IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

CODIFICATION OF ISLAMIC LAW: A STUDY OF AMIN AHSAN ISLAHI

Dr.Khalida Majid
Contractual Lecturer
Govt. Degree College Kangan
Jammu and Kashmir

Abstract: This study sheds light on the question of Codification of Islamic Law. It tries to explain historical attempts made for unification of Islamic law and explore the factors made these attempts fruitless. The study hinges upon a historical and analytical method and concludes some important finding. According to the study attempts of codification go back to the era of the Abbasid Caliphate. Freedom of Ijtihad was one of the main hindrances making codification of the Islamic Law prohibitive. However the Islamic State has presented different ways to unify the laws.

Key words: Codification, Islamic Law, Ijtihad, Shari'ah, Fatwa

INTRODUCTION

Maulana Amin Ahsan Islāhi[1] main concern was the codification of Islamic law as he thought it only means to eradicate the prejudice from the society. He has negotiated hitherto with the objections of those who straight away consider promulgation of Islamic law in the country (Pakistan) an impossible proposition because of its not being available in a compiled form. Islāhi has moreover deliberated the case of those who believe complication of Islamic law itself to be a completely un-Islamic act and not permissible.[2]

Maulana Amin Ahsan Islāhi divulges the intimate infatuation of the opponents and the supports of introduction of Islamic law that the aim behind the objections of those who oppose it is to initially subvert all efforts towards the introduction of Islamic law in the country. The supporters of Islamic law, no doubt, do not wish to place hurdles in the way of introducing Islamic law. Nevertheless, the reservations which they have brought up against its codification are in themselves of the kind that can stir up confusion in the minds of many and the opponents of Islamic law could take full advantage of this. So he recommends removing all the misgivings, as best as we could.[3]

SOME DOUBTS REGARDING CODIFICATION OF ISLAMIC LAW

Maulana Amin Ahsan Islahi apprises those who are hauled away by the misunderstanding that if a community is not in possession of a compiled code, it is not possible for them to run a judicial system while remaining faithful to their legal concept. These misguided are of the opinion that if compiled codes and ordinances were not available courts could not function, nor would they have any other means possible left to them to dispensate justice to the people. He speculated it as ignorance about the legal system of the past by excerpting the example of Romans, (father of laws) had no written code of law, and no idea of compiled law was in Europe till 19th century. Two super powers U.K and U.S.A remained totally unaffected by the nineteen century, movement for codification of law.

Islāhi claims that it can't be consummated that the law courts of these countries have the entire license in the world to set in legal matters as they wish. On the contrary these countries (British, America) courts are as much bound by their previous verdicts and precedents as the European courts are by their compiled codes. He further says that if the British and American courts could be secured against taking arbitrary decisions simply by providing custom and practice as the foundation of their law, and accepting precedents as a guiding code, it is definitely more logical to believe that the Islamic courts could be equipped with a much more effective safety device against all forms of arbitrary action by making *Nasus*[4] of the *Qur'an*, *Sunnah* and *Ijtihad*[5] of the Imams. On these lines the judicial system of the country could successfully run according to the true Islamic values without the help of a compiled code of law.[6]

REMOVAL OF APPREHENSIONS OF OPPONENTS OF CODIFICATION OF ISLAMIC LAW

He strives and directs towards eliminating apprehensions of opponents of codification of Islamic law. The major apprehension in the minds of opponents that the law is very vast and it will completely lose its breadth when hedged in a limited code. He holds back it through precept that the codification of Islamic law by no means implies limiting the expanse of *Shar'iah*[7] law, nor for that matter does it mean throwing away the opportunities for search after truth. In fact its object is simply to facilitate promulgation of *Shar'iah* law in the face of present day tragic decay of knowledge and moral values. The vastness of *Shar'iah* indeed facilitates the job of promulgation, provided that those responsible for its implementation are men of lofty character, possessing deep knowledge.[8]

The second apprehension of the opponents is that the project of codification will in any case be processed by a small group of persons. Regarding this apprehension, the author takes into notice the historical events which took place in the Abbasid period-. One is about the proposal by *Ib-e-Mugaffa*[9] for codification of law which he laid down before caliph *Jafar al- Mansur*[10].The second event is about the *Imam Malik*[11] refusal to the caliphs' proposal of unifying the people under the *Fiqh* of *Imam Malik*. He is of the opinion that both these proposals were put in an improper manner. According to him that *Ibn-e- Mugaffa* had made a serious mistake in his proposal wherein he bestowed full rights of approval and rejection, *Ijtihad* and discretion upon the person of *Abu Jafaral- Mansur*. *Abu Jafar* hardly deserved to be entrusted with a heavy responsibility to give his own approvals in the Islamic laws. Likewise the Islāhi takes it incorrect proposal placed by *Abu Jafar Mansur* before *Imam Malik*, because by the proposal entire responsibility for *Ijtihad* and selection for compilation would have fallen squarely on the shoulders of *Imam Malik* alone, and how could the Imam possibly come to forward to bear that grave responsibility on his own shoulders?[12]

