

Fiqhi Methodology of Tafsir-writing in the Subcontinent: A Brief Historical Survey

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The Holy Qur'ān, the everlasting miracle, is the final message of God Almighty for the guidance of mankind in all facets of life, both mundane and spiritual. It is the prime source of all injunctions pertaining to various issues such as law, constitution, economy, societal problems, politics or norms of ethics. From the earliest days, learned men have delved deep into the rich mine of divine wisdom and spent their lives in search of treasures lying buried in that mine. Their labours brought out those pearls of wisdom which illuminate our thought pattern even today. The first output of the intellectual activity of the *ummah*, therefore, was the *tafsir* or the exegesis of the Qur'ān to explain and elucidate the norms of *Shari'ah* injunctions contained in the Qur'ān. The *fuqahā'* (jurists), with exemplary religious zeal, devoted their entire lives to study the Qur'ānic verses in depth for deduction of injunctions and explaining them, through indications and reasoning. The verses with hidden meaning (*khafi*) or which were in abstract (*mujmal*) were elucidated in the light of specific verses. Eminent *fuqahā'* of the sub-continent have made valuable contributions in the *fiqhī* methodology of *tafsīr*-writing. These prominent personalities include, among others, Mulla Jīwan, Qādhī Thana' Ullah Panipati, Nawwāb Siddique Hasan Khān and Mawlana Ashraf 'Alī Thanvi. A need is, however, felt for further research in the interpretation of 'ahkām al-Qur'ān' to meet the requirements of the changing environments of the modern-day world.

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Ahkām ul-Qur’ān

These *fuqahā’* produced a number of *tafāsīr* in juristic (*fiqhī*) methodology. The earliest and prominent among them was the effort of *Imām* Shafī’ī’s (d. 204 A.H.) *Ahkām ul-Qur’ān*. It is attributed to *Imām* Shafī’ī though no epistle of the learned *Imām* referring to this *tafāsīr* is available. However, *Imām* Bayhaqī has collected the discussions of *Ahkām ul-Qur’ān* from the compendiums of *Imām* Shafī’ī and compiled them into a book, which is available.

In the third century *Hijrah*, the famous jurist, Shaikh Abul Hassan ‘Alī bin Hajr al Sa’adi (d. 244 A.H.) wrote a *fiqhī tafāsīr* which is also known as *Ahkām ul-Qur’ān*. Following his footsteps, Qādhī Abul Ishāq al-Azdi (d. 282 A.H.) also brought out a *fiqhī tafāsīr* in which he benefited from the opinions and principles propounded by *Imām* Mālik. On the same pattern, another *faqih*, Shaikh Abul Hassan ‘Alī bin Musā (d. 305 A.H.) wrote a *tafāsīr* under the title of *Ahkām ul-Qur’ān* in which he has kept in view the principles of *Hanafī* jurisprudence. Later on, a number of *Hanafī* scholars further promoted this field of knowledge. During this period, the famous *Hanafī Muhaddith* and *Faqih*, *Imām* Ja’afar bin Muhammad al-Tahawī (d. 321 A.H.) brought out a *tafāsīr* under the same title.

Jurists of Andalus (Spain) also made a significant contribution in the development of *fiqhī tafāsīr*. The well-known jurist of Qurtaba, Shaikh Abū Muhammad al-Qasim bin Asbagh (d. 340 A.H.) compiled a *fiqhī tafāsīr*, *Ahkām ul-Qur’ān*, while another jurist of the same region, Manzar bin Sa’ad al Baluti (d. 355 A.H.) also brought out *Ahkām ul-Qur’ān*.

Though a number of *tafāsīr* have been written under the title of *Ahkām ul-Qur’ān*, the compendium produced by the well-known *Hanafī Imām*, Abū Bakr Ahmed bin ‘Alī Jassās (d. 370 A.H.) has been universally acclaimed and considered as the elite among *tafāsīr*. After Jassās, a jurist of Shafī’ī School, Abul Hassan Ali bin Muhammad al-Kiyaharasi (d. 504 A.H) wrote a *tafāsīr* under the same title of *Ahkām ul-Qur’ān*. Later, a Maliki jurist, Qādhī Abū Bakr Muhammad bin Abdullah (popularly known as Ibn ‘Arabi) compiled *Ahkām ul-Qur’ān*. Another jurist of Andalus, Shaikh Abdul Mun‘im bin Muhammad (d. 597 A.H.) wrote a *fiqhī*

tafsīr under the same title. Among all the *fiqhī tafasīr* written in Spain, the most popular was *Tafsīr al-Jami‘-li-Ahkām ul-Qur’ān* by Abdullah Muhammad bin Ahmad al Ansari al Qurtabi (d. 671 A.H.). This *tafsīr* is not confined only to the verses pertaining to the legal injunctions but it also contains detailed discussion on general issues and directives.

