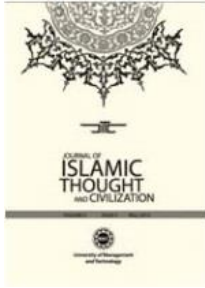


Volume 5 , Issue 2



Journal of Islamic Thought and Civilization (JITC)

Volume 5, Issue II, Fall 2015

ISSN: 2075-0943, eISSN: 2520-0313

Journal DOI: <https://doi.org/10.32350/jitc>

Issue DOI: <https://doi.org/10.32350/jitc.52>

Homepage: <https://www.umat.edu.pk/jitc/home.aspx>

Journal QR Code:



Article: **Muhammad Asad's Approach to Shari'ah:
An Exposition**

Author(s): **Showkat Ahmad Dar**

Online Pub: Fall 2015

Article DOI: <https://doi.org/10.32350/jitc.52.02>

**Article QR
Code:**



Showkat Ahmad Dar

**To cite this
article:**

Dar, Showkat Ahmad. "Muhammad Asad's approach to Shari'ah: An exposition." *Journal of Islamic Thought and Civilization* 5, no. 2 (2015): 15–23.
[Crossref](#)

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A publication of the
Department of Islamic Thought and Civilization
School of Social Science and Humanities
University of Management and Technology
Lahore

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Muhammad Asad's Approach to Shari'ah: An Exposition

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Abstract

Sharī'ah, the sacred and revealed guidelines from the Creator, that covers of all the tenets, beliefs and laws of Islam. However, in the contemporary times what essentially constitute the "Sharī'ah" and accordingly its implementation is complex. Some argue that it includes the laws coming forth from clear-cut injunctions of Qur'an and Sunnah while others add Ijmā and Qiyās as the sources of Sharī'ah. Besides, limiting the establishment of Sharī'ah merely to the implementation of some corporal punishments (literally adūd, Qiā and Ta'zīrāt) created an Islamophobic environment and people think these laws as inhuman. On contrary Sharī'ah is considered akin to human nature and indispensable for the peace and harmony in the world; the absence and negligence of which in practical level causes imbalance and disorder in the world. Muhammad Asad (1900-1992), a great Muslim thinker with Jewish roots tried to eradicate the misconception about the Sharī'ah from Muslim and non-Muslim reader. He proposed that Shariah, if applied, would be helpful in minimizing the tension caused due to the presence of various schools of jurisprudence. The present study is an attempt to explore Asad's approach and understanding of Sharī'ah and analyze his propositions that are still valid in the contemporary period.

Key Words: *Sharī'ah, Qur'an, Sunnah, Ijma, Qiyās, adūd, Qiyās and Ta'zīrāt*

Introduction

Muhammad Asad (1900-1992), formerly Leopold Weiss, has emerged as a writer, adventurer, diplomat, and a Muslim thinker par excellence in the 20th century. His writings cover large area, which include autobiography, travelogue, Islamic studies, Jurisprudence, and *Qur'anic* exegesis, secularism and westernization, political theory and constitutional law. Born in a Jewish family, he had a thorough grounding in the Hebrew religious lore and the sacred scriptures. He was very critical about his ancestral religion and regarded it not more than a series of restrictive regulations.¹ Notwithstanding the blatant face of degenerating Muslim world, Asad developed his interests in the study of Islam rather than its disparaging adherents and found this eternal creed akin to human nature embracing the entire gamut of human activity. Delving deep in the oceanic study of Islamic scriptures his curiosity was fostered as he observed that in Islam there was no place for mere nationalism, no vested interested, no class divisions, no church, no priesthood and no hereditary nobility, in fact, no hereditary functions at all.² The wonderful and inexplicably coherent structure of moral teachings and a pragmatic life scheme offered by Islam diverted Asad's attention from every other ideology that could have sustained by his mind. Being divinely

ordained, this creed created the strongest impression, he perceived its structure like a work of architecture whose parts are harmoniously in line with each other, where nothing is superfluous and nothing lacking, with the result of an absolute balance and solid composure.³ Subsisting on the critical approach of his own legacy⁴ and analytical understanding of the teachings of the Islamic teachings he concluded that the laws (*Sharī'ah*) perfectly in line with human nature.

