THE PROBABILITIES OF INTEGRATING AND/OR ISLAMIZING LAW AND *SHARĪ'AH* LEARNING OR *VICE VERSA*

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Abstract

The implementation of integration or Islamization of Knowledge (IoK) approach within the law and *Sharī'ah* professional programme of studies started in 1983 at the International Islamic University Malaysia (IIUM). The approach has never been easy. This research attempts to look into the probabilities and improbabilities of *integrating* and/or *Islamizing* law and *Sharī'ah* or *vice versa* in the Malaysian law and *Sharī'ah* studies. Can the integration of *Sharī'ah* into the current law curriculum, or the Islamisation of the law studies be done? The legal profession is regulated under the Legal Profession Act 1976 (Act 166), and the studies of law come under the control and supervision of the Legal Profession Qualifying Board of Malaysia (LPQBM) which prescribed the qualification for the legal practice, and the Malaysian Qualifications Agency (MQA) has provided guidelines for the accreditation of law degrees from local law schools. The legal studies have seen the realities—the probabilities and improbabilities—in *integrating* and/or *Islamizing* law and *Sharī'ah* or *vice versa* which have been motivated by the movement of change in many educational institutions in Muslim countries on other disciplines, such as finance, economics, and politics. It is more practical to integrate law studies with *Sharī'ah* than having the law subjects be Islamized. Harmonisation of law and *Sharī'ah* is another issue requiring another research and write-up. This study on the aspects of integration or Islamization of legal knowledge is based on qualitative and doctrinal research methods, based on deep analysis of available literature on

the subject. Whether the constitutional and legal framework of the country allow integration or Islamization of the law *Sharī'ah*, *vice versa*, be introduced into the curriculum of law and *Sharī'ah* studies remains questionable.

Keywords: Islamization of knowledge – integration of knowledge – law - *Sharī'ah* – constitutional and legal framework

Introduction: Integration or Islamization of Knowledge

The main premise at the International Islamic University Malaysia (IIUM)[1] in its early stage of development has been the talks and implementation of "integration and/or Islamization of Knowledge". It simply means "acquired Knowledge" like Sciences, Medicine, Economics, Law etc. have to be integrated with "Revealed Knowledge" (i.e., knowledge ascended from Allāh *Subḥānahu wa Ta'āla* through His Books and Messengers). The approach to the subject of integration and/or Islamization of knowledge has never been easy. One may come across questions which are conceptual on the one hand and philosophical on the other. How do we succinctly explain "integration of knowledge" *vis-à-vis* "Islamization of knowledge"? Are these the process, or could these be the methodology, or are they the end products of the endeavour?

Professor Aslam Haneef (2005) observed that all scholars who claim to be promoting the Islamization of knowledge (IoK) agenda, must be by definition, supporting

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[1] IIUM was established in 1983.

interaction of Islamic knowledge with modern knowledge rather than adopting a rejectionist stance. Islamization of knowledge implies supporting the position that solutions to contemporary problems developed by the secularists require the synthesis of both Islamic heritage and contemporary knowledge. Aslam Haneef partially agrees with Sardar's criticism that Faruqi fails in his work plan, which was evident by the many failed attempts at producing Islamized textbooks. Despite this, Aslam Haneef argues that "one must also be willing to accept the possibility that this is due to the wrong way in which the IoK has been understood and the misunderstanding of the pre-requisites for successful implementation. In other words, failure to produce textbooks may not be due to a failure of the IoK agenda in itself as opposed to a failure to understand it".[2]

Professor Mohd Kamal Hassan (2010)[3] observed that serious and sincere efforts of Muslim leaders, scholars, intellectuals, Islamic movements, and organizations, since the 1977 First World Conference on Muslim Education in Makkah al-Mukarramah, have led to the formation and establishment of many educational institutions of various levels, from early playschools to universities; their main objective being to actualize the Islamic vision of holistic and integrated education. We have seen the rise of modern Islamic higher educational institutions all over the world. In Malaysia, the establishment of the International Islamic University Malaysia (IIUM) and Universiti Sains Islam Malaysia (USIM), and in Brunei Darussalam, University

[2] Mohamed Aslam Haneef. (2009). *A Critical Survey of Islamization of Knowledge*. Kuala Lumpur: IIUM Press, p. 43.

[3] Mohd Kamal Hassan. A return to the Qur'ānic paradigm of development and integrated knowledge: The *Ulū al-Albāb* model. *Intellectual Discourse*, 2010 Vol. 18, No. 2, pp. 183-210. See also <https://core.ac.uk/download/pdf/300398003.pdf> (Accessed 7.12.2012).

Islam Sultan Sharif Ali (UNISSA) and Kolej Universiti Perguruan Ugama Seri Begawan (KUPU SB), among many others, generally emphasize on this holistic and integral vision of Islamic education, a common vision of many Muslim intellectuals and professionals, which underlies the Islamic paradigm shift from a secular and purely rationalistic epistemology to the *Tawḥīdic* epistemology and ethics.

Thus far, the legal studies too have seen the realities—the probabilities and improbabilities—in *integrating* and/or *Islamizing* law and *Sharī'ah* or *vice versa* which have been motivated by the movement of change in many educational institutions in Muslim countries on other disciplines, such as finance, economics, and politics.

Law and *Sharī'ah* Experience: Knowledge Integration or Islamization?

For law-*Sharī'ah* programme designers, the task towards the realization of meaningful integration of law and *Sharī'ah*, or Islamization of law, is a steep and tricky uphill ascension. At the outset, the words 'integration' and 'Islamization' of knowledge seem synonymous; the process and methodology too seem identical. Are they synonymous and identical? To introduce integrated composite without considering the distinction between the two approaches—either to 'integrate' or 'Islamize'—could end up in a futile and negative effort which could lead to producing inefficiently equipped graduates for legal practice in the country. The question being, which of the two approaches should be taken as the foundation for curriculum design? How would the outcomes of the intended curriculum be? There are myriad of questions and issues which could arise from this endeavour. This, however, is not "a rejectionist stance", but to find the best approach in realizing the way forward for the

law-*Sharī'ah* professional programme, *vis-à-vis* other law-*Sharī'ah* programme which is purely academic in nature.