In the sub-continent from the earliest day scholars who had mastery over ‘Arabic language developed an established trend toward understanding the Qur’ān. As they were conversant with Arabic, most of the *fuqahā’* and *muhaddithūn* used Arabic language as means of expression. They fully benefited from the writings in ‘Arabic sent by ‘ulamā’ from other countries. As such, for a few centuries in the beginning the ‘ulamā’ of the region did not pay any attention to writing any new *tafsīr*, and the general trend was to collect and compile *fatawā* (judicial decrees) on cases pertaining to Islamic law. Their services in this field are indeed creditable.

Mulla Jiwan

In the later half of the 11th century (A.H.) ‘ulamā’ took up the task of writing *fiqhī tafasīr*. Shaikh Ahmad, popularly known as Mulla Jīwan (d. 1130 A.H) was probably the first jurist in the sub-continent who wrote *tafsīr* in *fiqhī* methodology. In his *tafsīr*, *al-Tafsīrāt Al-Ahmediyya fī Bayān al-Āyāt al-Shar‘iyyah*, Mulla Jīwan selected those verses of the Qur’ān for explaining the injunctions which are called *ayāt-e ahkām* by about five hundred learned predecessors. On studying this *tafsīr*, one gets the impression that the author, besides *ahādīth*, benefited from the *tafasīr* of those *mufassirūn* (exegetists) who had a profound understanding of logical approach towards comprehension of the fundamentals: For example, *Anwar ul-Tanzīl* by Badawī, *Madārik al-Tanzīl* by al-Nasai, *al-Kashshaf* by Zamakhshari; books on *fiqh*: *al-Hidāya* and *Sharh Waqaya* on *fatawā* and precepts: *Fatawā Hammadiyya*; on *Usūl-al-Fiqh*: *Kanz ul-Wusūl ila Ma‘arifat al-usūl* by Fakhr al-Islam ‘Alī bin Muhammad al-Bazdawi; *Musallam-al-Thubūt* by Qādhī Muhibullah Bihari etc. From these references it is not difficult to assess the mode of reasoning by Mulla Jīwan. He was himself a master of intellectual dissertation and used to give his opinion after judicious argumentation.

Mulla Jīwan has referred to three types of precepts in his *tafsīr*, namely (i) *fiqhi* precepts (ii) fundamental rules; and (iii) *kalamī* precepts. Shaykh Ahmad Jīwan does not confine himself to the apparent language but goes deeper into the connotation and intent of the phraseologies. For example, while discussing the verses of *surah Fātiha*, he says that devotion is the vital factor of the prayer. He argues that *إِذَا نَعَبَدُكَ* (*Thee do we worship*) indicates two points: the first one is that the prayer is the Right of Allah; and the second point is that devotion in prayer is obligatory as is evident from the significance of the text. Similarly, in the context of the verse, *صِرَاطَ الَّذِينَ أَنْعَمْتَ عَلَيْهِمْ*, (*the way of those on whom Thou has bestowed Thy grace*), he opines that it is obligatory to follow the footsteps of *mu' minin*; and then extrapolating his argument in a subtle style, he says that it gives proof of *ijmā'* (consensus of opinion).

He also corroborates from the Qur'ānic *ayah* certain precepts described by *fuqahā'*, such as the aphorism, 'Every thing in nature is lawful,' is given credence by the following verse of the Qur'ān.

هُوَ الَّذِي خَلَقَ لَكُمْ مَّا فِي الْأَرْضِ جَمِيعًا

*It is He who hath created for you all things that are on earth.*¹

He argues that as every thing on earth has been created for the benefit of man, so nothing is forbidden or *harām* unless there is some specific reason given about it; or else, it may be considered at least permissible. Through arguments he also discounts the views of those *fuqahā'* who differ from his opinion.

