

Mohammad Akkhtar Saeed Siddiqi
Early Development of Zakat Law and *Ijtihad*
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Reviewed By:

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This book is the product of three years of research for a Doctorate at the University of Edinburgh.

It is pertinent to state at the outset that the entire research plan has been conceived with the Orientalists' assumption that "a distinction between the ideal doctrine and actual practice, between the *Shari'ah* Law as expounded by the classical jurists and positive law as administered by the courts, is inherent" (p.19). The writer however denies that his research is 'mainly' concerned with the above thesis of the Orientalists (p.27) According to him it deals with the evolution of *ijtihad* in the period preceding the birth of the Schools of *Fiqh* a study which has become feasible with the publication of new material.

The thesis covers a span of a century commencing with the Prophethood of Mohammad (peace be upon him) - 13 B.H. and ending with the death of the Ummayyad Caliph, Umar Ibn Abdul-Aziz in 101 A.H. After giving a definition of *ijtihad*, the thesis traces the role of *ijtihad* in the early development of *zakat* law, and in this regard affirms the Holy Prophet's own *ijtihad*/legislative activity besides the Quranic injunction.

The study has been divided into four periods (Chapter II to V) i.e. the period of the Holy Prophet (13 B.H. to 10 A.H.);
the period of the older companions (10 A.H. to 35 A.H.);
the period of the younger companions (35 A.H. to 73 A.H.);
and the period of the successor jurists (73 A.H. to 101 A.H.).

The first Chapter (Introduction-pp 10-28) of the book is devoted to a review of the studies carried out in the field of Islamic Law during the last hundred years (1880-1980 A.D) by scholars in the Western as well as Arabic and Urdu Languages, and evaluates their contributions.

I

The first period of twenty three years of the Prophethood (thirteen years at Makkah and ten at Madina) depended on the Quran as primary source, the various verses indicating the beneficiaries of *al-zakat*, the economic pillar of Islam, are identified through verse 9:60 as : the indigent and the incapacitated (*al-fuqara wa al masakin*), the administrators (*al-amilin*), those in whom inclination towards Islam is to be strengthened or created (*mu'allafat al Qulub*), in the freeing of the slaves (*fi-al-riqab*), those burdened with debt (*al-gharimin*), the wayfarers (*ibn al sabil*), and generally in the Way of Allah (*fi sabil Allah*). The Quranic verse (2: 219) enjoining the expenditure of surplus (*al afw*) is interpreted as a general *infaq*, the rates and the minimum limit for imposition of *zakat* being fixed later (p.42). *Sadaqat* are considered as voluntary individual contributions to the *bayt al mal* and/or payment to the beneficiaries direct. *Sadaqat al najwa* are identified as contributions required before seeking private consultation with the Prophet (peace be upon him). Another kind of contribution was the great sacrifices required of the Believers during battles with the unbelievers (*Sura al hadid 57:10,11*) presumably upto the victory of Makkah, and no rates of *zakat* were fixed. While *sadaqat al najwa*, *sadaqat al fitr* were per capita charges, *zakat al mal* was a tax on wealth with different rates for different commodities or *amwal* possibly levied after the victory of Makkah. By the year 9 A.H. the *zakat* laws of the Prophet must have assumed their final shape (p.44,45).

The author then goes into the details of *zakat* laws which were current in Madina and the areas governed by it in the last days of the Prophet's life. Citing the items chargeable and/or exempt he asserts that reports positively indicate that during the Prophet's time *zakat* was levied on *al mashiya* (animal proper ties), once a year with minimum exemption limits for camels and sheep, on *al'ayn* (gold silver and coins) once a year; on *al harth*(agricultural produce) at harvest; on *al rikaz* (buried treasure) at the time of extraction; and according to some reports on merchandise and honey. However, houses and slaves were totally exempt (pp.45-49). Details are then given by the author (pp.55 ff) regarding collection of *zakat*, but his remarks about its distribution are based on conjecture. More details should have been cited from the sources available to the author. This study, therefore, in this respect would seem lopsided.

Apart from the mandatory constitutional portion of the *zakat* law as contained in the Quran, the author discusses the operation of the Prophet's *ijtihad*/legislative activity and considers as probable sources of the Prophet's *zakat* laws:

- (a) His own opinion and wisdom (holding a humanly subjective and subordinate position to the Quran)
- (b) Discussions and consultations with the Companions
- (c) The ancient traditions and legal customs and the ideas of the Arabs.

