

ADDRESSABLE ISSUES OF IJTIHAD OF THE MUSLIM WORLD TODAY

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ABSTRACT

This paper is highlighting some of those issues which really are addressable by religious scholars of present era on priority basis. As human life is much variable, number of aspects come forth time to time which require religious guidance about them. Al-Mighty Allah not only sends human being with some clear instructions, rather also provide a tool to keep Islamic shari'ah dynamic named Ijtihad. Ijtihad is a continuous process to tackle the newly faced issues. In this paper, eight touching issues are highlighted to be addressed. The ample legal guidance in the light of Islamic shari'ah about these issues will definitely helpful for Muslim ummah to deal these matters as per commandments of Almighty Allah and minimize their conflicts which destroy their unity.

KEYWORDS: *Issues of Ijtihad, Muslim world issues, addressable issues of ijtiḥād, today's Muslim world.*

Introduction

The modern era is the era of globalization. Different problems are emerging due to the advancement of science and technology and the combination of different cultures. Some of them have special importance for the Muslim communities. So it is need of the day that a proper religious guidance about these issues should be provided to save the Muslim communities from conflicts and confusions.

Allah Al-Mighty has provided explicit commandments in the form of revealed literature and their explanation by the practical life of prophets. But, as human life goes on, number of new issues is faced every day demanding religious guidance about them, so Al-Mighty has provided a clear and very practical method in the form of Ijtihād to deal all these newly faced issues.

Ijtihād is not something new in Islam, rather it is to tell the point of view of shari'ah about the newly faced issues in Islam. The concept is proved by texts of Qur'an and Sunnah and practice is done by Prophets as well as righteous people throughout the Muslim history.

Now, when life is entirely changed by scientific and technological achievements, number of new issues are faced every day demanding religious guidance about them to lead the true followers of Islam. In the coming lines, some of those issues are highlighted, which must be addressed to maintain the peace of muslim communities in specific and the whole universe in general.

1. Cyber Crimes

The modern era is the era of science and technology. This technology has changed the entire human life by creating ease and facilitation. One of its examples is the

computer technology, which not only has replaced a large number of manual works, rather also has introduced such latest techniques and mechanisms which have a revolutionary change in the human thinking and working. But along with its benefits, it has numerous side effects as well. The computer and internet technology is introducing such heinous crimes in the contemporary world, which are beyond the human thinking. These crimes are known as cybercrimes.

Cybercrimes or computer crimes are meant those crimes involving a computer and a network. In these crimes, the computer can be used as both: a tool of a crime or as a target. These crimes are basically internet's criminal exploitation. Cybercrimes are defined by Dr. K.Jaishankar (1) and Dr. DebaratiHalder (2) as:

"Offences that are committed against individuals or groups of individuals with a criminal motive to intentionally harm the reputation of the victim or cause physical or mental harm to the victim directly or indirectly, using modern telecommunication networks such as Internet (Chat rooms, emails, notice boards and groups) and mobile phones (SMS/MMS)"(3).

These crimes create serious security threats to nations and financial health. Problems of privacy are also there when any confidential information is lost. Ethical exploitation is done at a large scale by these crimes such as harassment, sexually explicit materials, racist propaganda, fabrication of explosive and inflammatory devices transfer of funds electronically, trafficking of drugs through internet, hacking of passwords, e-mail services, websites or complete system of computer etc. These crimes involve stealing, fraud, robbery, cheating, harassment, exploitation and fear.

Briefly these crimes can be summarized as:

Against Individuals

- i) Pestering via e-mails.
- ii) Cyber-stalking.
- iii) Distribution of obscene material.
- iv) Insult.
- v) Illegal control over computer system.
- vi) Offensive exposure
- vii) Email spoofing
- viii) Cheating & Fraud

Against Individual Property

- i) Computer vandalism.
- ii) Transmitting virus.
- iii) Unofficial access over computer system.
- iv) Logical Property crimes
- v) 'Internet time' thefts.

Against Private Organization

- i) Unauthorized control/access over computer system
- ii) Ownership of none permitted information.

