

The Concept of Consistency and Change in Legal Rulings

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Abstract

This research deals with the disciplined rooting of consistency and change in the Shari'a rulings while clarifying the scholars' opinions on it. It also includes an explanation of the intended meaning of the change in the legal ruling, and that this change is a change in the reality of the facts, so the incident with different dimensions has two or more rulings according to its circumstances. It is a change in the application and the fatwa, not in the discourse according to its original requirement, and this is an activation of the spirit and intent of the text, even if it contradicts its ruling on the surface. The research aims to explain the importance of being aware of reality before applying the Shari'a ruling on it, taking into account individual and circumstantial exceptions and peculiarities, and not casting the rulings into rigid templates that are applied in all different circumstances, thus deviating from the spirit of Shari'a and its dominant objectives of facilitation and mitigation. This is the reason behind falsely accusing Islamic Shari'a of being unable to handle new issues.

Keywords: Constants And Variables, Change in Sharia Ruling, Reality, Goals of Sharia

INTRODUCTION

Praise be to God who taught with the pen, and may blessings and peace be upon His Prophet, who was sent as a mercy to the nations, and upon his family and companions and those who followed them, strengthening their resolve.

The combination of consistency and change is one of the characteristics of Islamic law. Because it is the conclusion of the heavenly laws, it is therefore described as steadfast and lasting until the Day of Resurrection, and it is necessary for that the provisions it contains are comprehensive of everything that humans need related to their livelihood and future, and this comprehensiveness can only be achieved by describing it with the characteristics of consistency and flexibility, in a way that achieves the required balance between preserving its identity and its principles on the one hand, and response to the changes of the times and the reality of life on the other hand.

This research dealt with explaining the concept of consistency and change in Islamic law. Given the breadth of this concept and the many differences in its meaning, the importance of this research is evident in the following:

* Contributing to clarifying the blurry vision of the concepts of consistency and change in Islamic legislation, in a way that contributes to maintaining the required balance between openness to purposes and meanings on the one hand, and closure to words and rigidity to the original requirements of evidence on the other hand.

* Defining the concept of constants and variables carries the meaning that the validity of legislation for every time and place is achieved, so that there remains no separation between the reality of people and the provisions of Sharia, because legislation is not just and wise unless its provisions are appropriate for those for whom it was legislated, consistent with their interests, and taking into account what is required by their customs and environments.

The research is divided into three sections:

The first section: Definition of the Sharia ruling

The second section: What is meant by changing the legal ruling

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The third section: identifying constants and variables in Islamic legislation

I ask Almighty God to make this humble effort beneficial for those who read it, and to forgive me for my mistakes or negligence. He is the Hearer and Answerer of prayers.

The First Section: Definition Of the Sharia Ruling

Ruling in the language: “Prevention from injustice, and it is called the wisdom of an animal because it prevents it. It is said: The animal ruled and made it wise, and it is said: It ruled the fool and made him wise, when it took it upon him” , “And the ruling: knowledge and jurisprudence. God Almighty said: {And We gave him wisdom as a child}

.That is: knowledge and jurisprudence.

In the terminology of the fundamentalists: it is the speech of God Almighty related to the actions of those in charge, whether by requirement, choice, or situation .What is meant by the speech of God Almighty: that is, His words related to the action of the accountable person, i.e. the rational adult .

The obligation is the request, and it includes the request to act and the request to refrain. As for the choice, it is permissibility, so the five rulings are included in these two terms, because the request to act, if it is decisive, is a demand, otherwise it is a recommendation.

If the request for abandonment is definitive, it is forbidden, otherwise it is disliked . As for the situation, it is the discourse contained in the thing being a reason, condition, or impediment .

And it came out with our saying: by requirement, choice, or placement, what is related to the action of the accountable person, not by requirement or choice, as in the Almighty’s saying: {And God created you and what you do} , it is not a request, but rather a declaration that he is a creation of God .

As for the definition of the legal ruling according to the jurists: “It is what is proven by speech, such as obligation, prohibition, and other things that are attributes of the act of the accountable person, not the same speech that is among the attributes of God Almighty” .

