

Fiqh of Priorities in the Light of the Purposes of Sharee'ah

Abdel Wadoud Moustafa Moursi El-Seoudi, Amir Husin Muhammad Nor,
Ahmad Muhammad Husni, Anwar Fakhri Omar Hayatullah Laluddin,
Ibnor Azli Ibrahim, Muhammad Adib Samsudin and Muhammad Nazir Alias
Department of Syariah, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia,
43600 Bangi, Selangor, Malaysia

Abstract: This research tries to answer the question that reads: What is meant by the Fiqh of Priorities? What is the relationship between it and the other religious basic principles? How can we make benefit of it in confronting our contemporary problems? What is meant by the Fiqh of Priorities and what is its relationship with the other usool (religious basic principles)? Fiqh of Priorities means the most appropriate way of understanding the rulings that are in conformity with the objectives of the religion through achieving the most important and beneficial benefits, warding off the evils or the lesser harm of them, as well as observing the results that may be caused by these rulings. It is a kind of understanding which is followed by the Fiqh of Reality in its different aspects and the Fiqh of Text through knowing its aims and objectives so that the jurisprudence scholars may choose the most appropriate in time and result. Therefore, this kind of Fiqh is related to three other matters that should be understood so that the meaning of the Fiqh of Priorities may be clear for us, the thing that will make us care about it and apply it in the real life of our nation. The first is the objectives of the Sharee'ah (Revealed laws of Islam). The second is removing difficulty and hardship. The third is elimination of means that may lead to unfavorable results. In this brief research, researchers will touch upon them according to the same earlier mentioned order.

Key words: Islam, Fiqh of priorities, purposes of Sharee'ah, hardship, benefits, rulings

INTRODUCTION

In fact, the Islamic nation has never been in any time in bad need to observing the Fiqh of Priorities than in these difficult days of its present times. That is due to several causes. The most important of them may be the cultural stagnation that it lives in and that increases every day. What actually may increase witnessing, it is the huge and rapid development that occurred in the different means of communication and magnificent progress in the quantity and quality of information, the thing that made the whole world as a small village that has no room to intellectual laziness or mental sluggishness. To catch the cultural train, the nation has to define clearly its aims and objectives and to choose the shortest and fastest ways of achieving these aims without hesitation or slowness. What should be observed with clarity is the possibility of achieving it and its realistic nature. There is no harm at all that this is done on different stages where every stage leads naturally to the other. There is another reason which is the disintegration of the Islamic nation to small countries that do not have relationship in between as if they are like the necklace that broke up or to some

separated to islands. Therefore, researchers have to search for some realistic means that can gather them together such as the economical ties that can reconcile among them. The Islamic nation really has the potentialities and capabilities that can prepare it to play an effective role in its contemporary world. The third cause is the multitude of sects, parties, trends and juristic reasoning among those who research for the renaissance of the Islamic nation without coordination nor making muwazanaat (The act of carefully weighing the pros and cons of a certain matter in view of an existing situation) between the priorities and planning to achieve them. Rather, some of these juristic reasoning inclines to superstition and superficiality, some other inclines to literalism, narrow-mindedness and heartedness; while, the third party is the moderate trend that care about understanding the reality and choosing what is prior and possible. This moderate trend is the trend that searches for drawing balances between the interests and choose the most appropriate for its nation from among its values and religion. Actually, this trend is what this research attention and application of the Fiqh of Priorities based on.

**FIRSTLY, RELATIONSHIP BETWEEN
THE FIQH OF PRIORITIES AND THE
OBJECTIVES OF THE SHAREE'AH**

Lawgiver aims, from the rulings, to achieve the benefits of human beings in this life and the hereafter. Whoever contemplates the Islamic Sharee'ah; its source and resources will observe this reality very evidently. Benefit is the opposite of corruption and it means achieving helpful and good effect. Maslahah means bringing about an interest or warding off harm. By this word, we do not refer to such a meaning; since bringing about interest and warding off harm are the ends of creatures and the benefit of creatures lies in attaining their aims. By Maslahah, we mean observing objectives of the religion that includes five things; preservation of religion, life, intellect, procreation and property.

