

Dr Imranali Panjwani

A Lacuna in Shī'ī Legal Theory: The Scope of Reason in Capturing Human Experience through the Subject of the Ruling

Shī'ī jurists generally focus on the role of reason in *mabāḥith al-ḥujja* to verify the authoritativeness of evidences for the derivation of God's rulings and the correlation (*mulāzima*) between rational and revelatory rulings. However, it appears less emphasis is given to the usefulness of reason in understanding and capturing the realm of human fact and experience. Here, jurists turn to the practice of rational people (*sīrat al-ʿuqalāʾ*) to understand numerous social norms relevant to the derivation of a *sharīʿ* ruling that is applicable upon the legally responsible person (*mukallaf*).

Whilst *sīrat al-ʿuqalāʾ* is arguably the key source to comprehend human experience, it is a general and wide-ranging source without a consistent methodology to comprehend the complexity of norms the *mukallaf* experiences. Shī'ī legal theory terms the *mukallaf* as the subject of the ruling (*mawḍūʿ al-ḥukm*). However, there isn't a rational framework to delineate the subject's moral, intellectual and psychological attributes which are crucial to understand and implement the *sharīʿa*.

I humbly argue the aforementioned lacuna could be filled with existing but under-explored mechanisms within Shī'ī legal theory itself. For example, they can be found in the distinction between the preliminaries of the obligation (*muqaddimāt al-wujūb/al-wujūbiyya*) and preliminaries of the obligatory (*muqaddimāt al-wājib/al-wujūdiyyah*); and between the action-orientating ruling (*al-ḥukm al-taklīfī*) and declaratory ruling (*al-ḥukm al-waḍʿī*).

There are four benefits in shifting the discussion on *mulāzima* from revelation to human experience. The first is to comprehend the human complexity of the legally responsible person in his/her intellectual, psychological, moral and biological dimensions; the second is to create a distinction between the person-oriented subject (the individual) and the fact-oriented subject which relates to the world surrounding the individual. Both dimensions help us consider the totality of factors affecting our understanding of the *sharīʿa* and its application of it; the third is the changing quantitative and qualitative nature of both dimensions of the subject to facilitate adaptable Shī'ī rulings for contemporary issues and the fourth is the role of the subject of the ruling in the operation of Shī'ī jurisprudence as a whole.



Dr Imranali Panjwani

Anglia Ruskin University

Dr Imranali Panjwani is a Senior Lecturer in Law at Anglia Ruskin University and Head & Founder of Diverse Legal Consulting (www.diverselegal.com), a consultancy that specialises in country expert reports for asylum seekers. He obtained his PhD in Theology & Religious Studies from King's College London and pursued legal studies at the University of Sheffield and University of Law. He completed his Islamic seminary studies at Al-Mahdi Institute and post-doctoral research at Jam'iat al-Mustafa, Mashhad. His interests lie in exegesis of the Qur'an, Islamic and Western jurisprudence, human rights, mysticism and philosophy.