

Interpretive Policy of the Supreme Court of Pakistan: A Critical Analysis from the Perspective of Islamic Interpretive System

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Abstract

The present article provides an analysis of the interpretive policy of the Supreme Court of Pakistan from the perspective of Islamic interpretive system. For a long time and particularly after the insertion of "Objective Resolution" as a substantive part of Article 2-A of the Constitution of Pakistan 1973, the Supreme Court of Pakistan often claims as having capacity of an independent mujtahid. In this context, this article provides that in majority of the cases, the Supreme Court of Pakistan does not perform ijtiḥād rather follows the principles of amalgamation and selection (takhyīr and talfīq) and as well as foreign methods of interpretation. This paper concludes that constitutionally, Supreme Court of Pakistan have authority to do independent ijtiḥād but is not exercising ijtiḥād rather working on ad hoc basis by following any of the juristic opinions or by adopting Western rules. This article suggests that the Court should review its interpretive policy in the light of the Islamic techniques of interpretation. It invites the Court to do ijtiḥād rather than following the principles of takhyīr and talfīq or foreign methods. It also invites the Court to establish a general policy of interpretation by following the unique interpretive principles of the Qur'ān and the Sunnah such as contextual interpretation, public interest, purposive interpretation and rule of customs etc. The literal rule, the golden rule and the mischief rule have no worth if compared with the contextual rule, rule of maṣlaḥah mursalah/ public interest and ijtiḥād al-maqāṣidī of Islamic interpretive system.

Introduction

Pakistan, a nation-state established in 1947 on the basis of distinct Islamic features and culture. Pakistan (Gupta, 1996) in itself has a rich cultural and traditional back ground going back to the Indus Valley civilization 1800-2800 BC. The Constitution of Pakistan (1973) consists of many provisions which are Islamic by nature. The most striking provisions are Articles, 1, 2 & 2-A which declare that Pakistan shall be a Federal Republic to be known as Islamic Republic of Pakistan; that Islam shall be the state religion of Pakistan and that the Objective Resolution forms part of substantive provisions. Article 2-A declares that sovereignty over the entire Universe belongs to Almighty Allāh alone and the authority to be exercised by the people of Pakistan within the limits prescribed by Him. It also guaranteed the fundamental rights, including equality of status, opportunity and before law. Social, economic and political justice will be provided according to the law and public morality. It declares that the independence of judiciary shall be fully observed. Further, the Principles of

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Policy (Article 29-40) provide details of the responsibilities of the government and other organs of the state.

Under part ix of the Constitution, Islamic provisions (Article 227-231) have been inserted which describe that all existing laws shall be brought in conformity with the injunctions of Islam and that no law shall be enacted which is repugnant to such injunctions. They also provide a guideline for an interpreter. As the political system of governance in Pakistan is basically Federal in character sharing with the British Parliamentary system, so, it is appropriate to give a comparative analysis of the origin, fundamental concept and the purpose of interpretation in Islamic and as well as in English legal systems.

1. Analysis of the Interpretive System of Islamic and English Law

The fundamental difference between Islamic legal system and English-European legal system is that Islamic legal system has its origin in the divine instructions of the Qur'ān and the Sunnah (PBUH) and is based on the concept of Oneness of God while interpretation in English-European legal system has its origin in the precedents and case law.

The existence of an interpretative system is inevitable for every legal system. The process of interpretation for application of the existing legal rules is the most important aspect of every legal system. The whole structure of any legal system is dependent upon its interpretive system which requires the existence of the courts of law and the presence of the judges to construe a statute and to apply it to a particular situation arose. The interpretative policy of each nation is originally based on the constitutional law of the land and there for, it is necessary that the constitutional law consists of guiding principles to establish interpretive policy and to guide the relevant institutions in the administration of justice. The process of interpretation or construction primarily deals with the written text or statute to find out the true intention of the legislature to

The term interpretation in English legal system literally, means to discover the meaning of the language used in a text. Technically, it may be defined as a process by which a judge or a court of law constructs from the words of the statute, a meaning which he either believes to be that of the legislature or which he proposes to attribute to it.” Construction on the other hand, deals with the ambiguous written text to derive a legal meaning of the text and to arrive at the true intent of the legislature. The task to find out solution for contemporary issues of any age through interpretation and construction of the legal texts has been assigned to the people of knowledge, the jurists and the judges. Likewise, in Islamic legal system, the terms *tafsīr* and *tā'wīl* are used corresponding to the terms interpretation and construction respectively.