Meaning of Sharī'ah

The word *Sharī'ah* is derived from the root word *sh-r-a* (paths leading to drinking place, to make plan or manifest, law) of which four forms occur five times in the Qur'an: *shara'a* (to legislate) twice, *shurra'an* (openly for all to see) once, *shir'atan* (Divine way) once and *Sharī'atin* (clear path) once.⁵ The literal meaning of the word *Sharī'ah* connotes canon of the laws of Islam or the clear path or the highway to be followed or the way to a watering place from which men and animals derive the elements indispensable to their life. In Islamic terminology it denotes the right path to lead humanity to reach the source of mundane life; a system of laws necessary for a community's social and spiritual welfare. It is the path of correct conduct that the Creator has revealed through His long chain of Prophets—from Prophet Adam (عليه السلام) to the final Messenger, Prophet Muhammad (SAW)—with the same mission though different methods to make people to follow a life of obedience and submission to their Lord. Every prophet came and presented the divine scheme of life in such a manner that would suit the conditions of his people and time. These laws served the purpose of training different people over all ages for a better civilization and equipping them with better morals. As mentioned in the *Qur'an* that Allah has enjoined the same way of life as was enjoined upon the early prophets such as Prophet(s) Noah, Abraham, Moses and Jesus (عليهم السلام).⁶ Thus, *Sharī'ah* covers all the commandments which Allah has revealed from time to time upon His messengers. Lastly, Prophet Muhammad (SAW) who was sent with the final and eternal message containing a detailed code of conduct and canon laws which are applicable to all mankind for all times to come. The *Qur'an* declared it as: “*Today have I perfected your religious law for you, and have bestowed upon you the full measure of My blessings, and willed that self-surrender unto Me shall be your religion.*”⁷ Thus *Sharī'ah* includes the laws, commandments and prohibitions set forth by Allah which have been classified as recommended (*Halāl*), prohibited (*Harām*) and permissible (*Mandub*) along with their practical efficacy.

Muhammad Asad's Approach to Sharī'ah

Muhammad Asad observed his contemporary scenario and felt the “need of a precise body of laws that would outline, however broadly, the whole sphere of human life in all its aspects—spiritual, physical, individual, social, economic, and political.”⁸ After his deep and comprehensive understanding of Islam argued that Islam fulfils this need by means of Divine law—called *Sharī'ah*.⁹ He is not comfortable with the *Sharī'ah* that is understood now a days in the shade of different *fiqhī* schools of thought. He had his own understanding of Islam and devoted himself to present the real message of Islam objectively in a ubiquitous manner. Unique with his command of the

English language, knowledge of the Bible and Biblical sources as well as Jewish history and civilization, he was able to address appealingly, both the Muslim and non-Muslim readers, the essence of Islam in its historical and timeless context. For him the real understanding of *Sharī'ah* and the real *Sharī'ah* is that “which has been provided in the ordinances of the *Qur'an* and supplemented (or, rather, detailed and exemplified) by the Prophet Muhammad (SAW) in the body of teachings which we describe as his *Sunnah*”.¹⁰ He excludes *fiqh* and other human exertions being as a part of *Sharī'ah*. His thought, thus, demands from the contemporary Muslims to return to the ideology apparent in the *Qur'an* and *Sunnah*, prompts us to consider new ways of thinking, and heightens our sensibilities and feelings for other people, places, and their ways of being.

While describing the historical review of the concept of *Shari'ah*, he gave its literal meaning and said *Shari'ah* means “the way to a watering place” (from which men and animals derive the element indispensable to life)¹¹ and is used in the *Qur'an* to denote a system of laws necessary for a community's social and spiritual welfare.¹² He further illustrates that “since water is indispensable for all organic life, this term has in time come to denote a ‘system of laws’, both moral and practical, which shows man the way towards spiritual fulfillment and social welfare”.¹³ This understanding and approach to *Sharī'ah* by Asad denounces all the interpretations that construe *Sharī'ah* something barbaric, cruel and violent. He presented *Sharī'ah* as an elixir for humanity and called it the *Right Way* marked out in the commandments of God and His Apostle [ﷺ]: the law of Islam.¹⁴ Terming man-made laws as faulty, he argued human beings are unable to present universal criteria to describe what is right and what is wrong in isolation with Divine guidance. *Sharī'ah*, being based on divine guidance, present a universal scheme to distinguish right from the wrong for these laws deal the human life in totality—that is it guides man not only how to deal with the physical aspect but spiritually as well including both individual and its social aspects.¹⁵ According to him *Sharī'ah* touches every aspect human existence and is the life-breath of Islam.¹⁶ For him *Sharī'ah* is entirely based on Divine commandments that are “so formulated that they can be applied to every stage of man's social and intellectual development.”¹⁷ He quoted Ibnazm of Cordova (994-1064) as saying that “The *Sharī'ah* in its entirety refers either to obligatory acts [*fard*], the omission of which constitutes a sin; or to forbidden acts [*Harām*], the commission of which constitutes a sin; or to allowed acts [*mubāḥ*], the commission or omission of which does not make man a sinner.”¹⁸

