TAKHAYYUR
A REFORM METHODOLOGY FOR PAKISTAN

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Eclectism or *takhayyur* denotes choosing opinions from different schools of thought within Islamic law. This concept is based on non-adherence to a single school. Although there is a huge debate over legitimacy of *takhayyur* among Muslim jurists but it is used as a tool by Muslim states to reform their family laws. This article will analyze *takhayyur* as a reform methodology as employed in Pakistan. It is suggested that despite debate over legitimacy of *takhayyur* in Islamic law it has been proved as a successful tool for reform. The laws made on the basis of *takhayyur* have been proved less controversial as compared to laws made on the basis of *ijtihād.*

Introduction

Eclectism or *takhayyur* denotes choosing opinions from different schools of thought within the Islamic law. This concept is based on non-adherence to a single school of law. The process of *takhayyur* sparked differences of opinion among the jurists of Islamic laws and there is a huge debate over its legitimacy. Despite this debate, *takhayyur* is used as a tool by Muslim states including Pakistan to reform their family laws. Muslim states including Pakistan have tried to reform their laws especially family laws in the past century by using methodologies of *takhayyur* and *ijtihād*. Due to space constraint *ijtihād* as a reform methodology will not be discussed here. This article will analyze *takhayyur* as a reform methodology as employed in Pakistan. This topic is very

important as *takhayyur* is used as a reform methodology by the Muslim states and choice of methodology affects the resultant law. The article suggests that despite the debate over legitimacy of *takhayyur* in the Islamic law it has been proved as a successful tool for reform. The laws made on the basis of *takhayyur* have been proved less controversial as compared to the laws made on the basis of *ijtihād.* There is no scope to discuss the opinions of *fuqahā* regarding legitimacy of *takhayyur* in detail so it will be just touched upon. This article will focus only on the use of *takhayyur* as a reform methodology. It comprises two sections: the first one deals with the use and legitimacy of *takhayyur* as a reform methodology and the second section analyses Pakistan's practice regarding *takhayyur.*

It will be a socio-legal study so qualitative methodology will be used for the purpose of this research. Books, articles and statutes will be consulted to find out opinions of scholars and approach of the modern Muslim states including Pakistan. Effort will be made to consult original sources as well as modern writings by Muslim scholars. Reference is made to the statutes and case law wherever necessary.

Takhayyur: A Reform Methodology

The word *takhayyur* literally means to choose.[1] *Takhayyur* means to switch between different schools of thought on different issues. The concept is based on non-adherence to a single school of law. All schools of the Islamic law recognize the orthodoxy of each other.[2] The principle of *takhayyur* not only gives a right to an individual Muslim to resort to any other school than his own in a particular matter but is also a reform methodology. According to this concept diversity of opinion in the Islamic law is considered a wealth and an asset and different opinions from different schools are used for the purpose of reform. Due to the necessity and desire to find solutions for new challenges *takhayyur* is used in legislation, *fiqhī* books and even *fatāwā*.[3] The condition for a person to practice *takhayyur* is that he/she should not combine the opinions of two schools.[4] The principle of *takhayyur* is recognized by the *Ḥanafī, Mālikī* and *Shāfi'ī* schools.[5] According to the opinion of *Shawkānī*, a renowned Muslim scholar, the concept of adherence

to a single school was evolved after the period of the four great *imāms.* There was no concept of strict adherence of a single school in their time period.[6] The concept of adherence to a single school was developed in the middle of third century *Ḥijrī* after the death of great *imāms*.[7] Shāh Walī Ullah in his book *Ḥujjah-tu-Allah al-Bālighah* states that before advent of fourth century there was no agreement on *taqlīd* of one particular school. It was a general practice to contact any *muftī* for resolution of issue arisen regardless of his school. The concept of strict adherence to a single school was developed during fourth century.[8] During the 'Abbāsid's reign judges did not consider themselves to be bound to follow a particular *mujtahid* or school rather they used to follow their own opinion. People used to ask for opinions of different scholars without considering themselves bound to follow a particular *mujtahid*.[9]

Ibn al-Qayyim, a *Ḥanbalī* jurist, is of the opinion that nothing is mandatory upon a Muslim except what the Qur'ān and *Sunnah* has made mandatory. It is binding upon a Muslim to follow Qur'ān and *Sunnah* and opinions of the *Ṣaḥābah* (*Companions* [f]). By strict adherence to a single school a Muslim may act against opinion of a *ṣaḥābī* which has more sanctity than an opinion of a particular *imām*.[10] *Ibn Ḥazm, 'Izz-ul-Dīn 'Abdussalām* and *Abū Shamah* are also of the opinion that a particular school should not be followed rather the opinion which is in conformity with the Qur'ān and *Sunnah* should be followed.[11]

Muslim jurists have always considered a Muslim free to choose any school he/she wants. Coulson mentioned Ibn Taimiyah's opinion that according to him adherence to a particular authority except the Prophet Muḥammad (ﷺ) was not a requirement. Ibn Taimiyah considered it permissible for a Muslim to follow different scholars and said that scholars like Abū Ḥanīfah, Mālik, Shāfi'ī, Aḥmad ibn Ḥanbal did not deny this right of a Muslim.[12] Isnawi has mentioned opinion of *Al-Amīdi* that according to him to follow one school in one issue and another school in another issue is allowed.[13] Same is the opinion of Zaidān.[14] Al-Māwardī permits appointment of a judge from a different school than the appointing authority. According to him a judge has authority to follow any other school than his own if he considers it a sound opinion based on his own *ijtihād.* Strict adherence to the judge's own school is not required.

