Insight into Prophetic Ijtihād: An Analysis of Muhammad’s Legal Thinking

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Abstract

After the passing away of the Prophet Muhammad, there were different perspectives regarding ijtihād (independent reasoning) and how it relates to the role of Muhammad as a Rasul (Messenger) and a Nabi (Prophet) among the Muslims. The Muslims were divided into two contending groups: one believing that Muhammad never carried out the ijtihad, the fact that he was ma’sum, while the other asserting that he might actually have carried it out. This last was in reference to a number of verses in the Qur’ān that are considered mutashābih. This article attempts at analysing the legal thinking of the Prophet of Islam by providing an insight into Muhammad’s ijtihād with direct reference to Manhaj al-Fikr al-Tawasuthīyyah and Manhaj al-Fikr al-Ishlahīyyah. Our knowledge of the methods propounded in these two kitabs may help us in reconciling the two differing Muslim perspectives regarding the role of the Prophet Muhammad in ijtihad, prior to the post-prophetic consolidation of Islamic law.

Keywords: Ijtihād, Prophet Muhammad, Islamic law, Qurʾān and Sunnāh.

Introduction

To the Muslims, the Qurʾān is the Divine Holy Scripture sent down to Mohammad as the greatest miracle in human history. The miraculous nature of the Qurʾān – its language, law and wisdom – would have been difficult for us humans to comprehend without God’s messenger. The language used in the Qurʾān is very profound and meaningful. Despite its poetic structure, the Qurʾān also contains legally definitive verses, the muhkam, and verses that are mutashābih, those that appear obscure and requiring additional interpretation. When social problems emerged, those that were not covered by the muhkam, God gave an order to Muhammad to draw meanings, law and wisdom from the Qurʾān by using his own powers of understanding, as well as ijtihad (independent reasoning) (al-Ghazali, 1998).

Many Muslim scholars hold the thought that Muhammad had never made a mistake in his speech or attitude. This assumption is definitely contrary to the reality of his life. In fact, there were mistakes made in prophetic ijtihad, either the ijtihad used to discover the Qurʾān, or the ijtihad used to define the law. However, the mistakes made would be directly corrected by God. Muhammad carried out the ijtihad using deductive reasoning to interpret the Qurʾān, and inductive methods to resolve social problems (Baqillani, 1991).

In the Qurʾān, Muhammad is called Rasul (apostle), Nabī (prophet), bashār (man) or insān (human), and also ‘ibād (servant/slave) (Sarakhsi, 1997). When Muhammad was assigned to be Rasulullah (God’s messenger), his psychic faculties were more dominant than his senses. The process of revelation between the khaliq (creator) and the makhluq (created) occurred spiritually. It also happened with the other divine messengers before Muhammad where revelation occurred in a dream state. Typical of such revelation to Muhammad was Sūrat al-Kausar (Q.S. 108). The revelation was on the obligation to pray five times a day allegedly received during the Night Journey, the Isra’ and Mi’rāj. The experiential truth of the
revelation categorized as haq al-yaqīn (truth of certainty) and ‘āqīn al-yaqīn (eye of certainty) provided Muhammad with his infallibility (isma’). (Bukhari, 1980).

Muhammad conveyed God’s risālah (message) in the form of the Qur’ān. To the Muslims, the Qur’ān is kalam Ilaahi (Divine Speech). It is free of ma’siah (transgression) and mistakes. Regardless, Muhammad was given an order to reveal the truth as God’s messenger without departing from his normal human behaviour. To this last effect, the Qur’ān states:

“Say, “I am only a man like you, to whom has been revealed that your God is one God…” (Qur’ān, 18: 110; Qur’ān, 41: 6)

“Nor does he speak from [his own] inclination. It is not but a revelation revealed.” (Qur’ān, 53: 3-4)

“…Say, [O Muhammad], “It is not for me to change it on my own accord. I only follow what is revealed to me...” (Qur’ān, 10: 15)

There were two distinct perspectives regarding the above verses. Firstly, they indicate that all the knowledge revealed by Muhammad was revelation. In other words, Muhammad did not carry out the ijtihād as he was ma’sum. Secondly, the term یحتیر refers to the Qur’ān received by the Prophet. This shows that Muhammad had carried out the ijtihād. According to Sarakhsi, there are two kinds of revelation: the zahir (expressed) and batin (hidden) (Sarakhsi, 1997). Zahir is defined by the revelatory process of Gabriel delivering revelation to Muhammad. This is clearly stated in the Qur’ān:

“Say, [O Muhammad], “The Holy Spirit has brought it down from your Lord...” (Qur’ān, 16: 102)

