

THE COMMON SOURCES OF ISLAMIC JURISPRUDENCE AMONG SHIA AND SUNNI

By

Dr. Zahid Ali Zahidi •

Shia شيعية and sunni سني are two major sects of Islam. Yet they have a long history of differences in some basic faiths as well as in jurisprudence. Hundreds of books have so far been written and countless debates have been taken place to respond to these debatable issues from both sides. But all of them have proved to be in vain. Perhaps the beginning of these differences goes to the early history of Islam when after the sad demise of the prophet of Islam the issue of the leadership arose. After a bitter debate between ansar أنصار and muhajirun مهاجرون of Madina over the successor of the prophet at Saqifa Banu Saida سقيفة بنو سعدة at last allegiance were paid to Abu Baker. ¹ Later on, common people of Madina also joined the same decision. But a small group of people gathered at the house of Fatima, the daughter of the deceased prophet to show their support to Ali b. Abi Talib the cousin and son-in-law of the prophet.² Apart from Banu Hashim بنو هاشم, the tribe of the

*-Assistant Professor, Department of Islamic Learning, University of Karachi.

¹-Ibn Hisham, Siratun Nabi by Ibn Ishaq written by ibn Hisham, tr. Amjad Mailasvi, p.532, Maktaba-e-Rahmania, Lahore.

²-Ibid p.529

Prophet, they were not more than fifteen at that time¹ but after the passage of time, most of them also joined the mainstream but a small group of people remained in their way and considered the house of Fatima as the center of the leadership of Islam being the progeny of the holy Prophet. They were the pioneers of the doctrine of shi'ism.² After twenty-five years of the death of the prophet, Ali b. Abi Talib became the fourth caliph after the assassination of Usman b. Affan عثمان بن عفان in 40 hijra.³ Muawiya b. Abu Sufyan معاوية بن أبي سفيان, who has been the governor of Syria for almost twenty years, did not recognize Ali b. Abi Talib as the righteous successor of former caliph. Here comes the sorrow phase of the early history of Islam where bloody battle *al-siffain* between the forces of Ali and the forces loyal to Muawiya معاوية was held.⁴ At this stage two terms were used the *Shia of Ali* (Followers of Ali) and *Shia of Muawiya* (Followers of Muawiya). Even at this stage the differences were of political nature. We do not find any differences in basic doctrine or way of prayers or in the principles of Islamic jurisprudence. The first century hijra of Islamic calendar remains in the same conditions. *Shia*, at that time means the followers of Ali and his progeny and the term *sunni* was not invented so far nor the phrase *Ahl-us-Sunna wal Jamaah* أهل السنة والجماعة was being used.

The sectarianism in Islam started with the arrival of books of Greek philosophy. These books were translated into Arabic from Greek and Latin. Some books were also translated from Persian and Hindi. These

¹-Ali Asghar Rizwani, *Defa az Tashayyu*, p.14, Intisharat-e-Masjid-e-Muqaddas Jamkaran, Qom, 1385 hijra shamsi.

²- Ahmed Amin, *Fajrul Islam* p.333

³-Tabari, Abi Jafar Muhammad ibn Jareer, *Tareekhul Umam- Tabari*, Abi Jafar Muhammad ibn Jareer, *Tareekhul Umam-e-Wal Muluk*, Tr. S.M. Ibrahim Nadvi & Habibur Rehman Siddiqui, P.23, Vol.III, Part II, Nafis Academy, Karachi,