A condition binding the judge to follow a particular school is invalid according to al-Māwardī whether it is a general condition or relates to some specific case or category of decisions. A judge is supposed to exercise his reason and to decide about the right solution of the case so he is not bound by such conditions.[15]

The principle of *takhayyur* is also mentioned by Imām Qarāfi. He mentioned in his book *Sharḥ Tanqīḥ al-Fuṣūl fi Ikhtiṣār al-Maḥṣūl* about Yaḥyā al Zunnnātī who allowed *takhayyur* on three conditions: that the opinions should not be combined or mixed in such a way to oppose consensus or to make it an opinion which is not given by any jurist; the jurist to be followed must be trustworthy; that a particular opinion should not be followed to seek *rukhṣah* (concessions). Qarāfi mentioned that there is consensus of opinions that a Muslim may follow any of the jurists. He also mentioned consensus of the *Companions* (f) that after seeking opinion of any of the *Companions* a Muslim is allowed to seek opinion on the same matter from some other *Companion* (d).[16] In the *Musallam al-Thabūt* and its commentary the *Fawātiḥ al-Raḥmūt* the author is of the opinion that it is not binding on a Muslim to follow one school, concessions cannot be sought in the same problem but can be sought in different problems.[17]

Muḥammad ‘Abduh, the Egyption scholar, gave the idea that a law should be formulated based on the *Ḥanafī* and other schools regarding *mu‘āmalāt* to fulfil social needs. According to him (in an Egyptian context) adherence to the *Ḥanafī* school is not a necessary qualification for *qāḍīs*. He considered such a code to be helpful for *qāḍīs* and ordinary persons in application of the *Sharī‘ah* law as they do not need to be involved in differences of opinion. It also provides certainty in a legal system as litigants will know which opinion in a particular matter will be applicable to them. ‘Abduh’s disciple Rashīd Riḍā further developed this doctrine.[18] It is a kind of *ijtihād* as it involves evaluation of opinions from different schools. It is the most common device used by the Islamic states in formulating their laws based on the Islamic law. Reformers applied this principle to bring legislative reforms in the law applied by the state.[19] In particular the principle of *takhayyur* has proved very successful in reforming the Islamic family law.[20] The *Majallah Aḥkām al-‘Adalīyah* was the first codification which was based on *takhayyur* and, although the *Ḥanafī* school was officially followed in the Ottoman empire,

the *Majallah* borrowed some opinions from other schools as well.[21] *Abū al-'Alā Maudūdī*, a renowned scholar from Pakistan, also did not show strict adherence to any particular school in his writings rather he occasionally resorted to other schools keeping in view social needs.[22]

Wielderhold presented a 17th century anonymous treatise which according to him was a *Shāfi'ī* treatise and has shown that *takhayyur* and *talfīq* were not the twentieth century phenomenon but were debated even in seventeenth century. The treatise said that if there is difference of opinion among jurists it is a duty of the judge and the *muftī* (jurisconsult) to look for an appropriate opinion. For giving a judgment or a legal advice any of the doctrines/opinions of different schools can be relied upon. If a *Companion* (d) has issued an opinion and it is against the doctrine of main schools that opinion can be preferred. The only condition here is that the person exercising *takhayyur* should be aware of the reasons, conditions and circumstances of that opinion. A *muftī* is allowed to rely on a weak opinion but he should inform the *mustāftī* about weakness of that opinion. This could be done for the benefit of the community or for *ḍarūrah* (necessity). This is if the person is capable to make a preference.[23] According to Moors, in the seventeenth and eighteenth century Syria and Palestine, it was the practice of judges to refer litigants to judges from other schools to get relief for instance for dissolution of marriage. It means that they considered *takhayyur* a valid and correct practice.[24]

