UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

The Changeability of Shari`ah Rulings: An Analysis of the Contemporary Discourse

Sayed Sikandar Shah Haneef
Professor, Department of Fiqh and Usul al-Fiqh,
IRKHS, International Islamic University Malaysia.
Email: sayedsikandar@iium.edu.my

Mohd Abbas Abdul Razak
Assistant Prof. Department of Interdisciplinary Studies,
IRKHS, International Islamic University Malaysia.
Email: maarji@iium.edu.my
DOI: 10.33195/journal.v4i02.336

Abstract
Shari`ah and its practical legal rules primarily are of divine origin according to Muslims` belief. Nevertheless, the revealed nature of the Shari`ah does not imply that it is a static system incapable of providing solutions to changing human situations due to change in time and space. It takes cognizance of such changing needs of humans primarily in two ways: at the level of its textual laws, it takes into account the time-space requirement of their applicability on people, and at the event of unfolding new situations and novelties of human life, it mandates ijtihad to resolve them. At the age of globalization, however, this unique feature of Divine-based system of stable but flexible Shari`ah has become a mooting point among some segments who would like to go ultra-realists either mala fide or out of naïve notion of defending time-space suitability of the Shari`ah even if it is at the expense of disbanding its divinely fixed legal corpus. Accordingly, this paper argues that a methodological analysis of the principles of changing the Shari`ah rulings on account of changing circumstances do not allow for laissez-fair and arbitrary alteration of the fixed structure and essence of the Shari`ah.
Keywords*:* *changing rules, fixed, flexible, Shari`ah, time-space*.

Introduction

The Shariah is a composite of fixed and flexible laws. The scope of its changeability within the structure of the science of Islamic jurisprudence, at both substantive and procedural laws, was well defined during the heydays of Islamic civilization. However, with the erosion of classical framework for accommodating change and updating Islamic law according to the set methodology of Islamic jurisprudence during old colonial times as well as its further degradation during the post-colonial period which includes the age of globalization, the state of the art has drastically changed. There are multiple reasons for such a big paradigm shift on the discourse of changeability of Islamic law which conveniently can be

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

subsumed under ideological and methodological ones. Ideologically, any attempt at change is pursued and undertaking primarily from materialistically secularist outlooks. Methodologically, the approach to change in the sense of renewing, reforming, or updating textually entrenched laws, such as Islamic law, Western frameworks of hermeneutics, feminists and postmodernist methodologies have become the dominant paradigms. The common thrust of these schools are challenging the traditional legal standards by considering them as historical, context-bound, and relative all in sundry, thus in need of total deconstruction and reconstruction to suit the changing needs of times and circumstances .

In consequence, when it comes to the discourse of changeability of Islamic law, we are also witnessing various trends as far as the scope of the changeability of Islamic law is concerned. Some go liberal, others remain conservative and another group maintain a balanced view. The implication of such a dichotomist approach to accepting change in Islamic law does not only confuse the commoners about Islam but paves the way for secularizing Islamic legal system (*duyawiyyat al-Shari`ah/* and Islamic religion) with its devastating effects on less informed masses` compliance to Islamic edicts. The primary concern of this paper, therefore, is to revisit the standard principles of change in classical Islamic law in the context of modern debate for change in Islamic law so as to earmark the premises for a genuine Islamic approach to Islamic law reform in line with its established principles of change and stability.

The Concept of Changeability of Islamic law

The idea of change in Islamic law has featured in three interrelated concepts of *taghayyur, tatatuwwur* and *tajdid.* First, *taghayyur* (changeability) linguistically conveys the idea of changing things from its original form in the sense of total transformation (Ibn Manzur 2010, Vol. 3, 149). Literally, it can mean the permissibility of something which originally was prohibited (Kuksal 2002, 27). Nevertheless, in the context of *taghayyur al-hakam*, it only means a change of rulings(*ahukam.*singlar *hukum*) due. to change in circumstances of the *mukallaf*(subject of the law) and not in the literal sense of annulment or abrogation *(naskh*) of a ruling since no one has the *locus standi* to scrap textually established
rulings (embedded in the Qur`an or hadith) after the demise of the Prophet. But different rules can apply to different people in view of their changed circumstances. For example, Umar imposed *zakat* on horses of the Syrian Muslims (Ibn Hanbal, Number 78).

Second, *tatawwur*(evolution) lexically means either expansion and growth or exceeding the permitted limit (Ibn Manzur, Vol.4, 508). Technically, it signifies the capability of Islamic law to expand its ambit of

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

the legal corpus by providing legal solutions to new problems and novelties of Muslims` lives in line with its methodologies and principles through the vehicle of *ijtihad(* al-Zarqa 2013, Vol.1, 146*)*. For instance, Islamic law in terms of scope and coverage from its humble beginning during the time of the Prophet has continued to see the expansion of its both substantive and procedural legal corpus until our time and is dynamic enough to continue its pace till the end of the world.

Lastly, *tajdid* literally means revival and reactivation and renewal and its antonym is dissolution and dissipation (Ibn Manzur, Vol.3, 111). Restoring the vitality of Islam including its laws was mandated by the Prophet: **"**Allah will raise up in this nation at the beginning of every century someone who will r"Verily enew their religion" (Sunan Abu Daud, Number 4291). Renewal of religion in this sense does not mean abdicating religious legal texts(*nusus shar`iyyah*) nor distorting their meanings but re-establishing them in people`s life (Islamizing people) and expounding the Shariah rulings on novel issues as they exponentially unfold in line with the Islamic methodology of renewal and reform (Kuksal, 32-33).