So far as concerned the sources of interpretation, unlike majority of the legal systems of the modern world whether civil law system or common law system where case law is the primary source of interpretation, the interpretive system of Islam is based on the divine instructions of the Qur'ān and the Sunnah (PBUH). In this sense, the primary source of interpretation is the Qur'ān and the Sunnah of the Prophet (PBUH) which laid down general principles for further development of law by way of interpretation. Among the contemporary sources of interpretation are the Constitutions of the contemporary Muslim states, statutes, precedents, case law and the customs of a particular society if not repugnant to the provisions of the Qur'ān and the Sunnah.

In the same manners, it is a well-established principle and a unanimous agreement among the interpretive systems of all the nations whether religious or secular that the fundamental objective of statutory interpretation is to discover legislative intent. For example, in a case *Khurshid Bibi v. Fazal Dad*, the Supreme Court of Pakistan held that *ijtihad* which purports to be independent of Sharī'ah can neither be Islamic *ijtihad* nor is there any room for such an instruction in the legal system.” It was commented by Shah Wali

Allah (1978) that the object of *ijtihad* is not to undertake independent legislation of the Qur'ān and the Sunnah rather it tries to create harmony between the religion and society. Similarly, each legal system prescribes certain conditions to become an interpreter and to derive law from the legal texts.

2. Supreme Court of Pakistan

In accordance with the provisions of Article 175, the Supreme Court of Pakistan is the apex court of the country. The Supreme Court is consisted of a Chief Justice, known as the Chief justice of Pakistan and some other judges. Now after 18th amendment, a new Article 175-A has been inserted in the Constitution. According to this new article, a Judicial Commission will be constituted to appoint the judges of the Supreme Court, High Courts and Federal Sharī'at Court. The President shall appoint the most senior judge as the Chief Justice of Pakistan.

The primary task of the Supreme Court is to interpret law according to the intent of law-giver and to determine the scope of every enactment passed by the legislature. So far as concerned the jurisdiction of the Supreme Court of Pakistan Articles 184-188 of the Constitution 1973, deal with the powers and the jurisdiction of the Supreme Court. It has three types of jurisdiction. The Supreme Court has exclusive jurisdiction between inter Government disputes. The judgment of the Supreme Court has declaratory character. It has power to make a declaratory order regarding the enforcement of Fundamental Rights. The Supreme Court has jurisdiction to hear and to determine appeals from judgments, decrees, final orders or sentences of High Court. The President may refer any matter of public importance to obtain the opinion of the Supreme Court. Under Article 189, all decisions of the Supreme Court shall be binding on all other courts in Pakistan.

The primary source of interpretation in Pakistan is the Constitution of Pakistan 1973 which is consisted of the fundamental general principles contained in the Qur'ān and the Sunnah (PBUH). In this sense the primary source of interpretation is Qur'ān and Sunnah and then Constitution. This has been expressed in many legal decisions by the Supreme Court of Pakistan. For instance, in *Zaheeruddin vs. State*, (1998) the Supreme Court has held: "It is thus clear that the Constitution has adopted the injunctions of Islam as contained in the Qur'ān and Sunnah of the Holy Prophet (PBUH) as the real and effective law. In that view of the matter, the injunction of Islam as contained in Qur'ān and Sunnah are now the positive law. Among the secondary sources are precedents, juristic opinions and legal writings of contemporary jurists including Western jurists. In a case, (2004) it was held by the Supreme Court that the superior courts of Pakistan consult writings of Western legal scholars, legal materials and judgments of Western Superior Courts in their jurisdictional functions. The writings of Western jurists such as Maxwell, Crawford, Odgers, Frances Bennion and others have been consulted by the Pakistani superior courts in their discussion." In its process of interpretation, the Supreme Court of Pakistan adopts certain rules of interpretation irrespective of their origin, i. e., Islamic or foreign. The body of interpretive rules thus contains Islamic and Western rules. The Supreme Court however, in many cases made it clear that no rule or source will be taken into consideration which is repugnant to the spirit of Sharī'ah. In a case, *Habib Bank Limited v. Muhammad Hussain* (PLD, 1987), it was observed by J. Tanzil-ur-Rehman that the Book of Allāh and the Sunnah of the Holy Prophet (P.B.U.H) mean the paramount law of Pakistan and that the Courts of Pakistan are not only competent but obliged to construe and enforce existing laws in the light of the Qur'ān and Sunnah. The Supreme Court however, is authorized to exercise and to avail any of the prevailing and well recognized principles of interpretation what it thinks appropriate to the situation of the case, the only condition is that such principle must not lead contradiction to the injunction of Islam or contrary to the spirit of Sharī'ah.

