

## THE ROLE OF HISTORY AND *AKHLĀQ* IN RECONCILIATION BETWEEN JURISPRUDENCE AND MODERNITY

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### ABSTRACT

*After the advent of modernity and its spread in Islamic societies, challenges arose for Muslims. At first glance, these challenges indicated the conflict between modernity and religion in general and jurisprudence in particular. For this reason, some Muslims have strongly rejected modernity, calling it the destruction of religion. Some also have abandoned religion and solely followed modernity. The purpose of this article is to provide a way to resolve differences and reconciliation between jurisprudence and modernity so that Muslims can benefit from the achievements of modernity while maintaining the basic principles of religion. To achieve this goal, jurisprudential sources were examined and jurisprudential fatwas that conflicted with modern laws were extracted. The research method in this article is based on library resources and has been criticized descriptively and analytically. To clarify the issue, examples of jurisprudential fatwas have been proposed. It should be noted that these are*

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*not all fatwas and are just examples because the purpose of this article is to provide a solution to resolve the conflict or reduce the difference between jurisprudence and modernity. In some cases, the communities that have implemented the fatwa have also been mentioned. After examining the origin of these fatwas, it became clear that some of them were related to specific circumstances and specific times, and others conflicted with the basic principles of ethics. Therefore, the finding of this article is that there are two basic strategies to resolve or reduce this conflict; firstly, the jurisprudential fatwa should be adapted to the principles of Islamic ethics; and secondly, the historical context of the issuance of the fatwa should be considered. This leads us to the conclusion that some fatwas can only be implemented in certain circumstances and can be revised today due to the change in those circumstances. By applying these two strategies, it is possible to reconcile to a large extent between jurisprudence and that part of the achievements of modernity that are compatible with human rights and dignity.*

**Keywords:** *modernity, jurisprudence, historical context, akhlāq*

## INTRODUCTION

Modernity is not just a historical event; it created a new mode of life for humankind. Before the appearance of modernity, jurisprudence and religious law had created an exclusive lifestyle for the followers of each religion. Industrial and scientific developments in the West have raised serious questions for Muslims, such as how can religion be preserved in these new circumstances? Is it possible to reconcile new sciences and religion? Or do science and religion have different purposes and any attempt to reconcile science and religion is futile? Modernity, on the other hand, had made progress in the Western societies and for this reason, followers of religions, specifically, followers of Islamic law faced various challenges.

The purpose of this article is not to examine the reason for the emergence and the increase of challenges between modernity and jurisprudence.<sup>1</sup> Rather, it seeks to provide solutions to how these challenges can be mitigated.

After facing these challenges for a Muslim, three different views have been created:

- a) Following modernity and ignoring both jurisprudence and religion.
- b) Following jurisprudence and ignoring modernity
- c) Considering both jurisprudence and modernity.

The first and second views, despite having many followers, cannot be deserved for a religious man and for whoever wants to be inclusive in society. Because modernity was so widespread that a Muslim could not play an effective role in society without considering it.

From the perspective of followers of the third view, a person can follow his religion and be a modern man. To achieve this goal, the challenges between Islamic law and modernity must be reduced and minimized. It should be noted that eliminating all these challenges is impossible because the roots and methods presented by Islam and modernity are different. However, solving the fundamental challenges in the present age is very important. If religion and its goals are correctly identified, they are not only incompatible with the correct principles of modernity, but they can also be helpful and supportive to the general society.

## DEFINITIONS

In addition to the duties of man concerning himself, the Quran and *ḥadīth*, as the two basic sources of religion, have defined duties for man to God and with others. For example, the duties that are before God are fasting,<sup>2</sup> prayer,<sup>3</sup> *ḥajj*,<sup>4</sup> meanwhile the duties

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<sup>1</sup> Somfai Kara, Dávid, "Conflict between Traditional and Modern Muslim Practices," *Acta Ethnographica Hungarica* 61, no. 2 (2016), 469-481.

