

Taqlid A Dilmma for Muslim Intellect: An Analysis in the Light of Contemporary Issues of Muslim Ummah

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Abstract

The present article aims to analyze critically the principle of taqlid and its effects in the light of the dynamic process of ijtiḥad. It points out that at present this flexible way of interpretation of Qur'anic legal texts and the Sunnah of the Prophet (pbuh) is in turmoil due to blind imitation in the name of taqlid. By ignoring the progressive spirit of ijtiḥad, the Islamic law has become stagnated if compared with the modern development of law and legal theories. It highlights some important problems faced by the Muslim Ummah generally and some problems of the Muslims in Pakistan particularly, which in fact need to be solved by way of flexible interpretation through the process of ijtiḥad. Finally, it suggests that the modern Muslim scholars and muftis should have a scientific understanding of the sciences of the Qur'an and Sunnah of the Prophet (pbuh) to analyze the interpretive policy of the Prophet (pbuh), his companions and the traditional Muslim jurists who ever condemned taqlid for a jurist and a mufti (who has capacity/authority to issue fatawa).

1. Introduction and Scope of Ijtiḥad

The term ijtiḥad literally means to strive hard in searching of something (Ibn Manzur, 1978). Technically, it is defined as a process and a mental activity through which a Muslim jurist, judge and a mufti interprets and re-interprets the legal texts of the Qur'an and Sunnah (pbuh) to find out the solution of a contemporary issue which otherwise cannot be solved by way of plain meaning of the text concerned. As Al-A'midi (1967) pointed out that ijtiḥad is concerned with the discovery of the ruling of Sharī'ah from those legal texts of the Qur'an and the Sunnah (pbuh) which do not clearly cover the situation at hand (Vol.2, p.78). In this way, the concept of ijtiḥad is not much different from the concept of interpretation/construction in western legal systems.

To become an interpreter it is necessary for a person to get expertise in the language of the Qur'an and its sciences such as he must have a firm grasp over grammatical and contextual meanings and objectives of legislation (revelation). As described by Al-Sarakhsi (1370 A.H.) that an interpreter/ mujtahid should be able to distinguish the clear words (*waduh*) from the unclear words (*khifa*) and to determine the degrees of clarity and ambiguity in words to resolve the conflicts in the legal text/*nass* (Vol.1, p.10). Not only have these qualities but a modern Muslim jurist must have knowledge of the contemporary scientific, political, social and economical issues facing by Muslim Ummah so, that he may be able to resolve these issues in the light of the changed context. The objective of interpretation in Islamic legal system is to ascertain the intention of the Law-Giver behind an enactment (Al-Ghazali, 1367 A.H). There are four elements which are necessary to perform ijtiḥad: The process of finding out the true intention of the Law-Giver; presence of a mujtahid; issue faced by the Ummah and lastly, the existence of evidence on the basis of which the particular problem is going to be solved (Taj al-Din, 1378 A.H).

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There are two types of *ijtihad* such as *ijtihad tam* which can be exercised only by an independent, trained and skilful mujtahid who has his own methodology of interpretation and does not follow any jurist or his methodology. The second type is *ijtihad naqis* which means that the mujtahid does not possess the capacity of an independent mujtahid (Al-Shawkani, 1977).

Looking at the Sunnah (pbuh) we find that the Prophet (pbuh) extensively utilized the process of *ijtihad* and introduced many interpretive principles such as contextual, logical, purposive and flexible interpretation etc (Ibn Qayyim, 1977). It is reported that Hadrat Abu Bakr discussed many rules of interpretation in his treaty which however, could not reach to us (Al-Mawardi, 1965). Hadrat Abu Bakr and Hadrat ‘Umar re-interpreted many legal texts of the Qur’an and the Sunnah (pbuh) by way of public interest and derived quite different laws from the earlier laws just to cope with the changes of time and changed needs of the people. They focused on the context and the objectives of a text rather than its literal meaning (Abu Yusuf, 1988).

