

The Concept of Tahqiq Al-Manat and its Suitability as a Method of Reasoning in the Judicial Process

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Abstract: With a view to analysing the suitability of the process of tahqiq al-manat as a proper method of reasoning in Islamic judicial process, the paper discusses the concept of tahqiq al-manat according to the elaboration of the Muslim theoreticians (Usulis). The study identifies that there are three steps involve in the process of tahqiq al-manat, they are; identification of the governing rule (al-hukm) and principles from the recognised sources (al-mudrak al-Shar'i), examination of the legally relevant facts of the new cases and application (tatbiq) of the relevant governing rules and principles to the facts of the cases to come to proper legal conclusions, which are exactly reflective of the judicial tasks of the judges in the judicial process. Therefore, the paper argues that tahqiq al-manat constitutes a proper method of judicial reasoning in the judicial process, being the reasoning of the judges when adjudicating actual legal cases.

Key words: Tahqiq al-Manat • Judicial reasoning • Islamic judicial process

INTRODUCTION

From Islamic legal point of view, the concept of *tahqiq al-manat* has been normally discussed in the context of analogical deduction (*qiyas*). In the scheme of analogical deduction, the process of *tahqiq al-manat* comes after the processes of *tanqih al-manat* and *takhrij al-manat*. *Tanqih al-manat*, which literally means purifying the 'illat, is a process of eliminating of the improper and assignment of the proper 'illat to a ruling in the case where there are more than one probable 'illats. The process is undertaken by the jurists in order to identify the proper 'illat out of the possible 'illats. *Takhrij al-manat*, on the other hand, is the process to adduce or discover the ratio (*manat*) of a ruling when the text of the ruling did not mention any [1].

Discussing *tahqiq al-manat* in a different yet relevant setting of judicial process, the paper explicates the concept of *tahqiq al-manat* from the theoreticians' (Usulis) point of view in order to gain a comprehensive insight into the nature of the process as well as to examine the suitability of the concept as a method of reasoning to be employed in the Islamic judicial process.

Elaboration of the Concept of Tahqiq Al-Manat by Muslim Theoreticians' (Usulis): At the outset, *tahqiq al-manat*, as the term itself suggests, implies the process

of verifying or establishing (*tahqiq*) the presence of the ratio or the anchor point (*al-manat*) [2] of the established law in any new case or situation. This process is resorted to with the purport of extending the legal rule of the original case (*al-asl*) to the new case (*al-far'*) which is not covered by the texts [3]. Accordingly, the process of *tahqiq al-manat* is a process which is limited to the activity of authenticating the existence of the identified ratio of the well-established legal rule in the other cases or situations. This activity can be illustrated in the examples of examining the presence of "intoxicating quality" which is the ratio for proscribing wine in the other types of fruity or herbal drink or in drawing an analogy between a thief and a snatcher or a pickpocket to ascertain whether the latter falls under the definition of theft to assume the same legal effect. It is clear from above instances that, in the process of *tahqiq al-manat*, the main concern of the jurists is directed to the relevant facts of the new case, so that on the basis of the established factual reality of the new case, a proper conclusion can be made regarding the existence of the ratio of the original case in the new case to assume the same legal effect of the original ruling.

As will be further explained, it is in the context of this meaning that the term has been purported to be in its operational scheme in the judicial process. However, as the discussion proceeds further, the issue whether the ratio must be clearly mentioned in the texts or that it must

be agreed upon by jurists or that it could as well be a derived ratio by way of *ijtihad* for purpose of undertaking the process of *tahqiq al-manat* is a matter of difference between the jurists.

Imam al-Ghazali, who has been regarded as the first jurist to divide *ijtihad* in relation to the ratio of the law (*'illat*) into three types [4], observes that the process of *tahqiq al-manat* is limited to the situation where the basis of the rule (*manat* [5] *al-hukm*) has been clearly identified from the texts or by the consensus. The operational task of the jurists is then to verify the presence of the identified basis of the rule (*al-manat*) in the other cases governed by the same rule in order to extend the original ruling to the cases.

