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Anti-sectarian Discourse in the Context of Effective Contemporary Fiqh Mentality with Reference to Perspective of Salafism and Modernism¹⁰

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INTRODUCTION

In general, *madhhab* (*sect*) is defined as the scholarly and intellectual accumulation arising from the schooling created within the framework of the unique approaches in understanding and interpreting the principles about theology and practice (Üzüm, 2004, 29: 526). Islamic jurisprudence (fiqh) schools consisting of a certain method are basically understood from the concept of madhhab, which means opinion, doctrine, way etc. (For Arabic dictionary, see Abu Hâka, 2007, p. 419; For Turkish dictionary, see Erdoğan, 2010, p. 375). Fiqh schools do not have any names other than madhhab,¹¹ which gives an idea about the meaning of the word *lâmadhhabiyya* (*non-sectarianism*), which came out in the modern era. As understood, *non-sectarianism* is a word used for the field of fiqh rather than the field of kalam (theology). This word could be stated to have come to the agenda as a top title for the search of the new methods other than the settled method in fiqh and the ijtihaids (juristic opinions) that are given accordingly.

It is necessary to reveal out whether non-sectarianism, which mostly comes to the agenda within the context of fiqh methods, indicates, as its primary connotation, a lack of method in negative meaning or a new method with a scholarly aspect. In the context of academia, Kawthari (2009, p. 191-197) and Ramazan al-Bûtî (1974) mentioned non-sectarianism for the first time.¹² It is important to know what they intended to criticize with this word. Both scholars are known to have used such discourse with the effect of the discussions that came out in the 19th and 20th centuries. Therefore, it would be wise to mention the discussions of those periods before making such a definition. Particularly Salafism and modernism had a great role in the generation of the discussions. Therefore, Salafism and modernism will be analyzed within the historical development context of fiqh, in general terms, and madhhab, in specific terms. It will be attempted to understand whether the anti-sectarian discourse belongs to the effort to unite the current popular jurisprudence sects or to a super-sectarian thought, indeed. Thus, an idea about the content and framework of the perception of non-sectarianism which describes the anti-sectarian discourse in reactive terms will come out.

1. Salafism and Anti-Sectarian Discourse

Salafism, in other words, the return to al-salaf al-sâlih (the pious predecessors), is the name of the thought which accepts a certain period of the Islamic history as the

¹⁰ This study was presented orally in the (ISHSS 2018) 2nd International Symposium on Humanities and Social Sciences held in Comrat, Moldova. August 04-07, 2018.

¹¹ In terms of the historical development process it is observed that the concept of madhhab was not initially used for theological schools but instead, the scholars of the field preferred to use other names such as article owners, party, cult or nation (Üzüm, 2004, p. 526).

¹² Both scholars conducted individual studies on non-sectarianism. al-Kawthari has an article titled as, “اللامذهبية” and Ramazan al-Bûtî has a book titled as, “اللامذهبية اخطر بدعة تهدد شريعة الإسلام”, al-Bûtî’s book was translated to Turkish by Durmuş Ali Kayapınar as “İslam Dini’ni Tehdit Eden En Büyük Fitne Mezhepsizlik”.

religious authority when defining the principles of religion. In Salafism, the first period is praised by the God (Anfal, 8: 74; Tawbah, 9: 100) and his Prophet (Buharî, Fadailu's-Sahabe: 1; Muslim, Fadlu's-Sahabe: 52) starting from the Companions of Prophet Muhammad, which exalts this generation to a holy position. Therefore, in the mind of Salafism, the religion-life relationship has been completed through this holy generation and there is no need to say anything new.

Salafism has revealed itself through different thought movements in history. For this reason, it could be concluded that Salafism is not a current which progresses steadily. In all its manifestations like Ahlal-Hadith, Ahmad b. Hanbal partisanship, Ibn Taymiyya movement, Wahhabism movement and Islamists, Salafism aims to clear the religion from bid'a (innovation) and to return it to its origin. For this reason, this current focuses on the salvation from fanatic sectarianism and the return to the Koran and the Sunnah. In Salafism, âthâr (traditions from the Companions and the Successors) and hadiths (traditions from the Prophet) have become as valuable as Koran in terms of faith and behaviors particularly with the efforts of Ahlal-Hadith. This empowered the idea that the opinions of the pious predecessors would be deemed to be superior to the judicial opinions of Islamic lawmen. Therefore, the idea of fiqh which uses the ra'y (judicial opinion) as a tool in making religious orders and prohibitions get closer to the humane, has started to be overshadowed by the idea of hadith involving the opinions of the first three generations (İşcan, 2015, p. 2-5).