“[That] indeed, the Qur’ān is a word [conveyed by] a noble messenger.” (Qur’ān, 81: 19)

Batin on the other hand, refers to the edict from God to derive a law, despite the Qur’ān, using reasoning. There is no dispute concerning this revelation. The batin revelations are later termed as the hadith, referring to the revelation from God and the utterance from the Apostle (Shalabi, 1986). The Qur’ān says:

“...so you may judge between the people by that which God has shown you... ”(Qur’ān, 4: 105)

Muhammad was a normal human being. Humankind is termed as insān. ‘Insan’ is mentioned 65 times in the Qur’ān. Insān may be understood positively, as in the appointment to become a Caliph, or negatively, as the portrayal of the unstable negative behaviour of human beings (Bukhari, 1997). In the first context, it shows the psychic qualities or spiritual potential of human beings, which differentiate them from animals. For instance, human beings can think, analyse and discover the Qur’ān (as the theoretical science) and the universe (as the technological product). God has completed the creation of the universe and provided the Qur’ān as guidance to human-beings, who are God’s representatives to govern the universe (Hazm, 1998). When it comes to describing the negative elements, insān is mentioned as being abrupt and stubborn, usually categorized as bashār (another term for human being). The Qur’ān mentions bashār as many as 27 times using the associated terms of mithlukum (like you) and mithluna (similar to us) [both phrases referring to Muhammad as normal human beings similar to all of us]. And when the term, ‘ibād (plural for ‘abd (عبد), is used, it means God’s servants – indicating the God-serving posture of insān.

Muslims believe that the Prophet’s mission to deliver the Qur’ān as the fundamental guidance for human life has been completed. Muhammad taught manhaj al-ijtihād (method of reasoning) to define the law from the Qur’ān and manhaj al-‘ilm (method of acquiring knowledge). Thus a human in the role of the Caliph (vicegerent or representative) could either serve God in the context of bashāriyyah (humanhood)
or that of ‘ibādiyyah (servanthood). In governing the universe, a caliph is regarded as bashāriyyah when he behaves as a human being. Consequently, his thoughts will lead to negative consequences. On the contrary, if his ‘abd attitude (‘ibādiyyah) is more dominant than bashāriyyah, his thoughts will have a positive effect on the universe (‘ibād al-rahmān). In Muhammad’s role as God’s divine messenger and a prophet, his bashāriyyah existed only as an instrument to deliver the spiritual message. His spirituality triumphed over his emotions. Muhammad’s entire life was spiritually controlled; this is called mi’rāj in-between the creature and the Khaliq.

The Prophetic Ijtihād

Muslims differ amongst themselves when it comes to prophetic ijtihād by Muhammad concerning the shari‘ah, particularly those legal matters not governed by the theory of Naskh (lit. abrogation). These differences occurred among the scholars of uṣūl al-fiqh. To some, ijtihād was carried out by the Prophet Muhammad during his prophetic career. The scholars who agreed with this opinion are the jumhur al-ūlama’ (the majority of ‘ulama’ – the ālama’ of uṣūl al-fiqh), such as Ibn Hajib and all scholars of the Hanafi and Hanbali schools of thought (Ghazali, 1997). Many Shafi‘i scholars like Fakhr al-Razi, Baidawi and al-Asnawi believed that Imam al-Shafi‘i agreed with the mu’tazili opinion – one associated with his followers like al-Qadi Abd al-Jabbar and Abu al-Hasan al-Basri – that Muhammad did perform the ijtihād. On the other hand, the second opinion believes that Muhammad never carried out the ijtihād. An extreme example of this last position was attributed to Ibn Hazm. According to Ibn Hazm (1998), “Whoever says that ijtihād had been carried out by the Prophet, they are grossly misled according to the Qur‘ān”.

So to recapitulate, two perspectives represent the views concerning Muhammad’s prophetic ijtihād: one stating that the Prophet did not carry out the ijtihād the fact that everything he uttered was revelation as he was considered ma‘sum, and the other saying that Muhammad did carry out the ijtihād, which in turn led to different perspectives on the Prophet’s ijtihād involving matters relating to all aspects of social manners or the shari‘ah.