"To integrate" is "to combine two or more things so that they work together".[4] This meaning implies that two or more parts become integral. In simple language, it is not like mixing black coffee and cream which could thereafter end up as a mixture of "white coffee" or "cappuccino". It is more of one thing being an essential part of something, like an "integrated school" which is attended by students of various race and ethnicity, religion, and culture. Likewise, the four wheels in our car are integral part of the vehicle.

In law-*Sharī'ah* professional education and training programme, it, therefore, brings forth the meaning that any individual law or *Sharī'ah* courses may be integrated in the same programme. Is such integration possible? It may, or may not, be as this concept may represent the act of integrating or mixing two or more things, disciplines, programmes, or courses, so that they could work together; like racial integration in school as indicated earlier, where it involved the act or process of mingling students who have previously been separated, predominantly by colour, race, ethnicity, or religion, to be educated equally and give equal opportunities in the same institution. The ethnicity and individuality remain the same. Hence, for professional purposes, law courses must remain distinct from *Sharī'ah* in such integrated programmes. This has been the design followed by almost every institution offering law and *Sharī'ah* studies.

On the other hand, "to islamize" brings a different connotation to its concept. Rosnani Hashim and Imron

[4] *Oxford Advanced Learner's Dictionary*.

Rossidy (2000)[5] look at the phrase "Islamization of knowledge" as misleading to a certain extent as it gives the connotation that all knowledge needs to be Islamized. "Knowledge" in this context represents modern Western knowledge. The phrase "Islamization of knowledge", inevitably, characterizes, firstly, the process of Islamization of the past and contemporary modern Western knowledge which ignores Islamic traditional knowledge. Islamic traditional knowledge has integrated and incorporated reason, intuition, and divine revelation. It has imbued faith, temporal, and divine knowledge, as well as moral value and virtues, to accommodate human material and spiritual needs.

Contemporary knowledge has been seen to have undergone the process of secularization and westernization which is not only not in harmony with, but also endangers, the Muslim faith. Al-Attas contended that knowledge is not neutral and can indeed be infused with the nature and content which masquerades as knowledge. Some scholars contended that knowledge is not neutral and can indeed be infused with the nature and content which masquerades as knowledge. On the same note, some others were of the view that the West deliberately avoids human judgement and preference, and claims that its social sciences are scientific as they are neutral. Western social scientists treat facts as facts and leave them to speak for themselves. Since knowledge is not neutral, modern knowledge cannot be applied *in toto* to the Muslim community where certain values and beliefs differ from the Western civilization. The incompatibility and incompleteness of Western methods of

[5] Hashim, Rosnani & Rossidy, Imron. Islamization of Knowledge: A Comparative Analysis of the Conceptions of Al-Attas and Al-Faruqi. <http://iiitbd.org/biit/files/library_services/e-resource/rosnani_hashim/papers/Islamization%20of%20Knowledge%20A%20Comparative.pdf> (Accessed 7.12.2012).

knowledge led Muslims to seek another alternative that corresponds with the Islamic worldview.[6]

For professional legal studies, to integrate knowledge does not necessarily mean to islamize knowledge. The circumstances, including the national education policy, the country's Constitution, the regulatory legislative framework, the type of educational programme and the foundation of a particular educational establishment, would dictate whether certain contemporary Western knowledge should remain; whether it should be integrated with Islamic knowledge; or whether such knowledge should undergo transformation through the Islamization process.

Ironically, whether we realise it or not, many statutory laws that Malaysia is currently enforcing since the British era, which originated from British India, especially the Penal Code drafted by Lord Macaulay[7] in mid-19th century,

[6] AbuSulayman, A.H. (Ed.). (1997). *Islamization of Knowledge: General Principles and Work Plan*. 3rd ed. Herndon: The International Institute of Islamic Thought (IIIT).

[7] Professor M.P. Jain observed that Lord Macaulay had formulated and expounded principles upon which codification of laws in India should be done to enable the chaotic situation on the uncertainties upon which the court had dealt with the law, including indigenous laws to be resolved. Lord Macaulay said:

"I believe that no country ever stood so much in need of a code of laws as India; and I believe also that there never was a country in which the want might so easily be supplied. I said that there were many points of analogy between the state of that country after the fall of the Mogul power, … there are in India now, several systems of law widely differing from each other, but coexisting and coequal. The indigenous population has its own laws. Each of the successive races of conquerors has brought with it its own peculiar jurisprudence: the Mussulman his Koran and the innumerable commentators on the Koran; the Englishman his Statute Book and his Term Reports. … so, we have now in our Eastern empire Hindoo law, Mahometan law, Parsee law, English law, perpetually mingling with each other and disturbing each other, varying with the person, varying with the place. In one and the same cause the process

basically incorporated to a large extent the Islamic legal rules (*ḥukm*) and nuances enforceable during the reign of the Moghul Empire, but "gradually been disstated to such an extent as to deprive it of all title to the religious veneration in Mohammedans".[8] Mohammedan criminal law governed both Muslims and Hindus during that period. Matters relating to civil law, such as trades, barters, sale, contract etc., were dealt with under Mohammedan law of transaction, which was applicable to both Muslims and Hindus, and to people of other religions, alike. The Hindus and people of other faiths, however, were free to be governed by their personal law on matters such as marriage, divorce, adoption, caste, inheritance, succession, religious usages, and

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and pleadings are in the fashion of one nation, the judgment is according to the laws of another. An issue is evolved according to the rules of Westminster and decided according to those of Benares. The only Mahometan book in the nature of a code is the Koran; the only Hindoo book, the Institutes. Everybody who knows those books knows that they provide for a very small part of the cases which must arise in every community. All beyond them is comment and tradition. Our regulations in civil matters do not define rights, but merely establish remedies. If a point of Hindoo law arises, the Judge calls on the Pundit for an opinion. If a point of Mahometan law arises, the Judge applies to the Cauzee [*Qadī*]. … We must know that respect must be paid to feelings generated by difference of religion, of nation and caste. Much, I am persuaded, may be done to assimilate the different systems of law without wounding those feelings. But whether we assimilate those systems or not, let us ascertain them; let us digest them. We propose no rash innovation; we wish to give no shock to the prejudices of any part of our subjects. Our principle is simply this; uniformity where you can have it: diversity where you must have it; but in all cases certainty."
See Jain, M.P. (2009 Reprint). *Outlines of Indian Legal & Constitutional History*. 6th ed. New Delhi: LexisNexis Butterworths Wadwa Nagpur, p. 423. See also <http://www.columbia.edu/itc/mealac/pritchett/00generallinks/macaulay/txt_commons_indiagovt_1833.html> (Accessed 21.04.2021).