***Sharī'ah* and Islamic Legal Punishments**

The unfamiliarity of the Islamic legal punishments caused people to fall in doubts and they became scared when they heard about the establishment or implementation of *Sharī'ah*. Unlike the contemporary forms of punishments, the *Sharī'ah* of Islam prescribed three kinds of punishments as *Had*, *Qisās* and *Ta'zīr*.¹⁹ For Muhammad Asad such punishments can only be understood in the context of “no duty (*taḳlīf*) is ever imposed on man without his being granted a corresponding right (*Haqq*)”.²⁰ The punishments intended for social security, which according to Asad, are applicable only within the context of an already existing, fully functioning social security scheme, and

in no other circumstances.²¹ He maintains that *Qisās* has been often and erroneously treated as retaliation rather it is a “just retribution” and argued that all the classical commentators consider it synonymous with *Musāwāh* (making a thing equal [to another thing]) and “in this instance, making the punishment equal (or appropriate) to the crime”.²² Asad further adds that the objective of *Qisās* is the protection of the society and not the revenge; and accordingly the implantation of Islamic legal punishments is to safeguard the community or a society as a whole.²³ His stand and justification of the punishments prescribed in *Sharī‘ah* is sound.

Sources of Sharī‘ah

Muhammad Asad rejected the dominant notion of having the sources of *Sharī‘ah* as *Qur’an*, *Sunnah*, *Ijmā’* and *Qiyās*. For him *Sharī‘ah* has only two sources—*Qur’an* and *Sunnah*.²⁴ He believed the *naṣuṣ* [clear textual injunctions] of *Qur’an* and *Sunnah* collectively constitute the real and eternal *Sharī‘ah* of Islam, hence valid and obligatory.²⁵ While explaining the meaning of the term *Sunnah* in the context of *Shar‘i* legislation, Asad said, “everything which the apostle of God did, commanded or consented to comes under the general heading of *Sunnah*”.²⁶ It is worth noted that Asad did not deny the importance of *Ijmā’* and *Qiyās* and consider them important to deduce the will of Allah from the *Sharī‘ah*. When for any particular case the *Qur’an* and *Sunnah* are silent, Asad argued, the deduction by analogy, *Qiyās* came to be accepted as a legitimate method of establishing laws.²⁷ It is obvious, he adds, that the individual deduction is prone to err in discovering and interpreting the lawgivers supposed intentions. To reduce such errors, the consensus of competent scholars—*Ijmā’*—came to be recognized as further means of establishing laws.²⁸ The process which needs these two sources is known as *fiqh*, the objective of is which, according to Asad, is twofold: firstly to decide what the laws of the *Sharī‘ah* are, and secondly, to show how those laws are to be applied to practical cases.²⁹ Unfortunately, *fiqh* was confused with *Sharī‘ah* and more often, erroneously, these terms are used synonymous to each other. Consequently, instead of the original two sources of the law—*Qur’an* and *Sunnah*—the Muslims were presented with four sources—*Qur’an*, *Sunnah*, *Ijmā’* and *Qiyās*.³⁰ These terms are related to each other but are not identical. *Sharī‘ah* is the divine will where as the *fiqh* spells out that will and establishes the methods to derive and apply its rules to regulate individual and collective behaviour.³¹ In this way *Fiqh* is human *Ijtihād* and to err is human, so it could not be included in *Sharī‘ah*. Muhammad Asad gives the example of noble *Suhābah* in this regard. For him, the practice of *Suhābah* was that they looked upon the observance of the *Sharī‘ah* as the indivisible guiding principle in a Muslim’s life, however, if they found *Qur’an* and *Sunnah* silent, they exerted their common sense to reach a legal decision but never thought and intended their *Ijtihād* as valid for coming generations.³²

