Role of Ngo's in Pakistan: An Overview

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Research Methodology:

Pakistan as an important atomic power with significance Geo-political location is eye catching and burning issue of research not only in international affairs but academicians from all areas of social sciences have studied its society and state therefore role of NGO's has been focused for couple decades in print and electronic media. Research departments of think tanks, research centers and universities provided lot of food for thought and identification of grey areas to make our topic understandable. On line data and published reports of international and national institutions was very helpful, purposeful and productive for our study. Present century has been entitled as information age therefore regularly being conducted conferences, forums, seminars and discussions publish their proceedings to facilitate the researchers .All available information and data is impossible to get studied and probed therefore ranking and categorization was made but fresh information, data and newly published reports and books were preferred. It had been complicated process to differentiate between biased and unbiased sources because society and state in Pakistan is not easy to declare secular or religious. In this regard this study considered only credible sources.

Introduction:

Pakistan is population wise 6th largest country in the world with highest growth rate.(1) Extreme poverty and under development in Pakistan obscure the reality of a country which has variety of resources and entrepreneurial skill to help economic growth. Political instability and devastating floods are major obstacles in this regard. The country's arable land is out standing by potential but only 25% of the total land area is under cultivation. Share of agriculture at the time of creation of Pakistan was around 53% and after 65 years a significant decline is observed, now it is 26% of G.D.P(2) Exploitation of natural resources has been slow due to shortage of capital and domestic political constraints. Pakistani energy grid has become a great challenge which is failing to meet the growing needs. Literacy rate is very low.(3) Violence is another burning issue of the society.(4) Despite all these Pakistan is mismanaged country because ruling elite has failed has failed to set examples of basic honesty and decency. Lacking of coherent and inspiring political culture is the basic short coming and crisis.

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- Hussain Hamid Hassan, Usul al-Fiqh, (Islamabad: Dar al-Sidq, 1999) p. 293.
- Shaybani, Muhammad bin Hassan, al-Asal, edt. Abu al-Wafa al-Afghani(Karachi, Idarat al-Quran wa al-Uloom al-Islamiyyah,n.d.) al-Asl, VoLl, p.23 cf.
- Ahmad Hasan, The Early Development of Islamic Jurisprudence (Islamabad: Islamic Research Institute, 1988) p. 140.
- ¹⁰ Ibid,p.141
- ¹¹ Ibid,p.141.
- ¹² Ibid, p. 145.
- Hashim Kamali, Istihsan and Renewal of Islamic Law, Islamic Studies Occasional papers 58, p. 17.
- Ibn Abd al-Bar, al-Intiqa fi Fadhail al-Thalathah al-aimah(Beirut: Daral-Kutub al-ilmiyyah) vol.1, p.143
- Sahih Muslim, Kitab al-Talaq, Bab al-Mutallqah Thalathan, No 1480.
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² Ibid

al-Bazdawi, Usul al-Bazdawi, in Abd al-Aziz al-Bukhari, Kashf al-Asraf, (Beirut: Dar al-Kutub al-Ilmiyyah, 1997) Vol.4, p. 4

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not interpret the texts merely with reference to their outward meaning, but in terms of the objectives which they seemed to be designed to serve. This justified not only the use of common sense, but also practical convenience and administrative considerations in actual application of legal doctrines. The point is illustrated with few examples.

The authoritative rule regarding uncultivable land was that whosoever cultivated it became its owner. Imam Abu Hanifah considered that if this rule were to be applied absolutely, it would lead to inconvenience and mutual conflict. Hence he bound its application with the permission of the ruler, and ruled that the land made cultivable would belong to the person who cultivated it only if he had done so with the permission of the ruler.

The Madani jurists held sale of fruits before they were ripe to be prohibited on the basis of several traditions from the Prophet (s.a.w.s). Imam Abu Hanifah interpreted the traditions to signify, not a prohibition of all kinds of sale of fruits until they were ripe, but the sale of unripe fruits with the stipulation that they would be left on the tree till they became ripe because such stipulation introduced an element of gharar i.e. uncertainty and risk in the transaction.