- iii) Distribution of pirated software etc.
Against Government/Nation
Cyber terrorism against the government organization.
Against Society at large
- i) Pornography (basically child pornography).
- ii) Polluting the youth through coarse exposure.
- iii) Trafficking
- iv) Monetary crimes
- v) Sale of illegal articles
- vi) Online betting/gambling
- vii) Forgery (4).

The rapid expansion of these crimes is creating a threat that in near future will give birth to a cyber-warfare among nation-states. It is therefore required that the scholars of present era should consider the issues of cybercrimes very seriously, defining the code of conduct of their use.

2 .The Authenticity of DNA Test

The DNA technology is a latest achievement of contemporary medical science. A DNA test is actually an implementation of DNA, the genetic material. The DNA is found in every person and animal and it can be tested for a number of things such as to determine the ancestry of a person, close family relationships, particularly sibling ship and paternity and for the determination of predisposition to disease (5).

It is also used in crime detection. The blood samples and samples of other parts of body collected from the crime scene help to detect the suspects if their DNA matches with that obtained from these samples. In a sexual assault case, the DNA evidence proves a key tool for investigations and prosecution for law enforcement. It proves the occurrence of sexual assault with the help of biological material left on the body of the victim.

In present era, considering it a grand achievement of medical science, the DNA technology is much in practice to determine the culprits of rape cases. However, according to the Chairman of the Council of Islamic Ideology, Maulana Muhammad Khan Shirani “the DNA test is not acceptable as primary evidence in rape cases, but it could be considered as supporting evidence” (6).

This stance of Maulana Shirani was perplexing for some members of the council, reportedly led by Maulana Tahir Ashraf^J, which being known as reformer, were of the view that the DNA test should be given prime importance and punishment should be issued to a rape suspect on its base. However, the council’s chairman remained clinged to his point of view till end (7).

Although the above mentioned opinion of Maulana Shirani was criticized in some circles, but the following incident can give a weightage to this opinion.

Rape Case

A South African physician, practicing in Canada, John Schneeberger, drugged and raped his stepdaughter and one of his female patients. He adopted the technique of planting a fake DNA sample in his body, to foil the DNA test successfully and was able to escape from arrest for years.

On October 31, 1992, he sedated his 23 years old patient and raped her. Although he used the anesthetic with a very strong amnesiac effect, the patient was still able to remember the rape, so she reported it to the police.

The blood sample of Schneeberger did not match to the samples of the alleged rapist's semen, so he was cleared of being suspect. The test was repeated on the request of the victim in 1993, but it was again negative. The case was closed in 1994.

Schneeberger wife, Lisa, noticed in 1997 that her 15 years old daughter from her first marriage has been repeatedly drugged and raped by her husband. It was reported to police and fourth DNA test was ordered. Multiple samples of mouth swabs, blood and hair follicles were taken this time, which all matched the semen of the rapist.

The method Schneeberger applied to foil the DNA test was revealed by him during his trial in 1999. He told that in his arm, he has implanted a 15 cm Penrose drain filled with the blood and anticoagulants of another man. The laboratory technicians were also tricked by him during tests to take the blood sample from the very place where the tube was planted (8).

Although, the case of Dr. Schneeberger can be considered as an exceptional case, however chances are there of such practices which can make the technology doubtful. And as the test is being used for proof of a crime, which later on will sentence the penalty of ḥadd on the culprit, the legal principle of $\text{shar}^{\text{ḥ}}$ 'ah that $\text{ḥud}^{\text{ḥ}}$ are dropped in case of doubt (9) is rejecting this technology.

The scholars of the present era are required to re-consider the status of this technology, its usefulness as well as its harms.

3. Sex Change

Sex change is also among the revolutionary achievements of contemporary medical science. It is the process by which the sex of a person or an animal is being changed by substituting the female sexual characteristics for male ones or vice versa. Although, this process can occur naturally as sequential hermaphroditism, which in some species is being observed, but generally this term is used for sex reassignment therapy as well as sex reassignment surgery, applied on humans. Sometimes, it is used for medical procedures applied to intersexual people. Even the term can be used for the broader process of changing gender role i.e. to adopt the life style of a woman instead of a man, or vice versa.