[8] See fn. 14.

institutions. On legal precedents, Atul Chandra Patra observed:[9]

> "The numerous collections of *fatwas*[10] (decisions) of the celebrated Mohammedan lawyers (jurists) forming a mass of precedents hardly surpassed in the legal literature of any nation were constantly referred to as expositions of the law in all the courts of justice as presided over by the *Kazis* or the Nawab or the Emperor sitting with the *kazis*, *mooftis*, *ulamas* and other jurisconsults."

Although at the end of the 18th century, the British courts were actively introducing English law into India, "there is evidence to show that the Supreme Court did not disregard the indigenous law", i.e., Mohammedan, and Hindu laws.[11]

Criminal law, before the codification of the Penal Code, appeared to be simply chaotic. Macaulay declared that the people in the Presidency Towns of India living under English criminal law were subject to a very artificial, complicated, and foreign system, framed without the smallest reference to India. It was so defective that it had to

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[9] Atul Chandra Patra. Historical Background of The Indian Contract Act, 1872. <https://pdfcoffee.com/023historical-background-of-the-indian-contract-act-1872-373-400-pdf-free.html> (Accessed 22-04-2021); See also Atul Chandra Patra. An Historical Introduction to The Indian Penal Code. *Journal of the Indian Law Institute*. Vol. 3, No. 3 (July-Sept. 1961), pp. 351-366.

[10] *Fatawa Alamgiri* being the most celebrated compilation of *fatwas* during the Mogul era.

[11] In succession cases, the courts applied Mohammedan law if the parties were Muslim. There are cases where the Supreme Court invoked the help of the Indian Law Officers of the *Sardar Diwan Adalat* to throw light on controversial points of Islamic or Hindu law. See Jain, M.P. (2009 Reprint). *Outlines of Indian Legal & Constitutional History*. *op cit*., p. 374.

be reformed and reconstructed.[12] William Stokes was of opinion that the basis of the Indian Penal Code was the law of England. Rankin too held similar view. Some scholars, however, characterised Macaulay's Penal Code differently. Professor Fitzgerald refused to acknowledge the view that the Penal Code was English law; and he felt it irrelevant to do so. Professor M.P. Jain thus summarised the conflicting views: "The Code is not a verbatim reproduction of the English Law. Certainly, it is much superior to anything in England, as there is no code there and everything is in the cases and decisions of the court." The Penal Code was couched in simple, concise, and comprehensive language, which later described by Fitzjames Stephen as entirely new and original method of legislative expression.[13]

Prior to the codification, the penal law of Bengal and Madras presidencies was in fact Mohammedan law which had "*gradually been disstated to such an extent as to deprive it of all title to the religious veneration in Mohammedans*",… "*[y]et technical terms and nice distinctions borrowed from the Mohammedan law are suit retained.*"[14] This is obviously true if we compare between the law on homicide in the Penal Code and *qatl* (homicide under *Sharī'ah*).

We could easily identify, among the main criminal "offences" in the Penal Code, three out of six *ḥudūd* offences[15] were incorporated within it. *Ḥudūd* offences are: (1) *zinā* (fornication or adultery); (2) *qadhaf* (false accusation of adultery); (3) *syurb al-khamr* (drinking liquor or consumption of intoxicating drinks); (4) *sariqah* (theft);

[12] *Ibid*., p. 464.
[13] *Ibid*., pp. 466-468.
[14] *Ibid*., p. 465. Emphasis added.
[15] "Offences" *per se*, not referring to, nor including, "punishments" and "evidentiary" matters.

(5) *ḥirābah* (robbery); (6) *irtidād* (apostacy). Three of the offences were not incorporated in the Penal Code, but their co-related offences are available. Firstly, consensual sexual relationship between unmarried couple, i.e., *zinā* is not an offence under the Penal Code, but *zinā bi al-jabr* (rape) and *liwāṭ* (sodomy) are.[16] Secondly, *syurb al-khamr* (drinking liquor) is not incorporated, but "misconduct in public by a drunken person" is an offence under the Penal Code[17]. Thirdly, *irtidād* (apostacy) is not an offence under the Penal Code because under the English concept there is absolute freedom in changing one's faith or religion. The other three—false accusation; theft, and robbery—are maintained in the Code.

Although the three offences above originally carry *ḥudūd* punishment, respectively, the punishments for such offences under the Penal Code are not *ḥudūd* anymore. The drafters from the Law Commission had substituted the punishments from *ḥadd* to *ta'zīr* (discretionary) only.[18] The burden of proof of "beyond reasonable doubt" will suffice to establish a *prima facie* case for committal. Even under the *Sharī'ah* law, the burden of proof for any crime punishable under *ta'zīr* punishment is similarly "beyond reasonable doubt" (*ẓann al-ghālib*). On the other hand, the burden of proof for *ḥadd* punishment is higher; the case must be proved "beyond all doubt" (*yaqīn*). Since the *ḥudūd* offences in the Penal Code are dealt with as *ta'zīr* only, the burden of proof is sufficiently "beyond reasonable doubt" (*ẓann al-ghālib*). Hence, it is Islamic Criminal Law drafted and codified in English legal language. The structure of the common law crimes in England, especially on homicide, was rather

[16] See sections 376 and 377A-C of the Penal Code, respectively.
[17] Section 510.
[18] *Sharī'ah* and *fiqh* terms had "gradually been disstated to such an extent as to deprive it of all title to the religious veneration in Mohammedans…".

different at that time, and not codified. After the codification of the Penal Code in India, the law in England seems to be more in tune with the spirit of the criminal law in India. Similar development could be seen happening in the law of contract too.

It is humbly observed that, the crimes embodied in the Penal Code is an "Islamised" substantive criminal law, lacking in some *Sharī'ah* evidential and procedural legal technicalities, and terminologies, as every punishment in the Penal Code, including murder, is *ta'zīr* in nature.