This definition is closer to practical reality. Because the Shari’a ruling is the effect of the discourse of the Lawgiver and not the discourse itself. It is a description of the actions of the accountable that scholars deduce from the discourse of the Shari’a. Thus, the Shari’a ruling expands to include all the rulings that scholars deduce from the texts of revelation directly or by analogy with what is stated in these texts or deduction through consequential evidence. Which the texts of revelation have guided to, such as the Maslaha al-Mursalah and others .

Based on the definition of the fundamentalists, the legal ruling is divided into: mandatory and statutory (13).

The obligatory ruling is “the Almighty’s speech related to the actions of those who are obligated to do so as a request or a choice”

A firm request is an offer, a non-firm request is a recommendation, a firm request to refrain is a prohibition, a non-firm request is a dislike, and a choice is a permissibility . These are the sections of the mandatory ruling.

As for the positive ruling, it is: God Almighty’s speech by making something a cause, condition, or obstacle .

The relationship between the sections of the legal ruling is integration and interdependence, and this relationship goes through several stages, starting with the mandatory ruling, which represents the command, abandonment, or choice, and this is the first stage, then looking into the fulfillment of the reasons and conditions and the absence of impediments, which are the sections of the positive ruling that represent the stage.

The second, then comes the third stage, in which the act is described as valid, invalid, determined, or licensed

From the above it becomes clear that the Sharia ruling is the speech of God, and the speech of God is fixed and does not change because it was established to be permanent and eternal, and because changing it means introducing a new law and abrogating the previous law, and this is not permissible, but the change is in the legal description of the facts of obligation, recommendation, prohibition, detestation, and permissibility, which are the sections of the mandatory ruling that are descriptions of the actions of those charged, and this change is based on a change in the facts of the facts and not in the origin of the discourse, and the reasons, conditions and prohibitions, which are the sections of the positive ruling, were established by God Almighty to be signs on which the existence or absence of the ruling depends, and therefore they affect the ruling. The consistency and change of the mandatory ruling, because it is closely linked to knowledge of reality, and constitutes an important part of the circumstances affecting the change in the original ruling of the evidence.

The Second Section: What Is Meant By Changing The Legal Ruling

Change is linguistically: transformation, alteration, and difference. It is said: “He changed a thing from its state: transformed, and changed it: transformed it and changed it as if He had made it other than what it was, and in the Mighty Revelation: {That is because God would never change a blessing which He has bestowed upon a people until they change what is with it.” themselves, and God is Hearer. All-Knowing} ...and things changed: they differed” .

As for the change in the Sharia ruling in terminology, there was no specific definition for it from ancient scholars, while contemporary scholars provided different definitions for it, based on their differences in defining the nature of the constants and variables in Islamic Sharia, and among these definitions are:

The first definition: Changing the ruling: It is acting according to the original fixed text, but with evidence inspired by the circumstances of the text according to a temporal interest .

This is because, in the circumstances of the text, there is evidence that the ruling established in the text is a ruling based on a temporal interest. If the interest changes, the ruling changes with it, and this is not a change in the text .

The second definition: The change in the Sharia ruling: “It is its transition from being lawful and becoming prohibited, or prohibited and becoming lawful, depending on the degrees of legality and prohibition” .

This definition is based on the fact that it did not mention the reason for the transfer or change of the Shari’a ruling from one case to another. The Shari’a ruling does not change unless evidence and external influences support the text, which makes its application to the previous body not lead to achieving the purpose for which the ruling was legislated.

The third definition: “It is the change in the legal description of the facts from its first state to another state, due to external influences that affected it” .

This means that it moves according to the types of mandatory ruling from being obligatory to becoming permissible, forbidden, or recommended, or forbidden to becoming obligatory or permissible, and so on. What is meant by external influences is circumstances of various types, temporal, spatial, personal, etc., that is, the emergence of new evidence that celebrates the ruling, which makes its application to the authority. The precedent does not lead to the purpose for which the ruling was enacted.

The fourth definition: “Change of rulings is the cessation of their implementation due to the absence of their basis in the issues that were governed by them. If the basis were to return to those issues, the ruling would be restored. The change of ruling may be in replacing it with another ruling on the incident that it was ruling, due to the emergence of a new basis in that incident that necessitated the change.” .