⁴- Ibid p.224

translation works had their impact on Islamic thought – good and bad. Good, because philosophers like al-Kindi, al-Farabi, ibn-e-Bajja, ibn-e-Sina wrote their remarkable books and established their philosophical thought on the foundation laid down by Greek philosophers specially Plato;¹ bad, because Islam, which was a clear, practical and simple religion, became the prey of unnecessary debates and impractical ideas. The issues like compulsion and delegation (al-jabr wa-tafwid الجبر والتفويض), Quran as creatable and eternal (al-hadith wa-qadeem الحديث والقديم), justice (adl عدل) as the divine attribute of God and others were all results of the philosophical attitude of mind set by the eastern and western philosophers. This was the beginning of a new Islamic science, the dogmatic theology (Ilm-ul-Kalam علم الكلام) and establishment of new sects in Islam based on Ilm-ul-Kalam علم الكلام. These sects were Mutazilites المعتزلة and Ash'arites الأشاعرة, Qadria القدرية, Jabria الجبرية and Maturidia الماترودية, Shia and Khawarij الخوارج etc. They were called firaqul kalam فرق الكلام i.e. the sects based on the differences of dogmatic theology. At that time these sects were not schools of thoughts based on the differences on every section of Islam like doctrine and jurisprudence nor their followers were the followers of today's sect. Many *Mutazilites* had their sons *Asharites*. Haroon-ur-Rashid هارون الرشيد the Abbasid caliph had his inclination towards *Ash'arite* while his son Mamoon-ur-Rashid مأمون الرشيد was a *Mutazilite*. Of course the reason behind it was political but it shows the tolerance towards the creed. These differences were not among shia شيعة and sunni سني (in new term) because *Shias* had some common believes with Mutazilites and Mutazilites and *Asharites* were both Ahl-us-Sunnah أهل السنة (according to new terminology).

Another types of differences occurred in Islamic society with the Ijtihad اجتهاد (exertion in Islamic jurisprudence). Two major thought in

¹-Oliver Leaman & Seyyed Hossein Nasr, History of Islamic Philosophy, p.6, Arayeh Culture Institute, Tehran.

this respect was dominating the two centers of learning of Muslim world. Imam Abu Hanifa was the chief of Kufian school which was called Ahl-ur-Rai أهل الرأي and Imam Malik b. Anas was the leader of Medinan school which was called Ahl-ul-Hadith أهل الحديث. The difference between them were in some of the principles of jurisprudence. Imam Abu Hanifa used *Qiyas* قياس (judicial reasoning by analogy), *Istihsan* استحسان and *Urf* عرف as the tools for jurisprudence while Imam Malik used *Qiyas* قياس and *Masalih Mursala* مصالح مرسلّة and rejected *Istihsan* استحسان and *Urf* عرف¹. His disciple Imam Shafi wrote a book *ibtal ul-Istihsan* (the refutation of al-Istihsan الاستحسان). Imam Jafar as Sadiq and his disciples rejected *Qiyas* قياس and promoted *Aql* as the source of jurisprudence. Later on *Aql* became a symbol of shi'ism in the principles of jurisprudence and shia jurists have worked hard to elucidate and expound this term in their writings.² But it should be kept in mind that *shias* are not only the custodian of *aql* in their jurisprudence, simultaneously Mutazilites also believed in *aql* as a source of their jurisprudence. Imam Ghazali, a shafi theologian used the term *aql* as fourth source of jurisprudence.³ Hence again this is not the difference between shia شيعة and sunni سني. This confusion occurred because Mutazilite thought have been vanished in contemporary sunni سني doctrine, the revival of which can not only bring closer the two major sects of Islam but also provide solutions to wide range of issues which lack the direct verdicts of Quran and Sunnah.

¹-Jalandhry, Dr Rashid Ahmed, *Islami Qanoon ki Irtiqa me Ijtehad ka Kirdar*, in *Iqbal, Fikr-e-Islami ki Tashkeel Jadid*, edited by Dr. Hossain Muhammad Jafri, p.124 (the writer comments in detail about the differences among earlier jurists in the principles of Islamic jurisprudence).

²-Dr. Ali Raza Faiz, *Mubadi Fiqh wa Usool*, p.42, Tehran University Publication, Tehran, 1371 hijra shamsi, (the author believes that the term *aql* as a fourth source of shia jurisprudence was not used in the beginning although the method was employed, the first jurist who used it as a source of jurisprudence was Sheikh Mufid (d. 413 hijra).