He validates the proof of *khavar-e wāhid*, (tradition of the Prophet reported by one of his companions), through the following verse of Qur'ān:

وَإِذْ أَخَذَ اللَّهُ مِيثَاقَ الَّذِينَ أُوتُوا الْكِتَابَ لَتُبَيِّنُنَّهُ لِلنَّاسِ وَلَا تَكْتُمُونَهُ فَنَبَذُوهُ وَرَاءَ ظُهُورِهِمْ وَاشْتَرَوْا بِهِ ثَمَنًا قَلِيلًا

فَبَيَّنَّ مَا يَشْتَرُونَ

And remember, Allah took "Covenant from the People of the Book, to make it known and clear to mankind, and not to hide it; but they

1. *Surah al-Baqarah*, II:29.

*threw it away behind their backs, and purchased with it some miserable gain!*²

This verse makes it obligatory on the ‘ulamā’ to explain the truth to the people and educate them truthfully, not concealing it for some perverse and selfish motive. Niggardliness in dissemination of knowledge is not permissible. It is the duty of ‘ulamā’ to educate the people; whereas it is incumbent on the recipients to mould their lives in the light of the obtained knowledge. The above verse testifies the moot point that a ‘*khabar-e wāhid*’ provides sufficient reason for its implementation.

Ijtihād

Dealing with *ijtihād*, he has based his argument on the following verse of the Qur’ān:

إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ

*We have sent down to thee the Book in truth that though might judge between men, as guided by God.*³

In other words, one has to use of knowledge with discernment which Allah has bestowed on us, for judgment among the people. According to the above-quoted verse, the use of *ijtihād*, and then taking decision through it, has been made permissible for the Holy Prophet (PBUH).

Mulla Jīwan also discusses certain subjects which have no relevance to the normal activities of human life. For example, who is superior, human beings or angels? Here he quotes the following verse of the Qur’ān.

إِنَّ اللَّهَ اصْطَفَىٰ آدَمَ وَنُوحًا وَآلَ إِبْرَاهِيمَ وَآلَ عِمْرَانَ عَلَى الْعَالَمِينَ

*Allah did choose Adam and Noah, the family of Abraham, and the family of Imrān above all people...*⁴

According to the above-quoted verse, he argues that it proves man’s superiority over angels. Such argumentations are galore in *al-Tafsirāt al-Ahmadiyya*: and in all these discussions he proves his point with the support of some Qur’ānic verse. For example, he quotes the following verse in support of the torment of the grave:

2. Surah Āl-e ‘Imrān, III:187.

3. Surah al-Nisā’, IV:105.

4. Surah Āl-e Imrān, III:33.

النَّارُ يُعْرَضُونَ عَلَيْهَا غُدُوًّا وَعَشِيًّا

*In front of the fire will they be brought, morning and evening.*⁵

Keeping in view the methodology of the Qur'ānic verses, Mulla Jīwan works out the classification of *fiqhī* injunctions, and alongside ascertains whether the injunction is obligatory, desirable or it is *sunnah*. Similarly, in explaining the prohibitory injunctions he elucidates whether they are in the category of inviolables or abominations.

Al-Tafsir Al-Mazhari

From *fiqhī* view-point another significant *tafsīr* is *al-Tafsīr-al-Mazhari* written by Qādhī Thana' Ullah Panipati who received enlightenment from two notable personalities of his time as is manifested in his *tafsīr*, the first personality is Shāh Walī Ullah from whom he acquired the understanding of *din* and its inspired knowledge. A person cannot achieve expertise in Islamic jurisprudence unless he devotes himself fully for the acquisition of the objective and, at the same time, strive for the purification of his self. Qādhī Thana' Ullah was helped in his spiritual elevation by the munificence of *Hadhrat* Khwaja Muhammad Abid Sanami and *Hadhrat* Mirza Jan Janan.

Detailed discussion on *fiqhī* injunctions is the main feature of *al-Tafsīr al-Mazhari*. However, unlike Mullah Jīwan, he has not confined himself to the elucidations of the Qur'ānic injunctions only. It is a *tafsīr* of the Qur'ān in toto. Presently, I quote some examples from the *fiqhī* part of his *tafsīr* for the benefit of the readers so that they can visualize his status in *Fiqhī* literature.