Likewise the traditional Muslim jurists contributed in the development of the science of interpretation/*ijtihad* and introduced many new interpretive rules such as Imam Abu Hanifah introduced interpretive rule of juristic preference and rule of interpretation of hypothetical issues (Ibn Qayyim, Vol. 1, p.122). Imam Malik introduced interpretive rule of *maslahah mursalah* (public interest which is not against the spirit of Shari’ah), rule of customary law and textual rule of interpretation (Abu Zahrah, 1970). He was not agreed to grant power of deciding a matter through *Ijma’* except by the jurists or people of Medina (J. Schacht, 1964). Imam Shafi’I introduced interpretive rule of combine reasoning and exercised both textual and contextual rules in his process of interpretation. As pointed out by Majid Khadduri (1978) that his treaty on jurisprudence titled as “Al-Risalah” is a monumental work which indicates his clear vision and full grasp of legal knowledge and science of interpretation (pp.12-24). Imam Dawud al-Zahiri however, introduced rule of literal interpretation but it was rejected by the contemporaries due its strict and inflexible consequences (Maulana Taqi Amini, 1988).

In this way, the science of interpretation in Islamic legal system became fully developed by the 3rd century of Hijrah. This discussion reveals that Islam motivates its believers to enhance their knowledge, to use their logic and to introduce new modes of interpretation to provide ease to people and to remove harm from them and thus, made it compulsory for a person who wants to resolve the issues of the people to get expertise of the Qur’anic sciences, scientific understanding of the earlier modes and to introduce some new methodology in the light of the changed context.

Unfortunately, after this period due to many reasons the principles of *taqlid* was introduced and got rooted among the Muslims and later caused to make Islamic law as stagnated and inflexible. As pointed out by George Makdisi (1991) that by following the principle of *taqlid* and contrary to the earlier development, the progress of *ijtihad* in later period among Muslim jurists became slow and some of them claimed for the closer of *ijtihad*. This tendency apprehended the great activity of *Ijtihad* and led to *Taqlid* (p.34).

2. Taqlid A Dilemma for Muslim Intellect

The term *taqlid* has been derived from the Arabic word “*al-qaladah*” which means to put something in to the neck of someone. *Taqlid* literally means to follow the opinion of other person without knowledge of the authority of such opinion (Ibn Manzur, 1988). In technical sense, it is defined as to follow blindly the opinion/ fatwa of a jurist without knowing its reality, source and evidence upon which the fatwa is based (Muhammad Ali al-Sais, 1986).

It was at the end of the 3rd century of Hijrah when the legal theories of the traditional Muslim jurists were started to be preached by their disciples who showed great respect to them and tried to convey it to all the Muslims. This respect however, later resulted in the stagnation of the Muslim's knowledge and made them confined to the study of the writings of their respective teachers rather than to get expertise in the sciences of the Qur'an and Sunnah (pbuh). During this period many Muslim intellectuals appeared on the scene such as Khalil al-Maliki, Taqi al-Din al-Subki, Kamal bin al-Hammam etc who were expertise of the Qur'anic sciences and possessed the capacity of *ijtihad* but they did not exercised *ijtihad* rather devoted themselves to the compilation of the writing of their teachers. (Al-Sais, pp.118-119). In this way, they introduced the principle of *taqlid* which later established among the Muslims as a general principle to be followed by all whether the jurists or the common men and became the central point of their discussions. The situation was that if any one among the Muslim intellects tried to oppose *taqlid* or to talk about *ijtihad* was alleged as a claimer of a new legal theory and as competitor to the founders of the four well-known legal schools such as Hanafi, Maliki, Shafi'i and Hanbali etc (Ibn Qayyim, Vol.1, p.233-238).

This situation made the Muslim scholars afraid of the serious fighting among the Muslims so, at the end of the 4th century of *Hijrah*, they pronounced in different meetings and in public places that the traditional Muslim jurists have made Islamic law completed in its all aspects and anyone who will issue a fatwa different from his teacher will be innovator and he will be prevented from issuing fatatwa (Al-Sais, p.119). Closing the door of *ijtihad* was meant that there is no possibility for the establishment of a new school of law or to give a verdict different from the traditional Muslim jurists. It is reported that during the time of Taqi al-Din al-Subki, a Muslim scholar Abu Zar'ah talked to his teacher Al-Balqini about the wisdom and knowledge of Taqi al-Din al-Subki and commented that he has capacity to do independent *ijtihad* and that we do not find in him any deficiency in this regard". His teacher Al-Balqini did not reply him and kept silent. Then Abu Zar'ah said that we can refrain him (Taqi al-Din al-Subki) from exercising *ijtihad* by declaring that the four Sunni schools have binding authority and if any one try to deviate from these legal schools and to exercise *ijtihad* (*ijtihad*) he will not be recognized and he cannot be appointed as a judge/jurist (*Harrama wilayathu al-qada*). And people will be asked not to follow him and he will be declared as an innovator". On these comments Al-Bilqini smiled and agreed with his suggestion (Al-Sais, p.120).