In a nutshell, the notion of change as an empirical fact of human life has its origin in Islamic law as it is *an ad infinitum* feature of any other legal system. Nevertheless, the distinctive feature of Islamic methods of changing Islamic law and its ruling is not an unregulated matter in view of its revealed foundation and textually restricted methodologies.

Classical Framework of Changeability of Islamic Law

The sum total of Shari`ah rulings subsume fixed and changeable laws( *al-thawabit wa al-Mutaghayyrat*). The fixed part of the Shari`ah consist of those divinely prescribed rulings which guarantees not only moral, spiritual and material wellbeing of the individuals and people but also are of utilitarian benefits, similar to the goal of any other legal system, as far as maintaining the continued social stability and order are concerned (Awdah, n.d, Vol,1,72). Technically, the fixed aspect of the Shariah consists of its core content which every ordinary member of the Islamic fraternity must know by necessity and abide by them. And compliance with such laws is not purely for worldly and secular reasons but is a requirement of faith and an act of *`ibadah*( self-abasement) to God. Methodologically, *thawabit* have been defined as those laws which are either found in the definitive texts of the Qur`an and Sunnah or has been sanctioned by consensus (*ijma`)* of the legal scholars. However, this seems to be restrictive as it only covers one domain in the science of *usul al-fiqh* , namely, the implication of the wording of textual evidence (*dilalat of nusus).* The correct concise denotation of *thawabit* is what Ibn Qayyim elucidates:" The immutable rulings are those which never change with the change of time, space, and legal scholars` *ijtihad,* encompassing the

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

mandatory nature of the obligations, prohibition of the unlawful, prescribed penalties for certain crimes and the like (*nahw dhalika*) (Ibn Qayyim n.d., Vol.1, 570). *And the like* implies that a thematic reading of the Qur`an and the Sunnah points to the inclusion of all provisions which govern every detail of Muslims` daily life, social encounters, economic dealings, communal interactions, national and international affairs either specifically or by virtue of broad principles. Because Shari`ah in a broader sense is about "dos and do not's in all aspect of human life". For instance, Muslims during their daily life are bound by the limitation of *halal* and *haram* when interacting with family members, eating and drinking, engaging in worship and meditation of God, when socializing with members of the opposite sex, when making purchases or involving in financial transactions, when conducting their professions both at public and private domains, and when entering into alliances and interacting with people of other faiths to dealing with natural environment and its content. The reason is that Islam is about believing and performing (*aqidah and `mal/aqiadh and shariah*) transcending the bifurcation of life into the otherworldly and this-worldly *(ukhrawi* and *dunyawi*). This is what our scriptures ( the Qur`an and the Sunnah texts) dictate. God ordains:" O believers! Enter into Islam wholeheartedly and do not follow Satan's footsteps. Surely he is your sworn the enemy"(al-Qur`an 2: 208).

It is on this account, therefore, that Islam at the level of its temporal universal mission envisions building a civilization of its own based on the Qur`anic principles of *khilafah, Imran, taskhir and amanah* (al-Qur`an, 2:30; 45: 13 and 33: 72). At the operational level, however, these mega principles require detailed procedural and administrative rules which are left to human creative intellectual thought (*ijtihad*) in line with the general purports of the Qur`an and Sunnah and their annotated objectives(*maqasid*). This is where the changeable parts of the Shariah is inaugurated.

Chargeable parts of the Shar`aih embrace the flexible parts of its legal structure which is accommodative of human exigencies, custom and usages, and creativity to ground the divinely revealed injunctions into day-to-day matters of life. This is where the time-space requirement of applying the divine Shariah has its heavy presence in Islamic jurisprudence which ensures its continued relevance to changing situations of human life. Elucidating this Ibn Qayyim gives a contextual example: " Changeable laws are those which change depending on the purpose which they serve on account of changing time, space, and situations , such as types, amounts and description of the discretionary punishments *(ta`zirat*) , which legislatures would enact whenever deem fit" (Ibn Qayyim n.d., Vol.1, 572). Commenting on this feature of the Shari`ah, Ibn Taymiyyah (2008) characterizes the fixed part of the Shariah as *Shar`a al-Munazzal*(the

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

posited revealed law) signifying what the Prophet has established either through the Qur`an or his Sunnah. And this is the *Shar`a* (law) the compliance to which is incumbent upon all Muslim generations… anyone who casts any doubt about them, deliberately flouts them or permits their defiance needs to repent otherwise deserves capital punishment. The changeable laws are those about which the *majtihads* have had different interpretations, from among which Muslims are at liberty to choose" (Vol.11, 506).

