



Role of Jurisprudential Principles in Religious Diversity

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Abstract

Religious understanding and diversity is necessary to be developed in order to create peace and harmony in the social life. This paper aims to explore the role of principles of Islamic Jurisprudence in the context of basis of diverse opinions. With the growth of Islamic state, the scope of Ikhtilaf broadened leading to the development of Jurisprudential schools in the Islamic law. The difference among the juristic opinions is natural because of the inherent discrepancies in intelligence, intellectual capabilities, varying understanding and analytical capability with which individuals are created. The focus of the study is to explicate the role of jurisprudential principles in bridging the gap between differences of opinions and to see how tolerance interplays between religious diversity. The study is descriptive and analytical in nature. The research concludes that diversity in Jurisprudential principles allow catering daily routine complexities and leads to the development of new approaches.

Key Words: Religious diversity; Jurisprudential Principles, Differences of opinions, Peace and Harmony, Ikhtilaf

Introduction:

In classical Islamic Jurisprudence (fiqh), Juristic Disagreement (Ikhtilaf) has been deliberated as an accepted wonder among the jurists. The elementary reason behind Ikhtilaf is resorted to Ijtihad when different jurists interpret according to this source. However, the Shari'ah has also approved Ijtihad as an instrument for deriving the rules when the primary sources i.e. the Holy Quran and Sunnah provides no obvious provisions on a particular matter. In this scenario, Ijtihad is taken as an elementary instrument for the challenging and upcoming changing conditions of the modern times. The methodology of Ijtihad adopts the systematic process which includes the legal text interpretation, deriving the rules from the primary sources i.e. the Holy Quran and Sunnah and consideration of lawful speculation where legal ruling is not available. Ijtihad cannot be practiced regardless of one's unrestricted thought and discrete opinion. Therefore, Ikhtilaf is catered as natural phenomena or personal opinion (Ra'i).¹ The juristic issues regarding fiqh are described

as “diversity within unity”, unity describes the basic principles and diversity deals with details.²

Juristic Matters: Sign of “Tension and Conflicts”: With the growth of Islamic state, the scope of Ikhtilaf has been comparatively broadened during the subsequent generation. The appearance of several uprising problems has led to the development of Jurisprudential schools in the Islamic law. Therefore, such deviant situations arises Ikhtilaf on the juristic matters and they should not be considered as the elements which are creating “tension and conflicts”. It is also evident that Shari’ah act as a flexible body which itself has expanded the existing legislature body, due to which the classical jurists reached the point of reconciliation among the differing juristic matters. This whole process has its roots deeply connected to the primary sources i.e. the Holy Quran and the Sunnah.³

Tolerance towards Deviating Opinions: The examination on the foundation of Juristic Disagreement (Ikhtilaf) provides a baseline to eliminate misconception regarding difference of opinions. It also provides tolerance in appreciating others opinions between and within the various Islamic schools of Jurisprudence. It also affords a deep understanding in finding out the reasons of Ikhtilaf concerning legal issues which would ultimately led to the integration of different opinions resulting in assembling of common Fiqh.⁴

Schools of Jurisprudence (fiqh) and Diversity: With the passage of time, after the time period of the Holy Prophet Muhammad (ﷺ), their companions and successors, emerged eminent scholars who laid down the foundation of madhahib (Islamic School of Thoughts) in Islamic Jurisprudence. These madhahib were initially known as Ahl al-Sunnah i.e. Upholder of the Prophetic traditions, and is still recognized in the Muslim world even today. In the present day, four prominent schools; Madhhab Imam Abu Hanifah, Imam Malik, Imam Shafi and Imam Ahmad have followers around the Muslim globe.⁵

Principles of Islamic Jurisprudence in Diversity: The difference among the juristic opinions is natural because of the inherent discrepancies in intelligence, intellectual capabilities, varying understanding and analytical capability with which individuals are created. As Allah Almighty has created human beings with diversity, so it is a natural phenomenon for humanity who is blessed with deviating opinions within the certain limits. Basically there are three main reasons for this diversity among the juristic principles.