By developing such a situation and by creating misunderstanding regarding the concept of *ijtihad* and *taqlid*, the Muslim scholars of that time brought a matchless failure for the development of the field of interpretation and Islamic law and caused to make it unable to compete the challenges of the scientific development of the modern world. In this way, the Muslims themselves are responsible for the stagnation of Islamic law which has been failed to decide the contemporary issues of the Muslim Ummah.

In later centuries however, some of the Muslim jurists started movement against *taqlid* such as Ibn Taymiyyah (1263-1328 C.E), was the foremost among the Muslim intellects and raised his voice against blind imitation/*taqlid*. He studied *fiqh* according to the Hanbali *madhhab* but rejected the absolute authority of any *madhhab* and refused to follow any of the traditional legal schools. He also refuted the old methodology of *Qiyas* and *Ijm'a* adopted by the Hanafi jurists and issued *fatawa* in the light of the provisions of the Qur'an and Sunnah of the Prophet (Ibn Al-Jawzi,1977).

In the sub-continent some of the Muslim scholars also raised their voice against *taqlid* and suggested to get rid of *taqlid* and to go back to the legacy of the Qur'an and the Sunnah (pbuh). Here, Muhammad bin Abdul Wahab in Najdi, Shah Wali Allah and Shah Isma'il Shaheed led opposition to *taqlid* (Muhammd Ishaq Bhatti, 19978). During the 19th century, Jamal al-Din Afghani (1839-1897 A.D.) suggested that the jurists should establish regional

centers in various countries where *ijtihad* could be exercised for the guidance of the common man. These regional centers should be connected with global center which may be established in any of the holy places (Aziz Ahmad, 1961). Muhammad Abduh (1849-1905 A.D.) and Rashid Rida rejected the traditional view that the Qur'an had been, once for all, expounded authoritatively by the traditional jurists and confirmed by an irrevocable *Ijma'* (Rashid Rida, 1967).

Although these and alike Muslim scholars worked for the renaissance of the process of *ijtihad* and tried their level best to remove misconception regarding *ijtihad* and *taqlid* yet majority of the contemporary scholars are still in a state of confusion and are trying to solve the contemporary issues by way of amalgamation and reconciliation rather than to exercise independent *ijtihad*. The fact is that even in the 21st century majority of the Muslims particularly, from Pakistan are in favor of the binding authority of traditional *fatawa* and do not allow others to speak about independent *ijtihad*.

3. Contemporary Problems of the Muslim Ummah

To day Muslim Ummah is facing many problems in its political, economic and social spheres which cannot be solved in the light of the strict literal rule or by adopting traditional *fatawa* rather demand to be resolved in the light of the logical and purposive approaches of interpretation. Among the contemporary issues of the Ummah are the concept of nationalism, concept of *dar al-Islam* (Islamic state) and *dar al-Harb* (war state), issue of constitutionalism and democratic form of the government, issue of the concept of *jihad* and its practice, implementation of *hudud* punishments, issue of covering face with veil and issue of marriage of a Muslim woman with a *Ahl al-Kitab* and issue of the interest based economy of the Muslim state etc.

So far as concerned the issue of nationalism that whether a non-Muslim citizen of a Muslim state can be declared as a member of the Muslim Ummah or not? This issue can be solved in the light of the first treaty of *Madīnah*. Article One of the Treaty states that the Muslims and all those who followed and fought with them. They will form one Ummah to the exclusion of others (Ibn Ishaq, 1968).

The issue of the concept of *Dar al-Islam* and *Dar al-Harb* was in fact defined by the traditional Muslim jurists in the light of the circumstances of that time. According to which Islam and Islamic law stand in diametrical opposition to non-Muslims people and non-Muslim territories (Majid Khadduri, 1955). In theory, this interpretation contended that the world of Islam remain in a constant state of war with non-Muslim territories until all the inhabitants of these territories are subdued and brought under the Muslim dominion. This problem can be solved by the application of the theory of Ashmawi (1988) who rejected the traditional interpretation and contended that neither the Qur'an nor the *Sunnah* (pbuh) has given any indications towards this form of relationship between Muslim and non-Muslim states. (pp 91-94).

Another problem is the issue of political form of the government, in Islamic legal system, the Qur'ānic principles guide an Islamic government to decide the matters and issues of the national interest with counseling and mutual understanding. The Muslim state of *Madīnah* can be presented as an example of this type of government which was based on the principle of consultation and consensus of opinions. Hence, the most suitable form of the government of an Islamic state is democratic form of government (Naseem Razi, 2013).

