

Islam is a Full Package of Life and Not Limited to Personal Matters

News:

The High Court in Mombasa has stopped a Kadhi Court from presiding over a dispute between a family of both Christian and Muslim faith. Justice Olga Sewe issued the order stopping the Muslim Court in Kwale after one of the parties complained that they were being subjected to a court that could not deal with their issues. The Judge agreed with the petitioner Josephine Kyavi Isika that the Jurisdiction of a Kadhi court is limited to determining matters of Muslim Law relating to personal status, marriage, divorce or inheritance in proceedings where all parties are Muslims.

Comment:

Disrespecting Islam is primarily founded on the tainted basis of the corrupt creed of Secularism that detaches Religion from the realm of life. This creed has crowned the human being to confine Islam in to spiritual guidance into personal matters.

The current structure of kadhi court in Kenya is greatly attributed to the British Colonial policy of indirect rule which emphasized a need to establish Native Courts where British powers were in theory limited to oversight and supervision. In practice, the policy of indirect rule gradually altered the legal power structure away from Religious and Customary law courts. Under this system, the British established several court systems, including the High Court and district courts in the secular side, and native courts that included the Kadhi's Court and the Court of Local Chiefs. These changes have lasted within the Kadhis' Courts through the reign of colonialism and into post independent Kenya.

Kadhis' Courts are established under Article 170 of the Kenyan Constitution. Their jurisdiction is limited to the determination of questions of Muslim Law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim Religion and submit to the jurisdiction of the Kadhis' courts. Under current Constitution, kadh's court is considered as a subordinate court under the superior courts of Kenya (Supreme Court, Court of Appeal, and High Court).

However, the court has received some opposition from political class as well as the judiciary itself. In May 2010, a three-judge bench of the High Court ruled that the inclusion of Kadhi courts in current Constitution was illegal and discriminatory. The Judges went further saying the inclusion of kadhi courts in the country's ultimate law favored Islamic religion over others.

Islam is not the off-spring of particular social circumstances, nor is it the product of human thinking under certain limits of time, place and thought. In fact, it is the legislative formulation of the nature of human life, and a complete disclosure of its rules and systems. Islam is a full package of life that includes judicial system. Judiciary is one of key institution of the Khilafah. It settles the disputes among people, prevents that which harms the community's rights and eliminates the disputes arising between people and members of the ruling apparatus - rulers and employees - including the Khaleefah and those of lesser rank.

In Hizb ut Tahrir's Draft Constitution under Article 67, the Khaleefah is to appoint a chief judge authorized to appoint, discipline, and dismiss judges within the administrative regulations...." Article 68, has stipulated that there are three types of judges:

First: The judge who settles the disputes among people in transactions (Mu'aamalaat) and punishments ('Uqooabaat);

Second: The muhtasib who settles the violations of the community's rights;

Third: The judge of the Court for the Unjust Acts (mahkaamat ul-madhalim) who settles disputes between people and officials of the State.

It is apparent that Islam leaves no part of the human activity, big or small, without having it organized in one way or another, through well-defined laws, rules and regulations. It has addressed to the human race as a whole. Its message is a universal one. Its laws are general and not legislated for the sake of a particular group.

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