When Pakistan introduced and enforced *ḥudūd*[19] and *qiṣaṣ* laws in 1979, the Pakistan Penal Code, which is identical to the Indian Penal Code, is enforceable alongside the *ḥudūd* ordinance as *ta'zīr* law, except for homicide offences.[20] Take for example a theft (*sariqah*) case; where a person accused of having committed theft under the *ḥudūd* ordinance which is punishable with the amputation on his hand. He could not simply be convicted under such offence where any of the *arkān* (essential elements) for the offence of *sariqah* is/are lacking or not fully established. Where all the *arkān* are produced and proven before the Judge, the accused can be convicted for the offence, *but* no guarantee yet whether he could be punished with *ḥadd* punishment of amputation of the hand, if any of the *shurūṭ* (conditions) for such punishments is/are absent. There are more than 16 conditions to be met before *ḥadd* punishment could be imposed.[21] In that case, the Judge could only hand down a

[19] The Offences Against Property (Enforcement of 'Hudood') Ordinance, 1979.

[20] Offences for "homicide and murder" and "causing hurt", from section 299 of the Penal Code onwards have been modified and amended with *qiṣāṣ* provisions. The rest of the criminal law offences remained and parallelly enforceable as *ta'zīr* offences and punishments.

[21] For example, *ḥadd* punishment shall not be imposed where the value of the stolen property is less than the value of a *niṣab* (which is 1 *dinar*;

ta'zīr punishment on the convicted thief as provided by law. In Pakistan, therefore, the accused could be convicted and punished up to 3 years imprisonment under section 379 of the Penal Code as *ta'zīr* punishment by the same court.

Al-Faruqi's vision that the two educational systems should be unified; in this sense, I should say, should be integrated. The union of the two education systems "is expected *to bring Islamic knowledge to the secular system and modern knowledge to the Islamic system*." (Emphasis added.) He talked about Islamization within integration concept of both knowledge systems. He had addressed his mind on social sciences generally and made some constructive comments on the development of *Fiqh and Fuqāha'*.[22]

Through some years of the writer's practical experience in legal and *Sharī'ah* education, it is observed that Islamization of the law is rather intriguing and challenging, and improbable. Some scholars insisted that the subject of law must be 'Islamised'. The common questions posed on Islamization of knowledge by enthusiasts to law programme and course designers have always been—

- "Why didn't you incorporate *jināyat* in your Criminal Law course content?"
- "Why *mu'amalāt* is not taught in your Law of Contract syllabus?"
- "Why is your Land Law subject taught separately from Islamic Property Law?"

in Pakistan equivalent to the value of 4.457 grams of gold at the time of the theft)(in Malaysia and Brunei, the value prescribed for 1 dinar is 4.25 grams of gold); or when the owner of the property had not taken sufficient precaution to safe keep the property against theft, etc.

[22] AbuSulayman, A.H. (Ed.). (1997). *Op cit*., pp.14-15 & 24-26.

and the questions go on and on. Sometime, the saying, "your wish is my command" is the rule of the day. Some course designers simply say "yes" and satisfy the bosses' wish without really knowing the mechanics and requirements of the professional legal studies at the expense of students' learning time, quality of the teaching and learning, and professional learning outcome expectancy. And, worst still, the degree awarded to the graduates at the end of the studies is not recognised as a professional qualification.

If we hold on to al-Faruqi's vision, the same questions could also be asked to *Sharī'ah* programme designers:

- Why don't you teach "modern [legal] knowledge within the Islamic [legal] system subject?"
- Why don't you teach Law of Contract in *mu'amalāt* course?
- Why is your Islamic Property Law subject taught separately from Land Law?

Again, the debate will go on and on too, and will never end.

Such approach would definitely go against the regulations and requirements set by the Legal Profession Qualifying Board (LPQB) and the Malaysian Qualification Agency (MQA). Practically and professionally, *no courses can be taught "comparatively"*! If for each course, the "two-in-one" approach is followed, law and *Sharī'ah* or *Sharī'ah* and law subjects are combinedly taught in every course of the programme, against such regulations and requirements, the programme concerned *would not be accredited* as a professional programme for the purpose of the legal or *Sharī'ah* professional practice, respectively.

Integration of Law and *Sharī'ah* at Professional Degree Level: Possibility or Probability

Reading law at bachelor's degree level is *not* purely academic. The bachelor's degree obtainable at the end of the study programme is a professional qualification; a route to enable graduates to become professional lawyers, legal officers, and judicial officers (judges). Higher Islamic educational institutions in Malaysia and Brunei—International Islamic University Malaysia (IIUM), Universiti Islam Sains Malaysia (USIM) and Universiti Islam Sultan Sharif Ali (UNISSA)—to name a few, have accommodated the teaching, learning and training of this discipline and have aspired to incorporate *Sharī'ah* and *fiqh* courses within their law programmes. These law programmes which incorporate a number of those courses, are styled: (1) Bachelor of Laws, (4) Bachelor of Syariah and Law, and double-degree programmes, such as (1) Bachelor of Law and Bachelor of Law (Shariah) (LL. B & LL. B(S)), and (2) Bachelor of Law and Bachelor of Shariah Law (LL. B & BSL).

When IIUM introduced the first model in 1983, there were high hopes in the air. The programme survived till today. A few years after the introduction of the 4-year LL.B programme (using English as the medium of instruction), IIUM introduced a second model, the LL.B & LL.B(S), a 5-year double-degree programme, where laws are taught in English together with students of the 4-year LL.B programme of the first model, but instead of having *Sharī'ah* and *fiqh* courses taught in English, as in the first model, the *Sharī'ah* and *fiqh* courses in the second model are taught in Arabic; whilst some professional courses for practice in Syariah Court may be dealt with in the Malay language. The UNISSA LL. B & BSL double-degree programme is basically in English. Courses relating to *Sharī'ah* practice in

the Syariah Court, nevertheless, are taught in the Malay language, as the language of the Syariah Courts is Malay. Arabic language, in all the above institutions, however, is studied and mastered as a language course.

Generally, many people have given their support to this type of legal education and training, but many others have seen that the outcomes of this legal educational system have not been fully able to successfully produce graduates of the expected quality and of the required standard for the market, as the workload and student learning time are greater. On the one hand, it has been the aspiration of Muslims to support the integration/Islamization of knowledge movement in bringing about new paradigm into the system, but on the other hand, comes the question of quality and mastery. The noble aspiration is confronted with the issues of quality education and training to produce legal professional of the required standard. The possibility and probability of success in the system may be gauged from the following experience.

The Legal Profession and Qualification

The main objective of the single or a double law degree programme has always been to produce "qualified person" as defined under the Legal Profession Act (Act 166).[23] Only "qualified person" can become legal professionals in the legal profession[24], either in the judiciary (as magistrates and

[23] In Brunei Darussalam, the Legal Profession Act (Cap. 132).