As a result, Al-Qarafi suggested ijmā‘ to reconcile the differing positions regarding the prophetic ijtihād to resolve matters relating to hukm (law), conflicts among companions, war strategy and social problems. To that effect, we have Malik, al-Shaf‘i, Ahmad ibn Hanbal, and majority of the ahl al-ḥadīth suggesting that ijtihād was indeed carried out by the Prophet Muhammad in response to emerging new problems and questions without having to wait for revelation (al-‘Asqalani, 1959). As for the Hanafis, ijtihād was carried out by the Prophet only after revelation. A third opinion, that of Imam al-Ghazali’s, considers waiting for the revelation as ‘ibādah (religious obligation). Al-Shatibi (2002) noted that the ijtihād conducted by Muhammad was related to fiqh and ahkam (legal) determination, but not concerned with the laws of ‘aqidah (faith/belief).

Most of the early scholars of Islam when asserting that Muhammad had carried out the ijtihād did so by considering Sūrat al-Hashr verse 2, Sūrat al-Nisā’ verses 83 and 105, Sūrat Al ‘Imrān verse 159, Sūrat al-Anfāl verses 67-68 and Sūrat al-Taubat verse 43. In Sūrat al-Hashr for instance, the common term, ulul al-absār, implies that Muhammad possessed the spiritual intellect to carry out the ijtihād (al-Razi, 1998). Also, the phrase “هللا كارأ” in Sūrat al-Nisā’ verse 105, it is interpreted to mean the inspiration for and the fundamental thought of qiyyās.

Muhammad’s Ijtihād

Muhammad’s ijtihād (legal reasoning) is defined as his attempt to express and define the laws of God. But his ijtihād is often associated with the concept of naskh (lit. abrogation) (Umari, 1985). This is because his personal opinion
might be subjected to divine intervention – either upheld or overridden depending on the legal circumstances. In other words, despite his role as either a mujtahid (one who legally reasoned) or a mufassir (one who interpreted) in conveying the laws or delivering divine messages, God directly corrected him whenever there was a mistake in his reasoning or interpretation. Muhammad would then pass on the resulting knowledge to his Companions.

Technically, Muhammad is observed to have used two kinds of ijtihād methodologies: one, the qiyās (analogical reasoning) and the other, the istihsān (juristic discretion). Let us briefly take a look at examples of the two.

Ijtihād with Qiyās

The qiyās deductively place the Qur’ān as the source of istinbath al-ahkam (derivation of legal provisions). It can be defined as a discovery process in order to achieve the conclusions that rely on analogy (Bukhari, 1997). There are ḥadīths that directly relate to qiyās. Examples are:

Qiyās of Hājj with Debt

Prophet Muhammad used the ijtihād with qiyās when a woman named al-Jariyyah al-Khatamīyyah came to him and asked about her mother who had never done the hājj during her lifetime. The woman said, “Oh Messenger of God, my mother has intended to perform the hājj, but she has since passed away. If I do the hājj on her behalf, will it benefit her? The Prophet told her: ‘Yes, perform the hājj for her. What if your mother had a debt? Wouldn’t you pay back her debt? Fulfill your right to Allah. Verily, one’s obligation to Allah is primarily to fulfill’” (Bukhari, 1997).

A father refusing to acknowledge his son due to dissimilar skin color.

The story of a man coming to the Messenger of Allah complaining about his son’s black skin is mentioned in the hadīth:

The Messenger of God says to a man from Bani Fazarah who has denied his black-skinned son: ‘Do you have camels?’ The man answered, ‘yes’. He asked: ‘What are their colors?’ The man answered, ‘red’. The Prophet asked: ‘Do camels have various colors?’ The man said, ‘yes’. The Messenger asked, ‘From where?’ He answered: ‘Descended from their ancestors.’ The Messenger then said, ‘So it has happened to your descendant.’ (Naysaburi, 1988).

Ijtihād with Istihsān

Ijtihād with istihsān appears due to the irrelevance of qiyās and the inability to resolve social matters (Naysaburi, 1988). Muhammad received guidance from God or carried out the ijtihād to determine the better of two choices. For example, in the case of captives of war, the Prophet defined the position through inductive methodology, shifting between ilhāq (reference) and zāhīr (clear), which was “to release the war captives”, and ilhāq khafi (obscure), which was to “exterminate all hostages”. In the Battle of Badr, the Prophet chose to release the hostages of war hoping that they will benefit them by teaching the Muslims, in addition to the ransom supporting the battle. Muhammad’s choice was actually prompted by God in the Qur’ān, 8: 67.