<sup>2</sup> Quran 2:183

<sup>3</sup> Quran 35:40

<sup>4</sup> Quran 3:97

towards people are *zakāh*,<sup>5</sup> charity,<sup>6</sup> avoiding usury,<sup>7</sup> observing justice,<sup>8</sup> avoiding bribery<sup>9</sup> and so on. To perform these duties, there are regulations that these laws are extracted by jurists from the basic sources of religion. In the general and basic definition, particularly Islamic laws are rulings that have been enacted to better perform these duties.

In general, the path that a Muslim must take is defined for him in the form of *sharī'ah*. The word *sharī'ah* is frequently used in the Quran and *ḥadīth*. Etymologically, the term *sharī'ah* can be understood to mean 'the path to be followed to reach a watering-place in the desert' – the path to a flowing stream where animals and humans come to drink life-giving water. Just as the stagnant water is not life-giving, so does *sharī'ah* which is not an unchanging path.<sup>10</sup> Therefore, the *sharī'ah* is the path that must be taken towards God, and in this way, the Muslims have duties. The Quran describes *sharī'ah* as the 'ordained way', asking Prophet Muhammad to follow it.<sup>11</sup>

Following the spread of the term "Islamic law", some scholars have considered the word "*sharī'ah*" and "Islamic law" to be synonymous.<sup>12</sup> By reading some books on this subject, some scholars, without mentioning the differences between *sharī'ah* and Islamic law, use these two side-by-side and sometimes interchangeably. This means that they also equate Islamic law with *sharī'ah*. Some believe that the meaning of these two phrases is different.<sup>13</sup> Shaheen Ali says about this:

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<sup>5</sup> Quran 4:162

<sup>6</sup> Quran 2:267

<sup>7</sup> Quran 2:257

<sup>8</sup> Quran 4:135

<sup>9</sup> Quran 2:188

<sup>10</sup> Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (The Hague: Kluwer Law International 2000), 44.

<sup>11</sup> Quran 45:18

<sup>12</sup> Mathias Rohe, *Islamic Law in Past and Present* (Leiden: Brill, 2014), 10; Wael B Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 15.

<sup>13</sup> Emilia Justyna Powell, *Islamic Law and International Law: Peaceful Resolution of Disputes* (Oxford: Oxford University Press, 2019), 24.

*“My personal position, to be distinguished from other writers on the subject, is to see sharī‘ah as the overarching umbrella of rules, regulations, values and normative frameworks, covering all aspects and spheres of life for Muslims, as developed over time. It comprises elements informed by the religious texts of Islam as well as human interpretations by generations of Muslim jurists and scholars. Sharī‘ah, therefore, denotes the principles of Islamic law, rather than the law per se. Sharī‘ah encapsulates the rules of rituals and worship (‘ibādāt) and of social relations (muamalat). Not all sharī‘ah is legally enforceable in a court of law. Some remains in the moral/ethical domain, and our human understandings of its requirements and our actions about these are to be judged in the hereafter.”<sup>14</sup>*

What we mean by Islamic law in this article is the laws that are derived from religion and are often related to the social (about others) and political aspects of religion. Therefore, beliefs and *akhlāq*, which are important parts of religion, are outside the scope of Islamic law, while beliefs and *akhlāq* are part of the *sharī‘ah*. Even the laws related to the method of performing the rituals and worship (‘*ibādāt*), although considered as Islamic law, are not considered in this article. For instance, the method of preparing for prayer or the rule related to fasting or *hajj* is not in conflict with modernity in principle. What we mean by this article is the rules that apply to others. For example, laws related to women and non-Muslims. Laws that are institutionalized in specific social, geographical, and historical contexts and at the same time, the law was considered correct, but with the change of those contexts, those laws have lost their proper function.

