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Islamic Thought (BIIT)

# SHAH WALI ALLAH'S CONCEPT OF IJTIHAD AND TAQLID

*With Special Reference to 'Iqd-al-Jid  
Fi Ahkam al-Ijtihad wa'l-Taqlid*

Muhammad Athar 'Ali



### **About the Author**

Dr. Muhammad Athar 'Ali, son of Mauhum Muhammad 'Ali, a devoted teacher and researcher, was born in a traditional Muslim family of the village Jhinai in the Dhunat upazilla of Bogra district in 1942 A.C. Dr. 'Ali got his Kamil degree in Hadith (Mumtaz al-Muhaddithin) from the Mustafawiyah 'Aliyah Madrasah, Bogra in 1961 A.C. He did his B.A. (Hons.) in Islamic History and Culture from the University of Rajshahi in 1966 A.C. and took his Master's degree in the same subject in 1967 A.C. He obtained his Ph.D. degree from the University of Chittagong availing the Chittagong University Fellowship in 1993 A.C. He served the Government Carmichael Collage, Rangpur up to 1976 A.C. He served the Government Carmichael Callage, Rangpur up to 1976 A.C. Then he joined the University of Chittagong in the Department of Islamic History and Culture in the same year.

Dr. 'Ali has a good number of articles published in research journals of home and abroad.

In personal life he is the father of two daughters and one son.





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**Muhammad Athar 'Ali**

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Dedicated to  
*The affectionate memory of my son  
Flight Lieutenant A. A. M. Rahmatul Bari  
Who laid his life in the service  
of the Country.  
May Allah forgive him and bless him!*

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## Publisher's Note

All praise be to Allah (SWT) who graciously enabled us to publish the book- *Shah Wali Allah's Concept of Ijtihad and Taqlid* by Dr. Md. Athar Ali. This is a major research based on an in-depth study on various works of Shah Wali Allah. The author completed the manuscript in nine chapters. The chapters chronologically discuss the historical background of Shah Wali Allah's meaning, implication and basis of Ijtihad; problem and the necessity of Ijtihad, resolving the controversial issues; Ijtihad by the Holy Prophet (sm) called as absolute Mujtahid and the knowledge of logical argumentation and methodology; the legal nature of Ijtihad; the nature of Taqlid, it's classification, legal position and admissibility; and a summary of the general discussion.

The dissertation is more important for a huge gathering of references rather than its literary value. The book reflects Shah Wali Allah's concepts towards Ijtihad and Taqlid from social, historical, religious and legal point of view. The work specially emphasized the historical methodology to reconstruct a gap created in the history of Islamic law.

To our consideration the author has done a great job, under a famous and great scholar Dr. Muin-ud-Din Ahmad Khan, for the ummah. We acknowledge the invaluable contribution of both with high esteem. We also hope that the publication will fulfill a great demand to the researchers and learners of the relevant field.

M.Zohurul Islam  
Secretary General, BIIT



# Foreword

With thankful gratitude to Allah and respectful reverence to His Apostle Muhammad (sm), I feel deeply gratified to see the publication of one of the four Ph.D. Theses, which I have had the privilege to guide at the University of Chittagong. These were planned to be a connected series of intellectual analysis of doctrinal Islam centering round the concept of *Tawhid* or Unitarian doctrine of Islam and three top intellectual personalities of Islamic history. They are Hasan al-Basri of the 7th and 8th century, Shah Wali Allah of the 18th century and Professor Dr. Fazlur Rahman of the 20th century Christian Era.

It is fervently hoped that these works on the concept of *Tawhid*, Philosophy of Hasan al-Basri (R.), minute analysis of the principles of *Ijtihad* and *Taqlid* by Shah Wali Allah, Muslim re-assessment of the Western Orientalism with reference to the scholarship of Professor Fazlur Rahman along with available well documented intellectual acumen of Imam Ghazzali of the 11-12th century C.E. will provide solid grounds for a proper, realistic and timely understanding of the one-and-half millennial intellectual storm and stresses of the living pattern of the Muslims and the tide and web of their ideological endeavours and promptitudes to stabilize them from the beginning to the end of of Islamic history down to the present time.

It the remaining three works are published, it will be further hoped that it would set up and provide a religio-ideological counter-foil in correlational contrast to the other side of the medal, the political organization of the Muslim peoples, which would make possible to theoretically formulate and practically build up the broad body political structure of Islamic faith as envisaged by the Messenger of Allah, Muhammad, Peace and blessing of Allah be upon him. I do hope, even hoping against hope under the prevailing dire circumstances that some Muslim intellectuals and philanthropists will come forward to help the intimate thoughts of the above millennial personalities of Islamic intellect an effective

break-through in moving forward Islamic intellectual efforts and disentangling it from the presently throttled arena of Muslim political, economic and social life. That is most likely to help the divine light of eternal Islam to shine forth into the seeding grounds of the temporary but potential mundane life of the Muslim peoples around the global planet of our dear but dreadful earth.