Early Post-Prophetic Development of Ijtihād

After the passing away of Muhammad, the rapid spread of Islam changed the Muslim way of thought. Followers of Islam multiplied and the Islamic ideology spread throughout the world. Along the way they often encountered challenges and new problems. Companions of the Prophet like Ibn Mas’ud, ‘Ali b. Abi Talib and ‘Umar b. Khattab continued with the prophetic tradition of logical reasoning. They were not afraid to carry out the ijtihād, a tradition they observed from the Prophet. In deciding the law therefore, they referred to both the Qur’ān and the hadīth. If there was
no definitive provision of the law in the both Qur’ân and the ḥadīth, they turned to ijtihād (Dawlabi, 1960). Typical examples of post-prophetic ijtihād as noted from the Sahabah (Companions of the Prophet) are as follow:

The Allocation of War-Seized Treasures (The Spoils of War)

Caliph ‘Umar b. Khattab did not allow the allocation and distribution of the war-seized lands in Egypt, Syria and Iraq. This decision was deemed controversial which consequently led a conflict among the Prophet’s Companions. Subsequently, a comprehensive discussion was held to resolve the conflict. ‘Umar’s decision was supported by ‘Ali b. Abi Talib, ‘Uthman b. Affan, Talhah ibn Zubayr and Mu’adh b. Jabal. Meanwhile, the other Companions suggested that the war-seized treasures should be allocated according to the principles of distribution of the ghanimah hārbīyyah (spoils of war) the way Muhammad had appropriated, which was clearly stipulated in the Qur’an as follows:

“And know that anything you obtain of war booty – then indeed, for Allah is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller…” (Qur’ân, 8: 41)

Umar b. Khattab contested that with another verse:

“And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and orphans and the [stranded] traveler - so that it will not be a perpetual distribution among the rich from among you…” (Qur’ân, 59: 7)

Umar b. Khattab gave his response to the matter by looking at the existence of two verses which extrinsically contained contradiction. However, when the verses were deeply analyzed, there was no contradiction existing. ‘Umar b. Khattab employed verse of fay’ and finally, all companions accepted the respective thought (Sajastani, 1998).

The Distribution of Inheritance

With regard to two grandparents:

A man came to Caliph Abu Bakar to report a dispute about inheritance between a group of relatives consisting of grandparents (mother’s mother and father’s mother). The matter under dispute was whether the grandfather could represent the position of the father if the father had already passed away, and prevent the other relatives from inheriting. As this matter was not clearly stated in the Qur’ân and the ḥadīth, the Prophet’s Companions resolved it through ijtihād. Caliph Abu Bakr suggested that the inheritor should be the ūmm li ūmm (mother’s mother) but not ūmm li abb (father’s mother), and the siblings could not inherit. Meanwhile, Caliph ‘Umar b. Khattab stated the sibling’s rights to inherit has been explained in the Qur’ân. A friend from al-Ansar, ‘Abd al-Rahman b. Sahal suggested that the both ūmm li ab and ūmm li ūmm be given the same portion, because it looked fairer that way. This is reflected in the following ḥadīth (Hanafi, 2000):

“A man came to the Prophet and said, ‘Verily the son of my son has passed away, what is my inheritance?’ The Prophet says, ‘For you is one sixth’.”

In relation to a woman who passed away leaving inheritors i.e., a husband, mother, mother’s relative and siblings:

According to the fara’id (laws of inheritance), the husband would get half, the mother, one sixth, mother’s relatives get one third, and the siblings get nothing.

“...if their number is big so they do get one third…” (Qur’ân, 4: 12).

When the siblings reported this matter to Caliph ‘Umar b. Khattab because the allocation seemed unfair, a different perspective appeared among

“Give your remaining inheritance to the deserving ones who are the closest among the descendants”

Going strictly by the text in the Qur‘ān, male siblings should get nothing. On the other hand, it is noted in the ḥadīth that male siblings do get something from the inheritance.

The above discussion demonstrates the methodology used by the Prophet’s Companions to resolve any matter that is not mentioned in the Qur‘ān and the ḥadīth. Ijtihād was carried out in various ways according to the Prophet’s methodology, such as using the theory of qiyās, the theory of istihsān and the theory of maṣlahah al-mursalah. Nevertheless, ijtihād was not always theoretically and systematically carried out.

The consensus and disagreements are sometimes held when there are different perspectives among the Companions in upholding the law – when there are no set laws like the one governing inheritance rights in the matter of grandparents that are not mentioned in the Qur‘ān and the ḥadīth. The Companions agreed on certain points of the law. The agreement reached by the Companions is termed the ijmā’, a source of law after the Qur‘ān and the ḥadīth (Umari, 1985).