Since the advent of Islam, modernity has been the most important factor that has led to fundamental changes in those contexts. The product of modernity has not only been technology and industry but also fundamental changes in human thought. One

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<sup>14</sup> Shaheen Sardar Ali, *Modern Challenges to Islamic Law* (Cambridge: Cambridge University Press, 2016), 22-23.

of the most important changes has been the shift of the duty-based paradigm to the right-based paradigm. The right-based paradigm changed attitudes and functions. As the result, serious challenges arose between some aspects of Islamic laws and modernity. This article discusses two ways to reduce these challenges. One way is from outside of religion and the other is inside religion. The extra-religious way is related to history and the intra-religious way is related to ethics.

### **THE BEST WAY TO RESOLVE THE CONFLICT BETWEEN ISLAMIC LAW AND MODERNITY**

As mentioned in the definitions section, Islamic law in this article does not mean fixed laws, but flexible laws. Fixed laws are often related to the realm of worship (*'ibādāt*), and flexible laws are laws related to man's relationship with nature and his social and political relations, which depend on the conditions and requirements of that period. When we talk about the revision of Islamic law, we mean the flexible law and this article is discussing the same law.

There are many ways to reduce the challenges between Islamic law and modernity. In this article, the most important and most practical ways are mentioned. There are ways to solve fundamental contradictions, but if these contradictions are resolved, minor differences also disappear.

#### **First: Attention to Historical Context in Jurisprudential Laws**

The jurisprudential laws of religion have been formed in a historical context, although the jurisprudential principles have been taken from Quran and *ḥadīth*, the historical and even geographic conditions of that time have influenced the formation of jurisprudential laws. The Quran and the *Sunnah* have also comprised legal contents, the implementation of which demands legal reasoning from the side of the jurists. This legal reasoning points to the maximum effort exerted by the jurist to interpret and apply the rules on the origins of jurisprudence (*usul al-fiqh*), in the quest for the appropriate legal ruling that best fits the legal case in

question.<sup>15</sup> The jurists' efforts are in the context of the conditions of the time they lived. One of the most important reasons for revealing the challenge between Islamic law and modernity is the disregard for historical and geographical conditions. In other words, the lack of flexibility in extracting the purposes of religion by jurisprudence is the reason for the emergence of fundamental challenges. For this reason, it is hard to understand some jurisprudential rulings in modernity.

For example, *zakāh* (charity, alms), which literally means growth, can be understood as the growth of wealth in the 'real sense', growth of the community as a whole, or growth of the purified soul.<sup>16</sup> *Zakāh* is one of the fundamental tenets of Islam, made obligatory since 2 Hijri or 624 AD.<sup>17</sup> The importance of *zakāh* is placed next to *salah* in Islam. To quote from the Holy Quran, Surah 2, verses 43; 83; 110; 177; 277. Every Muslim, with a few exceptions, who possesses wealth above a certain level (*nisab*), is supposed to pay *zakāh* to his poor counterparts. In Islamic law, *zakāh* must be paid only by owners of nine things: gold, silver, wheat, barley, date, raisin, sheep, camel and cow.<sup>18</sup> These items were comm sources of income for people in Arabia at the time of Prophet Muhammad. Today, sources of income have changed. Industry, technology, and many other businesses that did not exist at that time are now very profitable. Even at the same time, in non-Saudi countries, other animals and other goods were also profitable. Therefore, *zakāh* must be determined and enforced at any time and in any place appropriate to the conditions. Today, this jurisprudential law can be reviewed and, in this case, both the understanding and the practice of this jurisprudential ruling in modernity will not be challenged.

Another example is about women. Some jurisprudential laws of women are related to the conditions of the community of the

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<sup>15</sup> Wael B Hallaq, "Was the Gate of Ijtihad Closed?," *International Journal of Middle East Studies* 16, no. 1 (1984), 15.

<sup>16</sup> *Ibid.*, 15.

<sup>17</sup> Omar Abdullah Zaid, "The Appointment Qualifications of Muslim Accountants in the Middle Ages," *Accounting Education* 9, no. 4 (2009), 350.