[24]The word 'profession' "…in the present use of language involves the idea of occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale of commodities." *Per* Scrutton LJ, in *Commissioners of Land Revenue* v *Maxse* [1919] 2 KB 705.

judges), legal services (as law officers in the Attorney-General Chambers and other public bodies), or private legal practice (as advocates and solicitors). The market demands dictate the objectives. The ideals of integration and Islamization, in this context, seem secondary and academic.

Legal professionals undertake a wide range of legal work, including corporate transactions, conveyancing (transfer of title of property from one owner to another) and litigation. They may or may not specialize in any specific area of law. Those who specialized and admitted as an "advocate and solicitor"[25] may either specialize in solicitor's work only, or both as an advocate and solicitor to appear in court in litigation. Some prefer to be legal executives whose daily work is like that of the solicitors' calling in England, but usually work in a particular specialist area of law, such as conveyancing or probate, and many works in the legal departments of the public or private organisations.

Similarly, these standards are also expected out of *Sharī'ah* graduates. The nature of the job has advanced so much that differences between the approach and methodology in the study of law and *Sharī'ah* seems no longer distinct. The teaching and learning must incorporate (1) knowledge and understanding, (2) intellectual skill, (3) practical (application) skill and (4) transferable skill.[26] The approach is no longer traditional to merely emphasize on knowledge and understanding, delving on memorization and rote learning. Little has changed thus far. The study of

[25] Under our fused system of "advocate & solicitor" profession, there is no separation between 'barrister' and 'solicitor' professions like in the UK.

[26] See "The Academic Stage of Training for Entry to the Legal Profession: Standards, Content and Related Issues".

Sharī'ah today requires the *Sharī'ah*-in-context approach.[27] Professionalism must be acquired and practised in *Sharī'ah* discipline too, like the approach practised in the legal studies. Principles and rules of *Sharī'ah* and *fiqh* in all courses require illustrations using contemporary actual decided cases apart from the traditional authorities from *fiqh* books alone. This approach will help to nurture the development of the intellectual, practical, and transferable skill in graduates of such institutions. Simply following Bloom Taxonomy *per se*, without understanding the mechanics of the legal or *Sharī'ah* professional teaching and learning approaches would not lead to the expected results.[28] It is observed that the *MQA Programme Standards: Law and Shariah Law. Second Edition 2015* have recommended such teaching and learning that have changed the learning

[27] Professor Shaheen Sardar Ali emphasises: "It is necessary for Islamic Law teaching to adopt a 'law in context' approach where the meaning of law is understood and explored in its wider social, economic, political, ethical and moral sense and not confined to a reading of the text as a formal, written piece of legislation. Additionally, and more importantly, any question on Islamic law is open to more than one legal response and, barring a few exceptions, more than one set of laws may well be extrapolated from the same sources." Ali, Shaheen Sardar. (2011). Teaching and learning Islamic law in a globalised world: some reflections and perspectives. *Journal of Legal Education*, Vol. 61, No. 2, 2011, p. 221.

[28] I had been informed that higher education providers were advised to apply the first 4 levels of Bloom's Taxonomy for undergraduate programmes: (1) remembering; (2) understanding; (3) applying; (4) analysing. All 6 levels (the first 4 plus 2 more - (5) evaluating, and (6) creating), are only appropriate for postgraduate programmes. This is ridiculous if professional law graduates are lacking in the ability to evaluate and create! How could a judge or a lawyer be able to solve novel situations if he is not professionally trained to "evaluate and create"? In another version of the taxonomy: (1) knowledge; (2) understanding; (3) application; (4) analysis; (5) synthesis; and (6) create. In legal studies, the 4 learning outcomes developed by the authorities on legal profession in UK have stood the tests of time. Is there really a need to change the teaching and learning regime to Bloom's Taxonomy?

landscape to achieve the desired result. The question is whether the teaching and learning practice have really and effectively changed towards achieving such expectations.

The Current Practice: Integration or Islamization *Vis-À-Vis* the Constitutional Framework, Legislation, and Policies

Looking at the legal profession requirements, programme structures and the market demands, the Islamization approach in teaching law is *not*, at this juncture, probable. What has been the practice adopted by law schools mentioned above is the *integration* of *Sharī'ah* (and *fiqh*) courses into the law programmes. Law and *Sharī'ah* courses are taught distinctly and individually. Perhaps, the emphasis is to enable students to "master" law and *Sharī'ah* courses in parallel sequence. Yet, in the *Sharī'ah* domain, knowledge and understanding approach of learning have just been restructured some years ago, as per MQA's recommendation,[29] towards a well-balance study between knowledge and understanding, and intellectual, practical, and transferable skills.

In the Malaysian scene, within the constitutional framework, there is still a dichotomy in the legal system. Law and *Sharī'ah* justice system are still distinct. Most laws come within the jurisdiction of the Federal legislature (Parliament), whereas *Sharī'ah* laws are under the respective States' Legislative Councils, except *Sharī'ah* legislation for the Federal Territories which is within the jurisdiction of Parliament. The jurisdiction of the Syariah Court is confined under List II of the State List of the Ninth Schedule to the Federal Constitution and is legislated with limited powers

[29] MQA Programme Standards: Law and Shariah Law. Second Edition 2015.

under the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355), making the implementation of comprehensive Islamic criminal law, including *ḥudūd* and *qisās* impossible.

