

## MISUNDERSTANDING ABOUT THE *USULI* MAXIM “NO *IJTIHAD* IN THE PRESENCE OF A TEXT” AND ITS CLARIFICATIONS

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### ABSTRACT

There is a misunderstanding among some students and scholars of Islamic jurisprudence that if a Qur’anic or Sunna’ic text is available on a particular issue, in order to derive the rule for this issue, neither is *ijtihad* required nor is it allowed. Rather, this text is sufficient to know the rule and implement it. This misunderstanding goes back to a well-known *usuli* maxim: “No *ijtihad* in the presence of a text.” Using the method of critical analysis, this research intends to remove this misunderstanding and provide the correct understanding about this maxim and issues related to it.

Keywords: Misunderstanding, *Ijti*had, Qur’anic Text, Sunna’ic Text, Clarifications

## 1. INTRODUCTION

Since the beginning of time, human civilizations have continuously been developing and changing. In every generation, numerous new issues and problems arose that were dealt with in some way. Our present generation is an excellent example. The onslaught of technology and rapid changes in societal behavior and culture keep bringing new issues and problems to sight. Human beings, including Muslims, need to know the solutions and rules for these issues and problems. Secular and Western solutions are readily available for many of them. However, as Muslims believe in the Islamic Shari`ah, these solutions are not suitable or acceptable to them. They need Islamic solutions. In order to have these Islamic solutions and rules of Shari`ah for these issues and problems, qualified Muslim jurists have to derive them from the sources of Shari`ah, with utmost effort. This is called *ijtihad*. Among these sources are the Qur`anic and Sunna`ic texts.

This is on one hand. On the other hand, two different types of maxims are used in Islamic jurisprudence, i.e. Islamic legal maxim (*qa`idah fihiyyah*) which is a rule that is applicable for a number of issues; and *usuli* maxim (*qa`idah usuliyyah*) which is not a rule, rather it is a principle used to derive the rules of Shari`ah based on its sources. An *usuli* maxim is “No *ijtihad* in the presence of a text.” The ‘text’ here in Arabic is called “*nass*.” As a jurisprudential term, the word “*nass*” has more than one meaning. The most famous among them is: “*nass* is the words of the Qur`an, and Sunnah of the Prophet (pbuh) whose meanings are so clear and fixed that they do not bear any other meaning and they are authentic in their existence.” In other words, *nass* is not every word of the Qur`an and Sunnah, rather it is a certain type of word or text, which has only one fixed meaning and does not have any doubt in its present existence. This is called *qat`i al-thubut wa qat`i al-dalalah* in Arabic. But because of the spread of blind imitation (*taqlid*), and the rare existence of *ijtihad* for many centuries some people added to *nass* all that was written in the past [such as texts that are *qat`i* (authentic) in terms of their existence but their meanings are *zanni* (speculative), i.e., they bear more than one meaning; texts that are *zanni* according to their existence, but they are *qat`i* in their meaning; and texts that are *zanni* in both their existence and meaning; some people have even added to *nass* texts of *fiqh* books]. So gradually, a misunderstanding began rooting itself among many Muslims and also some jurists regarding the maxim mentioned above. Using analytical and critical methods, this paper intends to discuss this misunderstanding further and provide the right understandings and clarifications about this maxim.

## 2. LITERATURE REVIEW

A number of contemporary Muslim scholars, such as Zaydan, Salqini, al-Zuhayli, al-Qaradawi, discuss this *usuli* maxim briefly but do not elaborate issues and misunderstandings related to it. Some academic theses have been written on this maxim, relating it to some practical implementation. One such M. A. thesis has been written by Al-Badr. The introductory chapter of his thesis is related to the present research. In it he explained the maxim and mentioned its proofs from the Qur`an and Sunnah. Subsequent chapters are on practical implementation. However, he has not touched elaborately upon the misunderstandings related to this maxim. Sano has written an article on this topic, discussing a number of issues related to this maxim. But he did not give examples of *ijtihad* in the presence of a text which is *qat`i* in terms of its existence and meaning. `Imarah has written a book on the topic of text and *ijtihad*. He has discussed a number of issues and misunderstandings about this maxim. All of these sources are in Arabic. As per knowledge of the researcher, writings in English on the topic are rare. The researcher himself has written a paper on the closing or opening of the gate of *ijtihad*, which does not touch upon this maxim. The present paper highlights issues related to this maxim and discusses misunderstandings about it and their clarifications, based on some of these Arabic sources.