Imam al-Ghazali cited the examples of the appointment of a caliph, or a governor or a judge, the determination of sufficient amount of maintenance of one's relatives, the determination of compensation for things illegally or unjustifiably damaged or for the like animal in case of killing a game in the sacred place (*haram*) or during ihram of pilgrimage, to illustrate the application of the *tahqiq al-manat*. He explained that in these examples the bases of the governing rules are already ascertained in the texts or by consensus. Therefore, there is no need to derive the *'illats* of these rules. Quoting the example of maintaining one's poor relative, Imam al-Ghazali explicated that according to *Quranic verses* [6] the rich are obligated to provide maintenance for their poor relatives. The basis for the determination of the maintenance's amount which is derived from the *Quranic* text is sufficiency (*kifayah*). The issue as to what amount represents the sufficient amount in future cases is to be decided based on the facts of each case on the standard of probability (*al-zann*). Imam al-Ghazali, even though he discussed *tahqiq al-manat* in the context of *ijtihad* in relation to the ratio (*'illat*), argued that *tahqiq al-manat* is an independent mode of *ijtihad* which has no relevance to *qiyas* [7].

Ibn Qudamah (d. 630H), in his description of the operational process of *tahqiq al-manat*, has recorded the following enlightenment which is upon analysis comparable to the concept of *tahqiq al-manat* as explained by Imam al-Ghazali:

"That *tahqiq al-manat* (ascertainment of the support) is of two types, the first type which is we do not know any disagreement regarding its validity. The meaning of this type is that the encompassing principle [*al-qa'idah al-kulliyah*] is agreed upon or is explicitly given by a text and [*the faqih*] exerts *ijtihad* to ascertain its existence in the specific case [*far'*]. An example is our view, "For the wild ass, a cow." because of His (Allah) saying, "the amends [is] in cattle equivalent to what he has killed"[5:95] [referring to the *Quranic* penalty for killing

game during a pilgrim]. So [*the faqih*] says that the equivalent is obligatory, the cow is an equivalent and so [the cow] is obligatory. The first [proposition], i.e., that the equivalent is obligatory, is known by text (*nas*) and consensus (*ijma'*), while the ascertainment (*tahqiq*) of the equivalence in the cow is known by a sort of *ijtihad*. Another example is *ijtihad* as to the qiblah [direction of Mecca], because we say that the obligation to face the *qiblah* is known by explicit text, but the direction of the *qiblah* is known by *ijtihad*. Similar is the selection of the ruler, the [determination of] good character [such as in accrediting witnesses], the amount of maintenance payments (*nafaqat*) for support [of spouses and relatives] and such like. This is called as *tahqiq al-manat* (ascertainment of the support), when [the support] is known but knowledge of its existence in the several manifestations (*ahad al-suwar*) is difficult, so proof for it is sought in possible indicators (*amarat*). The second type is when the cause (*'illat*) of the rule is known by the text (*nas*) or by consensus for the *mujtahid* to verify its existence in the specific case by way of *ijtihad*. The example is the saying of the Prophet (s.a.w) regarding the cat "*innaha laysat binajasin, innaha min al-tawwafin 'alaykum wa al-tawwafat*", whereby frequent visit (*al-tawwaf*) is mentioned as the ratio (*'illat*) to consider the leftover of a cat is clean. Thus the *mujtahids* can verify the existence of this ratio (*'illat*) in the other reptiles such as the mice in order to determine the purity of their leftover. The second type is, in fact, *qiyas jali*, the type which is recognised even by those who reject *qiyas*. The first type of *tahqiq al-manat* is not *qiyas*. Indeed it is agreed upon [by jurists] whereas *qiyas* is controversial [among jurists]. It [*tahqiq al-manat*] is a necessity for every *Shari'ah* because revelation by texts regarding probity of every person (*'adalah al-ashkhas*) and the amount of sufficient maintenance of every person are not available [8]".

