THE ETIQUETTES OF *IKHTILAF* (VARIATION OF UNDERSTANDING) IN ISLAMIC JURISPRUDENCE

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ABSTRACT

This write up is an attempt to study the etiquettes of ikhtilaf; variation of understanding among Muslim scholars and the to extend to which it can go in maintaining a cordial relationship between Muslim communities of deferent background and eras, more especially, the cotemporary Muslim scholars who at a time use the common variation of understanding in some branches of Islamic law; not in the aspect of dogmatic matters to cause conflicts between their followers; therefore it is hope that this write up will help in no small measures in bringing about good understanding in Islam.

Keywords: *Etiquettes, Variety, Understanding, Scholars, Ikhtilaf.*

men all together (Qur'ān, 11: 119)

However, variation of opinion among Muslim scholars (Ikhtilāf) is not a strange thing; it has been in existence over the history of Islam, even the companions in the time of the Prophet Muhammad (SAW) used to differ on some

Introduction:

Diversity of opinion or disagreement is a common phenomenon in the history of human nature. Allah (SWT) says in the Glorious Qur'ān:

And if your Lord had so willed, He could surely have made mankind one Ummah [nation or community (following one religion only i.e. Islam)], but they will not cease to disagree. (Qur'ān, 11: 118)
Except him on whom your Lord has bestowed His Mercy (the follower of truth - Islamic Monotheism) and for that did He create them. And the Word of your Lord has been fulfilled (i.e. His Saying): Surely, I shall fill Hell with jinns and

particular aspects of Islamic law. The presence of the Prophet helped the situation, because whenever there were disagreements, they refer all to him immediately for solution. (Al-Alawani, 33).

After the demise of the Prophet Muhammad (SAW), this phenomenon continues among the Muslim scholars due to some reasons that we are going to discuss them in this study. Nevertheless the ideological difference between the Muslim scholars concerning jurisprudence has never lead the early Muslim generations to religious conflicts or denial of one another, because they adhere to certain conducts that help them in respecting each other's views that are not contrary to the basic Islamic tenets. However these scholastic opinions led to the emergence of the prominent Islamic schools of law such like Hanafi school of law, Māliki school of law, Shāfi'i school of law and the Hambali school of law. Each school is ascribed to its honorific and erudite scholar ImāmMālik, ImāmAbúHanífa, ImāmShāfi'i and Imām Ahmad bin Hambali respectively.

This write-up therefore sees it very important to study *Ikhtalaf* from its Islamic conceptual viewpoint in order to provide the correct understanding about its conceptin Islamic sources of law as it has occurred in the interpretation (*tafsir*) of the Glorious Qur'ān, and the authenticity of some traditions (*Ahádíth)* of the Prophet Muhammad (SAW) and their application. Moreover, the research studies the different factors that led to the diversity of understanding among the Muslim scholars (*Ulama')* with a view to averting the misconceptions of the half bake scholars in our contemporary society.

The ethics of variation of opinions (*ádab al-Ikhtilāf)*in the other hand, is another basic aspect in the study of Ikhtilāf in general as it helps in no small measure in maintaining good relationship and unity among the followers of different schools of law, however, respecting those ethics further prevents using *Ikhtilāf* by the enemies of Islam as mean of causing conflicts in the religion. So it is mandatory upon each and every Muslim particularly those who are directly or indirectly related to Islamic scholarship activities, such as contemporary Islamic scholars, the Islamic studies students and the Islamic advocates to be well equipped with the knowledge of those ethics and to apply them properly, this is in order to eliminate any misconception whatsoever about *Ikhtilāf* in Islam in the contemporary society. Islam is a comprehensive religion and a complete way of life which Allah revealed at a particular period of time known as the age of ignorant (*Jāhiliyya*) when the whole of mankind was in a serious desperation to a very comprehensive and dynamic system and code of life that will check out

and balance all the types of lawlessness that were being practiced at the time mentioned. History has established it that the *Jāhiliyya* period was characterized by a lot of social misbehaviors and a general anarchy, dictatorial rule and all sort of violence were in high order, thus Allah the Almighty delivered the mankind by sending the great Prophet Muhammad (peace and blessing of Allah be on him), and was also made him a universal and seal of the Prophets and Messengers of Allah to mankind. Allah says:

And (remember) the Day when We shall raise up from every nation a witness against them from amongst themselves. And We shall bring you (O Muhammad) as a witness against these. And We have sent down to you the Book (the Qur'ān) as an exposition of everything, a guidance, a mercy, and glad tidings for those who have submitted themselves (to Allah as Muslims). (Qur'ān, 16: 89).

The above verse of the Glorious Qur'ān clearly indicates that the message in the Qur'ān is meant to explain all aspects of human life as individuals and as a society or group, however it is meant to guide the mankind to the right path of living. Moreover, the massage contains static laws in a sense, the laws that deal in broad sense with state, family and private affairs among others, known as Islamic shari'a law if put all together. There are four main sources from which the Islamic laws are being derived, namely; Qur'ān, *Hadíth* or *Sunnah*, (the tradition of the Prophet) *Ijma'* (the consensus of Muslim scholars) and *Qiyās* (an analogical deduction) the former two (Qur'ān and Sunnah) are known as the primary sources of Islamic law upon which all generations of the Muslim scholars have agreed, while the remaining two; (Ijma' and Qiyās) have a little and insignificant debate upon them.

    There are many other sources of Islamic law though with serious debate among the scholars concerning their recognition as part of the established sources of the law, such as; (Ijtihád) scholarly exertion, (Aq'wál as-Sahāba) statements of the companions, (Urf) the custom (Istihsán) juristic preference, (Masālih al-Mursala) or (Istislāh) consideration of public welfare, (Istis'hāb) presumption of continuity, (Sadd al-Dharái) blocking the means of evil and (Shar'u man qablaná) laws revealed prior to the advent of Islam (Ahmad, 119).

Apart from the general disagreement among the Muslim jurists with regard to the above mentioned secondary sources of Islamic law, the sources are however being attached with some certain conditions; the main condition is that each of the above mentioned secondary sources of the Islamic law must not in whatever

dimension goes against or contradicts an established injunction of the Glorious Qur'ān, tradition of the Prophet or a well established (Ijma') consensus of the Muslim scholars of a particular generation, they can only be accepted in a situation whereby they answer a question on which both the Qur'ān and the (Sunnah) tradition of the Prophet Muhammad (SAW) were silent about, because anything that is determined by either the Qur'ān or the Sunnah will be no more subjected to anybody's decision. (Qur'ān, 33:36)

Following are the primary sources of Islamic law; the Qur'ān and the tradition (Sunnah) of the Prophet Muhammad (SAW).

Qur'ān: It is the word of Allah the Almighty which He revealed to the seal of His messengers: Muhammad (SAW) over a period of twenty three years; it contains one hundred and fourteen chapters called *Suwar* as a plural term or *Súrah* as a singular term. There are different types of divisions of which the Muslim scholars have divided the chapters of the Qur'ān depends on the kind of consideration given; a division of it can be *Makkí* and *Madaní* based, which simply refers to the chapters revealed when the Prophet live in Mecca; that was before his final migration and other chapters revealed within the period after migration to Medína. However, there is another categorization like *Diwál al-Mufassal* and *Qisār al-Mufassal*, meaming the lengthy and the shorter chapters. (Al-Zarkashi, 245).