<sup>18</sup> Horr Ameli, *Wasā'il al-Shi'ah* (Qom: Ahllobait Press, 1994), 4: 41.

jurists. There are limitations to women in jurisprudential laws, which can hardly be accepted in the modern world. For instance, women do not have the right to leave home without the husband's permission,<sup>19</sup> or a judge should not be a woman,<sup>20</sup> and so on. Women in that community had little involvement in social and economic activities. For this reason, these laws are unacceptable today in the modern world. In a world where women need to participate in all activities like men, these laws can be reviewed.

According to the Quran, women (at least in terms of their relationship with God and their responsibilities) are equal to men. Women have the same obligations as men when it comes to a belief in God, worship, and the practice of certain religious rituals such as prayer. Women are born just like men, according to divine nature.<sup>21</sup> Islam confers on women all the political and social rights just the same as men, and they are entitled to all the privileges bestowed upon men. Besides worldly matters, women are also equal to men in the spiritual sense.<sup>22</sup> According to the Quran, the woman in creation has no difference from the man and the differences are related to the historical situation. Today, the conditions of women in society have changed, so their related jurisprudence needs to be reviewed so that the challenge between modernity and women's rights in Islam is greatly reduced.

Another example is about the *Haram* Months. Before the advent of Islam, because the ruling system was tribal, the phenomenon of war was very common, and some of these wars took a very long time, sometimes lasting several years. Because the tribes had to do other important things, such as *hajj* and trade, they agreed that the war and committing murder would be banned for four months.<sup>23</sup> Islam also approved this law and it is mentioned in the Quran.<sup>24</sup> If someone murders during these four months, the perpetrator should

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<sup>19</sup> Mohammad Hossein Fazlollah, *Islam Woman and New Research* (Qom: Bustan Kitab Publication, 2003), 65.

<sup>20</sup> Mohammad Hossein Tabatabaee, *Almizan in Interpretation of Qur'an* (Qom: Islami Publication, 1999), 12: 568.

<sup>21</sup> Quran 3:195; 4:124; 16:97.

<sup>22</sup> Quran 33:36.

<sup>23</sup> 'Abd al-Mālik Ibn Hishām, *Sīrah al-Nabawiyyah* (Bayrūt: Dār al-Ma'rifah, 1956), 148.

<sup>24</sup> Quran 9:37.



be punished double. The double punishment is for preventing the actions, hence ensuring the proper implementation of the law in that society has been accepted by the people. At present, countries are not governed based on tribalism, consequently, there are no tribal wars like in the early centuries of Islam. In other words, with the advent of democracy and the emergence of a central government in each country, inter-tribal wars do not occur in practice.

For this reason, it is not logical today to double the punishment in the *Haram* Months because the way of governing has changed fundamentally. But we see that this law still exists in jurisprudence and is implemented in some Islamic societies; for example, in Iran, even if the death is due to a car accident on the road, the law applies to it. The existence of this law in the new world, which has different conditions than the time of issuance of the sentence, creates a challenge. In addition to the above examples, many jurisprudential laws have been valid and acceptable considering the historical context of the issuance of that law.

The modern world is fundamentally different from the traditional world in many ways. These fundamental differences lead to differences in the rulings of each age, and scholars of Islamic jurisprudence should not ignore them. For this reason, jurists need to know the historical contexts correctly and consider them in issuing rulings.

