Shari'ah Legitimacy of Islamic Banking in Pakistan: An Analytical Study of Issues Regarding *Talfīq* and *Rukha*┐

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Abstract

Islamic Banking is an important branch of Muslim financial transactions. New developments in the global economic system have created a number of issues for Muslims, especially, in the field of modern banking and finance. In the current global setup, one school of jurisprudence could not be followed with its all rulings as a cosmopolitan jurisprudence. This is why Shari'ah Scholars gave various verdicts benefiting from inherent choice and opportunity of Juridical Madh┐ ib. These verdicts provide justification to 'Talf┘ q' and adoption of 'Rukha┐ ' (choosing easier rulings from different schools). It is, however, needed to carefully review the concept of Talf┘ q and 'Jam` bayn al-Madh┐ ib' for closer examination of the modes of financing that are in practice in the contemporary Islamic Banking. This research focuses on multidimensional aspects of the aforesaid issues of Talf┘ q and Rukha┐ in order to meet some of the challenges posed by the modern banking.

The option to follow an opinion from another school and permissibility of giving verdict accordingly has been an issue of heated debate among the Shari'ah Scholars in Pakistan in their Fat┐ w┐ regarding current Islamic Banking. The opportunity to follow a verdict from another school is needed in circumstances like: (a) When following of one's 'Madhhab' would lead to undue hardship, (b) Due to narrowness of a 'Madhhab' in a specific issue, (c) Fulfilling a public need [1] *(Ma┐ la ┌ a)*

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and (d) Seeking easier way to act upon a Shar┘'ah ruling and to avoid sin.

The present issue in terms of Islamic Jurisprudence has been titled as: *Talf┘q*, *Ift┐' bi Madhhab al-Ghayr* and adoption of *Rukha┐*.

Talf┘q is to join between different ideas from various schools of jurisprudence in the context of one action resulting amalgam that would not be accepted according to all Jurists. For instance, someone makes wu╔┴ with mas╒ (running the wet hands over the head or feet) upon one or two hair and decided to follow the Shafi'i school, does not follow Imam Shafi'i in another verdict in the same ablution, i.e. doing ablution in case of touching a woman or his own private parts. The ablution will not be right since both schools would say that his prayer is invalid. Creating such a hideous amalgam is objectionable because it has been made for entertainment- without any genuine need, and because of a negative tendency to alleviate the burden of one's duties. If such a process is allowed, it will lead him to frailty in acting upon Shari'ah rulings.

Seeing towards a 'Madhab' (مذهب) as an established legal system, the issue of mixing between 'Mazahib' and adoption of 'Rukhas' seems unlawful as it leads to the termination of a settled legal system. No legal system allows this type of engineering in it. For instance, a legal system which conditioned registration of a Nikah, presence of witnesses or the presence of custodian in case of virgin, etc. for a valid Nikah. If the addressees of this very legal system aim to nullify these conditions by acting upon another family law, it will lead towards several legal mistakes.

For this valid technical necessity, the jurists declared that the compiled law of renowned Islamic 'Madahib' are binding upon people who are living in a territory, being ruled with the verdicts of that specific 'Madhab'. That was under the principle of *"Sadd ul-Dhariah"*[2] so that no one could absolve himself from his responsibilities by using these sort of juridical engineering, which further leads to the nullification of authentic Islamic juristic 'Madahib'. This is where the idea of 'TaqlĪd' came into existence, which means the obligatory adoption of a specific 'Madhab' in the area being ruled with.

On the other hand, there had been genuine needs in every era of time which assist the jurists to think and ponder that the theory of 'Taqlid' could not be followed with its all letter and spirit in each and every '*Fara''* (practical laws) and that in various new issues regarding 'Ibadaat' and 'Mu'amalaat', exception should be given from general principle of 'Taqlid'. By this, theories like 'giving verdict according to another school' (إفتاء بمذهب الغير) and 'Talfīq' came into existence.

