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Significance of *Ijtihād* (reasoning) in Islam

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ABSTRACT

This research paper, covers the importance of reasoning i.e. Ijtihād with logical and meaningful, it is a serious attempt to explain that every person always restricted to follow the ideology of a particular scholar or a school of shariah or school of thought. Beyond this restriction of fiqh in Traditional Islam, muslims have to explore them through creative ideas by using reasoning as per the critical requirement of this modern age. It also covers the detailed discussion on Muslims, who are not playing their significant role in the development of science & technology, in order to conclude the result i.e. the ignorance of Ijtihād by intellectuals, scholars and learned persons. After this discussion on the causes of educational and intellectual decline of Muslims this paper covers this undisputed fact that Muslim scholars have played their dynamic role for the revolution through struggle in the past centuries and laid down the strong foundation for modern development & research.

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Introduction

In a world preoccupied with material wealth and convenience, the gift of life is often minimized and sometimes forgotten altogether. Modernity encourages us to view “unwanted” life as a burden that will hold us back. While the religious injunctions reverberate through faith on a spiritual level, the blessings of life touch us daily on a worldly level, as well. Muslims believed that laws of *Sharī‘ah* are immutable and cannot be changed because there is no conflict between the laws of *Sharī‘ah* and nature of man. The injunctions (*Aḥkām*) of the Qur’ān are of primary importance in the life of Muslims. They form the primary source of the *Sharī‘ah* (Islamic Jurisprudence). The verses that have legal connotations in the Qur’ān form the code of conduct for every Muslim from the date of birth till death. They provide the touchstone to distinguish the lawful (*ḥalāl*) from unlawful (*ḥarām*) and the right from wrong. In short Islamic law has solution to the multifaceted problems of life of every era.

During the era of the prophet, Muḥammadﷺ Muslims obtained the necessary guidance and solutions to their problems either through divine revelation or prophetic sayings and there was not much gap between the message and the meaning. The demise of prophet Muḥammadﷺ deprived the Muslims of direct revelation and the question as to the meaning of text arose. The search of God’s law continued after his death, the means had to change. To fill that vacuum and answer burning issues and new problems Muslim scholars used *Ijtihād* which is considered as the dynamic principle of Islamic Law, helps to keep law ever fresh. The exercise of critical thinking and independent judgment or *Ijtihād* was an important way to address questions in the early centuries of Islam because it unveils and elaborates the spirit of fundamental Islamic

tenets. Notwithstanding the fact that human reason always played an important role in the development of *Sharī‘ah* through the medium of *Ijtihād*, the *Sharī‘ah* itself is primarily founded in divine revelation. A broad vision and methodology of *Ijtihād* is one of the essential principles in the development of Islamic law and indicates the progressive character of Islamic jurisprudence. In other words, realities of the matter and secrets of the universe can be explored with the help of *Ijtihād*. It is the biggest favour and blessing God bestowed upon the Muslim community, which gave the reason and mind their share, which in turn the most precious divine gift of God to mankind.

Pre-eminent poet and philosopher of South Asia, Dr. Sir Muḥammad Iqbāl (1294-1357/1877-1938) shed light on the importance and significant of *Ijtihād* in one of his lecture which was delivered at the request of the Madras Muslim Association, under the topic ‘*The Principle of Movement in the Structure of Islam*’. He said,

“In Islam, the Ultimate Reality God is the ultimate spiritual basis of all life, the ultimate spiritual basis of all life, as conceived by Islam, is eternal and reveals itself in variety and change. A society based on such a conception of Reality must reconcile, in its life, the categories of permanence and change. It must possess eternal gives us a foothold in the world of perpetual change. But eternal principles when they are understood to exclude all possibilities of change which, according to the Qur’ān, is one of the greatest ‘signs’ of God, tend to immobilize what is essentially mobile in its nature. The failure of Europe in political and social science illustrates the former principle, the immobility of Islam

during the last 500 years illustrates the latter. What then is the principle of movement in the nature of Islam? This is known as *Ijtihād*”.^[1]

Islam emphasizes practice over belief, as a result, law, not theology, has always been the most important area of concern to Muslims. At the same time, we are also aware of the fact that the *nuṣūṣ* of the Qur’ān and the prophetic traditions are limited in numbers, Change is inevitable in human life and society and due to it new experiences in the life of the community continue to give rise to new problems, so it is very rational that people may ask how you can assert the exigencies of life with limited teachings. Simple answer to this question is that yes express textual obligations of the Qur’ān and Ḥadīth are limited but they are subject to interpretation according to the changing societal conditions through *Ijtihād* (legal judgment) which is the ongoing and continuous process and it reveals the universality of Islam, sufficient to provide practical solution for numerous problems under any circumstances and yields the virtually inexhaustibly law of God till the last day. Islamic law is like an ever-growing tree when somebody cut off its branches the only thing happening is people miss its cool shade but its strong main woody stem continues to guide and guard those who adhere to it in a hurricane and critical situation.

Islamic Law is not confined to any particular time or period; rather it is to be effective till the last day that is why the very nature of Islamic law is not immutable and rigid. In this perspective *Ijtihād* (a rigorous intellectual exercise to arrive at a legal opinion) is not only permissible within its own boundaries, but essential from the Islamic point of view, because it is considered to be an authoritative source of law being subservient to the Qur’ān and Ḥadīth which are the only two true and valid guides for

human interpretation in Islamic legal system. *Ijtihād* was forbidden in scenarios where a scholar reaches a conclusion without consulting Quran or Ḥadīth, based on personal reasoning.

In fact *Ijtihād* helps to keep Islamic law fresh, a valid course of action to meet the needs of changing circumstances and allow us the capability to tackle the challenges and problems of new places, times and unimaginable scientific developments and advancements on one hand and it also has enabled us to be flexible and to learn from other cultures and civilizations on the other. *Ijtihād* is one of the signs of a healthy Muslim life and mind. So in a nutshell we can say *Ijtihād* is a classic Islamic juristic tool for understanding Islamic principles in a way that fits the needs and challenges of individuals and societies but the authenticity of this auxiliary source shall be determined only by the degree of it consonance with the unchallenged sources of Islamic law, i.e., the Qur’ān and Ḥadīth.

Qur’ānic condemnation of *Taqīd*, (means act upon the opinion of a person without knowing the evidence) touches all kinds of conservatism due to two reasons. Firstly, it is a fact that all the knowledge of Islam is not encompassed in the chest of one man, for example, at one time of moment, the second caliph of Islam, Ḥazrat Sayyidunā ‘Umar (R.A.) was intended to limit Mehr (dowries), a woman from Quraysh objected publicly and quote a Qur’ānic verse^[2], which clearly says that treasure can also be given in the dowry, resulting in the Ḥazrat Sayyidunā ‘Umar (R.A.) recanting his view on the subject of dowries, and Ḥazrat Sayyidunā ‘Umar (R.A.) openly acknowledged her and said, “the women have more knowledge than ‘Umar.”^[3] Secondly it keeps the person unaware and away from the knowledge of truth.