The process of natural sex change occurs both in animals as well as in humans. The change of sex from male to female is a normal process in clown fish. Sequential hermaphroditism is exhibited by some species, which adopt sex change as a normal physiological process (10). Moray eels, clownfish, wrasses, gobies and many other species of fish are known to change sex, including function of reproduction (11). This

natural process has also been reported in mushrooms, corals, in both directions, as well as in some dioeciously plants (12).

In humans natural sex change can occur due to various medical conditions, where the appearances at the time of birth is being of one sex, mostly or completely but even the course of a life time, it changes to other sex, partially or completely. In majority cases, it happens from a female appearance by birth to a male after puberty (13).

Despite the natural phenomenon of hermaphroditism, in different parts of the world, some people are going to change their sex just for the sake of their ill mentality and fashion. Whereas, Islam dislikes that change and adoption of the identity of one another (14).

The mujtahidin of present era are required to clear the status of this issue in the light of Islamic teachings, as it is not just the change of the identity of one being, rather, it disturbs the whole family set-up. The status of relations, the issues of inheritance etc are also linked to it. So its position must be clear to ummah.

4. Ro'iyat-e-Hilal and Variations in Moon Sighting

Ro'iyat-e-Hilal and variations in Moon sighting is also a pinching issue for the Muslim communities in various parts of the World and especially in Pakistan for last few years. Although the issue has been tackled largely after the establishment of central Ro'iyat-e-Hilal Committee of Pakistan (Moon sighting Committee) even then, some areas of country especially in KhaibarPukhtunkhwah(KPK), has continuously contradicting with central Ro'iyat-e-Hilal Committee about moon sighting, and as a result their Rama ٱ and Eidayn schedule did not match with the entire country, which dangers the religious uniformity of the country. A recent contradiction arose on this issue about Eid al-Fitr in May 2020 between Ro'iyat-e-Hilal Committee and Ministry of Science and technology which was really embarrassing for all Pakistanis. So it is needed that a uniform system should be introduced in the light of the Quran and Sunnah.

So far as this reality is concerned that scientifically there is being a difference of time for rising of moon, and sometimes it happens that the moon becomes visible in an area and in a far off area it becomes visible in the very next day for the first time, so as an incident it is true. It is possible due to the movement of moon rather it happens oftenly. But is it compulsory to consider it legally ?And is it not true that the visibility of moon at one place can be regarded by the entire Muslim Community of the World, by establishing their fasts and celebrating their Eids on one day?

There are two groups of the fuqaha of ummah in this regard:

According the detail explained by Mufti MahmoodHasan Gangoohi (15) in Fatawa Mahmudiyyah and by Maulana ZawwarHusainShah of Karachi in Umdah- tul-Fiqh:

“The a’imah of Hanafi, Maliki and Hanbali schools did not consider the variations of moon sighting (*Ikhtilaf-e-Mataleh*) and said that if the visibility of moon is proved in any part of the world, the entire people of the world are bound to follow it” (16).

However the a'imah of Shafi'efiqh and among AhnafImam Zail'ie and Sayyad Anwar ShahKashmiri (17), consider the variations of moon sighting. They said:

“Where there is a difference of one day for the visibility of moon, the variation in moon sighting will be regarded, and the visibility of moon at one place did not set it compulsory for the people of another place to have fast and Eid on the same day”(18).

In Pakistan, although the later point of view is in practice, but the senior scholars of three schools of Ahl-e-Sunnat i.e. Brailvi, Deobandi and Ahl-e-Hadith have explained that from point of view of Shari'ah, they did not consider the variations in moon sighting and the shar'ie (legal) proof of visibility of moon in any place of the world, set it compulsory for the Muslims of entire world to follow it .Therefore, a renowned Mufti of *Brailvi* school, Maulana AmjadAli A'zimi wrote in “Bahar-e-Shari'at”:

“The Moon of one place is not specific for that place, rather for the entire world, but for the other place, it will be regarded at the time when proved legally as the moon of that date” (19).

A great scholar of Deoband school of thought, Maulana Mufti Azizal-Rahman explained in “Fatawa Dar al-Uloom Deoband”:

“Practically the variation in Moon sighting is present, but according to Ahnaf it will not be regarded legally. And if a shar'ie (legal) proof of visibility of moon in west is received, the people of east are bound to have fast and Eid according it” (20).