Islamic Banking is an important branch of financial transactions of economic system of Islam. Due to the new expansion in the global change and emergence of numerous forms and various new modes of banking business and transactions came into being. In this global change, one school of jurisprudence could not be followed with its all rulings as a cosmopolitan jurisprudence. This is why Shari'ah Scholars gave various verdicts benefiting from inherent choice and opportunity of Juridical Madahib. These verdicts provide justification to 'Talfīq' and adoption of 'Rukhas' (choosing easier rulings from different schools).

'Taqlīd' (تقليد) being a very sensitive issue in the subcontinent, has been seen a core requirement to be adopted in the opinion of Ulama in this region. To become free from 'Taqlīd' is considered very hideous by them. They raised many questions in their Fatawa stating that the current Islamic Banking is unlawful as it is based on these afore mentioned theories. These objections could be summarized as under:

- Such a process is leading to the trickery in matters of Shari'ah.[3]
- The people who loosed the virtue of being committed Muslim took advantages of 'Rukhas' for more earning from new modes of banking.[4]
- These trickeries has benefited upper class of businessman, investors, who strengthen their wealth by the current 'Hīlah' based modes of transaction and does not benefiting the poor ones or average men as they are a very small number involved in the business of Islamic Banks.[5]

- 'Talfīq' means combination of 'Rukhas' from different schools which is 'Haram' (forbidden), so that the modes based upon these theories are also 'Haram'.[6]
- Ifta' bi Madhab il-Gair' (إفتاء بمذهب الغير) is not allowed to frame a permanent system of Islamic business and finance while the current Islamic Banks use it as a regular financial system.[7]

To discuss these arguments, it is essential to elaborate these concepts in a bit detail so that the transaction based upon these theories in current Islamic Banking in Pakistan can be discussed.

Transference from 'Madhab' to 'Madhab' in different verdicts (خروج عن المذهب):

By transference from Madhab to Madhab we mean non-restriction to the verdict of one absolute Mujtahid (jurist), rather reference to the verdicts of more than one Mujtahid concerning an independent action. By this transference from Madhab to Madhab, choice between verdicts of various scholars or *Ifta bi Madhab il-Gair* [8] differ from Talfīq which is making a compound entity adhered to by no one.

There is a difference of opinion among the jurists whether an ordinary person has the choice to refer to any of Mujtahid in his fatwa rulings. In other words, following one Mujtahid in certain matters and following the other in certain other matters is allowed or not, needs to be discussed.

First opinion:

A group of scholars is of the view that a Muqallid's responsibility is only to fulfil the requirements set out by one of the school he is following to. The reason is that he does not have a capacity to derive/deduct the Shari'ah rulings himself directly from the text of the Holy Quran and Sunnah, nor can he do the *Ta'yin* (specification) and *Takhyer* (choice) between the Mujtahid and others. He is not even capable to determine the rank of Mujtahids in terms of knowledge and kinds, or which one opinion of two or more is stronger than the others. Another medium opinion is of Allama Amidi (آمدي) and Al Kamal ibn ul-Humam who say that someone who follows an Imam in an issue must follow the requirements of his Madhab on that issue and everything else that related to it. But if someone who follows positions

in different schools in issues not related to each other, can validly follow a different school in each one of these separate issues.[9]

Second opinion:

Second view is that; one could conceivably follow the positions of multiple schools. If someone decided to follow Imam Abu-Hanifah or Shafi'i, is not bound to follow them continuously in each and every matter. So one would absolve himself of his responsibility before Allah Almighty by following any of the Madhahib and be benefited with which is mentioned (that differences of opinion are a mercy)[10].