On close examination one would find these four volumes as solid research works based on a carefully synthesized logical instrumentality of an analytical-reflective-interpretative methodology, minutely guided and carefully endeavored by each researcher in his own way to express the authentic research materials in easily understandable journalistic language.

These are hopefully extended to the learned readers as second millennial scholastic research model, marking the the starting point for moving ahead in the lap of still uncharted intellectual horizon of a super-scientific third millennial age that has just powerfully knocked at our doors. Besides providing a serialized account of the Islamic intellectual development from the 7th to the 20th century C.E., these works in English language are further expected to open up a new vista of vision in the thought process of the researchers of religion and Islamic ideology, amenable to facing newer challenges of the impending new age by inspiring methodological creative thinking in their minds.

I extend my hearty thanks and appreciation to BIIT for the publication of the present voume which would gain for it a wide circulation and publicity through the international net-work of its organizations.

Dr. Muin-ud-Din Ahmad Khan  
Professor, Department of History and Culture  
University of Chittagong  
Bangladesh

## ACKNOWLEDGEMENT

All gratitudes and thanks are due to Almighty Allah, the Exalted. I should like to express my sincere thanks to my supervisor Dr. Mu'in al-Din Ahmad Khan, Professor, Department of Islamic History and Culture, University of Chittagong, Bangladesh, but for whose constant advice and proper guidance the present work might not have been materialised. I am equally indebted to my honourable teacher professor M. A. Bari, D.Phil (Oxon), former Vice-Chancellor of the Bangladesh National University, Gazipur and former Chairman of the University Grants Commission, Bangladesh, for extending a financial grant for collecting materials from India.

I should like to extend my thanks to my wife Aliyah Begum and my children for their cooperation and encouragement while carrying on my research work.

I would be failing to my conscience if I do not mention the help of Dr. Manazir Ahsan, Director General of the Islamic Foundation, London, who supplied some valuable books. My thanks are also due to Mr. Anisur Rahman, Librarian of the Chittagong University for procuring books and journals in connection with my research work.

Muhammad Athar 'Ali  
Professor  
Dept. of Islamic History and Culture  
University of Chittagong

**The system of transliteration has been adopted as follows:**

ا = a	ف = f
أ = á	ق = q
ب = b	ك = k
ت = t	گ = g
ث = t	ل = l
ث = <u>th</u>	م = m
ج = j	ن = n
چ = <u>ch</u>	و = n
ح = h	و = w
خ = <u>kh</u>	ه = h
د = d	ء = (midial)='
ڈ = d	ء (final)='
ذ = <u>dh</u>	ء (initial) = not expressed
ر = r	ی = y
ڑ = <u>rh</u>	ے = ye
ز = z	ال = al- ('l in construct form)
ژ = <u>zh</u>	ة = (marbutah) = ah or at
س = s	<u>Short vowels :</u>
ش = <u>sh</u>	َ / fathah = a
ص = ş	_____ Kasrah = i
ض = d	ِ / dammah = u
ط = t	<u>Long vowels :</u>
ظ = z	َ / fathah = α (followed by l )
ع = ' (inverted apostrophe)	_____ Kasrah = i (followed by ی )
غ = <u>gh</u>	ِ / dammah = u (followed by و )



## ABSTRACT

The present work is meant to be a rational analysis and deeper study of *Shah Wali Allah's Conception of Ijtihad and Taqlid with Special Reference to 'Iqd al-Jid fi Ahkam al Ijtihad Wa 'l-Taqlid* for which I have collected materials from his various well-known works such as *Hujjat Allah al-Balighah, al-Budur al-Buzighah, Tafhimat Ilahiyyah, Musaffa wa Musawwa, Sharh Muwatta of Imam Malik, Insaf, Izalat al-Khafa' 'an khilafat al-khulafa,'al-Juz al Latif fi Tarjamah-i-'Abd Da'if, Anfas al-'Arifin, Fuyud al -Haramayn, Qurrat al `Aynayn, etc* with special reference to his masterly essay on the problem entitled *'Iqd al-Jid fi Ahkam al-Ijtihad wa 'l-Taqlid*.

I have divided the work into nine chapters. In addition to that I have added an appendix and a selected bibliography relevant to the subject alphabetically arranged.

The first chapter is introductory depicting the historical background of the time, life and works of Shah Wali Allah, the intellectual atmosphere and the human environment under which he lived and had his being.