Another problem is of comparison of capitalist Banking interest (developed during the 19th century) and issue of *Riba* which was practiced by the people throughout the history of human being and has been declared prohibited (*haram*) by the clear provisions of the Qur'an and *Sunnah* of the prophet (pbuh). This issue has been solved by the contemporary Muslim

scholars and judges by way of strict literal interpretation and remote analogy. This issue however, demands contextual interpretation.

The other issue is of marriage of a Muslim woman with a non-Muslim man. This issue can be solved by way of contextual interpretation of the Qur'anic verses which addresses both male and female. Likewise, the issue of veil which is covering face for Muslim women is one of the hot issues and a large number of Muslim women especially, residing in western/European countries are in trouble and their lives are in danger due to ignorance of this issue. This issue is being ignored by the contemporary Muslim intellectuals although it is very simple and easy to resolve. The relevant Qur'anic verses never asked the women to cover their face or to adopt a getup like to day's form of niqab/veil. Further, the provisions of the Sunnah (pbuh) and the practices of the female companions during the time of the Holy Prophet (pbuh) and four Caliphs reveal that no such order was imposed upon Muslim female rather after the revelation of the verses regarding Hijab, the female just started to cover their whole body with proper dressing including chest, neck and head except (ma zahara minha) face, hand and foot. Today, in some western countries the issue of covering face has become an hot issue and some of the countries have made and implemented law against the covering face of the women. But the Muslim intellectuals and even OIC has kept silence over this minor issue and do not bother resolve it by issuing a fatwa and by providing that covering face is not obligatory and that the Muslim women should avoid to cover their faces in case where they are living in a foreign country and where law does not allow anyone to cover his/her face.

Conclusion and Recommendations

In the light of the above discussion it is concluded irrespective of the fact that the contemporary cultural, political and economic circumstances have no match with the circumstances of the past generations when the world was very simple and ignorant, the contemporary Muslims intellectuals however, are still trying to solve the contemporary issues in the light of the traditional fatawa which even did not deal with these issues. This attitude of the Muslim intellectuals neither justifies the foundational principles of the Qur'an, the Sunnah (pbuh), and the companions nor of the traditional Muslim jurists. It is also concluded that the intellectuals of the modern times have enough resources to get scientific understanding of the Qur'anic sciences and of the contemporary social and natural sciences and thus, can enhance their capacity to re-interpret and to re-construct the legal provisions of the Qur'an and the Sunnah (pbuh) in the light of the modern context. As Allamah Muhammad Iqbal(1988) described that the commentaries on the Qur'an and the Sunnah (pbuh) have been compiled and multiplied to such an extent that a mujtahid of today has more material for interpretation than the needs and ijthad for latter jurists is easier than for the earlier jurists (pp.178-179).

It is also concluded that due to blind imitation/taqlid, lack of knowledge, lack of scientific study of the earliest and traditionalists approaches led the contemporary Muslim intellectuals to be static not dynamic. The contemporary Muslim intellectuals are ignoring the teachings of their Aimmah (teachers) As Imam Shafi'i (189) stated that no problem is confronted by any of the followers of Allah's religion but there exists indications of guidance to it in Allah's book (p.45).

It is also concluded that Islamic approaches of interpretation such as public interest, contextual approach and rule of necessity (which means that in case of necessity the prohibited things become permissible) are being neglected by the Muslim intellectuals.

In this context this article suggests that it is necessary for the modern Muslim intellect to get rid of taqlid and to get correct knowledge of the Qur'anic language and Qur'anic sciences and try to enable them to exercise ijthad. Ijthad should not be understood in the

meaning of an interpretive principle and context of existence or non existence of a hukm/ rather it should be considered as a process of understanding something.

It is also suggested that the term *taqlid* should be taken in the meaning of following a juristic opinion by a common/lay man as considered by the earliest and traditional Muslim jurists.

The contemporary institutions of ifta' such as World Muslim League in Makkah, Fatwa Committee of OIC, Azhar University in Egypt, the Council of Islamic Ideology in Pakistan should pronounce not following any of the traditional madhhab rather ijthihad should be made binding for the Muslim intellectuals who are expertise of the sciences of the Qur'an and hadith etc. Fatwa Committee of OIC should play its role by declaring *taqlid* prohibited for the Muslim intellectuals and the jurists.

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