

Hokm Sharai and how to view different opinions

In recent years it has become noticeable how intolerant some Muslims have become of other people's views in Islam. Unfortunately it is an attitude that has penetrated deeply, embracing institutions and organised bodies as well as individuals. It is an attitude that stems from both a lack of sound knowledge and correct Islamic behaviour.

The tendency is for Muslims to consider that if someone has a different opinion to oneself, that opinion must therefore be un-Islamic. Moreover, different opinions must equate with disunity and weakness.

In, many respects it is easy to see how such attitudes take shape. Most things in life are either right or wrong. Therefore it is understandable that Muslims find it difficult to conceive how there can be two opinions in the same question and still both be Islamic. If they are different - so the understanding goes - one must be right and the other un-Islamic.

However this idea is erroneous and built on an incorrect understanding of the basis of Hokm Sharai and the way in which different opinions should be viewed.

In order to understand how different opinions arise, and how one should consider different opinions, it is necessary to look deeply into the subject of Hokm Sharai.

Hokm Sharai

Simply put, Hokm Sharai is the speech of Allah connected with the actions of people. The speech of Allah being Quran and Sunnah. The Sunnah is included in this definition because Sunnah, like Quran, is from Allah. The Supreme Says:-

"AND HE SPEAKETH NOT FROM HIMSELF WHATEVER HE SPEAKETH OF IS BUT REVELATION REVEALED TO HIM."

The Sunnah is an order which the Messenger of Allah (pbuh) received from Allah by means of inspiration (wahy). Allah conveyed the inspiration to Mohammad (pbuh) who then conveyed the message in his own words. Accordingly, Quran and Sunnah from their origin are both speech of Allah. There is no dispute among the Ulema (Scholars) concerning the inclusion of Sunnah as a source of Hokm Sharai.

"AND TAKE I WHATEVER THE MESSENGER CONVEYS TO YOU AND ABSTAIN FROM WHATEVER HE FORBIDS YOU FROM."

Sources of Hokm Sharai are of two kinds:

1. QATIY (DEFINITE): Quran and Hadith Mutawatir.
2. THANNIY (NON-DEFINITE): Hadiths other than Hadith Mutawatir.

Definite by text

Quran is definite i.e. nothing has been added or deleted from Quran since it was revealed in its original form. This is proven through successive reports (Mutawatir) and by the preservation of Allah (SWT). Some hadiths are also considered definite because they were also conveyed through successive reports. Thus, their authenticity is beyond doubt. Thus Quran and Hadith Mutawatir are considered definite by text. In other words, they are immune of any doubt.

Definite by meaning

Although the Quran and Hadith Mutawatir are definite by text it does not necessary follow that the meaning of the text (verse or hadith) is definite. If there is only one possible understanding of the text then that meaning is considered definite by meaning. But if there is more than one understanding of a text then it is not considered definite by meaning.

The assured rule

If the text is definite i.e. Quran and Hadith Mutawatir, and the meaning is also definite, the divine rule (Hokm Sharai) derived from them is considered an assured rule. An example of an assured

rule is the prohibition of usury (riba) the verse of Quran:- "ALLAH HAS PERMITTED TRADE AND FORBIDDEN RIBA" is a definite text. The meaning, with regard to the legality and illegality of the two transactions, is clearly Manifest (Zahir). And it is explicit (nass) is distinguishing riba from trade. Accordingly the prohibition of usury is an assured rule, that does not come through Ijtihad.

The non-assured rule

If the text is definite, but the meaning of the text is open to more than one interpretation, the rule derived from the text is not considered an assured rule. An example of this is the rule of Jizya (head tax on non-muslims). Although the verse is definite the meaning is not. Accordingly Imam Abu Hanifa stipulated that the tribute, paid by the non muslims subjects of the State, must be called Jizya. And, those who pay it should show some form of humiliation. Imam Shafii on the other hand, understood this verse differently. He did not stipulate that it had to be called Jizya. He accepted that it could be called double zakah. As for the understanding of humiliation, Imam Shafii was of the opinion that humiliation was the very fact that the non muslim subjects of the State had to submit to the rule of Islam.