Great jurist of his time, Imām ‘Āzam Abū Ḥanīfah (80-150/699-767), who acclaimed in the Islamic world as “The Greatest Imām” said, “this

is the opinion of Nu‘mān bin Thābit and it is better for you than following your desires and if someone presents a better opinion, then take it will be considered to be appropriate”. Imām Mālik (93-179/711-795) whose name included in the chain of narrators that chain called by Muḥaddithīn (traditionalists) as *Silsilatuzzahab* (the Golden Chain). He said, “Everyone’s statement can be rejected or taken expect that of the prophet Muḥammad ﷺ Imām Shāfa‘ī (150-204/767-820), whose great contribution was codifying and organization of a concept known as *Uṣūl al-fiqh* (principles of Islamic jurisprudence). He said, “When you find my statement contradicting the *Ḥadīth* then act upon the *Ḥadīth* and throw my statement against the wall”, great Muslim scholar and theologian, Imām Aḥmad bin Ḥambal (164-241/780-855) who is considered as the founder of one of the four authoritative schools, i.e., Ḥambalī school of law, which gained recognition throughout the Muslim world. He said, “There is no one’s statement when it comes to obeying of Allah and His messenger”.^[4] When *Taqīd* gained pre-eminence, the *Sharī‘ah*, lost its dynamism and the Muslim community gradually began to stagnate. One of the main reasons behind the decline of Muslim dynasties, i.e., Safavid in Persia in 1722, Mughal in India in 1858 and Ottoman in Turkey in 1924, is ignore the importance of *Ijtihād*. All these problems came to limelight due to psychopathology generates from the negligence of *Ijtihād*, which in turn has had extremely detrimental ramifications for the Muslim world. *Ijtihād* allows Muslims to interpret their beliefs according to the time and place they live in. So the restoration of *Ijtihād*, thus become an essential step towards the regeneration of the Muslim community.

There is a great urgency in modern times for Muslim *ummah* to use it. The Qur’ān in numerous passages encouraged critical observation and reflection and thus kept asking

the question أَفَلَا تَعْقِلُونَ “*afalāta ‘qilūn*” will they not reason?^[5]

أَفَلَا تَتَفَكَّرُونَ “*afalā tatafakkarūn*” Then will you not give thought?,^[6]

أَفَلَا يَتَذَكَّرُونَ الْقُرْآنَ “*afalāyatadabbarūn al-qur’ān*” Then do they not reflect upon the Qur’ān?^[7],

أَفَلَا تُبْصِرُونَ “*afalātubsīrūn*” Then will you not see?^[8]. These verses express that the Quran can be understood, and thus interpreted, through contemplation and thought, i.e., *Ijtihād*.

Hazrat Sayyid Shaykh Abdul Qadir Jilani (may Allah sanctify his soul) (470-561/1078-1166) strongly condemned the *Taqīd* (blind imitation) and said, “Make the Book and the *Sunnah* your Imām and look into them and do not go by the statements of the people”. In course of their long history, Muslims seem to forget this reality, which is considered as gravest mistake committed by Muslims and they simply went back into blind following (*Taqīd*), which is inadequate to solve the problems and difficulties of modern era, as a result Islamic law has become increasingly detached from verity, actuality, modernity and contemporaneousness. The need of the hour is given much priority, attention and care to the *Ijtihād* and the practice of *Ijtihād* with adequate methods must be revived in the limits of well established principles of interpretation by the founders of schools of Islamic law for successful reconciliation of Islam and modernity.

Islam opposed the concept of blind *Taqīd* (mere imitation) on one hand and fully advocates and gives immense importance to the concept of *Ijtihād* (reasoning) on the other, next to the Qur’ān, *Ḥadīth* and *Ijmā‘* (unanimous agreement). It will fulfill the objective of religion as a way of life. The main aim of *Ijtihād* is to discover the will of Allah and His messenger ﷺ. All the sunni schools of Islamic jurisprudence

agree that the matters which have not been provided for by the Qur'ān, *Ḥadīth* and *Ijmā'*, the law may be deduced by the process of *Ijtihād*. Islam pays much importance to *Ijtihād*. But the fact is that Muslim community ignores the importance of *Ijtihād*. Reformer of the second century of Islam^[9], first scientific writer on principle of jurisprudence, world's greatest lawyer,^[10] founder of Shāfa'ī School of Law, Muḥammad ﷺ bin Idrīs commonly known as Imām Shāfa'ī has complained in his own times that the standards of reasoning he noticed were of an inferior quality^[11]. If Muslims did not use this tool to its optimum utilization, they have failed to derive its natural and divine advantages. The large part of a Qur'ānic legislation have been given in broad outlines and general moral directives, only a small portion of *Nuṣūṣ* (texts) gives precise meaning and considerable details. Hardly there is anything where the Qur'ān has given all details. We are dependent on the *Sunnah* and the *Ijtihād* to fill up the gaps or for explanations. The larger portion of *Nuṣūṣ** has to be interpreted by *Mujtahid* or scholars in the light of the general principles and objectives of *Sharī'ah*.

One issue of concern is whether it is permissible to research the cause (*ta'līl*) of *Ahkām* or not, majority of scholars hold that this is permissible, indeed a must for development of Islamic law through *Ijtihād*. In other words when the rules from basic sources fail to resolve disagreements among Muslims, use of *Ijtihād* is desirable and valid. Abū Naṣr Muḥammad ﷺ al-Fārābī (257-339/870-950) who had great influence on science and philosophy for several centuries, also deems the quality of *Ijtihād* as one of the most important qualities of an ideal ruler because

knowledge of law and of the means by which new problems can be solved are an essential part of his duties^[12]. Abul Ḥasan 'Alī Māwardī (362-448/972-1058) listed *Ijtihād* as a major source of rulers of Islamic law^[13]. Ibn Khaldūn also unrolled a discussion on *Ijtihād* and says the true foundation of *Ijtihād* can be laid down only if a believer has a strong faith in Din (religion), possesses requisite insight, has vision.

Lexical meaning of *Ijtihād*

The Arabic word, اجتهاد *Ijtihād* (Lit. "Exertion") is extracted from a three-letter Arabic root, جهد *juhd*. Linguistically it means conscientiousness, hard striving, strenuousness, exert one's power of efforts and ability^[14]. The adequately qualified, enlightened doctor and learned jurist termed as a مجتهد *mujtahid* who exercising his efforts and struggle to use رأى *rā'y* (considered opinion) and قياس *qiyās* (analogical reasoning) in logical deduction on a legal or theological question^[15], and the question he is considering is called مجتهد فيه *mujtahad fih*,^{[16],[17]}

Technical meaning of *Ijtihād*

Ijtihād (independent thinking) as a technical term in Islamic law, means putting forth of utmost and exhaustive endeavor expended by *faqīh* (jurist) through using all faculties of mind and all possible means of valid interpretation to ascertain of *zan* (fallible opinion or presumption) in a (*qadiyah*) case with regard a *ḥukm* (legal effect) of the *Sharī'ah*, or issuing the injunction of Islam and its real intent, which is not precisely covered by the Qur'ān, the *Ḥadīth* (prophetic traditions) and the *Ijmā'* (scholarly consensus). In short we can say *Ijtihād* means "technical estimate, discretion of the expert in order to reach

* The word *Nuṣūṣ* is a plural form of *Naṣ* which mean those Qur'ānic texts which are absolutely clear, being of a single meaning, about which there

is no ambiguity whatsoever. These ordinances (*Nuṣūṣ*) are said to be self-evident (*zāhir*) and not open to conflicting interpretations.

some difficult matter” or “the exercise of Judgment in the light of Islamic law to meet new circumstances^[18 to 24]”.

It is worth mentioning that the main purpose of Islamic jurisprudence is to teach the art or methodology of *Ijtihād*, which is the most importance source of knowledge in the matter of Islamic law, next to the Qur’ān, *Hadīth* and *Ijmā’*. *Ijtihād* cannot be said to be an independent source of Islamic law, but is a subsidiary one only, which is quite clear from the definition of the term *Ijtihād*. It covers only those questions which relates to Islamic law. In other words intellectual problems such as the createdness (*hudūth*) of the universe, the existence of creator, sending of prophets and messengers, miracles, angels, paradise, hell, concept of crossing the bridge of *Širāṭ*, actions weighed by Allah, performing prayers five times a day, observing fast during the month of *ramadān*, giving charity and go for pilgrimage by financially sound person, prescribed punishments etc cannot properly constitute a subject of *Ijtihād* because out of these some concepts are relates to articles of faith, some are known as pillars of Islam, and the rest termed as *hudūd* (penalties) which all are evident truths of Islamic law based on *naṣ* explicit statements and not open to *Ijtihād*.

