

Usul al-Fiqh

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13. Taa'rud and Ijtihad

Taa'rud (conflict of evidences): Taa'rud means conflict. In Usul al Fiqh, Taa'rud means that two evidence of Shariah are of equal strength and they require opposite of each other. A conflict is thus not expected to occur if the two evidences are of unequal strength, because the stronger evidence will prevail. For this reason, there will be no conflict between a Qati and Zanni proof.

If, however, the opposite is required by 2 Quranic Ayat or by a Quranic Ayat and a Mutawatir Hadith (these two are considered equal in authenticity as explained earlier in the course) or by two Ahad Hadith, then, there is a conflict.

Conflict can only arise, if the rulings of the two evidences can not be reconciled, that is the subject matter of one can not be distinguished from the other or the time sequence of them can not be distinguished (that is it can not be ascertained which one is the latter).

A genuine conflict can hardly arise between Qati proofs. All such conflicts are apparent rather than real. Such apparent conflicts can be resolved by

- a. reconciliation,
- b. by specification or
- c. by giving preference of one over the other.

A conflict between Nasus (texts of the Quran and the Sunnah) and Ijma is inconceivable as Ijma can not violate Nass.

A Mujtahid must therefore, try to reconcile the apparent conflict in which case both the evidence will be applicable in different sets of circumstances. If this is not possible, he will try to prefer one over the other, thus at least one evidence will be kept. If this is not possible, then, he would see the time sequence and apply the principle of abrogation. In this way the later evidence will be retained and the earlier one in time will stand abrogated (However, such cases are very few). Please see the lectures on Naskh that is discussed earlier. If this is also not possible, both the evidences will be abandoned. When two evidences in conflict are Amm (general), one may try to distinguish the subject matter of application (for instance, one may be applicable to adult and the other to the minor or one may be applicable to married people and the other to unmarried people). If one evidence is Amm and the other Khass, the solution is Takhsis al Amm (specification of a part of Amm).

As regards, cases where both the rulings can not be retained because of apparent conflict, the following rules of preference should be applied:

- a. Clear texts will be preferred over unclear texts.
- b. Sarih (plain) will be preferred over Kinayah (allusive), Haqiqi (literal) over Majaji (metaphorical) and so on.
- c. Ibarah al Nass will be preferred over Isharah al Nass and so on. (see Interpretation chapter of this course).
- d. Mutawatir Hadith will be preferred over Mashhur and Mashhur will be preferred over Ahad.
- e. Hadith transmitted by Faqih or leading companions are preferred over others.
- f. Another rule of preference is that affirmative rule takes priority over regative (please see example in the text book).
- g. Similarly prohibition takes priority over permissibility.
- h. If attempts at reconciliation or preference fail, then resort should be taken to abrogation (Naskh).

Rules or view points on Naskh may be seen in earlier discussion. In the case of conflict of two Qiyas (analogies), if the two can not be reconciled, one may be given preference.

Ijtihad: Ijtihad has been derived from the root word *Jabada*. Ijtihad literally means striving or self-exertion. Ijtihad consists of intellectual exertion. Ijtihad is a very broad source of Islamic law and comes after the Quran and the Sunnah.

The Quran and the Sunnah were completed at the time of death of the Prophet (SM). Ijtihad, however, continues and this is the source or methodology which gives Islamic law, its adaptability to new situations and capacity to tackle all new issues and its harmony with the Quran and the Sunnah.

The sources of Islamic law other than the Quran and the Sunnah are essentially manifestations of Ijtihad. When clear rule is available in the text (Nass) of the Quran and the Sunnah, Ijtihad is not applicable. The findings of Ijtihad are essentially Zanni in character. The subject matter of Ijtihad is the practical rules of Shariah not covered by Nasus. Ijtihad is a duty of the scholars. If the issue is urgent, Ijtihad is compulsory on each competent scholar (Fard al Ayn or Wajib al Ayn). If the issue is not urgent, it is a collective obligation (Fard al Kafai or Wazib al Kafai).

A scholar is supposed to avoid *Taqlid* (blind following of another scholar). Taqlid is permissible only for a layman. Ibn Hazm believes Taqlid is not permissible for any one. Shah Wali Ullah says, Taqlid is not permitted for a person who can investigate even some matters (Ref.: 'Al-Insaf fi Bayan-al-Asbabil Ikhtilaf', by Shah Wali Ullah).

Ijtihad is validated by the Quran and the Sunnah and the practice of the Sahabas. The Quran - 59:2; 9:122; 29:69; 4:59 have been quoted in support of Ijtihad. These Ayats are Zahir in nature (i.e., liable to interpretation and as such only give rise to probability).

Several hadith are quoted in support of Ijtihad. Of them, two are very important. First is the hadith in which Muadh bin Jabal replied to the Prophet (SM) that he would resort to Ijtihad, if he does not find a solution in the Quran and the Sunnah and the Prophet (SM) affirmed him (Narrated by Abu Dawood). Second is the hadith in which the Prophet (SM) said that the Mujtahid will get two rewards if he is correct and one reward if he commits a mistake (Abu Dawood).

Requirements of Ijtihad have been laid down by some scholars. Nothing has been mentioned in this regard in the Quran and the Sunnah. Abul Hussain al Basri, laid down for the first time the qualifications of a Mujtahid in the 5th century Hijra which was later accepted by Gazali and Amidi. It is true that Ijtihad is the function of the competent scholars. The following are the requirements:

- a. Good knowledge of Arabic language.
- b. He must be knowledgeable in the Quran and the Sunnah and related subjects.
- c. He must be knowledgeable of previous scholars on the Ijtihad carried out by them.
- d. He must know the Maqasid of Shariah.
- e. He must be an upright person and must be capable of distinguishing between strong and weak evidence.

It may appear that the qualifications are very tough. But it is not really so. These are all attainable in reasonable time by any sincere and competent person. The majority of Ulama hold that if a person is capable of making Ijtihad in one area, he can do Ijtihad in all areas. Procedure of Ijtihad is that the Mujtahid must first look at the Quran and the Sunnah. Only if solution is not found there, he may resort to Ijtihad. Rules of discussed previously (in the respective chapters on these).

The majority hold that Ijtihad is liable to error. The minority hold that each of the several verdicts may be regarded as truth on their merit. (Shawkani, Irshad).

Mujtahids have been classified in various ways by some scholars according to their understanding (See Kamali). The basic classification can be as follows:

- a. Major Mujtahids, who made their own rules of Ijtihad and did comprehensive Ijtihad.
- b. Average or other Mujtahids who in most part followed the rules of Ijtihad of other scholars and who undertook Ijtihad in some areas only.

Some scholars were against Ijtihad after the first few centuries. This view has now been rejected. Shawkani said that this view is to be utterly rejected. Iqbal says that closure of gate of Ijtihad is 'a pure fiction'. Progress of Islamic civilization in future depends on Ijtihad by competent scholars. In future, more and more Ijtihad is likely to be collective.