Innovations became popular among the Muslims through sects and the taqlîd (imitation) was praised through sects which caused Salafism to develop an anti-sectarian discourse. Salafism reacted against innovations under the phrase 'struggle against innovations' although there is no evidence that it's against Islam. This attitude manifested itself as a radical attitude in certain Salafism movements, just like Wahhabism. For this reason, there came out uncertainty in the issue of whether the current was a revivalism or a hard intolerance (İşcan, p. 1, 6).

One of the most significant criticisms against the revivalist movement initiated by Salafism is that it is impossible in sociologic terms to transfer the practices of early Islam to the present day in their original form. From this understanding, Salafism is claimed to have moved away from the intellectual and rational viewpoints. Due to the fact that the scholar field is limited to the traditional teaching program, there emerged unalterable opinions that would lead to radical interpretations later on (Aydm, 1990, p 274-275).

Salafism objected to the concept of the sect as it led to a sort of separation and disagreement. It shall be noted here that sects that caused disagreement and that were reacted in terms of the category were the ones that were related to theology, philosophy and Sufism. The Salafis did not object to the sects of fiqh in terms of the category but objected to the fanaticism of sects in the imitation period following the institutionalism of the sects of fiqh. Because; according to the Salafis, particularly the founders of the four Sunni sects followed the way of the pious predecessors and did not get busy with the science of theology. They believe that the theology-based viewpoint allows the mind to take precedence over Nass (religious texts). The differences in these minds which are deemed to be more important than religious texts and thus, opinions, lead the Muslims to instability. One cannot speak of union or agreement in such a context. Therefore, the mind is the reason for separation for the

Salafis and separation is clearly prohibited in the Koran (En'am, 6: 159). Treasuring Nass over the mind is the attitude of a Salafi. The pious predecessors also treasured Nass and put the minds under the power of Nass. According to the Salafis, this is a way of protecting the Muslims from separation, indeed. This is because Nass do not differ and vary, like the minds, but they have a uniting nature (al-Kûsî, 2013, p. 374-379). In fact, the Salafis emphasize the non-contradiction of mind-nass just like the theologians. However, whereas the idea of mind is general in the theologians, the idea of mind is specific in the Salafis. Because according to the Salafis, the mind is only responsible for understanding religious texts; it is not a direct source of information. Considering that fiqh applies the inference of judgment from religious texts, it could be concluded that the idea of mind in Salafism is similar to the fiqh.

The movement of Salafism which is based on the mixed method in *usul al-fiqh*,¹³ differs from the traditional idea in that it requires making a judgment based on evidence rather than the opinions of a sect. Therefore, it is not possible to state that Salafism attempts to establish an inter-sectarian or a super-sectarian viewpoint. For this reason, Salafism remained within the borders of the traditional approach and thus, did not face the accusation of being non-sectarian.

In Salafism, non-sectarianism applies to the direct utilization of the primary resources instead of obeying the opinions of the Islamist lawyers. This opinion is in the form of an initiative that would bring mobility to the field of jurisprudence which has become immobilized over time. But, the attempt to respond to new problems with the backgrounds of the first three generations seems to be the most significant obstacle in preventing Salafism, which came out with the argument of revivalism, from achieving success.

2. Modernism and Anti-Sectarian Discourse

Modernism is obviously an unpleasant concept for Muslims in terms of religion, as it connotes words like *reform, innovation, change, updating* etc. When this western-origin concept is used together with Islamism, an innovation or change that takes religion away from its origin comes to mind at first (Aydin, p. 274). Therefore, expression of modernism and Islam together raises concerns about losing the Muslim identity.

To make itself accepted, the modern western civilization adopted a materialism-based attitude and put forward principles supporting its existence. These principles were humanism, individualism, moralism, equality, democracy, nationalism, rationalism, scientism, positivism, advancement, civilization etc. In the West, modernism generated its own sacred elements and took a form of opposite religion. Muslims are concerned about that consequences of modernism would be the same as those in the West, that is, a protestant Islamic idea would come out (Özyurt, 2013, p. 212). This concern seems reasonable at first. Because; according to Muslims, Islam is the perfect and the last religion. It is not possible for some initial arguments of Islamic modernism to be accepted by them at once.