In conclusion scholars have of the view that *Mujtahid* may exercise *Ijtihād* regards to those questions only on which there is no evidence is available in the Qur’ān, *Hadīth* and *Ijmā’*. In other words *Ijtihād* does not arise in respect of matters that have already been dealt

with in the Qur’ān, *Hadīth* and *Ijmā’*. According to Ḥazrat Abul ‘Ārif Shāh Syed Shaffullāh Husaynī al-Qadrīul-Multānī[†] authorized representative (*Sajjādahnashīm*) of the shrine of PīrQuṭb al-Mashā’ikh Ḥazrat Shāh Syed Pīr Husaynī al-Qadrīul-Multānī al-Muhaqqiq (May Allah perfume his resting place) (1293-1305/1823-1887),[‡] *Ijtihād* neither be required in an explicit rule of the Qur’ān nor in the matter of faith and belief because the latter related to the dogma and doctrines of Islam, which are beyond the capacity and jurisdiction of the brain power.

The Proof of *Ijtihād* from the Qur’ān:

The Qur’ān says^[25]:

“And when there comes to them some matter touching safety or fear, they divulge it. If they had only referred it to the apostle or to those charged with authority among them, those among them who are able to think it out, it would have certainly known it (the truth of matter)”.

This verse invites all the believers to refer the case to those scholars who have the ability to think and reflect to ponder over the Message. It is the duty of religious scholars to extract and formulate such meanings through the established methodology of *Ijtihād*. It is also incumbent upon Muslim community to follow the rulings of Muslim scholars, because we are required to fulfil our obligations whether they are personal or

[†] He is the son of ḤazratAbulQāsimShāh Syed ‘Abdul Wahāb Husaynī al-Qadrīul-Multānī (May Allāh sanctify his secret) (1326-1415/1908-1995) bin ḤazratAbul ‘IrfānShāh Syed Aḥmad ‘ĀrifHusaynī al-Qadrīul-Multānī (May Allāh shower His mercy on him) (1300-1330/1882-1912).

[‡] This *dargāh* named after Ḥazrat Shāh Syed Pīr Husaynī al-Qadrīul-Multānī al-Muhaqqiq (May Allāh perfume his resting place) (1293-1305/1823-1887), who is one of the greatest Sufi Saint of the Deccan, Founder of Multānī Order (a sub branch of Quadri Order) in Hyderabad

and Spiritual Mentor of Ḥazrat Syed Shāh Muḥammad Husaynī al-Qadrīul-Multānī (May Allāh sanctify his soul) (1279-1342/1862-1923), founder Islamia College Warangal. The first president of this prestigious educational institute was NawābJivan Yār Jung Bahādur, B.A. (Cantab), Barrister at Law of the Lincoln’s Inn, London, Judge of the High Court, Hyderabad, Deccan, India. Nawāb JivanYār Jung Bahadur belongs to a famous Mughal family of Chogathā’ī clan which was related by marriage and blood with the historical imperial family.

societal and we must respect the decision of those that are in authority. The Arabic word for ‘to investigate’ is *istinbāṭ*.[§] According to Mālikī jurist of Cordoba in Andalusia and famous *mufasssīr*, *muḥaddith* & *faqīh*, of 13th century, Imām Abū Abdullah Muḥammad رحمه الله ibn Aḥmad Ibn Abū Bakr al-Anṣārī al-Qurtubī (610-671/1214-1273), the lexical meaning of *istinbāṭ* is drawing out water from the depth of a well. When a well is dug, the water that oozes out first is called *mustambaṭ* water. But, the usage in this context means to get to the bottom of something and find out the truth of the matter^[26 to 28].

The term *اولو الامر* (*Ūlul ‘amr*) ‘those in authority’, covers a wide variety of people. It includes things of political and spiritual affairs of the nation. Some scholars including Ismā‘īl Ibn ‘Abdur Raḥmān Ibn Abū Karīmah commonly known as al-Suddī (d. 127/745) have of the view that its means those people in whose hands lies the management and administration of something. In other words, the special organs of the state entrusted with gathering and evaluating political and military intelligence. According to some such as Ḥasan (468-548/1073-1153), Qatādah (61-117/680-735), Ibn Abī Laylā says the correct signification of the expression of the Arabic word *اولو الامر* (*Ūlul ‘amr*) ‘those in authority’ refers to Muslim scholars and jurists since they are the succeeding deputies of the prophets^{**} and the proper regulation of religion in their hands, they are the ones who do not deviate from the truth, they play a vital role in the Muslim community. According to some the words ‘those in authority’ refer to the Holy Prophet رحمه الله or his Successors or the Chiefs appointed by both.

Whereas great Ḥanafī scholar theologian, exegete, linguist and jurist Abū Bakr al-Jaṣṣāṣ al-Rāzī (d. 370/981) due to his tendency towards syncretism urged him to attempt a reconciliation between the above cited two group of scholars and takes a general view and maintains that the expression means both, which is correct approach, because ‘those in authority’ applies to both meaning. According to him the implementation of authority takes two forms. Firstly, it can be done by using force, coercion and oppression. This is something which can only be done by those who is in ruling. The second from of obedience to authority comes from reliance and trust, and that stands reposed in revered Muslim jurists only, a demonstration of which has been all too visible in the lives of Muslims in general in all ages where the general body of Muslims have been, by their own free will and choice, taking the decision and authority of religious scholars as the mandatory mode of action in all matters of religion. Then, according to the percepts of the *Sharī‘ah*, obedience to rules set by them is obligatory on them as such.

Various verses of the Holy Qur’ān have made it very clear that command and obedience really belong to none but Allah – from Him the command and to Him the obedience. The Qur’ān Says^[29]:

“The Command belongs to none but Allah”

But, the practical form of the obedience to His command is divided over three parts.

(1) Direct Divine commands, means Commands about something which Allah Almighty has Himself revealed very explicitly in

[§] The extraction of the jewels of meanings is through the intricacies of ‘thinking it out’ (*istinbāṭ*).

^{**} Prophet صلی الله علیه وسلم said, “The scholars are heirs of the Prophets”. In another

Hadīth, prophet صلی الله علیه وسلم said “Prophets did not inherit money, but rather knowledge, so whoever follows the same path, is lucky”.

the Holy Qur'ān which do not need any explanation.

(2) Divine commands of Allah which needs to be explained. *Aḥādīth* of prophet Muḥammadﷺ is also a kind of *Waḥī*(revelation) as Qur'ān says: “Nor does he speak from his own inclination^[30]”. *Hadīth* is the second source of Islamic law. *Hadīth* refers to everything that comes from prophet Muḥammadﷺ, be it his words, actions or silence approval. It interprets the Qur'ān and elaborates about legal injunctions of the Qur'ān such as the way of performing *Ṣalāt* (prayer) and *Ḥaj*(Pilgrimage). That is why we find throughout the Holy Qur'ān, the command to obey Allah has the allied command to obey the messenger as a constant feature. The Qur'ān says: ‘He who obeys the Messenger has obeyed Allah^[31]’. Therefore, obedience to the prophet Muḥammadﷺ which, in reality, despite being in unison with obedience to the Divine.

2) Divine Command which have not been explicitly mentioned in the Qur'ān or in the *Hadīth*. In such a case scholars having the highest multi-dimensional expertise in religious knowledge through original sources along with a close study of precedents and parallels offered by the problem in consideration, giving their best thought and concern to arrive at the appropriate rule of conduct while staying within the parameters of the imperatives of the sacred texts. This being so, the obedience to these rules is one and the same as the obedience to the Divine because it has been, in all reality, deduced from the Qur'ān and *Hadīth*.

(3) *Aḥkām* which are free of any restrictions from the Qur'ān and *Hadīth*. In fact, here people have the choice to act as they wish. This, in the terminology of the *Sharī'ah* is known as *Mubāḥāt* (allowed). The formulation, enforcement and management of orders and rules of this nature has been entrusted with rulers and their officials so that they can make laws in the background of existing conditions and considerations and make everybody follow these. Therefore, the responsibility of organizing and running the system has been placed on the government.