Analysis of Prophet Muhammad’s Thought

The manhaj al-fikr (method of reasoning) of Muhammad may be explained through two theories: the deductive theory, based on qiyās, and the inductive theory, which places istihsān as the fundamental methodology. While implementing the method of istihsān, the Prophet Muhammad resolved every problem relating to violations using wisdom rather than meting out punishments simply on the grounds that the laws are absolutely right according to shari‘a and justice. During the Battles of Badr and Uhud, Muhammad was instructed by God to make decisions based on hikmah al-atṣarīyyah, that is, choosing the best rule among the existing rules, rather than using a normative and conventional methodology.

It is worth noting that in order to explore the use of wisdom in resolving problems of the law, Prophet Muhammad’s thought paradigm can be used as an essential means to define the law for the better. The manhaj al-fikr of Prophet Muhammad through qiyās and istihsān may be considered as manhaj al-tawasutiyyah (moderate), manhaj al-fikri al-tasamuhiy (tolerant), manhaj al-fikri al-īslahiy (reformative), manhaj al-fikri al-tatowwuriy (dynamic), and manhaj al-fikri al-īmanhay (methodical).

In recapitulation, following the pathway of Muhammad’s thought, two kinds of thought may be discerned: the qiyās, known to have been developed by Imam al-Shafi‘i, and the istihsān, by Imam Abu Hanafi. Imam al-Shafi‘i established qiyās as the only manhaj al-īstimbat (method of legal decision making) while denying the others. This had an impact on the development of Islamic law. On the other hand, Imam Abu Hanifah’s methods were simpler – whenever qiyās is felt as contradictory to the objectives of the Shari‘ah, Imam Abu Hanifah would abandon the qiyās and use the istihsān instead (Bardisi, 1987).

It may be observed that the conflicting methodological stances as seen above are actually a continuation of the different thought processes of the rationalists (ahl al-ra‘y),
inspired by Ibn Mas‘ud, and the traditionists (ahl al-hadīth), based on Ibn ‘Abbas’s method. Abu Hanifah, as the successor of the rationalists, developed the theory of liberal istihsān, a theory that departed from qiyās and one that is based on justice and truth. Meanwhile, al-Shafi‘i appeared to have constructed the theory of uṣūl al-fiqh that is systematic and academic. In fact, he conflicted istihsān through his “forbidden and abolishment” statement. The conflict then led to the rise of the fanatics and subsequent efforts to find justification for their madhhab. As a result, the al-ahnāf ideology emerged through the inductive theory developed by Abu Hanifah, and the mutakallimīn ideology with its deductive theory by Shafi‘i.

The laws stipulated by istihsān and the qiyās may be different in terms of thought, but the stipulation of both theories could be synergized if only al-Shafi‘i left his mind of qiyās, and use instead the theories of bayān, takhsis and istithnā’. As a matter of fact, the theory used by Imam Abu Hanifah is actually the same as the theory used by Imam al-Shafi‘i (Zahrah, 2000).

The legal terminologies of istihsān, qiyās and al-maṣlahah al-mursalah (known to be similar to istihsan) are known to have similarities and also differences with each other. The similarity is the ijtihād processes in carrying out istinbat al-ahkam and istidlal al-ahkam. The difference is merely the theories themselves. In terms of methodology, qiyās applies to the mind as a bridge, to derive the law by comparing it with the other laws.

**Conclusion**

The manhaj al ijtihād has been known as one of Prophet Muhammad’s legacies in spite of the Qur‘ān and the Sunnah. In conducting the ijtihād on the Qur‘ān, the Prophet used qiyās methodology through istinbat al-ahkam (legal determination from the Qur‘ān) and istihsān methodology through istidlal al-ahkam (defining a theorem from the Qur‘ān). These two ijtihād methodologies of the Prophet Muhammad have been used by all Muslim scholars to determine the law.

After the death of Prophet Muhammad, two different schools of thought arose, splitting Muslims into two groups. The first group comprised of Ibnu Abbas, Talhah, Aisyah, Abdullah Ibn Umar and other companions. This group perceived Islam through a textual approach. The second group regarded Islam through a contextual approach. This group comprised of Ibnu Mas‘ud, ‘Umar bin al-Khattab, Ali bin Abi Talib and others companions.

Muhammad conducted ijtihād in order to resolve social problems with no definitive law stated in the Qur‘ān. The manhaj al-fikr of Muhammad’s ijtihād through qiyās and istihsān are manhaj al-Tawasutiyah (moderate), manhaj al-fikri al-Tasamhīyy (tolerance), manhaj al-fikri al-Ishlahīyy (reformative), manhaj al-fikri al-Tatowwūrīyy (dynamic), and manhaj al-fikri al-Manhāfīyy (methodologic). It is noticeable that these thought paradigms of the Prophet, could be adopted as the essential rule to define the law to deal with the global spread of Islam.

**References**


