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**THE IMPORTANCE OF COMPARATIVE FIQH FOR
UNDERSTANDING CONTEMPORARY ISSUES AND EMERGENT
QUESTIONS**

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Abstract

In every age, there are always new issues and emergent questions that merit juristic and scholarly investigation and research, inviting Muslims to pay due attention to these issues and handling them from a Shari‘ah perspective. However, the developments and changes in this age are huge and dramatic, giving rise to a lot of questions whose Shari‘ah rulings need clarification. Hence, fiqh councils have been established, many conferences have been held, a

lot of books have been authored and new departments have been created in Shari'ah colleges to study contemporary issues and to find their rulings. In the same vein, I discuss in this research the importance of comparative fiqh for the juristic study of contemporary and emergent issues. This research is divided into three parts and conclusion. In the first part I discuss the definition of comparative fiqh, its subject matter and its importance. The second part explains the concept of contemporary issues and their characteristics. Part three discusses comparative fiqh and contemporary issues. The conclusion includes the most important findings and recommendations.

Keywords: Fiqh, comparative, issues, contemporary, new.

I. Definition of al-Fiqh al-Muqāran and Its Importance

Al-Fiqh al-Muqāran definition: The term "al-fiqh al-muqāran" is composed of two words: "fiqh" and "muqaran". To realize the meaning of this term, the word "fiqh" needs to be defined first, followed by the word "al-muqāran". After that the whole term needs to be defined as a name of a specific discipline.

Fiqh definition: Linguistically, 'fiqh' means understanding and knowing something (Ibn Manzūr and Al-Fayyūmī). Technically, 'fiqh' is defined as the knowledge of the Shari'ah practical rulings acquired from the detailed evidences (Al-Taftazany: 1/19 and Al-'Attar: 1/57).

Al-Muqāran definition: Linguistically, muqāranah has two meanings: first, combining and gathering. The second meaning is comparing. Technically, muqāranah stands for comparing two opinions to know the similarities and differences between them and to find which one is supported by stronger evidence (Ibn Manzūr, al-Jawharī and Majma' al-Lughah al-'Arabiyyah bil Qāhirah).

Definition of "al-fiqh al-muqāran" as a name of a specific discipline: Contemporary scholars disagree about the definition of the term "al-fiqh al-muqāran" when used as a discipline name. It can be defined as, "a discipline that focuses on gathering the scholars opinions regarding different fiqh issues and comparing them using a specific methodology (Ramadan: 8) ".

The process goes as follows: first, the scholars' views about a specific controversial fiqh issue are presented and the points of disagreement are defined. Next, the reasons for disagreement

are pointed out, followed by a presentation of the evidence of the opinions and how the evidence supports these opinions. After that, the opinions are discussed in a scholarly manner and the counter arguments are answered. All of the above is meant to identify the opinion that is supported by the stronger evidence and that is closer to the general principles of Shari'ah. Ultimately, the preponderant view will be selected with an elaboration of the reason justifying this selection; otherwise, a new opinion is formulated on the grounds of the evidence that the researcher deems stronger (Al-Farra: 7, al-Durainī: 1/23).

Importance of Studying Comparative Fiqh: There are a lot of benefits of studying comparative fiqh, among the most important of which are:

- i. Attempting to discover Allah's ruling regarding issues that scholars disagreed about.
- ii. Developing the fiqh skills through reviewing scholars' opinions in debatable questions and recognizing the scholars' ways to infer the Shari'ah rulings.
- iii. Combating fanaticism and removing it from fields of scholarly research.
- iv. Opening the door to utilizing the different fiqh schools and for selecting fiqh opinions that are preponderant or that realize the public interests in various contexts, times and places.
- v. Appreciating and benefitting from the efforts of previous scholars. This way, the Islamic legacy is safeguarded and the calls to merge, cancel or freeze the fiqh schools are thwarted.
- vi. Highlighting the richness of the Shari'ah and its applicability to all times and places.
- vii. Showing the value of fiqh and its close connection with the sources of legislation.
- viii. Demonstrating the necessity of studying Arabic, being the language of the Quran without which the Quran cannot be properly understood. Similarly, studying comparative fiqh shows the necessity of learning the occasions of revelation (asbab al-nuzūl), the abrogating and the abrogated (al-nāsikh wa al-mansūkh), Hadith Methodology (muṣṭalah al-hadīth), Principles of Fiqh (Uṣūl al-fiqh), and the rulings verses and hadiths ('āyāt wa ahādith al-ahkām) and their roles in the process of ijtihad (Al-Hakīm: 14, Al-Ashqar: 11, Al-Farra: 6, Al-Maṣrī: 4-5 and Al-Būṭī: 5-6).