They argue that making someone's Taqlīd obligatory in each and every matter means a new legislation (تشريع) which is the authority of Allah Almighty. As far as the matter is concerned with a Muqallid's decision to follow a Mujtahid, that is not a sort of 'Nazr' (vow) to be completed at any rate. Although Allah Almighty has made it compulsory to follow Ulama but not a specific one, he states in the Holy Quran:

''فسألوا أهل الذكر إن كنتم لا تعلمون'' [11]

"Ask the followers of the Remembrance if you know not"

Moreover, during the early Islamic period, the ordinary people still continued to follow one companion in a certain issue, and another companion in another issue, and another concerning a third issue, and so on in numerous cases. Nevertheless, no objection to such a practice of theirs has been recorded; neither were they ordered to search the one who had been consulted before.

These scholars are of the view that to make a 'Madhab' incumbent upon someone is like creating hardship to him while a variety of *Madhahib* is a mercy for the people. It is appropriate here to quote a statement by Shaikh Abdul-Ali'e Ansari in this regard from his famous book *"Fawatihul Rahmoot"* (فواتح الرحموت) as:

''انعقد الإجماع على أن من أسلم فله أن يقلد من شاء من العلماء من غير حجر وأجمع الصحابة رضي الله عنهم أن من استفتى أبا بكر وعمر وقلدهما

فله أن يستفتي أبا هريرة ومعاذ بن جبل وغيرهما، ويعمل بقولهم من غير نكير، فمن ادعى رفع هذين الإجمالين فعليه الدليل''[12]

"There is a consensus in the issue that a Muslim may follow any of the Ulama without any restriction. Companions of the Holy Profit (رضي الله عنهم) were also agreed upon the matter that who asked from Abu-Bakar or Umer and followed them, can also asked Abu-Hurayrah and Mu'aaz bin Jabl, and can act upon their verdicts without any restriction. The person who disagree with this opinion will be asked to come with evidence."

Shaikh Abdul-Ali'e goes on supporting this view that commitment to a particular Madhab is not obligatory by saying:

''..لا يجب الاستمرار ويصح الانتقال وهذا هو الحق الذي ينبغي أن يؤمن ويعتقد به لكن ينبغي أن لا يكون الانتقال للتلهي فان التلهي حرام قطعا في التمذهب كان أو في غيره (إذ لا واجب إلا ما أوجبه الله تعالى) والحكم له (ولم يوجب على أحد أن يتمذهب بمذهب رجل من الأئمة) فايجابه تشريع شرع جديد ولك أن تستدل عليه بان ا ختلاف العلماء رحمة بالنص وترفيه في حق الخلق فلو الزم العمل بمذهب كان هذا نقمة وشدة'' [13]

"It is told that continuation is not necessary and transference is valid. This is the truth that ought to be accepted. The reason is that there is no obligatory duty but Allah decreed some, and the Hukm (authority to rule) only belongs to Him. He did not make it obligatory on anybody to follow the Madhab of any one of the four Imams. Therefore, making such a thing *'Wajib'* will be considered a new legislation, and you may reason against it by saying that, based on 'Nass' (textual evidence) disagreement of scholars is a blessing and a relief for the human being."

We conclude this discussion by saying that; some Fatawa raised this debate, relating it with the existing modes of transactions in current Islamic Banking. In this regard, what I believe is that this is not a related issue. The reason behind prohibiting people from transference and mixing the schools is to save them from entertainment with Shari'ah rulings or for adoption of another Madhab by the way of elimination of excuses and outlawing to do Haram, or that may lead to evil results, or defiance of Shari'ah rules.

As for Ifta' from Shari'ah scholars or Shari'ah boards in banks is concerned, the case is not the same. Their verdicts according to another school could not be considered Khuruj 'anil-Madhab (خروج عن المذهب), nor could it be called the violation of Shari'ah rules or mockery with Shari'ah. As stated earlier, due to the change of customs and circumstances, or for the public good, seeking advantage from any school of jurisprudence is required as per Shari'ah objectives.

'Talfīq':

Talfīq literary means: piecing together. In legal terms, describing the derivation of rules from material of various schools of Islamic Law. [14]

Talfīq is defined as:

> ''هو الإتيان بكيفية لا يقول بها المجتهد، ومعناه أن يترتب على العمل بتقليد المذاهب والأخذ في قضية واحدة ذات أركان أو جزئيات بقولين أو أكثرللوصول ألى حقيقة مركبة لا يقرها أحد"[15]
>
> "Talfīq is to join between the verdicts of more than one school with respect to a single issue, so that the resulting amalgam would be unacceptable near all Jurists".