3. Interpretive Policy of the Supreme Court of Pakistan

The interpretive policy of the Supreme Court of Pakistan means those techniques and modes which are adopted and practiced by the Supreme Court of Pakistan as an independent jurist or a *mujtahid*. Among the principles of interpretation are the principle of independent *ijtihad*, principle to get rid of *taqlid*, mischief rule, contextual rule, restrictive construction, harmonious construction, rule of necessity, rule of legislative history, rule of sociological construction and rule of purposive interpretation etc. The detail of these rules is as under:

3.1 Principle of Independent Ijtihad

The Constitution of Pakistan has assigned the task of *ijtihad* or interpretation of the Constitution to the Supreme Court of Pakistan. Supreme Court thus, has authority to exercise independent *ijtihad* and to interpret laws in the light of the changed circumstances. In a number of cases, it has been held by the Supreme Court of Pakistan that it has authority to exercise independent *ijtihad* to solve contemporary issues of the people. For instance, Supreme Court (PLD,1992) held that judiciary is one of the three limbs of the state which exercise the delegated functions of the divine sovereignty with its own sphere...the reference in the Holy Qur'ān to the obedience of *'ulū al-amr* (who hold the authority) is equally applicable to the members of judiciary."

In a case *Khurshid Bibi vs. Mohammad Amir* (PLD,1967) while commenting on the authority of the Supreme Court of Pakistan regarding interpretation of law, it was held by the Court: "That a court is only bound by the Qur'ān and the Sunnah of the Prophet (PBUH)." In another case, *Habib Bank Limited v. Muhammad Hussain* (PLD,1987), it was observed by J. Tanzil-ur-Rehman that the Book of Allāh and the Sunnah of the Holy Prophet (P.B.U.H) means the paramount law of Pakistan and the Courts of Pakistan are not only competent but obliged to construe and enforce existing laws in the light of Qur'ān and Sunnah." The view of the Supreme Court on the question of its judicial and authoritative capacity has been explained in a well known case, *Asma Jilani vs. The Government of the Punjab* (PLD, 1972), in this case, the Chief Justice Hamood-ur-Rehman in his leading judgment went to the following observations: "In any event, if a Grand-norm is necessary for us, we do not have to look upon to the Western legal theories to discover that. Our Grand-norm is enshrined in our own doctrine that the legal sovereignty over the entire Universe belongs to Almighty Allāh alone and that the authority exercised by the people within limits prescribed by Him is a sacred trust. This is an immutable and unalterable norm which was clearly accepted in the Objective Resolution passed by the first Constituent Assembly of Pakistan on the 7th March 1949." In *B. Z. Kaikaus vs. The president of Pakistan* (PLD,1980), the Supreme Court held that principles of Islam are neither hidden nor complicated nor complex nor impracticable. Islamic law is capable of being enforced, practicable, applied and adopted at all times and places, only if understood and interpreted in its true spirit keeping in view environment and circumstances of situation at relevant times.

3.2 Principle to get rid of Taqlid

The Supreme Court of Pakistan claims not to follow any *maslak* and to get rid of the principle of *taqlid* during the process of interpretation. For a more liberal and compatible interpretation, the Court has made it clear that it has all rights to interpret the primary sources of Islamic law directly, unaffected by any juristic opinion or past decisions. Thus, in a case, *Bilqees Fatima vs. Najm-ul-Ārā'* (PLD,1959), the Lahore High Court held that if the courts are clear as to the meaning of the verses, effect to that interpretation will be given irrespective of what has been said by the jurists." In another case, *Khurshid Jan vs. Fazal Dad* (PLD,1964), it has held that the opinions of the jurists are entitled to almost respect and

cannot be lightly disturbed but the right to differ can never be denied.” However, practically the Supreme Court is following the principle of *takhyir* and *talfiq* rather to do fresh *ijtihad* or interpretation.