³-Ibid p.43

As far as *Qiyas* القياس was concerned the harsh attitude of *shia* imams and jurists was to counter the then sunni jurists who wanted to solve their most of the problems with the help of *qiyas* and *istihsan* otherwise it could be considered as a supporting tool. A shia jurist of short occultation (ghybat al-sughra الغيبة الصغرى 169-240hijra) period of twelfth Imam Ibn Junaid Iskafi recognized *qiyas* as a tool and used in his *ijtihad* اجتهاد,¹ although he was widely criticized by other shia jurists like Sheikh Mufid and Sheikh Tusi. Later on *qiyas* was divided into two types: al-*qiyas* mansus ul-'illah (a logical analogy extracted by textual principle) and al-*qiyas* mustanbitul 'illah (a logical analogy extracted by the principle derived by the jurist himself). Contemporary shia jurists accept the first type of *qiyas* and use it in their jurisprudence.²

Another source of jurisprudence among jurists is *Ijma* إجماع (consensus) but the scope of consensus has always been different among Muslim jurists. Imam Malik considers the consensus of jurists of Madina as a valid *ijma* while Imam Abu Hanifa thinks that the consensus of jurists of Kufa and Basra is a valid *Ijma* إجماع. Imam Shafi believes in the consensus of entire ummah for the validity of an *ijma* إجماع, while near Imam Ghazzali the consensus of Ahl Hall-o-aqd أهل العقد (experts) is the only valid *ijma* إجماع.³ In *shia* principles of jurisprudence *ijma* إجماع has been recognized only if an infallible imam is included in consensus otherwise there is no validity of *ijma* إجماع.⁴ Whereas if jurists of a particular time agree on a same verdict then this consensus can be considered as a supporting evidence only. It does not mean that any jurist cannot give his verdict against it.

¹-Syed Ali Naqi Haideri, *Usul-ul-Istanbat fi Usool-ul-Fiqh wa tarikhehi bi Usloob-e-Hadith*, p.259, Intisharat-e-Mahallati, Qom, 1412 hijra.

²-Mubadi *Fiqh-o-Usool*, Tehran University, p.231

³-Siddiqi, Dr Sajidur Rehman, *Islami Fiqh kay Usool-o-Mabadi*, conclusion of pp.136-145.

⁴-Mubadi *Fiqh-o-Usool*, Tehran University, p.38 (this sort of *Ijma* is called *Ijma-e-Taqriri* i.e. a consensus in which Imam shows his acceptance by silence)

No doubt Quran and Sunnah have been the primary sources for jurists of all schools of thought. Quran is considered as the first source because according to Islam it is the words of God and it is free from any abrogation and change.¹ Basically, Quran is not a book of Islamic jurisprudence nor does it provide details for all type of issues. Only ten percent of Quranic verses are about Halal and Haram (what to do and what not to do) but if any verdict is given by Quran, it becomes a part of divine law (*shariah*). According to *shia* perspective a jurist can take decision from the meanings of Quranic verses but no one has the right of *tawil* (esoteric interpretation) of Quran except the holy Prophet or the infallible imams.²

Sunnah is the second source of Islamic jurisprudence after Quran. Sunnah generally means the sayings, acts and silence of the holy Prophet. *Shias* include the sayings, acts and silence of the holy Prophet as well as their infallible imams in sunnah and hadith.³ Some of the *sunni* scholars include the sayings of the companions of the prophet in sunnah and hadith while some of them do not accept sunnah as a source.⁴ Muslim scholars have developed other Islamic sciences like *Ilm-ur-Rijal علم الرجال* (biography and criticism of the transmitters of the traditions of the holy

¹-Khoi, Ayatullah Abul Qasim, *Al-Bayan fi Tafsseril Quran*, tr. Muhammad Shifa Najafi, pp.197-231, Jamiatu Ahlil Bait, Islamabad, 1989 (the author discussed in detail about the types and possibilities of abrogation in Quran and concludes that it is free from all types of abrogation and change, he also discussed different traditions in the books of hadith about abrogation in shia and sunni sources and comments on their authenticity.

²-Muhammad Hadi Marifat, *Uloom-e-Qurani*, p.251, Tamheed Cultural Institute, Qom, 1380 hijra shamsi.