In other words, 'Talfīq' means acting in such a form that Mujtahid does not recommend, by combining two or more verdicts with respect to a single matter, and hence, achieving a compound entity adhered to by no one. For instance, someone who bleeds and decides to follow 'Shafi'i school on ablution (wudu), cannot follow the Hanfi school in touching his private parts or a woman (أجنبية), without his Wudu being nullified, and in prayer by not reciting the 'Fatiha' (فاتحة) behind the

Imam, since both schools would say that his Wudu and prayer were invalid because this form of Wudu represents a compound entity that is addressed by none of the two jurists. An example from family law could be one's Nikah without custodian's consent, without 'Mahr' (dowry) and without witness. All of three conditions could be nullified by different verdicts of various schools, but this compound entity is being found to do Haram and causing evil results and making anarchy in an established legal system which would not be acceptable. In the same way if a man divorces his wife three times, the divorced lady then marries a '*Murahaq*' (teenager) for 'Halalah' (which is lawful in Shafi'i School), then takes divorce after intercourse (as per Imam Ahmad's School), then marries first husband without 'Eddah' (which is lawful in Hanbali School), the marriage would be unlawful because in the case of marriage with a '*Murahiq*' (teenager), Imam Shafi'i conditioned several things, e.g. presence and consent of Wali (guardian), Maslaha (benefit) of that boy etc.

Reasons for Prohibition of Talfīq:

The reason behind the prohibition of 'Talfīq' is that the jurists after pondering over all the aspects of an issue and its evidences- literal and textual- structuralize all possible forms of that very issue. After the specification of structural form of that issue, the possible way outs are also be specified. All this legal procedure has its principles in Islamic jurisprudence. By mixing different individual cases (فروع), there occurs disturbance in these principles.

Secondly, in many cases, to create a new form is impossible. For instance, *'Eddah* (عدة) of a pregnant widow can be settled only by two ways; one is to give birth to her baby and the other is; to complete the period of four months and 10 days after giving birth, i.e. the lengthy period from two periods (أبعد الأجلين). To create a new form e.g. Eddah by three months, is not possible.

The jurists who allow the 'Talfīq' do not agree with the argument, although they accept that 'Talfīq' causes problems and disturbance in the principles of law. They argue that in the example cited above, the structural form of issue has been specified by textual evidences. That's why to create a new way out is impossible, while in 'Talfīq' (which

means creating way out in the matters proved by probable evidence) making a way out is quite possible. They further state that 'Talfīq' is nothing but 'Taqlid'. Rejecting of 'Talfīq' means refusal of 'Taqlīd' itself (as Taqlīd does not mean to follow a single Mujtahid in each and every matter (فرع).

Besides, disapproval of 'Talfīq' means nullification of all actions done by the people who do not follow a specific Madhab (غير مقلد), as they follow several Mujtahidin and take verdicts from different jurists in their daily life. They even don't know the verdict they are acting upon is derived by which one of the Mujtahidin. So by doing 'Masah', for instance, according to Shafi'i s school, one's 'Wudu' is lawful in its beginning and by not renewing the same 'Wudu' after touching his private parts, is also lawful in its continuity according to the Hanafi School. So this Wudu is lawful according to the both schools (by one its beginning and by the second it's continuity).