Awzai cites a tradition to the effect that the spoils of the enemy soldier belonged to the Muslim soldier who had killed him. Imam Abu Hanifah interpreted it that it belongs to him, only when the commander had made the announcement: whoever kills a person, will own the spoils". Thus, he had restricted the interpretation or application of text because of administrative or other consideration.

We observe in the above cases that Imam Abu Hanifah introduced rationality and objectivity in the interpretation of a text and judged texts on the grounds of rationality and the reason and objectives which the text intended to achieve.

Conclusion:

In this study we have tried to establish that Istihsan is an approved Shariah proof and not an arbitrary opinion. Anchored primarily in Qiyas, it has provided equitable solutions for existential legal problems of Muslim society, prompted by necessity and public need. It is a dynamic principle that makes the Islamic law adapt to the changing needs of the society. It is an instrument of change and adaptability in Islamic jurisprudence. It has also promoted values of fairness and equity in legal reasoning.

Imam Abu Hanifah, through his extensive use of ray. Qiyas and Istihsan, has developed the figh as a vibrant and dynamic legal, system which has the ability to adopt itself to the changing needs of the society in every age. Allama lqbal in his "Reconstruction of Religious Thought in Islam" has rightly held that the school of Abu Hanifah possesses much greater power of creative adaptations than any other school of Mohammadan Law" and this is obviously because of its conformity with reason and supremacy of rationality in Fighi judgments.

Istihsan, Salam, qard and many other transactions although the general legal rule does not allow them.(13) The reason is that people need such transactions and the neglect of such benefits and interests may cause severe hardship for the society.

II- Relationship between Ra'y and Tradition

As we have mentioned earlier, Imam Abu Hanifah has been blamed for neglecting tradition from Holy Prophet (s.a.w.s) in favour of his personal opinion. How far, this criticism is valid? In the following lines we have attempted to answer this question.

Imam Abu Hanifah strongly believed in the authoritativeness of Hadith. In one of his leading statements he said:

I follow Allah's book first. When I do not find rule in it, I follow the Sunnah of Allah's messenger and sound traditions from him which have been transmitted through reliable persons. (14)

This passage shows that Imam Abu Hanifah considers Sunnah as primary source of Shariah. He, however, accepted traditions only when he is fully satisfied as to their authenticity.

He strongly refutes the blame that he neglected Hadith. He said: "When the authenticity of Hadith is established and ascertained, that is my madhhab". He rejected only those solitary traditions which were not authentic in his opinion. On this basis he did not accept the Hadith of Fatimah bint Qays regarding maintenance, and ruled that a divorced woman is entitled to maintenance and accommodation during waiting period ('iddah). It is interesting to note that Hadrat 'Umar (r.a.t.) also did not accept the solitary tradition of Hadrat Fatimah bint Qays, on the ground that she may not have properly understood the Hadith (15) On the same ground he did not accept solitary tradition regarding authority of guardian in the marriage of an adult girl and acknowledged her right to contract her marriage.

Imam Abu Hanifah, also does not accept a tradition when it opposes the general principles of Shariah because a general principle is derived from a number of texts collectively, so it should take precedence over solitary tradition. He, therefore, did not accept the musarrat Hadith on the ground that it contradicted the Shariah principle of daman i.e. compensation. The established principle of Shari'ah is that compensation of things is paid by giving similar thing if they have their similar, or by giving their value if they do not have their similar while the hadith suggested on Sa' of dates as compensation for the milk consumed by the buyer. (16)

The reason for this strict attitude towards traditions is that he wanted that no falsehood is attributed to the Holy Prophet (s.a.w.s). Such strictness in accepting traditions does not mean that he neglected tradition for his ra'y. The fact is that he accorded over-riding authority to the traditions from Holy Prophet (s.a.w.s).