Now, returning to basics it can be said that, in the above cited verse, the obedience to those in authority means obedience to both scholars and rulers. According to this verse, it becomes necessary to obey Muslim jurists in matters relating to jurisprudence, and it would be equally necessary to obey those in authority in matters relating to administrative affairs. This obedience too is, in reality, the obedience to the commands of Allah^[32].

However, it also appears in Tafsīr Ibn Kathīr^{††} and al-Tafsīr al-Mazaharī^{‡‡} that this expression includes both categories, that is, the scholars and jurists as well as the officials and rulers because the system of command is inevitably connected with these two.

Apart from it, there are two kinds of Qur'ānic injunction, i.e., (1) explicit, clear unambiguous injunctions and immediate in their message (2) implicit allegorical, ambiguous injunctions which carry meanings which are

†† It is considered to be as summary of earlier *Tafsīr* written by influential Persian scholar, historian and exegete of the Qur'ān AbūJa'farMuḥammad Ibn Jarīr al-Ṭabarī (224-310/839-923) entitled *Tafsīr-iṬabarī*. The uniqueness of this *Tafsīr* is that the explanation of each chapter and verse is fully based on *Hadīth*.

‡‡ It is a work of great Sunni scholar, Jurist, Traditionalist, Exegete and student of the great Islamic scholar, prolific writer and reformist of 18th century, Shāh Waliullāh Muḥaddith-i-Dehlawī (1114-1175/1703-1762),

Qādī Thanūllāh Pānipatī Naqshbandī (1143-1225/1730-1810), who belonged to the main branch of Naqshbandī Order, i.e., Mujaddidī order. He has named his *Tafsīr* after the name of his spiritual Master, i.e., Mirzā MazaharJān-i-Jahān Dehlavī (1111-1195/1699-1781) whose spiritual lineage goes back to prophet Muḥammadﷺ through Shaykh Aḥmad Sirhindī (971-1033/1564-1624). He established Naqshbandī suborder, i.e., Mazahariyyah Shamsiyyah.

hidden in the depths of the verses as willed by Allah in his infinite wisdom. It is the duty of the scholars to extract and formulate such meanings through the established methodology of *Ijtihād*. For the Muslims, it is not only incumbent upon Muslims to keep the tradition of *Ijtihād* alive but also to follow the guidance given by the scholars in such case.

The Proof of *Ijtihād* from the *Hadīth*:

After the migration of prophet Muḥammadﷺ to Madīnah, messengers of the kings of Yemen came to him announcing that they and the people of Yemen had become Muslims. They requested that some teachers should be with them to teach Islam, provide religious knowledge and educate until memorized the Koran to the Yemeni population, the prophet Muḥammadﷺ commissioned this task to *Faqīh-i Yemen* (jurist of Yemen) Ḥazrat Sayyiduna Mu‘āz ibn Jabal^{§§}. He then put the some questions to Mu‘āz, which is mentioned in the following *Hadīth*:

Ḥārith ibn ‘Amr reported: prophet Muḥammadﷺ asked Ḥazrat Sayyiduna Mu‘az bin Jabal, and said: كَيْفَ تَقْضِي by what criteria you would decide the cases? Mu‘āz said, أَقْضِي بِمَا فِي كِتَابِ اللَّهِ “I will judge in accordance with the Qur’ān.” The Prophet said: فَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ فَبِسُنَّةِ رَسُولِ اللَّهِ “Then with the tradition (*sunnah*) of the Messenger of Allah.” The Prophet said: فَإِنْ لَمْ يَكُنْ فِي سُنَّةِ رَسُولِ اللَّهِ What if it is not in the Qur’ān? Mu‘āz said, فَبِسُنَّةِ رَسُولِ اللَّهِ “Then with the tradition (*sunnah*) of the Messenger of Allah.” The Prophet said: فَإِنْ لَمْ يَكُنْ فِي سُنَّةِ رَسُولِ اللَّهِ What if it is not in the tradition of

the Messenger of Allah? Mu‘āz replied أَجْتَهِدُ رَأْيِي (*ajtahidubirā’ī*) “I will make *Ijtihād* (own reason) and extract judgment with my opinion”. The prophet was pleased and patted him lightly on the chest and saying الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ All praise is due to Allah who has made the messenger of the Messenger of Allah consistent with what pleases him^[33 to 35]. In other words prophet expressed his approval on his reply. The doctrine of *Ijtihād* approved by prophet Muḥammadﷺ himself. The prophet gave Mu‘āz instructions for properly applying Islamic guidance and principles if nothing explicit can be found in the Qur’ān and the *Sunnah*.

Ḥazrat Sayyidunā Abū Mūsā al-Ash‘arī^{***} (may Allah be pleased with him), reported that the prophet Muḥammadﷺ said, “The example of guidance and knowledge with which Allah has sent me is like abundant rain that fell upon the earth, some of which was fertile soil that absorbed rain water and brought forth vegetation and grass in abundance; and another portion of it was hard and held the rain water and Allah benefited the people with it and they utilized it for drinking, making their animals drink from it and for irrigation of the land for cultivation. And some of the rain fell upon another portion of the land that was barren which could neither held the water nor brought forth vegetation (then that land gave no benefits). The first is the example of the person who comprehends Allah’s religion and gets benefit (from the knowledge) which Allah has revealed through me and learns and then teaches others. The last example it that of a person who

^{§§} When he embraced Islam together with seventy *Anṣār* (helpers), he was eighteen years of age. His ability in juristic reasoning and the courageous usage of his intelligence enabled him to master the *fiqh* (Islamic jurisprudence), excelling all other scholars. The Prophet ﷺ justifiably described Mu‘āz as ‘the most learned man of my nation in *ḥalāl* and *ḥarām*.

^{***} He was well-known Companion and an important figure in early Islamic history. He migrated to Makkah, then to Abyssinia, then to Madīnah. The prophet Muḥammadﷺ put him in charge of one district of Yemen. He was courageous and was involved in the early Muslim conquests of Persia. ‘Umar bin Al-Khattab appointed him as governor over Kūfah and Baṣrah.

does not care for it and does not take Allah's guidance revealed through me^[36 to 37] (He is like that barren land).^{†††}

Prophet Muḥammadﷺ describe the three various level of people and the top most is one who seeking knowledge, act upon it accordingly, discover the knowledge and extract the new thing from it. It is a collective obligation of the duty Muslim scholars to exert themselves in order to find solutions to new problems in the light of Islamic law. But even so, to make an error in *Ijtihād* is not only tolerated but is worthy of reward given the sincerity and earnestness of the *mujtahid* who attempts it. 'Amr bin al-'As, who heard the prophet Muḥammadﷺ say: If a judge makes the right decision through *Ijtihād*, he shall be doubly compensated; if he errs, he shall be compensated once^[38]. Because the basic principle is that, the man's knowledge is imperfect whereas Divine knowledge is perfect. In this *Hadīth* the prophet Muḥammadﷺ, agreed on the concept of *Ijtihād* which provides its clear authority, in Islamic judicial system. According to Māwardī "this *Hadīth* implies that regardless of its result, *Ijtihād* never partakes of sin. When the necessary requirements of *Ijtihād* are present, the result is always meritorious and never blameworthy^[39 to 40]". He further says that Qazi who does not exercise *Ijtihād* in his judgment the decree which he issue is null though it is correct. *Ijtihād* is applied, not only for the judges but equally to others who have legitimate authority.