Arguing the evidence that Talfīq causes transgress in the consensus they say: *Ijma'* noted in this regard may be of one Madhab only, not the consensus of Ummah or all the schools. Says 'Ibn ul-Hummam:

> ''إن المقلد له أن يقلد من شاء، وإن أخذ العامي في كل مسألة بقول مجتهد أخف عليه لا أدري ما يمنعه من النقل أو العقل، وكون الإنسان يتبع ما هو الأخف عليه من قول مجتهد مسوغ له الإجتهاد، ما علمت من الشرائع ذمة عليه، وكان صلى الله عليه وسلم يحب ما خفف عن أمته''[16]
>
> "A muqallid may follow whom he wills. A common man can act upon a verdict of a mujtahid, which he sees easier to be acted upon. I do not know evidence (textual or intellectual) which forbids him from this. The fact is that a human follows what is lighter among the probable statements of a Mujtahid. I never learned prohibition of this behavior from the divine rulings. Holy prophet (SWAS) loved what eased his Ummah".

So, to say that 'Talfīq' causes transgress in the consensus is not true.[17]

It also becomes clear from this that every follower is naturally unable to distinguish between the ranks of Mujtahids. Therefore, he is allowed

to follow different Mujtahids with respect to various religious matters. During the early Islamic period, the compliance by a solicitor of verdict with the opinion of one of the scholars from the Prophet's companions regarding a certain issue, and his compliance with the opinion of another Companion or tabi'i regarding another issue, was not called Talfīq, although the result was a compound entity that was not believed by any of the two scholars. Rather, it resembles the overlapping of scholars' opinions in an unnoticeable and unintentional natural way, like the overlapping of words' in the Arabic language. Does any Muslim have the misimpression that Abu Hanifah rejected to follow Imam Malik or to eat from the animal slaughtered by Ja'far? Never! Their personalities were higher than such prejudice. Ibn e Taymiyyah (ابن تيمية) is quoted as making an argument that can be briefly put as the following: Obliging an ordinary *Mukallaf* (the subject) to follow a jurist involves great difficulty and limitation. The ordinary people of every period still continue to follow one mujtahid in a certain issue, and another Mujtahid in another issue, and another concerning a third issue, and so on in numerous cases. Nevertheless, no objection to such a practice of theirs has been recorded; neither were they ordered to search for the most learned and competent in their views.

They further mention some quotations from fiqh literature which justify compound verdict (قول مركب). Says Ibn e Abideen in *"Tanqih ul-Fatawa"*:

> .. "أن في منية المفتي ما يفيد جواز الحكم المركب . . وجزم العلامة ابن النجيم في رسالته بان المذهب جواز التلفيق، ونقل الجواز عن الفتاوى البزازية"[18]
>
> ..."The book '*Munia al-Mufti*' has quoted which allows compound verdict (to be act upon)... and Allama Ibn Nujaim asserted in his '*Risaalah*' that Hanafi doctrine allows Talfīq. *Fatawa al-Bazzaziah* has quoted the same."

Same is the coat of *Ibn e Arafah Maliki* who allowed compound verdict to be act upon.[19]

Prohibited 'Talfīq':

However, jurists who allowed *Talfīq*, discussed its various forms which are not approved. These forms are as under:

(1) Void originally (باطل لذاته)

This leads to make 'Haram' 'Halal' and vice versa. For example: to make wine (خمر) Halal or committing adultery permissible with some kind of Talfīq.

(2) Prohibited (محظور)

This form is not prohibited by itself, rather for the cause makes it prohibited.

Three major forms fall under this category:

i. 'Talfīq' without genuine need:

This type of Talfīq is prohibited so that people could not take Talfīq a tool to absolve themselves from their legal responsibilities.[20]

ii. 'Talfīq' which neglects Shari'ah objectives, causes harm to mankind or to be made for tampering with Shari'ah, fall under this category.

iii. 'Talfīq' which causes breakage to a legal system.

In the book *"Usul al Fiqh il-Islami"*, Dr. Wahbah al-Zuhali has elaborated this issue in a suitable manner which can be summarized as:

Permitted 'Talfīq' could be made in those matters (فروع) which are probable (ظني) or based on *Ijtehad*. These matters are divided into three categories:

1. There are matters which are based upon facility and ease (يسر). In such matters, exemption for Muqallid is preferred.
2. Matters which are based upon piety.
3. Matters in which the human benefits have a priority and are promulgated for the sake of human welfare and civilization.