Ray' played an important role in interpreting and working out the legal implications of texts in Hanafi jurisprudence. Imam Abu Hanifah did

Istihsan to mean general principle or a legal rule. Al-Shaybani in his writings often says: "We part with Qiyas and follow Istihsan", or "Qiyas would be but we do not follow it". Here he refers to a legal rule or general principle which is applied in ordinary circumstances.(8) Such legal rule is given up in special and extraordinary circumstances, and recourse is made to a special rule called Istihsan which is applied in extraordinary circumstances. The point can be illustrated by the following example:

If a person purchased an article and then he discovered defect in it after he had used it, now the question is whether he can return it to the seller or claim some compensation for defect. Al-Shaybani holds that if the article is mortgaged or given to some one as a donation by the purchaser, all such acts according to Qiyas, are indications of the purchase's assent. Hence, the goods cannot be returned on the plea of defect to the seller. In this example, it is evident that Qiyas simply means a general rational ground rather than technical Qiyas which explicitly involves a maqis 'alayh (original basis)(9). Al-Shaybani validates the sale of wine and swine by the protected non-Muslim (ahl al-Dhimmah) because they are valuable goods according to them. In this case again he exercised Istihsan, and abandoned Qiyas because of a tradition of Hadrat Umar (r.a.t.) reported to him on this point. In this example again, the word Qiyas has been used in the sense of general rule or rational ground.(10)

It would not be out of place to mention that departure from Qiyds and acting in accordance with a given situation is not peculiar to Hanafi's of Iraq. Hadrat 'Umar's acts of litihad i.e. stopping the amputation of the hands of thieves during the days of famine, declaring three talaq pronouncement as triple divorce, banning sale of slave-mothers, prohibiting marriage with a woman of ahl al-kitab in certain cases, in fact fall under Istihsan,(11). Thus, the theory of Istihsan has, in fact roots in the period of companions of Holy Prophet (s.a.w.s), especially in the judgments of Hadrat Umar (r.a.). We note that Hadrat 'Umar's primary consideration in these judgments was removal of hardship and inconvenience caused by the application of rigid law. We have already observed that the hallmark of Hanafi's Istihsan is attainment of ease and convenience in legal injunctions. Istihsan is invoked when the application of general legal rule causes hardship and inconvenience and leads to undesirable results. Here we can conveniently compare principle of Istihsan with doctrine of equity in western jurisprudence, which is grounded in the idea of fairness and conscience, and derives legitimacy from a belief in natural law and natural justice beyond positive law(12).

The principle of Istihsan also takes care of the interests and benefits of an individual and society. Thus we observe that in many cases the Hanafi jurists gave their legal rulings on the basis of public interest, and accommodated exigencies of necessity and public need. The Hanafi jurists sometimes elevate a need to the rank of necessity if they find that it concerns the public at large. On this basis they have allowed Ijarah,

in a number of ways having regard to its different aspects and characteristics. Some of the definitions formulated by Hanafi jurists are as follows:

- 1. Abu al-Hasan al-Karkhi (d.340 A.H) defines Istihsan as: "Departure from the existing precedent by taking a decision in a certain case different from that on which similar cases have been decided, for a reason stronger than the one that is obtained in those cases".
- 2. Renowned Hanafi jurists Sarakhsi (d.483 A.H) adds to the above definition that "the precedent that is set aside by Istihsan normally consists of an established Qiyas which may be abandoned by a superior proof, namely the Qur'an, Sunnah, darurah (necessity) and a stronger Qiyas" Istihsan thus in the analysis of Imam Sarakhsi consists of two analogies: one of them is patent and week in effect and it is called Qiyas, and the other is latent and stronger in effect and is called Istihsan.
- 3. According to Bazdawi. "It is moving away from the implications of analogy to an analogy that is stronger than it, or it is the restriction of analogy by an evidence that is stronger than it".(5)
- 4. Sa'ad al-Taftazani described Istihsan in the following words: "Istihsan is an approved evidence of Shari'ah. It occurs as opposed to patent analogy (Qiyas jali) and it is exercised when it is stronger than analogy. It gains strength either by tradition or consensus, or necessity or latent analogy"(6) From the above description of Istihsan following conclusions may be drawn:
 - 1- Istihsan is a departure from a general rule, the generality of a text, or effective cause of an analogy for some more valid, effective and stronger proof of Shariah that necessitates that departure.
 - 2- This proof is sometimes a latent analogy, a text, a consensus, necessity or the principle of removal of hardship (raf' al-haraj).