1. Linguistic Causes: The Holy Quran being a primary source is used to derive specific rules in the context of Jurisprudence. It aids in deriving the Khas (specific), Aam (general) ruling, Nasikh and mansukh and differentiation between allegorical and univocal texts. A jurist who is not specialist in these sciences may create a disaster resulting in the disunity among Islamic nations.⁶ The text of the Holy Quran and Sunnah contains more than one meaning depending upon the linguistic considerations. For example, the word “ayn” in the Holy Quran takes the meaning of spy, pure gold, running water or even in the sense of sight. In this context, it is difficult to ponder over the meaning of the particular word; even the jurists have developed their insight to classify the meanings. Sometimes odd meanings are suggested to the words which are totally opposite to the context being employed.⁷

Mutual Literal Meaning the Holy Quran states: وَالْمُطَلَّقاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ
 “And divorced women shall undergo without remarrying, a period of three quru.”⁸ In this verse, “quru” means purity period or cycle of menstruation. The waiting period thus clarify which period is meant for this verse. The disagreement over the adoption of correct meaning exists between the Hijazi and Iraqi scholars; the latter adopted three intervals of waiting period of purity while the former adopted the shorter length of waiting period i.e. three cycles of menstruation.⁹

i. Literal and Metaphorical Meanings: In the Holy Quran and Sunnah, some words have both literal and metaphorical meanings. For instance, the Jurists have disagreement over the usage of the word “lams”, which is used for touching with hand with some pleasurable feeling, in contact with two things intentionally or unintentionally and sexual intercourse. It was further elaborated by Imam Malik, Imam Shafi and Abu Hanifa. These three deviated meanings appear in the verse of the Holy Quran:

أَوْ لَمْ تُسَمِّمُوا النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا

“Or you touched women and cannot find water, then make tayammum from clean earth.”¹⁰

ii. Grammatical Meanings in Arabic language, certain words have ambiguous meaning due to grammatical construction. In the Holy Quran, the word “ila” is mentioned in the verse:

فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ

“Then wash your faces and your hands up your elbows.”¹¹

Zufar, Ibn Dawud al-Dhaziri of Hanafi disciple and some Maliki’s students interpreted the word “ila” as up to but excluding elbows.

However, the four Imams of the School of Thought have adopted the meaning up to with including elbows.¹²

2. Diversity over Hadith Interpretation: The scholars have never disagreed hadith as a source of interpretation in Jurisprudence. However, the majority of early scholars have disagreement over the interpretation of Prophetic Traditions in reconciliation,¹³ the reason behind this is that sometimes the text of hadith does not reaches to a certain scholar and he possibly formulated his own judgment based on the explicit meaning of the Holy Quran or the availability of some other text of hadith. The Jurist might refer to Qiyas on already decision declared by the Holy Prophet Muhammad (ﷺ) or Istishab pertaining to analogous circumstances. The Jurist would not derive such principles which will be harmful for the humanity when textual evidence too is not providing any wrath on it.

a. Accessibility of Hadith: Sometimes a hadith has different judgments regarding same issue. For example, Abu Hanifa is of the view that salat-al-istisqa (prayer for rain) did not require congregational prayer, because it is narrated by Anas ibn Malik that the Holy Prophet Muhammad (ﷺ) made an impulsive supplication (du'a) for rain. While Abu Yusuf and al-Shaybani including other imams based their viewpoint on the basis of narration by Abbad ibn Tamim that Prophet Muhammad (ﷺ) made du'a for rain while facing towards Qiblah and headed the individuals in two divisions of salat.¹⁴

b. Hadith with Weak Narrations: Sometimes when jurist receives a hadith text, he deliberates it as defective, thus no legal ruling can be deduced from such text then. The possibilities behind this are inclusion of untrustworthy narrator in isnaad, interrupted, implications of certain conditions on a single narrator by some jurists. For authentic hadith, continuity of chain of narrations is necessary. The diversity occurs among Imam Bukhari and Imam Muslim where the later stipulates a condition that both narrator and teacher must have met each other while the former are of the opposite view. Therefore, some of the jurists adopted Imam Muslim principle while others rejected Imam Bukhari' view depending on the trustworthiness and integrity of hadith narrators.¹⁵