In the first category, concerning with 'Ebadaat' (worships), 'Talfīq' should be allowed when needful, because the objective behind 'Ebadaat' is to know man's submission to Allah's will, not embarrassment and difficulty.

As well as the financial matters are concerned, 'Talfīq' should not be allowed. So, one cannot do tricks to cause harm to others or not to

dissipate their rights. However a Mufti should give consideration to someone's exceptional state in which he wants relief due to some compulsion.

The second category comprises prohibited matters in which carefulness is a general maxim. The purpose to forbid Talfīq in these matters is the safeguard of people from unjust and transgression, especially when the matter concerns to public rights (حقوق العباد). However, the legal maxim does not work in the matters other than "Huquq ul Ebaad".

In the third category, matters belonging to all 'Hudud', 'Amwāl' (wealth) and family laws, Talfīq may be allowed to giving benefit to the people concerned, except which require carefulness.

Likewise matters relating public welfare or those financial affairs which are changed due to the custom and the change of time, or one interest (مصلحة) got changed into another interest, 'Talfīq' may be allowed. The verdict which matches with the changed circumstances may be accepted even from another school.

It may be concluded from earlier discussion that 'Talfīq' which causes harm to Shari'ah objectives, leads to defiance of the order of legitimate ruler, or to the breakage of a legal system, or which is being done to do mockery, or harms people and wastes their rights is not 'Halal', and which is, in contrary, based on public good, or which is required due to the change in custom or ages, may be allowed by the experts of Shari'ah.

Adoption of *Rukhas*:

'Rukhas' (relief or provisos) stands in contrast 'Azimah' (عزيمة). It denotes the rules enacted by Allah to lighten the obligation of *Mukallaf* (the person having legal capacity) in certain cases that call for such a relief and peculiar to certain circumstances on *Mukallaf*. What is meant by 'Ruksah' (singular of 'Rukhas') here is the Mukallaf's right to examine the verdicts concerning different cases and thereupon trying to find the verdict lighter and easier, that change difficulty to leniency and ease and bestows comfort. Such an attempt may combines two matters: first, commitments to Shari'ah limits and avoiding sin, and second, making the duty as much easier as possible by trying to find lighter verdict, and then follow it in various cases.

Once permissibility of 'Talfīq' is settled, and un-necessity of continuation to follow a specific school of Fiqh is allowed, the permissibility of the adoption of 'Rukhas' in the consequence also be approved, as this issue is a branch of 'Talfīq' or 'Khuruj anil Madhab'.

The author of *"Fawatih al-Rahmut"* (فواتح الرحموت) states that it may be concluded from this – namely, from what was mentioned concerning the unnecessary of continuation to follow a specific Fiqh that a 'Mukallaf' may follow their Rukhas,[21] he quoted from *"Fath ul-Qadir"* (فتح القدير):

> "Perhaps, the opponents of transference objected only so that no body adopts the 'Rukhas' of the schools of Fiqh".[22]

He states that no legal deterrent forbids it because a person has the right to choose a way that is the easiest for him, provided that he has right to go through it or when the Shari'ah possess no objection or prohibition against it.[23]

Although they are of the opinion that this adoption of Rukhas should not be for ridiculing like playing chess by a Hanafi as per Shafi'i Madhab or like drinking of "*Muthallath*" (مثلث) by a Shafi'i as per Hanafi Madhab, such an action may be haraam based on *Ijma'*, because seeking amusement is prohibited according to the explicit texts.[24]

Imam Qarafi has mentioned a condition in this regard as:

> ''يجوز تتبع الرخص بشرط ألا يترتب عليه العمل بما هو باطل عند جميع من قلدهم كما إذا قلد الإمام مالك في عدم نقض الوضوء بلمس المرأة بغير الشهوة وقلد الإمام الشافعي في عدم وجوب دلك الأعضاء في الوضوء أو عدم وجوب مسح جميع الرأس فإن صلوته تكون باطلة عند الإمامين لعدم صحة الوضوء عند كل منهما.'' [25]

> "Rukhas may be followed with the condition that the matter does not consequent what is wrong among all whom someone follows. For instance following Imam Malik, someone who does not renew his Wudu after touching a woman without lust as per Maliki madhab,

> does not massage his Wudu organs as per Imam Shafi's madhab, his prayer would be void as both Imams consider the inaccuracy of his ablution."