Therefore, Shariah is not a rigid system of legal ordinances with no room for creative legislative perspective to cater for the changing needs nor is a fluid system of chaotic legal propositions constantly in a state of change. But it consists of a perfect blend of immutable and changeable laws running through the whole fabric of *fiqh*(Islamic jurisprudence) as the science of expounding Islamic substantive laws, and its methodology of *usul* (Islamic legal theory). Methodologically, the in-built mechanism of Islamic jurisprudence while ensuring the durability of Shari`ah core principles, it provides sufficient space for renewal, expansion, and updating of its corpus because 1) its sources consist of both revealed texts and human rational tools of legal constructions, namely the Qur`anic and prophetic texts and human reasoning methodology of *ijma`, qiyas, istihsan, maslahah mursalah ,sadd al-Dhara`i`* and *`urf* (Kuksal, 61). Thus, as the textual sources of Islamic law, the roles of the Qur`an and the Sunnah are primary and fixed and other sources except *ijma`* are secondary to them and subject to variation among the legal scholars thus changeable; 2) the corpus of Shari`ah rulings also consist of textually permanent rulings - some specific and others general. However, even these fixed rulings require some changeable operative rules for grounding them into human reality. Again the classification of textual rulings into those dealing with overwhelmingly mundane matters and those purely or greatly religious in nature is an evidence of Shari`ah flexibility on worldly matters and its immutability on purely religious issues as it allows wider space for human creative views on running the worldly matters but puts strict regiments on matters of worship and other morally and religiously sensitive matters.

Additionally, the fact that Islamic jurisprudence distinguishes non-textual rulings into those covered by logical extension of the textual sources(*qiyas*) and those about which textual sources are totally silent(*mantiqat al-afw)*(al-Khin 1982, 38), is again a cogent proof that Shari`ah laws allows a great deal of legislative space for human *ijtihad* especially on matters which are mundane or administrative in nature but in line with Islamic methodology of *ijtihad* and *tajdid*; 3) the principles of dealing with legal texts ( *al-Qawa`id al-Usuliyyah*) when deducing rulings from them also are either immutable or changeable types. For instance,

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

some examples of immutable *usuli qawa`id* are: explicit expression of legal texts prevail over other inferences, and the qualified textual rulings stand on their own and cannot be further qualified. Changeable *usuli qawa`id*, on the other hand, are those about which legal theorists have differed. For instance, particularisation of general textual rulings by specific textual rulings (Ibid, 118-121), or legal donation of prohibitory or imperative legal commands in terms of making things *haram or makruh*, or *wajib* or *mandub* respectively. Hence, the first category is fixed and the second is subject to juristic dispute and thus changeable in that sense. Similarly the principles of dealing with subsidiary rulings (*al-qawa`id al-fiqhiyyah)* known as Islamic legal maxims also consist of fixed *qawa`id* in the sense that they are directly derived from the textual laws, such as " harm shall neither be inflicted nor reciprocated" (Sunan Ibn Majah, Number 2340), and changeable ones such as "customary practice of people is a legal proof and binding "(The Mejelle 2003, art. 39). The implication is that a fixed legal maxim is a binding legal proposition and can serve as a proof *(dalil)* for juristic legal deduction while the changeable legal maxim is only a piece of corroborative evidence to support a legal argument (Kuksal, 67-68).[1]

Other changeable parts of Shari`ah encompass its rules of dispensations *(rukhas)* by waiving certain fixed laws or mitigating the stringency of their performance in order to ease compliance with their imperatives in difficult situations of life. It is on this account, that Muslims can still conduct their daily life as practicing Muslims in circumstances of geographical pandemics such as COVID-19 by not strictly following the SOP of congregational prayer, contracting their marriages, etc. In the case of extreme situations of emergencies, certain prohibitions are totally lifted under the principle of, "necessities override prohibition"(Ibn Nujaim,1983, 84). For instance, in the absence of *halal-certified* vaccines, Muslims can immunize/inoculate themselves with any other available vaccines. Nevertheless, both concessionary and *darurat* rulings would end once the normalcy returns or lawful alternatives become available. In this area, also we see a dialectic relationship between fixed laws and flexible principles, adherence to fixed laws is a basic law, and rules of necessity and need are exceptions to it. Last but not least, the essential feature of Shariah flexible law is its recognition of local customs, traditions, and usages of the native

1. This principle is known as ease the opposite of which is difficulty/ hardship, featured prominently in the Qur`an and *hadith* . See al-Qur`an, 22: 78; 2: 185; 4: 28. The Prophet also, among others, has said: "Whenever Allah's Apostle was given the choice of one of two matters he would choose the easier of the two as long as it was not sinful to do so, but if it was sinful, he would not approach it. Allah's Apostle never took revenge over anybody for his own sake but (he did) only when Allah's legal bindings were outraged, in which Bukhari, Number 760). (case he would take revenge for Allah's sake"

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

communities provided that they do not override fixed principles of the Shariah or their intended purposes (*maqasid*).

Contemporary Debate

As a matter of principle, *Shari`ah* rules are meant to guide and regulate Muslims` behavior at all times and circumstances. Hence, it is Muslims (believers of the divine origin of the Shariah) who need to adjust themselves to the ethos of the Shari`ah and not *vice versa*. In the contemporary time, however, the tsunami of change around us, the prevalence of materialistic outlooks of life and its demands, dominating power of hegemonic hedonistic culture, and inferiority the complex of looking for secularists models of "progress" whether Eastern or Western, have covertly or overtly have seeped into Muslim thinkers` psyche for remodelling and aping alien systems even at the cost of core Islamic values and the Shari`ah immutable laws. To find self-satisfaction, the liberal among them, go to the extent of either bending the clear textual injunctions of the Qur`an and the Sunnah or side-lining them by drawing on some dubious juristic views and doctrines(even by emulating secularist methodology of change and reform) and finally by nailing the coffin of the entire Shariah rulings by invoking the legal maxim[2] "*change of rules due to changing situation of times is undeniable*" (The Mejelle, art.21). But the *principled jurists*[3] (both classical and contemporary), unencumbered by modernists` thoughts and ideologies have no confusion about the true meaning of the maxim in question. To put the issue in its true perspective, we present a condensed argument of both the stands respectively.