'Amr ibn al-'Aas narrated that I had a wet dream on a extremely cold night during the expedition of Dhat al-Salasil, and I was afraid that I would die if I performed *ghusl* (a post-nocturnal bath), so I did tayammum (act of dry ablution)

then I led my companions in praying Fajr. They mentioned that to the prophet Muḥammadﷺ and he said: "O 'Amr, you led your companions in prayer when you were *junub*?" So I told him what had kept me from doing *ghusl*. I said: "I heard that Allah says: 'And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you^[41]'. The Messenger of Allah (peace and blessings of Allah be upon him) smiled and did not say anything^[42].^{†††}

Imām Shāfa'ī acknowledges disagreement as the necessary result of *Ijtihād*(systematic reasoning); it existed already in the time of the Companions, and it is to be resolved by reference to the Qur'ān and the *Sunnah*.

Academic pre-requisites of the *Mujtahid*

The position of *Mujtahid* is a very prestigious one. It is an honor for the one who assumes it as well as a weighty responsibility. Because of the seriousness of this responsibility, the *Mujtahid* must know many sciences in order to be able to deduct religious rulings. A *Mujtahid* is expected to have a comprehensive knowledge, ranging over different fields^[43 to 49] which are as follows:

1. Have complete penetrating grasp and known the nuances of Arabic language, literature grammar, syntax, rhetoric, morphology, vocabulary and eloquence and possess deep an insight into the different within the Arabic language.
2. Have comprehensive knowledge of the Qur'ān together with its lexical, technical and legal meanings, various divisions, principles and themes, the Makkan and Madīnan chapters, *Asbābunnuzūl* (causes of Qur'ānic revelation),

††† *Mutaffaq 'alayh*, the literal meaning of this Arabic phrase is agreed upon. Among the scholars of *Hadīth*, this phrase is used to indicate that the *Hadīth* is found both in *Ṣaḥīh al-Bukhārī* and *Ṣaḥīh al-Muslim* as well, on the authority of the same even if there exist variation in the

wording but meaning should be same. For detail see reference [36 to 37]

††† In *Hadīth* terminology this example illustrated the prophet's tacit approval.

nāsikh wa mansūkh (abrogating and abrogated), seven variant readings^{§§§}, general knowledge of exegesis and other necessary matters connected with it.

3. Aware of the prophetic traditions from authentic sources of *Ḥadīth* and its various categories, The science of *rijāl*, to the extent where one is able to discern the validity of the *ahādīth*, knowledge of *isnād* (chain of narration) and *matn* (content of text) and other related issues.

4. Deep understanding of Islamic law (*fiqh*), principles of Islamic jurisprudence (*Usūl al-fiqh*), commandments their secrets, mysteries, Inference of commandments, and other relevant matters

5. Knowledge of *Ijmā* in all those issues upon which the pious predecessors have reached a unanimous decision, so he doesn't violate agreement as it is more important than the individual opinion in Islamic Jurisprudence.

6. Knowledge of methods by which legal evidence is derived from the texts.

7. Thorough understanding of *Qiyās* (Analogical deduction).

8. Aware about the basic objectives of the *Sharī'ah* (*maqāṣid*) and their essential importance.

9. Knowledge of logic (*mantiq*) and theology (*ʿIlm al-Ilāhiyāt*), which is necessary for deductive skill.

10. Knowledge of differences among the communities. *Mujtahid* must be complete familiar with the time, place, norms, customs, culture, prevailing situation, appraisal of modern exigencies, perfect understanding of modern problems and their complications and

understanding of changing economic, political, and social conditions.

11. Knowledge of branches of Mathematics like algebra, geometry, etc. so that he is able to determine the truth in matters of inheritance, qiblah, zakat etc.

12. Firm knowledge of *Riwāyah* (the science of *Ḥadīth*) and *Dirāyah* (the science of *Fiqh*).

In additions to above, religious and moral pre-requisites and attainments pertaining to his personality that a *Mujtahid* has to fulfill:

1. He/ she should be Faithful and firm in belief and action
2. He / she should possess the quality of justice, piety and God fearing
3. He / she should be upright character
4. He / she should be possessing high level of intellectual competence.
5. He / she should not being a talkative because wise people can say what they want in few words.

Degrees of *Ijtihād*

There are three degrees for *Ijtihād*, viz., *Ijtihād fish Shar'* اجتهاد في الشرع, *Ijtihād fil mazhab* and *Ijtihād fil masā'il* [50 to 54]. These degrees will be discussed at length in the following lines:

Ijtihād fish Shar' (Absolute independence in legislation) also known as *Mujtahid-imuṭlaq* (independent) or *Mujtahid-imustaqil* (a scholar who carries out *Ijtihād* by employing his own methodology and arriving at his own conclusions on Islamic law) is one who did not follow a *mazhab* nor they follow some else's *uṣūl* but has established a legal system of his own and is called founder of school. Eminent scholars in this

^{§§§} The names of the transmitter of seven variant reciters of the Qur'ān: 'Abdullāh Ibn 'Amīr al-Shāmī (8-118/629-736), Abū Bakr 'Āṣim al-Kūfī (33-127/653-744), Ibn Kathīr al-Makkī (45-665/120/737), Abū

'Amr Ibn al-'Alā' al-Baṣarī (68-154/687-762), Nāfi' bin 'AbdurRaḥmān al-Madanī (70-169/689-785), AbūImārahHamzah al-Kūfī (80-156/699-772), AbulHasan 'Alī al-Kisā'ī al-Kūfī (119-189/737-904).

categories are Imām ‘Āzam Abū Ḥanīfah (80-150/699-767), Imām Mālik (93-179/711-795), Imām Sufyān Thawrī (97-161/716-778), Imām Shāfa‘ī (150-204/767-820), Imām Aḥmad bin Ḥambal (164-241/780-855), and Imām Dāwūd al-Zāhirī (255-297/868-909) are the founders of Ḥanafī, Mālikī, Thawrī, Shāfa‘ī, Ḥambalī, Zāhirī respectively. The two sects, i.e., Thawrī and Zāhirī became extinct in the eight century Hijrah.

Ijtihād fil mazhab (*Mujtahid* within the school) are those who have the capability of deriving ruling from the sources if Islamic law and qualifications to perform *Ijtihād* and does not imitate the Imām of his school even though they disagree with their masters on certain matters. But they follow the *uṣūl* of the *mazhab* to whom they belong. Such a jurist is also known as *Mujtahid muntasib*. Imām Abū Yūsuf and Imām Ghazālī who were a follower of the Ḥanafī and Shāfa‘ī *mazhab* respectively, but they had *Ijtihād* in their *mazhab* which contradicted the *Ijtihād* of their masters. But it is incumbent upon them to follow the methodology of the Imām of his *mazhab* determining the *furū* (legal particulars) the master had settled the broad principles (*uṣūl*) of *fiqh* and had laid down fundamental texts. Abū Yūsuf (116-182/735-798), Imām Muḥammad[ؑ] bin al-Ḥasan al-Shaybānī (132-189/749-805), Imām Zufar (110-158/728-775), Imām Muzanī (d. 175-264/791-876) are the best example in this category.

Ijtihād fil masā’il (*Mujtahids* on particular questions) are those who derive ruling (*Ijtihād*) in those issues (*masā’il*) regarding which there is no report from mujtahideen of the school or not made clear by them. Like Imām Abū Ja‘far Aḥmad al-Ṭahāwī (239-321/853-

933), AbulḤasan Ubaydullāh al-Karkhī (260-340/873-951), Imām Abū Ishāq Jamāluddīn Ibrāhīm al-Shirāzī, Abū Bakr Muḥammad[ؑ] al-Abharī (d.375/985) (393-476/1003-1083), Shamsul ā‘immah ‘Abdul ‘Azīz al-Ḥalwānī (d. 448/1056), Shams al-Dīn Qādī Khān (d.592/1196), Abu lQāsim ‘Amr al-Khiraqī (d. 334/945) etc, have been placed in this category. These people have not opposed the founder of the school, either in the principles *اصول* (*uṣūl*) or in the particular applications of the principles *فروع* (*furū*), but have contented themselves with determining the law in regard to particular cases which the former had left undetermined, using however, the principles established by the former. All the above cited three classes have been termed as *Mujtahid*.