Ibn Qudamah, as clearly indicated in the above statement, has validated the application of *tahqiq al-manat* not only to the cases where the bases or the ratios of the rules are known by the text or by the consensus but also to the cases where the encompassing principle (*al-qa'idah al-kulliyah*) is clearly mentioned in the text or agreed upon by jurists. However, upon examination, his concept of *tahqiq al-manat* is not different from that of Imam al-Ghazali. Even though Imam al-Ghazali did not mention explicitly *tahqiq al-manat* on the basis of encompassing principles like Ibn Qudamah, yet the examples of the application of *tahqiq al-manat* given by Imam al-Ghazali which are similar to that of Ibn Qudamah, constitute a sufficient proof that Imam al-Ghazali also admitted encompassing principles to be the bases for the

operation of *tahqiq al-manat*, or that it can be argued that what is meant by the word ‘*illat*’ in the opinion of Imam al-Ghazali is also to include the encompassing principles. Apart of this, they are in agreement that both, the ratio or the encompassing principles, must be clearly mentioned in the texts or agreed upon by the jurists where no resort to *ijtihad* is needed to discover the ‘*illat*’.

Another jurist, al-Amidi, who afforded *tahqiq al-manat* the same concept as Imam al-Ghazali, had differed from Imam al-Ghazali and Ibn Qudamah when he asserted that the ‘*illat*’ for the process of *tahqiq al-manat* must not necessarily come from the text or by consensus, but it may also be ascertained by the way of derivation (*istinbat*) [9]. This opinion of al-Amidi nowadays seems to be accepted by the later scholars where contemporary scholars like Wahbah al-Zuhayli, ‘Abd Karim Zaydan and ‘Abd al-Wahhab Khallaf are of the view that the process of *tahqiq al-manat* can either be made on the basis of the ratio which is found in the texts or agreed upon by jurists or by way of derivation [10].

Al-Shatibi’s Concept of *tahqiq al-manat*: It is also interesting to note that Al-Shatibi, whose elaboration on *tahqiq al-manat* has been regarded as the most comprehensive, described the process of *tahqiq al-manat* in a slightly different concept and thus deserves a separate discussion. He observed that *tahqiq al-manat* operates to verify the application of the legal rule (*al-hukm*) which has been established by its legal sources (*al-mudrak al-Shar‘i*) in the other specific individual cases governed by the legal rule by examining the basis of the legal rule. Thus, in the process of *tahqiq al-manat*, the emphasis is on the examination (*al-bahth*) regarding the applicability of the rule of the original case to the specific new case (*mahallihi*). From the explanation we can understand that the method of *tahqiq al-manat* is fairly applicable when there is an established legal rule, regardless of the methods used to establish the rule (*manahij al-istinbat*), either it is by way of clear and definite texts, or by way of consensus or by *ijtihad* activities of the jurists, for its application or extension to the other cases [11]. He illustrated the application of *tahqiq al-manat* in the example of the issue of excessive conduct in the prayer (*al-ziyadah al-fi ‘liyyah fi al-salat*). The established rule provides that if the excessive conduct is trivial then it is forgiven, but if it is major, then the prayer is invalid. Al-Shatibi explains that a person can decide the status of his prayer on the premise of the rule by verifying to which category of excess his conduct belongs to. Once the category is ascertained, then he can decide based on the rule the validity of the prayer accordingly. Likewise, it is a well-known legal rule that a

witness must be just (‘*adl*’) in order for his testimony to be accepted by the court. The jurists had prescribed the characteristics and conditions of justice (*al-‘adalah*). The determination of the status of a particular witness in question in light of the conditions is an example of the application of *tahqiq al-manat*[12].

Thus, according to al-Shatibi, the process of *tahqiq al-manat* is applicable when the established abstract rule or principle, including the rules and principles established by way of *ijtihad*, is sought to be applied to a specific case or situation. In such a case, the task of the *mufti*, the *qadi* or even the laymen is to determine the case in light of the rules and principles for purpose of making its proper legal conclusion.

Analysis of the Concept: From the discussion it is apparent that, while Imam al-Ghazali restricted the process of *tahqiq al-manat* to the basis or ratio (‘*illat or manat*’) which is explicitly known by the text or by consensus, Ibn Qudamah, however, extended the application of *tahqiq al-manat* to be operative on the basis of the encompassing principles (*al-qa‘idah al- kulliyah*) provided that they are clearly mentioned in the text or agreed upon by jurists. Al-Amidi on the other hand, legalised the application of *tahqiq al-manat* on the basis or ratio (‘*illat or manat*’) of a ruling which is ascertained by way of derivation (*al-istinbat*).