3.3 The Mischief Rule

The mischief rule is a flexible rule of interpretation of English law and is adopted to remove the defect of a statute for which the common law provides a remedy. The Supreme Court of Pakistan adopted and exercised this rule frequently. In a case, *Kishwar Naseem v. Hazara Hill Tract* (PLDD,2005), it was held by High Court of Peshawar that mischief rule is one of the cardinal principle of interpretation of statutes that construction on any provision of statute shall be made in a manner to suppress the mischief and to achieve the cause of justice. The second principle of equal considerable worth that court shall not shut its door for an aggrieved party, on ground of technicalities that has a genuine grievance.” In another case *Nihayatullah v. Secretary Local Government*, (PLD,2004), it was held by the High Court of Peshawar that the fundamental principle of construing and interpreting statute is that the court shall strive in search of that interpretation which advances the cause and suppress the mischief.

3.4 The Contextual Rule

This rule provides an alternative meaning in case of some absurdity or ambiguity in the language of the text. In *Ayaz Hussain v. Province of Sind* (PLD,2005), it was held by the High Court of Pakistan that every section of statute is substantive enactment in itself and its true meaning and effect depends upon its language context and setting. Every section must be considered as a whole and self-contained with the inclusion of saving clause and provisos. It is not permissible to omit any part of it. In another case, *Arbab Akbar Ali v. Government of Sind* (PLD,2005), it was held by the court that entire scheme of the law is to be read together and no provision of the law is to be read in isolation.”

3.5 Restrictive Construction

The rule of restrictive construction is as applicable in Pakistan as in English-European legal system. Thus in a case, *Mahesh Kumar v. Chairman, NAB* (PLD,2008), the question was regarding the scope of the words “a person or holding a public office” in sec. 5(o) (m) (r) of the Ordinance XXXIII of 2002 were under consideration for construction and it was held by the court that it is well settled principle of law that a penal provision is to be interpreted strictly. The provisions of sec. 5 are strict in nature as they involve punishment on omission to fulfill the requirement of provisions.”

3.6 Rule of Harmony

The court is not allowed in any case to interpret and to construct a particular provision as to defeat another provision of the same statute dealing with the same subject matter. In *Abdul Waheed v. Asma Jehangir* (PLD,2004), it was held by Supreme Court of Pakistan that it is well-settled that the court will lean in favour of harmonious interpretation of the statutes/ various provisions and would certainly avoid an interpretation which has a potential of conflicting judgments or pitching one constitutional court against another constitutional court.”

3.7 Rule of Necessity

In *Sayyed Zafar Ali Shah and Others v. General Pervez Musharraf*, Chief Executive of Pakistan (PLD, 2000), the Supreme Court invoked the doctrine of necessity and allowed the Chief Executive to amend the Constitution. Under this judgment the Chief Executive was given power to take all legislative measure and steps for attainment of the declared objectives of the regime, if the Constitution did not provide remedy. That the independence of judiciary, federalism and parliamentary form of Government blended with Islamic provisions cannot be tinkered with; that any amendment made would hold good only for a period of three years and thereafter the 1973 Constitution shall remain supreme.

3.8 Rule of Legislative History

In a case, *Shaukat Baig v. Shahid Jamil* (PLD, 2005), it was held by the Supreme Court of Pakistan that to find out the intention of the legislature, the court may look into the history of the legislation. The court may refer to contemporaneous circumstances. Such circumstances may include the history of the time existing when the law was enacted, the previous state of the law, the evil intended to be corrected, the general policy of the state and the established policy of the legislature. Such construction will be in case where the language of the enactment is not clear. In Islamic system of interpretation the same rule is applicable under the title of contextual rule which leads that not only past or history of the text but contemporary context of the text must be taken into consideration during the process of *ijtihad*.

3.9 Rule of Sociological Construction

In a case, *Arshad Mehmood v. Government of Punjab* (PLD, 2005), it was held by the Supreme Court of Pakistan that while interpreting constitutional provisions, the Courts should keep in mind, social setting of the country, growing requirements of the society, nation burning problems of the day and the complex issues facing by the people, which the legislation seeks to solve through legislation.