II. The Definition and Characteristics of al-Qaḍāyā al-Mu‘āṣirah (Contemporary Issues)

The term, "al-Qaḍāyā al-Mu‘āṣirah" is composed of two words, namely, "al-Qaḍāyā" and "al-Mu‘āṣirah". To know the meaning of this term, the two words need to be defined separately first.

Definition of "al-Qaḍāyā": "Al-Qaḍāyā" is the plural of qaḍiyah which stands for a disputed issue that needs to be presented before a judge for investigation and judgment (Al-Baraktī: 203 and Majma‘ al-Lughah al-‘Arabiyah bil Qāhirah).

Definition of "al-Mu‘āṣirah": The word "al-Mu‘āṣirah" is derived from "al-‘aṣr" which linguistically means time. It is used to indicate present time or current age (Majma‘ al-Lughah al-‘Arabiyah bil Qāhirah).

Meaning of al-Qaḍāyā al-Mu‘āṣirah: "Al-Qaḍāyā al-Mu‘āṣirah" indicates new issues and questions that emerge in the current times and require the ijtihād of specialized scholars to clarify their Shari‘ah ruling (Yasīn: 6).

Characteristics of al-Qaḍāyā al-Mu‘āṣirah, The characteristics of contemporary issues include:

- i. Many of these issues are new; so they need thorough study, deep insight, great effort and accurate understanding; there is no room for hasty ijtiḥād or judgment due to their complex nature.
- ii. Contemporary questions that have been already researched represent a valuable asset and an Islamic legal content that continues to be relevant and appealing.
- iii. The fiqh of contemporary issues differs from the hypothetical fiqh in that it deals with real issues that happen to people and, therefore, there is great interest in knowing their rulings.
- iv. Most of these issues have caused distress and difficulties to those affected by them; so there is a pressing need for answers that relieve people from such distress through ijtiḥād and fatwa.
- v. The fiqh of contemporary issues aims at finding Shari‘ah solutions for modern problems in the social, political, economic and legal areas.
- vi. The contemporary issues give us a portrait of societies in terms of their intellectual, social, political, economic, historic, and literary life. That is because such issues relate to the various aspects of life.

- vii. The fiqh of contemporary issues helps us recognize great scholars who practise ijthad and fatwa; they engage with these problems and exert a lot of effort, using the principles of ijthad, without bias or fanaticism, to discover the Shari'ah ruling and to bring relief to the Ummah.
- viii. The discussion of contemporary issues in fiqh counsels leads to the cross-fertilization of the ideas of scholars and enables them to benefit from each other; it helps their collaboration to reach the correct Shari'ah ruling which, in turn, minimizes the possibilities of error and helps lay down the principles and guidelines of ijthad that helps the faqih in his effort to infer the Shari'ah rulings (Humīsh: 38 ff).

III. Importance of Comparative Fiqh for the Fiqh of Contemporary Issues and New Questions

Undoubtedly, contemporary issues that are not regulated by conclusive evidence provide a broad space for exercising ijthad by specialists and scholars of fiqh. Moreover, it is not possible to single out one mufti as the only one whose views regarding these issues are correct. That shows the significance of comparative fiqh when dealing with such emergent questions. The following points explain that further:

- i. The comparative fiqh opens the door for researchers to benefit from all schools of fiqh and to choose the preponderant opinions or the views that can bring greater public interest according to the context, time and place. The comparative fiqh enriches the faqih with the knowledge of previous scholars. So, he can apply previous scholars' fatwas if they are relevant to the contemporary issues or at least utilize the approaches and methodologies they used to study the questions of their time in his effort to find the correct Shari'ah rulings for the contemporary issue. Imam al-Nawawī said:
 "Know that knowing the madhāhib of the predecessors (al-salaf) and their proofs is greatly needed; that is because their disagreements in the [fiqh] branches (furu`) is a mercy. Citing their madhāhib along with their evidence enables well-versed scholars of fiqh to recognize the arguments of the madhāhib and to identify the preponderant and the outweighed opinions. That also helps clarify the ambiguous questions and highlights valuable insights; it trains learners through studying the questions and answers; it sharpens their minds and makes them stand out among the smart people. Furthermore, such study

enables learners to distinguish between the authentic and weak hadiths and between the preponderant and the outweighed evidence; it helps them to reconcile between conflicting ahādith and also between the ahādith whose literal meaning is applied and others whose implicit meaning is used. This way, no questions can confuse the learner except for rare cases (Al-Nawawī: 1/19)."

- ii. The comparative fiqh helps bridge the gap between Muslims and limits the effects of disunity factors; important among them is fanaticism for certain madhhab or view (Ramadan: 8).
- iii. The comparative fiqh provides relief for people because the differences of recognized schools of fiqh and mujtahid scholars makes things flexible; opinions that are more suitable and convenient can be selected as long as that goes in line with the principles of the religion and the objectives of Shari‘ah and does not conflict with a conclusive evidence or a clear text. Ibn Qudamah, may Allah shower his soul with mercy, said: "Indeed, Allah, by His Mercy, Might, Power and Sovereignty, has guaranteed that a group of this Ummah will continue to advocate the truth and will not be harmed by those who let them down until His final command is executed. He made the persistence of this group contingent on the existence of their scholars and dependent on their following into the footsteps of their imams and fuqahā'. He instructed that this Ummah follows its scholars just like the previous nations were required to follow their prophets. In every class of scholars, He promoted imams whose examples should be followed and whose opinions are the final say. In the early generations of this Ummah, He nominated prominent imams, through whom He erected the pillars of Islam and clarified confusing rulings. Their consensus is conclusive evidence and their disagreement is a broad mercy. Their stories revive hearts and following into their footsteps is a source of happiness. He distinguished some of them with high status and preserved their legacy and madhahib; so their statements are references of the rulings and their madhahib are sources of scholars' fatwas (Ibn Qudāmah: 1/3-4)."

IV. Conclusion and Recommendations

Findings

- Al-fiqh al-muqārṅ (comparative fiqh) is a discipline that focuses on gathering scholars' opinions regarding various fiqh issues and comparing them using a specific methodology. It has a lot of benefits for the Muslim society.
- Al-qaḏaya al-mu'aṣirah (contemporary issues) are the new questions that require exercising ijtihad by specialized scholars to find their Shari'ah rulings. They have many characteristics that distinguish them from other questions. Studying these issues brings a lot of benefits for society.
- The comparative fiqh makes it possible to utilize the various opinions of the scholars who practice ijtihad and to pick the opinions that realize the public interest according to the different circumstances, times and places.
- The comparative fiqh makes people's life easier and provides them Shari'ah solutions and alternatives for the various issues they encounter.

Recommendations

The following points need to be considered when practising ijtihād for contemporary issues:

- The mujtahid investigating the rulings of contemporary issues should be qualified for ijtihad; without such qualification no proper ijtihad can be exercised. That is important to prevent ijtihad from deviating from Allah's ruling and to ensure proper understanding of the objectives of Shari'ah as provided in the Qur'an and the Sunnah.
- No need for committing to a specific madhhab or to the views of a particular scholar if the contemporary question is open for ijtihad and accommodates disagreement.
- Unqualified pseudo-mujtahids who engage with contemporary issues using faulted approaches to examine Shari'ah texts should be called out to protect the sanctity of faith and the honor of Shari'ah (Al-Qaraḏawī: 281).

My closing prayer is, “All praise is for Allah—Lord of all worlds!” And may Allah send peace and blessings on Prophet Mohamed, his household and his companions.

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