Avazbek GANIYEV,
INTERNATIONAL ISLAMIC ACADEMY OF UZBEKISTAN, doctor of philosophy PhD, senior lecturer at the department of Islamic studies and ISESCO chair for the study of Islamic Civilization

VIEWS ON ZAKAT UNDER THE LAW OF IJTIHAD IN DIFFERENT SCHOOLS OF THOUGHT

Role of reasoning '*Ijtihad*' in the formation of the zakat law. *Ijtihad* [1] is the art of interpretation within Islamic jurisprudence *(Ilm al-Usul al-Fiqh).* Powell states that, "the process of seeking to form correct legal opinions through reasoning from the Quran and the *Sunna.* Whenever there was no clear text on a particular issue, jurists used methods of analogy and consensus and, depending upon the school of thought, custom, public policy analysis, necessity, and judicial discretion to reach a decision consistent with Qur'anic principles."[2] Encyclopaedia Britannica defines *ijtihad* [3] as an effort in Islamic law, the independent or original interpretation of problems not precisely covered by the Qur'an and *Ahadith*. In the early Muslim community every adequately qualified jurist had the right to exercise such original thinking, mainly *ra'y* (personal judgment) and *qiyas* (analogical reasoning), and those who did so were termed *mujtahids*. However, with the crystallization of legal schools (*madhahib*) under the 'Abbasids (reigned 750–1258); some Islamic schools held the opinion that at the end of the 9th century, gates of *ijtihad* were closed and that no scholar could ever again qualify as a *mujtahid.* Powell states that, "One challenge to the continued development of *fiqh* was the notion of the closing of the gates of *ijtihad*."[4] All subsequent generations of jurists were considered bound to *taqlid,* [5] the unquestioned acceptance of their great predecessors as authoritative, and could issue legal opinions drawn from established precedents.

[1] Ijtihad literally means to endeavor, effort, put oneself out, work hard. In Islamic legal terminology, it means the process of deriving the laws of the shari'ah from its sources. https://www.al-islam.org access date 12.11.2016

[2] Powell L., (2010), 'Zakat: Drawing Insights for Legal Theory and Economic Policy from Islamic Jurisprudence', see p. 52. Article retrieved from http://digitalcommons.law.seattleu.edu on 25.08.2016

[3] https://www.britannica.com accessed on 12.11.2016

[4] Ibid. See p.57

[5] Taqlid literally means, "To follow someone", "to imitate someone". In Islamic legal terminology, it means, "to follow the mujtahid in religious laws. https://www.al-islam.org accessed on 12.11.2016

Views on Zakat under Law of *Ijtihad* in *Hanafi* School of Thought

Hanafi jurisprudence, like all the other schools of Islamic *fiqh,* relies primarily on the text of the Qur'an. The *Sunna* of the Prophet (as recorded in *hadith)* provides the context for the Qur'anic interpretation and supplies a large number of legal standards. By the eleventh century, *Hanafi* jurists had developed an extensive corpus of legal treatises that analogized from the text of the Qur'an and *Ahadith.* Their use of interpretive techniques in the classical period was broad and expressly allowed for judicial discretion. As mentioned earlier, horses are subject to zakat under certain circumstances. Rehman observes that, "Abu Yusuf and Zufar state that no zakat is to be paid on horses based on Prophetic traditions. Abu Hanifa by contrast submits that Prophetic tradition concerned horses for military purposes only and did not extend to ordinary horses."[6]

In the *Hanafi* School, zakat is to be paid on an annual basis. Should a mentally ill person recover prior to the lapse of a full year, then he ought to pay zakat. However, this is conditional upon him having suffered zakat for the greater part of the year. In the *Hanafi madhab* zakat is not imposed on those who have debts when those debts are equal to the total amount of one's property or more. However, should the property exceed the amount of debt owed then that person is liable for the excess. Zakat is not imposed on items that are used for the primary needs of a person. Rehman states that, "Even though there are numerous disagreements regarding *zakatability* of wealth obtained in a doubtful or illegal way, the *Hanafi* jurists reached consensus that zakat cannot be paid in that case."[7]

The *Hanafi* School of Thought divides *zakatable* categories of property into three: livestock, agriculture, and trade goods. Although government authorities may collect zakat, they are limited to forcibly collecting "visible" property (generally livestock and crops). Zakat beneficiaries include the categories listed in *Surah at- Taubah (9:60)*, with an emphasis on the poor, needy, wayfarers, and debtors within the Muslim community. Powell writes that,