## 3. CORRECT STANDS OF A MUJTAHID TOWARDS THE QUR`ANIC AND SUNNA`IC TEXTS

3.1. If a text's existence is *zanni* (speculative), but its meaning is *qat`i* (confirmed), there is no difference of opinion among the jurists about the necessity of *ijtihad* to determine the soundness of the existence of this text. Many *akhbar al-ahad* (solitary *ahadith* of the Prophet (pbuh)) are considered to be *zanni* in terms of their existence. Therefore, these *ahadith* require *ijtihad* to be sure about their sound existence.

3.2. If a text's meaning is zanni (speculative), i.e. it has more than one meaning, but its existence is qat'i (confirmed), there is also no difference of opinion among the jurists about the necessity of ijtiḥad for selecting the appropriate meaning of this text. This text has two types. First, those words/verses of the Qur'an whose meaning is zanni, i.e. they have more than one meaning. Second, those ahādith of the Prophet (pbuh) whose existence is authentic, i.e. they are ahādith mutawatirah, but their meaning is zanni, i.e. they have more than one meaning. In order to select the appropriate meaning of these verses of the Qur'an and ahādith of the Prophet (pbuh), ijtiḥad is required.

3.3. If a text is zanni in terms of both its meaning and existence, there is likewise no difference of opinion among the jurists about the necessity of ijtiḥad for determining its sound existence and selecting its appropriate meaning. Many akhbar al-ahad (solitary ahādith of the Prophet (pbuh)) fall under this category, which require the type of ijtiḥad mentioned above.

3.4. A fourth type of text is qat'i (confirmed) in terms of its meaning, i.e. it has only one meaning; and it is qat'i in terms of its existence. This type of text has two sub-types. First, those words or verses of the Qur'an that have only one meaning. Second, those ahādith mutawatirah that have only one meaning. This type of text requires a detailed clarification.

#### **4. DETAILED CLARIFICATION ABOUT TEXT THAT IS QAT'I IN TERMS OF BOTH ITS MEANING AND EXISTENCE**

##### **4.1. Misunderstanding about This Type of Text**

The maxim mentioned earlier, i.e. "No ijtiḥad in the presence of a text" is also related to this type of text. It is as if this maxim demands that the existence of this type of text means that there is no necessity of ijtiḥad, and that ijtiḥad is not even allowed in this case. The statements of a number of contemporary authors of Usul al-Fiqh indicate this view. For instance, al-Qaradawi says: "The field of ijtiḥad is every Shari'ah issue for which there is no textual proof which is qat'i in terms of its existence and meaning." It means that if there is a textual proof which is qat'i in terms of its existence and meaning, there will be no ijtiḥad. In another place, he says: "[The issue for which] a qat'i textual proof is available, there will be no ijtiḥad."

Referring to Imam al-Ghazali, another contemporary scholar, al-Zuhayli, says that the place [field] of ijtiḥad is every Shari'ah rule for which there is no qat'i textual proof. This means that if there is a textual proof which is qat'i in terms of its existence and meaning, there will be no ijtiḥad.

Likewise, a third contemporary scholar, Salqini, says: "So a textual proof (which is qat'i in its chain of narration and meaning) is not considered to be a field of ijtiḥad."

Countering and criticizing the above view, 'Imarah says that the existence of a text which is qat'i in terms of its meaning and existence does not mean that there is no need of ijtiḥad. Rather, there is necessity of ijtiḥad, but its nature and necessary limitations should be determined.

##### **4.2. Clarification about the Nature and Limitation of Ijtiḥad with a Qat'i Text**

'Imarah determines the nature and limitations of ijtiḥad with a text which is qat'i in terms of its meaning and existence in the following points:

4.2.1. In order to implement the rules of this text on newly arisen issues, there should be ijtiḥad for understanding its meaning. There should not be any difference of opinion regarding this type of ijtiḥad.

4.2.2. In order to know the similarity and difference between the meaning of this text and other similar texts on the same issue, a comparative study is necessary, which is a kind of ijtiḥad.