Islamic modernism is understood to be based on the idea of revivalism observed in Salafism. Islamic modernism is divided into two in terms of its historical development: *classical Islamic modernism* and *modern Islamic modernism*. Classical

¹³ It is a branch of fiqh. This term indicates the sources of the law and the methodology for extrapolating rules from revelation (Calder, 2000, 10: 931-934).

Islamic modernism came out in the 19th century and argued that the Islamic civilization could challenge the West in any field. Rashid Rida was one of the most significant representatives of this current, as it owned a modern idea of Islamic law. The discussions around the issues addressed by the classical Islamic modernism continued in the 20th century with the new movements of revivalism and served the transition to modern Islamic modernism. Fazlur Rahman is the most significant representative of the modern Islamic modernism (Aydın, p. 281). It could be stated for sure that both the classical Islamic modernism and modern Islamic modernism are based on the idea of non-sectarianism. Indeed, both modernist currents recommend the building of a new idea of fiqh instead of the traditional sect-based idea of fiqh. However, these movements take different arguments as their base in the new idea of fiqh they want to build. It would be wise to discuss these differences for the understanding of the issue.

Classical Islamic modernists rejected the idea of contradiction in mind-inspiration and religion-science relationship. They argued that Islamic sciences, particularly including the Islamic history and Islamic law, had to be reviewed through a new perspective, a new attitude and manner. When they put these ideas forward, there rose claims arguing that this was a Westernization movement based on missionary activities. This is because classical Islamic modernists defended the need to re-interpret the sources of fiqh in rational terms as a solution to the challenge faced by classical sources of fiqh in meeting the needs of the contemporary world. This idea is a sort of modernization project, indeed. However; it started to deviate from its goal and to shift toward admiration for the West. For this reason, the project was criticized in the later period by Fazlur Rahman who was a modernist himself (Uyanık, 2013, p. 131-133).

Secularization in law and adoption of the parliamentary system in politics are among the most important indicators showing that classical Islamic modernism developed under the influence of the Western modernism. Accordingly, judgments are divided into two as religious and earthly. Whereas the religious field is compulsive and closed to change, the earthly field is voluntary and open to change. According to the classical Islamic modernism, the legislative power of the Prophet was limited to religious matters only and God ordered him to consult with the Companions in civil, political and martial issues. After the Prophet, this power was transferred to those with the Islamic authority (caliph). Classical Islamic modernists argue that the caliph could use the power to change based on the principles of proportionality and balance in interests (Kavak, 2011, p. 143). This thought prepares a legal basis for a parliamentary legislative organ as in the West and the new judicial decisions to be made by this organ.

Classical Islamic modernists are observed to share the same opinion with the Salafis concerning the early interpreters of the Islamic law and the fanaticism of sects. According to both movements, the initial imams were pure believers, and later, an innovation came out in the form of the fanaticism of sects. Since the fifth year of the Hegira, an imitator group presenting itself in scholarly and judicial activities, although not possessing sufficiency in fiqh, was deemed to be legitimate like the interpreters of the Islamic law (Koca, 2004, 29:54), which helped the strengthening of the fanaticism of sects. Classical Islamic modernists claimed that members of the Iraq school of fiqh tended to the fanaticism of sects more than members of the Hejaz school of fiqh. Because according to them, the Iraq school prioritized the opinions of the imam of the

sect over the Koran and the Sunnah and focused on the elicitation of these opinions (Kavak, p. 145).

Unlike the Salafis, the traditional fiqh procedure is criticized in classical Islamic modernism. These criticisms are made over the concepts of imitation and sect. Whereas the Salafis focused on the idea of the revival of the traditional legal style, classical Islamic modernists searched for a method slightly different from the traditional legal style. In classical Islamic modernism, the reason for the current bad state of the community was related to the accumulation of fiqh which grew and became difficult to learn within the framework of the sects (Rıza, 1974, p. 98; also see Kavak, p. 144). This gives the impression that classical Islamic modernists are opposed to, and even struggle against fiqh, which is one of the main sources of the Islamic civilization, indeed. Therefore, Islamic modernism has faced reactions since the beginning.