## **Second: The Priority of *Akhlāq* on Jurisprudence**

Religion has many aspects. The three basic domains of religion

are beliefs, jurisprudence, and *akhlāq*. One of the best ways<sup>25</sup> to reduce the challenges between modernity and Islamic law is to prioritize *akhlāq* because *akhlāq* is the most important message and the most fundamental goal of religion. Prophet Muhammad said: “*God has sent me only to institute akhlāq in society*”.<sup>26</sup> The Quran praised the Prophet Muhammad for his good moral conduct<sup>27</sup> and God says to the Prophet: “*People follow you because of your good morals*”.<sup>28</sup> Undoubtedly, the people who followed the Prophet were not due to Islamic law, but to free them from polytheism, enslavement, and invite them to *akhlāq*. The main purpose of religion has been to improve mankind and perfection, and this goal is achieved only by institutionalizing *akhlāq*. Therefore, *akhlāq* is the most important and preferred compared to other aspects of religion. Religious ethics invite believers to consider human rights,<sup>29</sup> freedom,<sup>30</sup> justice<sup>31</sup> and respect for human beings.<sup>32</sup> For this reason, jurisprudential sentences that conflict with the principles of religious ethics should be reviewed.

For example, in the past, among the jurisprudential rulings, there were laws in which some rights of women or non-Muslims

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<sup>25</sup> In *akhlāq*, principles are often followed that are not purely religious and are accepted by conscience and reason. For example, the right to dignity of all human beings, regardless of religion, race, or gender, is an accepted issue in *akhlāq* by all and sundry. On the other hand, one of the most important foundations of modernity is to focus on the right. In this sense, the fit of modernity with morality is greater than that of jurisprudence; Because jurisprudence is an effort within a religion that sometimes only pays attention to the considerations of that religion. Thus, the superiority of *akhlāq* over jurisprudence can be a way to reduce the challenge between the legal laws of jurisprudence and modernity.

<sup>26</sup> Bahaoddin Khorramshahi, *The Message of Prophet* (Tehran: Monfared Publication, 1997), 752.

<sup>27</sup> Quran 68: 4.

<sup>28</sup> Quran 3: 159.

<sup>29</sup> Quran 4: 135.

<sup>30</sup> Quran 10: 99.

<sup>31</sup> Quran 5: 8.

<sup>32</sup> Quran 17: 70.

were ignored in Islamic society.<sup>33</sup> This problem arises various challenges between Islamic law and modernity because rights are very important in modernity. An-Na'im writes in an article about the subject:

*“Women and tolerated communities of non-Muslims suffer more restrictions than Muslim men. Islamic law does not allow either group to advise the ruler or participate on equal terms with Muslim men in the public life of the Muslim state. Islamic law treats women as the wards of men. As such, women lack the capacity to hold high-ranking general executive or judicial office. While Islamic law achieved significant advances over the contemporary practice in improving the status of women it generally inhibits women’s participation in public life. Non-Muslims suffer limitations on their access to public offices that exercise authority over Muslims because their allegiance to the Muslim state is in doubt. Islamic law allows them a degree of communal autonomy and power to conduct the private affairs of their religious community, but they may not hold responsible office or join the military service of the Islamic state. In exchange for being dhimmis, tolerated community governed and defended by the Muslims, non-Muslims pay jizya, a personal poll-tax that signifies submission to Muslim rule and sovereignty.”*<sup>34</sup>

However, Al-Naeem’s words cannot be generalized to all Islamic societies because not all laws in these societies are

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<sup>33</sup> For example, in 2017, a Zoroastrian became a member of the Yazd City Council by popular vote. The jurists of the Guardian Council rejected his membership in the city council, citing the rule of negation of the mustache. Although this problem was eventually resolved with the intervention of the Expediency Council, the jurists defended their *fatwas* ([https://en.wikipedia.org/wiki/Sepanta\\_Niknam](https://en.wikipedia.org/wiki/Sepanta_Niknam)).

<sup>34</sup> Abdullahi Ahmed an-Na'im, "Islamic Law, International Relations, and Human Rights: Challenge and Response," *Cornell International Law Journal* 20, no. 2 (1987), 320.

directly derived from jurisprudence. But if the basis of laws is jurisprudential orders, we can see through an example. One of them happened after the US withdrawal from Afghanistan in August 2021. The new rulers of this country have claimed that they want to rule based on jurisprudence-derived Islamic law. Hence, they have opposed the presence of women in government offices and even banned girls from studying at higher levels.<sup>35</sup> They also announced in a decree that only those who follow Hanafi jurisprudence can hold high-ranking government positions.

