

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

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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 modern 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 qiyas 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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References

- 1 For more account of it see. Lokesh Koul's Methodology of Educational Research, and P.K. Majumdar's Research Methods in Social Science.
- 2 Muhammad Mohar Ali: Sirat Al-Nabi (S.A.W) and the Orientalist. King Fahad Complex, Madinah 1997, p.453.
- 3 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
- 6 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)
- 7 Bell acknowledges that the term *mirrah* in verse 6 is taken to mean fitness either of figure or of intellect. See Watt's M at M: 1934, p.145:
- 8 See Al-Quran: 66:06 and 72:08.
- 9 M.Watt: Muhammad at Mecca. Oxford University Press Oxford, 1953, p.42
- 10 See Ibid. pp.42-43
- 11 See: Al-Quran: 15:9 (i.e. إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ)
- 12 For more detail see: Mohar Ali: Op. cit, p.435
- 13 Watt: op. cit. p.41 (as quoted by Mohar Ali)
- 14 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.
- 19 Watt: Muhammad at Mecca, p.44.
- 20 Watt: op. cit, p.42.
- 21 Ibid
- 22 See: Muhammad Mohar Ali, op. cit, p.465
- 23 Watt: Loc. cit
- 24 Ibid.
- 25 Ibid.
- 26 Ibid.
- 27 Ibid.
- 28 Muhammad Mohar Ali: Op. cit, p. 467.
- 29 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 next 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 notably 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 'tahannuth' (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 permanent 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: "Judaean-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