It is clear that *takhayyur* is considered permissible by Muslim jurists and has been used in the past. Muslim countries have used it as a reform tool in the twentieth century as well. In the process of reform the methodology of *takhayyur* went through three stages: in the first stage of reform opinions were taken from different schools, which was done by the Ottomans in framing of the laws of 1915 and 1917. In the second stage legislators adopted opinions from individual jurists which were occasionally in conflict with the dominant opinions of the schools. The Egyptian Law of Inheritance 1943 is an example of that. In the third stage patchwork or *talfīq* comes. In *talfīq* parts of opinions are patched together and the result is a new rule which is not held by any jurist.[25] Islamic states like Pakistan, Egypt, Iraq, Syria, Tunisia and Sudan found *takhayyur* as a most practical reform device and have continuously used

it for effecting reforms.[26] It is argued that a Muslim is bound to follow Islam and not a particular interpretation. In today's world if a state wants to reform the law it must not adhere to a particular school.[27] Different opinions are considered equally authoritative and should be resorted to for finding solutions to recent problems. It is argued that strict adherence to a single school may result in reluctance in such a Muslim to consult a scholar from any other school and may develop a feeling of prejudice towards other schools and their scholars. It may result in preference of opinion of an *imām* even though it contradicts a particular *ḥadīh* or opinion of a *ṣaḥābī* ( ).[28]

As people's problems, customs and interests change with passage of time so the law changes. The Islamic law comprises two sets of laws: definitive and probable. Definitive are Divine laws which cannot be changed whereas probable laws are based on *ijtihād.*[29] Muslims are bound to follow Divine rules but are not bound to follow opinions of jurists, if based on *ijtihād*, as they are probable and not definitive. Such opinions shall be followed if they fulfil social needs of a particular society otherwise Muslim scholars should do *ijtihād.* Keeping in view public welfare and social need, opinions from different schools can be adopted.[30] Where there is scarcity of *mujtahids,* at least it is a duty of the scholars to evaluate opinions of different schools and then choose the one which has stronger evidence/argument.[31] As in a modern state, laws are enacted through legislature, otherwise opinions of jurists will not have any effect; such preferred opinions can be enacted through legislatures in Muslim states. It is a duty of jurists to formulate the whole process so that the wealth of opinions in the Islamic law can be used. As members of parliament are not qualified to evaluate religious opinions this role must be played by the jurists.

The Concept of *Takhayyur* in the Indian Subcontinent

Shāh Walī Ullah, (d. 1760) was of the opinion that the concept of strict adherence to a school was developed in the fourth century Ḥijrī. Before that the common practice was to consult any *muftī* regarding the issue in question regardless of his school.[32] The best example of the use of the methodology of the *takhayyur* in Indian subcontinent is when this

methodology was used to resolve the issue of apostasy among Muslim women in the beginning of twentieth century. In his article 'Apostasy and Judicial Separation in British India' Khālīd Masūd discussed this case in detail. It is evident from this article that due to strict *Ḥanafī* law regarding dissolution of marriage, which only recognised impotency of the husband as a valid ground for dissolution of marriage, women started using apostacy as a legal device to get out of an undesirable marriage. Ashraf 'Alī Thānvī, an Indian jurist, who in an earlier *fatwā* declared marriage of an apostacised wife null and void was compelled to change his *fatwā* due to the increase in the number of women using apostacy as a legal device. He was a follower of the *Ḥanafī* school like a majority of Indian Muslims. He was against *takhayyur* but to tackle this problem he resorted to the *Mālikī* school and issued a revised *fatwā*. According to this new *fatwa* the *Mālikī* opinion regarding acceptable grounds for judicial dissolution of marriage was adopted and several grounds including impotency, cruelty, non-provision of maintenance, prolonged absence of the husband etc. were declared valid for dissolution of marriage by courts. On the basis of this *fatwā* Qāḍī Muḥammad Aḥmad Kāzimī from the 'Jam'iyat al-'Ulamā'-e-Hind' presented a bill in the parliament which was passed as the Dissolution of Muslim Marriages Act 1939.[33] After enactment of this Act the *Mālikī* law related to divorce became applicable on all Muslims irrespective of their school.[34] This Act is still enforced in India, Pakistan and Bangladesh. This was the use of *takhayyur* which was inevitable. It is clearly better to choose the opinions of different Islamic jurists than to abandon *Sharī'ah* entirely. There is a possibility that a particular opinion provides a better interpretation of a Divine text or a particular opinion is based on a stronger evidence than another opinion or that opinion is suitable and fulfils social needs in a particular environment. In such scenarios choosing such an opinion becomes inevitabile.[35]

Takhayyur as Practised in Pakistan

Pakistan initiated a process of Islamisation to bring its laws into conformity with the Islamic law. In this process not only were amendments made to laws in Pakistan by the legislature but the judiciary also played

an important role. Islamisation of laws is considered a judge led process by some scholars.[36] As far as methodology of reform is concerned there is no consistency in Pakistan's approach as it has practised *takhayyur* as well as *ijtihād* in the past. There have been instances when Pakistan actually practised *takhayyur* but claimed it to be *ijtihād*.*[37] Section 4 of the Muslim Family Laws Ordinance 1961 is a good example here. In this section the legislature adopted the *Shī'ah* law of inheritance to give relief to an orphan child.[38] According to section 2 of the Shariat Application Act 1991 in interpretation of the Qur'ān and *Sunnah* to follow one school is not necessary and opinions from different schools can be used for this purpose.[39] In Pakistan *takhayyur* is used not only by the state in the process of Islamisation but also by the courts. There are certain rules in the Pakistani Family law which are borrowed from other schools despite the fact that the majority in Pakistan belongs to the *Ḥanafī* school. In the Indian subcontinent the device of *takhayyur* was for the first time used in drafting of the Dissolution of Muslim Marriages Act 1939. As discussed earlier, this Act was based on the *Mālikī* school and is still applicable in Pakistan.[40]

