

THE PARAMETERS OF AL-IJTIHAD IN ZAKĀT: THE PAST AND THE PRESENT

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Abstract

Throughout the centuries the Muslim ummah, and their scholars in particular, have faced questions and challenges about zakāt. However, there is a vast difference between raising questions for the sake of seeking knowledge and making allegations based on mere assumption rather than on ijtihād. Zakāt is the third pillar of Islam and it should therefore be realized that all the rulings and norms related to zakāt are fixed by sharī'ah texts which cannot be changed because of the mutability of time and space. To some people certain aspects of zakāt seem irrelevant to our contemporary time and therefore they suggest revising the whole concept of zakāt and applying it according to our modern era. However, anyone who ventures to challenge the established norms of zakāt must at least be well versed in the major sources of sharī'ah such as the Qur'ān, sunnah, ijma', qiyās as well as in Islamic jurisprudence and the Arabic language. Otherwise what they pose are baseless claims rather than intellectual questions. The authors of this paper focus mainly on three aspects: concept and scope of ijtihād, discussion and responses to various allegations raised by Volker Nienhaus and textual evidences for the proper understanding of zakāt. The paper has adopted historical and descriptive methods of analysis.

Keywords: *zakāt, al-ijtihād, mujtahid, Qur'an, sunnah, al-ḥawl, al-naṣṣ, nuṣūṣ, income tax, wealth, redistribution, rate.*

Introduction

Whoever observes the very nature of *sharī'ah* will conclude that nothing has been left without explanation. The *Qur'ān* says: “And We have appointed the night and the day as two *āyāt* (signs, etc.). Then, We have obliterated the sign of the night (with darkness) while We have made the sign of the day illuminating, that you may seek bounty from your Lord, and that you may know the number of the years and the reckoning. And We have explained everything (in detail) with full explanation”¹. He says in another place: “And Allah will never lead a people astray after He has guided them until He makes clear to them as to what they should avoid. Verily, Allah is All-Knower of everything”². Al-Nu‘mān ibn Bashīr narrated that the Messenger of Allah (*ṣal-allāhu 'alayhi wa sallam*) said: “The lawful is clear and the unlawful is clear, and between them are matters that are doubtful (not clear); many of the people do not know whether they are lawful or unlawful. So whoever leaves the doubtful has definitely protected his religion and his honor, and whoever falls into something from the doubtful, then he soon will have fallen into the unlawful. Just like a shepherd who grazes (his animals) around a sanctuary, he will soon end up in it (with his animals). Indeed for every king is a sanctuary (pasture), and indeed Allah's sanctuary is what He made unlawful.”³

‘Therefore it is a general principle in Islam that *sharī'ah* is a comprehensive body of law designating a ruling for everything. Henceforth, a careful study of the *sharī'ah* by a student of knowledge depicts that the *sharī'ah* did not address everything specifically or directly. Rather, in many instances it has guided the *ummah* through inferences or general rulings. These grey areas which the *nuṣūṣ* (texts) of *sharī'ah* did not discuss directly are the scope of *ijtihād* in *al-fiqh al-islāmī* (Islamic jurisprudence). The *mujtahidūn*⁴ will make

¹ Sūrah al-Isrā' āyah: 12. Al-Hilālī, Muḥammad Taqī-ud-Dīn & Muḥammad Khān. *The Noble Qur'ān, English Translation of the Meaning and Commentary*. Saudi Arabia: King Fahd complex for the printing of the Holy Qur'ān.

² Sūrah al-Taubah āyah: 115. *The Noble Qur'ān*.

³ Muḥammad ibn Īsa ibn Sawra Al-Tirmidhī, *Sunan al-Tirmidhī*. (Beirut: Dār Ihya'ī al-Turāth). *Ḥadīth* No: 1126

⁴ The word is the plural of the word *mujtahid* which means a person who is qualified

an effort to extract the legal ruling on those issues from the established general principles. One of the main conditions of *ijtihād* is that *ijtihād* can only be practiced when there is no clear text from the *Qur'ān* and *sunnah* to address the issue. When dealing with the issue of *ibādāt* the scope of *ijtihād* is very narrow. *Zakāt* is not just an act of worship in Islam, rather it is the third pillar of Islam, thus the practice of *ijtihād* in it is very sensitive even though it has the nature of *mu'āmalah* in it. In this paper the focus is on the possibility of observing *ijtihād* and the limitations that restrict the *mujtahid* who seeks to extract rulings of certain ambiguous issues. This will be formulated through discussion of the following elements: definition, conditions, scope and limitations of *ijtihād*, the current situation of the *ummah* concerning *ijtihād*, critical issues regarding *ijtihād* in *zakāt*, a recommendation and conclusion.

Definition of Ijtihād

According to Arabic dictionaries, the word *ijtihād* is originally derived either from the root word *juhd* which means exhausting an effort or it is derived from the root word *jahd* which means tolerating a hardship. Thus, the linguistic meaning of *ijtihād* is exhausting one's efforts and ability to achieve handling a difficult task that can be physical (such as walking and working) or spiritual (such as critical thinking in deducing a ruling from a text)⁵. It can also be literally defined as striving or self-exertion in any activity which entails a measure of hardship⁶. As for the technical meaning of *ijtihād*, it is defined by the scholars of *usūl* as a total expenditure of effort made by a jurist in order to infer, with a degree of probability, the rule of *sharī'ah* from their detailed evidences in the sources.⁷ Thus *ijtihād* is the process of making effort by a *mujtahid* in order to reach the correct ruling of *sharī'ah* for a specific issue.

to perform *ijtihād*.