Some modem jurists have mentioned maslahah (public interest) among the proofs that invoke Istihsan, and call for it. The fact is that Istihsan by maslahah is included in the meaning and scope of Istihsan by necessity Istihsan bil darurah because maslahah (benefits and interests) recognized by the Shari' ah consist in necessities and needs.(7) Thus, for necessity and public need (darurah and hajah) departure can be made from a general principle or a rule of precedent. In other words Istihsan can be invoked in case of necessity and public need. On this very basis, the Hanafi jurists have validated the advance sale of manufactured goods (i.e Istihsan) although the general legal rule prohibit is the sale of non-existent objects.

While describing Istihsan in Hanafi legal theory, it is pertinent to note that the Hanafi scholars generally use the word Qiyas in the context of

Role of *Ra'y* and Istihsan in Hanafi Legal Theory

Muhammad Tahir Mansoori

The significance of reason and personal opinion in Hanafi legal theory can hardly be over-emphasized. Imam Abu Hanifah (d. 150 A.H) the founder of Hanafi School of Law is known for his extensive use of personal judgment, qiyas i.e. analogical deduction and Istihsan i.e. juristic preference. His frequent exercise of personal opinion, acquired for his School the title of ahl al-Ra'y i.e. upholders of personal opinion. For this approach, he was charged by the traditionists with arbitrariness in legal reasoning, who ignored the tradition of Holy Prophet (s.a.w.s) in favour of his personal judgment.

In his popular criticism of Istihsan, Imam Shafi'i says: "He who practices preference (Istihsan), assumes unto himself the power of law making".(1) He further says that he who uses Istihsan acts as if he were left without guidance from God and comes to whatever conclusion he please, while the Qur'an declares that man is not left without guidance.(2) Is Istihsan a whim and arbitrary opinion as claimed by Imam Shafi'i or it is a valid method of legal reasoning anchored in the Qur'an, Sunnah, Ijma' and Qiyas? Did Imam Abu Hanifah neglect Sunnah in favour of Ra'y as asserted by the traditionsist? These questions have been addressed in this paper. The paper presents juristic exposition of the concept of Istihsan and the role it has played in the enrichment of Islamic legal thought both in the classical and modem periods. The paper also studies and examines the relationship of Ra'y and tradition in Hanafi jurisprudence.

1. Meaning and Significance of Istihsan:

Imam Abu Hanifah is reputed for giving his legal opinion frequently on the basis of the principles of Istihsan. His extensive reliance on Istihsan gave rise to severe criticism by the traditionists who characterized Istihsan as a form of arbitrary indulgence in personal preferences and adjudication without textual evidences. In response to their objections, the Hanafi jurists have tried to establish that Istihsan is a valid Shariah proof and not adjudication by whims. It is anchored in givas which a recognized Shariah proof. Besides, it derives legitimacy from the texts that emphasise ease, convenience, facilitation and removal of hardship in legal ahkam. Thus, Istihsan is not outside the sphere of recognized proofs of Shari'ah.

In its literal sense the word Istihsan means "to consider something good" or to "seek the best". It is applied to mean something towards which one is inclined. In technical sense, it has been defined by the Hanafi jurists

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- For more account of it see, Lokesh Koul's Methodology of Educational Research, and P.K. Majumdar's Research Methods in Social Science.
- Muhammad Mohar Ali: Sirat Al-Nabi (S.A.W) and the Orientalist, King Fahad Complex, Madinah 1997, p.453.
- It is a lengthy topic and will be discussed in detail in coming passages.
- ⁴ See: Watt, Op. cit, p.40
- ⁵ Al-Quran: 53: 1-18
- Prof. Dr. Zafar Ishaq Ansari. Ex-Director General, Islamic Research Institute, International Islamic University, Islamabad, who is very competent of both the languages (Arabic and English)
- Bell acknowledges that the term *mirrali* in verse 6 is taken to mean fitness either of figure or of intellect, See Watt's M at M: 1934, p.145:
- See Al-Ouran: 66:06 and 72:08.
- M.Watt: Muhammad at Mecca, Oxford University Press Oxford, 1953, p.42
- ¹⁰ See Ibid, pp.42-43
- الله المُكُورُ وَإِنَّا لَهُ كُورُ وَإِنَّا لَهُ لَحَافِظُونِ. See: Al-Quran: 15:9 (i.e. إِنَّا نَحُنْ نَرْتُكَ الذَّكُر وَإِنَّا لَهُ لَحَافِظُونِ.
- For more detail see: Mohar Ali: Op. cit, p.435
- Watt: op. cit, p.41 (as quoted by Mohar Ali)
- Muhammad Mohar Ali: Op. cit, p.456.
- ¹⁵ See for example Al-Quran: 10:30; 10:32; 23:16.
- ¹⁶ See for example Al-Quran: 2:26; 2:42 3:60 etc.
- ¹⁷ M. Watt, Op. cit, p.17-18.
- ¹⁸ M. Watt, Op. cit, p.42.
- Watt: Muhammad at Mecca, p.44.
- ²⁰ Watt: op. cit, p.42.
- 21 Ibid
- See: Muhammad Mohar Ali, op. cit, p.465
- Watt: Loc. cit
- 24 Ibid.
- 25 Ibid.
- 26 Ibid.
- lbid.
- Muhammad Mohar Ali: Op. cit, p. 467.
- For further detail see: Ibid.