Each chapter of the Qur'ān is made up of verses called *āyāt* or *áya* as a single term, the shortest chapter in the Qur'ān contains only three verse; and this refers to (Qur'ān, 108). There can be many classification for the (*āyāt*) verses of the Qur'ān same like the case of the (suwar) chapters but the classification which will be of more interest to this research work is that of (Al-Muhkam and Al-Mutashábih) clear verses in terms of their meaning and the ambiguous ones Allah has this in the Qur'ān:

It is He Who has sent down to you (Muhammad) the Book (this Qur'ān). In it are Verses that are entirely clear, they are the foundations of the Book and others not entirely clear. So as for those in whose hearts there is a deviation (from the truth) they follow that which is not entirely clear thereof, seeking Al-Fitnah (polytheism and trials, etc.), and seeking for its hidden meanings, but none knows its hidden meanings save Allah. And those who are firmly grounded in knowledge say: "We believe in it; the whole of it (clear and unclear Verses) are from our Lord." And none receive admonition except men of understanding. (Qur'ān 3: 7)

Thus those ambiguous verses or statements in many cases attract a kind of hot debate among the scholars which subsequently lead to variation of opinions among them which is the topic in question in this research.

Hadíth: this refers to the statements of the Prophet Muhammad (SAW), his actions, his approvals and his personal description by companions, *hadíth* as earlier stated is one of the primary sources of Islamic law and only next to the glorious Qur'ān. (As-Sakhawi, 22).

Some of the Classifications of Hadíth:

Following are some of the classifications of hadíth; (Sahíh) means sound or authentic hadíth, then their (Hasan) means Good, (SahíhunLighairihí) authentic hadíth based on external support, (HasanLighairihí) good hadíth based on external support (Da'íf) a weak hadíth, (Maudu)' fabricated hadíth. All of the above mentioned terminologies have their own literal and technical definitions which may not necessary be of our interest here, only that the important point worthy of mentioned is that all of the classes mentioned are accepted evidences on their own with the exception of the last two: weak *hadíth* and the fabricated one, as for their own case, their injunctions are not recognized and thus are rejected. (Al-HalAbí, 291)

Al-Hadíth al-Qudsi and Al-Hadíth an-Nabawi

(Al-Hadíth al-Qudsi) sacred hadíth is a statement of Allah the Almighty divinely communicated to the Prophet Muhammad (SAW) while he (the Prophet) communicated it to the *Ummah* (Muslim community) with his own wordings, as according to some of the scholars of *hadíth* but others still maintained that even the wording too can come directly from the Almighty Allah therefore al-Hadíth al-Qudsi, as per meaning, it is directly from Allah and as per wording, it is from the Prophet. While al-Hadíth al-Nabawi on the other hand, both its wording and its meaning are from the Prophet Muhammad (SAW). (al-Qasimí, 64)

Some differences between al-Hadíth al-Qudsí and the Qur'ān:

It has been mentioned earlier that al-Hadíth al-Qudsí (the sacred hadíth) is a narration of the Prophet Muhammad (SAW) directly from Allah the Almighty, then what can differentiate it from the Glorious Qur'ān? Scholars have enumerated a number of points from which the two concepts can be differentiated; the following are some of those points:

(a) The Glorious Qur'ān is from the Almighty Allah in both words and meaning while *al-Hadíth al-Qudsí* is from Allah only by meaning but the wording comes from the Prophet Muhammad (SAW).

(b) Mere recitation of *Hadíth Al-Qudsí* cannot be considered a ritual act on its own,   unlike the glorious Qur'ān; its recitation is an act of worship.

(c) Allah has promised to safeguard the Glorious Qur'ān from any attempt of tempering with its authenticity, while according to scholars of *Hadíth*, the sacred *Hadíth* can be authentic, good, weak and even be fabricated.

(d) Sacred Hadíth cannot be recited in (Salát) prayer unlike the Qur'ān which one's prayer cannot be validated unless a potion of it is recited. (opcit, 324).

These are but few among many differences between *Hadíth Al-Qudsí* and the Glorious Qur'ān.