Where a rule is derived from a hadith, other than a hadith Mutwatir, the rule is considered a non assured rule. This applies even if the meaning of the hadith is definite. For example, the hadith concerning fasting of 6 days of Shawal, the meaning here is definite but because the hadith is a single hadith (hadith ahad) the text is not definite. Therefore the rule is a non-assured rule.

The meaning and scope of ijthihad

The divine rule (Hokm Sharai) is extracted from the speech of Allah (Quran and Sunnah) through Ijtihad. Ijtihad signifies exertion in order to extract a divine rule from Quran and Sunnah. It is the application by the person who undertakes ijthihad (Mujtahid) of all his faculties to the consideration of the sources of Islamic law (Quran, Sunnah, Ijma and Qiyas) with a view to extracting the divine rule.

The basis of Islam legislation (Tashree) is the book of Allah and the Sunnah of the Messenger of Allah (pbuh). The prophet Mohammad gave permission to the Sahaba (companions) to undertake ijthihad. This is clear from the following incident:

Prior to sending Muath bin Jabal to Yemen, the messenger of Allah (pbuh) asked Muath: "What would you do if it is required from you to give judgement concerning a particular happening?" Muath replied "I would judge according to what is in the book of Allah." Then the Messenger asked "If you cannot find in the Quran that on which to base your judgement, what would you do then?" He replied "I would give judgement according to the Sunnah of the Rasool," "what then?" Muath then said "I would do ijthihad and follow my own opinion. I will not go beyond that." The messenger of Allah patted him on the chest and said praise be to Allah who had caused the Messenger of Allah to conform to that which pleases Allah and His Messenger."

Whenever the Sahaba carried out ijthihad the Messenger of Allah (pbuh) would acknowledge their efforts and inform them if they were following the correct lines. He trained the Sahaba to deduce and extract certain ideas from the Ahkams (decrees). This guidance led to them becoming very skilled in the use of ijthihad.

Foremost of the Sahaba in the use of ijthihad were Abu Bakr, Umar bin al Khattab, Uthman bin Affan, Ali bin Talib, Abdullah bin Masood, Zayd bin Thabbit, Abdullah bin Abbas, Abu Musa al Ashariy, Muath bin Jabel, and Ubay bin Kab (May Allah satisfy them all). Examples of the use of ijthihad amongst the Sahabah are numerous. The following are two examples of the ijthihad of Umar bin Khattab:

1. Umar was of the opinion that it was no longer allowed for Muslims to discharge Zakah to those who embraced Islam as the text of Quran commanded us to do.

"ALMS(ZAKAH) ARE ONLY FOR THE POOR AND THE NEEDY AND THOSE WHO COLLECT THE ZAKAH, FOR THOSE WHOSE HEARTS ARE TO BE RECONCILED, AND TO FREE THE CAPTIVES AND THE DEBTORS, AND FOR THE CAUSE OF ALLAH, AND THE WAYFARER, A DUTY IMPOSED BY ALLAH."

This verse relates to the distribution of Zakah. The words "THOSE WHOSE HEARTS ARE TO BE RECONCILED", refer to a group of weavers who were included among the recipients of the Zakah to win them over to the side of Islam on account of their influence and the high esteem in which they were held in their tribe. Umar refused to give them zakah when Islam gained in strength. He said "These were payments from, the Prophet to you in order to win you over for Islam. Now, Allah has given power to Islam and made your support unnecessary. So you either remain faithful to Islam or the sword will be the arbiter between us. The divine reason (illah) behind the rule had ceased to exist so the text was considered by Umar to be inapplicable.

2. During the year of famine Umar suspended the penalty for theft, "AS FOR THE THIEF, BOTH MALE AND FEMALE, CUT OFF THEIR HANDS." Umar suspended the penalty because of necessity, his reasoning was that if someone had stolen something to eat or wear for himself or his family through need the situation resembled the case of plight. This is based on the verse:

"WHOSOEVER IS FORCED TO TRANSGRESS THE LAWS WITHOUT VIOLATING THE LAWS, THEN THERE IS NO SIN AGAINST HIM."

Allah's rule in a question

The person who performs ijthihad is called a Mujtahid. The ijthihad of the Mujtahid disclosed the divine rule (Hokm Sharai) in the matter. Allah's rule in a question, as far as the Mujtahid is concerned, is the rule he arrived at by his ijthihad. For example, when Umar bin Khattab made ijthihad that the penalty for the man who married a woman whilst she was still under her period of waiting (iddah) was that she became haram for him forever. This ijthihad became Allah's rule in the question, as far as Umar was concerned, because this was the opinion most convincing to him.