1-Principled jurists` viewpoint

By principled jurists we mean those jurists who are supportive of renewal and reform and open to change but in the domain of changeable aspect of the Shariah and in accordance with the internal methodology of legal

[2] It is to note that the probative value of legal maxim as a source of legal deduction is a disputed point among the classical jurists. For example, Ibn Nujaim maintains that a legal verdict cannot be based on a legal maxim or a parameter(*dabit*) by virtue of the fact that they are not all-encompassing in terms of covering all legal issues but only represent majority of them (Ibn Nujaim,1983, 192).

[3] To us the correct categorization of all contemporary strands of legal thought on this issue is twofold: Genuine jurists and liberal modernists (encompassing all strands of thoughts within it from liberal to feminists and so on). We dismiss Western labeling of Muslim scholars with all its innuendoes which aim to resurrect and sustain the old colonial policy of "divide and rule" in order to advance their nefarious designs, especially by classifying Shari`ah scholars as conservative (radical or orthodox etc.) and moderate.

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

deduction and induction. To them, Shariah primarily being the command of God and supplemented by authentic prophetic traditions has defined the scope of human legislation within its structure. In elucidating this approach, the Islamic legal theorists have drawn certain redlines for the change of the Shariah rulings which if violated, not only erodes the essence and uniqueness of the Shari`ah but also distorts its very basic nature as being a code of revealed cum divinely inspired laws. Accordingly, the principle of changing Shari`ah ruling as per the legal maxim in question cannot be unduly stretched to annul the whole edifice of the Islamic legal system, or whatever remains of its applied aspect in the Muslim world. It has its limitations as it only operates within the confines of changeable laws which we elaborated earlier, i.e., falls within the ambit of experts` speculative views *(ijtihad*) or were initially custom-based and interest-oriented (Kuksal,68).

Explicating on the above, Subhi (2014) contends that: "According to Ibn Abidin changes accrue in time-space and not in legal proof and evidence. Consequently, to contend that *Shariah* rules can change based on changes which come with times implies abrogation of the rule (*naskh al-ahkam*) on account of changing times, a proposition which defies Islamic methodology of abrogation in Islam. There is a consensus among the jurists that revealed laws can only be cancelled and replaced by other rules when there are other repealing revelations to the effect, a matter which is not possible after the demise of the Prophet (Vol.2, 259).

It is also argued that renowned classical thinkers of Islamic jurisprudence were well aware of this uniqueness of the *Shari`ah* in their discourse on renewal of the *Shari`ah*. For instance, Ibn Taymiyyah (2004) maintains: "Anyone who wants to alter Islam after the demise of the Prophet, in the same vein as Christians did by alleging that Jesus has authorized their clergies to delegalize and legalize things in the name of *maslahah*, should understand that this does not hold true for the religion which Muslims adhere to" (Vol. 33, p.94.). Reiterating the same point, Ibn Hazam (2015) holds: "Any matter whose ruling is established on the authority from a text of the Qur'an or an authentic hadith, it cannot be modified because of the change in time, place or circumstances unless there is another proof text of the same standard to the contrary (Vol. 5, 771). Elucidating the immutability of the revealed laws, al-Shatibi (2008) also affirms: "That is why abrogation does not apply in *Shar`i* rules after their completion; neither they are susceptible to qualification and particularization; nor they can be annulled on account of changing circumstances of the *mukallafun*, and the changes of time and space. None of the *Shar`i* rulings are amenable to change as they can neither be amended nor nullified. The logic of this is if legal accountability is an everlasting

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

duty in Islam then Islamic rules are also eternal" (Vol. 1, 78). On the impact of *`urf* on legal ruling, he specifically argued: "The difference in rulings on account of different customs in fact does not mean divergence from the basis of the command (*khitab*) because it has been anchored in the eternal *Shari`ah* texts. By difference of custom, nevertheless is meant that any changing *`urf* has to be referred to *Shari`ah* for determining its validity"(Ibid, 79).

Summarizing the position on this fundamental issue, Ibn Qayyim (n.d.) holds that the maxim on the effect of change of time, place, custom, intent, and the situation on *fatwa* implies two things: 1) What changes on account of these factors is the *fatwa* and not the *hukm shar`i* itself; 2) The change of *fatwas* on such accounts occur because they were initially based on customs and traditions (Vol. 3,14).

Expanding on this, Ibn Abidin (n.d.) argued: "You must know that juristic ruling are either based on texts or *ijtihad* and opinion. Much of what a *mujtahid* articulates as legal opinions are custom-oriented, which if changed, he would have reversed them at his time. That is why one of the requisite qualities for a *mujtahi*d is his familiarity with people's *`urf*. A great number of rulings change because of change of time, local *`urf*, or change on account of necessity or on the account of the corrupting nature of people. Otherwise, the outcome would be harming people and making life difficult for them, which in turn would be tantamount to violating the *Shari`ah* principle of removing hardship and preventing harm and corruption. Accordingly, it is incumbent upon the *mufti* to be acquainted with the timely need of people and their circumstance provided he can distinguish between general and specific *`urf* and whether they contravene the text or not (125).