3.10 Rule of Purposive Interpretation

In *Shaukat Baig v. Shahid Jamil* (PLD, 2005), it was held by the Supreme Court of Pakistan that preamble is a legitimate aid in discovering the purpose of a statute since the middle of the 19th century. A preamble shed useful light on what a statute intended to achieve or remedy. The provision of the Act has to be read in conjunction with the preamble in order to arrive at a finding as to what was the purpose of the legislation. The preamble however, cannot either restrict or extend enacting parts when the language is not open to doubt. The preamble may be considered to be a key to the Act itself, it cannot normally be applied to explain the Act except where its provisions are vague.

4. Characteristics of Interpretive Policy of the Court

A thorough study of the interpretive policy of Supreme Court reveals that certain loopholes are existed in the interpretive policy. The Supreme Court of Pakistan is not clear regarding its interpretive policy which seems ambiguous and contradictory. For instance:

(i) The Court claims for independent *ijtihad* or interpretation of Qur'ānic legal texts without reference of any *maslak*. Contrary to it, the practical situation is that majority of the decisions of the Court are based on the principle of *takhyyir* and *talfiq* without re-interpreting Qur'ānic texts in the light of the modern context.

(ii) The rules of English-European legal system are still form part of its interpretive policy and are in practice. In this way, interpretive policy of Supreme Court is a mixture of foreign and Islamic rules while there is no need to adopt any western policy in the presence of flexible and rich Islamic interpretive legacy.

(iii) Theoretically, the principle of *taqlīd* has been declared as static and set aside in favour of direct approach to the provisions of Qur'ān and Sunnah. Practically, it performs its function of interpretation by way of amalgamation and selection of any juristic opinion of classical and medieval jurists.

(iv) The principle of amalgamation or *takhyīr* has been modified by the Court by adopting one rule from Shari'ah and other from Western legal system which resulted ambiguity in the policy.

(v) Instead of a clear policy regarding the status of Objective Resolution after its insertion in article 2-A, Supreme Court adopted an ambiguous view in this regard. For instance, the content of article 45, was challenged in a case Sakina Bibi vs. Federation of Pakistan (PLD,1992) and the Full Bench of Lahore High Court held that since the Objective Resolution has become operative part of the Constitution and shall have effect accordingly, there of the president of Pakistan has no such power to commute the death sentences awarded in matter of *hudūd*, *qisās* and *diyat* Ordinance. The power of pardon in such cases only vested to the heirs of the deceased, therefore the cases in which the death penalty has been awarded, the president has no power to commute, remit or pardon such sentences. The cases would be no different footings if a person has been punished by way of *ta'zīr*. The president has power to pardon the offender and that too in public interest." The decision of the Lahore High Court was challenged in the Supreme Court in case, Hakim Khan and Three others vs. Government of Pakistan and Others (PLD,1992). The Point at issue directly involved in the case was whether article 45 of the constitution empowering the president of Pakistan to grant pardons contravenes, as repugnant by virtue of Article 2-A or not? The Supreme Court in Hakim Khan Case while examining Article 45 and 2-A accepted the Government appeal and observed that: "In the instant case, if the High Court considered that the existing provision of the Article 45 of the Constitution contravened the injunctions of Islam in some respects, it should have brought the transgression to the notice of the Parliament which alone is competent to amend the Constitution and could initiate remedial legislation to bring the impugned provision in conformity with the injunction of Islam. The Court did not go in to the question whether the supposed repugnancy actually existed. The Supreme Court assuming the repugnancy to exist, held that whenever, two Constitutional provisions are found to be repugnant, the Court's duty is to read the Constitution as a whole, and try to harmonies these provisions, if possible according to the well known canons of interpretation. If this is found impossible, the court itself being a creature of the constitution is helpless. All Constitutional provisions must be taken as equal in weight and status unless the Constitution itself indicates that some provision is to be preferred over the others. Where there is no such indication, the Court can draw the intention of the parliament to the matter, who can resolve the conflict through suitable amendment in the constitution." While commenting on the verdict of Supreme Court it is contended that Article 2-A is not amendable therefore it cannot be put on the same level with other constitutional provisions like Article 45. Then Article 2-A became a part of the constitution later than Article 45. While interpreting and enforcing the law the courts are often confronted with a situation of conflict between two or more provisions of the same statute. The main and important consideration before the court is the ascertainment of the intention of legislature. The last provision of the law in point of time is taken to be the latest expression of legislator's intention and will. This is according to the principle that later law is presumed to have repealed or modified the earlier law by implication. The upshot is that Article 2-A became a constitutional provision in 1985 later than Article 45. As such

Article 2-A is entitled to weight and priority. Another objection is that the violation of Article 2-A involves violation of oath under Schedule 3 of the constitution. The new form of oath for legislators and members of the executive powers of the state was introduced in to the constitution on the same day. The content of oaths and the Objective Resolution have an integral relationship. Thus an action taken by the president under Article 45 would be at the same time repugnant to his oath under Schedule 3 of the Constitution.