Anything that implies preserving these five necessities is Maslahah. On the contrary, anything that implies wasting them is Mafsadah (evil, corruption, harm, etc.) whose warding off is Maslahah.

There are several divisions of Maslahah according to different considerations. As for what the Lawgiver has considered or neglected, find that there are some benefits that the Lawgiver has taken into consideration. Thus, His rulings came observing them due to the existence of their origin that supports their class and kind. Or the Lawgiver may neglect considering it through not observing this benefit in His basic principles such as the benefit of giving the woman the right to divorce herself, the benefit of the killer in not applying al-Qasaas (retribution) against him and the like. Or keeping silent regarding observing or neglecting it. These are the issues that the majority of the scholars of jurisprudence called with Masaalih Mursalah (referring to unrestricted public interest which secure a benefit or prevent harm but not mentioned in the Quran or the Sunnah). What is meant is that the Lawgiver did not pass any ruling in conformity with this benefit or against it (Hasaan, 1981).

Benefit regarding importance and significance are of three kinds: The essentials (Darooriyyaat), the complementary (Haajiyyaat) and the embellishments (Tahseenniyyaat). What is means by the essential benefits are the benefits that are indispensable in performing the benefits of religion and the worldly life and if they are missed then there will be evils and corruption. Furthermore, missing them will bring about loss of life in this world, loss of deliverance and pleasure in the Hereafter and having all forms of clear loss.

Essential benefits are five; preservation of religion, life, intellect, procreation and property. The Lawgiver has observed these benefits, obligated preserving them and

even enacted al-Hudood (Corporal punishment prescribed for crime) that deter or prevent whoever thinks about attacking them.

What is meant by the complementary benefits are all what is needed to alleviate and remove harm, difficulty and hardship that may occur through missing what is required. They are an integral part of the essential benefits. As for the embellishing benefits, they are to adopt the best of habits and high and noble moral standards such as purification and adornment. Every benefit of these benefits has its integral and completing parts, where if we suppose missing them, we do not miss its original wisdom. This is like the idea of similarity in retribution, compatibility in marriage, etiquette of purification and the like (Hasaan, 1981). Actually, this form of division is something that has close relationship with the Fiqh of Priorities? That is because the scholar of jurisprudence should observe the order of these benefits. That is to say, one should give priority to the essential benefits over the complementary ones and in turn the complementary ones over the embellishing ones. One also should give precedence to the basic principles over the integral and completing parts. If the essentials contradict with the complementary ones then the essentials should be given precedence and if the complementary ones contradicts with the embellishing ones then the complementary ones should be given precedence and so on. Accordingly, the Fiqh of Priorities has a close relationship with this division and whoever makes a mistake in observing this order, he may give precedence to something that is less important over a more important benefit and thus, he puts people in difficulty and hardship or this may even lead them to destruction.

There is another division of the benefits according to generality and specificity. By this, they means that there are general benefits that include all people such as the benefit of the people in killing the infidel that conceals himself and not accepting his repentance after catching him because he corrupts the morals and religion of the people as well as their political and social system. There are some benefits that are related to most of the people such as making craftsmen guarantee what they are manufacturing. There are some other benefits that are relate to just few individuals in rare cases such as the benefit that entails canceling the marriage of the wife of the missed husband (Hasaan, 1981).

Furthermore, this division of benefits has a close relationship with the Fiqh of Priorities. Although, it views observing all of them, attention should be paid to the collective benefits over the special benefits when there is a contradiction between them. The benefit of the group is given precedence over the benefit of the individual and

the benefit of the majority is given precedence over the benefit of some individuals and the comprehensive benefit is given precedence over the limited benefit and the extended benefits is given precedence over the current benefit or that can be achieved in one time and not in the other. Consideration of the Lawgiver to these benefits and drawing attention to the Fiqh of Priorities of them when there is a contradiction between them can be proved by several examples of the noble Quran, the honorable Sunnah, the actions of the companions, followers and their sayings which I will suffice with mentioning only one of every category.