The fifth definition: “It is leaving the first ruling - if it has reasonable meaning - to another new jurisprudential ruling that is more capable of achieving interest and justice, given that the basis that is the basis of the first ruling has moved to what is required by the new jurisprudence” .

Change is not the introduction of Sharia rulings out of sheer desire, being influenced by the secretions of the age, or the desire to be freed from the authority of the upright Sharia. Rather, it is stopping the implementation of the original requirement of the evidence when the basis of the ruling changes, because rulings are means that are intended to lead to goals, so if they deviate from achieving those goals, their fate is determined. Other than that which is stronger in achieving the legitimate objectives.

Sixth definition: Change of ruling: It is a change in diligence in issues for which there is no definitive evidence from an authentic text or explicit consensus, or issues based on custom or interest .

Seventh definition: Change of ruling: It is the change that occurs in the jurisprudential ruling that is originally required by the evidence, when applied to the reality of the taxpayer, where an interest has arisen that can be considered as an exception .

This change includes both final and speculative jurisprudential rulings, because final rulings, when applied to reality, may change temporarily, taking into account the rest of the general rules in order to achieve the reason for legislating rulings, which is to achieve the interest in accordance with the intent of the law, and where applying them required temporary change in some cases, the quality of consistency is no longer there. From this point of view, not in the sense that they are universal laws, as for the speculative jurisprudential ruling, it is variable according to the differences in the views of the diligent scholars on it, in addition to the possibility of a change occurring in it when it is applied to the reality of the accountable person according to what the diligent opinion comes out of .

I say: What is noticeable about these definitions is that they include the transition of the legal ruling from one type to another for a specific reason, and then they differ in determining this reason. Some of them attribute it to the association of the event with external circumstances and circumstances that affect the original requirement of the ruling, and then transfe it to another ruling in order to achieve the legal goal. What is envisaged by the law of governance (this is noted in the first and third definitions).

Some of them are due to a change in the basis of the ruling. It is believed that the change in the ruling is merely a temporary suspension of its application (as noted in the fourth and fifth definitions), and it is no secret that the basis is closely related to taking into account individual privacy when applying the original ruling to the presented incident.

As for the sixth definition, it did not address the effect of these two aspects - taking into account the circumstances and achieving the basis - in changing the legal ruling. Rather, it limited itself to describing the rulings that accept this change, without mentioning the reason for that, so it clarified that the jurisprudential rulings (which are speculative rulings, not definitive rulings, and rulings based on interests and customs) are considered a field for change without definitive rulings based on anything other than interests and customs. This is in contrast to what is observed in the last definition, as the change included both final and speculative rulings, given that they are applied to the reality of the taxpayer and balanced between them and general rules.

From the above it is clear that changing the Shari'a ruling and its connection to circumstances and circumstances, and its connection to the basis and achieving the Shari'a objectives, is nothing but an implementation of the text from another side and not an abolition of it or a change to God's law unnecessarily. Perhaps this is what prompted Imam Al-Shatibi to come to the convention of naming the process of change. This is (by necessity after the legal evidence). i.e. what is required and called for by the evidence as a consequence and not as a basis when the necessitating reason exists, and God Almighty knows best.

In this sense, Al-Zarkashi says: "We do not say that rulings change with the change of time, but rather with the change in the situation occurring...and all of that is merely a deduction from the rules of the Sharia, not that it is outside of the legitimate rulings, so know that, for it is strange" .

The change we mean does not mean a change in the origin of the legal discourse, because the Sharia was established to be permanent and eternal, and "because changing the ruling of the text itself by opinion is invalid"

Thus it is clear that changing the rulings is not considered abrogating them, because none of the mujtahids abrogated anything from the Sharia after the Prophet - may God bless him and grant him peace - but a single

incident with different dimensions has two or more rulings, and each ruling has an application in the circumstance in which it was established. This is in contrast to abrogation because the lifting of the ruling in abrogation is eternal and the abrogated is not applied at all. As for changing the ruling, it is an activation of the same text, but with a new ruling based on evidence inspired by the circumstances of the text based on a temporal interest, and in that case the ruling is not applied or some facts are excluded from its application. This does not mean invalidating the legal text, but rather it is in the truth of the matter is an implementation of the will of the legislator and the fulfillment of his purpose, which the mujtahid derived from the same legal text. Al-Shatibi says: "The failure of individual particulars to fall short of the requirement of the general, if it is for a reason that is not accidental, then it is not valid according to the law, and if it is for a reason, then that is due to preserving that generality on the other hand." Or on another universal, the first would be a blame for his backwardness in the universal, and the second would not be a fault for his backwardness".