By all the accounts the "Call" took place in the wake of the retirement at Hira and the "appearance" or the "vision" was a simultaneous, indeed an inseparable feature of the call. Whether Khadijah was near the Prophet at Hira, as stated in one of the reports reproduced by Ibn Ishaq, or the Prophet was at home near her, as said in the version of Al-Zuhri's report quoted by Watt, the "appearance" (of Jibril) was in every case sudden and unexpected. It is not "sometimes" that "the appearance is said to be unexpected" it is always so in the reports.(28)

Thus, this should be understood by all the Western scholars that the suddenness and unexpectedness of the "appearance or vision of Gabriel" or the "call" is a very definite feature of all the reports in all the versions. Even Watt himself acknowledges this suddenness when he discusses the issue of "the truth" in support of his assumption of the "vision of God". However, Watt, after realizing this fact of suddenness, tries to cast doubts and shows that the "call" is something independent of the "vision" or a separate issue.(29) The issue of this separation (which is actually inseparable) is to be discussed in detail under the pext sub-title 'c'.

inconsistency of his above views regarding the visit of Muhammad (S.A.W) to Hira. In fact, here in the above quoted statements, he himself nullifies the view of summer holiday by Muhammad (S.A.W), and also the view of imitation of the practice of the Christian monks, while he elaborated the meaning and purpose of the 'tahannuth'. Thus in the light of above quoted views of Watt i.e. if tahannuth was:

- Prayers for God's favour,
- ❖ Doing some work as an expiation of sin. And if tahannuth performed by Muhammad (S.A.W) was because:
- he (S.A.W) was aware of social and religious problems of Makkans
- his (S.A.W) outlook in religion was the vague monotheism,
- ❖ he (S.A.W) deliberately adopted solitude or retirement at Hira to reflect on Divine things,

then what is the relevance of these with summer holiday and imitation of the Christian monks? Are they consistent or compatible? It is very simple that Prophet Muhammad (S.A.W) definitely adopted this solitude in the cave of Hira to reflect on the Divine things (which have been revealed upon or realized by him in the form of dreams in sleep before Wahy or Divine communication).

There is no substantial argument or even an indication in the sources in favour of Watt's theory that Muhammad (S.A.W) did so in search of a framework for his contemplated socio-religious reform. This assumption of contemplated reform either of ambition or personal preparation is a baseless assumption and against to the facts and figures. Watt's this theory was based on his predecessor's views noteably of W. Muir and D.S. Margoliouth. Anyhow, whatsoever the reason or motive of Prophet's retirement or solitude at Hira, the coming of Wahy (Divine Message) to him (S.A.W) was a sudden and an unexpected event. By all accounts of Muslim sources, it is quite evident that nothing was prepared and ambitious. If it (revelation) was previously fixed ideas, then why Prophet Muhammad (S.A.W) was perplexed or seriously worried (as acknowledged by Watt and many his predecessors that he was bewildered), and why he (S.A.W) went with his wife Khadijah (R.A) to Waraqah ibn Nawfal for consulting the event of first revelation. All these arguments are emphasizing that coming of Wahy was definitely unexpected and unprepared at the part of Muhammad (S.A.W).