Ramazan al-Bûtî, who compiled a special work piece against the Islamic modernism, basically criticizes this current argument that; although Islam is simple, the late period scholars who are educated under the roof of the sects, complicated fiqh (Bûtî, 1974, p. 18-19, 75). This reaction naturally came out due to the fact that this thought was based on the orientalist J. Schacht and there was an obvious effort to abandon fiqh, which became systematic in a unique way, on the ground that it was complicated. And quoted from Schacht in brief *“Islamism came to an illiterate community...Fiqh written by the imams of the sects is just a judicial thing presented by the genius minds of law. They found it useful to base this law on the Koran and the Sunnah.”* (Quoted by Bûtî, p. 75, 95-96), which, according to Ramazan al-Bûtî, is the product of the effort to limit¹⁴ Islamic fiqh to issues related with the individual. This approach reduces the classical and medieval fiqh from a role building the civil, as well as the individual rules of Muslims, to the status of a “religious science”. Consequently, the attempt of fiqh to find a solution to the problems faced in the modern era might be in vain (Bedir, 2014, p. 122).

The most obvious problem among those arising in the opinions of classical Islamic modernists, including Reşit Rıza particularly, is the attempt to bring together the opinions of the scholars who have their own unique juristic method within the framework of a certain goal. Classical Islamic modernists consulted the opinions of Sunni scholars of fiqh rejecting imitation, like al-Shafîi, Ibn Hazm, Ibn Taymiyyah, al-Shatîbî, al-Shawkânî, Necmettin al-Tûfî and Shah Wali Allah al-Dihlawî and the Shia-Zaydiyya scholars of fiqh (Kavak, p. 46-62). It is observed that the classical preference criteria are not considered in this consultation. This attitude exposes the idea of the renewal of fiqh with the concern of consistency. For example, although classical Islamic modernists argued that the method of Hejaz school was more feasible than the method of the Iraq school, they criticized kiyas and praised istihsan, which is one of the most prominent principles of the Hanafi doctrine. Because, for classical modernists; kiyas, meaning inference according to general rules, consists of the rules imposed by sects and restricts lawyers. On the other hand, istihsan means getting out of the general rules due to a more powerful principle. For this reason, kiyas should be a method preferred in the determination of the pure religious judgment only. The

¹⁴ Issues related with the individual refer to the civil status laws which were presented as a project in Egypt with the movement of renewal and which came to force in 1920. These laws include Islamic provisions on issues about the persons, family and heritage (Yaman&Çalış, 2012, p. 130).

method to be used in the earthly field should be istihsan (Kavak, p. 42-62, 140-141). Therefore, the principles adopted by different sects within their own systematic integrity, look like they have been brought together by pushing the limits, as they somehow confirm the idea of modern Islamic law. In this respect, it is like the procedural equivalent of the idea of *talfik*,¹⁵ which comes to the agenda for the individual provisions and which are approached with caution within the framework of *sadd al-dharai*, which means the closure of ways leading to the bad and wrong actions.

While *talfik* is basically a method of imitation in classical Islamic Law, it was transformed in modern Islamic law. Whereas *talfik* was used to criticize the idea of the sect in Islamic communities, it was envisaged as a method of judicial opinion and enactment (Kaya, 2011, 40: 402). Based on this envision it is observed that, classical Islamic modernists attach more significance to the *fiqh*'s principle of convenience.

Zahid al-Kawthari defined the *talfik* as non-sectarianism as it has meanings like taking the convenient or license (*al-ahzubi'l-ahaf* or *ittibâ'u'r-ruhas*). Because; according to him, *talfik* is like saying 'I am one of you' to multiple groups but then being with none of them. Indeed, al-Kawthari is worried about how the supporters of this idea should be named. It was difficult for him to decide whether these people were crazy or silly. Al-Kawthari, who accused Islamic modernists of opening the door to irreligion, is understood to be aiming for the preservation of the judicial and internal consistencies. Because while he stated that there was an agreement among the scholars concerning the non-necessity to remain connected to a single sect, he emphasized the necessity to consider the principles of legal preference which were determined within *fiqh*'s own background (al-Kawthari, 2009, p. 191-194).

The opinions of classical Islamic modernism about *fiqh* and sect are observed to be based on a different platform with the contemporary Islamic modernism. Contemporary Islamic modernism came to the forefront with the historical criticism method inspiring from the orientalist, that is, with the idea of historicism.