Like Mulla Jīwan, Qādhī Thana' Ullah deduces his arguments from the Qur'ānic verses in support of *fiqhī* injunctions and principles. For example, the Holy Qur'ān says:

شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى وَعِيسَى أَنْ أَقِيمُوا
الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ

*The same religion has He established for you as that which He enjoined on Noah - the which We have sent by inspiration to thee – and that which We enjoined on Abraham, Moses, and Jesus: Namely, that ye should remain steadfast in religion, and make no divisions therein.*⁶

5. Surah al-Mu'min, XL:46.

Old Revelations

In a priori discussion in the *tafsīr* of the above-quoted Qur'ānic verse, Qādhī Thana' Ullah is of the view that it is also obligatory on us to follow the injunctions of old revelations as Allah is the only Source of all revelations. However, the authenticities of these injunctions call for deliberation. The proof of authenticity of only those injunctions is available, which have been mentioned in the Qur'ān, directly and in a narrative form.⁷ Observance of all such injunctions is mandatory. However, the claims advocated by the people of the Book in these precepts written in their books cannot be accepted as truth as they are mostly distortions. The people who are responsible for distorting the Book of Allah cannot be trusted. In addition, there is a Qur'ānic testimony about the People of the Book that they have gone astray and forgotten the injunctions of the revelations and distorted the Message of Allah.⁸

Qādhī Thana' Ullah relies on the *sunnah* as a source and proof. While explaining the Qur'ānic injunctions and precepts, he refers to *ahādīth* in his reasoning. On certain issues, he bases his reasoning entirely on *sunnah*. For example, according to a Qur'ānic injunction, a person performing *hajj tamattu* (حج تمتع) should also carry out sacrifice. Here, Qādhī Thana' Ullah determines the time of sacrifice by quoting a *hadīth* that 'sacrifice is not permissible before *'yaum al-nahr'*. In support of his opinion he quotes a tradition of *Hadhrat* Hafsah. On the occasion of *hajj*, *Hadhrat* Hafsah asked the Holy Prophet (PBUH) about the reason why he was not putting off his *ihram* along with others. He (PBUH) replied that he would not put off his *ihram* till he sacrificed his animal. Based on this tradition Qādhī Thana' Ullah supports the view that in case of *hajj Tamattu'*, the *hāji* should sacrifice his animal after *rami jimar*, and after that he can put off his *ihram*. In support of his argument he also quotes the opinion of *Imām* Abū Hanifah, *Imām* Shafī'ī and *Imām* Ahmed bin Hanbal.⁹ This

6. *Surah al-Shura*, XL:12, 13.

7. Qadhi Thana' Ullah Panipati, *Al-Tafsir al-Mazhari*, vol.1 (Delhi: Isha'at al-'Uloom, N.d), p. 166.

8. *Surah al-Baqarah*, 11:75; *Surah al-Nisā*, IV: 46; *Surah al-Mā'idah*, V: 13.

9. Qadhi Thana' Ullah Panipati, p.210.

discussion approves the principle that a clear injunction of the Qur'ān can be encompassed with the help of a *hadīth saḥīh*.

Another significant feature of *Tafsīr-e Mazhari* is that the traditions which have been quoted for reasoning are categorized: If the narration is from a weak source, it is mentioned as such.¹⁰ The author accepts the *hadīth-e mursal* as proof; and for deduction of injunctions, he gets support and cognizance from *mursal ahādīth*.¹¹

Qādhī Thanā' Ullāh, like Mulla Jīwan, subscribes to the Hanafī school of thought; however he is not dogmatic and adopts a broad-minded approach in his reasoning by quoting views of other *fuqahā'*. On certain issues he even differs from the views of *Imām Abū Hanifah*. For example, he differs, in a refined manner, from the views of *Imām Abū Hanifah* while explaining the following Qur'ānic verse.

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ
بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

*And do not eat up your property among yourselves for vanities,
Nor use it as bait for the judges, with intent that ye may eat up
wrongfully and knowingly a little of (other) people's property.*¹²

Judgments

Discussing the judgments of court in the light of the above verse, Qādhī Thanā' Ullāh writes that in cases of contracts and annulments (عقود و نسوخ) if the court, on the basis of some superficial evidence, gives a wrong judgment, then the decision will be enforced only outwardly and not inwardly. However, the opinion of *Imām Abū Hanifah* on this issue is that the judgment will be enforced both inwardly and outwardly. The reasoning of *Imām Abū Hanifah* is based on a judgment given by *Hadhrat 'Ali* in which he told a woman that “these two witnesses have confirmed your *nikāh* (marriage).” The story was that “a person claimed that a woman is married to him and he is her husband”. In support of his claim he produced two witnesses. The court accepted his appeal and gave verdict in his favour. After the announcement of

10. *Ibid.*, p.157.

11. *Ibid.*, p.165.

12. *Surah al-Baqarah*, II: 188.

the judgment the woman requested *Hadhrat* ‘Ali that “now as the court has given its decision, she may now be married to the man.” *Hadhrat* ‘Ali replied: “In case the *nikah* was not consummated before, it has been done now in the presence of these two witnesses.”¹³ Qādhī Thana’ Ullah considers *Imām* Abū Hanifah’s opinion to be not in conformity with the essence of the Qur’ānic verse.