Contextualizing the issue in the modern discourse, Hussain al-Tawturi (n.d.) maintains that the assumption that *shar`i* rulings change based on the change in time and places based on an erroneous reading of the maxim "Rulings change in accordance with the change in time" is farfetched. The reason is that this maxim does not lay down a general principle as it in no way implies changing immutable part of the *Shari`ah* as established by the legal texts *(nusus)*. But it encompasses those rulings which were based on *jtihad* by way of *qiyas* or *maslahah* (*or `urf ab initio*). However, in the area of fixed laws what may change is the methods and mechanism of their application. For instance, adjudication (*qada*') is a means of establishing justice (to secure and remedy the violated rights). This was originally set to be achieved by one judge, but on account of changing mores of the society, a penal of three judges may serve justice better. Hence, to al-Tawtari, the scope of change is confined to extra-textual tools of *ijtihad* (261).

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

To Fawzan (2008), however, neither the textual rulings nor the bases of *ijtihad* warrant change in *fatwa* but it is choice of evidence by a *mufti* or *mujtahid* which gives rise to changing *fatwas* (rulings). A *mujtahid* or *mufti* may give a ruling based on a piece of certain evidence that appears to him to be relevant to the point but later on he discovers another evidence more suitable to cover the case, and hence, he revokes his previous ruling. Or once a *mujtahid*'s mastery of *Shari`ah* knowledge deepens, he realizes his previous mistake and rectifies it, thus, the maxim of change of rule on account of changing time does not work the way some people, *male fide*, misconstrue it to conform to their agenda of reform (27).

Abu Zaid (2013) also contends that: "The maxim of change of rules on account of changing *`urf* is an apparent principle (*qa`idah suriyyah*) not real principle *(qa`idah haqiqiyyah*). The reason is that all applied examples cited by the jurists as the basis for the maxim are instances of *`urf*-based rulings which change when the old *`urf* changes. It is the modernists who expand the scope of this maxim even to impinge upon the textually fixed part of the *Shari`ah* with the ultimate evil design of abdicating the *Shari`ah* in its entirety"(58).

Reiterating the above, Ashraf (2018) maintains that modernists erred in advocating wholesale susceptibility of *Shar`i* rulings on account of changes in time, by declaring them as archaic, from two aspects: 1) By committing sheer generalization without distinguishing between fixed and flexible parts of the *Shari`ah* (*thwabit wa mutaghaiyyirat*); 2) At the level of some textual laws also, fail to distinguish between the alteration of *hukm* and its non-applicability on issues due to the disappearance of factual reasons for their applicability. For example, the Qur'anic allocation of *zakat* for *muallifat al-qulub* which consisted of a segment of Non-Muslims as the recipients of *zakat* during the time of the Prophet for the purpose of winning their support (*tahqiq al-manat*) is one of such rulings. But it was declared as non-essential by Umar Ibn Khattab, thus dropping them from the list. Here, the legal ruling stays but its application changes when there are other people who can be financially supported to strengthen Islam (par, 6). We believe that this is a valid argument as such folly was never committed by the true *majaddid* of Islam and its *Shari`ah* during the glorious days of Islamic scholarship in *fiqh.* For Instance, Ibn Qayyim (1975) argues: "*Shar`i* rulings are of two types: the first category never changes with changing circumstances, such as clearly established prohibitions and obligations, and fixed penalties (*hudud*) for serious crimes. They can neither be changed nor are open to *ijtihad*. The second type is susceptible to change on the account of *maslahah*, which can be reviewed due to changing time, place and situation, such as types, specification and amount of *ta`zir* punishments at the discretion of the ruler" (Vol. 1, 330.).

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

2-Liberal argument

Liberal modernists take the legal maxim in question as an overriding principle, the scope of which does not exempt any aspect of the Shari`ah except for fundamentals of *`Ibadat.* The central argument of this school is that Shari`ah rules are the means for achieving certain utilitarian ends, and thus if they fail to serve such purposes, can be annulled and abrogated. For instance, al-Dawalibi (n.d.) holds that to annul (abrogate) some of the *Shar`i* rulings were reserved to the lawgiver (Allah and the Prophet) and was affected then. And the authority to repeal others is left for the *mujtahidun*, *muftis* and judges to do so when they no longer realize their intended goals due to a change of time (*their validity expires*). He takes pride on this by saying that procedure of changing *shar`i* rule (*taysir*) is much easier than man-made legal systems (*there are strict procedures for amending or repealing them*)(Vol. 6, 553). Echoing the same sentiment, al-Nuwaihi asserts that all ruling of the Qur'an and the Sunnah which deal with worldly matters and social relations among people were not intended to be eternal laws but were interim solutions to suit the needs and environment of the early Muslim epoch. They are not necessarily incumbent upon us. Therefore, it is not only our rights but our obligation to add to them, annul, amend and change them by virtue of the compelling change of circumstance (quoted in Khair 2005, par,4).