In the noble Quran, Allaah The Almighty says in Quran 9: 19-20. In this verse, there is a balancing made between several permissible benefits. They are providing water for the pilgrim, the maintenance of al-Masjid al-Haram (the sacred mosque in Makkah) and striving in the cause of Allaah The Almighty. Allaah The Almighty has preferred the benefit of striving in His cause to the other two benefits for the great benefits of striving in His cause because it is the pinnacle of the religion of Islam.

In the Sunnah when Quraysh wanted to conclude the Treaty of al-Hudaybiyyah and sent Shuhail ibn 'Amr as its representative to negotiate the matter with the Prophet (Peace and blessings be upon him). At that time, some disagreements were occurred. The party of Quraysh saw them necessary while the Prophet (Peace and blessings be upon him) saw them insignificant and believed that benefit of concluding the treaty is more important and beneficial. That is because Quraysh insisted on not writing the sentence in the name of Allaah, the Most Beneficent, the Most Merciful and writing In the Name of Allaah instead and not writing Muhammad is the Messenger of Allaah and writing Muhammad ibn Abdullaah instead. The Prophet (Peace and blessings be upon him) agreed (Al-Jawziyyah, 1986).

As for the skillful understanding of the companions, may Allaah be pleased with them, Umar ibn Al-Khattaab, (May Allaah be pleased with him) prevented marrying from the women of the People of the Book (i.e., Christians and Jews); so that the Muslim women may not be neglected and that the women of the people of the book may not affect the morals of the Muslim children badly.

This means that he made a balance between the benefit of the individual and the benefit of the whole Muslims and saw that the benefit of the majority of Muslims entails preventing such form marriage.

SECONDLY, THE RELATIONSHIP BETWEEN THE FiqH OF PRIORITIES AND REMOVING HARDSHIP

Actually, hardship refers to all what may cause excess difficulty in the body, soul or property in

immediate or long-term. Removing hardship means getting rid of difficulty or lightening it in a way that it can be bearable.

Relationship between the Fiqh of Priorities and the removing hardship is of great importance. The wise Lawgiver has taken it into consideration. Amongst this is that when the Prophet (Peace and blessings be upon him) was asked about the order of the actions of Hajj (Pilgrimage to Makkah) on the day of sacrifice; such as throwing pebbles, shaving head, tawaaf (circumambulation) and slaughtering sacrificial animal, he said: Do and there is no harm in this (Baaqi, 1987). He enacted the permissibility of not observing the order among these rituals and removing difficulty from the one who did not observe the same order of the Messenger of Allaah (Peace and blessings be upon him). This hardship becomes clear when a Muslim individual was afflicted by a difficult or harm and wants to remove it then how can he remove it? Can he remove it with a harm like it or with a harm that less harmful than the first?

Mujtahid, i.e., a scholar of great caliber who can deduce from the sources of Islamic law (texts from the Quran and the Sunnah) should choose nothing but what implies no difficulty. That is because Sharee'ah does not come with what may imply hardship or harm. If falling into harm is inevitable, he has to draw balance between these harms and choose the lesser of them. If it is possible to remove this harm then it should be done by a lesser harmful evil than the removed one. Accordingly, scholars has laid down several rules which they deduced from many parts that the Islamic Sharee'ah came with. The objective of these basic rules is to control these conducts on the one hand and choosing the more right and proper on the other hand.