Muslims scholars have of the view that the tag ‘closure of the door of *Ijtihād*, refers to the *Ijtihād* of first kind, i.e. Independent *Ijtihād* only, because they possessed the right to work out all questions from the very foundation and there is hardly any person today in the stature of Imām ‘Āzam Abū Ḥanīfah, Imām Mālik, Imām Shāfa‘ī, Imām Aḥmad bin Ḥambal (R.A.) who could not be influenced by any influence. If *Ijtihād* taken to mean that all Muslims can interpret their faith as they wish in accordance to what they see as new socio-political circumstances and new contexts then we must be troublesome situation and indeed *Ijtihād* gone tragically wrong. But at the same time we have to accept this fact that the tag ‘Door to *Ijtihād* was closed’ is not applicable for rest of the two kinds rather it is a duty of the competent scholars to widen the gates of other two kinds which will have to be remain opened till last day. *Ijtihād* is actually *Fard-ikifāyah* ****

**** Its mean a collective duty, the fulfilment of which by a sufficient number of individuals excuses the other individuals from fulfilling it, if the Muslim of any era neglect or discontinue the practice of that then all

of them would be guilty for that. In other words there must be a group of *mujtahid* in every age, who will carry on the practice of *Ijtihād*.

for every epoch since “every age has its own countless specific problems, and cognizance of the divine decisions with respect to them is essential^[55]”. Muslims can restore the glory of caliphate era, global dominance of the splendor Islamic civilization and modernize without de-Islamizing or de-traditionalizing through *Ijtihād*. Thus, Islam’s own tradition of critical thinking, debate and dissent, i.e., *Ijtihād* ensures that Islam and Muslim communities continue to reform in positive ways without losing the connection to Divine revelation, i.e., the Qur’ān and the *Ḥadīth*.

Eminent jurists’ view on *Ijtihād*

Imām ‘Āzam Abū Ḥanīfah, explained the principles which he followed in his *Ijtihād* and to which he bound himself in derivation of rules. He said, “I follow Allah’s Book when I find a rule in it. When I do not find a rule in it, I follow the *Sunnah* of Allah’s Messenger (PBUH) and sound traditions from him which has been transmitted by the reliable persons. When I do not find a rule in Allah’s Book nor in the *Sunnah* of Allah’s Messenger, I follow the opinion of way of the Companions I wish, and leave the opinion of anyone wish. Then I do not go beyond their opinions to follow the opinion of others. When the matter comes to Ibrahim, al-Sha‘bī, al-Ḥasan Ibn Sirīn, Sa‘īd Ibn al-Musayyab, and he mentioned the names of some men who exercised *Ijtihād*, I have the right to exercised *Ijtihād*, as they did.

Imām Shāfa‘ī supported the idea of *Ijtihād* by quoting a verse of the Qur’an to substantiate his conviction. Quran Says:

“Wherever you go, you shall turn your face (during *ṣalāt*) in the direction the Mosque of Ḥarām^[56]”

Imām Shāfa‘ī maintained that if 'one does not exercise his intellect, he would not be able to know where Masjid al-Ḥarām is. Therefore, Allah himself indirectly encourages us to exercise

our faculty of reasoning, a great gift to mankind, to derive a logical conclusion on certain matters^[57]. According to him *Qiyās* (analogical deduction) and *Ijtihād* (personal reasoning) are two different terms with the same meaning. For him *Qiyās* is the method of *Ijtihād*^[58]. In other words *Ijtihādīs* in many respects similar to that of *Qiyās*. He further says, On all matters which confront the life of a Muslim there is either a binding decision or an indication as to the right answer. If there is a decision, it should be followed; if there is no indication as to the right answer, it should be sought by *Ijtihād*^[59].

Imām Mālik also considers *Ijtihād* as a source of Islamic law which govern and regulate all aspects of Muslim’s public and private life. He applies frequently the term *Ijtihād* to the discretionary judgment in his work *Muwattā* (the leveled path) which is considered as earliest written collection of *Ḥadīth* comprising the subject of Islamic law^[60]. He exercises *Ijtihād* generally in the sense of fair judgment or well considered opinion in the same way of *rā’y* was practiced in the early period of Islam. So it is obvious in the light of above quoted views of eminent jurists that the *Ijtihād* should be in the framework of Islamic *Sharī‘ah*. Any *Ijtihād* which is repugnant to the spirit and the essence of the teachings of the Holy Qur’ān and prophetic traditions is not acceptable.

Needs of the *Ijtihād*

As long as the Muslims steadfastly fulfilled the purpose for which they were given this rule, they were shadowed by the great blessings of God and their caravan sped across the highway to prosperity. There was a time when Islamic Civilization was considered to be the most advanced, tolerant and progressive Civilization in the world. It had been in the vanguard of human intellectual and economic progress for several centuries after its birth. When

Muslim started deviating from Qur'ānic message and started ignoring their collective responsibilities, they were first subjected to stagnation and subsequently to deterioration and second Muslims' centuries of intellectual and political power were decline. Especially due to clash between energized & stagnant of Muslim world and dynamic & obscurantist of western world drastic changes took place after 16th century, as a result, Muslims are educationally backward, scientifically marginal, politically insignificant economically poor. It is an historical fact that the Muslims are the key figure behind the development of modern Europe, its scientific activities in particular and the world transforming revolution in general^[61]. But the current situation of the Muslims is in turmoil, less than acceptable rather and they suffer from afflictions, which have caused it to lose its balance, which needs to be analysed in a correct perspective. One of the major reasons for weakening Muslim society was Muslim scholars lost the appetite for intellectual enquiry. It is a need of the hour to wake up from deep slumber, discard the heavily fettered shackles of present rigidity, misogyny and inflexible approach to Islamic law and to save the floundering boat of the by using *Ijtihād*. Due to umpteen reasons *Ijtihād* is incumbent upon Muslims in the contemporary conditions to bring about intellectual, economic and political renaissance. Some reasons are pointed out as follows:

First reason, some philosophers exaggerates the importance of reason, they rely upon the reason to the fully extent and have of the view that intellect alone can guide humanity, for them eternal truths can be achieved by intellectual

endeavour, that is why they even gave rational proofs priority over those of relation because they do not considered revelation as a means of acquiring truth, they also believed that all truths are discovered by human reason. This type of rational view excludes what is supernatural because mysteries of the universe cannot be solved or understand rather with the mere help of intellect. Whereas some theologians who simply relying on revelation and disregarded & marginalized the reason's role. According to them reason cannot be of any positive benefit in discovering divine truth. But the fact is that without reason it is very difficult to understand the scriptural texts in its true sense, so reason is required to interpret revelation and apply it to changing human situations. The matter of fact is that reason and revelation cannot be separated and both has its own importance in the life of the believer. Islamic approach is median between two extreme approaches that gives each side its due. *Sharī'ah* is composed of both the elements i.e. transcendent and transient or, in other words, the revelation and reason. Islam not only commands all believers to follow the *Naql* (revelation) but simultaneously exalting reason and assigning it a role complementary to that of '*Aql*^[62] (reason)^{††††}. Muslims must accommodate the mixture of reason and revelation in their lives. A true Muslim cannot rejects either revelation or reason or under-emphasizing either aspects. It is worthy to note that the sources of Islamic law generally classified into two, i.e., primary sources which consists of revealed sources, like the Quran and the *Hadīth*, secondary sources which consists of unrevealed sources like *Ijma'* and *Qiyās*.^{††††} Unrevealed sources are human institutions

††† To substantiate the above said point, some scholars argued that the relationship between Allah and man is the same as that between the Creator and the created. Revelation is from Allah, the Creator of man. Reason is created tool to be used for assignments, and to serve as a

means for apprehending, discerning and applying.