Ijmā’

Qādhī Thana’ Ullah accepts *ijmā’* (Consensus of opinion) as a sound reason and a number of references have been given about it in *Tafsīr-e Mazhari*. For example, the Qur’ān says:

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَحُمَّ الْخِنْزِيرِ وَمَا أُهْلِيَ بِهِ لَعَنَ اللَّهُ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ
اللَّهَ غَفُورٌ رَحِيمٌ

*He hath only forbidden you dead meat, and blood, and the flesh of swine and that on which any other name has been invoked besides that of God) But if one is forced by necessity, without wilful disobedience, not transgressing the limits - then he is guiltless.*¹⁴

Discussing the above verse, Qādhī Thana’ Ullah opines that in a situation of helplessness which may be due to hunger or compulsion, the eating of dead meat is permissible when it is decided through *ijmā’*.¹⁵ Giving some more examples of *ijmā’*, he says:

If a *dhimmi* (protected non-Muslim citizens) kills another *dhimmi*, then the murderer *dhimmi* will face the murder charge as per *qisās* rules. Similarly, if a patient or a traveller cannot fast during the month of *Ramadhān*, they can postpone their fasting till the normalcy. They will complete their *qadhā’* after the recovery of health or, in the other case, after completion of journey.¹⁶

However, the question arises that the sequence in fasting of *qadhā’* is mandatory or not. Applying the analogy of the above quoted verse, Qādhī Thana’ Ullah is of the opinion that keeping of sequence in this case is not mandatory and other *Fuqahā’* also have the same consensus of opinion. He says: “this *ayah* is self-

13. Qadhi Thana’ Ullah Panipati, p.195.

14. *Surah al-Baqarah*, II:173.

15. Qadhi Thana’ Ullah Panipati, pp. 158-59.

16. *Ibid.*, pp.176-77.

contained. It proves that sequence in *qadhā'* of fasting is not necessary. There is *Ijmā'* on this issue".¹⁷

It will be of interest for the scholars to know that whereas Qādhī Thana' Ullah refers to *ijmā'* on the non-necessity of sequence in *qadhā'* fasting he also quotes the opinion of *Imām* Dawud who is of the view that continuity in *qadhā'* fasting is essential.¹⁸ It shows that is his view the position of *ijmā'* is not affected if a few persons have different opinion on the issue. He also does not agree with the views of the *fuqahā'* who are of the opinion that a single dissenting stand-point will render *ijmā'* as void.

On certain occasions, Qādhī Thana' Ullah has made use of *ijmā'* and *qiyas* for deduction of certain precepts. For example, a Qur'ānic verse says:

قَالَ إِنِّي جَاعِلُكَ لِلنَّاسِ إِمَامًا

*He said! O Abraham! I will make thee an Imām to the Nations.*¹⁹

Explaining this verse, the author says the word *imamah* means the office of prophethood or such an office for which obedience is mandatory. In support of his opinion he also refers to certain verses of the Qur'ān and also given introspective justification in proof of his viewpoint. Referring to the remaining part of the above-mentioned verse, which says:

قَالَ لَا يَنْتَهِ عَهْدِي الظَّالِمِينَ

*My promise is not within the reach of evil-doers*²⁰

Qādhī Thana' Ullah opines that the word 'evil doer' means 'transgressor'. According to him, this part of the verse testifies the concept of '*ismah* (complete protection from disobedience) of the prophets. He says this virtue is the basic condition for prophethood. There is consensus of opinion (*ijmā'*) on this condition."²¹

17. *Ibid.*

18. *Ibid.*

19. *Surah al-Baqarah*, II: 124.

20. *Ibid.*, II: 124.

21. Qadhī Thana' Ullah Panipati, p.115.

Opinion on Major Issues

Qadhi Thana' Ullah adopts a very circumspect attitude while giving his opinion and reasoning on major issues. For example, while discussing the issue of divorce he says that in the verse (الطلاق) divorce is only permissible twice,²² the reasoning of (عبارة النص) is based on the maxim that the divorces cannot be given at a single time; they should be segregated. And the (عبارة النص) gives indication of number. In the word (الطلاق) 'alif and lam are for *jince* (genders). Therefore, the analogy indicates that two divorces are given at one go, they should not be relied upon as per *shari' ah*. And if two divorces are not given credit then three divorces given at a single time should not be relied upon. He also refers to the difference of views among *fuqahā'* on this issue, and opines that three *talaqs* given at one single occasion is forbidden. However, if a person indulges in this prohibitive act he will be a sinner, though the divorce is rendered effective. There is consensus of opinion of *sahaba* (companions of the Prophet) on this issue.²³

Qādhī Thana' Ullah, in his efforts in deduction of injunctions also maintains a prudent approach to impede any harmful effects on public interest.