A different scenario is seen in Negara Brunei Darussalam, where such constitutional and legislative constraints, as embedded in the Federal Constitution of Malaysia, do not exist in the country. Article 39 of the Constitution of Brunei empowers His Majesty the Sultan and Yang Di-Pertuan Negara Brunei Darussalam to make laws for the peace, order, security and good government of the country, and Article 3(4) of the same Constitution enables His Majesty, after consultation with the Religious Council, but not necessarily in accordance with the advice of that Council, make laws in respect of matters relating to the Islamic Religion. Both type of laws is enforceable nationwide. Although on the one hand, current laws within the civil court jurisdiction in Brunei are identical to some of the laws in Malaysia, on the other hand, *Sharī'ah* law is part and parcel of the Bruneian national legal system. Although Islamization of law seems more probable in Brunei as the Brunei Constitution accommodates fully the implementation of *Sharī'ah* law, the two legal systems, however, are still not unified. The integration of knowledge approach is still relevant as the country still maintains the dual judicial system.[30]

[30] Since the country's independence in 1984, Brunei Darussalam has chartered its course through its proclaimed national philosophy of MIB (Melayu, Islam, Beraja). All three pillars of MIB - Malay culture, the religion of Islam, and the institution of an absolute Monarchy - are traditional, long standing Bruneian features. As the ideology is all-encompassing, law has not only been one of the vehicles for implementation but is being shaped to accord with the tenets of MIB. This can be seen in legislation, legal institutions, and processes for dispute resolution with the promotion of a more distinctive Malay character as well as a discernible Islamization agenda. "The Independence *Titah* of 1984 stated:

Although Brunei has the Syariah Penal Code Order, 2013[31] enforceable and administered in the Syariah Courts, the existing Brunei Penal Code, which is identical to our Malaysian Penal Code, is still administered in the civil court, separately.[32] Under such scenario, Islamization of law subjects or courses at the law school in UNISSA, at professional bachelor's degree level, in reality could not still be probable. Perhaps it could be more suitable at postgraduate levels which are more academic in nature. The trend of integrating the studies of *Sharī'ah* courses in law programmes in parallel structure is continuing in the university there, until such time the national policy clearly dictates such unification. Should in future Brunei moves towards introducing unified legal system framework, the dichotomy between law and *Sharī'ah* would no longer exists in the country. Only then Islamization exercise could be implemented rigorously, as the products of UNISSA have been equipped with thorough knowledge and practice of both law and *Sharī'ah*.

The Requirements Set by The Regulatory Authorities

The Legal Profession Qualifying Board of Malaysia (LPQBM), for e.g. has prescribed how the six core law courses and six other substantive law electives shall be taught in order to qualify for the academic stage of the law programme, and what other relevant courses have to be

"Negara Brunei Darussalam … akan untuk selamanya kekal menjadi sebuah negara Melayu Islam Beraja yang merdeka, berdaulat dan demokratik bersendikan kepada ajaran-ajaran ugama Islam menurut Ahli Sunnah wal Jama'ah".
See Black, A. (2008). Ideology and Law: The Impact of the MIB Ideology on Law and Dispute Resolution in the Sultanate of Brunei Darussalam. *Asian Journal of Comparative Law*. 3(1) 18-21.

[31] Perintah Kanun Hukuman Jenayah Syariah, 2013.

[32] A Shariat court in Pakistan can apply the Penal Code alongside the Hudood Ordinance.

taught to qualify for the professional or vocational stage of the studies.[33] The Malaysian Qualifications Agency (MQA) has also provided guidelines for the accreditation of law degrees from local law schools.[34] The Malaysian law schools have, therefore, been guided by the MQA standards to provide legal education and training, which incorporate the *Sharīʿah* component. The LPQBM, thus far, (as far as the writer has observed) have not objected to the MQA guidelines on the general law programme structure which has incorporated and integrated *Sharīʿah* and *fiqh* courses in the Malaysian law programme, but that is not really within the spirit of Islamization of knowledge. In the Foreword of the MQA Programme Standards, it is stated as follows:

> "These guidelines, if followed closely and wisely, enable the development and sustenance of programmes quality in Malaysia, thus improve the quality of graduates, and enhance graduates' employability and progress."

The objective seems to focus on enhancing graduates' employability and progress. The noble objective of integration or Islamization of knowledge seems remote.

The Study of *Sharīʿah* and Fiqh

The realities clouding the legal studies have long been plaguing the studies of *Sharīʿah*. Al-Faruqi observed:

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[33] *Guidelines of the Legal Profession Qualifying Board Malaysia.* See <http://www.lpqb.org.my/index.php?option=com_content&view=article&id=51:a-statement-on-six-core-subjects&catid=17:frontpage> (Accessed 15.04.2021)

[34] MQA "Programme Standards: Law and Shariah Law. Second Edition 2015". <https://www2.mqa.gov.my/qad/PS/PS%20Law%20and%20Shariah%20Law%20BI.pdf> (Accessed 15.04.2021).

> "If the early *fuqahā'*, due to their superb training and competence, were models of creative handling of their lives of the Muslims they counselled, however the training and knowledge of today's *faqīh* does not adequately equip the person to assume the role of the early *fuqahā'* who had carried out very successfully their duties and responsibilities in guiding the lives of Muslims. A great number of graduates from the present day *Sharī'ah* and Islamic colleges are not sufficiently trained by the curricula of these institutions."[35]

This frank observation seems tenable and new strategies are needed in order for teachers and students alike to *master* Islamic legacy, in this context, *Sharī'ah*, being an important tool and element towards working on a successful Islamization of law. Current research shows that the teaching of Islamic law today lies in the approach and expectation of the course aims and objectives, contents, and delivery. The outcome is not closely measured but linked to the institutional department in which the Islamic law courses are offered, and this has resulted in an uneven pattern of understanding. Shaheen Sardar Ali[36] (2006) made a significant observation as follows:

> "For purposes of faculty in law schools, the critical question underpinning a course on Islamic law is: Does the fact that the sources of Islamic law are believed to be of divine origin affect the way the law should be

[35] AbuSulayman, A.H. (Ed.). (1997). *Op cit*., p. 25.

[36] Professor Shaheen Sardar Ali was a Pakistani professor at Peshawar University in 1995 and currently at the University of Warwick, UK since 1998 (specializing in human rights, women's and children's rights, and Islamic law and jurisprudence), a consultant, among others, for the British Council, the World Bank and vice-chair of the Office of the United Nations High Commissioner for Human Right.

taught? If so, how might one approach the subject? Students often confuse the teaching of Islam as a religious doctrine with Islamic law, i.e., the principles and body of legal rules based upon it. Islamic doctrine and Islamic law are indeed different, and this difference needs to be considered pedagogically. What is the impact of this difference on teaching and learning processes within the discipline? For instance, if we are to teach the subject as part of a religious studies curriculum, both content and delivery is likely to cover the origins, history and evolution of Islam and Muslims, with less emphasis on the law-making process in the Islamic legal tradition. On the other hand, when located in law and social sciences …, instructors must use divine, and divinely inspired sources, i.e., the *Qur'an* and *Hadith*, as sources of a legal tradition hence opening them to critical engagement and analysis. Most English language scholarship on Islamic law devotes less space and discussion to *usul-ul-fiqh* and more to the history of Islamic law. Faculty using these as textbooks reflect similar trends and approaches. It is suggested that course content on Islamic law include methodology (*usul*) for deriving concrete and relevant legal doctrines from the religious sources.