Irrespective of the above noted differences, they are, however, in agreement that, conceptually, *tahqiq al-manat* is a form of reasoning which is restricted to the activity of verifying the existence of the basis or ratio (‘*illat or manat*’) of the rules and principles of law, whether the basis is clearly mentioned in the texts, agreed upon by jurists, or ascertained by *ijtihad*, in the specific cases not clearly covered by the texts.

In an obvious contrast, in the opinion of al-Shatibi, the process of *tahqiq al-manat* is not limited in its application to the cases where the basis or ratio (‘*illat or manat*’) of the original rulings are mentioned clearly in the texts or agreed upon by the jurists. Al-Shatibi, in fact, did not mention about the basis of legal rule (‘*illat*’) at all when he discussed *tahqiq al-manat*. He made it clear that *tahqiq al-manat* operates as long as there is a legal ruling (*al-hukm*) which has been established either from the texts or by *ijtihad* for it to be applied to new legal cases. In this context, the opinion of al-Shatibi is more favourable taking into account the rigorous *ijtihad* activities of the Muslim jurists in the realm of legal rules deduction resulting, as we have today, in the abundance of legal opinions. To exclude the operation of *tahqiq al-manat* on the basis of the derived legal rules would in turn

to ignore the wealth of the *fiqh* corpus of the jurists which were formulated mainly due to the limited coverage of the *explicit textual rulings in the Qur'an and Sunnah* to every single case and situation of all times.

Looking from this context, one might notice that *tahqiq al-manat* is not equivalent to *qiyas*, at least on the ground that in exercising the process of *tahqiq al-manat*, the requirement of identifying the proper '*illah* through the process known as *masalik al-'illah* is dispensed with either on the ground that the '*illah* is clearly mentioned in the texts or is agreed upon as required by Imam al-Ghazali or that the process to identify the proper '*illah* through the process of *masalik al-'illah* has been duly undertaken by the qualified jurists [13]. What remains in the process of *tahqiq al-manat* is to apply the '*illah* to new specific cases.

To support the above, Imam al-Ghazali mentioned that *tahqiq al-manat* is an independent mode of *ijtihad* which has no relevance to *qiyas*. Similarly, Ibn Qudamah held that *tahqiq al-manat* is not *qiyas*. To provide a further argument for his stance, Imam al-Ghazali observed that *qiyas* is controversial among the jurists whereas *tahqiq al-manat* is recognised by all jurists. In addition, the method of *tahqiq al-manat* is considered a necessity on the fact that it is impossible to expect the revealed texts to provide detailed rules covering each and every case and person [14].

Furthermore, al-Shatibi when discussing the types of *ijtihad* had divided *ijtihad* into two categories, the ever-continuing *ijtihad* which is in the form of *tahqiq al-manat* and the other one which is capable of being discontinued due to the absence of required expertise of a *mujtahid*, which involves the full-fledged processes of making analogical reasoning consisting of *tanqih al-manat*, *takhrij al-manat* (which is regarded by al-Shatibi as equivalent to *al-ijtihad al-qiyasi*) and *tahqiq al-manat*[15]. In addition, al-Shatibi while discussing the concept of *tahqiq al-manat* had made no reference to the concept of '*illah* as normally discussed in *al-qiyas*. Such an approach shows that *tahqiq al-manat* is a distinct method of *ijtihad* from *al-qiyas*. Furthermore, al-Shatibi argued that the method of *tahqiq al-manat*, which is categorised as a form of *al-ijtihad al-tatbiqi* [16] can also be undertaken by *muqallids*, unlike *al-qiyas* which can only be employed by those who qualify as a *mujtahid*.