Contemporary Islamic modernism argued that the ultimate goal of the Koran concerning the judicial life was to ensure justice in the society and thus, a special way of the solution addressing to a social event would not be eternal-perpetual. According to contemporary Islamic modernists, if the goal of the Koran to ensure justice could be understood by Muslims, it would be easier for them to create solutions for the current problems. In this way, issues like interest in economy and testimony in cognizance could be resolved in relation to the new progressing acceptances (Uyanik, p. 133-134). With respect to this thought which forms the base for the historian point of view, the boundaries of the change of provisions come to minds. Although Fazlur Rahman, one of the contemporary Islamic modernists, argued that determination of the provisions through historical interpretations would not be violating the universality of the Koran, it is understood that his idea of universality meant the basic rules of law. Indeed, he thought that the boundaries of change had to be kept free as far as the special judicial provisions of the Koran. This was because it would be impossible to draw any boundaries for change (Fazlur Rahman, 1999, p. 124-126; 1997, p. 147-149).

¹⁵ In legal jargon, *talfik* cannot test the bringing together of certain elements of two or more doctrines in such a manner as to create therefrom yet another different doctrine (Hallag, 2000, 10: 161).

Fazlur Rahman mentioned of the necessity for a method based on the Koran and the Sunnah, proposing the determination of the primary and relevant secondary social and moral principles and reflection of these on the law. He emphasized the necessity for the deep understanding of the socio-cultural structure of the Era of Bliss for the determination of the primary principles in the Koran and the Sunnah. According to him, the Godhead, worship and social justice were integrated into the Koran. On the other hand; certain esoteric-mystic actions interpreted worship and morals with immeasurable gloss, certain Sunni groups took the literal as basis, without considering its philosophy, which were among the most significant reasons making it difficult to determine the primary principles of the Koran and the Sunnah (Fazlur Rahman, 1999, p. 209-210; also see Aydın, p. 276-281).

In the early period, Islamic modernism recommended the *talfik* as a functional principle, which shows that the anti-sectarian discourse started to gain an inter-sectarian idea of *fiqh*. However; as *talfik* opened to door to risks such as the internal and judicial consistencies in *fiqh*, new studies on *fiqh* are observed to remain distant from the idea of the *talfik*, indeed. Later, with the influence of the West and the Muslim philosophers, historicism became the basic acceptance of Islamic modernism. According to this acceptance, historical social differences require that the judgment addressing to the social field should be different, as well. The new juristic method tried to be built in this approach is dependent on the deep analysis of the history of *fiqh*, indeed and it will require a long time. This shows that the anti-sectarian discourse in Islamic modernism shifted towards a super-sectarian approach.

3. Reflections of the Anti-Sectarian Discourse on the Modern Idea of Fiqh

The anti-sectarian discourse has specific effects, as well as the general effects, on the sense of *fiqh* of the modern era. Due to the fact that the specific effects are sometimes limited to a certain area or a certain scholar group, it would be wiser to focus on the general effects. Chronology and the cause and effect relationship were considered, as much as possible, when listing the general effects of the anti-sectarian discourse on *fiqh*.

3.1. Transition to the Society of Will

Since the 18th century, the Islamic world has been dragged to a financial and political crisis, which certainly caused Muslims to seek new things. This seeking is understood to have started in the intellectual and scientific fields. So; the idea of Salafism to re-interpret the Koran and the Sunnah, the foundations of the Islamic law, without getting under the influence of the sects, which called for the careful systematic review of all current works of hadith emerged. On the other hand, the idea to reject imitation and call for judicial opinion led Muslims to search the idea of *fiqh* in the period of the establishment of sects (Nafi, 2015, p. 19-20). In parallel with this, modernism strongly emphasized the idea of the union of judicial opinions, affairs and sects (Karaman, 2011, p. 103-108), which was also influential in the process of transition from an obedient society to a strong-willed society. Therefore, self-esteem, which began to be lost by the Islamic world against the West, was attempted to be overcome in the scientific area as a systematic problem.