According to the Enforcement of Shariah Act 1991 *'Shariah'* means injunctions of Islam as laid down in the Qur'ān and *Sunnah* and is the supreme law of the land.[41] This Act gives the authority to the courts to interpret the laws in the light of *Sharī'ah* wherever possible. Section 4 says that while interpreting the statute law if more than one interpretation is possible the one consistent with Islamic principles and jurisprudence should be preferred.[42] So the courts have authority to choose an interpretation which is closer to the Islamic law. Pakistani courts while exercising their discretion do not consider themselves bound to follow any particular school. In 1967 in **Khurshīd Bībī v Muḥammad Amīn** the Supreme Court of Pakistan said:

> '… It is permissible to refer to those opinions [of other *Sunnī* sects other than *Ḥanafīs*] which are consistent with the Qur'ānic

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*For instance the use of Li'ān in determining the case of legal separation of husband and wife. If there is no tangible evidence of adultery, the court asks the two to swear five times about the accusation as true or false and in fifth swearing they implore Divine curse on their spouse and then the court orders their separation and breakup of marriage as legal – *Ed.*

injunctions. A certain amount of fluidity exists, even among orthodox *Ḥanafis* in certain matters. In the case of a husband who has become *mafqood-ul-khabār,* for instance, *Mālikī* opinion can be resorted to by a *Ḥanafi qāzī* as is mentioned in the *Raddul Mukhtār*.

… The learned *imāms* never claimed finality for their opinions, but due to various historical causes, their followers in subsequent ages invented the doctrine of *taqlīd* under which a *Sunnī* Muslim follows the opinion of only one of their *imāms*, exclusively, irrespective of whether reason be in favour of another opinion.'[43]

As the doctrine of precedent prevails in Pakistan the decision of the Supreme Court is binding on lower courts. In **Mst. Khurshīd Jān v. Fazal Dād**[44] the Lahore High Court clearly said that in the case of conflicting views of earlier jurists the court is free to adopt any opinion. In **Fidā Hussain v. Naseem Akhtar**[45] where admissibility of testimony of close relatives was in question the Lahore High Court held that testimony of close relatives will be admissible if it is corroborated by some other evidence. The court said that there is difference of opinion among *fiqhī* schools regarding this issue. The *Ḥanafī* school does not accept the testimony of close relatives but according to other three *Sunnī* schools such testimony is admissible. The court was of the view that it is not bound to follow any particular school on a particular issue and can adopt opinions from other schools.

It is evident from these cases that Pakistani courts do not consider it mandatory to follow a particular school and so they have made use of the wealth of juristic opinions available in the Islamic law.

The concept of *takhayyur* brings flexibility to the Islamic law. If adherence to a single school is emphasized it makes the Islamic law narrow. The reforms which were based on *ijtihād* have been more controversial as compared to the reforms made on the basis of *takhayyur.* Section 7 of the Muslim Family Laws Ordinance 1961 is a good example here. This section requires the husband to give notice to the Union Council to make the divorce effective. Without such notice divorce will not be effective. In the Islamic law there is no such requirement and an oral divorce is effective. This section is greatly criticized by the scholars although according to the drafters of MFLO it was based on *ijtihād.*

In 2000 in **Allah Rakhā v. The Federation of Pakistan** the Federal Shariat Court declared section 7 of the MFLO repugnant to the Qur'ān and *Sunnah.*[46] In 2004 in **Shaukat Ali and another v. the State** the Federal Shariat Court said that failure to comply with the procedure given by Section 7 does not invalidate *ṭalāq.*[47] The MFLO is criticized by scholars as not based on Islamic law.[48] In a modern state like Pakistan the wealth of the opinions of the jurists should be used in legislation.

Conclusion

In Islamic history strict adherence to a single school is a concept which was developed after third century Hijrī. Before that Muslims were considered free to consult any *mujtahid* regardless of his school. A Muslim is bound to follow Qur'ān and *Sunnah* and not any particular school. As people's problems, customs and interests change with passage of time so the law changes. Muslims are bound to follow the Divine rules but are not bound to follow opinions of jurists, if based on *ijtihād*, as they are probable and not definitive. Such opinions shall be followed if they fulfil social needs of a particular society otherwise Muslim scholars should do *ijtihād.* Keeping in view public welfare and social need opinions from different schools can be adopted. Where there is scarcity of *mujtahids* at least it is a duty of the scholars to evaluate opinions of different schools and then choose the one which has stronger evidence/argument.