In addition to the historical context, the lack of attention to *akhlāq* has led to such restrictions in Islamic law. But the truth is that religious ethics has always emphasized rights. God says in the Quran: “there is no compulsion in religion”<sup>36</sup> and prophet Muhammad never forced anyone to accept Islam<sup>37</sup> because the Quran did not allow him to use coercion.<sup>38</sup> This means everyone has the right to choose his religion freely. Therefore, if the rules of jurisprudence ignore the inalienable rights of a person, it conflicts with the principles of ethics and should be reconsidered.

Many jurists have argued in jurisprudential books that non-Muslims in Islamic society should not be superior to Muslims. This law is taken from a *ḥadīth* of the Prophet Muhammad. It is stated in this *ḥadīth* that Islam is superior, and nothing is superior to Islam.<sup>39</sup> This *ḥadīth* is not one of the authentic and reliable *ḥadīths*, but this fact was ignored, and the *ḥadīth* has been considered valid because this *ḥadīth* is very famous, thus some people believe it to be correct. The most important issue is the correct meaning of this *ḥadīth*. One of the correct meanings is that

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<sup>35</sup> <https://www.cbsnews.com/news/afghanistan-taliban-women-girls-work-school-sharia-rules>.

<sup>36</sup> Quran 2: 256.

<sup>37</sup> Mohammad Ibn Sa’d, *Great Classes (Altabaqat al-koba)* (Beirut: Dar Sader Publication, 1985), 266; Mohammad Khazaeli, *The Rules of Qur’an* (Tehran: Javidan Press, 2005), 259.

<sup>38</sup> Quran 88: 22.

<sup>39</sup> Muḥammad Ibn Ismā’īl al-Bukhārī, *al-Ṣaḥīḥ* (Bayrūt: Dār al-Fikr, 1990), 4: 264; Mohammad Ibn Ali Sadough, *Man la Yahzuruh al-Faghih* (Qom: Islamic Publication, 1993), 4: 334.

the religion of Islam has a higher ability to reason,<sup>40</sup> after coming from other religions. However, most jurists interpret this *ḥadīth* as saying that non-Muslims should not be superior to Muslims in a Muslim society, and they mean superiority of any kind. The following is a list of the most important jurisprudential rulings extracted from this *ḥadīth*:

- a) A Muslim's property is not transferrable to a non-Muslim after his death, even if it is his child but the non-Muslim's property can be transferred to his Muslim child after his death.<sup>41</sup>
- b) It is forbidden for a non-Muslim man to marry a Muslim woman, but a Muslim man can marry a non-Muslim woman.<sup>42</sup>
- c) Non-Muslims cannot judge Muslims as judges.<sup>43</sup>
- d) The administration of executive affairs and departments in some Muslim countries is not allowed for non-Muslims<sup>44</sup>
- e) The wealth and property of non-Muslims, such as the home, etc., should not be greater or better than that of Muslims.<sup>45</sup>
- f) Non-Muslims in the Muslim community are not allowed to invite others publicly or even secretly to their religion.<sup>46</sup>
- g) The testimony of non-Muslims is not admissible in court<sup>47</sup>.
- h) A Muslim is not retaliated against for intentionally killing a

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<sup>40</sup> The validity of this *ḥadīth* has been examined in an article and its weakness has been confirmed and its correct meaning is presented. See Meysam Kohantorabi, "A Document Study and Causal Analysis of the Hadith of Superiority and Evaluating its Citation in Interaction with non-Muslims," *Ketab-E-Qayyem Journal* 25 (2021).

<sup>41</sup> Fazl Ibn Ḥassan Tabarsī, *Makārim al-Akhlāq* (Qom: Sharīf, 1990), 2: 12.