The stratus of Qazi Shaukani for the Ahl al-Hadith school of thought is well established and Mufti MahmoodHasanGangaoohi quoted a detailed phrase of Qazi Shaukani in Fatawa Mahmudiyyah, in which he said that “ There is no status of variation of *Mataleh* in shari'ah” (21).

It means that along with majority of Hanafi fuqaha, the aimah of Hanbali and Maliki schools have no contradiction in this matter. Qazi Shaukani from Ahl al-Hadith school of thought is also agreed that despite the difference in moon sighting of first night in different parts of the world, it is not necessary to consider this variation of *mataleh* (places of Moon sighting) according to Shariah, and equally follow able for the entire Muslim community for their fasts and Eids.

So it is compulsory that these scholars should be followed for the solution of this contradictory issue. It will not only uniform the schedule of fasts and eids, rather it will also be a source of mutual collaboration with the Arab countries.

5.1.5 The Issue of loyalty with a Non-Muslin Government

In the current political scenario, a large number of Muslim communities are residing in non-Muslim states. Along with their other issues, the one very important issue is of loyalty of Muslims with non-Muslim governments.

AllamahIbnTaymiyyah said in this regard:

“It is prohibited for Muslims to help the enemies of Islam on physical and financial grounds and they should try their best to avoid it, whether by hiding or through

dialogue etc. And if the escape from the help of enemies of Islam seems impossible without migration, then it is compulsory for Muslims to migrate from there (22).

Ibn-e-Hazam also declared illegal all such co-operations with non-believers, by them; they will get strength against Muslims (23).

However the status of current Muslim communities is somewhat different. They have adopted those countries as their permanent residents. So if the loyalty and co-operation with those governments did not cause any harm to the fundamental belief of a Muslim, and the issues of security of his life and wealth and halal and haram did not arise, nor it creates any arm to any other Islamic country or for Muslim ummah collectively, rather national and community's benefit is considered by doing so, then loyalty and co-operation with non-Muslim government did not seem harmful from the point of view of shari'ah.

Even then there is an example of loyalty with non-Muslim government in the era of Prophet (SAWS) as well. Number of companions including the high esteemed Uthman b. Affan and Abd al-Rahman b. Auf migrated from Makkah to Habshah on the order of Prophet (SAWS), where they attained complete security of lives and belief. But there, any Negro revolted against the government. The Muslims got much annoyed by this situation. And when the ruler Najashi launched the operation to abolish the revolt, the migrant Sahabah themselves sent the young companion Zubair b. al-Awam to the battlefield without any sort of demand from the government, so that he can help Najashi whenever he needed. Those companions not only rely upon it, rather also prayed for the victory of Najashi, and when they got the news of his victory, they were much delighted upon it (24).

AllamahShibli Naumani (25), quoting number of examples of practical co-operation with non-Muslim governments by accepting important administrative posts by numerous senior scholars and fuqaha, wrote:

You can know by above mentioned incidents that it has been an everlasting practice of Muslims from golden era of Prophet (SAWS) to date that they remained loyal and obedient to each government under which they remained, it was not only their practice, rather the education of their religion, which is apparent directly or indirectly by the Qur'an, Hadith and Fiqh" (26).

So it is required in present era that a thorough code of conduct should be designed for Muslim communities residing in non-Muslim states about their attitude towards the ruling governments in the light of Shari'ah.

6. The Conditions and Qualifications of Mujtahid

To conduct Ijtihad, it is very basic confusion to find out that who can be Mujtahid in present era. An overview of the historical study of the qualification of the Mujtahid highlights very detailed and strict conditions of a Mujtahid, whereas in present era, the situation is somewhat difficult. Although some private institutions of ijtihad are following the merit strictly, however, there are also some institutions and individuals, which are destroying the status of this esteemed activity. The general criteria of

qualification i.e. a complete expert over religious sciences, is somewhat an abstract criteria which can be enjoyed by any so-called religious scholar. Even a recognized person of any institution or department, may have number of weaknesses on moral basis.