In our humble perception the motive behind this condition of *Al-Qarafi* is just for the safe guard of a legal frame work and principles of jurisprudence, because every *Fara''* (فرع) is based upon certain principle and to disturb or mix Furu (singular of Fara') causes disturbance in settled Usul, otherwise the reason mentioned above is not applicable in general and all cases. That is why Imam *Ibn ul-Humam hanafi* argued *Qarafi's* opinion by saying:

> "This is not the unanimous opinion, because if it is permissible to oppose a Mujtahid in his all verdicts, it should also be permissible to oppose someone in his specific verdict." [26]

Says Imam *Ezz ibne-Abdussalam*:

> ''وللعامي أن يعمل برخص المذاهب، وإنكار ذلك جهل ممن أنكره لأن الأخذ بالرخص محبوب ودين الله يسر و "ما جعل عليكم في الدين من حرج''[27]

> "An ordinary man is allowed to follow the Rukhas of various schools. To say it unlawful is mere ignorance. Because to adopt Rukhas in Shari'ah is generally preferable, Allah's deen is quite easy, and "He did not make in the religion the embarrassment for you"

However, the discussion about adoption of Rukhas in context with the current Islamic banking in the country, and considering it totally haram, is not a just opinion in our view. As discussed earlier, because the eminent scholars of various schools like Imam *Qarafi* from Maliki school, Ahnaf and *Shafi'i* in general, have allowed certain kinds of Rukhas to be sought.

Generally their textual evidences are those sayings and traditions of the Holy Prophet (SAWS) which show his own practice of adopting the easier from two options.[28]

Conclusion:

After the elaboration of general principles we may conclude it in context with the existing banking by saying that the exploration of economic doctrine is being accomplished by an operation of Ijtihad in understanding texts. A Muslim researcher, who looks for a vital doctrine like Islamic economic or sociopolitical doctrines, may find consistent verdicts issued by several jurists. He can put forward this guide line in form of an Ijtihad representation of various Madahib. This is an opportunity of inherent choice where a researcher holds his freedom and opinion. Allah is the knower.

Endnotes and References

[1] For managing certain vital affairs, this may be needful to choice from/among different verdicts like unification of the beginnings of the lunar months, or invaliding of divorce while one is angry, intoxicated, etc.

[2] .. blocking the lawful means to an unlawful end.

[3] Rufqa' e Darul-Ifta' Benori Town, Jamia, *"Murawaja Islami Bankari"* (Maktabah Bayyenat Karachi 2008), p. 80,306-7

[4] Ibid.

[5] Abdul-Wahid, Mufti, *"Jadid Mu'ashi Masail"* (Majlis Nashriyaat e Islam Karachi 2008), p. 133-34

[6] Rufqa' e Darul-Ifta' Benori Town, Jamia, *"Murawaja Islami Bankari"* (Maktabah Bayyenat Karachi 2008), p. 183

[7] Ibid.

[8] If this transference is suggested from one of the Shari'ah Scholars, it would titled 'Ifta bi. .(إفتاء بمذهب الغير), otherwise it would be a theoretical issue of following a specific Madhab by ordinary man who does not acquire the capacity of Ijtehad.

[9] Zuhaili, dr. Wahba, *"Usul al Fiqh il Islami",* (Darul Fikr Barut, Ed:1, 1986/هـ 1406), p. 1141-55/2

[10] Ibid.