(vi) Since the emergence of Pakistan, Supreme Court of Pakistan could not achieve its target to become a true Muslim interpreter to solve the issues of the Constitutional reform in the light of the Objectives of Sharī'ah. The Parliament however, has suppressed the mischief and provided a remedy by inserting Objective Resolution in the Constitution and by making it a part of substantive provisions in the form of Article 2-A. The logic behind such insertion was that all obstacles and barriers in the way of execution of Islamic law of Pakistan should be removed from the Constitution 1973.

(vii) The methods and techniques adopted by the Supreme Court of Pakistan lead that Supreme Court follows double standard. On the one hand, it aims not to follow any *maslak* and claims that the term '*ulū-al-amr*' mentioned in the Qur'ān is equally applicable to the members of judiciary and on the other in majority of the cases it follows Western rules of interpretation rather than to adopt Islamic principles of interpretation.

(viii) The majority of the judges has no sound knowledge of the principles of Islamic jurisprudence and is not well-equipped with Arabic language and Islamic techniques of interpretation. The majority of them do not accomplish the pre-requisites to become an independent jurist in the light of the conditions prescribed for a jurist. They are not able to re-interpret Qur'ānic legal texts in the light of the modern context and to fulfill the demand for fresh interpretation of Qur'ānic legal texts in the light of their objects and changed context.

(ix) Practically Supreme Court has failed to recognize the fact that the contemporary scientific period in fact demands certain changes in the whole structure of Islamic law by way of *ijtihād al-maqasidī* and rationale interpretation.

Conclusions and Recommendations

The above discussion reveals that the contemporary interpretive policy of the Supreme Court of Pakistan is based on the principle of amalgamation by adopting both Islamic interpretive principles and principles of the western legal system. It has made the whole policy of the interpretation ambiguous and has created a contradiction between saying and practices of the Court. This also led the people of Pakistan and its religious scholars to condemn the interpretive policy of the Court when they observe that the Supreme Court is following interpretive principles of the west. In fact this condemnation is based on the two contrasting approaches of an Islamic state, the extreme and the moderate. The holders of first approach do not agree to analyze the Islamic system of governance, constitutions, organizations and system of interpretation in the light of the changed context and modern terminologies and declare that the terms constitution, interpretation and democracy is against Islamic suggested structure of governance as it is based on the modern concepts of constitutionalism and democracy. The moderate approach on the other hand contends that modern and scientific ways of governance and modes of interpretation should be analyzed critically in the light of the general principles of the Qur'ān and the Sunnah of the Prophet (PBUH) and the practices of the companions and if do not seem contradictory to these principles should be declared permissible and practicable.

It is also concluded that the majority of the cases is not being solved by the Supreme Court through the process of *ijtihād* which only means to consult the general principles of the Qur'an and the Sunnah of the Prophet in the light of the logical reasoning and changed context.

This article suggests that it is necessary for the Court to review its interpretive policy and to establish certain general interpretive principles based on the foundational principles of the Qur'ān and the Sunnah and in the light of contemporary changed context. The policy of amalgamation and selection of any juristic opinion does not accomplish the claim of having authority and competency for independent *ijtihad*. It is also necessary that the judges and the law-makers should have sufficient knowledge of Islamic jurisprudence and Islamic legal theories. They must be able to understand a particular text, its historical context and its former construction by the Prophet (PBUH), by the companions and by the traditional jurists. They must be able to understand the demand of the contemporary period and to use logical reasoning to derive a law. The scope of Islamic legal theories should not be confined to the interpretation or re-interpretation of legal texts of Sharī'ah rather all existing positive laws, interpretive principles should be re-examined and re-interpreted in the light of the Islamic modes of legislation and interpretation. The modern time demands that *ijtihad* should be exercised more rapidly than by the earlier period. The literal rule, the golden rule and the mischief rule have no worth if compared with the contextual rule, rule of *maṣlaḥah mursalah*/ public interest and *ijtihad al-maqasidī* of Islamic interpretive system.

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