The Suitability of Tahqiq al-Manat as a Method of Reasoning in the Judicial Process: From the overall survey on the concept of *tahqiq al-manat*, particularly from the examples of its applications as demonstrated by the jurists, it points out that *tahqiq al-manat* is a form of

ijtihad in the application of the established general legal rules or principles by the definite texts or *ijtihad*, to individual cases which are governed by the same legal rules and principles. The process is undertaken by verifying the presence of the bases or the mandatory elements of the applicable rules and principles in the individual cases in order to come to proper judicial judgements for the individual cases. This undoubtedly, resembles the adjudication process of legal dispute by the judges. The best explanation to recap the operational mechanism of *tahqiq al-manat* has been offered by al-Shatibi in his deliberation of the concept in the following wordings;

“...the *ijtihad* regarding *tahqiq al-manat* which is of no disagreement among the community (*al-umma*) for its acceptance, it (*tahqiq al-manat*) means that the rule (*al-hukm*) establishes from the recognised sources (*al-mudrak al-Shar'i*), however, examination is required to determine its case (*mahallihi*). Such as in the rule when the Shari' mentioned (أَمْحُ الْإِثْمَ إِذَا تَلَّاهُ) (al-Talaq:2), even when the meaning of justice (*al-'adalah*) is known, we are still required to determine the person who acquires the attribute... and that is indeed among what is required from every judge...” [17]

From the above explanation, it is clear that there are three stages involve in the process of *tahqiq al-manat*, they are;

- Identifying the governing rule (*al-hukm*) and principle from the recognised sources (*al-mudrak al-Shar'i*).
- Examination of the legally relevant facts of the new case in order to determine whether the case is the proper case (*mahall*) to assume the same legal rule.
- Applying (*tatbiq*) the applicable rule and principle to the facts of the cases to come to proper legal conclusions.

Interestingly, the above operational mechanism of *tahqiq al-manat* is exactly reflective of the judicial tasks of judges in the judicial process. In the judicial process the judges have to identify the legally relevant facts of the case, which are determined substantially by the substantive law governing the subject matters of dispute, to determine the correct legal rules and principles applicable to the cases and to decide the application of the rules and principles to the proven facts of the cases to arrive at reasoned judicial decisions [18].

In this regard, it is worthwhile to refer to the exemplary legal acumen and judiciousness of ‘Umar al-Khattab in the case of theft committed in the famine year (*‘am al-ramadah*), in which he decided to suspend the punishment based on the application of the law and relevant principles of *Shari‘ah* to the facts of the case.

It has been explained that the second Caliph ruled out the person who stole out of necessity during the time of famine and in dire need as corresponding with the legal term of a thief (*sariq*) mentioned in *al-Maidah* verse 38. It is very intriguing to note that ‘Umar al-Khattab considered such a person as not a thief since what he took was part of his right. ‘Umar al-Khattab understood the word of *al-sariq* in the verse to mean a person who steals what not his. Thus when he applied the interpretation of the verse to the facts of the case in hand he found that the case was not a proper case to be covered by the legal text since the accused stole what he or she was entitled to. The reasoning is that according to a trite principle of Islamic teachings, the Muslim community is obligated to provide what is needed by fellow Muslims who are in horrible need for maintenance and food under the principle of mutual solidarity (*al-takaful*) and cooperation (*al-ta‘awun*). Consequently, when there is a needy person stole as a result of the failure of the community to perform the prescribed obligation it would create a doubtful situation that what was stolen is his own right accruing from the operation of the said principles [19]. It is in line of this reasoning that Ibn Qayyim observed if it is found that person who steals during the famine year is a well-off person, the prescribed punishment for theft will definitely be inflicted [20].

Ibn Farhun al-Maliki (d. 799H) has also impliedly indicated the method of *tahqiq al-manat* as the method in the judicial reasoning in the judicial process citing the example of a claim for divorce due to the inability of the husband to provide maintenance (*al-‘Isar*) for the wife. In such a case, he highlighted that the judge needs to examine the relevant facts and circumstances of the case in light of the rules and principles governing the issues in the case. He pointed out that the issues whether the wife has had the prior knowledge that the husband was a pauper or that the husband has the potential to have property in future to maintain the wife are among the issues need to be addressed in deciding the case [21].

CONCLUSION

The overall discussion on the concept of *tahqiq al-manat* establishes that it constitutes a proper method of reasoning in the judicial process, being the reasoning of

the judges when adjudicating actual legal cases. In the reasoning justifying judicial judgments, the judges are to provide convincing legal grounds or arguments for the judicial decisions they made which are to be derived from the application of the applicable law and principles to the proven facts of the cases.

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