

Coherence and Relativity of the Islamic Legal Theory: A Study of Methodology in Socio- legal Context

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I. PROLOGUE

The literature compiled on Usul al-Fiqh from 2nd to 6th century A.H is indeed a significant landmark for evolution of the Islamic legal theory. The concept of Ijtihad as methodology reveals the comprehensiveness of the Islamic legal system covering the objectives (Maqasid) of the Revelation (Wahy), as well as Welfare (Falah) of the society. The evolution of the Fiqh methodologies including Ijtihad was to address, interpret and explore all such possibilities, where the text (Matan) needed further explanation (Tashrih) for the legislation process. This exertion also facilitated the idea, as how a particular legal deduction is to be applied in its appropriate socio-legal perspective. It is due to this particular intent that Islamic jurisprudence attained all the necessary features required to construct sound and evolving socio-legal mechanism. The concept of Ijtihad in socio-political matters stimulated and re-blooded Islamic institutions to attain the inclusive universal character. The Fuqaha (jurists) utilized their utmost intellectual worth to ensure the maximum socio-legal benefit while deducing law from a variety of generally accepted sources. The deduction of the legal precepts and methodology has been a monumental endeavor of the Muslim jurists. The jurists knowing context of the text, its possible interpretations and social workability made valuable contribution to the legal theory and its application which amplified and maintained connection between the Shari'ah and the society. For this objective, The Muslim jurists authored and annotated scores of the treatises and exposed their utmost concern to deal with the problems that arise from social evolution. In this context, the socio-political developments especially during the Ummayyad (661-750 A.D), the Abbasid (750-1258 A.D) and the Sammanid (874-1005 A.D) periods were having perpetual significance. The socio-economic issues during this era influenced and shaped the discourse of legal theory. It was during this period, that the interaction with different cultures, ethnic groups and regions widened the scope of Islamic legal discourse enabling it to assume a standardized universal character. The Muslim legal experts took inspirations from changing facet of the societies and interpreted legal discourse to suit the circumstances. The Muslim jurists were certain in believing that Islamic jurisprudence must reveal the fate of confronting situations (Mahazr) with an absolute potential. The ultimate aim of Ijtihad is to identify or unveil a commandment (Hukm al-Shara'i) and expose its context in relation to the social adaptability. This is how the Mujtahids approached and deduced from the concept of social change.

II. LEGAL FRAMEWORK

The Muslim jurists, on the one hand, contributed to the expansion of the legal theory and on the other hand expounded the possibility of further advance by virtue of writing commentaries, selective principles and methods to study the subject with contemporary relevance.¹ The mode of operating upon the sources, consideration of overall socio-political and legal discourse, its evaluation by means of consensus (Ijma) and analogy (Qiyas), has been the foremost concern of the Muslim jurists.² As a result, a scholarly conviction full of socio-legal expertise gave birth to an evolving trend surpassing world's utmost judicial codes and mechanisms. The qualified Mujtahids, in every era, discussed the formulation and deduction of laws, from, and in accordance with sources to suit the exigent circumstances.³ The deductions into the primary sources, books on Usul al- Fiqh, principles of analogy (Qiyas) and consensus (Ijma) gave fresh sanctions and definitions to a variety of socio-legal contents not reflected in the earlier phase of the Islamic history. The magnificent aspect of their contribution is validating the concept of change (Taghaur) and its impact over socio-legal institutions and interpretations.⁴ The Muslim jurists believed that the nature of laws change with the change in time (Wa yeta badal al-ahkam bi-tabdil al-azminah). Indeed, this legal precept has brought relevance as well as coherence to Islamic jurisprudence.⁵ The Muslim jurists implied that the content (Asl) and context (Tanazur) of a legal