Taking ones *Ijtihād* as *Sharī‘ah* makes Islam difficult

Sharī‘ah being eternal, immutable basis of Muslim life, could not be made dependent on the exertions of fallible human intellect. Therefore, the *nass* ordinances of the *Qur’an* and *Sunnah*, comparatively few as they are, constitute the sum-total of the *Sharī‘ah* in its true and eternal sense.³³ He

maintains that believers should not take the deduced laws (those laws not having clear textual evidence either in the two sources) as *Sharī'ah* by arguing that such approach might cause hardships by imposing additional burdens on the believers above and beyond anything that has been stipulated in terms of law in the *Qur'an* or in the authentic commandments of the Prophet.³⁴ He adds that including the juristic regulations of various jurists (*fuqahāh*) in *Sharī'ah* has made *Sharī'ah* inaccessible to the understanding of common man.³⁵ Making *Sharī'ah* the preserve of “specialised scholars”, instead of being a way of life became a merely academic affair and thus its practicability became an illusion.³⁶ Terming the current theology and jurisprudence a vast old-clothes shop selling ancient thought-garments, Muhammad Asad argued Muslims must begin to think anew about Islam, about what it really signifies and what its real laws are.³⁷ For him a thousand years of theology and canonical jurisprudence have made the simplicity of Islam entirely illusionary and the presence of various schools of thought put a common person into confusion.³⁸

He argues that it is not against to utilize ones exertion in evolving, whenever necessary, any amount of additional, temporal legislation from these sources rather tries to make it clear that such additional legislation cannot be regarded as forming part of *Sharī'ah* as such.³⁹ Here Muhammad Asad by excluding *fiqh* from *Sharī'ah* wants to refresh Muslim mindset. In this article, *Towards a Resurrection of Thought*, Muhammad Asad critically analyzed the contemporary Muslim thought and held that Muslims were once regarded as a creative force but today they became stagnant by their blind imitation of their ancestors. After discussing the causes of their stagnation, Asad provided that there is a need of resurrection of Muslim thought which should be revised in the light of our own understanding of the original sources and freed from the thick layer of conventional interpretations which have accumulated for centuries and have been wanting in the present time. Asad held that the outcome of such an endeavor might be the emergence of a new *fiqh*, exactly conforming to the two sources of Islam—the *Qur'an* and *Sunnah*—and at the same time answering to the exigencies of present life.⁴⁰

In his another paper, *The Concept of Religion in the West and in Islam*, Muhammad Asad after discussing the various facets of religion in it, argued that *Shari'ah* should be brought within the orbit of the Muslim masses and should be made an open book which every Muslim could understand.⁴¹ According to Asad, a genuine revival of Islam is impossible without an intensive inquiry into its original spirit for which Muslims should consider themselves travelers aiming at new discoveries in the domain of the spirit of Islamic teachings. The more the worldly knowledge of Muslims increase, the more new and hitherto hidden meanings appear in the *Qur'an* and the *Sunnah*, are deciphered.⁴² Thus, while Asad favors the pragmatic and dynamic way of life for which the code is to be derived from the *Qur'an* and *Sunnah*, he laid emphasis on the Muslims to reinstate their lost legacy of intellectualism and develop a realistic approach towards the life in the modern world. For this he urges that Muslims should abandon the blind imitation of what the earlier scholars have deduced from the *Qur'an* and *Sunnah* rather there is a need of a fresh *ijtihad* by which laws well-suited for the contemporary period could be deduced from these basic sources of Islam

as did the scholars of the past. According to Muhammad Asad for the Muslim renaissance the need of a new code of *Sharī'ah* is necessary which would bring out the eternal, unchangeable quality of the Divine Law in such a way as to demonstrate its applicability to all times and all stages of man's social and intellectual development.⁴³

Conclusion

Muhammad Asad contributed to the cause of Islam in an inimitable way by which he tried to stimulate a purposeful and vibrant soul among the modern day Muslims and thereby ushered a room for them to realize, think, and solve the coming-forth novel issues in the Muslim world while remaining strictly adherent to Islam and its everlasting principals. This makes his approach to *Sharī'ah* and its understanding relevant to the present day scenario. He aimed to present before the humanity the meaning and essence of *Sharī'ah* as it is and accordingly making it easily accessible to a common man. To him *Sharī'ah* has been termed as the preserve of "specialised scholars" which has created not only misconceptions but has presented a vague impression as well. Terming spelling out of Divine will form *Sharī'ah* by classical Jurists as authentic and relevant to present time, for Asad, has made Muslims stagnant and backward. Moreover, the more number of schools, the more Muslims got divided and put the unity in danger. For the unification of Ummah, he proposed the need of a new (collective) *Ijtihād* by learned scholars of Islam that would be generally acceptable to all without distinction of the *fiqhī* schools and would meet the contemporary demands of Muslims in particular and humanity at large. The need is to reassess and analyse the validity of the propositions made by this scholar to eradicate the misconceptions about *Sharī'ah* and Muslims instead of splitting into groups should unite to implement the real *Sharī'ah*, a path-way that leads to attain the ultimate purpose, as in the words of Asad, "compliance of the created with the will of the Creator".