In the past century Muslim states have tried to reform their laws by using methodologies of *takhayyur* and *ijtihād*. After independence in 1947, like other Muslim states, Pakistan has tried to reform its laws. Pakistan has been inconsistent as far as its reform methodology is concerned. The methodology employed by Pakistan to reform its laws has been used occasionally on *ijtihād* and occasionally on *takhayyur.* In this paper *takhayyur* as a reform methodology for Pakistan has been analyzed. It was found that the legislations which were based on *takhayyur* were less controversial than the legislations based on *ijtihād,* as in a modern state laws are enacted through legislature, otherwise opinions of jurists will not have any effect. Such preferred opinions can be enacted through the legislatures in Muslim states. It is a duty of the jurists to formulate the whole process so that the wealth of opinions in Islamic law can be used. As members of parliament are; generally, not qualified to evaluate opinions this role must be played by the jurists.

Notes and References

1. Ibn Manẓūr, *Lisān-al-'Arab*, Beirut, Dar Ahya-al-Turath Al-'Arabi,vol. 1, 1988, pp. 258-259. [Hereinafter Ibn Manzur, 1988].
2. David Bonderman, Modernization and Changing Perceptions of Islamic law, *Harvard Law Review,* vol. LXXXI(6), 1968, 1174. [Hereinafter Bonderman, 1968]. For a discussion on difference of opinion among schools see Muhammad Khalid Masud, Ikhtilāf Al-Fuqahā: Diversity in Fiqh as a Social Contruction, *Wanted: Equality and Justice in the Muslim Family,* Ed. Zainab Anwar, Selangor: Musawah, 2009, pp. 65-90. [Hereinafter Masud, 2009].
3. Ihsan yilmaz, *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan,* Aldershot, Hants: Ashgate Publishing Ltd, 2005, pp. 39-43. [Hereinafter Yilmaz, 2005].
4. John L. Esposito, Muslim Family Law Reform: Towards an Islamic Methodology, *Islamic Studies,* vol. 15(1), 1976, p. 20. [Hereinafter Esposito, 1976].
5. J.N.D. Anderson, Modern Trends in Islam: Legal Reform and Modernisation in the Middle East, *The International and Comparative Law Quarterly,* vol. XX(1), 1971, p. 13. [Hereinafter Anderson, 1971]; Masud, 2009, p. 78.
6. Muḥammad ibn 'Alī Al-Shawkānī, *Al-Qawl Al-Mufīd fi 'Adillat al-Ijtihād wa al-Taqlīd,* Kuwait, Dar al-Kalam, 1396 A.H.), p. 45. Hereinafter Al-Shawkānī, 1396 A.H. The great imams were flexible in adopting each other's opinions as well. According to reports Mālik has adopted few opinions of Abū Ḥanīfa and Abū Hanīfa has adopted few opinions of Mālik. For details see Ahmad al-Khairī, *Al-Fiqh wa Uṣūl al-Fiqh min 'Amal al-Imām Muḥammad Zāhīd al-Kauthari,* Beirut, Dar al-Kutub al-'Ilmiyyah, pp. 209-213. Hereinafter Al-Khairi].
7. Abdul Mun'im al-Nimr, *Al-Ijtihād,* Beirut, Dar al-Shuruq, 1986, p. 200. [Hereinafter Al-Nimr, 1986].
8. Shāh Wali Ullah, *Ḥujjah Tu-Allah al-Bālighah*, Beirut, Dar Ahya al-Turath al-'Arabi, 1990, vol. 1, pp. 438-440. [Hereinafter Shah Wali Ullah, 1990].
9. *Ibid.,* pp. 240, 169-175. Also see Amīr Bādshah, Muḥammad Amīn, *Taysīr al-Taḥrīr,* Beirut, Dar al-Fikr, undated, vol. IV, p. 247.
10. Muḥammad bin Abi Bakr ibn al Qayyim a-Jawziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn,* Egypt, Maktabah Al-Kulliyat Al-Azhariyah, 1968, vol. IV, p. 261. [Hereinafter Ibn al-Qayyim, 1968].
11. Shāh Wali Ullah, 1990, vol. 1, pp. 442-445.
12. Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence,* Chicago and London, The University of Chicago Press, 1969, pp. 33-35. [Hereinafter Coulson, 1969].
13. Jamāl-ul-Dīn Abi Muḥammad 'Abdul Rahīm ibn Al-Hasan Al-Isnawi, *Al-Tamhīd fi Takhrīj al-Furū' 'ala al-Uṣūl*, Beirut, Dar-al-Kutub Al-'Ilmiyyah, 2004, pp. 653-656. [Hereinafter Al-Isnawi, 2004].
14. 'Abdul Karīm Zaidān, *Al-Wājiz fi Uṣūl-al-Fiqh,* Beirut, Mu'assasah Al-Risalah, 1987, pp. 407-411. [Hereinafter, Zaidan, 1987].

