39286 - Is it correct to think that fatwas may vary according to time and place?

the question

I read the words: “The scholars are unanimously agreed that fatwas may change according to time, place, local custom and situation so it is essential to take new developments into account.” But I am not convinced of this. Is this view correct? I hope that you can answer with evidence from sharee’ah and the Sunnah. May Allah reward you with good.

Detailed answer

This principle is expressed by some scholars in the words, “Changing rulings according to changing times is not to be denounced,” as it says in Majallat al-Ahkaam al-‘Adliyyah al-Maaddah, 39; Sharh al-Qawaa’id al-Fiqhiyyah by al-Zarqa, p. 227; and elsewhere.

This is one of the principles that are derived from the principle of al-‘aadah muhakkamah (custom is a source for rulings).

The word “rulings” here refers specifically to rulings that are based on custom and tradition. These are the rulings that may change according to time, place and circumstance.

It says in Durar al-Hukkaam Sharh Majallat al-Ahkaam: “The rulings which may change according to time are the rulings that are based on customs and traditions, because as time changes, the people’s needs change. Based on this, changes also affect customs and traditions, and changes in custom and traditions change the rulings, as we have explained above. This is unlike the rulings that are derived from shar’i evidence and are not based on custom and tradition, which do not change.

For example: the punishment for murder is execution. This shar’i ruling is not based on custom and tradition, and cannot be changed because of changing times. The rulings that can be changed as times change are those that are based on custom and tradition, as we have said.

There follow some examples: In the view of the earlier fuqaha', if a person wanted to buy a house, it was sufficient for him to see some of the rooms; but according to later fuqaha', if a person wants to buy a house he has to see each and every room of it. This difference is not based on evidence, rather it stems from changes in customs and traditions regarding the way in which houses are built. That is because in the past, when a house was built the custom was for all its rooms to be the same, so if a person saw some of the rooms he had no need to see the rest. But nowadays the custom is that in one house the rooms vary in size and shape, so when buying a house it is essential to see all the rooms.

From Durar al-Hukkaam, 1/47, by Shaykh 'Ali Haydar. Similar comments are to be found in Sharh al-Majallah by Saleem Rustam, 1/36.

Al-Zarqa described this principle by saying:

Because sound character is rare nowadays, they said that testimony may be accepted from the best and then the next best, or from the least immoral then the next least immoral…

They said that it is permissible to ask the witnesses to swear an oath, if the opponent insists on that, and if the judge deems it appropriate, because of the corrupt nature of the times.

Sharh al-Qawaa'id al-Fiqhiyyah, p. 229/

Dr. Muhammad al-Zuhayli pointed out that the basic principle in sharee'ah is that rulings are fixed, and that the word "rulings" in this principle is not general in application. He said: "Hence the principle is specific and is an exception, whilst noting the following:

1-The basic rulings that are established in the Qur'aan and Sunnah and which Islam brought in its basic texts – the commands and prohibitions, such as the prohibition on wrongdoing, adultery, riba, drinking alcohol and stealing, the obligation of mutual consent in contracts, of fighting crime and protecting people's rights – none of these can be changed as times change. Rather they are principles that were brought by sharee'ah to guide all people at all times. All that changes is the means by which they are achieved.

2-The pillars of Islam and basic rulings that no Muslim has any excuse for not knowing cannot be changed. They remain fixed as they were narrated and as they were in the first era of Islam, because they are not open to change.

3-All the rulings on worship are not subject to individual opinion or ijtihaad, and cannot be changed because of different times, places, countries or individuals.

4-Matters of ‘aqeedah are also fixed and cannot be changed or altered, and are not subject to ijtihaad. They have been fixed from the time they were revealed and from the time of the earlier Prophets and Messengers, and will remain so until the Hour begins. They cannot change because of changing times.

End quote. From al-Qawaa’id al-Fiqhiyyah ‘ala al-Madhhab al-Hanafi wa’l-Shaafa’i by Dr. Muhammad al-Zuhayli , p. 319.

Hence it becomes clear that there is no confusion about this principle, and that it does not provide proof for those who want to allow riba or mixing, for example, or who want to abolish the hudood punishments because the times have changed. The matters mentioned are firmly established in clear texts of the Qur’aan and Sunnah, and there is no room for changing or altering them, unless one wants to leave Islam altogether.

And Allah knows best.