The second chapter deals with the meaning, implication and the bases of Ijtiyhad; the definition of Ijtihad as offered and discussed by Shah Wali Allah as well as its comparison and contrast with the definitions of other legistic theorists. In this sphere we have focussed attention on Shah Wali Allah's peculiar religio-synthetic attitude vis-a-vis the logicalistic attitude of others. We have tried to place on the table his relenting attitude of roominess in accommodating multifarious opinons, views, verdicts and judgments into one grand, high and deep religious milieu where indefiniteness tends to touch infinity and the variety desolves into unity.

The third chapter deals with the problem of sizing up the necessity of Ijtihad, resolving the controversial issue of admissibility of gaps and vacuity occurring in the continuity of

*mujtahids* for the guidance of general masses of the Muslims and the historical problems of admitting the closure of the door of Ijtihad or non-closure. In this respect we have made a broad survey of this last issue in considerable details.

The fourth chapter discusses Ijtihad of the Holy Prophet, its admissibility, nature and distinction with considerable details.

The fifth chapter deals with the conditions of the absolute majtahid, and the knowledge of logical argumentation and methodology which are superadded by Shah Wali Allah, as necessary requirement.

The sixth chapter deals with the classifications of mujtahids into four gradations and admissibility of piece-meal Ijtihad confined to any particular segment of human life.

The seventh chapter deals with the legal nature of Ijtihad with special reference to contending verdicts of more than one *mujtahids* as to whether on controversial points both sides are right or not and whether there exists any process of preferential treatment of one verdict over another and Shah Wali Allah's peculiar specification on this issue.

The eighth chapter nearing the end of our dissertation deals with the nature of *taqlid*, its classifications, legal position and admissibility or prohibitedness of *taqlid* and its various contingent issues arising out of it.

The ninth and concluding chapter consists of a summary of the general discussion and enumeration of the points specially touched by us in course of our discussion of the problems of *Ijtihad* and *taqlid*.

Towards the end, we have added a lengthy appendix placing therein an annotated English translation of Shah Wali Allah's masterly treatise on the subject of this work namely, *'Iqd al-Jid fi Ahkam ul-Ijtihad wa'l-Taqlid*, that is to say, the Necklace of the Rules of Ijtihad and Taqlid.

At the end, a selected bibliography has been provided with and arranged alphabetically by mentioning the surname first. But in case of Muslim names, the general rule of alphabetic order by surnames of authors is not strictly maintained, rather they have been inserted in the natural order for avoiding technical difficulty.

## PREFACE

The present work aims at an in-depth study of Shah Wali Allah's juristic thinking with special reference to the problems of *Ijtihad* and *Taqlid*. During the twelfth century of Hijrah/eighteenth century A.C. the Muslim society all over the world demonstrated a near bankruptcy of intellectual creativity. The Muslim intellectuals of the age settled down unhesitatingly on the habit of blind imitation (*taqlid*) in matters of Shari'ah.

Sir Muhammad Iqbal points out that from about the middle of the first century upto the beginning of the fourth century of Hijrah no less than nineteen schools of law appeared in Islam. This fact alone is sufficient to show how incessantly our early doctors of law worked in order to meet the necessities of a growing civilization.<sup>1</sup> In this context 'Allamah Iqbal considers *Ijtihad* as the principle of movement in the structure of Islam.

At the time of Shah Wali Allah this principle of movement (*Ijtihad*) and progress within the social structure of Islam had become stifled. The Muslim doctors of religion had forsaken the deeper contemplation of *Ijtihad* and took to the easy way of imitative habit of *taqlid*, which in-effect, almost completely stopped the creative movement in the social milieu of the Muslims, decapitating the Muslim leadership in all fields from facing newer problems of life and exigencies of the time. They ignored adhering to the fundamentals of the Qur'an and the Sunnah. Consequently the Shari'ah had become altogether a different entity due to the excess of abduction, deviation, alteration and adulteration.

Now Shah Wali Allah's job of reform and guidance, therefore, lay in the heavy task of reproducing of the Islamic

injunctions and secondly, to restore the solidarity of the Ummah by emphasizing a formula of compromise (*tatbiq*) based on whatever was commonly acceptable by the various sects of Islam, and by force of conciliatory logic to blot the dividing line between the mystic and theologian, between the Mu'tazilah and the Ash'aerah, but even more specially between the four Sunni Schools of law, inspite of the fact that he himself, as he claimed, was a *faqih muhaddith* and his *madhhab* was *fiqh hadith* (Jurisprudence based on hadith), a middle course in respect of *madhhab*. He studied widely the Islamic sciences, commented upon merits and shortcomings of different periods of the Muslim history, travelled from Delhi to the Hijaz, gathered information and data about the contemporary Muslim world. He pointed out almost all the evils and conflicts that had entered into the beliefs, thoughts, sciences, ethics, civilization and politics of the Muslims. He then tried to find out from amongst the total of these wrongs, the basic fault which generated others; and convincingly realized that the existing process of decline and sterility of the Muslim society was mainly due to the conversion of the democratic institution of *Khilafat* into hereditary kingship, and discontinuation of *Ijtihad* (independent interpretation) and the domination of a rigid conformity on the minds of the muslims.<sup>2</sup>