3.2. The Attempt to Determinate the Philosophy or the Goals of the Islamic Law

The Koran and the Sunnah, which constitute the basic sources of *fiqh*, date back to fourteen centuries earlier. Besides the divine messages they involve, these two

sources naturally reflect the culture of the period in which they came out. For this reason, associating these sources with a significantly changing world order is a fundamental problem faced by Muslims. One of the solutions offers to overcome this problem is intended for a shift from the literal interpretation-based idea of fiqh to a goal-based idea of fiqh. Thus, it is aimed to determine a measure that will distinguish the constant terms of fiqh from its variable terms. For this purpose, it was attempted to determine the universal principles of fiqh. When determining the judgment of fiqh, the basic goals it observed and might observe in philosophical and sociological terms, were pointed out. As the reasons for the reveal of the Koran and the Sunnah would pose an additional importance, it was needed to return to the historical reading of the Nass. Concerning the *goals of the Islamic law* which were pointed out by Ibn Qayyim and Shatibî for the first time, works of Tahir b. Ashur aroused great interest (Köksal&Dönmez, 2012, 42: 209).

3.3. Increasing the Number of Studies on Fiqh History

Works on fiqh and the background knowledge of fiqh available in these works could be properly understood only when this scientific process is considered through both holistic and partial perspectives. As the historical researches of the West could be superficial and biased, it is necessary for Muslim scholars to reveal their own history of science, particularly including the history of Islamic law. Writing of fiqh history is one of the issues Islamic modernism points out to be urgent (Fazlur Rahman, 1999, p. 217).

With anti-sectarian discourse coming to the agenda, an emphasis has been given on theme-based and comparative studies of fiqh. It could be stated that, whereas modernism argued that the fiqh taught by the sects was impossible to learn and apply, the traditional Islamic scholars focused on the understanding of the sects of fiqh.

3.4. A Tendency of Secularization in Fiqh

Secularization is basically manifested through laicism. Efforts to determine merely the religious and earthly field have begun to manifest themselves in the form of the secularization of state institutions, especially during the Tanzimat period of the Ottoman Empire. The base for secularization in the field of law was formed later and the phrase “quasi-laicism” was used for this condition (Okumuş&Avcı, 2016, p. 256-261). With the adoption of the nation-state structure and a completely secular system in the Republican era, fiqh continued merely as religious sciences. In Egypt, secularization started with the integration of the French documents on the law with the Islamic law. Afterwards, the judicial power of Islamic courts was restricted to the issues concerning civil status and foundations (Kavak, p. 309-311).

A more effective and productive model of management (modern legislative assembly) was proposed in the field of law, and the idea of the institutionalization of consensus was brought forward. Particularly the modernists wanted that the moral and legal rules available in the known injunctions possessed a positive character. For example, with respect to polygamy, traditional fiqh thought left it to the will of the person to set heart to a spouse more than the others and determined equality based on material measures. On the other hand; modernists argued that there should be justice among the spouses in emotional terms; in addition, as it would be impossible for the deceased to decide about that, the management could impose a positive clause about this issue and restrict with a single spouse. (Layish, 2013, p. 268).

It could be concluded that a new classification of judgments was made within the framework of secularization. In the new process, fiqh gradually became equal to the concept of law in the West, and the form and the content of fiqh started to be determined in line with this process. As is seen, researches about fiqh are generally conducted in the form of researches about the law. The attempt to present fiqh as an alternative to the written law was supported the increase in this tendency. These researches that intend to show the earthly, as well as the religious aspect of fiqh, could play an efficient role in putting an end to its nostalgic look, in the eyes of the society, which is limited to the books on Islam and historical practices. In this way, Islamic law could be expressed on a more realistic platform.

3.5. Damaging the Sunni Doctrine

Fiqh, which manifested itself through sects, was unable to resist the radical changes occurring in the contemporary era. Consequently, it got weakened in time and began to lose its power to rule the whole life. Therefore, it became inevitable to start a new era in fiqh. The basic feature in the policy of this era was that fiqh procedure did not depend on a certain sect. Offered as the new Islamic model, *al-fiqhal-mukaran* is presented as an inter-sectarian or super-sectarian fiqh (Bedir, p. 121).

Considering the transition to *al-fiqhal-mukaran* in Islamic countries and particularly in the Ottoman Empire it could be stated that; the needs of the era were attempted to be met by Mejlle (the Ottoman code of civil law) for the last time in parallel with the methods and approaches of the Sunni doctrine. Indeed, Mejlle took Hanafi sect as a basis. The Family Law began to push the boundaries of the four juristic sects and involved a greater number of individual fatwas of mujtahids. In the period when the Arab-Islamic law was published, fiqh abandoned its active role and adopted a passive role, instead and it was deemed to be merely one of the sources of the written laws in the Arab states. When "taqnin" (legislative) activity was completely taken under the control of the state, fiqh was no longer a scientific field ruling the law (Bedir, p. 121). This development naturally opened the door for a radical transformation in the status of the traditional fiqh.