Convenience of Approach

In case of difficulties in implementation of injunctions, he considers the principle of *jalb al-maslahah* (consideration of interest) and *daf' al-dharar* (removal of difficulty or hardship) He, therefore, suggests a convenient approach and explains the measures that can be taken to disentangle the situation. For example, the Qur'ān directs the *hujjāj* "to prepare *maqam-e Ibrahim* for prayers". In his *tafsīr*, he says that according to the direction the *hujjāj* after circumambulating the *Ka'abah*, have to offer two *raka'ah* prayers at *maqām-e Ibrahim*; but in view of the difficulties one could face due to huge crowds, the condition has been eased by addition of the words "to one's best ability". If due to large congregation it is not possible to offer prayers at *maqām-e*

22. *Surah al-Baqarah*, II: 229.

23. Qadhi Thana' Ullah Panipati, pp.278, 280.

Ibrahim, the whole mosque is *haram*, and prayer can be offered at any convenient place.²⁴

The subject of ensuring human convenience in the observance of *shari'ah* injunctions has been discussed in another illustration by Qādhī Thana' Ullah. Reasoning on this issue he says that in case human convenience is adversely affected, God declares His right as void and grants priority to His servants' welfare. The faithful are ordered in the Qur'ān:

فَادْعُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ

*Call ye, then, upon God with devotion.*²⁵

This verse and many other verses of the Qur'ān have laid great stress on devotion in one's prayers. Devotion is the essence of the prayer and it must be manifested in every step of the prayer. This is Allah's right. If at some time, the concentration of a person gets disturbed during the prayer and his devotion is effected, his prayer is rendered invalid. Allah's right demands that the devotional spirit should be always constant. Now we look at human convenience. When a person is told that his prayer will be rendered invalid if there is a break in his devotion, he will be in a dire strait. Taking human convenience into consideration, the *fuqahā'* believe that an unintentional break in devotion does not render the prayer invalid.²⁶

Nayl al-Marām

Followed by *Tafsīr-e Mazhari* by Qādhī Thana' Ullah, another *tafsīr* with *fiqhī* methodology, entitled *Nayl ul-Marām min Tafsīr Āyāt-al-Ahkām*, has been written by Nawwāb Siddique Hassan Khān (d. 1307 A.H.). He was a well-known scholar of his time and has, to his credit, a number of books. That was the period of British rule and Hindu influence was also on the increase in the social norms of the sub-continent. In certain areas, ignorant and illiterate Muslims had come under the sway of Hindu customs and superstitions. Siddique Hassan remained in the forefront of the battle against such heresies and published a number of books to

24. *Ibid.*, p.117.

25. *Surah al-Mu'min*, XL: 14.

26. Qadhi Thana' Ullah Panipati, p. 117.

warn Muslims against non-Islamic practices. Despite extensive use of *fiqhī* injunctions, his book lacks the dimension and depth which is found in the works of other *fuqahā'*. The reason is that he accepts only three sources of *fiqh*: (i) Qur'ān, (ii) *sunnah*, and (iii) *ijmā'* of *Sahabah*. Therefore, he cites only those injunctions that are testified by above sources.²⁷ He does not give any importance to reasoning and other principles of deducing the injunctions.

In his *tafsīr*, Siddique Hassan has selected about 225 verses which, in his view, pertain to *fiqhī* injunctions. This book comprises of elucidations and *tafsīr* of these verses. He divides these verses into two sections: the first one relates to the verses with clear directives, while in the second section some argumentation and reasoning is needed for full comprehension; e.g. verses about *wudhū*, *tayammum* etc. In the second section, there are verses in which *fuqahā'* have differences in their reasoning. For example, the Qur'ān says:

وَالْحَيْلَ وَالْإِغَالَ وَالْحَمِيرَ لِتَرْكَبُوهَا وَزِينَةً

And (He has created) horses, mules and donkeys for you to ride and use for show.²⁸

This verse, some *fuqahā'* believe reasoned the prohibition of horsemeat. However, this reasoning is neither definite nor clear.²⁹