⁵ Muḥammad ibn Mukrim ibn Manzūr, *Lisān al-'Arab*, (Beruit: Dār Ṣādir), 3:133. See also, Aḥmad ibn Muḥammad ibn 'Aliyyu al-Fayyūmī, *al-Miṣbāh al-Munīr fī Gharīb al-Sharḥ al-Kabīr*, (Beruit: al-Maktabah al-'Ilmiyyah), 1: 112.

⁶ Mohammad Hashim Kamalī, *Principles of Islamic Jurisprudence* (Malaysia: Petaling Jaya, 'Ilmiah Publishers, 1999), 367.

⁷ Ibid.

Who is qualified to exercise *ijtihād*?

The reality about *ijtihād* is that it is an undertaking by the *mujtahid* to represent The Law Giver (Allah). This makes it a very sensitive issue in Islam and consists of a heavy responsibility. They affirm that *ijtihād* is not to be practiced by anybody except those who are qualified and fulfill the following main conditions:

1. The *mujtahid* must be trustworthy (*al-‘adl*). This is a person who stays away from major sins and avoids the minor sins as well⁸.
2. He has to be well versed in the following sciences:
 - a. *Qur‘ān* and its sciences
 - b. *Sunnah* and its sciences
 - c. *Ijmā‘* and its application
 - d. *Qiyās* and its application
 - e. *Fiqh* and its principles
 - f. The ‘Arabic Language and its sciences (in particular *al-naḥw*, *al-balāghah*, *al-adab* and *al-lughah*)⁹

Scope and Importance of *Ijtihād*

Under the science of *usūl al-fiqh* there are two types of *ijtihād* which are: *ijtihād* to understand the *nuṣūṣ* and *ijtihād* to deduce a ruling for an issue that the *sharī‘ah* does not provide specific evidence to address. The first type is broadly inclusive and has a few restrictions, whereas the second type is highly restrictive and cannot be considered for *ibādāt*. This is because the scholars mention that the issue of *ibādah* is based on *tawaqquf* which means to wait until you are told to perform an act. The Prophet (*ṣal-allāhu ‘alayhi wa sallam*) said in the following *ḥadīth* narrated by ‘Āishah (May Allah be pleased with her), she reported that the Messenger of Allah (*ṣal-allāhu ‘alayhi wa sallam*) said, “Whoever introduces in this affair of ours

⁸ Al-Amīn al-Shanqīṭī, *Mudhakkarah fī Usūl al-fiqh*, (Al-Madīnah al-Munawwarah: Maktabah al-‘Ulūm wa al-Ḥikam, 2001), 135.

⁹ ‘Abd Allah ibn Aḥmad Ibn Qudāmah, *rawdāt al-nāzīr wa junnat al-munāzīr* (Makkah Al-Mukarramah: Al-Maktabah al-Makkiyah, 2002), 2:334-337. See also Muḥammad al-Khudarī Bak, *usūl al-fiqh*, (Al-Maktabah al-Riyāḍ al-ḥadīthah), 367-369. See also Muḥammad ibn ‘Aliyyu ibn Muḥammad Al-Shawkānī, *irshād al-fuhūl ilā taḥqīq al-ḥaqq min ‘ilm al-usūl*, (Beirut: Dār al-kutub al-‘Ilmiyyah, 1994), 370-374.

something that does not belong to it, it is to be rejected¹⁰”. In another version narrated by Muslim the Prophet (*ṣal-allāhu 'alayhi wa sallam*) said: “Whoever performs an action which has no command for it in this religion of ours, it is to be rejected¹¹”. Ibn Mājūshūn said I heard *Imām* Mālik saying: “Whoever introduces an innovation in *Islām* which he sees to be good, he indeed claimed that Muḥammad (*ṣal-allāhu 'alayhi wa sallam*) has cheated in conveying the message he was entrusted with by Allah. This is because Allah says: [*This day, I have perfected your religion for you, and completed My favor upon you, and have chosen for you Islām as your religion*] therefore, whatever was not part of the *dīn* in those days, will never be part of the *dīn* today”¹². The most sensitive type of *ijtihād* is the *ijtihād* in deducing a ruling. This is where all of the conditions stipulated by the scholars apply. This paper’s focus is to determine whether this type of *ijtihād* can be applied in *zakāh*.

The importance of *ijtihād* cannot be overemphasized due to its facilitative role in *sharī‘ah*. It is a bridge between the *nuṣūṣ* and contemporary issues. *Sharī‘ah* did not discuss or directly state the rulings on every matter. There are some issues which do not have a direct ruling and instead *sharī‘ah* has provided general rulings and principles which would be a basis of *ijtihād* in extracting their rulings. This shows the prestigious position that *sharī‘ah* has given to the *ijtihād* that is based on *qiyās* and similar sources. *Ijtiḥād* has enabled scholars to deduce multiple rulings which would otherwise remain unknown to the vast majority of people. Moreover, life on earth is going through a constant process of transformation. New situations, innovations and events will continue to arise until the Last Day. This is why there is a need for a system that can enable scholars to derive rulings for contemporary issues. When encountered with a new issue, the scholars of Islam use the available principles and legal

¹⁰ Muḥammad ibn Ismā‘īl Al-Bukhārī, *Saḥīḥ al-Bukhārī with fat’h*, (Riyadh: Dār al-Salām, 2000) *ḥadīth* No. 2499. Muslim ibn al-Ḥajjāj, *saḥīḥ muslim*, (Riyadh: Dār al-Salām, 2000) *ḥadīth* No. 3242.

¹¹ Muslim *ḥadīth* No. 3243

¹² Ibrahim ibn Mūsā ibn Muḥammad Al-Shāṭibī, *al-i‘tiṣām* (Al-Qāhirah: Dār Al-Ḥadīth, 2003), 37.