More specific is Yahya Muhammad (2010) in lumping together the *Shar`i* rulings as changeable even if they are based on explicit texts. To him, there is no difference between ordinary rulings (*al-ahkam al-`adiyah*) and political rulings (*al-ahkam al-wila'iyyah*). He divides textually rooted rulings into specific as *wasail* (means) designed to serve certain specific needs and general which are eternally valid. But even in the area of general laws, the change would occur at the level of implementation due to changing *`urf* and *`adah*. Therefore, the main reasons for the changeability of the entire *Shari`ah* rulings are: First, change of ruling becomes inevitable on account of changing time, *`urf* and *maslahah.* This is clear from revisionist positions adopted by the four rightly guided caliphs on a number of textual rulings, such as Umar's decision to review the *zakat* allocation for *Mu'allafat al-qulub*, and his ruling on triple divorce, Uthman's order to burn the non-Uthmani scripts of the Qur`an and Ali's order of burning Zanadiqah alive. Regardless of the jurists' differences regarding what Umar did, *maslahi*, or disappearance of reason for the *hukm* etc., the fact is that Umar changed the textual rulings on the above two issues. His decisions were purposive *(maqasidic*) as opposed to what literalists (*harfi*) *muqallidun* advocate, i.e. textually rooted ruling are not open to change (par, 5-6). Second, or the general rules are *wasili* (strategic) and not

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

maqasidic (goal-based) even if such rules are based on definitive pieces of evidence such as the rules pertaining to the conduct of military combat which change based on the state of art in terms of military capability (*tactic, arsenal, and technology*). Even if we concede that textual rulings cannot be repealed completely, on account of changing circumstances, they will be held in suspension until the situation for their application warrants their restoration. Therefore, this kind of approach to amenability of textual rulings to change is not a question of repealing the textual laws but construing them based on their end-goals and not clinging onto them literally. This necessitates going back to the special circumstances which warranted the enactment of textual rulings at the beginning. If such social reality no longer exists, the change in their rulings should follow suit in accordance with their *maqasid.* The third reason for the changeability of *shari`ah* rulings is the co-relation between textual ruling with their initial contextual application. This serves as cogent proof for the effect of time and circumstances for their continued validity or otherwise in changing human reality. For instance, the application of *hudud* was contextual as circumstances for their application were there in the past. For today's application, the approach should be what Muhammad al-Ghazali (2006) says: "I must say that *hudud* can apply and cannot be disputed theoretically. But for implementation purposes, there is no harm, to begin with applying *qadhaf* and theft penalties which are easier and others should be postponed until the conditions for their application are there. However, for educating the public about Islam, we have to be holistic but when it comes to the practical implementation of such laws, we have to approach them piece by piece so as to commensurate with our circumstances"(Vol. 1, 128). To Yahya, however, gradual implementation (as al-Ghazali proposes) does not solve the problem of accommodating *Shari`ah* rulings to changing circumstance but subjecting all of them (whether general or specific) to their usefulness in changing context. Finally, by excessively insisting on the contextual application of the *Shari`ah*, he says: "It is impossible to apply *Shari`ah* and its specific principles literally in all circumstances and environments. It is not because of deficiency in the *Shari`ah* but due to novelty of situations inappropriate to its full implementation. Hence, to harmonize between *Shari`ah* and social reality, we need to distinguish between two types of rulings: 1) inducted encompassing principles (*al-qaw`id al-kulliyyah*) which transcends time-space requirements as embodied in fundamental purposes of the law; 2) specific rulings which are subject to application or annulments based on changing circumstances and customs (par, 18).

Nevertheless, Yahya qualifies his statement by holding that it is true that there are rulings that are totally immutable because they are considered

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

as the mother of all the rulings and bases of legislation, such as fundamental purposes of the law, namely justice and prohibition of harm. Some others are partially fixed, such as the rulings of `Ibadat and transactions. However, he paradoxically concedes that not all Shari`ah rulings are subject to changing circumstances but instead they influence and impact social reality and correct it, such as `*ibadat*(par, 14).

Critical Analysis

From the above analysis on the tussle between principled jurists and liberal modernists, the overwhelming juristic stand on the minimal changeability of Islamic law is demonstrative of the uniqueness of a legal system, the revealed fixed part of which represents divine commands and prohibitions, the ultimate purpose of which is to protect the moral and material wellbeing of the human beings. God is the ultimate legislator and henceforth has laid down the constitutional structural framework for juristic activism and *ijtihad*. Even if we go by simple rule of law-making in man-made legal systems, no subsidiary legislation can overturn the core constitutional principles nor can it overrides its fundamental principles.

This is just a simple parallel from a positive law which we can cite, but God`s laws and the Prophetic edicts are the supremacists of all laws as far as Islamic faith and belief is concerned, thus the issue of changes must be bound by its parameters, philosophy, and religious content. Accordingly, jurists and muftis and even judges for that matter cannot act *ultra-vires* of divine principles of law if they partake on clear texts regardless of their subject matter, God-human affairs (`*ibadat*) or human affairs in the broader *fiqhi* sense of *mu`amalat.* If modernists by claiming realism argues that some aspects of the Shari`ah rules are already abandoned in favor of man-made laws by Muslims, or because of changing taste of the people (secular reason) some others are even not followed by nominal Muslims, thus they have to be changed to suit such whimsical human desires, then that is a perverted notion of the Shariah and changing it because Muslims are commanded to follow God`s law and not their own material desires: " And then We set you, (O Prophet), on a clear high road in religious matters (Shari`ah) So follow that and do not follow the desires of those who do not know." (al-Qur`an, 45: 18). The rationale is that the core mission of the revealed laws is to tame and Islamize the wild human desires and not to fulfil them in a manner that can be morally and spiritually destructive.