In line with what have been mentioned so far concerning the *Sunnah* as the second source of Islamic law, there are many issues in it that can lead to the variation of understanding among different scholars, for instance; confirmation of a *hadíth* as being authentic or otherwise can lead to disagreement among scholars, the awareness about the *hadíth* itself can also be a source of problem because a scholar may not be aware about the existence of the *hadíth* in the first place and hence he advances a decision against its teaching which will in fact be contrary to the decision of the other people who may be aware of the *hadíth*. The interpretation of the *hadíth* can also easily lead to many opinions all together. Therefore, a thorough study about *Ikhtilāf* (variation) of pinions among Muslim jurists is needed in order to see how the previous generations of the Muslim *Ummah* (community) managed and handled this very sensitive issue, this is to ensure that variation of understanding in Islamic laws does not lead the contemporary generation to social fractions and religious disunity which Islam is vividly kicking against.

THE ETIQUETTES OF *IKHTILĀF* AND THEIR RELEVANCE TO CONTEMPORARY MUSLIM SOCIETY.

In order to avoid the consequences of misconception about the variation of opinions in the Islamic law as discussed above, there is cogent need for us to understand and to properly be acquainted with and apply the ethics and rules of the variation of opinions (Ikhtilāf), because in Islam, everything has its own rules

and regulations as well as its ethics; the Prophet Muhammad (SAW) says: "there is nothing more heavier in one's scale of good deeds than good ethics" (IbnAbíShaiba, 211).

Adherence to the ethics of *Ikhtilāf*, will really go a long way in building rapport among the contemporary scholars which establishes unity among the followers and Muslim community in general. This research has identified the following points as the ethics of variation of understanding as follow:

Sincerity in Purpose

Sincerity (Ikhlas) simply stands for discharging ones duty only for the sake of Allah not looking after any other interest and not resulted by any other motive whatsoever. Any act of worship in Islam, is useless unless it has been characterized by the character of sincerity (Ikhlas) Allah the Almighty says: "And they were commanded not but to that they should worship Allah, and worship none but Him Alone…" (Qur'ān, 98: 5). Moreover, if each and every scholar of our contemporary generation will adopt this behavior then many of our problems will be over, because anybody will then be sincerely searching for the truth without any personal interest.

Reference to the Qur'ān and the Sunnah of the Prophet Muhammad (SAW).

In case of any disagreement, the first and famous majeure to be taken is to refer that particular disagreement to the injunctions of the Glorious Qur'ān and then to the Prophetic traditions with intention of searching the truth. Allah the Almighty says: "And in whatsoever you differ, the decision thereof is with Allah, such is Allah, my Lord in whom I put my trust, and to Him I turn in all of my affairs and repentance." (Qur'ān, 42: 10). "O you who believe obey Allah and obey the Messenger and those of you who are in authority, if you differ in anything amongst yourselves, refer it to Allah and His Messenger if you believe in Allah and in the last day." (Qur'ān, 3: 59). In the above verses, it is indicated that disagreements are anticipated but when they occur, the way out from them is by going back to the main source of the law Qur'ān and the *Hadíth*of the Prophet Muhammad (SAW).

Surrendering to the Truth

Each and every Muslim scholar should accept the truth regardless of who says it, so long as it has been substantially proved to be the truth. The Prophet

Muhammad (SAW) says: "Wisdom is a lost property of a believer; anywhere he finds it, he embraces it" (Imam Tirmidhi, 51)

Flexibility in Perception:

As a scholar, one should have a flexible perception so that he will in the first place bear in mind that there will be possibility of having at least two different solutions that are both correct for one single case. This idea is obtainable from some of the judgments of the Prophet Muhammad (SAW) where two parties argued and when they referred their case to him, he approved both of them right. (Al-Bukhari, 15). When scholars adopt this attitude, they will have an opened mind, thus be ready to accept from others or there wouldn't be unauthenticated condemnation of one another.