Hence, the Shah moved heaven and earth in search of causes of these impediments and their practical remedies. In this process he wrote a number of books such as *Hujjat Allah al-Balighah*, *Izalat al-Khafa' 'an Khilafat al-Khulafa*, *Tafhimat-i-Ilahiyyah*, *Insaf fi Bayan Sabab al-Ikhtilaf*, *Musaffa wa Musawwa*, the commentary on the *Muwatta* of Imam Malik, *Fuyud al-Haramayn*, *Qurrat al-Aynayn*, *Fath al-Rahman*, the Farsi translation of the Qur'an, etc. and his masterly treatise *'Iqd al-Jid fi Ahkam al-Ijtihad wa'l-Taqlid* which marks the completion of his analytical researches on *Ijtihad* and *taqlid*. This

last monograph constitutes the subject of our present work.

A few scholars such as Dawud Rahbar, 'Ubayd Allah Sindhi, Dr. Mazhar Baqa, Professor Mu'in al-Din Ahmad Khan, etc. took interest in the subject. Dawud Rahbar has translated only a few pages of *Iqd al-Jid*. Ubayd Allah Sindhi's attempt was mainly on the political and philosophical thinking of Shah Wali Allah. Professor Mu'in al-Din Ahmad Khan has written a comprehensive article on the Shah's conception of Ijtihad and *taqlid* published in the Journal of the Pakistan Historical Society in 1959. Dr. Mazhar Baqa adds a brief chapter on the subject in his voluminous work entitled *Usul-i-Fiqh awr Shah Wali Allah* in Urdu language. In these studies the problem of ijthihad and taqlid did not receive as much attention as it deserves.

This attempt at studying the problem as deeply as Shah Wali Allah aims at filling up the gap left by them, which in our view is requisite to meet the requirement of our times.

The urgency and importance of Ijtihad for all ages, particularly for our times, can not be exaggerated. Socio-political debacle of the community of Islam is due to its moral degeneration, and at the root of all evils is discontinuation of Ijtihad and the domination of blind *taqlid* in the minds of the Muslims. So the regeneration of the community of these days mostly depends on exercising Ijtihad which can revive the vitality and cohesion therein.

The Problem under study in broader sense is related to society, history, religion and to the legal problem of Islam as well. Historical methodology has been applied here, and history-based materials and data have mainly been used therein to analyse critically the problem in order to arrive at a conclusion. Hence, from the legal stand-point this study will have a special value in the testing formula of historical perspective. Historical methodology does not rest on case-study

in the form of a questionnaires or on survey-process of chosen areas. So we have selected historical methodology to reconstruct a gap created in the progress of the long history of Islamic jurisprudence in respect of this special subject (Ijtihad).

**- Notes and Reference :**

1. 'Allamah Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: SH. Muhammad Ashraf, 1965), p. 165.
2. Mawlana Abul A'la Mawdudi, "Mansab-i-Tajdid Ki Haqiqat awr Tarikh-i-Tajdid mayn Shah Wali Allah ka Maqam, *Al-Frqaan*., Shah Wali Allah, Number, Beriely (1941), p. 81.

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# CHAPTER 1

## INTRODUCTION

### A. BACKGROUND

Shah Wali Allah's life time (1703-1762 A.C.) coincided with the most critical phase of the Muslim rule in South Asian subcontinent. During this period the political panorama in the subcontinent had undergone changes of significant dimensions. The death of Awrangzib (1707 A.C.) proved calamitous to the Maghal Empire as no capable successor arose after him who could catch hold of the rein of the power with a strong hand. The capital Dlihi had witnessed scenes of bloodshed in the royal palace. In course of six decades of his life span eleven emperors ascended the throne and descended therefrom in quick succession<sup>1</sup>. The rule of Muhammad Shah (1719-48 A.C.) was comparatively longer. After Awrangzib none his successors could reign independently. They were puppets in the hands of the wazirs and nobles. Under continuously deteriorating chaotic situation, rebellious atmosphere at home and intriguing diplomacy of the Western powers through their trading agencies, these weaklings had little to do except being carried by the exigencies of the circumstances. Four years after his birth was marked by the death of last strong Mughal hand, Awrangzib and five years before his death was marked by even a more disastrous historical drama, the battle of Plassey (1757 A.C.). So the process of decline of the Muslim political power in India had almost matured. External attack first came from Nadir Shah (1739 A.C.) of Persia and then from Ahmad Shah Abdali (1761 A.C.).