While explaining the Qur'ānic verses on injunctions, Siddique Hassan often mentions the views expressed by other jurists and exegetists but his mode of expression does not manifest preference to any specific view. However, he endeavours to substantiate his opinion with some relevant *hadīth*. For example, if in an Islamic country a Muslim commits murder of a non-Muslim citizen, then according to the views of *Hanafi* jurists and *Imām* Sufyan Thorī, the Muslim murderer should be sentenced to death as per rules of *qisās*, as there is clear order in the Qur'ān:

كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرِّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ

O ye who believe! The law of equality is prescribed to you

27. Qadhi Sai'd Ullah, *Life and Work of Siddique Hassan Khan* (Lahore: Muhammad Ashraf, N.d.), p.96.

28. *Surah al-Nahl*, XVI:8.

29. Nawwab Siddique Hassan Khan, *Nayl al-Maram* (Lahore: Muhammad Ashraf, N.d.), p. 17.

*in case of murder: the free for the free, the slave for the slave.*³⁰
Similarly it is ordained: *Life for life...*³¹

In these verses no distinction has been made between Muslim or non-Muslim. Discussing the view-points of other jurists on the issue, he says that majority of them are of the view that a Muslim will not be sentenced to death for the murder of a non-believer. This consensus of view is based on the following *hadīth*: “A Muslim will not be sentenced to death in lieu of a non-believer’s murder.” Majority of the jurists have put forward the argument that the above-mentioned *hadīth* has determined the significance of the Qur’ānic verse. Siddique Hassan has mentioned the opinion of the majority but has neither given any reference to the views of *Hanafī fuqahā’* and of *Imām* Sufyan Thorī nor mentioned their views regarding the *hadīth*.³²

Mode of Reasoning

In order to fully comprehend Siddique Hassan’s mode of reasoning and his views on *shari‘ah* issues, another example is mentioned here wherein he uses his argumentation leaving aside his own laid down three principles.

قَالُوا أَلَمْ تَكُنْ أَرْضُ اللَّهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا

(Angels will say to the people who did not migrate):
Was not the earth of God spacious enough for you
to move yourselves away (from evil).³³

Deliberating on the *ayah* Siddique Hassan opines that migration is mandatory on every person who can afford and is residing in the land of infidels (*dar ul-shirk*) and where sinful activities are rampant.³⁴

In explaining this verse, the writer avers that the injunction is general in nature because the words of *nass* (Definite order) are also general in substance. Here, in his reasoning, he has used the terminology of *dār ul-shirk*. In the Islamic international law the

30. *Surah al-Baqarah*, II: 178.

31. *Surah al-Mā'idah*, V: 45.

32. Nawwab Siddique Hassan Khan, p. 17.

33. *Surah al-Nisā'*, IV: 97.

34. Nawwab Siddique Hassan Khan, pp. 170, 171.

terminologies of *dār ul-Islam*. *Dār al-harb* or *dār al-‘ahd* have often been mentioned but the term, *dār al-shirk*, has been used by Siddique Hassan. Here we find him exercising *ijtihād* and thus, applying forth source of reasoning and deduction.

The purport of certain verses of the Qur’ān has wider dimensions and a significant number of injunctions can be deduced from them. Siddique Hassan includes them among ‘mothers of verses’ (*ummahāt ayāt*) and always mentions them in injunctions which are deduced from them. For example, the Qur’ān says:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا

*God doth command you to render back
your trusts to those to whom they are due.*³⁵

In view of the author, the above verse is from among *ummahāt al-ayāt*. Apparently the expression of this verse is general but according to Hazrat ‘Alī and Zayd bin Aslam it is addressed to Muslim rulers. However, the author gives preference to the general connotation of the Ayah. Here in a doctrinal discussion, which is significant from juristic view-point, he argues that the “revelation of an ayah in the background of a specific situation does not negate the general nature of the injunction. As such, the generality of the text is given credence for affirmation of the injunctions.” He says that according to this verse all offices are trusts: even evidence or any information is a trust. Honesty, truthfulness and justice are the fundamental virtues of trust.³⁶ Explaining in such intellectual way he is following the method of Ibn-e Taymiyyah and Ibn-e Qayyim.

