws which are not compatible with the spirit of the legal philosophy of Islam. The fact is that law is rooted in the deepest beliefs and emotions of a nation. Holistic approach is essential to ensure that law draws its legislative justification from the revealed wisdom and law has to play an active functional role in shaping the cultural order. It is an instrument of social change. If God is the source of life why not of law?

It was during the Colonial rule that Islamic Law was disfigured beyond recognition. The Colonialists had confined the *Shari'a* to the orbit of Family or Private Laws, as if other branches of Islamic Laws, such as, the Commercial, the Criminal, the Constitutional and International Laws, etc., did not exist at all. The Colonialists and their clients, in fact, indulged into profane meddling with the *Shari'a*. The battle now waged between the forces of Islamisation and secularization of Islamic Law is going on. The secularists want to introduce a unified civil code or effect the eclectic codification. But such legal modernism, liberalism or the methodology of reforms to articulate changes that could modify the effective substances of *Shari'a*, have been rejected by the forces of re-Islamification and contemporisation of Law in Muslim countries. *Ijtihad*, the principle of dynamism in Islamic legal system, which operates as a prime mover to new ideas and safeguards the right of personal juristic and legal reasonings, is advocated by the Fundamentalists. It has been used in the past and can be used even today for the purpose of assimilation and adaptation, provided it is in conformity with the Qur'an and the *Sunna*. Man made law, which has rejected the Divine guidance, is doomed to fail for it can not fulfil the spiritual needs of man, which is the core of Islamic Law.

The present book which is the first of its kind ever produced in this country, projects a sublime idea of Islamic legal philosophy. It is splendidly direct and spontaneous, and probes into searching and exciting questions with epigrammatic brilliance. It is essential reading for everyone who wants to diagnose the symptoms of legal tensions in the Muslim World and to pulsate the fever of reforms running very high in these countries. It also probes into the causes of allergic reaction of the sworn enemies of Islam who are against the *Shari'a*. Specialists as well as non-specialists will find this book an illuminating piece of literature on Islamic Law.



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