It was an age of enveloping crises. So Shah Wali Allah was properly called by some scholars 'the thinker of the crisis'.<sup>2</sup> The overall impact of these gruesome crises generated by political decay embraced all the departments of human life. A soldierly 'plunder and escape' was woefully manifest also in civilian life. The revenue producing classes, peasantry and artisans, suffered grossly under the heavy and unjust taxes. Graft money tendered in the name of *nazrana* (gifts) by the clever nobles was ultimately extracted from the unwarring agriculturists and craftsmen leaving the masses to starve away. The luxurious and extra- vagant living of the aristocracy and the pompous celebrations of religious festivals contrast woefully with the misery of the peasants and the artisans. Monastries and mausoleums thrived with pompous celebration of ill-directed religious festivals. Instances of dancing girls giving a performance at the tombs were not lacking. They prostrated themselves before their pirs and at the graves of the dead seeking their aid to ask Allah for the granting of their desires. Worship of the non-creator to which Islam has shown its utter resentment and which turned a Muslim out of the fold of Islam, was publicly practised.<sup>3</sup>

Mirza Hayrat Dihlawi says that the *tasawwuf* (mysticism) prevalent during the age of Muhammad Shah Rangila (1719 - 1748 A.C.) possessed an enormous matter of insult to Islam.<sup>4</sup> The 'Ulama' were no better. They ignored the atheistic rites being performed in their houses. Their wives worshipped the goddess sitla and other Hindu deities. The 'Ulama' became so engrossed in the *taqlid* (imitation) that no unanimity was even reached between the *faqih*s. This situation led to the development of hair-splitting doctrinal debates. The continued development in the belief of *taqlid* was also responsible for the emergence of a situation, now those people who were loquacious enough were called *faqih*s even though they were unable to discriminate between sound and weak *ahadith*. Showing repugnancy to the activities of the then jurists (*faqih*s)

Shah Wali Allah observes, "In these days a jurist is a person who takes glibly knocking jaws with increased force against each other: memorizes without any distinction the true and the doubtful statement of the old jurists and goes on repeating them with the strength of his jaws.<sup>5</sup> Added to this blind adherence to the infallibility of one's ancestors became widespread.<sup>6</sup> Knowledge was the name of studying Arabic grammar (*Nuhw*) rhetoric and prosody (*'ilm al-ma'ani wa'l bayan*), Greek philosophy, logic and fiqh.<sup>7</sup> Usul Fiqh (principles of jurisprudence) was regarded as Islamic logic (*mantiq*). The study of the Qur'an and Hadith, as the sources of Shari'ah, was seriously neglected.

The harrowing impact of political calamity split up the various joints of the society baring open sectarian ideologies conflicting denominational or *madhhabi* tendencies and latent historical animosities of different sections of the Muslim peoples while these prevailing weakening circumstances, also called forth the surroundings non-Muslim Communities of India to fall upon them with war-like ferocity. The Muslim Community now faced a two pronged threat, external and internal, to their very existence. The Marathas, the Jats, the Sikhs and lastly the British formed a set of danger from outside and sectarianism from within; the latter expressed itself in Shi'ism and Sunnism of which the Irani and the Turani groups were the political personification. The eighteenth century shi'ahs and sunnis were as much antagonized to each other as they were at times to the non-Muslim of India. Political alliances were made with the Jats and the Marathas, the avowed enemies of the Muslim rule in India.

The Sunni community was further divided into various contentious groups. Hanafi and non-Hanafi contumacy, *sufi* and *mulla* conflict, the Mujaddidi and *wahdat al-wujudi*<sup>8</sup> confrontation and the Mu'tazilah and the Ash'ari debates convulsed and overwhelmed the Muslim community-life. A

more expressive cleavage was brought about by the difference amongst the mystic orders, such as the *Chishti*, *Qadiri Naqshbandi*, *Suhrawardi*, etc. Mysticism once a radical force, had been reduced and confined almost to grave worship and superstition.

Another mode of general disdain among the Muslims was the conflict between heterodoxy and orthodoxy. The orthodox reaction led by Shaykh Ahmad Sirhindi against eclectic Akbar naturally strengthened this tendency. Thus there was continuous conflict between heterodoxy and the strict orthodoxy of the revivalists. A glimpse of the physical expression of this clash was manifest in the lives of Dara Shakoh and Awrangjib, the sons of Shah Jahan.