(d) External influences, and selective adaption from the *ahl al-kitab*. The thesis then mentions presumable modes of the Prophets *ijtihad* activity. These principles could have been (i) superiority of the Quran, emphasis on the aims of legislation rather than internal literal contents, *tadrij*, natural justice and equity, individual and public good, elimination of hardship etc.

The conclusion drawn by the author about the *ijtihad* of the Prophet is not substantiated by the author's own research but is based on the conclusions already drawn in the books on *Usul*. It is a mere reproduction of the arguments detailed therein. The sources listed for the *ijtihad* of the Holy Prophet (peace be upon him) are also based on conjecture and have no basis in the research of the author. Further, except for the superior position of the Quran, they have not been linked through any juristic or other argument to the *zakat* laws listed by the author. The mode of equity and natural justice conforms more to the 'justice, equity and good conscience' of a British judge rather than that of a Muslim jurist. The major objection which can and must be raised is about the source described as "the wisdom and opinions of the Holy Prophet". It is here that the author seems to have been vanquished completely by the Orientalist's approach. He fails to distinguish between *wahi* which is *khafi* or *ghair matlu* and which Islamic jurisprudence terms as the *Sunnah* of the Holy Prophet and between the *ijtihad* of the Prophet which was practiced, according to those who accept it, when *wahi* in both forms *Jali* and *Khafi* was not forthcoming. The *Sunnah* of the Prophet is equated with his *ijtihad* under the title "opinions and wisdom" and it is, thereafter concluded that: "The Prophet's own opinion and wisdom was a thing from a human being, a Prophet of God, a leader of a nation and practical ruler of the society. However, as such it could also be regarded worthy of respect, obligations and final for the believers."

It is further submitted that most of the conclusions drawn by the author are preceded by words like: *must have*, *would have*, *probably* etc. and little has been linked with the research of the author on *zakat* laws.

II

The second period relates to the first three *Khulafa*, upto the end of the twelve years of Caliph Uthman. The community was guided by *al-Sahabah al Kibar* (the Older Companions) who were always consulted by the Caliphs in all important matters. Another influencing factor was the expansion of the Islamic State which brought a flood of wealth and prosperity to the Centre at Madina along with new legal and political problems requiring *ijtihad* for their solution. This continued till the younger generation started the disintegrating movement leading to the assassination of Uthman.

In Abu Bakr's time the Prophet's *Zakat* Law was followed. The refusal of tribes like Banu Qalb led to the swift military action, based on *ijtihad*, which saved the institution of *zakah*. Abu Bakr did not charge *zakat* on newly acquired *mal* (*res in commercio*) before the expiry of a year and took into account the amount of grant (*'ata*): A practice adopted by the Holy Prophet regarding *al-mashiya* and *al-ayn* (p.88).

Ten years of Umar ibn al khattab as Caliph are conspicuous for *ijtihad* in many fields including *zakat* law. Foremost among these is *zakat* on horses meant for trade and on *al adas*, *al humus* (lentiles and peas); amber was also charged at *al-khums* (20%). A distinction was made in the case of *zakat* levied on honey in the mountains (at 5%) and in plains (at 10%). The author remarks: "Another innovation of Umar's time was the appointment of *Ashir* (tax collector) on many important trading routes to

collect the prescribed rates. As they were instructed to collect *jizya* from the non-Muslims, similarly they were also instructed to collect *zakat* from the Muslim Traders". (p.94). Umar is also reported to have sent detailed instructions to the *zakat* collectors to streamline the assessment and collection in the interest of natural justice (*masalaha*) and avoidance of hardship (*raf' al haraj*). Mention is also made of the charge of *zakat* on orphan's property, and postponement of collection for a year as a result of *al-Ramada* (drought).

The author states that no significant *ijtihad* activity took place during Uthman's time, except that distinction was made between the loans of an assess into recoverable (*marju alada*) and irrecoverable (*ghayrmarju alada*), and adjustment of his debts from *zakatable* property. This, however, was a matter of accountancy, which the author has tried to link up with the Quranic injunction of *al-afw* (p.103).