<sup>42</sup> Ḥassan Ibn Yūsuf Hillī, *Tazkirah al-Fuqahā'* (Qom: Ahl al-Bayt, 1968), 569.

<sup>43</sup> Muḥammad Ḥassan Najafī, *Jawāhir al-Kalām* (Bayrūt: Turāth al-'Arabī, 1984), 37: 294.

<sup>44</sup> Ḥussaynalī Montazarī, *Dirāsah fī al-Wilāyah al-Faqīh* (Qom: Tafakkur, 1989), 2: 149.

<sup>45</sup> 'Abd al-'Azīz Ibn Boraj, *Jawāhir al-Fiqh* (Qom: Islamic Publication, 1991), 51.

<sup>46</sup> Zakariyā Nawawī, *al-Majmū'ah* (Riyāḍ: Dār al-Kutub, 2006), 19: 412.

<sup>47</sup> Ḥussayn Bojnourdī, *al-Qawā'id al-Fiqhiyyah* (Qom: al-Hadī, 1998), 1: 291.

non-Muslim, and he only must pay compensation (*diyat*).<sup>48</sup>

All these rulings have been taken from the same *ḥadīth* that we said is both distorted in terms of the validity of the document and its content is not in the field of jurisprudential issues. The jurists have tried to issue a ruling in all contexts in which Muslims and non-Muslims have a common practice, which is a ruling of superiority for Muslims and with these rules, perform the *ḥadīth* mentioned by the Prophet Muhammad in the society.

It should be noted that we do not intend to violate those jurists in this article because the jurisprudential views and even the understanding of the Quran and the *ḥadīth* largely depend on the surrounding conditions in which the jurist is. These rulings were issued at a time when modernity and its accessories did not exist, and the followers of any religion often sought the supremacy and domination of their religion and considered it the most correct thing to do. After the advent of modernity, these rulings and their implementation, in addition to not being acceptable to non-Muslims, have also raised questions and doubts for some Muslims.

If we present these jurisprudential rulings on *akhlāq*, it will face serious challenges and make it difficult to defend them. For example, Categorical Imperative,<sup>49</sup> proposed by Kant and accepted by many ethicists, is a reasonable criterion for examining these rulings from an ethical perspective. That is, one of the criteria for moral behaviour is pervasiveness. In other words, if non-Muslims make such rulings for the presence of Muslims in non-Muslim societies and Muslims are satisfied with it, then it can be said that it is morally correct, while most likely, there is no such satisfaction among Muslims. Criteria such as the Categorical Imperative are often accepted by all. However, the criteria considered in this article are the principles of religious ethics derived from the Quran and Sunnah. One of these criteria is that a Muslim should not want something for others that he wants for himself. Both the Prophet Muhammad and Imam Ali have been quoted as saying:

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<sup>48</sup> Shahab al-Dīn Mar'ashī, *al-Qiṣāṣ* (Qom: Mar'ashi Library, 1995), 1: 302.

<sup>49</sup> Johnson, Robert & Cureton, Adam, "Kant's Moral Philosophy," *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Spring 2019).

“Like what you like for others and do not like what you don’t like about others.”<sup>50</sup> According to this principle of Islamic ethics, just as Muslims do not want to be treated like this in non-Muslim societies, they should not treat non-Muslims in the same way. Interestingly, this criterion is similar to the Categorical Imperative.

On the other hand, one of the most important achievements of modernity is the importance of establishing rights. In other words, the most important principle that individuals, societies, and governments must adhere to is tolerance and respect for the rights of all human beings, regardless of religion, nationality, race, etc. This principle forms the basis of the Universal Declaration of Human Rights and all countries have accepted it. This concept is also mentioned in the sources of the religion of Islam, as Imam Ali has dealt with it in detail in sermon 256 of *Nahj al-Balaghah*, but throughout history, the concept of “right” has been ignored by governments. What causes the challenge between jurisprudence and modernity is clear here.