Evolutionary Process

Siddique Hassan Khān, in explanation and *tafsīr* of *fiqhī* injunctions has endeavoured to confine himself to the Qur’ān, *sunnah* and *ijmā’* of *Sahabah*, but at times he has also made use of analogy and opinion of others. There is no denying the fact that if *ijtihād* is not used in its wider perspective, the evolutionary process of jurisprudence gets stalemated. Siddique Hassan acknowledges *ijtihād* as a matter of principle and asserts that the condition of *ijtihād* is a prerequisite for the office of *qadā’* for the

35. *Surah al-Nisā’, IV: 58.*

36. Nawwab Siddique Hassan Khan, p. 152.

reason that the basic objective of this office is to ensure justice and equity in the society. These goals can be achieved only by a person who possesses perspicuity to interpret the Islamic law. Therefore, it is necessary that a Qādhī should be an enlightened and learned person so that he can judge cases by exercising *ijtihad*.³⁷

As the judicial system cannot function effectively without ability and insight of *ijtihad*, similarly for reasoning and deduction of injunctions, *ijtihādi* insight is of paramount importance. Therefore, the process of deduction of injunctions cannot be confined to the three principles mentioned earlier. Need of *ijtihad* arises only when the Qur'ān and *sunnah* are silent about a particular situation.

A Comprehensive Work

A very comprehensive and wide-ranging work on *Ahkām ul-Qur'ān* has been accomplished by a committee of jurists under the supervision of Mawlana Ashraf 'Alī Thanvī. Hadhrat Thanvī constituted a committee comprising of well-known 'ulamā', Mawlana Zafar Ahmad 'Uthmanī (d. 1395 A.H.), Mawlana Muhammad Idrees Kandhalvī (d. 1394 A.H), Mufti Muhammad Shafī' (d. 1396 A.H.) and Mufti Jamil Ahmad Thanvī (d. 1415 A.H.).

In fourteenth century Hijra, when a campaign started to raise objections on the reasoning mode of Hanafī *fiqh*, a need was felt to present, in a more scholarly diction, the argumentation process of *fiqh*, and it was decided to compile a comprehensive *tafsīr* on the pattern of *Ahkām ul-Qur'ān* written by Abū Bakr Jassās and *Imām* Tahawī. The project was started under the supervision of Mawlana Ashraf 'Alī Thanvī. He also took active part in the compilation of the *tafsīr* and incorporated a number of his elucidation about *nusūs* ul-Qur'an in the *Ahkām ul-Qur'ān*. The scholarly dissertations of Hazrat Thanvi and his students give a manifestation of the depth of their knowledge on Islamic jurisprudence. The book is not merely confined to the explanation of injunctions and issues in the Qur'ānic *Nusūs*. The tempo of deduction and reasoning has been maintained throughout the compendium, occasionally discussing the issues from new angles never touched before. The book has

37. *Ibid.*, p.153

also deliberated on the rules and regulations for jurists as well as the sources of *shari'ah*.

The book has dealt with the subject of *ijtihad* and its various methodologies establishing its reasoning on various verses of the Qur'an. Similarly the views of Hanafi *Fuqahā'* on the subject have been discussed in a scholarly and thought-provoking manner. *Ijmā'* and its various configurations have been explained with arguments supported by verses of the Holy Qur'an.³⁸ The book, with cogent reasoning, has refuted the arguments of those who do not accept '*qiyās*' and '*istihsān*' as a valid ground for reasoning. For example, the opponents of '*qiyās*' base their argument on the following verse of the Qur'an:

وَاعْتَصِمُوا بِحَبْلِ اللَّهِ جَمِيعًا وَلَا تَفَرَّقُوا

'and hold fast, all together, by the Rope which God (stretches out for you), and be not divided among yourselves.'³⁹

According to them, the words '*la taffarraqu* (be not divided) negates '*qiyās*', because '*qiyās*' and '*rāy*' breed division. Replying to this objection Mawlana Zafar Ahmad 'Uthmanī writes that difference of opinion is neither prohibited nor harmful. Referring to a number of occasions when *sahabah* differed on various issues, he says that differences of opinion are blessings of *shari'ah*. However, only those divergent views are considered harmful which are not based on reason but indicate stubbornness and narrow-mindedness of a person. Such differences lead to dissensions in the unity of *ummah*.⁴⁰ This compendium contains so much material on the Qur'anic injunctions and principles of *fiqh* that if all the subjects are categorized in a suitable form, a well-documented authoritative book can be compiled for the guidance of our jurists.

38. Zafar Ahmad 'Uthmani, *Ahkam al-Qur'an*, vol.1 (Karachi: N.p., N.d.), p.57.

39. *Surah Āl-e-Imrān*, III: 103.

40. Zafar Ahmad 'Uthmani, pp.29, 48, 49.