Taking advantage of these chaos and confusion prevailing over the socio-religious milieu of the Muslims, the Rajputs, the Jats, the Marathas and the Sikhs rose in rebellion against the Mughal power. The European powers, such as the Dutch, French, German and the English trading agencies in close touch with their home governments had deciphered the signs of the decline of the Mughal power since sixteen sixties following the war of succession among the sons of Shah Jahan and ceaselessly spread their designing nets to grab any and every opportunity for increasing their influence at the Mughal court and joining hands with the rebellious elements for precipitating downfall of the Mughal rule. Some of them even pretended to hold the sovereign position in respect of India as the kings of England openly expressed it.<sup>9</sup>

Under such circumstances Shah Wali Allah's life long efforts were directed towards resolving the conflicts, synthesizing the controversies, fusing the animosities and curing the convulsions by means of sharpening the understanding of the basic doctrine of Islam as adumbrated in the the Holy Qur'an and the Prophetic Sunnah on the one hand and by dint of deeper apprehension of the forces of history in moulding the social,

political, economic, religious and spiritual life of human beings on the other. Shibli Nu'mani's observation is appreciable when he pays his homage to the Shah in the following words: "In view of the downfall of reason and rationalism which had commenced after Ibn Taymiyah and Ibn Rushd, nay even during their times there existed no hope that a man of subtle disposition of heart and mind would be born. But nature had willed to display its miracles. During the last age, when Islam was breathing its last, was born a man like Shah Wali Allah whose ingenuity and discernments made the achievements of Ghazali, Razi and Ibn Rushd dwindle into insignificance."<sup>10</sup>

## **B. A BRIEF SKETCH OF THE LIFE OF SHAH WALI ALLAH AL-MUHADDIIH AL-DIHLAWI.**

Shah Wali Allah was born at the break of dawn on Wednesday, the 4th of shawwal, 1114 of Hijri<sup>1</sup> corresponding to *21st February*, 1703 A.C., four years before the death of emperor Awrangzib (1658-1707 A.C.). The boy was named 'Wali Allah, (friend of Allah) by his father, Shaykh 'Abd al Rahim, forgetting the matter of his early inspiration of naming the boy as Qutb al-Din. After a while 'Abd al-Rahim remembered it and also named him Qutb al-Din.<sup>2</sup> His another name was Ahmad 'Azim al-Din (chief of the religion) is said to be his cronogrammatic name which indicates the year of his birth. 'Abd Allah was his self adopted name. Abu'l Fayyad, Abu 'Abd al 'Aziz, and Abu Muhammad were his filionomy (Kuniyah).<sup>3</sup> But he was generally known as Shah Wali Allah.<sup>4</sup>

Shah Wali Allah discended on his father's side from 'Umar Faruq (584-647 A.C.), the Second Caliph and on his mother's side from 'Ali (R), the fourth caliph of Islam<sup>5</sup>, through Musa al-Kazim (d. 183 A.H/799 A.C.). So he was "Umari or Faruqi in respect of family, an Arab by origin and a Qurayshi and Sayyid indirectly.<sup>6</sup>

## **Education**

The environment in which Shah Wali Allah grew up was highly persuasive and conducive to learning. His father was eager to see his son rising to great heights of eminence. At the age of five years Shah Wali Allah was admitted in the maktab (elementary school). Within the next two years he learnt reading and writing and finished the simple reading of the Qur'an. By that year he began to read Persian books and treatises. At the age of ten years he received lessons in Sharh Mulla<sup>7</sup> and attained the stage of independent study (mutala').

## **Marriage**

At the early age of fourteen, his father decided that the boy should marry and accordingly the marriage was performed.<sup>8</sup> The wife bore to the Shah a son name Shaykh Muhammad (d.1208 A.H.)<sup>9</sup>.- After the death of his first wife Shah Wali Allah married a daughter of Shaykh Thana' Allah of Sunipat in 1157 H. for the second time.<sup>10</sup> His second wife bore to him four sons, Shah 'Abd al-Aziz, (1159 AH/1746 A.C.-1230/1815), Shah Rafi al-Din (1163/1749-1233/1818), Shah 'Abd al-Qadir (1167 A.H.- 1230/1815). and Shah 'Abd al-Ghani (1171/1202H.), the father of Shah Isma'il Shahid (1193 H./1779 A.C.-1246/1831).<sup>11</sup> This wife also bore to the Shah a daughter called Amat al - Aziz <sup>12</sup> who was married to Muhammad Fa'iq, son of Muhammad Ashiq Phulati.