Leniency

A scholar should learn how to be lenient in his general interaction with others which shall include his way of speech, his way of refuting others' arguments and in the way he present his ideas to others, this in fact will make his argument more attractive to others in the sense that people will always like to listen to him and to pay more attention to his conclusions and reason with his arguments and finally, he will easily be understood. However his opponents will also more likely be ready to surrender to his argument when they feel that he has the right argument; unlike someone who is very rigid and arrogant to people, who use to attack his opponents in a harsh manner instead of politeness, anyone that has these types of bad conducts, will hardly be understood because no one will like to go closer to him. As a result of that his argument will almost be useless because he has a factor that keeps people away from him and above all, this is not a characteristic of a good Islamic teacher. Allah the Almighty says: "And argue not with the people of the scripture (Jews and Christians), unless it is in that which is better." (Qur'ān, 29: 46).

If this is for the case of Jews and Christians, then what about someone with whom you share the same faith, the same direction and everything, in fact you only need to argue with him when the argument becames inevitable and in such condition, you definitely have to be so lenient, polite and very wise. Allah says: "And for the mercy of Allah, you dealt with them gently. And had you been severe and harsh-heated, they would have broken away from you." (Qur'ān, 3: 159).

Consideration of Precedence

In the event of any disagreement, scholars should be taking consequences into consideration, because in some cases a scholar may unavoidably abandon his own opinion for another one just to avoid worse consequences following otherwise may cause; the example of this is that when an attempt to establish a supererogatory act (Sunnah) leads to a situation whereby a compulsory act (Fard) will be undermind, in this situation, the first attempt to realize the supererogatory act must be temporarily suspended because the realization of the compulsory act will now take precedence over the required one; this is based on the popular assertion of Islamic lawyers (usúliyyún) which says: "if there are only two but harmful options before us that are different in the degree of their harmfulness, then we are compelled to go for the one that is less harmful." (Al-Subki, 549). Therefore if this account is understood, then we should not insist for example on the case of saying one *taslim* or otherwise even at the cost of our separation and disunity, because the latter one (unity) is compulsory.

In the above chapter, the following issues have been discussed: causes of the variation of understanding in the Islamic law, thus it has been identified that there are factors that normally lead to diversity of opinions; these factors at times are considered to be a legitimates ones that cannot be avoided anyway. However there are other factors that are mainly motivated by individuals or groups personal interest or lack of proper knowledge of the Islamic law and its correct way of interpretations. It has been however identified that most of our contemporary scholars maintained wrong conceptions about the diversity of understanding in Islamic law which in most of the cases leads to verbal and some time physical combat between the admirers of different scholars who maintained different understanding about some simple issues, moreover in some situations it leads to separation of places of worship while at worst it leads different groups to declaration of one another as infidels and consequently suspend all spiritual entitlement to one another which include attending funeral activities and passing Islamic salutation to one another, etc.

Moreover, among other things, the etiquette of variation of understanding have also been discussed in this chapter while a number of good approaches have been identified as the ethics of variation of understanding among scholars; if these ethics are correctly applied by our contemporary scholars, then many of our contemporary internal socio-religious problems and conflicts will be a history of the past.

Conclusion

Islam has left nothing untouched, the issue of variation of understanding or ikhtilaf in Islamic jurisprudence, has been in existence since the beginning of Islam, the companions of the prophet peace and blessings of Allah be upon him used to disagree on some certain issues which they would finally report it to the Prophet and he will give them the appropriate decision; Muslim Scholars have identified some etiquettes of the variation of understanding or ikhtilaf that a long way in solving the consequences of those misunderstandings that occur between Muslims scholars across the generations and times.

Recommendations

At the end of this write up, the writer here by recommends the followings: that Islamic scholar should go deep into the study of ikhtilaf i.e the variation of understanding in Islamic jurisprudence and its etiquettes and that the students of Islamic studies should be encouraged to do so.

Finally, further studies should be taken on this field in order to cover more area in the field.

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