[11] النحل:43

[12] Ansari, Zakariyya, Abdul-Ali'e, *"Fawatihul Rahmut li Shirh e Musallimul-Subut",* (Matba' Ameeriah Kubra, Bolaq Egypt, n. d.) Vol. 4, p. 306

[13] Ibid., Vol. 4, p. 303

[14] 'Talfīq' could not be searched out in creed or settled with definitive textual evidence or the one concurrent upon, because the search for 'Talfīq' in that very issues makes the man renegade from the circle of Islam. In modern times 'Talfīq' was advocated by Muhammad Abduh'u (d. 1905) and his student Muhammad Rashid Riza (d. 1935) as a means to

reform Islamic Law. 'Ikhtelaf' (difference of opinions) were a source of intellectual wealth, they reasoned, that ought to be utilized for the benefit of whole community.

[15] Zuhaili, dr. Wahba, *"Usul al Fiqh il Islami",* (Darul Fikr Barut, Ed:1, 1986/هـ 1406), p. 1141/2

[16] Inb al-Humam, kamal al-Din Muhammad ibn Humam, *"Fath al-Qadir ala al-Hidayah",* (Dar al-Fikr Baruet, n.y.), Vol. 7, p. 258

[17] Decission of 1st convention of Islamic Fiqh Academy, Jeddah, p. 95

[18] Amin, Muhammad, Ibn Umar,*"Tanqih al-Fatawa al-Hamidiyah",* (Al-Bab al-Awal fi Waqf il-Mareed Ardah au Darah..), Vol. 2, p. 207

[19] Al-Dasuqi, Muhammad Arafah, *"Hasheyah al-Dasuqi ala al-Sharh al-Kabir",* (Darul Fikr Baruite, n. y., Bab Fil Qada'), Vol.4, p. 130

[20] Gazali, Abu Hamid, *"Al-Mustasfa fi Elm al-Usul"*, (Dar al-Kutub al-Elmiyah Bariute, 1413AH.), Vol. 1, p. 374

[21] Ansari, *"Fawatihul Rahmut li Shirh e Musallimul-Subut",* op. cit., Vol. 4, p. 303

[22] يقول المؤلف: قال في فتح القدير لعل المانعين للانتقال انما منعوا لئلا يتتبع أحد رخص المذا هب واقل هو رحمه الله تعالى (ولا يمنع منه مانع شرعي إذ للانسان أن يسلك الأخف عليه إذا كان له إليه سبيل) بأن لم يظهر من الشرع المنع والتحريم و (بأن لم يكن عمل) فيه (بآخر) هذا مبين على منع الانتقال عما عمل به ولو مرة (وكان عليه) وعلى آله وأصحابه (الصلاة ولاسلام يحب ما يخف عليهم انتهى) (فواتح الرحموت)

[23] Ibid.

[24] ..لكن لابد أن لا يكون اتباع الرخص للتلهي كعمل حنفي بالشطرنج على رأي الشافعي قصد إلى اللهو وكشافعي شرب المثلث للتلهي به ولعل هذا حرام بالإجماع لان التلهي حرام بالنصوص القاطعة فافهم (فواتح الرحموت، 4/304)

[25] Qarafi, Shihab al-Din, Ahmad ibn Idrees, "*Al-Dhakhirah",* (Dar al-Garb Beirut, 1994), Vol. 1, p. 141

[26] Inb al-Humam, *"Fath al-Qadir",* op. cit., Vol. 7, p. 258

[27] Ezz, Ibn Abd al-Salam, "Qawaid al-Ahkam fi Masalih al-Anam", (Dar al-Ma'arif Beriut, n. y.), Vol. 2, p. 11

[28] For instance see: *Bukhari*, Sahih, (Dar Took al-Najah, 1422hj.), Hadith # 3560

"عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا أَنَّهَا قَالَتْ مَا خُيِّرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَيْنَ أَ مْرَيْنِ قَطُّ إِلَّا أَخَذَ أَيْسَرَهُمَا مَا لَمْ يَكُنْ إِثْمًا"