As a result, Islamic law teachers must always decide whether the course will be taught from a faith-based or a critical perspective.[37]

[37] Ali, Shaheen Sardar. Teaching and Learning Islamic Law in a Globalized World: Some Reflections and Perspectives, 61 J. Legal Educ. 206 (2011), p. 213.

If one were to study the judgments[38] of the Federal Shariat Court, Pakistan, which dealt with appeals against the judgments of the *Sharī'ah* trial courts on *ḥudūd* matters, one could easily see the concern voiced by Professor Shaheen Sardar Ali, above, as present, and imminent. We could easily observe from such judgments that some trial judges do have adequate knowledge and understanding of the rules and principles but lacking in intellectual and application/practical skills, which led to the unnecessary conviction of the accused persons in various *ḥudūd* charges. Hence, unnecessarily facing *ḥudūd* punishment. Fortunately, the panel of appellate senior judges of the Federal Shariat Court, in some instances, the Supreme Court, are competent professionals who are well equipped to serve justice where "[n]ot only must justice be done; it must also be seen to be done"[39]. As a result, many *ḥudūd* sentences were quashed and substituted with *ta'zīr* punishment instead. In some cases, trial judges failed to ascertain whether the *arkān* (essential elements) which need to be established were satisfied beyond all doubt (*yaqīn*), whilst in some respects whether the *shurūṭ* (conditions) for such *ḥudūd* punishment were all established. In other cases, whether the eyewitnesses called to testify for such offence were qualified to testify as *'adil* witnesses (*shāhid*); whether

[38] See for example, among the main cases, *Ghulam Ali v. The State* PLD 1986 SC 741 (conviction and *ḥādd* sentence on *sariqah* (theft) was set aside and substituted with *ta'zīr* punishment under section 379 of the Pakistan Penal Code); *Hazoor Bakhsh* v *Federation of Pakistan* PLD 1981 FSC 145 (whether the stoning to death, as prescribed by the *Sunnah* for *muḥṣan* adulterers a valid punishment in view of the Qur'anic injunction in *Sūrah al-Nūr* (24): 2 which provides 100 lashes); *Latif & Anor* v *The State* PLD 1981 FSC 108 (*ḥādd* punishment was substituted with *ta'zīr* punishment under the Penal Code for theft of a cattle); *Sanaullah* v *The State* PLD 1991 FSC 186 (*ḥādd* sentence for theft in a jewellery store in the presence of the owner and store assistant was similarly set aside and substituted with *ta'zīr* punishment under the Penal Code).

[39] [1924] 1 KB 256; [1923] All ER 233.

the testimony amounts to *shahādah* or *bayyinah* only. Doubts (*shubhah*) in many aspects found in the prosecution of the *ḥudūd* cases, which require "beyond all doubts (*yaqīn*)" burden of proof, have led to many *ḥadd* conviction being quashed by the appellate judges. There is nothing wrong and nothing to worry if the prosecution had failed to secure a conviction against a person charged with any *ḥudūd* offences. The existence of doubts or uncertainties (*shubhah*) would avert *ḥadd* conviction and punishments. Where, in such cases, the court found sufficient evidence to convict the offender on the offence committed but has failed to satisfy the requirement for *ḥadd* punishment, e.g., in theft cases of Pakistan, the court would apply the corresponding Penal Code punishment instead, as *ta'zīr* punishment. Other *ta'zīr* punishments are provided alongside the respective *ḥudūd* punishments in the *ḥudūd* ordinances.

Islamization of Law in Malaysia

In Malaysian context, islamization of laws must start from the civil judiciary, top down. The spirit of islamization could be injected through common law approach, rather than through statutory law on various subjects passed by Parliament.[40] It would only then be most probable for the law schools to actively introduce islamization of the legal studies. The judges have to be given the liberty to refer to and apply legal and equitable principles of Islamic law or *Hukum Syara'* whenever there is a *lacuna* in the law.[41] Currently, the Civil Law Act 1956 confined the jurisdiction of the civil courts in Peninsular Malaysia to apply only the English "common law and rules of equity". Similarly, such

[40] The writer is sceptical as to the readiness of Parliament to Islamise the law.

[41] The idea of introducing the application of Islamic legal principles for the civil court judges to resort to wherever there is a lacuna in the law was once mooted by Prof. Tan Sri Ahmad Ibrahim.

application of laws is also provided for Sabah and Sarawak, but with an additional provision for the application of "statutes of general application, as administered or in force in England"[42], on 1 December 1951 (Sabah) and 12 December 1949 (Sarawak), respectively. Section 3(1)(a) of the said Act states:

> "Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall— (a) in Peninsular Malaysia or any part thereof, *apply the common law of England and the rules of equity as administered in England* on the 7 April 1956".[43]

This scope of the application of laws has remained the same for the last 69 year! It is high time the "character"[44] of the country must be respected and included in the law. The writer would suggest that the words— "apply the common law of England and the rules of equity as administered in England on the 7 April 1956"—be substituted with the following words:

> "(a) in Peninsular Malaysia or any part thereof, apply the common law of England, the rules of equity as administered in England on the 7 April 1956, and the principles and equitable rules of Islamic Law (*Hukum Syara'*) of the *Ahlis Sunnah Waljamaah* and other compatible equitable principles of any other faiths or religions in the country".

[42] See section 3(1)(b) & (c) of the Civil Law Act, 1956.
[43] Emphasis added.
[44] See Article 3 of the Federal Constitution of Malaysia and the "Rukun Negara" (The National Principles): 1. Belief in God; 2. Loyalty to the King and Country; 3. Supremacy of the Constitution; 4. Rules of Law; and 5. Courtesy and Morality.

The same substitution may similarly be made to paragraphs (b) and (c) of subsection (1) of section 3 of the Act for the states of Sabah and Sarawak.

The proviso of this section should be amended too, accordingly, from the words— "Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and *their respective inhabitants permit and subject to such qualifications as local circumstances render necessary*."[45]— to read:

> "Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to the principles of *Rukun Negara* and such qualifications as local circumstances render necessary."