15. Al-Māwardī, *Al-Aḥkām al-Sulṭāniyah,* Translated as *The Laws of Islamic Governance,* Asadullah Yate (Translator), London, Ta-ha Publishers Ltd., 1996, pp. 102-103. [Hereinafter Al-Mawardi, 1996].
16. Shihāb-al-Dīn Al-Qarafī, *Sharḥ Tanqīh al Fuṣūl fi Ikhtiṣār al Maḥsūl,* (Al-Maktabah al-Shamilah), p. 468. [Hereinafter Al-Qarafi]; Birgit Krawietz, Cut and Paste in Legal Rules: Designing Islamic Norms with Talfīq, *Die Welt des Islams,* New Series, vol. LII(1), 2002, p. 12. [Hereinafter Krawietz, 2002].
17. 'Abd-al-'Ali Muḥammad b. Nizām-al-Dīn Al-Ansārī, *Fawātiḥ Al-Raḥmūt Sharḥ Musallam-al-Thabūt,* Matb'ah-alAmiriyah, 1366 A.H.), vol. II, pp. 405-407. [Hereinafter Al-Ansari, 1366 A.H.]; Nyazee, 1983, p. 26.
18. Aharon Layish, The Contribution of the Modernists to the Seculaization of Islamic Law, *Middle Eastern Studies,* vol. XIV(3), 1978, p. 263. [Hereinafter Layish, 1978].
19. John L. Esposito, Muslim Family law in Egypt and Pakistan: A Critical Analysis of Legal Reform, it's Sources and Methodological Problems, PhD Thesis submitted at Temple University, Michigan, 1974, p. 247. [Hereinafter Esposito, 1974]. For the first time the principle of *takhayyur* was used in *Majallah* by Ottoman Empire. Then the principle expanded and was used by different Muslim countries. For a detailed discussion see Norman Anderson, *Law Reform in the Muslim World,* London, The Athlone Press, 1976, pp. 47-58. [Hereinafter Anderson, 1976].
20. Norman Anderson, Islamic Law Today the Background to Islamic Fundamentalism, *Arab Law Quarterly,* vol. II(4), 1987, p. 347. [Hereinafter Anderson, 1987].
21. Bonderman, 1968, p. 1177; Aharon Layish, The Transformation of the Shariah from Jurists' Law to Statutory Law in the Contemporary Muslim World, *Die Welt Des Islams,* New Series, vol. XLIV(1), 2004, p. 89. [Hereinafter Layish, 2004]; Anderson, 1971, p. 2.
22. Rafiullah, Haliya 'Aa'ili Qawanin, *Fikr-o-Naẓar*, vol. III(4), 1965, pp. 284-285. [Hereinafter Haliya, 1965].
23. Lutz Wiederhold, Legal Doctrines in Conflict the Relevance of Madhab Boundaries to Legal Reasoning in the Light of an Unpublished Treatise on *Taqlīd* and *Ijtihād, Islamic Law and Society,* vol. III(2), 1996, pp. 273-277. [Hereinafter Wiederhold, 1996].
24. Annelies Moors, 'Debating Islamic Family Law: Legal Texts and Social Practices', A Social History of Women and Gender in the Modern Middle East, Eds. Meriwether and Tucker, Westview Press, 1999, p. 155. [Hereinafter Moors, 1999].
25. Imran Ahsan Khan Nyazee, The Scope of Taqlīd in Islamic Law, *Islamic Studies,* vol. II(4), 1983, pp. 23-24. [Hereinafter Nyazee, 1983]; Al-Nimr, 1986, pp. 226-227; N.J. Coulson, Reform of Family Law in Pakistan, *Studia Islamica,* No. 7, 1957, pp. 135-136. [Hereinafter Coulson, 1957].
26. Esposito, 1974, pp. 245-257; Abdullahi Ahmed An-Na'im, *Toward an Islamic reformation: Civil Liberties, Human Rights and International Law,* New York,

Syracuse University Press, 1996, p. 45. [Hereinafter An-Na'im, 1996]; Bonderman, 1968, p. 1181; Coulson, 1957, p. 135.