†††† Apart from it *istiṣlāḥ*(to deem proper) or *maṣāleḥ al-mursalah* (considerations of public interest), *istidlāl*(is a mode of reasoning to law from principle), *istiḥsān* (juristic preference), *istishāb* (presumption), '*urf*

devised to meet emerging situations not faced by earlier Muslims. So the concept of *Ijtihād* is extremely important to keep pace with developing society. It is a tool through which jurist apply all his faculties in inferring the rules of *Sharī'ah* from revealed sources.

Second reason, every Muslim individual finds himself / herself at one time or another, in the position of Mu'āz as cited above, and has to fall back upon the *Ijtihād*. So *Ijtihād* starts from the point where the fixed law based on the relevant operative order of the Qur'ān, the *Sunnah* and the evidence of *Ijmā'*, are not available.

Third reason, There are two sources of *Sharī'ah* (Islamic law): revealed and non-revealed. The revealed sources of Islamic law are the Qur'ān and *Hadīth* (traditions of the prophet Muḥammadﷺ and his companions), whereas the non-revealed sources consist of rationality and *Ijtihād*. Since the revelation of the Qur'ān and prophetic *Hadīth* both ended with the demise of prophet Muḥammadﷺ. However, the Muslim community rapidly expanded; the community of scholars became too large, and *Ijmā'* no longer practical. *Ijtihād* assumes a vital role in the interpretation of these sources so that Islamic law keeps pace with the changing needs of society.

Fourth reason, *Ijtihād* is an accepted concept in Islamic and it holds central position in the Islamic law which is suitable for the changing society and the requirements of time and space. *Ijtihād* also allows Muslims to interpret their understanding according to the time and place they live in, in a way that does not contradict the teachings of the Holy Qur'ān and the *Sunnah*. It is also a tool given to us by *Sharī'ah* to resolve upcoming problems in sphere of life and matters

of changed life style due to drastic changes of society, atmosphere, development of knowledge, health issues medical information, scientific revolutions, usage of various methods in irrigation and cultivation, improvement of computer technology, means of communication & transport, attractiveness of social media and various innovations of science & technology.

Fifth reason, because the extensively use of *Ijtihād* only we are able to see some prominent revivalist thinkers like Jamāluddīn Afghānī, Muḥammadﷺ 'Abduh, Syed Quṭb, Ḥasan al-Bannā Muḥammadﷺ Iqbal and many others. Revivalist thinkers needed in each and every era, so for this purpose also use of *Ijtihād* is necessary.

Sixth reason, whenever we attentively study about the flawless, faultless, systematic, organized, well measured constituents of universal system through intellectual observation, we found it more marvelous and wonderful. Still today it is a fact that majority of the Galaxy will never be discovered even if every steam user buys the game and becomes an explorer. There will always be plenty to explore and be the first to discover. Likewise we infer the solutions to modern day problems from the Qur'ān and *Hadīth* through *Ijtihād* especially for those problems which arise due the scientific development and innovations in various fields of life and Muslims want to know how to respond them in the light of Islamic law. As there is no limit for innovations, discoveries and exposures for universal system likewise there is no end for *Ijtihād*. The greater part of *fiqh* consists of rules which are derived through interpretation and *Ijtihād* from text that is not self-evident.

Seventh reason, variant readings of the Qur'ān^[63 to 72]§§§§ which can lead to a divergent

(custom), and *ṣad al-zarāi'* (blocking the means) are also considered as Sources of Islamic Law by jurists but this classification lack universal

acceptance amongst the various schools of Islamic jurisprudence. §§§§ It is narrated by Hazrat 'Abdullāh bin 'Abbās that the prophet

exegetical view, it had also become one of the vital techniques of Qur'ānic exegesis and played a role in substantiating an ad hoc theological exegetical point of view. Although the Uthmānic master codex became the official copy of the Muslim countries during the reign of third caliph 'Uthmān Ibn 'Affān (d. 35/656), the modes of reading continued to be in circulation and after his rule. The difference of readings can influence one's understanding of the doctrinal and ideological issues from the Qur'ān as well as affect the deduction of practical *Aḥkām* which pave the way to *Ijtihād*. In addition, the benefit of the Muslim society deriving from the revelation of the Qur'ānic message in several modes for instance, in the following verse:

فَاعْتَرَلُوا النِّسَاءَ فِي الْمَجِيضِ وَلَا تَقْرُبُوهُنَّ حَتَّى يَطْهُرْنَ

(fa'tazilunnisā fil mahīd

walātaqrabū hunna hattā yaṭhurn)

.....Go apart from women during the monthly course, and do not approach them till they are clean^[73].

There is a difference of reading regarding the word يَطْهُرْنَ (yaṭhurn), some read it as يَطْهُرْنَ with pesh/zammah to ه and others as يَطْهُرْنَ (yaṭhurn) With zabar/fatha to ه If we go with the latter as يَطْهُرْنَ it means that it is permissible to have intercourse with a woman after her mensus have ceased but before she has taken a ritual bath. If we prefer to the former as يَطْهُرْنَ means that intercourse with her is not permissible before she takes the bath. Imām 'Āzam Abū Ḥanīfah, and his followers, have given their fatwa according to the first reading. Another group, including Imām

Mālik, Imām Shāfa'ī and Imām Aḥmad bin Ḥambal have given fatwa in accordance with the second reading. The reason for the divergence of views between the jurists is due to the fact that the word *ṭuhr* is used in all the above said meanings in the Arabic tongue.

Eight reason, Using of different phrases and words, the Qur'ān and *Ḥadīth* consists of words and sentences which gives different meaning according to intensity and context. Every words and every sentence has now its own place and class. The words using in the Qur'ān and *Ḥadīth* are vary in its nature, for example explicit (*Naṣ*), obvious (*Zāhir*), hidden (*Khafī*), literal (*Ḥaqīqī*), metaphorical (*Majāzī*), univocal (*Ṣarīḥ*), allusive (*Kināyah*), abstract (*Mujmal*), explained (*Mufassar*), absolute (*Muṭlaq*), qualified (*Muqayyad*), general ('*Ām*), specific (*Khāṣ*), perspicuous (*Muḥkam*), allegorical (*Mutashābih*) ambiguous (*Mushkil*), congruous (*Fahwa*), unfinished (*Lahn*), discordant (*Mahfūm*) homonym *Mushtarak* (a word which have several signification, but only one meaning is allowable, and that meaning the context settles) and *Muawwal* (a word which have several significations and all are allowable). These types of verses are comprehensible and interpretable. Apart from it Qur'ānic textual expressions in relating to their indication of meaning is divided into four, viz., (1) ***** عبارة النص (*Ibāratunnaṣ*) 'the explicit meaning' (2) اشارة النص+++++ (Ishāratunnaṣ) 'the alluded meaning' (3) دلالت النص +++++) (Dalālatunnaṣ) 'the inferred meaning' (4) اقتضاء النص \$\$\$\$\$ (Iqtidā'unnaṣ) 'the required

Muḥammad صلى الله عليه وسلم said "Gabriel recited the Qur'ān to me in one half. Then I requested him (to read it in another *ḥurūf*) and continued asking him to recite in other *ḥarf* till he ultimately recited it in seven *ḥurūf*" & also in Muslim added "Ibn Shihāb al-Zuhrī said: it has been narrated to me that these seven *ḥurūf* are in one meaning and do not differ concerning lawful (*Halāl*) or unlawful (*Ḥarām*)".

***** It is a Qur'ānic verse which gives explicit indication of meaning.

+++++ It is a kind of Qur'ānic verse which could neither be understood from the text nor the text is meant for it, but an indication about the order is found in the text.

++++ It is a kind of Qur'ānic verse which indicates meaning according to logical and juridical purport of the text.