III

The period of the younger Companions (35 A.H. to 73 A.H.) includes the Caliphate of Ali (d.40 A.H.) The entire period is characterized by disunity and discord commencing with the assassination of Caliph Uthman and terminating in the execution of Abdullah ibn Zubayr. The political disunity, social instability and dispersal of jurist consults to far-away regions affected and retarded *ijtihad*/legislative activities which were now confined to private *fatawa*. By the end of this period the *khawarij* and the *Shia* became distinct sects with their own doctrines.

However, to the disturbed rule of Caliph Ali is attributed the total exemption from *Zakat* of *al-hawamil wa al awamil* (beasts of burden and employed in work). This decision was upheld by later jurists. Some have, unsoundly, attributed this decision to the time of the Holy Prophet (*Kitab al Athar*). Ali is also reported to have totally exempted horses from the payment of *zakat*, whether used by soldiers or reared for commercial purposes.

Mu'awiya is reported to have introduced half a sa' per head as *sadaqat al-fitr* in lieu of one sa' per head since the Prophet's time. A considerable number of younger companion jurists held the opinion that payment of *zakat* to the central authority (ruler) was a religious obligation, while others privately held that it should be paid directly to the beneficiaries (pp.131-132). This attitude emerged in the distinction between payment on *al mal al zahir* (checkable property) to Government and payment on *al-mal-al-batin* (secret, uncheckable property) direct to the beneficiaries) evidently a schismatic trend that later gained general approval. Another controversial item was gold and silver jewellery considered as *al-ayn* and, therefore, chargeable according to the Kufa Jurists, while it was considered as exempt at Madina (pp 133-134) as goods for domestic use. Another controversy prevailed regarding *zakat* on orphan's property, the *jurists* of Madina being in favor of chargeability following Umar, while those of Iraq (Kufa) being in favor of exemption.

IV

The period of Successor Jurists (73 A.H. to 101 A.H.) extends from the assassination of Abdullah Ibn al Zubayr to the death of Umar Ibn Abdul-Aziz (101 A.H.). Apart from the sporadic Kharajite disturbance this period had comparative peace and "a Centralized monarchy, modified by Arab traditions and by remnants of theocratic idea, had become established" (p.146). The juristic/*ijtihad* activities were still in the private sector, however, the term of Umar Ibn Abdul-Aziz is important for cooperation between the Government and the Ulema in matters of *Fiqh* as well as statecraft in preference to civil and military officials.

In this period *al harth* (Agricultural produce) and *al-mashiya* were considered as *al amwal al zahira* while silver, gold and coins (*alayan*) were categorized as *al amwal al batina*, hence on the latter an assess could pay *zakat* direct to the beneficiaries independently of the Government (vide names of jurists mentioned on p.149); except in the case of a minor the guardian was not obliged to pay *zakat* on *al amwal al batina* (pp.150-151).

Two important topics for *ijtihad* during this period were (i) the theory of productivity of *mal* and (ii) the expiry of *hawl* (i.e. cycle of full year) before *zakat* became payable. Under the criterion of productivity, jewellery not constantly used by the owner, *al harth* and livestock were charged, while *al mal al samit* (goods lying dormant) of an orphan and *almal aldimar* (property not in possession and control of the owner) were declared exempt. Distinction is also made between goods held back by a trader for profiteering and regular transactions during the *hawl*; salaries paid were deductible at source. Livestock and merchandize were made chargeable annually while *zakat* on *al-harth* was charged at harvest. The technical details and complexities of *zakat* on incomes ensued at various times during the year are then discussed and different views explained (pp.151-158). It is noticeable that the Caliphate of Umar Ibn Abdul-Aziz is marked by a trend to return to the practices and precedents of the Prophet's time in relation to items chargeable to *zakat* and rates thereof; for instance, total exemption from *zakat* of horses and honey.

Chapter V of the thesis (pp.181-195) contains a summary of conclusions already included in dealing with each relevant period and would seem to amount to an avoidable repetition. At the end is given a bibliography of books mostly consulted and others not consulted by the author of the thesis. He particularly stresses the importance, to researchers, of the publication of the voluminous work of the 2nd century A.H. viz. *al Musannaf of Abd al Razzaq*, 11 Volumes (Beirut 1970 A.D.).