Clearly, however, the opinion which is most convincing to one mujtahid may not convince another. Accordingly Allah's rule in the matter for both mujtahids will be different.

Examples of different opinions

Different opinions in the same question are not uncommon. It is not a modern problem by any means. Different opinions based on different understandings of a text (Quran & Sunnah) have been with us since the time of the prophet (pbuh).

It is narrated concerning the raid on the Jewish tribe of Bani Qurayza that the Prophet (pbuh) ordered it to be announced that none should perform the Asr (afternoon) prayer until after he reached Bani Qurayza. When the time for Asr came the Muslims fell into two groups one group took the opinion that the Prophet's words should be understood literally i.e. they should not pray Asr until they reached Bani Qurayza. The other group took the view that what the Prophet (pbuh) meant was to go quickly, but as the time of Asr had come they should perform it; which they did. The first group continued on until they came to Bani Qurayza where they offered the Asr prayer after Isha. After the event the Muslims narrated to the Prophet(pbuh) what had happened, where upon he acknowledged both as being correct.

Other examples where the Sahaba differed in their ijthihad include the following:

During the opening of Syria and Iraq the Sahaba disagreed over what should be done with the land they had opened. Bilal, Ammar bin Yasir, Abdul Rahman bin Auf and others considered that the land should be divided into fifths as Quran prescribed. They were of the opinion that the four fifths of the land should be divided among the soldiers and the remaining one fifth should be distributed to those whom Allah has commanded in the Quran:

"THEN TRULY TO ALLAH BELONGS ONE FIFTH AND TO THE MESSENGER, THE MESSENGER'S FAMILY, THE ORPHANS, THE POOR AND NEEDY AND THE WAYFARER".

Umar, Uthman, Ali, Muath bin Jabel and Talhah bin Abdullah were of the opinion that they should not distribute it in accordance with the spoils but instead make the land waqaf. They wanted the land to remain in the hands of the owners but under the authority of the treasury (Baytul Mal) where every Muslim could benefit from it.

A major debate took place among the two groups to such an extent that the Caliph Umar was greatly distressed. Eventually, however, all agreed that the understanding of Umar was correct and the land should remain in the hands of the former owners and be made waqaf for all.

Another example concerns the time of waiting (iddah) for the pregnant wife who becomes widowed. Umar and Abdullah bin Masood were of the opinion that when a man dies and leaves a pregnant wife, her time of waiting expires at the birth of the child. Ali and Ibn Abbas were of the opinion that the time of waiting expires either when she gives birth or after 4 months 10 days, whichever is the longest divation. In other words, if the woman gives birth 8 weeks after her husband's death, she still has to wait the remaining two months and ten days.

Both understandings draw on the following two verses:

"For those who carry life in their wombs their period is until they deliver their burden."

"If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days."

The latter verse is a generalised hukm (rule) for ordinary woman as well as pregnant woman.

Ali and ibn Abbas considered that each of the verses was interdependent and, were connected in general to the other. The first verse is a general verse which has a reference and is connected to the second.

Thus the time of waiting of the women whose husband has died is four months and ten days if she is not Hamil (pregnant). The second verse is a general verse which has a bearing on the first and gives the meaning that the time of waiting of the pregnant and divorced women lasts until the time her burden is released.

Umar and Abdullah bin Masood were of the opinion that the second verse is linked to the first verse which gives the understanding that the women whose husband has died, is under iddah for four months and ten days if she is free from pregnancy. However if she is pregnant, her iddah expires when she has given birth.

These examples illustrate that there have always been differences of opinions, the history of the companions, the followers (tabeyines) and the followers of the followers of the companions (Tabeyines) bears witness to this. Imam Shafii, Abu Hanifa, Jaffer Sadiq, Ahmad ibn Hanbal and Malik all differed in their understanding. This is precisely why they were considered as different school of thought. Yet, these great scholars respected each others opinions as Islam.

Although the Mujtahideen were most convinced by their own opinion and considered their opinion to be the one which was most probably correct. Nevertheless they recognised the possibility that they might be wrong. Accordingly the Mujtahideen have stated that whatever is found in their work which is correct, it is from Allah. All errors are but from themselves.