³-Qurbani, Zainul Abideen, *Naqsh-e-Hadith*, p.19, Imam Asr Publication, Tehran, 1380 hijra shamsi

⁴- Muhammad Abu Zohra Misri, *Tarikh-e-Hadith wa Muhaddiseen*, tr. Ghulam Ahmed Hariri, Maktaba-e-Rahmania Lahore

Prophet) and Ilm-ud-Diraya علم الدراية (contextual study of hadith). *Shia* jurists have also written on both sciences.¹

In the light of above facts we conclude that the differences between shia and *sunni* jurists in the principles of Islamic jurisprudence is not more than the differences among different sunni schools of thought like Hanafi, Maliki Shafi and Hanbali. This is why one of the Sunni world's most revered scholars, Sheikh Mahmood Shaltout محمد شلتوت head of Al-Azhar theological school in Egypt, in his historic *fatwa* (religious verdict/ruling) recognizes Jafri school of thought as the fifth officially schools of jurisprudence of Islam. It should be of interest to know that a few decades ago, a group of Sunni and Shia scholars formed a center at al-Azhar by the name of "Dar al-Taqrīb al-Madhahib al-Islamiyyah" دار تقريب المذاهب الإسلامية which translates into "Center for bringing together the various Islamic schools of thought". The aim of the effort, as the name of the center indicates, was to bridge the gap between the various schools of thought, and bring about a mutual respect, understanding and appreciation of each school's contributions to the development of Islamic Jurisprudence, among the scholars of the different schools, so that they may in turn guide their followers toward the ultimate goal of unity, and of clinging to one rope.

Text of the Verdict (Fatwa) Issued by His Excellency Shaikh al-Akbar Mahmood Shaltout, Head of the al-Azhar University, on permissibility of following "al-Shia al-Imamiyyah" الشيعة الإمامية School of thought His Excellency was asked:

Some believe that, for a Muslim to have religiously correct worship and dealing, it is necessary to follow one of the four known schools of thought, whereas, "al-Shia al-Imamiyyah" school of thought is not one of them nor "al-Shia al-Zaidiyyah. الشيعة الزيدية. Does your Excellency agree with this opinion, and prohibit following "al-Shia al-Imamiyyah al-Ithna

¹-Books like Rijal-e-Kashi, Najashi, Sheikh Tusi and the remarkable work of Syed Khoi in last century are the examples of it.

Ashariyyah" الشيعة الإمامية الاثنا عشرية school of thought, for example? His Excellency replied:

- 1) Islam does not require a Muslim to follow a particular Madh'hab (school of thought). Rather, we say: every Muslim has the right to follow one of the schools of thought which has been correctly narrated and its verdicts have been compiled in its books. And, everyone who is following such Madhahib مذاهب [schools of thought] can transfer to another school, and there shall be no crime on him for doing so.
- 2) The Ja'fari school of thought, which is also known as "al-Shia al-Imamiyyah al-Ithna Ashariyyah الشيعة الإمامية الاثنا عشرية" (i.e., The Twelver Imami Shi'ites) is a school of thought that is religiously correct to follow in worship as are other Sunni schools of thought. Muslims must know this, and ought to refrain from unjust prejudice to any particular school of thought, since the religion Allah and His Divine Law (Shari'ah) was never restricted to a particular school of thought. Their jurists (Mujtahidoon مجتهدون) are accepted by Almighty Allah, and it is permissible to the "non-Mujtahid" to follow them and to accord with their teaching whether in worship (Ibadaat عبادات) or transactions (Mu'amilaat معاملات). Signed, Mahmood Shaltoot.

The above Fatwa was announced on July 6, 1959 from the Head of al-Azhar University, and was subsequently published in many publications in the Middle East which include, but are not limited to:

al-Sha'ab الشعب newspaper (Egypt), issue of July 7, 1959. al-Kifah الكفاح newspaper (Lebanon), issue of July 8, 1959.¹

¹ - <http://almahdi.4t.com>