Dr. Muhammad Mohar Ali has very rightly pointed out that:

'escaping from the heat of Mecca' or for 'a summer holiday', there was no need to cry for Judaeo-Christian influence of monks upon Muhammad (S.A.W) to visit Hira for getting retirement here. On the other side, if the solitude or retirement of Muhammad (S.A.W) at Hira was in the following of the practice of the Christian monks, the theory of summer holiday looks illogical and irrelevant.

Now let us see from whom Watt took or reproduced these two views. The view of going to Hira for summer holiday adopted by Watt from Aloy Sprenger who presented the view in middle of 19th century. Since then, no any note-able European scholar adopted that view as a rational explanation of the matter, except Watt, who not only reproduced the view of Sprenger but also remained silent to refer it to Sprenger in any way.

As far as the second view, that of Judaeo-Christian influence or the imitation of the Christian monks as "the need and desirability of solitude" is concerned, it is the view of many Watt's predecessors, whom he took this view, again without referring them which is not an appropriate attitude for any scientific research. Anyhow, Watt took this view from J. Herschfeld and Tor Andrae from their works "New Researches into the composition and exigencies of the Quran" and "Das Leben und die Lehre des Mohammed" respectively.(22)

Now the views of Watt about the meaning and purpose of retirement of Muhammad (S.A.W) at the cave Hira or the views about the term 'tahamnuth' (a term which has been described in Hadith and Sirah literature) are discussed here. Watt says 'tahannuth' means:

"prayers for God's favour".(23)

"doing some work so as to escape from sin or crime" (24)

"Muhammad must have been aware from an early age of some of the social and religious problems of Mecca".(25)

"In religion his outlook was presumably the vague monotheism found among the most enlightened Meccans" (26)

So on the basis of above views Watt concludes that:

he (Muhammad) must have looked for some kind of reform in Mecca, and everything (i.e. all circumstances) suggests that this reform must be primarily religious. In this frame (or state) of mind Muhammad apparently deliberately sought solitude to reflect on Divine things and to perform some acts of worship, perhaps an expiation for sins.(27)

These are the views, eventually Watt wanted to elaborate to 'fill out hypothetically' the account which was actually transpired in his view. This hypothetic behaviour, however, can not change the reality of the subject. Rather, through these views, he (Watt) has shown further contradiction and

Thus, all the above four replies, with very scientific arguments against the four grounds of Bell and Watt, very clearly show that the entity seen by the Prophet Muhammad (S.A.W) was not Allah, but the angel Gabriel.

This was, more or less, all about one of the five sub-headings arranged by Watt after reproducing the summary of Al-Zuhri's report from Jabir ibn 'Abd Allah al-Ansari. Now we proceed for second sub-heading, that is, the visit to Hira or tahannuth.

b) Did Muhammad (S.A.W) Used to Visit to Hira (cave) or Issue of Tahannuth

Watt's views on the wrong assumption or misunderstanding of "Muhammad's visions of God" continue in all its relevant sub-titles, as it is a permenant theme in all the sections (a to e). The same theme is behind the discussion on 'The visit to Hira or Tahannuth'. The aim Watt wants to achieve by this discussion is to prove that "vision" or receiving of Wahy is something mental or psychological. An important point is to be noted here that Watt differs from his teacher Richard Bell who has denied the report about the visit of Muhammad to Hira and tahannuth (a sort of worshipping). Watt accepts this going to Hira of Muhammad (S.A.W) but not in a clear manner as he says that: "there is not improbability in Muhammad's going to Hira".(19) Watt further tries to divert the attention from actual cause of Muhammad's going to Hira, and says that: Muhammad's going to Hira, "might be a method of escaping from the heat of Mecca in a unpleasant season for those who could not afford to go to at Taif."(20) Instead of giving arguments in favour of this claim, for example, whether the climate of Hira ("a hill a little away from Mecca") was different from that of the whole Makkah town in Summer, Watt, immediately after, gives another opposite view as a cause of going to Hira saying that: "Judaeo-Christian influence, such as the example of monks, or a little personal experience would show [i.e. would have shown Muhammad (S.A.W)] the need and desirability of solitude".(21)

The above quoted two consecutive sentences are giving in fact two different or contradictory views. One of them can be true at one time. There is a vivid incompatibility of the views presented here by Watt in the two consecutive sentences. Why, because if the solitude at Hira was for