Amongst these basic rules are; harm is to be removed. This basic rule means that it is obligatory to eliminate the harm if it occurs or prevent its occurrence before it occurs. As-Suyuti said:

Know that many of the chapters of Fiqh are based on this basic rule such as returning commodity back due to defect, all the categories of the Khiyaar (right of option) like the difference of the stipulated specifications, Ta'zeer discretionary punishment, bankruptcy of the buyer and all forms of hajr (As-Suyuti, 1998)

Cases of necessity make permissible what is normally forbidden or restricted, providing that it should not be lesser than the necessity: The scholars have added this very important condition which is their saying: Providing that it should not be lesser than the necessity. This means that it is obligatory to make a balance between the harm that can be brought about the prohibited and the benefit

that can be brought about the permissibility. Thus, if they are equal then, there will be no permissibility and if the benefit is overweight then the prohibited will be made permissible. Therefore, As-Suyuti, after mentioning several examples that the cases of necessity make permissible what is normally forbidden, stated the wisdom behind this condition saying:

That is to exclude the idea that if the dead is a prophet then it is not permissible for the one who is in the case of necessity to eat it (i.e., the dead flesh of a Prophet). That is because its sacredness according to the viewpoint of the religion is greater than the soul of the one who is in the case of necessity. However, if he was forced to kill or make fornication then no one of them can be made permissible due to coercion. That is because they implies evils that are equal to preserving the soul of the coerced or greater than it. If someone is buried without a shroud then he cannot be disinterred because the evil of violating his sacredness is greater than leaving him without a shroud which is replaced by putting dust over him (As-Suyuti, 1998)

Harm should not be removed by another harm. This basic rule is related to the other basic rule of the harm is to be removed, i.e., it should be removed but not by another harm. That is because if it is removed by another harm then removing it has not been achieved yet. Amongst the example of applying this basic rule is if the bankrupt person mortgages the sold item, then the seller does not have right to withdraw his word in the form of the validity of mortgage because it causes harm to the mortgaged object (As-Suyuti, 1998). This can be allowed if no one of them will have a greater harm. This actually conveys us to the other basic rule.

If there are two harms, then the greater of them is averted by the assumption of the lesser: In this case, juristic reasoning should be applied through using the Fiqh of Priorities. Therefore, Allaah The Almighty has prescribed al-Qasaas, al-Hudood, fighting rebels, Ash-shuf'ah (right of preemption), compulsion on fulfilling debts, shooting the non-Muslims (in war) if they take women and children or even the captives of Muslims as a shield (As-Suyuti, 1998).

As for the basic rule of warding off evil takes precedence over achieving benefits, it is actually related to the rule of doing the lesser of two evils. Thus, it depends on the juristic reasoning of the Mujtahid regarding the benefits and harms. It is permissible to do the lesser of two evils in order to achieve the greater of two benefits. Really, this needs deep contemplation, making a sound order for the benefits and the same with the evils then drawing balance among them and then

choose what the scholars sees the lesser of two evils or the greater of two benefits. Therefore, Sheykh Al-Islam Ibn Taymiyyah:

The sane person is not the one who knows the good and evil but rather, he is the one who knows the best of two good matters and the worst of two bad matters

This can be proved by several evidences from the noble Quran, acts of the Prophet (Peace and blessings be upon him), acts of his companions in this regard. Researchers will just mention the following examples:

Allaah The Almighty says in Quran 59: 5. This verse means that Allaah The Almighty made permissible for His Prophet to (Burn the palm trees of the tribe of Bani An-Nadeer. It is an evils but it contradicts with a greater benefit which is defeating them and achieving victory over them. Therefore, when the Jews went distorting the fame of the Prophet (Peace and blessings be upon him) that he burns the palm trees, this verse was sent down, justifying his stance) (As-Suyuti, 1979).