c. Differences in Individual Interpretation of Text: It involve principles relating to negation and affirmation which contributes to preponderance methods of jurists' conflicts. It involves discrepancy regarding whether a particular hadith text deals with order, negation in contrast to other hadith or not.¹⁶ The interpretation of the Quranic and Hadith text also varies according to the conception and implication of text by jurists. For instance, it is narrated by Abu Hurayrah, "he who

performed the funeral prayer in the mosque has not done anything wrong”, in another narration it is stated, “He who performed the funeral prayer in the mosque does not gain anything”. This difference occurs due to alteration in the prepositions employed in Arabic language.¹⁷ Some jurists adopted the approach of preponderance in this hadith text, considering the most relevant incidence pertaining to temporal and spatial conditions. In the time of Holy Prophet Muhammad (ﷺ), companions were used to prefer the most recent act of him (ﷺ). Some of the jurists have preferred any text on the basis of its occurrence in the principles of jurisprudence. This all leads to the diversity in the historical context.¹⁸

d. Firmness of Textual Disagreement in the Prophetic Tradition: Sometimes variation occurs due to non-availability of complete text of hadith due to which meaning of the text changes. It also resulted while listening to only part of a hadith by one jurist while other knows about complete text. Wrong spellings, misrepresentation also results in divergent judgments. Due to difference in school of thoughts methodologies, certain principles like abrogation etc. are not followed by all jurists.¹⁹

3. Differences over Juristic Approaches: The third factor contributing to the emergence of deviating opinions among jurists is that everyone has developed its own principles based on specific rulings. These rulings and principles then become the source of differences. For example, as in the case of Ijma, custom of Madinan people, Istihsan, Istislah, personal opinion, analogical reasoning and opinion of Companions are accepted by some jurists while others reject their authenticity of sources depending on the principles of their schools.²⁰ The Jurists utilizes different methodologies for the extraction of rules, thus adopting the acceptable sources of its particular Jurisprudence school. As in the Maliki School, Madinan People Practice is acceptable while others do not accept it as a source.²¹

4. Ijtihad as an Element of Diversity: In certain conditions, verdict or ruling pertaining to specific matter is not known to all companions and then later Ijtihad was applied. This type of Ijtihad on many occasions was in uniformity with hadith and at others it fails to qualify the criteria. Ibn Masud reported that once issue of dowry has been brought to him in which husband has not fixed any mount of dowry for her. The issue was unresolved for one month and after the continuous persistence from other people, it was decided to give her dowry amount according to custom.²²

5. Different Inferences and Assumptions: The scholars of Jurisprudence sometimes observe any act of Prophet Muhammad (ﷺ)

and drew different inferences and assumptions from it. For example, while performing Hajj, some of the companions were of the view that Prophet Muhammad (ﷺ) has performed Tamatuu (practice of Hajj and Umrah by separately donning Ihram for each) while others said it was Qiran (combining both Hajj and Umrah in a single journey).²³

The baseline of Islamic Jurisprudence is based on the rules which states, **“Harm shall be removed”, “hardship calls for alleviation”, “habits shall be legally observed”** and **“the intentions are more important than the acts themselves”**.²⁴ There are certain rules and principles in Islamic Jurisprudence (fiqh) which help to overcome the differences or shortcomings in diversity. The basic purpose is to provide feasibility and just environment. The further principles are stated below:

i. Divine Law and Reasoning: In Islamic Jurisprudence, reasoning has a special place. According to jurists, there is a strong connection between the divine canon laws and intellect. It is known as accompaniment or inseparable rule. It states, “Whatever commands the divine law is judged by reasoning and whatever commands reasoning is judged by the divine law.” This law demands the basic knowledge of interpretation based on reason, in this way it has the ability to generate a law with its restriction and generalization. It also helps in deducing the law from other sources too. In this way it acts as the standard for the Islamic commands as Islam has not put any mystery in its teachings.²⁵