The Hanafi scholar Abu Yusuf specifically excludes non-Muslims as possible zakat beneficiaries. Donors may not give in ways that benefit themselves. Transfer of ownership proceeds must go to proper beneficiaries rather than to public purposes such as the building of mosques. Abu Yusuf also recommended the appointment of a reliable man to oversee all offerings (including zakat). Given this concern for the effective administration of zakat, collectors of zakat receive priority in the receipt of their share.[8]

The *Hanafi* Law establishes zakat on horses but unlike other animals, zakat should be paid in cash rather than in kind or other form of animal. As for donkeys and mules, no zakat is paid on them unless they are intended for merchandise purposes. As Rehman states, "Animals, which are intended for transportation purposes, are not subject to zakat. It should be noted that a zakat collector may not demand a tender of the best animal or property as zakat."[9]

Views on Zakat under the Law of *Ijtihad* in *Shafi'i* School of Thought

Shafi'i law defines zakat as "growth, blessings and an increase in good, purification, or praise"[10]. To be accepted as zakat the following criteria must be fulfilled prior to payment:

a. a person must be in sound mind
b. be a Muslim
c. have an intention to perform his religious obligation

[6] Rehman J., Ahmedov A., (2011) Islamic Law of Obligatory Alms (Zakat), teaching manual p.23

[7] Ibid. p.21

[8] Powell L. (2010), 'Zakat: Drawing Insights for Legal Theory and Economic Policy from Islamic Jurisprudence', see p. 53. Article retrieved from http://digitalcommons.law.seattleu.edu on 25.08.2016

[9] Rehman J., Ahmedov A., (2011) Islamic Law of Obligatory Alms (Zakat), teaching manual p.23

[10] Ibid p.24

d. must have reach minimum amount (*nisab*)

e. and possess wealth subject to zakat for a full year

If the owner of the liable wealth for zakat is a child or insane, zakat should be discharged by the guardian of that person. "If the guardian does not pay the zakat, then the child or insane person must pay zakat for past years after attaining puberty or after recovering, because this is an obligation upon their wealth. But, the guardian is sinning if he delays it and what he has neglected cannot be waived."[11] The *Shafi'i* School of Thought clarifies the exact payment amount for the agricultural produce being minimum quantity for crops at 609.84 kilograms or for the rice 1219 kilograms.[12] As regards of the percentage of the zakat from the total yield, its calculation is similar to the *Hanafi* School of Thought. It clarifies that if the crops are grown using naturally formed irrigation, such as rainfall, then the zakat payment due is 10% and if the crops are grown using irrigation requiring human efforts then the zakat payment is on the level of 5% rate.

In the *Shafi'i* School of Thought, the following are subject to zakat payment:

a. livestock, which includes domestic animals such as camels, cattle, sheep and goats;

b. some food crops, which include staple types that are cultivated, dried and stored such as wheat, barley, millet, rice, lentils, chickpeas, broad beans, grass peas and as well as raw dates and grapes;

c. gold and silver;

d. trade goods;

e. wealth from treasure troves.

Regarding the zakat on animals, the *Shafi'i* law deviates slightly from tradition as it states that a male animal should be prescribed in some circumstances. It is not entirely clear as to why the *Shafi'i* law explicitly stipulates a male animal. Rehman writes that, "By contrast, the other traditions either directly specify a female animal or remain silent on this subject."[13] Regarding gold and precious stones the *Shafi'i* School of Thought poses the minimum amount as 84.7 grams gold and for silver 592.9 grams and for cash amount as for silver. It is interesting to note that *Shafi'i* Law does not establish zakat on any form of gold, silver or other valuable stone that is used for the purposes of jewellery.[14] The *Shafi'i School* of Thought establishes 20% rate for the treasure trove found on the lands, which were owned by the non-Muslim in the past. In other circumstances, zakat imposed on the treasure trove is 2.5% of the total amount found and after it had been processed into final product.

Ushri **and** ***Kharaji*** **lands**

In the *Hanafi* School of Thought, zakat on agricultural produce is also known as *ushr* or one tenth of the land harvest, which is subject to zakat.