So, Islāhi alleges that the right thing to do from the point of view of *Shari'ah* was that the intellectuals and Jurists of the country should have collectively undertaken the task of compilation of law, which should then have been enforced in the land with the sponsorship and support of the men at the helm of affairs. He in addition necessitates to engender us understand that if the proposals of *Ibn-e-Mugaffa* was rejected and if *Imam Malik* did not agree to the compilation of law code, it is not because the job itself was in any way repugnant of Islamic *Shari'ah* it was because a specific procedure must be observed for undertaking this task.[13]

The third apprehension is generally vivid by the minority group who claim a separate *fiqh*. He supports their claim in the sense that if in our country we allow our law to determine its bearings on the foundation of *Qur'an, Sunnah and Ijma'*[14], instead of compiling it in a code, it is believed that the minority groups with thin own separate *fiqhs* would prefer that form.[15]

Maulana Islāhi is of the opinion in order to obviate all these doubts that if Islamic governments are to be established in the Muslim country, where shi'a are in minority the law of the land be based on *shi'a* school of thought and *Ahl-e-sunnah* be given protection of safeguards in the constitution And vice-versa, second, we have to get rid of harmful conditions of obduracy and blind following and lastly we have to being about the change in teaching subject of *fiqh* so as to produce the men of experience of all schools of thought who will then take up the job of compilation.

4th apprehension of the opposing groups i.e., "we do not have any appreciable precedent among the Muslims with regard to codification of law. He says that this apprehension is unfounded because history shows various instances regarding the attempts taken for codification of Islamic law. Such as collection and distribution of the copies of *Qur'an*, during the period of *Hadrat Uthman* RA compilation of law in the form of *Ahadith*.

There didn't arise sharp differences in *fiqh* so compilation of code of *fiqh* didn't take place. But when differences raised their head, proposals were given by *Ibn-e-Mugaffa*, *Harun Rashid*[16] etc to codify law, and later on, codification was made during the eleventh century Hijra under orders of Emperor Aurangzeb Alamgir, and the book *Fatwa-e-Alamgiri*[17] was compiled. Islāhi rejects the manner of the book by saying it is not compiled in the way of modern codification and also it is not promulgated as a legal code in actual practice in a formal official capacity.

Another effort for codification of law was later made to an appreciable degree by the Othman rulers which resulted in the producing of the work *Mujallah-e-Ahkam-e-Ahaliah* (a code of judicial orders).

Here he highlights the true character of this work and compares it (*Mujallah-e-Ahkam-e-Ahaliah)* with *Fatwa-e-Alamgiri* and says that *Mujallah* remained in force in all the Arab states till the first world war. Similarly, he gives the references of Iraq, Egypt which appointed committees in 1936 and 1942 C.E to compile the civil code on the foundations of Islamic *fiqh*. The Egyptian Government compiled a code relating to Muslim personal law after the *Hanafi fiqh* which indulged subjects like, marriage, divorce, parentage guardianship etc and Egyptian judiciary runs its legal system on this very code but later on another committee was made to redraft the code of Muslim personal law but to what extent it works, we are unaware about it.

THE RIGHT WAY TO COMPILE THE LAW

Maulana Amin Ahsan Islāhi ultimately moves towards to the point of nationalist sentiment which is being employed in Egypt to advance the cause of Islamic *Shar'iah*. He assesses the arguments of *'Ulama* in support of Islamic *Shari'ah* as;

''It is indeed the call of our nationalist spirit that we should declare Islamic *Shar'iah* to be foundation of our legislation, since all laws other than those of Islamic *Shari'ah* happen to be totally alien to our country and our nation…"[18]

CONCLUSION

Thus Maulana Amin Ahsan Islāhi has vigorously elicudated that the compilation of law is by no means new to the Muslim world. He puts some short coming and of this method as:-
With this method, it is impossible to faithfully discharge the obligation of obedience to the *Qur'an* and *Sunnah*, because in matters of *Ijtihad*, we can't follow any particular *fiqh* only.
By adopting this method, it is not possible to meet adequately the demands of a fast changing world.
The followers of the sects which are in minority in a country feel a measure of dissatisfaction with this kind of single track *fiqh*.
So, he suggests the right way to compile the law in the following manner:-
The compilers of law should not confine themselves to one particular fiqh but they should take full advantage of the entire Islamic fiqh.
They should keep in view collective good of Islam and Muslims.
The job of compilation should be entrusted to the men who are free from prejudice and sectarianism.