ii. Imitation and Legal Reasoning: A person is said to be an imitator when he has not been given any choice of school and is not exposed to other schools of thought. However, if he has been exposed to other schools and still he is strict to his own school then it is said that he has practiced legal reasoning. It is narrated by Holy Prophet Muhammad (ﷺ) that, “there will always be a group of my Islamic nation who would seek the truth until Resurrection Day”. The diversity occurs if the independent jurist is not fully aware of the Holy Quran text, Sunnah, Analogy issues, Arabic language and Jurisprudential principles. He must be aware of ruling of the text too as jurists are termed as “physicians”.²⁶

iii. Annulment of Foreign Dominance: The Holy Quran has negated the concept of dominance even it is the case of non-Muslims over Muslims.²⁷ On the basis of this principle, jurists have inferred the rules of negation from the Quranic teachings and invoke for independency in all dimensions.²⁸ A major deficiency prevailed in the benchmark of knowledge as the colonialists factor weakened the strength of Muslims by affecting on their literary capabilities. In this way, creating a schism

between the religious teaching and Muslims; resulting in the ignorance of youth towards the treasure of the Arabic language.²⁹

iv. Maslaha (Public Benefit): The Ahkam (commands) present in the Islam act as a function of public interest. However, their status is not of the same importance which has encouraged jurists to work on “interruption” and “al-Ahamm wa al-Ahamm”. This principle has laid down the best rules which are nearer to the maximum interest or benefit of the community.³⁰

v. Public Responsibility: The Islamic culture is based on the principle to enjoin virtuous and prevent from evil.³¹ The Islamic Jurisprudence also obligates this principle and encourages to do it in collaboration in order to have positive consequences.

vi. Overruling Rules: The Islamic Jurisprudence deals with sufficient flexibility in its rules and principles to work for the beneficial management of the society. It has the characteristic of mystery of its stability. It further allows in settling of all commands and rules and thus was given the title of Qawaid al-Hakimah (overruling rules). They play a dominating role as the high authority of the law and control the overruling rules applicably. It includes Haraj (hard) and zarar (damage) rules which are prevailing in the society. It states that no loss to any particular individual is to be extended to the whole society as it is said, “La Zarar wa la Zarar Fi Al Islam” leading to the Hifz al-Nafs.

vii. The Discretionary Authorization of the Jurist: The rules and principles of Islam govern to run the Islamic society justly. This authority was initiated at the time of the Holy Prophet Muhammad (ﷺ) and it provides remedies for future contingencies and the needs of Muslim community. It also helps in initiation of new rules in which Shari’ah previously holds no reference.

Conclusion:

The Ethics of disagreement provides positive contradictions and moralities to overcome the conflicts and face the criticism, critique with graciousness and patience. The principles of Islamic Jurisprudence always set an exemplary path following Prophetic guidance to evade from offense and slander. The Holy Quran and Sunnah have always proved that there is no conflict on their text, the conflict lies only in the optional matters among jurists. This diversity was due to their mental capabilities, intellect, perceptual approaches and knowledge of vast source. This variation was known naturally among the jurisprudential principles. Islam has always provided source for every key matter, whether it belongs to individual or to society providing the principles

both in theoretically and practical form. The natural type of diversity should be considered as a basic element for positivity, informative and harmonious determinations.³² The Jurisprudential principles will make possible to generate extrapolating laws by utilizing the injunctions of the Holy Quran. Holy Prophet Muhammad (ﷺ) said, “Indeed Allah Almighty sends for this community (Ummah) at the head of every hundred years one who will revive and renew for it its religion.” The variation among Schools of Thought is not a negative aspect of Jurisprudence but it is a source of valuable literature. It opens the door of solutions when problem arises and it is not a matter of disunity. The diversity in Jurisprudential principles allows catering daily routine complexities and leads to the development of new approaches.³³

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