So, it is the urgent need of the era to highlight the conditions and qualifications of a Mujtahid in present era in detail. So that, the so-called Mujtahid can be easily discouraged.

It does not mean that there should be a list of as much strict qualification that no one can meet them. As it seems sometimes, while we observe the conditions set by the righteous forms. I think this trend can also discourage this activity.

The background studies of these strict conditions clear the reason of their strictness that was mainly the social and intellectual backwardness of ummah in that period.

But now when the circumstances have been changed, the modes of ijtiḥad also require new trends in it. Especially the study of objectives of shari‘ah is requiring number of changes in it. So the modes of ijtiḥad as well as the qualification of Mujtahid also require a revision.

No doubt in present era, all the sciences have adopted the methodology of specialization, and each science has a number of branches. And entire human life is spent just to understand the one part of any science. The practicable method of ijtiḥad in present era can be the divisibility of ijtiḥad, which is approved by most of scholars as ImamGhazali, IbnQudamah, ImamShatibi and IbnHumametc. (27)

But for the divisibility of ijtiḥad as well, a detailed criteria of ijtiḥad and conditions and qualification of Mujtahid must be clearly mentioned to discourage the non-qualified persons to dare this most responsible religious activity.

7. The Status of Revolt against the Rulers

The general teachings of Islam guide the ummah to be obedient to their rulers and try their best to not having any clash with them until they are acting upon the teachings of Islam. Numerous narrations in the books of Hadith under *Kitab al-Fitan* emphasize to not have any fight with the rulers of the time. The Prophet (SAWS) said:

“Do not initiate fight against your rulers even if they have any severe disorder among them.....(28).

But in present era, almost in all the Muslim countries, the rulers are so-called Muslim. They use the tag of Islam to show off, but actually either they are working on foreign agendas of non-Muslim world powers or have not proved themselves as strong as to keep them away from the support of the above mentioned world powers. As a result, they have accepted it as a ground reality to obey these powers for their survival. So their unconditional obedience to these powers has compelled them to have double standard before the masses which is resulting in the form of hate and disobedience to these rules. It is going to be a common practice in several Muslim countries. As a result, these practices are causing serious threats to the sovereignty and integrity of the Muslim states.

On the other hand the masses are also true in their cause as the rules are exploiting their rights. They are not performing their role of true leadership rather are self-centered and accept all the legal or illegal demands of super powers just to continue their tenure of Government.

So it is the urgent need of the hour that the code of conduct for the ruler should be issued, considering the status of power and strength of world powers as well as the richness of the Muslim countries in natural resources. Moreover, the regulations for masses should also be highlighted in the light of teaching of Islam and in the scenario of current political trends.

8. Collective Worship During Covid-19

The recent pandemic situation of Covid-19 has created much confusion about various administrative and political issues regarding community's safety and survival. It has also created grand confusion about some religious matters as well. One of them is collective worship during Covid-19. The community is much confused in this regard. The reason is contradictory remarks and verdicts of different religious scholars about the matter. Some scholars realizing the true issue has their clear verdict that safety of human life is top priority of Islamic shari'ah, so it is actually the compliance of shari'ah to perform collective worship i.e. congregational prayers etc. at home in specific situation of current Covid -19 (29). They also have exact proofs from texts of Quran and Sunnah in this regard. Whereas, on the contrary, some so called scholars, has created the confusion in community entitling the whole situation just propaganda. So, a lay man got confused and in spite of all Govt instructions of social distancing, they manage congregational prayers at some hidden places concealing and cheating the law enforcing persons, just to satisfy themselves that they are obeying the orders of Almighty Allah in this regard. This behavior is not only harmful for themselves rather for whole community.

Conclusion

This discussion can be concluded that the proper solution of above highlighted issues will clear many administrative, religious, social, political and theoretical issues of Muslim communities in specific and entire world in general.

Future researches

All above highlighted issues are just a glimpse of a very huge number of really addressable issues of modern Muslim world of scientific and technological achievements. A keen observation is required to highlight many other issues, which are really a danger to the peace and unity of Muslim ummah. Even all above issues demand to have a deep study about each one, collect facts and figures and their influence on different communities and finally present a comprehensive solution of the matter in the light of Islamic Shari'ah.

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