4.2.3. The main issue mentioned in this type of text may have different branches and small sub-issues. In order to derive the rules for them from this type of qat`i text, ijtiḥad is required.

4.2.4. In order to create legal maxims and codification of the rules from this type of qat`i text, ijtiḥad is necessary. There is no difference of opinion in this regard.

The researcher adds the following points:

4.2.5. Sometimes a text is qat`i in terms of its existence, and it may seem that it is also qat`i in terms of its meaning which has a general connotation or implication (`umum). But in order to be sure if there is any textual or other proof that may make this general meaning as specific (mukhassis) or not, a kind of ijtiḥad is required.

4.2.6. Likewise, sometimes a text is qat`i in terms of its existence, and apparently it seems qat`i in terms of its meaning which is not qualified with any attribute (mutlaq). But in order to be sure if this text is really mutlaq, or if any attribute has been added to its meaning (muqayyad) in any similar text elsewhere, or not, there is necessity of conducting ijtiḥad.

4.2.7. Moreover, this type of qat`i text sometimes describes a rule briefly without any details of it. It is necessary to do ijtiḥad to find out if there are any details about this rule in any other text of the Qur`an and ahadith of the Prophet (pbuh).

## 5. EXTERNAL REASONS FOR WHICH IJTIHAD IS REQUIRED WITH THE EXISTENCE OF A TEXT (WHICH IS QAT`I IN TERMS OF ITS EXISTENCE AND MEANING) ON AN ISSUE

5.1. If there is a text which is qat`i in terms of its existence and meaning, which establishes an individual right or interest (masalah fardiyyah), but contradicts public interest (masalah `ammah), ijtiḥad is required to consider this contradiction. The result of this ijtiḥad should be the preference of public interest over individual interest.

5.2. If a rule for a particular issue is established by this type of text, an ijtiḥad is required to find out whether all the conditions of implementing this rule are available or not. If any of the conditions is not fulfilled, the implementation of this rule must be postponed until this condition is fulfilled.

5.3. A rule is established through this type of text, yet an ijtiḥad is necessary to see whether the person to whom this rule is related has any reason of getting concession (rukhsah). If such a reason is found, this rule will be changed from obligatory (wajib) to recommended (mandub), or the rule will remain obligatory but the amount of work will be reduced, etc.

5.4. A rule is established by this type of text, yet there is need of ijtiḥad to find out whether the person to whom this rule is related faces any type of necessity (darurah) or not. If he/she faces any darurah, then this rule will be changed from forbidden (haram) to permitted (halal) or obligatory (wajib).

5.5. Prohibition of hudud related crimes and their punishments are established through this type of text. But it is necessary for a judge to do ijtiḥad to ascertain that there is no doubt in establishment of the crime against the accused person. If he finds that there is doubt, then the punishment of hudud will be changed to discretionary (ta`zir) punishment.

5.6. Permission (rukhsah) of doing a deed is mentioned in this type of text, yet an ijtiḥad is required to find out whether doing this permitted deed contradicts the wellbeing of the family of the person who wants to do this deed. If it goes against the wellbeing of his/her family, then this permitted deed will be changed to disliked (makruh).

5.7. The way of doing a deed is established by this type of text, yet there is a need to conduct ijthad if the circumstances change. This ijthad will be about finding an alternative way to perform this deed.

## 6. EXAMPLES OF IJTHAD IN THE PRESENCE OF TEXTS THAT ARE QAT'I IN TERMS OF THEIR EXISTENCE AND MEANING

6.1. Al-mu'allafat qulubuhum (those whose hearts are reconciled) are a category of non-Muslims who are entitled to receive a portion of zakah. This is an obligation established through a text which is qat'i in terms of its existence and meaning. Allah says: "Surely charities are for the beggars, poor, for those who work for them and for those whose hearts are reconciled (al-mu'allafat qulubuhum)." (Al-Tawbah, 9: 60). The Prophet (pbuh) himself and the first caliph Abu Bakr implemented this obligation. All Companions of the Prophet (pbuh) unanimously agreed upon it. Despite all of these precedences and presence of qat'i text, the second caliph `Umar conducted an ijthad on this rule when a condition of implementing the rule of this text, i.e. weakness of Muslims, was not fulfilled. Therefore, when Muslims became strong, `Umar stopped giving zakah to al-mu'allafat qulubuhum.