The above-mentioned jurisprudential rulings practically ignore the rights of non-Muslims, while modernity seeks to respect the rights of all. By prioritizing this important moral principle, one of the fundamental challenges between jurisprudence and modernity is reduced; some jurisprudential laws that oppose modernity are fundamentally opposed to *akhlāq* while *akhlāq* is the main goal of the Prophet Muhammad himself: “I have come to institutionalize the best morals among the people”.<sup>51</sup> It is noteworthy that despite the Prophet’s advice, *akhlāq* is not a source of jurisprudence. The Quran, *Sunnah*, reasons and consensus (*ijma’*) are the four main sources of jurisprudence.<sup>52</sup> If *akhlāq* is accepted alongside these four sources, some of the challenges between jurisprudence and modernity did not arise.

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<sup>50</sup> Ḥassan Ibn ‘Alī Ibn Sho’bh Harranī, *Tahaf al-Oghoul* (Qom: Islamic Publication, 2002), 159; Sayyid Razī, *Nahj al-Balaghah* (Tehran: Farhang Publication, 2002), 216.

<sup>51</sup> Aḥmad Ibn Ḥussayn Beihaghī, *Sunan al-Kubrā* (Bayrūt: Dār al-Kutub, 2003), 9: 145.

<sup>52</sup> Morteza Motahhari, *Generalities of Islamic Sciences* (Qom: Sadra, 2013), 49.

## IMPORTANT POINTS

As previously mentioned, eliminating all the challenges between modernity and Islamic law is impossible because each of them has different sources, destinations and methods. In addition, for these solutions to be functional and fundamental, it is necessary to consider the following points:

- a) The consequences of the rise of modernity have been very diverse, and its achievements have been accompanied by strengths and weaknesses. In other words, the achievements of modernity have not always been appropriate. For example, the legalization of homosexuality, which is one of the products of the modernity age, is not at all compatible with religious morality and even with the view of many secular scholars and philosophers. So, when we talk about the correspondence of jurisprudence and modernity, we do not mean accepting all views of modernity. At first, the achievements of modernity must be examined and then we try to minimize the challenges between these achievements and jurisprudential *fatwas*.
- b) It should not be assumed that the jurisprudential *fatwa* is exactly the commands of God. It is a human endeavour to discover the words of God and can be changed. Ethical principles, beliefs principles, and even jurisprudential principles are permanent. These principles are quoted and emphasized in the Quran, and the words and behaviours of leaders of religion, such as belief in God, prophecy, prayer, fasting, paying *zakāh*, and war in the way of God. However, jurisprudential *fatwas* related to social and political relations, transactions and financial issues are not so, because these *fatwas*, as stated above, depending on historical, geographical, and other conditions and can vary in different circumstances. Knowing these important points helps believers and followers of religion to accept changes in jurisprudential rulings.

## CONCLUSION

In the modern world, one can also be religious. Not all achievements of modernity are correct and not all the jurisprudential sentences



are unchangeable. Without modernity, progress cannot be made in this world, and without religion, eternal salvation cannot be achieved. The achievements of modernity are the products of human endeavour and some of them can be false, as well as some of the jurisprudential sentences are related to particular circumstances. Both achievements of modernity and the jurisprudential rulings must be consistent with the principles of *akhlāq*. Because according to Islam, *akhlāq* is superior to jurisprudence, and according to other schools of thought, living morally in modernity is the best way to live. Therefore, one of the best ways to reconcile jurisprudence and modernity is to bring the two closer to their common ground, which is *akhlāq*. Jurists, thinkers, and philosophers need to make a logical dialogue on the base of *akhlāq* with each other to adapt modernity and jurisprudence and reduce the challenges as much as possible. Eliminating either religion or modernity is not possible, in fact, religion and modernity can help each other to improve society. If the challenges between Islamic law and modernity are mitigated, people in the community will live more calmly and unity will appear. Ultimately, everyone can experience spiritual life while being in modern society.

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