The previously discussed *fiqh-based civil procedure* project cannot be stated to have received full support. Although this project was not accepted, an agreement was made for the renewal of the fiqh doctrine and development of the jurisprudence to meet the needs of the era, by benefiting from the non-Sunni sects besides the Sunni sects.¹⁶

Talfik, which is deemed to be an infraction, is observed in the legislative activities experienced in the Islamic world since the 19th century, then in the Supreme Judicial decisions and in studies about the present Islamic economy (Kaya, 40:402). Differences among the sects are good for Muslims. Because they would prefer any of the alternative opinions. Supporters of talfik aim for judicial productivity from the differences in the judicial opinions with the method of talfik. Also, they suggest that the authority have the power to make preference and to compile among different judicial opinions (Layish, p. 271). Whereas in Sunni doctrine, jurisprudence was developed by independent scholars of fiqh who had no official ties with the administrative authority. Judicial opinions of the scholars of fiqh, when they were

¹⁶ *Fiqh-based civil procedure* was proposed by Ziya Gökalp but was criticized by İsmail Hakkı from İzmir, as it was presented as an alternative source of judgement against the traditions and the known injunction (Quoted by Özervarlı, 2001, 23: 534).

brought forward, were not implemented by the administration through legislative activities. These judicial opinions were accepted by virtue of the scientific authority and were left to the discretion of Muslim judges and muftis in practice.

It cannot be denied that there are certain discourses about the categorical rejection of the statements of hadith which form a significant part of the Sunnah. On the other hand, the field of divinity is understood to have entered into an attempt to reinterpret the hadiths in parallel with their historical context and conditions. These developments give the impression that the Sunni doctrine is getting damaged a little.

Conclusion

Non-sectarianism means all the methods and opinions against the Sunni approach in general terms, and against the sects of fiqh in specific terms. However, it should be noted that the concept of non-sectarianism is observed in anti-sectarian discourses of neither the Salafis nor the Islamic modernists. Therefore, it is necessary to state that anti-sectarian discourse and non-sectarianism are two different forms of perception.

The concept of non-sectarianism, which was brought forward to criticize the ideas of Islamic modernists, instead of the Salafis, about methods and sects, had the same meaning with irreligion, though it was not expressly stated so. This way of expression makes one think that a perception of the sect as a religion stands in the background of the criticisms made. While it is natural that the theological sects were perceived as irreligion, throughout the history, due to their opinions about faith, it is interesting that the same is expressed for the sects of fiqh in relation with the practical life. This indicates that the reaction in the form of non-sectarianism arises from an understanding which considers behaviors as an integral part of faith.

Concerning the anti-sectarian discourse, it would be more solution-oriented to ask whether it would be possible to positively benefit from this understanding which has a clear effect on the modern idea of fiqh, instead of considering the issue with defensive reflexes. According to that, it seems wrong to claim that any way of solution, other than the traditional idea of fiqh, would be un-Islamic. This is because the Islamic solution cannot merely consist of the solutions that are based on the principles determined by the Islamic sects only. Likewise, the ways of a solution not contradicting with these principles cannot be put aside for being un-Islamic. While an idea cannot be Islamic just because of the fact that it belongs to a Muslim, it cannot be considered as being un-Islamic because of the fact that it was brought forward outside the Islamic geography. This contradicts with the understanding that the truth will be accepted, no matter where it comes from. However, it should be noted here that each scientific field has its own methodology and principles forming the basis of such a field. If one tries to reach a conclusion by completely violating the basic principles or by completely excluding the method accepted by that scientific field, the conclusions reached would not be related to such field, indeed.

It seems difficult to decide at this stage whether talk and historical analysis is absolutely wrong or absolutely right. On the other hand, it is obvious that both methods try to answer the questions about the financial and civil issues of the modern era. This creates the belief that, if the overstatement and understatement observed in the modern idea of fiqh could be eliminated over time, fiqh, which has been moved away from the practical life, will gain more functionality.

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