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¹Muhammad Asad, *The Road to Mecca* (New York: Simon and Schuster, 1954), 57-62.

²*Ibid.*, 324.

³Asad, *Islam at Crossroads* (Gibraltar: Dār al Andalus, 1934), .11

⁴ He criticized his own society by saying that, "...They belonged to a generation which, while paying lip service to one or another of the religious faiths that had shaped the lives of its ancestors, never made the slightest endeavour to conform its practical life or even its ethical thought to those teachings. In such a society the very concept of religion had been degraded to one of two things: the wooden ritual of those who clung by habit—and only habit—to their religious heritage, or the cynical insouciance of the more 'liberal' ones who considered religion as an outmoded superstition to which one might, on occasion, outwardly conform but of which one was secretly ashamed, as of something intellectually indefensible..." (See Asad, *Road to Makkah, op.cit.*, 60). He also criticized the cruel political maneuver designed against Palestinians to subjugate them in their own country. (See Asad, *Road to Mecca, op.cit.*, 101-109)

⁵Elsaid M. Badawi Muhammad Abdel Haleem, *Dictionary of Qur'anic Usage* (Leiden, Boston: Brill, 2008), 481.

⁶**Al-Shura 42:13**

⁷*The Message of Qur'ān*, 5:3, 206.

⁸Asad, *The Principles of State and Government in Islam* (Gibraltar: Dar al-Andalus, 1980), 3.

⁹*Ibid.*

¹⁰*Ibid.*

¹¹Asad, *This Law of Ours and Other Essays* (Gibraltar: Dar al Andalus, 1987, Reprinted 1993), 41.

¹²Asad, *The Message of the Qur'ān*, foot note 66 against verse no. 05:48, (Gibraltar: Dār al Andalus, 1980), 223.

¹³*Ibid.*, foot note 18 against verse no. 45:18: 1043.

¹⁴Asad, *This Law of Ours and Other Essays*, 41.

¹⁵Asad, *Islam at Crossroads*, 30.

¹⁶Asad, *This Law of Ours and Other Essays*, 20.

¹⁷Asad, *The Principles of State and Government in Islam*, 12.

¹⁸*Ibid.*, 13.

¹⁹For details of Islamic legal penalties See Mufti Muhammad Shafi, *Ma'ārif al-Qur'ān*, Eng. Tr. Muhammad Shamim, (Karachi: DarulUloom Karachi, 1995), 130ff.

²⁰Asad, *The Message of the Qur'ān*, foot note 48 against verse no. 5:38, p. 218

²¹*Ibid.*

²²*Ibid.*, foot note 147 against verse no. 2:178, (71-72)

²³*Ibid.*, foot note 151 against verse no. 2:179, p. 73.

²⁴Asad, *This Law of Ours and Other Essays*, 41.

²⁵Erwin I.J. Rosenthal, *Islam in the Modern National State* (Cambridge: The University Press, 1965), 125-126.

²⁶Asad, *This Law of Ours and Other Essays*, 41.

²⁷*Ibid.*, 48.

²⁸Ibid.,49.

²⁹Ibid.,47.

³⁰Ibid.,51.

³¹Abdul Rashid Moten, *Political Science in Islamic Perspective* (London: Macmillan Press Ltd., 1996), 61.

³²Asad, *This Law of Ours and Other Essays*, 63.

³³Ibid.,65.

³⁴Asad, *The Message of the Qur'ān*, foot note 120 against verse no. 5:101, p. 238

³⁵Asad, *This Law of Ours and Other Essays*, *op.cit.* pp. 20f.

³⁶Ibid., 22.

³⁷Ibid.,11.

³⁸Ibid.,19.

³⁹Asad, *The Message of the Qur'ān*, foot note 120 against verse no. 5:101, p. 238.

⁴⁰Asad, "Towards A Resurrection of Thought," in Chaghatai (ed.), *Muhammad Asad: Europe's Gift to Islam*, vol. II, (Lahore: Sang-e-Meel Publications,2006), 699-710.

⁴¹Asad, *The Concept of Religion in the West and in Islam*, in Chaghatai (ed), *op.cit.*,(vol. II), 659-675.

⁴² See Asad's Preface to the first edition(1938) of *Ṣaḥīḥ al-Bukhari: The Early Years of Islam*, vi-vii.

⁴³Asad, *The Principles of State and Government in Islam*, 101.