This ijthad of `Umar does not mean the nullification of the text, or it becoming historical, or related to a certain period of time. Rather, this text remains as it was from the beginning of Islam. Moreover, this ijthad does not mean postponement of the implementation of this rule forever. If a Muslim ruler in any place and time finds that the public interest of the ummah requires making a good relationship with the enemies of Muslims through paying them a portion of zakah, then there should be a new ijthad for determining the conditions of implementing the original rule. One of these conditions is weakness of Muslims. If they are really weak, and need support of non-Muslims, then yes, a portion of zakah should be given to these enemies. Therefore, the result of this ijthad should be to postpone the implementation of this rule at the time of absence of a certain condition, and reimplementation of the rule at the time of availability of a certain condition.

6.2. Punishment of theft has been established by a Qur'anic text which is qat'i in terms of its existence and meaning. Allah says: "And amputate the hands of male and female thieves." (Al-Ma'idah, 5: 28). But when a famine occurred in Hijaz, `Umar did an ijthad and postponed the implementation of hadd punishment for theft because general social conditions for the implementation of the hadd punishment for theft were not available, or because the hadd punishment is supposed to be removed when there is any doubt; the doubt of necessity of stealing during a famine was available.

Again, this ijthad neither nullified the text on the hadd penalty of theft nor its rule. Likewise, this text is not related to a particular period of time. Rather, the result of the ijthad was to postpone the implementation of the hadd for the time being. Moreover, this postponement was not for all places, rather, it was only for Hijaz because the famine occurred there. This postponement was also not forever. Rather, the punishment was re-implemented when the doubt of necessity to commit stealing was deemed gone. Additionally, implementation of the hadd punishment for theft during a time when there is the doubt of necessity to commit it, is considered to be injustice.

6.3. Marriage of a male Muslim with a female who is of the people of the Book is permitted (rukhsah), which is established through a Qur'anic text which is qat'i in terms of its existence and meaning. (See the verse of Al-Ma'idah, 5: 5). But during the caliphate of `Umar, when the Islamic empire became wider, the number of females of the people of the Book increased and male Muslims started to prefer them as their wives over Bedouin Muslim females, many of whose behavior was rude. Observing this situation, `Umar feared that the male Muslims would abandon female Muslims, and also feared the influence of the females of the people of the Book on the governors and rulers in the state, and also feared their influence on the `aqidah of Muslim children. Then `Umar did ijthad and advised male Muslims not to marry females of the people of the Book. However, he did not forbid it.

This ijthad neither cancels the text, nor indicates that the text is related to a particular period of time. Likewise, the cancellation of the rule of rukhsah was not forever. Rather, this ijthad was to make rukhsah as disliked, for the time being, for a particular reason; this public interest and dangers were not present at the time of its revelation, but came up during Umar's caliphate.

## CONCLUSION

1. An usuli maxim is not a rule, rather it is a principle used to derive the rules of Shari`ah based on its sources. One of this type of maxims is “No ijtiḥad in the presence of a text.”
2. Nass (text), as an usuli term, is the words of the Qur`an and Sunnah of the Prophet (pbuh) whose meanings are so clear and fixed that they do not bear any other meaning and they are authentic in their existence.
3. An important misunderstanding related to the above maxim is that at the time of rare existence of ijtiḥad and blind taqlid, many Muslims and some jurists started to consider that the presence of any text does not permit ijtiḥad.
4. Some contemporary Muslim scholars have misunderstood and maintained that no ijtiḥad is allowed with the existence of a text which is qat`i in terms of its existence and meaning.
5. A number of internal reasons are there because of which ijtiḥad should be conducted on text which is qat`i in terms of its existence and meaning.
6. A number of external reasons are there because of which an ijtiḥad should be made for the rule which is mentioned in a text which is qat`i in terms of its existence and meaning.
7. The second caliph `Umar was a pioneer in conducting ijtiḥad with the existence of texts which are qat`i in terms of their existence and meaning.
8. This type of ijtiḥad does not mean to nullify the text or its rule. Rather, the result of this ijtiḥad is to postpone the implementation of a certain rule for the time being because of the absence of certain conditions of its implementation. It also means re-implementation of this rule once the conditions are available again.

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