\$\$\$\$\$ It is a kind of Qur'ānic verse which indicates meaning according to logical implication, without which the text would be incomplete and fail to achieve its purpose.

meaning'. Likewise all imperative and negative imperatives does not indicates the obligation or harsh rule of prevention. Besides it some obligation and prevention denotes permanency whereas some of them relates to temporary period. So to determine the correct meaning of words and sentences, to understand the difference between implication of text, adhesive text and policy of the text of the Qur'ān, to establish the type of *ḥukm*(legal effect) from commands and proscription of the Qur'ān and *Ḥadīth*, to distinguish between various kinds of statement of the Qur'ān and *Ḥadīth*, and to ascertain the exact God and His messenger's will, thorough and comprehensive methodology of research and interpretation, i.e., *Ijtihād* is necessary, indeed inevitable.

Ninth reason, neither the Qur'ān nor the *Ḥadīth* prohibits all hard drink, Qur'ān literally prohibits consumption of wine without naming the other hard drinks. The reason for the prohibition of wine is that it is intoxicant, harmful for health, blurs one's mind, damages one's mental capabilities and adversely affects the body. Hence, jurists have extracted the Islamic law by way of inference (*Ijtihād*) that all sorts of drinks carrying the features (intoxicating effect and damaging human's intellectual) that cause wine must be forbidden as well; so they have stated that all sorts of intoxicants are forbidden (*ḥarām*).

Tenth reason, Islamic penal system provides a complete legal system which

combines between stability, flexibility and firmness due to its living and growing nature. The main aim of Islamic legal injunctions is to curb and prevent crime on one hand and to protect the central interests and values of the society on the other^[74].***** In order to protect five universal indispensables of human being, i.e., life, religion, intellect, lineage and property, which are necessary for human welfare, Islamic law has provided a worldly punishment in addition to that in the hereafter. Islam has ordained

three kinds of punishments according to the type of the crime committed subject to fulfillment of certain prerequisites, i.e., (1) حدود or *Al-Ḥudūd*^[75 to 77] ††††† (prescribed punishments) (2) قصاص or ^[78 to 79] *Al-Qiṣāṣ*††††† (retribution) and (3) تعذير or ^[75 to 77] *Al-Ta'zīr*§§§§§ (discretionary punishments). The last type of punishment, i.e., *Al-Ta'zīr* refers to those crimes for which no punishment prescribed in the Qur'ān and the *Ḥadīth*. *Ta'zīr* punishments were not written down or codified. It was left to the *Qāzī* (judge) or the ruler to decide what type or manner of punishment should be imposed. In other words, the judge or head of the state has wide discretion in such cases. The absence of codification of *ta'zīr* offences renders its codification a matter of *Ijtihād* the deriving capabilities of a judge.

Opinions of scholars (*Ijtihād*) are represented in the forms of:

1. *Fatwā* (legal opinion of Jurist)
2. *Qadā* (judicial judgment of court); and

††††† It implies to those crimes in which punishment is expressly stated in the Qur'ān and the *Ḥadīth* and it is an integral part of Islam. These deterrent punishments are constant and unchanging in its nature which prevent human beings from committing what He forbade and from neglecting what He commanded. In cases of offences under *hudud*, pardon is not admissible. Even judge or the head of the state has no authority to grant pardon. For more detail see [75 to 77].

§§§§§ It refer to those offences of bodily injuries and homicide which attract retributive punishments, is also known as retaliation. The exact

punishment for each *qiṣāṣ* crime is set forth by the Qur'ān and the *Ḥadīth*. For more detail see [78 to 79].

§§§§§ *Ta'zīr* crimes comprise offences for which punishments are not mentioned in the primary sources of Islamic law, i.e., the Qur'ān and the *Ḥadīth*, because they vary according to the circumstances and gravity of the crime. They change from time to time and from place to place and such offences were typically handled case by case. In such cases, the *qāzī* or judge is authorised to fix the term, nature and extent of punishment. For more detail see [80 to 82].

3. *Fiqh* (academy writings of jurist and scholars)

The following examples illustrate the use of *Ijtihād*.

Fifteen years after the death of prophet Muḥammadﷺ, Caliph ‘Umar ibn-al-Khaṭṭāb stopped cutting off the hands of thieves because most of them were stealing out of necessity due to hunger, poverty, and drought. While this contradicted a verse from the Qur’ān, he justified his decision by stating that the principles of justice and fairness were supreme.

Using of *Ijtihād* and Contemporary Issue

According to certain Islamic rule, women travelling for more than the distance of a ‘*Shara’īsafar*’ (Islamic journey approximately 48 miles from one’s city’s border) without *Mahram****** (non-marriageable men) is not permissible, whether she is travelling to do an act of worship such as *Haj*, rather it is main condition for *Haj* and ‘*Umrah*. According to the Qur’ānic teaching the fifth pillar of Islam, i.e., *Haj* is obligatory once in a lifetime upon only those Muslims who are capable to do it. Capabilities mean that he / she must be able to afford *Haj* both physically and financially. In other words Haj is not compulsory upon her until and unless she finds *Mahram* for her, who accompany her throughout the journey. The very purpose and wisdom of *Mahram* is to protect the honour, decency, modesty and chastity of woman, to tackle the problem from its root which leads the people to commit immoral and shameless acts and to curb the unnecessary intermingling and

interaction of men and women which lead towards the balanced, pure society. Some of the Islamic scholars including Yūsuf Qardawī††††††††, have of the opinion that there is a drastic change in modes of transportation in modern times which is not filled with the dangers of deserts, encounters of thieves, highway robbers etc., so it is valid for a women to be unaccompanied by a male relative during travel, especially by air travel. They argued that the rule that a male relative should accompany a woman was formulated in pre-modern times with the aim of securing a woman’s physical and moral safety and modern mode of transportation including air travel fulfils this requirement.

Conclusion:

It can be concluded that ignoring the significance of *ijtihad* is one of the principal reasons of decline of Muslim community and failure of Muslim to reconcile Islam and modernity. Islam is a progressive, dynamic universal religion. Therefore, Islamic system is reformable and sustainable development of Islam can be achieved only through *ijtihad* which is in fact an evolutionary aspect of the knowledge. On the other hand human life is also going to change drastically due to combination of different cultures, new inventions, and various demands, because of which new problems have been taking birth and human life gets influenced by these changes. In order to address new legal situations of every era, respond the changing needs of Muslim societies with reference to contemporary

***** In *Shari’ah* law, the term *Mahram* is refers to all those relative males with whom sexual intercourse is considered to be incestuous, because of blood relationship, marriage ties and breastfeeding. The wisdom behind have a having a *Mahram* for women during journey is surely to save her from those who have bad intentions, and dangers that can be encountered in the journey, because generally many difficulties and evils occur during the journey. In the case where a woman travels alone, there is no one to assist her or come to her aid. On the contrary, in the

case where she is accompanied by her *Mahram*, then she feels (mentally and physically) secure that in the event of some difficulty, she would be able to easily call out for him and seek his assistance.

†††††††† He is an Egyptian scholar, who took asylum in Qatar and resided there for decades. He is known as a Muslim Brotherhood’s leading ideologist and his contentious doctrine always being kept him in limelight.

world, resolve the socio-economic and political matters of life, and consider the circumstances and the requirements of the present era, the principle of *ijtihad* based on the Quran, prophetic traditions, reason, deduction, and prioritization is very effective and practical. The process of *ijtihad* has enabled Muslims to be flexible and to learn from other cultures and civilizations. Therefore, it is said that the status of *ijtihad* in Islamic law is just like a fresh blood which keeps Islamic law practicable in each and every era, therefore, *ijtihad* is considered as the backbone of Islamic law. Though *taqlid* is permissible in debatable affairs or in matters where human beings need guidance or in a cases where option of *ijtihad* is not found, but at the same time we have to keep in mind that the methodology of *ijtihad* is the main and perfect tool for legal reforms, the legislation of the contemporary issues and problems and developing law when coming across unprecedented situations.

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