REFERENCES AND ENDNOTES

1. Amin Ahsan Islahi (1904 – 15 December 1997), was a Pakistani Muslim scholar best known for his Urdu exegesis of the Quran, *Tadabbur-i-Quran* "Pondering on the Quran.
2. Amin Ahsan Maulana Islā hi, *Islam i-Riyasat Main Fiqhi Ikhtilafat*, English Translation, *Juristic Differences and How to Resolve in an Islamic State" ,* Adam Publishers and Distributors, 2007, p117.
3. Amin Ahsan Maulana Islā hi, *Islam i-Riyasat Main Fiqhi Ikhtilafat*, English Translation, *Juristic Differences and How to Resolve in an Islamic State" ,* Adam Publishers and Distributors, 2007, pp. 120-121.
4. *Nasus* means legal texts
5. *Ijtihad* (Arabic اجتهاد) is a technical term of Islamic law that describes the process of making a legal decision by independent interpretation of the legal sources, the Qur'an and the Sunnah.
6. Amin Ahsan Maulana Islā hi, *Islam i-Riyasat Main Fiqhi Ikhtilafat*, English Translation, *Juristic Differences and How to Resolve in an Islamic State" ,* Adam Publishers and Distributors, 2007, p. 124.
7. Shariah, or shariah law, is the Islamic legal system derived from the religious precepts of Islam, particularly the Quran and the Hadith. The term shariah comes from the Arabic language term sharīʿah, Arabic: شريعة which means a body of moral and religious law derived from religious prophecy, as opposed to human legislation……
8. Amin Ahsan Maulana Islā hi, *Islam i-Riyasat Main Fiqhi Ikhtilafat*, English Translation, *Juristic Differences and How to Resolve in an Islamic State" ,* Adam Publishers and Distributors, 2007, pp. 126-128.
9. Abū Muhammad ʿAbd Allāh Rūzbih ibn Dādūya , more commonly known as Ibn al-Muqaffaʿ was a Persian translator, philosopher, author and thinker who wrote in the Arabic language…
10. Abū Jaʿfar ʿAbd Allāh ibn Muḥammad al-Manṣūr; 95 AH – 158 AH/714 CE – 6 October 775 CE) usually known simply as by his laqab al-Manṣūr was the second Abbasid caliph, reigning from 136 AH to 158 AH (754 CE – 775 CE) succeeding his brother al-Saffah (r. 750–754). He is known for founding the 'Round City' of Madinat al-Salam, which was to become the core of imperial Baghdad. Modern historians regard al-Mansur as the real founder of the Abbasid Caliphate, one of the largest polities in world history, for his role in stabilizing and institutionalizing the dynasty……
11. Mālik ibn Anas ibn Mālik was a Muslim scholar, theologian, jurist, Traditionist, and writer. Born in Medina, Imam Malik rose to become the premier scholar of narrations in his day, seeking to apply to "the whole legal life" in order to create a systematic method of Islamic jurisprudence which would only further expand with the passage of time. Referred to as the Imam of Medina (Imām al-Madīnah) by his contemporaries, his views in matters of jurisprudence became highly cherished both in his own life and afterwards, becoming the founder of the Maliki school of Fiqh, one of the four major schools of Islamic jurisprudence. Other honorific names of his include the Imam of the Believers in Narrations (Amīr al-Muʾminīn fī al-Ḥadīth) and Shaykh of Islam (Shaykh al-Islām).
12. Amin Ahsan Maulana Islā hi, *Islam i-Riyasat Main Fiqhi Ikhtilafat*, English Translation, *Juristic Differences and How to Resolve in an Islamic State" ,* Adam Publishers and Distributors, 2007,pp.129-130.
13. Amin Ahsan Maulana Islā hi, *Islam i-Riyasat Main Fiqhi Ikhtilafat*, English Translation, *Juristic Differences and How to Resolve in an Islamic State" ,* Adam Publishers and Distributors, 2007, Ibid.
14. Ijma` means the agreement of the mujtahids of this ummah after the demise of the Prophet (peace and blessings be upon him) on a Shar'iah ruling.
15. Amin Ahsan Maulana Islā hi, *Islam i-Riyasat Main Fiqhi Ikhtilafat*, English Translation, *Juristic Differences and How to Resolve in an Islamic State" ,* Adam Publishers and Distributors, 2007, p.136
16. Harun al-Rashid was the fifth caliph of the Abbasid Caliphate who ruled the Islamic caliphate from 786 to 809 AD. He is often remembered as one of the greatest caliphs of the Islamic golden age,

famous for his patronage of arts and literature, and for his role in the stories of One Thousand and One Nights.

17. Fatawa 'Alamgiri, also known as Al-Fatawa al-'Alamgiriyya or Al-Fatawa al-Hindiyya is a 17th-century shariah based compilation on statecraft, general ethics, military strategy, economic policy, justice and punishment, that served as the law and principal regulating body of the Mughal Empire, during the reign of the Mughal emperor Muhammad Muhiuddin Aurangzeb Alamgir.
18. Amin Ahsan Maulana Islā̄hi, *Islam i-Riyasat Main Fiqhi Ikhtilafat*, English Translation, *Juristic Differences and How to Resolve in an Islamic State"* , Adam Publishers and Distributors, 2007, p.147.