The Prophet (Peace and blessings be upon him) used to divide sins into minor and major ones and divides major sins into major and even the most grievous kinds of major sin. It is authentically narrated that the Prophet (Peace and blessings be upon him) said:

Avoid the seven great destructive sins; to join others in worship along with Allaah, to practice sorcery to take the life which Allaah has forbidden except for a just cause (according to Islamic law), to eat up Ribaa (interest, usury, etc.), to eat up an orphan's wealth, to show one's back to the enemy and fleeing from the battlefield at the time of fighting and to accuse chaste women who do not have any unchaste thoughts and are good believers

He (Peace and blessings be upon him) also said:

Shall I tell you about the most grievous kinds of major sins?, thrice. It was said, Yes, Messenger of Allaah. He said: Associating deities with Allaah in worship, unkind treatment to parents (he sat erect after he had been reclining) and false testimony. He kept repeating the last phrase until the audience wished he would stop (Baaqi, 1987)

After the death of the Prophet (Peace and blessings be upon him), the respectable companions engaged in choosing the one who will be the caliph after him before they bury the Prophet. Here, they become have two contradicted benefits; benefit of burying the Prophet with their great love to him and preferring him to themselves and the benefit of the Islamic state as a whole; rather the religion of Islam itself. They saw that they should choose

the caliph of the Prophet and then bury him. Really, it is one of the great situation that indicates the deep understanding of the companions to the matter of Fiqh of Priorities. In spite of their great respect and estimation of the status of the Prophet (Peace and blessings be upon him), they saw that the benefit is to choose the caliph is more important than burying the Prophet (Hishaam, 1995; Al-Hilaali, 1994).

THIRDLY, RELATIONSHIP BETWEEN THE FiqH OF PRIORITIES AND ATH-THARAA'I

As for the third matter that should be observed in the Fiqh of Priorities is Ath-Tharaa'i or ends and objectives that can be caused by specific means. Actually, the good ends do not justify bad means but rather if the ends are good then the means shall be good as well.

What is meant by Ath-Tharaa'i? When can they be eliminated and when can they be allowed? What is the relationship of these matters with the Fiqh of Priorities?

The basic rule of Ath-Tharaa'i depends on another basic principle, namely; Shall the results of the conducts of the every sane adult (Mukalaf) be considered or not? The sound opinion that is substantiated with evidences and deduction is that the Lawgiver has observed these results. The conduct may be in itself a benefit but rather, it leads to something evil and vice versa. Thus, this should be taken into consideration at conducting juristic reasoning as Ash-Shaatibi says because the means or the ways are the things that bring about the results of conduct. These Ath-Tharaa'i can be avoided or eliminated if it is taken as a means for doing something evil or forbidden. They may also allowed if they are taken as a means for achieving benefits or permissible matter; rather obligatory ones. Therefore, they take the same ruling of their results. It can be deduced from the opinions of the scholars, may Allaah have mercy upon them that Ath-Tharaa'i are to be blocked if they have three conditions:

- If the permitted action leads to something evil
- If this evil matter is likely and directly linked to the benefit of the permitted action
- If it is repeatedly occurred that fulfilling the permitted action causes something evil (Hasaan, 1981)

Many evidences came to prevent and block Ath-Tharaa'i. Amongst these evidences are; it is the saying of Allaah The Almighty in Quran 6: 108. In this verse, Allaah The Almighty forbade cursing the idols that the infidels worship, so that it does not lead the infidels to curse Allaah The Almighty.

The Prophet (Peace and blessings be upon him) prohibited drinking the juice of grapes after three days (because it becomes alcohol) as well as making grapes juice in the utensil that are not used in making grapes juice. The Prophet (Peace and blessings be upon him) has pointed out that he forbade this so that this may not be taken as a means saying: If I allowed these matters, they will do them like this.

He (Peace and blessings be upon him) also prohibited male and female meeting in seclusion as well as the travelling of woman with a non-Mahram man so that this may not be a cause of making something evil.

The companions prevented Abu Bakr as-Siddeeq (May Allaah be pleased with him) to have a profession and earn his livelihood to spend on his children. We see that they prevented him from an essential or complementary benefit and this is impermissible; however, this prevention was for a great benefit which is the benefit of the whole Muslims so that he can take care about their benefits. Therefore, the companions prevented Abu Bakr from working and earning his livelihood and sufficing him from bayt al-Maal (Public treasury of Muslims) and he agreed with them on this (Husaan, 1981).