## **Initiation into Mysticism and Completion of Graduation**

At the age of fifteen Shah Wali Allah was formally taken into initiation of bay'ah (solemnization for spiritual guidance) by his father to the Naqshbandiyah branch of Khwajah Khward and Khwajah Baqi Bi'llah which was radically different from the Mujaddiyah branch of the same order.<sup>13</sup> He was garbed with

the robes of sufis (*khirqah-i-sufiyyah*) as a mark of accomplishment in the sufism.<sup>14</sup> In the same year (c. 1717 A.C.) he completed his graduation at the Madrasah Rahimiyyah. He was then awarded the diploma and permission to teach the subjects he had studied, in a great feast arranged by his father to celebrate the occasion.<sup>15</sup> In this stage he studied many important books on tafsir, hadith, fiqh, *usul al-fiqh* (principles of jurisprudence) kalam (scholastic theology), mysticism (tasawuf), philology, rhetoric ('ilm al-ma'ani), philosophy (*hikmah*), grammar (*nahw*), logic (*mantiq*), mathematics, realities (*haqa'iq*), medicine (tibb), properties of names and verses (khawass asma' wa ayat) etc. as recorded in his auto-biography.<sup>16</sup>

The progress of his studies was astonishingly quick, wholesome and masterly. At the age of fifteen Shah Wali Allah attained mastery over all the esoteric and exoteric sciences. Then he started his career as a teacher in the Madrasah-i-Rahimiyah in Delhi founded by his father Shaykh Abd al-Rahim. He had worked here barely two years when in the year 1719 A.C. his father breathed his last. He then succeeded to the chair of his father at the age of seventeen.<sup>17</sup>

### **His Departure for Hajj**

Following the death of his father Shah Wali Allah continued studies, teachings and mystic meditation. Meanwhile he decided to go on a pilgrimage to Makkah. He left Delhi on Saturday the 8th of Rabi' al-Thani 1143 H./21st October, 1730 A.C. for the Hijaz and performed Hajj in the same year.<sup>18</sup> In 1144 H. the Shah became a devoted attendant of Makkah 'Mu'azzimah and visited Madinah *Munawwarah* and attained benefits from various *muhaddithun* and savants including Shaykh Abu Tahir Muhammad Kurdi al-Madani (d.1145 H./1732 A.C.) who made him wear an all comprehensive *khirqah* (sufigown). In the mean time he devoted himself to the holy shrine of the Prophet and received endless blessing

therefrom. At the end of the year 1144H. he performed Hajj for the second time and returned home on Friday, the 14th Rajab, 1145 H./2nd January, 1733 A.C.<sup>19</sup>

This sojourn in the Haramayn was an epoch making event for the intellectual, missionary and reform life of Shah Wali Allah. During this period (1143-1145 H.) his rational faculty and academic feats had gained a lofty ground which would not have been possible in his native *land*. Here he studied *Hadith* literatures and mysticism with many well-versed scholars, This laid the foundation for his later reform movement.

During this sojourn in the *Hajaz* the Shah came in contact with several distinguished traditionalists (*muhaddithun*) as Shaykh Abu Tahir Kurdi al-Madani, Shaykh Wafd Allah, Taj al-Din Qal'i from whom he obtained *ijazah* (formal permission) and *sanad* (certificate) for teaching and transmitting *Hadith* to the pupils.<sup>20</sup>

Here in the *Haramayn* the Shah also came in contact with many sufis and jurists of great repute, Thus, he acquired both esoteric and exoteric knowledge from them.<sup>21</sup>

In Abu Tahir, Shah Wali Allah found a savant of rare scholarship. In course of his companionship, the Shah freely and fearlessly discussed with him many burning problems regarding the future of the millat. The learned *shaykh* not only approved the view-points of his Indian pupil but was also very gladly impressed by his erudition. The Shaykh paid a very high compliment to his pupil's scholarship when he said: "Wali Allah narrates the wordings on my authority whereas I correct the meaning through him."<sup>22</sup>

His stay in Makkah coincided with the education of Muhammad bin' Abd al-Wahhab (1115/1703-1201/1787) from Najd al-Uyaina, who was the Hanbali founder of the puritanical form of Sunnism later known as so-called Wahhabism. The two men had different teachers though, and in fact there is no evidence to suggest that they ever met each other.<sup>23</sup>

In course of his staying in the Hajaz Shah Wali Allah gained a thorough insight into the sciences of *Hadith* and



jurisprudence and felt himself called upon to declare himself as *mujaddid* (reformer) of his time.<sup>24</sup>

As a mark of the realisation of his role as a *mujaddid* the Shah often received, in dreams, clear hints and direct guidance from the Holy Prophet as well as from Lord-providence Himself a privilege, which emboldened him to assume the honorific title of *Uwaysi*<sup>25</sup>.