As Marghinani states,

According to Abu Hanifa upon everything produced from the land there is due tenth, or tithe which is termed ushr; whether the soil be watered by the annual overflow of great rivers (Oxus and Seyhun), or by periodical rains, except the articles of wood, bamboos and grass which are not subject to tithe. According to Abu Hanifa, land watered by means of buckets, or machinery, or watering camels, are subject to half tithe. The reason why such lands are made subject to half tithe only is that the expense of tillage greatly exceeds that of lands, which are watered by rains or by periodical overflow of great rivers.[15]

The *Hanafi* School of Thought had its distinctive features compared to *Shafi'i* School, for instance it is vivid in the rates of zakat imposed to the *ushri* lands. De Zayas explains that, "The *Hanafi* school which, under given circumstances admits. a) Muslim landowner being subject to the payment of a double tithe i.e., to a 20% zakat of his produce. Or b) A Muslim landowner being exempted from the payment of the zakat on agricultural products and

[11] https://islamqa.info/en/75307

[12] Ibid p.29

[13] Rehman J. and Ahmedov A., Islamic Law of Obligatory Alms (Zakat), teaching manual p. 28

[14] Ibid see p.30

[15] Marghinani A. B, Translated by Hamilton. Ch., (1870). The Hedaya or Guide: a commentary to the Mussulman Laws. H. Allen and Co. London, Great Britain see p. 16

instead subject to the payment of *kharaj* or tribute to the Muslim state."[16] However, in the early period of Islam in the Arabian Peninsula, most of the lands were conquered and these tribes converted to Islam giving them opportunity to perform their agricultural activities. As for the Islamic law they paid zakat on agriculture whereas, few tribes under Islamic rule, which were not Muslim had to pay land tax known as *Kharaj*, collected money was transferred to the budget of the Muslim state. Suharto explains that, "*Ushr* is often translated as tithe, which refers to the maximum rate of zakat on crops; one tenth for naturally irrigated crops and one twentieth for artificially irrigated ones. Hence in Abu Ubayd's view *ushr* is part of zakat."[17] Tribute or *Kharaj* is according to Islamic law, tax imposed by Muslim state on the non-Muslim landowners' produce. It is paid to the Muslim state for the protection from enemy attacks. These are lands given to the non-Muslim owners as lawful users of the property in Muslim conquered lands. De Zayas explains that,

This rule applies to both the non-Muslim that were conquered subjects or 'Taghallub'. Non-Muslim who has been defeated by force of arms and brought under Muslim rule and to the non-Muslim protected subject or 'Dhimmi', the non-Muslim who has entered into a pact with the Muslim State whereby, he voluntarily acknowledges himself as its subject and in exchange, is granted security of life, protection of his property, civil rights and freedom of worship. Upon tithe lands, possessed by persons of 'Tooleb' tribe, a twofold ushr, or fifth, must be levied, and in this all scholars agree.[18]

[16] Zayas, -de, F. (2003). The Law and Institution of Zakat. The other press. Kuala Lumpur. See p. 201

[17] Suharto U. (2005). Kitab Al-Amwal: Abu Ubayd's concept of public finance. The other press. Kuala Lumpur see p. 66

[18] Marghinani A. B, Translated by Hamilton. Ch., (1870). The Hedaya or Guide: a commentary to the Mussulman Laws. H. Allen and Co. London, Great Britain p. 8-9

The role of the zakat system in the history of the Muslim world

Zakat governed by the state and implemented as a system performed more efficiently in collection and distribution throughout the entire history of Islam compared to individual zakat disbursements to local mosques and religious authorities. Zakat is not only a private matter between the Zakat payer and the recipient but it has a certain different and undisputable social aspect, where the state has to set appropriate collection, distribution as well as efficient utilization of collected fund.

The zakat institution plays an important role to keep balance and fairness among different layers of society, simultaneously protecting rights of the poor and needy via distributing to them what they deserve by Islamic law and not abusing the performers of this religious obligation.

The role of the *amil* (zakat officer) is crucial in the whole zakat system as this person represents sacred law, which is making sure regarding aspects such as fairness and honesty. While the *amil* is important person in the zakat system, other officials play a crucial role in zakat collection, distribution and assessment. They are the following:

a. The collector – collects zakat funds and deposits them into respective zakat fund.

b. The distributor - gives zakat funds to the respective recipients.

c. The custodian[19] – keeps zakat funds safe and disburses them to the legal receivers.

d. The measurer –measures, weighs crops, cereals and other agricultural produce collected as zakat.

e. The clerk – keeps zakat records and related files.

f. The accountants –manage Zakat revenue and expenditure accounts.

g. The informer – look for people who fall under lawful recipient categories and inform zakat officials.