Nonetheless, while changing times and circumstances, cannot overrule fixed textual rulings as we have elaborated, they can warrant suspension of some fixed laws on an account of changing reasons for their application under the principle of *tahqiq al-manat* (the *process of verifying*

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

or establishing the presence of the ratio of the established rule in a new case or situation) (Awang *et al* 2017, *Vol.* 35, no. 9:1758). *Tahqiq al-manat* as such be it *qiyasi*, *istinbati*, or *kulli* is the basis for changing the application of a rule, normally in individual cases and it is not a principle of repealing the whole corpus of the *Shari`ah* on the basis of dubious human reasoning and fallacious argumentations. Accordingly, modernists' arguments of amenability of the entire *Shari`ah* rulings can be refuted from many angles, the most significant among which are as follows:

1- Assigning delegated authority of abrogating the *Shari`ah* rules to humans distorts the very notion o*f naskh*, beyond the juristic debate on its scope, for two reasons: 1) The power to abrogate a ruling is vested in Allah and the Prophet; 2) the instances of abrogation which occurred during the Prophet were not so much about changing time but strategically designed to facilitate transitioning people from their paganistic lifestyle to that of the Islamic way of life. Total prohibition of wine and fixation of punishment for adultery are cogent examples of such a moral vision as the rationale behind the abrogation of their initial rulings.

2- Citing Umar's decision on dropping *mu'allaf* as another category of *zakat* recipients is also refutable on two grounds: 1) it was a policy decision due to the inapplicability of the law in favor of *mu'allaf* because of the change in *manat, i.e.* disappearance of the reason for its continuation, and not a case of repealing the Qur'anic *hukm* or a concrete proof for deriving the general principle of the changeability of the *Shari`ah* on an account of changing time; 2) The *hukm* of zakat for *mu'allaf* continues to operate until our time—to financially support Muslim converts as part of Islamic solidarity to them.

3- Umar's decision on triple divorce is a misuse of evidence to support the doctrine of the changeability of a Shariah ruling. The truth of the matter is that Umar did not invent anything new on this issue but reinforced the version of the *hadith* which states that the Prophet approved the utterance of triple divorce by *Rukanah*.

4- Yahya's citation of scholars like Muhammad al-Ghazali on *hudud* is a twisted use of what the late al-Ghazali was intending to convey. His statement is evidence of gradual approach to the reintroduction of *hudud* in Muslim societies after it was halted

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

during colonization of Muslim states. His cited view does not imply anything about repealing *hudud*.

5- The argument that the validity of both specific and general textual rules depend on their social utility (*maqasid*), on top of its theological problems of doubting the divine origin of the Shari`ah rulings is a an erroneous conclusion. For instance, *salah* is designed to make Muslims immune against obscenity and wrongdoing (*fahasha'i wa al-munkar*). In reality, however few praying Muslims can be free from the taint of such sins. Can we replace *salah* in their case to a re-education camp? That is why principled jurists were cautious about the twisted use of *maqasid* when they declared *`illah* (*ratio legis*) as the basis of *hukm* (and its change) and not the *hikmah* (wisdom), because the former is a constant attribute (*wasfun mundabit*) while the latter is a changeable attribute (*wasfun ghayr mundabit*). Even if one agrees with the argument that *maqasid* can be a basis of legal construction, its operation is confined to the area of *masalih mursalah*, thus, it *would be ultra vires of the juristic authority to apply it to repeal textual rulings of the Qur'an and the Sunnah in the name of changing times or embracing modernity and progress.*

6- Lastly, declaring all *Shari`ah* rulings as changeable is so an implausible claim which cannot hold true even in the case of man-made legal systems which as a matter of cultural specificity, they continue to embody certain fixed core principles defining their ideological orientations and cultural identity to which they take pride as *their way of life and legal norms.* They jealously guard them by placing stringent limitations for amendment and change. Hence, liberal advocacy for unprincipled changeability of the *Shari`ah* does not only undermine its divine origin, Tawhidic vision and unique methodology but also makes it a laughing stock for inherent instability, unoriginality, and fragility among other rival legal systems of the world. The reason is that every legal system is anchored on its own ideological principles and worldviews, and is formulated based on its unique legal postulates and juridical assumptions. Now can we abdicate the Islamic theoretical and philosophical frameworks of our Islamic legal system and *Shariah* by subjecting them to the tide of constant changes, because time and space continue to create new lifestyles *(a`raf*) and even perverted behaviors?

In the final analysis, the authentic opinion on the issue is that of the principled jurists who distinguish between changeable and immutable parts of the *Shari`ah*—no matter how powerful is the pressure for alienating Muslims from their religious values, norms, and way of life and their legal code of conduct. Advocating liberalization of the *Shari`ah* law on account

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

of new lifestyles in the Muslim world amidst intense globalization of values, systems, and outlooks do not only stifle the ongoing process of Islamization of its people but also is impractical in view of current reawakening for self-assertion and cultural specificity. But this does not mean that Muslims should resist even good things which originate from other cultures provided that they do not contravene the explicit Shariah principles, and the Shariah outlooks of things, and adopting them does not compromise Islamic identity nor it retrenches secularist`s hegemony. Confused modernist and liberals, *mala fide* or due to naïve sense of civilizational inferiority complex would be delusional if they press for changing the Shariah rulings all in sundry without due regard to their divine origin.