What is meant by incidental circumstances is that the incident occurred, which makes applying the original ruling to it contrary to the spirit of Sharia law.

It can be said that the change in rulings is an apparent change and not in reality, and that the change is in the context of the facts and as a result different rulings were given, and this is what the previous scholars meant who established the rule (it is undeniable that rulings change with the change of times, so they meant the difference in rulings. According to the different facts when times change, as evidenced by the fact that Imam Al-Shafi'i - may God have mercy on him - when he came to Egypt gave different rulings to the facts; Because he found the circumstances surrounding it different from what he saw in Iraq, and we find scholars saying regarding Abu Yusuf and Abu Hanifa and their difference in some rulings that it is a difference of era and time, not a difference of argument and proof, and this characteristic gives the Sharia flexibility and adaptation to various situations and circumstances, and enables it to Its individuals coexist with different environments and cultures.

After this introduction about defining change in the legal ruling, I had to turn to a topic closely related to that, which is defining the legal rulings that accept this change (which is what has been called variables in contrast to the legal constants).

The Third Section: Identifying Constants and Variables in Islamic Legislation

Linguistically, steadfastness is the noun of the word for something to be steadfastly and steadfastly, and steadfastness, meaning: it has settled. The Almighty said: {Allah erases what He wills and establishes it}, and it is said that it is steadfast in the place, meaning: it remains established, and it is steadfast in the matter and opinion: it is patient in it and does not hasten, and steadfastness: the brave and steadfast in heart.

As for the linguistic meaning of change, its definition was presented in the previous section.

As for terminology: it is difficult to find a precise definition of consistency and change among scholars of fundamentals, especially the ancients. Defining this term and others like it did not constitute a problem for them in their time, although this does not mean that they were not interested in the principle of consistency and change in the Sharia, as they presented it with roots and branches.

Such as Al-Amidi, Al-Shatibi, Al-Zarkashi and others, while contemporaries set out to define the terms consistency and change and distinguish their concepts, and their opinions on this varied according to the criteria from which they started in determining the nature of constants and variables in Islamic legislation, and scholars - ancient and modern - have three schools of thought in determining this:

First: The presence or absence of a text represents the criterion that is used to determine the constants and variables. The constants are the rulings that were contained in legal texts from the Qur'an or the Sunnah, whether the texts were definitive or speculative. As for the variables, they are the rulings that were not contained in legal texts, but rather were built on Interests or customs and other similar evidences of ijthad. This is the doctrine of Al-Zarkashi and was adopted by contemporaries Dr. Abed Al-Sufyani and others.

According to this opinion, the definition of constants is that they are: what was revealed by revelation from God, whether verbally or in meaning, and they were not abrogated .

I say: Accordingly, the consistency in the legal evidence according to the followers of this trend is represented in the texts of the Qur'an and Sunnah and the consensus or analogy that is built on them, and this trend is the most narrow trend among the other trends, and the one most inclined to stop at the apparent meaning of the texts, and not to activate ijihad except in what is not textual in it.

Second: The rulings contained in definitive texts are constants and do not accept ijihad, while the rulings contained in speculative texts (in terms of occurrence or significance) are among the variables that accept ijihad. This is the doctrine of Al-Ghazali and Al-Razi, and was chosen by Al-Qaradawi and others .

According to this approach, the constants are: the definitive texts from the texts with which God established the argument in His Book or on the tongue of His Prophet - may God bless him and grant him peace - and the places of consensus in which there is no room for ijihad. As for the variables, what is meant by them are: the sources of ijihad, which are everything for which there is no conclusive evidence from a true text or explicit consensus .