27. Oussama 'Arabi, *Studies in Modern Islamic Law and Jurisprudence,* The Hague, London, Kluwer Law International, 2001, pp. 23-24. [Hereinafter 'Arabî, 2001].
28. Ghazalā Ghalib Khān, Application of *Talfīq* in Modern Islamic Commercial Contracts, *Policy Perspectives*, vol. X(2), 2013, p. 139. [Hereinafter Khan, 2013].
29. Imrān Aḥsan Khān Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad,* Islamabad, The International Institute of Islamic Thought and Islamic Research Institute, 1994, pp. 280-281. [Hereinafter Nyazee, 1994].
30. 'Abdul Kareem 'Uthmāẓn, Talfīq aur doosray fiqhi madhab par fatwā: ḥudūd-o-Ḍawābiṭ, *Fikr-o-Naẓār,* vol. XLVIII(3), p. 121. [Hereinafter 'Uthman].
31. Al-Nimr, 1986, pp. 240, 365-370.
32. Shāh Wali Ullah, 1990, vol. 1, pp. 438-440.
33. Muḥammad Khalīd Masūd, 'Apostacy and Judicial Separation in British India', *Islamic Legal Interpretation,* Eds. Masūd, Messick and Powers, Harvard University Press, 1996, pp. 193-203. [Hereinafter Masūd, 1996]. Also see Masud, 2009, p. 88; Muḥammad Rashīd Feroze, The Reform in Family Laws in the Muslim World, *Islamic Studies,* vol. 1(1), 1962, pp. 108-109. [Hereinafter Feroze, 1962]. Some provisions of the Act are not in conformity with the *Mālikī* school. Pakistan's law departed from *Mālikī* opinion regarding the scope of its definition of desertion, the length of the maintenance period, the cumulative nature of maintenance, the detailed procedures governing arbitration in maltreatment cases, and the form of judicial divorce; Esposito, 1976, p. 20.
34. Feroze, 1962, pp. 108-109.
35. Khān, 2013, pp. 147-148.
36. Lau, 2006, p. 211.
37. Coulson, 1957, p. 136.
38. Lau, 2006, p. 138.
39. Muḥammad Munīr, Precedent in Islamic Law with Special Reference to the Federal Shariat Court and the Legal System in Pakistan, *Islamic Studies*, vol. XLVII(4), 2008, pp. 452, 458. [Hereinafter Munīr, 2008].
40. Anees Ahmed, Reforming Muslim Personal Law, *Economic and Political Weekly,* vol. XXXVI(8), 2001, p. 618. [Hereinafter Ahmed, 2001]; Masū d, 1996, pp. 193-203; Feroze, 1962, pp.108-109; Esposito, 1976, p. 20.
41. The Enforcement of Shariah Act 1991, Section 2.
42. *Ibid.,* Section 4.
43. PLD 1967 SC 97.
44. PLD 1964 Lahore, pp. 558-612.
45. PLD 1977 Lahore, p. 328.
46. PLD 2000 FSC, p. 1.
47. 2004 YLR FSC, p. 619. Also see Fidā Hussain v. Mst. Najmā and another, PLD 2000 Quetta, p. 46; M. Parnian Arooj v. Mehmood Sādiq, 2010 CLC Lahore, p. 258.
48. Feroze, 1962, pp. 111-116.

Bibliography

'Abd al-'Alī Muḥammad b. Niẓām-al-Dīn Al-Ansārī, *Fawātih Al-Raḥmūt Sharḥ Musallam al-Thabūt,* Matb'ah al-Amiriyah, 1366 A.H., Vol. II.

Abū al-Hasan 'Alī b. Muḥammad b. Habib al-Basri al-Māwardi, *Al-Aḥkām-al-Sultāniyah,* Translated as *The Laws of Islamic Governance,* Asadullah Yat, Translator, London, Ta-ha Publishers Ltd., 1996.

Ahmed, Anees, Reforming Muslim Personal Law, *Economic and Political Weekly,* vol. XXXVI(8), 2001.

Al-Dehalwi, Shāh Wali Ullah, *Ḥujjah Tu-Allah al-Bālighah*, Beirut, Dar Ahya al-Turath Al-'Arabi, 1990.

Al-Isnawi, Jamāl-ul-Dīn Abī Muḥammad 'Abdul Rahīm ibn Al-Hasan, *Al-Tamhīd fi Takhrīj Al-Furū' 'ala Al-Uṣūl*, Beirut, Dar-al-Kutub Al-'Ilmiyyah, 2004.

Al-Jawziyyah Muḥammad bin Abi Bakr ibn al-Qayyim, *I'lam al-Muwaqqi'īn 'an Rabb al-'Alamin,* Egypt, Maktabah Al-Kulliyat Al-Azhariyah, 1968.

Al-Khairī, Ahmad, *al-Fiqh wa Uṣūl al-Fiqh min 'Amal Al-Imām Muḥammad Zāhid al-Kauthari,* Beirut, Dar-al-Kutub Al-'Ilmiyyah.

Al-Nimr, Abdul Mun'im, *Al-Ijtihād,* Beirut, Dar-al-Shuruq, 1986.

Al-Qarafi, Shihāb al-Din, *Sharḥ Tanqīḥ al Fuṣūl fi Ikhtiṣār al Maḥṣūl,* Al-Maktabah al-Shamilah.

Al-Shawkānī, Muḥammad ibn Alī, *Al-Qawl Al-Mufīd fi 'Adillat al-Ijtihād wa al-Taqlīd,* Kuwait, Dar al-Kalam, 1396 A.H.

Anderson, J.N.D., Modern Trends in Islam: Legal Reform and Modernisation in the Middle East, *The International and Comparative Law Quarterly,* vol. XX(1), 1971.

——, *Law Reform in the Muslim World,* London, The Athlone Press, 1976.

