8294 - Differences among the fuqahaa’

the question

What is the meaning of the expression, “This is a controversial matter, this is a matter concerning which the fuqahaa’ differed”? What is the correct attitude towards this?

Detailed answer

Praise be to Allah.

Undoubtedly there are matters concerning which there are differences among the scholars, matters which are subject to ijtihaad. What the scholars have said, in the past and in modern times, about controversial matters and ijtihaad is well known, but nowadays it is stirred up in a manner that takes it beyond the framework of research into controversial matters which are the subject of ijtihaad.

·In most cases, controversy is stirred up in matters which are regarded as social or academic issues. The purpose is not mere differences of fiqhi opinion. Many westernizers, for example, stir up issues that have to do with women, concerning which scholarly differences have been reported. The motive for doing this is far removed from mere differences of fiqhi opinion. It is an excuse for westernization that will soon go beyond the disputed issue to affect matters which are indisputably haraam.

·These issues are stirred up by people who are not scholars or fuqahaa’, who do not have a proper understanding of research into matters of sharee’ah. They only adopt the views of fuqahaa’ which happen to suit their own whims and desires.

·In most cases they take things out of context, and the fiqhi dispute is taken as an excuse and is applied to a wider range.

The following has to be said about this matter:

-that there is a difference between matters of controversy and matters which are subject to ijtihaad. Not every issue concerning which there are reports of differences among the scholars can be counted as a matter in which no views may be denounced [i.e., all are acceptable]. That applies only to matters of ijtihaad. Ibn al-Qayyim (may Allaah have mercy on him) said: “Their view that in matters of dispute no views may be denounced is not correct. The denunciation is directed either at the opinion and fatwa, or at the action. In the first case, if the opinion goes against Sunnah or a well-known ijmaa’ (consensus), it must be denounced unanimously. This confusion arises when the one who says it believes that controversial matters are matters which are subject to ijtihaad, as is believed by groups of people who do not have deep knowledge. The correct view is that of the imaams, which is that there is room for ijtihaad in cases where there is no clear evidence which we should follow, such as a saheeh hadeeth which does not conflict with other evidence of the same calibre . There are many ssues concerning which the earlier and later generations differed, but in many cases we have reached a point of certainty as to which of the two views is correct.” (I’laam al-Muwaqqi’een, vol. 3/288).

-The reference point in all cases must be the texts of the Qur’aan and Sunnah. When there is saheeh evidence it must be referred to and followed; it is not right to follow the opposite view with the excuse that there are differences of opinion on the matter. If the saheeh Sunnah which has been reported via a sound chain from the Prophet (peace and blessings of Allaah be upon him) is rejected because there is someone who says something different concerning this matter, this implies that a person thinks that the words and commands of the Prophet (peace and blessings of Allaah be upon him) do not carry any weight unless people unanimously agree with it, and the fact that someone disagrees with it, no matter who he is, is taken as a reason to take away this authority [of the Sunnah] and leave the matter wide open (to dispute). This is a dangerous path, and the one who follows it needs to review his faith.

-It is essential to pay attention to teaching people to submit to Allaah and to respect the texts of sharee’ah, and to take their religion seriously, and to avoid easy options and the mistakes made by the scholars.

-Beware of entering into debates of fiqh with such people on such topics. This is what they want. It is possible and is acceptable for a man to look into a matter and discuss it with knowledgeable people who understand the specialized terminology of fiqh, and who sincerely desire the truth and are striving for it. But those who stir up these issues do not have a good understanding of the terminology of fiqh or of the objectives of sharee'ah; they are simply interfering with something which they are not qualified to handle, and their desires have led them to indulge in discussing matters of religion.