Conclusion

From the above analysis, it can be concluded that unprincipled approach to the issue of the changeability of Shari`ah ruling beyond its motive and intent cannot be reconciled with the methodology of reforming a legal system that derives its validity from divine revelation from many aspects including: first, theologically, Allah the Almighty when legislating for humans had anticipated as to what types of ruling perennially serve their spiritual, moral, and worldly needs and what can be assigned to their legal leaders to determine as and when they unfold; second, methodologically, changing and reforming the Shari`ah has to be done in accordance with its own methods and not on the basis of ideologically charged methods of dealing with the texts which is in vogue among the scholarship outside the Islamic legacy; and lastly, practically, social acceptability of the Shari`ah as much as it depends on faith in the divine character of the Shari`ah, on the same token, the legitimacy of genetically modified Shari`ah rulings cannot be established unless their moral cum religious origin can be traced back to the Qur`an and the Sunnah.To abdicate the entire edifice of the Shari`ah in the name of change of time, sociologically it would profoundly erode the sense of commitment to Shari`ah as the connection between religious roots of Islamic law can be lost. The way forward, therefore, is avoiding excessive rationalism and contextualization on the part of the liberal trends, and the rational handling of their dubious arguments by their adversaries.

Notes and References

Kuksal, *Taghayyur al-Ahkam fi al-Shari`ah al-Islamiyyah*. Beirut: Mu`assisat al-Risalah, 2000.

Abu Zaid, B.A. *Al-Ta`alum wa Atharuhu `ala al-Fikr wa al-Kitab* .Riyad: Dar al-`Asimah, 2013.

al-Dawalibi, M.M. “Al-Nusus wa Taghayyur al-Ahkam.” *Majllat al-Muslimun*, 6 (n,d): 553 -560.

UOCHJRS, ISSN: 2616-6496, Vol. 4 | Issue 2 | Jan-June 2021
PP: 61-77

Al-Ghazali, M. *Fiqh al-Da`wah al-Islamiyyah wa Mushkilat al-Du`at.*Dar al-Shuruq, 2006.

al-Khin, *M.S. Athar al-Ikhtilaf fi al-Qawa`id al-Usuliyyah fi Ikhtilaf al-Fuqaha*.Beirut: Maktabat al-Risalah, 1982.

al-Shatibi, A.I. *al-Muwafaqat*. Cairo: Dar Ibn `Affan, 2008.

Al-Zarq`,M. *al-Madkhal al-Fiqhi al-`Amm*. Damascus: Dar al-Qalam, 2013.

Ashraf, A.R. *Qa`idat la Yunkar Taghiyyur al-Ahkam bi Tahgayyur al-Azman(2018)*. accessed February 5, 2021. https://www.alukah.net/sharia/0/125448/.

Awang. M. B. *et al*, "The Concept of Tahqiq al-Manat and its Suitability as a Method of Reasoning in Judicial Process." *World Applied Sciences Journal*, 35, no. 9 (2017):1758-165.

Awdah, A. Q. *al-Tashri` al-Jina`I al-Islami*. Beirut: Dar al-Kitab al-Arabi,n.d.

Ibn `Abidin, M.A. *Nashr al-`Urf fi Bina Ba`d al-Ahkam `ala al-`Urf* .Riyad: Makatabat al-Haramain, n.d.

Ibn Fawzan, S. *al-Ijtihad* .Riyad: Dar al-Muslim, 2008.

Ibn Hazm, A. M. *al-Muhalla* .Beirut : Dar al-Kutub al-`ilmiyyah, 2015.

Ibn Mukrim, M.M. *Lisan al-Arab*.Beirut: Dar Sadir, 2010

Ibn Nujaim, Z. *al-Ashbah wa al-Naza`ir* .Damascus: Dar al-Fikr, 1983.

Ibn Qayyim, M.A.B . *`Ilam al-Muwaqi`in `an Rabb al-`Alamin* .Azhar: Maktabat al-Kulliyyat al-Azhariyyah, n.d.

Ibn Qayyim, M.A.B. *Ighathat al-Luhfan.* Mustafa al-Babi al-Halabi, n.d.

Ibn Taymiyah , A.H. *Majmu` al-Fatawa* . Riyad: Wazarat al-Shu`un al-Islamiyyah, 2008.

Ibn Taymiyyah, A.H. *Majmu` al-Fatawa* .Riyad: Wazarat al-Shu'un al-Islamiyyah wa al-Da`wah wa al-Irshad, 2004.

Khair, B.M. *'Ara' al-Mu`asirah `an Taghiyyur al-Ahkam bi Tahgayyur al-Azman(*17/08/2005). accessed February 3, 2021. https:// www. feqhweb. com/ vb/ t22 68. html.

Subhi, K. "Al-`Urf wa Atharuhu fi al-Fatwa", *Majallat al-Qalam* 2 (2014):259- 267.

Tyser, C.R. The Mejelle. Kuala Lumpur: The Other Press, 2003.

Yahya, M. *Ishkaliyyat Taghyir al-Ahkam al-Shar`iyyah*(12/08/2010). accessed February 4, 2021. http://www.ahewar.org/debat/show.art.asp?aid=225482&r=05-8).

@ 2017 by the author, Licensee University of Chitral, Journal of Religious Studies. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) (http://creativecommons.org/licenses/by/4.0/).