——, Islamic Law Today the Background to Islamic Fundamentalism, *Arab Law Quarterly,* vol. II(4), 1987.

Annelies Moors, 'Debating Islamic Family Law: Legal Texts and Social Practices', A Social History of Women and Gender in the Modern Middle East, Eds. Meriwether and Tucker, Westview Press, 1999.

An-Na'im, Abdullahi Ahmed, *Toward an Islamic reformation: Civil Liberties, Human Rights and International Law,* New York, Syracuse University Press, 1996.

Badshah, Amīr and Amīn, Muḥammad, *Taysīr al Taḥrīr,* Beirut, Dar ul Fikr, undated.

Birgit Krawietz, Cut and Paste in Legal Rules: Designing Islamic Norms with *Talfīq*, *Die Welt des Islams,* New Series, vol. 42(1), 2002.

Bonderman, David, Modernization and Changing Perceptions of Islamic law, *Harvard Law Review,* vol. 81(6), 1968.

Coulson, Noel J., *Conflicts and Tensions in Islamic Jurisprudence,* Chicago and London, The University of Chicago Press, 1969.

Esposito, John L., Muslim Family Law Reform: Towards an Islamic Methodology, *Islamic Studies,* vol. 15(1), 1976.

——, *Muslim Family law in Egypt and Pakistan: A Critical Analysis of Legal Reform,*

it's Sources and Methodological Problems, PhD Thesis submitted at Temple University, Michigan, 1974.

Feroze, Muḥammad Rashid, The Reform in Family Laws in the Muslim World, *Islamic Studies,* vol. 1(1), 1962.

Haliya, Rafīullah, 'Aailī Qawānīn, *Fikr-o-Nazar* (Islamabad) vol. 3(4), 1965.

Ibn Mānzūr, *Lisān-al-'Arab*, Beirut, Dar Ahya-al-Turath Al-'Arabi, 1988.

Khān, Ghazala Ghalib, Application of *Talfiq* in Modern Islamic Commercial Contracts, *Policy Perspectives*, vol. X(2), 2013.

Layish, Aharon, The Contribution of the Modernists to the Seculaization of Islamic Law, *Middle Eastern Studies,* vol. XIV(3), 1978.

——, The Transformation of the Shariah from Jurists' Law to Statutory Law in the Contemporary Muslim World, *Die Welt Des Islams,* New Series, vol. XLIV(1), 2004.

Masūd, Muḥammad Khalīd, 'Apostacy and Judicial Separation in British India', *Islamic Legal Interpretation,* Eds. Masūd, Messick and Powers, Harvard University Press 1996.

——, *Ikhtilāf Al-Fuqaha'*: Diversity in Fiqh as a Social Contruction, *Wanted: Equality and Justice in the Muslim Family,* Ed. Zainab Anwar, Selangor, Musawah, 2009.

Munir, Muḥammad, Precedent in Islamic Law with Special Reference to the Federal Shariat Court and the Legal System in Pakistan, *Islamic Studies*, vol. XLVII(4), 2008, pp. 452, 458.

Nyāzee, Imrān Ahsan Khān The Scope of *Taqlīd* in Islamic Law, *Islamic Studies,* vol. II(4), 1983, pp. 23-24.

——, *Theories of Islamic Law: The Methodology of Ijtihād,* Islamabad, The International Institute of Islamic Thought and Islamic Research Institute, 1994.

Oussama 'Arabī, *Studies in Modern Islamic Law and Jurisprudence,* The Hague, London, Kluwer Law International, 2001.

'Uthman, 'Abdul Kareem, Talfiq aur doosray fiqhi madhab par fatwa: Ḥadūd-o-ḍawābit, *Fikr-o-Nazar,* vol. XLVIII(3).

Wiederhold, Lutz, Legal Doctrines in Conflict the Relevance of *Madhab* Boundaries to Legal Reasoning in the Light of an Unpublished Treatise on *Taqlīd* and *Ijtihād, Islamic Law and Society,* vol. III(2), 1996.

Yilmaz, Ihsan, *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan,* Aldershot, Hants, Ashgate Publishing Ltd., 2005.

Zaidān, 'Abdul Karīm, *Al-Wājiz fi Uṣūl al-Fiqh,* Beirut, Mu'assasah Al-Risalah, 1987.

CASES

Allah Rakhā v. The Federation of Pakistan, PLD 2000 FSC, p. 1.

Shaukat Alī and another v. the State, 2004 YLR FSC, p. 619.

Fidā Hussain v. Mst. Najmā and another, PLD 2000 Quetta, p. 46.

Fidā Hussain v. Tasmeem Akhtār, PLD 1977 Lahore, p. 328.

M. Parnian Arooj v. Mehmood Sādiq, 2010 CLC Lahore, p. 258.

Khurshīd Bībī v Muḥammad Amīn PLD 1967 SC, p. 97.

Mst. Khurshīd Jān v. Fazāl Dād PLD 1964 Lahore, pp. 58-612.