Rukun Negara was considered by the High Court in Kota Kinabalu in deciding whether a gambling debt agreement was unlawful or otherwise under the Malaysian law, though valid under the law of England. It is very fascinating to read the judgment of Mr. Justice Ian Chin, Judge of the Kota Kinabalu High Court (as he then was), in delivering the decision concerning the enforcement of a judgment from a UK Court relating to a gambling debt agreement. The issue in the case of *The Ritz Hotel Casino Ltd & Anor v. Datuk Seri Osu Haji Sukam*[46] was whether an English court judgment on gambling debt agreement could be enforced, outside of the UK jurisdiction[47], in Malaysia,

[45] Emphasis added.
[46] [2005] 6 MLJ 760.
[47] Judgment of a UK court can be enforced in Malaysia against a defendant/judgment debtor in Malaysia under the Reciprocal

on the ground that the agreement was valid as the creditor was a licensed casino under the relevant Act of Parliament in the United Kingdom.

In an earlier Malaysian decision, it was held by a Kuala Lumpur High Court that the gambling debt agreement, in the case of *The Aspinall Curzon Ltd v Khoo Teng Hock*[48], was not unlawful as it was not opposed to public policy, as provided under section 24(e) of the Malaysian Contracts Act 1950.[49] Four years later, the Kota Kinabalu High Court, in *The Ritz Hotel Casino Ltd* case, did not agree with the decision held in *The Aspinall Curzon Ltd*.

In *The Ritz Hotel Casino Ltd* case, the court observed that any transaction which is injurious to the public welfare goes against the principles of *Rukun Negara* of this country and must be regarded as against public policy; hence, unlawful and unenforceable. A casino, albeit licensed under the law, could not be allowed to recover, as the agreement was void as opposed to public policy. As the learned judge observed, the casino had enticed the debtor to gamble on credit and to gamble away the welfare of the family and led him away from the path of God. This is against the principle of "Belief in God' which is enjoined by the *Rukun Negara*. The local condition of this country, however, is different in various respects, and public policy is as one of the factors,

Enforcement of Judgments Act 1958. A UK Judgment creditor "may apply to the High Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court" here in Malaysia.

[48] [1991] 2 MLJ 484.

[49] Section 24 of The Contracts Act 1950 states, *inter alia*: "The consideration or object of an agreement is lawful, unless— … (e) the court regards it as immoral or opposed to public policy. … Every agreement of which the object or consideration is unlawful is void."

provided under section 24 of the Contracts Act 1950, to be considered for the legality of a contract.

Although public policy is seen as an unstable foundation upon which law should be built, the Contracts Act 1950 has empowered the judges in this country to exercise judicial discretion in determining what is and what is not opposed to public policy.[50] It would be more certain if the amendment suggested to be expressly made to section 3(1) and the Proviso to clearly give jurisdiction to the court to look into other legal and equitable principles which are dear to the inhabitants of this country in all matters. The public policy issue in *The Ritz Hotel Casino Ltd* case was based on religious and cultural considerations attributed to *Rukun Negara* principles. The attempt made by Mr. Justice Ian Chin to analyse and apply religious and traditional principles of various religions and faiths of this country, within the ambit of our Malaysian National Principles of *Rukun Negara*, is well lauded to widen the judicial interpretation of public policy of this multi-racial and multi-religious country.

Conclusion

The current practice adopted by law schools is the *integration* of *Sharī'ah* (and *fiqh*) courses into the law programmes, and law and *Sharī'ah* courses are taught distinctly and individually. The emphasis perhaps is to allow students to "master" law and *Sharī'ah* courses in parallel sequence. Integration of knowledge is more probable and practical and would not change much the structure of the programme. On islamization of law, professionally, it very much depends on the constitutional and legal framework of

[50] A. Mohaimin Ayus. (2009). *Law of Contract Law in Malaysia: Vitiating Factors.* Vol. 2. Petaling Jaya: Sweet & Maxwell Asia. pp. 1898, 1901-1905.

the country. Academically, there is no harm of islamizing the law, but to serve the requirements of the regulatory body, law must be taught without the infusion of Islamic law into it, and *vice versa*. The authorities, however, have allowed the parallel teaching of *Sharī'ah* to be integrated into the system. It is necessary in the process of islamizing knowledge, wherever tolerable and permissible within the identified constraints, to redefine and re-order the approach, to rethink the reasoning, to re-evaluate and to re-project the goals for the purpose of serving the cause of Islam. The observations are pertinent to the success of the venture to recast knowledge in the mould of Islam and to relate it to the Islamic vision.

At professional undergraduate level, an empirical study and review of the law and *Sharī'ah* programmes are urgently needed, to ensure graduates are really equipped with the expected knowledge and true understanding of both law and *Sharī'ah*, and be trained with the required intellectual, practical, and transferable skills in both disciplines; hence gaining mastery of both. In curriculum designing, every institution must consider the reasonable students learning time upon which they could "humanly" and possibly learn and be trained to successfully achieve the outcomes set for both disciplines. Sentiments, self-contentment, and lack of technical know-how are among the causes which may interfere, impede, and distort the progress and success of the venture and efforts to integrate or Islamise law and *Sharī'ah* and *vice versa*.

The writer supports Professor Shaheen Sardar Ali's suggestion that the "law in context" approach should be adopted in teaching *Sharī'ah*, to enable students to appreciate the inherent complexities and intricacies of Islamic law. A rigorous methodology in the teaching and learning process is pertinent, by encouraging a critical

engagement with the primary and secondary sources of the Islamic legal tradition, to include the opportunity for imparting important lawyering skills, including developing coherent arguments from varying source materials, understanding the plurality of views and opinions, analysing legal norms, and sifting and extrapolating the legal from the moral, ethical, and religious injunctions. In the words of Iqbal, "As knowledge advances and fresh avenues of thought are open, other views, and probably sounder views … are possible. Our duty is carefully to watch the progress of human thoughts, and to maintain an independent critical attitude towards it."[51]

Integration of *Sharī'ah* in law may start from the higher learning institution; however, Islamization of laws in Malaysia must start from the Judiciary and Parliament. The judges have to be expressly given the liberty to refer and apply legal and equitable principles of Islamic law or *Hukum Syara'* and any other compatible equitable principles from other faiths whenever there is a *lacuna* in the law. This will officially kickstart the islamization of law from top down.

[51] Iqbal, M. (2000). *The Reconstruction of Religious Thought in Islam*. Batu Caves: Masterpiece Publication Sdn Bhd, p. vi.