However, just because the Mujtahid might be wrong it does not mean that he should be dissuaded from exercising ijtihaad. On the contrary, the Messenger of Allah said: "Whosoever does ijtihaad and errs there in shall have one reward. And whosoever performs ijtihaad and is correct shall have a double reward."

It simply means that the Mujtahid's ijthihad may possibly be wrong. Therefore one should not consider another opinion as un-Islamic simply because it is different. Instead one should consider other opinions as respected opinions. Of course this is only on condition that the opinions are based on Islamic evidences. There is no meaning for respecting opinions not based on Islamic evidences. Such opinions have no place in Islam. Therefore it is necessary for every scholar to produce his evidence in support of his opinion. This is to give confidence to the Muslims that his opinion is Islamic. Opinion without evidence is baseless and should be rejected.

This view towards others Islamic opinions will ensure the correct Islamic attitude and behaviour to fellow Muslims who hold different opinions. However this measure alone will not provide the total answer to the problem we face today. In particular the need to unify Muslims on certain key issues. The solution to this problem lies with the adoption of Hokm Sharai.

Adoption of hokm sharai

The Ulayma have agreed that the Mujtahid who has made ijthihad in a question is not allowed to leave his ijthihad and to follow another Mujtahid's opinion. That is, once a rule has been concluded by the Mujtahid, that rule becomes Allah's rule in the question for that Mujtahid. Accordingly he must not leave the opinion.

With Allah's rule in a question being the ijthihad most convincing to the mujtahid naturally there will be many different opinions as to what is the divine rule in a question. In many instances this will not be a problem. However one can envisage a number of instances where it is necessary for the Ummah to be united on one opinion.

The consensus (Ijma) of the Sahaba have established that the Caliph has the authority to adopt certain rules (ahkam) and to enact them. Well known Sharia principles state:

"The Imam's decree settles the disagreement", and "The Imam's decree is executed openly and secretly." All Muslims, including the Mujtahids, have to leave their opinion and to follow the opinion adopted by the Caliph.

Thus, the only time when the Mujtahid can leave his ijthihad is when the Caliph adopts a divine rule. [*****This is not entirely correct*****]

An example of adoption is the distribution of funds by Abu Bakr and Umar. When Abu Bakr was Caliph he paid equal grants to all the Sahaba and he did not distinguish between the earliest Muslims and the later converts, between the slave and the free and between men and women. Once when a large amount of wealth was received from countries that had been opened by the Islamic army Abu Bakr started to distribute it equally among the people. Umar and some of the Sahaba insisted that the earliest Muslims should be given preference over the later converts. Abu Bakr replied: "I am fully conscious of the superiority and excellence of the people you have mentioned; but it is a thing which will be rewarded by Allah. But here is a matter of livelihood, where equality is better than the principle of preference." (Abu Yusuf, KITAB AL-KHARAJ)

When Umar was Caliph he replaced Abu Bakr's adoption of equality with his principle of preference. Umar did not like to pay the same amount to those who had fought against the Prophet and those who had fought on his side. Accordingly he gave huge amounts to the early Sahaba those who fought in Badr and Uhud and the relatives of the Prophet (pbuh).

Thus, when Abu Bakr was Caliph Umar left his understanding and enacted the decree of Abu Bakr. So did the judges, governors and all Muslims. When Umar became Caliph he obliged the enactment of his opinion and it was.

Many other examples of adoption abound. The important point is that the adoption of certain rules by the Caliph and their enactment by the subjects of the state was practised by the Rightly guided Caliphs and those that followed them.

Conclusion

Different opinions should not be seen as a weakness and source of disunity. As we have seen Muslims have had different opinions since the time of the Messenger of Allah (pbuh). The weakness and disunity is not the difference of opinions but rather in the way in which such differences are viewed. As long as an opinion is based on an Islamic evidence, and that opinion does not contradict an assured rule, that opinion should be respected as an Islamic opinions. Finally, the way to achieve unity, is not by suppressing different opinions and calling for the abandonment of madhabs (schools of thought), rather it is by Muslims living under the intellectual leadership of Islam where the Caliph makes adoption in key issues.

Al-Fajr Magazine, April 1987