**The Hammurabic code instead of Islamic justice?**

[Ikram Sehgal](https://dailytimes.com.pk/writer/ikram-sehgal/)

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The Quaid’s vision of Pakistan was of Muslims being a nation that was ‘Islamic’ as a state and as a society. The way democracy and governance thereof has been operated by Pakistani rulers, we have failed, at least so far, to create that nation, that state and that society. Citing justice in his writings as the “first virtue of social institutions”, of which a government is one example, John Rawls highlights the importance of justice and of its centrality in a “well-ordered” society. Failing to provide justice equally to all, socio-economic, ethnic and other differences continue dividing the population. For the state to provide equal justice to all its citizens is not only according to Western political theory and ethics but very much at the core of Islam.

In pre-Islamic times laws to provide justice were unaware of the principle of equality, mainly because they were made without understanding the will of God. One such example is the Code of Hammurabi. Named after the sixth Babylonian king this Code is one of the oldest deciphered laws in the world (1754 BC). It consists of 282 rules with scaled punishments, adjusting “an eye for an eye, a tooth for a tooth”. Based on social stratification depending on social status and gender, of slave versus free, man versus woman, other parts deal with contracts, business dealing, family law, regulations of government. It was one of the first formalized codes of law of humanity. While in theory the Code of Hammurabi was trying to achieve equality, in actual practice singular bias existed against those categorized in the lower end of the social spectrum. Justice was not based on equality of men, different laws provided for different justice for the three classes of men in society: property owners (or the elite), free men and slaves. Punishments for someone assaulting someone from a lower class were far lighter than if he had assaulted someone of equal or higher status. For example, if a doctor killed a rich patient, he would have his hands cut off, but if he killed a slave, only financial restitution was required.

Justice was different for men and women. While men were allowed to have out of wedlock sexual relations, women were punished severely for the same. Women could receive punishments that their male counterparts would not, as men were permitted to have affairs with their servants and slaves, whereas married women would be harshly punished for committing adultery. The Hammurabi Code suggests that the code may be better understood as a codification of Hammurabi’s supplementary judicial decisions, and that, by memorializing his wisdom and justice, its purpose may have been the self-glorification of Hammurabi rather than a modern legal code or constitution.

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While there is no direct connection whatsoever between ‘Hammurabi and Islam’ there is no doubt that the Quran’s basic connection with Arab law current at the time of the Prophet (PBUH). Islam could not have succeeded if an entirely new commandment unconnected to the current life would have come to them.

There is an evolution visible in the understanding of humanity of God, the world and the purpose of life. The history of revelations and prophets is a step-by-step revealing of the Truth by God in accordance with the level of understanding that humanity had gained by the time of revelation. With the last revelation to the last prophet, Prophet Muhammad (PBUH), the complete Truth (all knowledge that is needed to be able to live according to God’s wishes and intentions) has been given to humanity and humanity is now ready to live according to the ordained rules.

In Islam, justice is a result of Aman (to be safe) and to have Am?nah (trustworthiness). Thus, the one who upholds safety and is trustworthy is Am?n. The prerequisite for justice is trustworthiness. For peace and justice to prevail in an Islamic society, we do not require only laws of justice, but also people of justice who treat all those who come before them as equal human beings. Justice is not only the task of the courts but of individual Muslims as well. An important part of justice in both western and Islamic understanding is the idea of equality. Everybody across the social, ethic religious divide, needs to be just to himself and to others and he has to have secure and easy access to justice. The state has to provide this, but with the state and its institutions consisting of individuals, the practice of justice and equality has to be nurtured in the character of the people.

Unfortunately, in practice this seems to have been conveniently overlooked by Pakistani rulers with the result that today’s Pakistan is lacking much of this basic requirement of justice be it western or Islamic – in state and society of the country. What goes here for a system of justice rather reminds one of the Hammurabi Code two thousand years before Islam. The rich in our country have easy access to courts and lawyers through their money and -sometimes- their connections or even the infamous client-patron relationship. For the middle classes, justice is already much more removed; it is expensive, long delayed and the outcome is anybody’s guess. An if you get the verdict you had expected there is nobody who would implement it for you. The majority of our people who are poor have no money left to pursue years or decades of staying in the courts, thus justice is unavailable -like in Hammurabi’s times. In any case Pakistan’s justice system in practice is far from being Islamic.

While NAB must be commended for holding many crooks, businessmen, politicians and public servants, etc. accountable and recovering billions of rupees, most of our more notorious scoundrels are still free and continuing to cause not only political mayhem but acting against the State by targeting the Army. They mostly using the garb of political victimisation to camouflage (and thus legally escape) their crimes. The use of the political card has botched attempts at accountability by NAB in many cases. Moreover, the accountability process being stretched out over years has damaged the reputation of the accountability. While ‘justice delayed is justice denied’ is a maxim that holds true not without reason, one of most compelling positive factors about justice in Islam is that it is not delayed like it has been done in the Daniel Pearl case. The intervention of High Courts (and even the Supreme Court (SC)) in doling out bail for the accused on one pretext or the other has also badly compromised the process of accountability. Look at “Born Again” Nawaz Sharif sipping coffee walking around Hyde Park in London!

On the other hand take our faulty “evidence” process and procedure thereof. Consider just the Daniel Pearl murder case that had happened in 2002 being finally decided just recently. The acquitting of the accused may be due to missing or insufficient evidence but that decision should have taken into account that Omar Shaikh had confessed to the kidnapping of Danial Pearl and was therefore, at the very least, guilty of abetment in his murder. A major impediment to justice is that perjury is done freely and the courts accept it without using the available laws for punishment of telling lies in court. Those guilty of perjury (or causing perjury to be done shall be given exemplary punishment).

The centre piece of the state and the nation, Justice is what holds the nation together and allows its citizens to identify themselves with their state and its institutions and government. Everywhere in the world people learn not from sermons but from example. And that starts in childhood at home and in school. Especially young people get frustrated when they are treated unjust or when they experience that their elders violate the ethical principles that they are preaching, be it lying, treating others disrespectful or deny them equal and just treatment. And when these young children grow up with such scrambled ethics they might finish university and become lawyers, judges, businessmen and teachers. But what kind of professionals they will be? Knowledge in any resort of science can only be applied successfully in life when it is supported and practiced with the right ethics.

The result of the lack of justice is that both state and society in Pakistan lack stability, even after seventy years and despite the so many attempts to make the country ‘Islamic’, Pakistani society is torn apart by economic inequality, social strife and ethnic and religious separation, complicated by a weird understanding of Islam. The state and its institutions are not trusted and are marred by corruption and incompetence. Bureaucrats, politicians, even teachers are thinking “If I cannot trust that I will be treated with justice why should I be true to the state?” Justice is the basic requirement of the law and of life and is important for maintaining order in society. And while justice is not only a task of the law it is the law that has to uphold it at last. As long as the basic demand for justice is not upheld, Pakistan will fail to fulfil its destiny. We cannot continue to practice the Hammurabic Code while keeping justice on public display as is practiced in Islam in theory only

*The writer is a defence and security analyst*