[19] The custodian's roles include being treasurer, the caretaker of the zakat granaries and Zakat storehouses; and the caretaker of the domestic animals levied as Zakat.

h. The officers in charge – manage and navigate Zakat-centres, responsible to the State and to the public for the appropriate functioning of the zakat centres.

The payment of the remunerations to the respective zakat officials are made from the zakat funds. De Zayas writes that, “The actual emolument to be paid to the zakat officials in reward of their services has been a subject of some disagreement among the *fuqaha*.”[20] De Zayas states that, “According to the *Hanafi* School of Thought, the salary of the zakat officials is to be fixed by the Imam in proportion to what is required to afford them a fair livelihood. On the other hand, the *Hanafi* School correctly maintains that zakat may not be given to a person of means.”[21]

The Role of Zakat in the Early Stages of the Islamic Civilization

With the birth of Islam at the heart of today’s Saudi Arabia, Makkah, zakat was revealed in the *ayah* and *Surat* of the Qur’an during the Prophet’s 23 years mission in Makkah and Madinah. Powell writes that, “The revelations from Makkah established general principles of stewardship and charity, and the passages of the Madinah transformed these principles into rules that applied within the Muslim polity.”[22] During the Makkah revelations, Muhammad (S.A.W.) received *Surah al-Duha, al-Muddaththir, al-Ma’arij* and *al-Maryam* pertaining the zakat. As Siddiqi writes,

In surah al-Duha, the Prophet is reminded that when he was an orphan God gave him shelter, when he was ignorant He showed him the right path, when he was poor, He made him rich. The Prophet has been instructed not to be hard on orphans and not to be child on the ones who ask, and to maintain in acknowledging openly the blessing of God. Similarly, in surah al Muddaththir while depicting the ‘hereafter’, the Qur’an states that those on the right will be in the Gardens and will ask the guilty ones about what brought them to Hellfire. These will answer then that they did not pray nor did they feed the poor and they joked and denied the Day of Judgment, now, ‘we are confronted with this certain truth’.[23]

The same message is stated in *surat al-Dhariyat* and *al-Ma’arij* but in much stronger terms. In both these *surat* there are statements as Muhamad writes, “the definite right of the needy and the deprived to a share in the property of those who are well off.”[24] In *surah al-Dhariyat,* while describing “the heavenly blessings for the pious in the Hereafter, it is explained that they deserve these blessings on account of the fact that in their previous life they slept little at night. In the later phase of night asked for his forgiveness; further, the needy and the deprived had a *haqq* (share) in their wealth.”[25] In *surah al Ma’arij* where the vivid depiction of the punishment in the Hereafter is described. It is stated,

The criminal will wish that he could be ransomed from the punishment of that Day by his children, his wife, brother, other relatives. Who protected him and all the people of the world to save himself, but he will not be able to escape from wrath, for there will be a flaming fire that will lick his flesh and which will call everyone who turned his back and retreated, hoarded wealth and withheld it, to itself. Only those who pray regularly and in whose wealth the needy and deprived have a haqq ma’lum (definite or recognized right) can escape this vice.[26]

The research suggests that, it is very important to be responsible while a person tested with wealth. In order to avoid severe punishment in hereafter, one should pay zakat, give *sadaqah* and pray regularly.

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[20] Zayas, -de, F. (2003). The Law and Institution of Zakat. The other press. Kuala Lumpur. See p. 290

[21] Ibid. See p. 290

[22] See Powell R. (2010). Zakat: Drawing Insights for Legal Theory and Economic Policy from Islamic Jurisprudence. 7 PITT. TAX REV. 43. p. 48

[23] Siddiqi M. A. S. (1983) Early Development of the Zakat Law and Ijtihad. First edition. Islamic research Academy, Karachi, Pakistan see p. 24

[24] Muhamad A. A. (1993). Zakat and rural development in Malaysia. Berita Publishing SDN BHD. Kuala Lumpur, Malaysia. See p.

[25] The Qur’an, surah al Dhariyat (51:17-19)

[26] The Qur’an surah al-Ma’arij (70:12-26)