Accordingly, the outcome of the conducts should be observed and the means that achieve them takes the same ruling of them. So, if the conducts are permissible but lead to a bad outcome according to the three conditions mentioned previously then they should be blocked while if they are originally prohibited but can lead to a certain benefit then they should be allowed.

Relationship of observing the outcome is closely related to the Fiqhi of Priorities because the Mujtahid will not stop at contemplating the reality of benefits or evils only; rather he will contemplate what is deeper than this which is the outcome of this benefits or harms.

EXAMPLES OF THE CONTEMPORARY REALITY AND THE STANCE OF THE FiqH OF PRIORITIES TOWARDS THEM

Fields of the Fiqh of Priorities are several and we will choose a various examples that represent the most important of these fields:

First example: Which of which can be preferred quantity or quality? Whoever contemplates thoughtfully the verses of the noble Quran and the Sunnah of the Prophet, (Peace and blessings be upon him) will find that if there is a contradiction between the quantity and quality then the sound Fiqh chooses the quality over quantity.

Second example: At the time of multiple problems as we have in our present days from what can we start? The Fiqh of Priorities in this case will start with and pay attention to what the noble Quran has started and paid attention to. The noble Quran has paid attention first to the matters of the belief, basic principles of the worship, recommended acts and high moral standards.

Third example: In the field of actions, i.e., the measure of preferring between good actions should be done according to the most beneficial act for the people, permanent, last for a long time and extended throughout time, even if it is little. The deeds of the hearts take precedence over that of the organs as well as observing the worker himself, time and place.

Fourth example: In the field of reform: Souls should be changed first before systems and education should be done first before strive (Al-Qaradaawi, 2000).

CONCLUSION

At the end of this research, researchers have reached several results. Amongst the most important of them are that the Islamic nation is in the present time in bad need to put the Fiqh of Priorities into practice. What is meant by the Fiqh of Priorities is the most appropriate way understanding of the rulings that are in conformity with the objectives of the religion through achieving the most important benefits along with observing the outcome of these rulings. Fiqh of Priorities is related, after being related to the Fiqh of Reality and Fiqh of Texts to the religious objectives of warding off evils and achieving

benefits, making balance between the different evils, blocking or allowing the means according to their outcome. Fields of applying the Fiqh of Priorities are multiple in knowledge research and reform in various fields.

ACKNOWLEDGEMENT

Part of this study is an outcome of research was conducted by using the research funding of the UKM-PP-05-FRGS0071-2009 study.

REFERENCES

- Al-Hilaali, M., 1994. From the Fiqh of Priorities. 1st Edn., House of Distribution and Islamic Publication, Cairo.
- Al-Jawziyyah, I.Q., 1986. Provision of Guiding the Best of the Worshipers. 14th Edn., House of People, Cairo.
- Al-Qaradaawi, Y., 2000. In the Fiqh of Priorities. 4th Edn., Wahbah Publishing House, Cairo.
- As-Suyuti, J.A.D., 1979. Reports about the Reasons of Revelation. 2nd Edn., House to Revive Science, Beirut.
- As-Suyuti, J.A.D., 1998. Similar Matters. Dar As-Salaam Publishing House, Cairo.
- Baaqi, M.F.A., 1987. Pearls and Corals Regarding the Hadeeths that Bukaari and Muslim Agreed on. 1st Edn., Cairo Dar Al-Rayyan Heritage, Cairo.
- Hasaan, H.H., 1981. Theory of Benefit in the Islamic Jurisprudence. Al-Mutanabi Publishing House, Cairo.
- Hishaam, I., 1995. Biography of the Prophet. 2nd Edn., Mustafah Al-Halabi Publishing House, Cairo.