I say: This trend links the nature of the legal evidence in terms of definiteness and suspicion with the possibility of ijihad in it, and this is subject to consideration. Because many of the final rulings accept ijihad in applying them and applying them to the reality of the accountable person. Rather, ijihad is necessary in achieving their basis and taking into account the individual and circumstantial specificity of the facts that fall under them in order to achieve the purposes of Sharia, while recognizing that they do not accept ijihad in their confirmation or in their indication of their intended meaning.

Also, much of the presumptive evidence is characterized by consistency in terms of the nature of its subject matter, and the change is only in the scholars' diligence in its occurrence or in its meaning and nothing else . Therefore, we see many of those who express this opinion striving in the definitive matters in order to achieve their basis or to scrutinize their fulfillment of the rulings and objectives sought from their legislation.

Third: The criterion for consistency and change is the fulfillment of the ruling and the desired objectives of the law of ruling when applying it to the presented facts, regardless of whether it is definitive or speculative. This is the doctrine of Al-Shatibi and was followed by many contemporaries, such as Dr. Fathi Al-Darini, Dr. Safiya Al-Jifri, and others . Most of the rulings whose wisdom was realized accept this type of ijihad that prevents one from deviating from the legitimate objectives.

According to this opinion, the legal constants are the general purposes and general rules of the Sharia that do not change with changes in circumstances. They are represented in the five universals of the Sharia (religion, soul, mind, lineage, and money), which all heavenly laws came to preserve , and to them are added the devotional issues whose wisdom cannot be understood, such as matters of worship. And so on . As for the field of variables, they are the rulings whose wisdom has been realized and most of which fall within the chapter of transactions.

This trend is the most likely in my opinion. Because it is a balanced approach that does not limit itself to the outward appearance of the texts and say that ijihad is forbidden when it appears, and it does not go to extremes by diluting the constants and saying that all texts can be changed, regardless of their content.

It is a trend that is consistent with the spirit, moderation, and ease of Sharia law, and supports its suitability to govern human actions throughout the ages and times.

From the above, we can conclude that **what is meant by consistency in the legal evidence is the continuation of working with the evidence, in all circumstances, times and places.**

See: Fundamentalists' controls on the rule of reasoning by analogy, M. Eng. Hussein Mahmoud Ali, Prof. Dr. Bashir Al-Ajl, Iraqi University Journal, Issue 61, Part 1, Muharram / 1445 AH - July / 2023 AD, 233.

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As for change: it is stopping the work of the evidence in some circumstances, times, or places, for a reason that requires it.

With the characteristic of combining consistency and change, the Islamic society can adapt to the developments of contemporary life, remaining consistent in its origins and values, and developing in its methods and knowledge.

CONCLUSIONS

At the end of this research, we can conclude the following results:

1- The legal ruling is the speech of God Almighty related to the actions of those assigned (mukalafin) as obligation, non-obligatory, or context dependent. It is fixed and cannot be changed or abrogated. The intended change is the change in the facts of the facts, so the incident with different dimensions has two or more rulings according to its circumstances. It is a change in application and the fatwa not in the speech according to its original requirement, and this is an activation of the spirit and intent of the text, even if it apparently contradicts its ruling.

2- The generalities of Sharia law, its basic rules, and its general objectives are constants that do not undergo change, no matter how different the circumstances and times are. However, the means of applying these rules may change according to the different circumstances. Likewise, the rulings of worship are unreasonable in meaning, and the issues of belief and morals are also constants that do not change except in some cases of necessity, and some cases in which the means of worship change.

3- Partial rulings on transactions and other rulings with reasonable meaning may often undergo change, because they came to achieve certain interests, and these interests may change and the ruling changes accordingly, and there is no difference between the text being definitive or speculative, because the text of definitive proof and significance does not accept ijtihad in proving its meaning nor in its indication of its meaning, but it may accept fundamental consideration in its indication of the rulings of the facts that fall under it, because, considering its revelation and application, it may be definitive or it may be speculative.

4 -The rigidity to movables according to their original requirements, and their automatic transfer to different facts without taking into account the circumstances and peculiarities inherent in these facts, contradict the spirit of Sharia law, contradict its purposes, create overwhelming hardship, and may lead to major corruptions.

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The Concept of Consistency and Change in Legal Rulings

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