The detail account of the dreams and inspirations which Shah Wali Allah recorded several years after his return from Hajaz tend to show that he was inspired to become both a religious and a political leader. Through what he considered a divine inspiration he also came to believe that divine guidance had been personified in his own existence, that his name *zaki* (pious) and that he was the 'omega' of all knowledge. Therefore, he was raised to the status of a *mujaddid* (renewer of Islam), a *wasi* (executor of divine will), a *qutb* (pivot of faith), and an Imam (leader) along the sufi path.<sup>26</sup>

### **His Teachers and Guides in the Haramayn**

Shah Wali Allah studied under different teachers and received guidance from some perfect masha'ikh in the Haramayn. They are as follows:

1. Shaykh Wafd Allah Maliki of Makkah, a leading *muhaddith* of the time. Shah Wali Allah read with him the *Muwatta* of Imam Malik completely narrated by Yahya bin Yahya Masmudi, Shah Wali Allah received *sanad* from him for transmitting and teaching *Hadith*. The Shah also obtained permission (ijazah) of transmitting all the *ahadith* narrated by his (Wafd Allah's) father.<sup>27</sup>

2. Shaykh Taj al-Din Qal'i al-Hanafi, the Mufti of Makkah. Shah Wali Allah read with him the Bukhari, only two or three days, some portions of *Sihah Sittah*, *Muwatta*, *Masnad Darmi*, *Kitab al-Athar* of Muhammad and the *Muwatta* of him.<sup>28</sup>

Here one thing is remarkable that the Shah received written *Sanad* (certificate) from Qal'i for teaching the above mentioned books of tradition.<sup>29</sup>

3. Shaykh Abu Tahir Muhammad Kurdi al-Madani al Shafi'i (1080 A.H.-1145 A.H.):

During his sojourn at Hijaz Shah Wali Allah spent about four months in Madinah where he met Abu Tahir Muhammad bin Ibrahim Kurdi. Next to his father the man who influenced Shah Wali Allah's outlook and thinking was Shaykh Abu Tahir. He received immense benefits from his teacher. Abu Tahir keenly noticed his intelligent pupil's grasping of problems of Shari'ah, his insight into the Quranic injunctions and his ability of forming an independent judgment (Ijtihad). In the course of conversation Shah Wali Allah discussed freely and fearlessly with his Shaykh many problems of the day regarding the future of the *millah*. In turn the learned Shaykh not only approved the viewpoint of his Indian pupil but also formed a high impression of his erudition. Abu Tahir paid a very high compliment to his pupil's scholarship.<sup>30</sup>

In the mystical path Abu Tahir exerted also a great influence on Shah Wali Allah. As a mark of appreciation for mysticism in the person of the Shah, he passed his *khirqah* (mystical robe) to Shah Wali Allah. This *khirqah* was all comprehensive gown of all sufi orders.<sup>31</sup> This advantage of mutual attraction and affection between the teacher and the taught based on the fact that their fathers held identical views on Shaykh Muhiy al-Din Ibn al-'Arabi's (560/1165-638/1240)<sup>32</sup> philosophy of *wahdat al-wujud* (ontological monism)<sup>33</sup>. Both Shaykh 'Abd al-Rahim and Ibrahim Kurdi interpreted the Qur'an in the light of the philosophy of Ibn al-'Arabi.

4. 'Umar bin Ahmad al-Makki was one of the rare teachers of the Shah at Makkah.

5. Shaykh 'Abd al-Rahman al-Nakhli.

6. Shaykh Salim bin 'Abd Allah al-Basri who gave him (the Shah) *ijazah* of his *risalah*, *al-Imdad fi Ma'rifut al-Isnad*.

7. Ibn 'Usayla.<sup>34</sup>

Besides the above mentioned teachers and *masha'ikh* of the *Haramayn*, Shah Wali Allah studied under different teachers in India before his going to performing Hajj. They are as follows:

1. The Shah's father Shaykh 'Abd al-Rahim. He read the Holy Quran tafsir, Hadith, fiqh, 'Aqa'id (theology), Arabic grammar, kalam (scholasticism) principles of jurisprudence, logic (*mantiq*) and mysticism under his father.<sup>35</sup>

2. Shah Muhammad Afdal Siyalkuti (d.1114 H.). Shah Wali Allah read *Mishkat*, *Shama il al-Nabi* and the *Sihah sittah* with him and obtained *ijazah* from him.<sup>36</sup>

3. Haj Muhammad Fadil Sindhi: The Shah read the whole of the Qur'an with him.<sup>37</sup>

It is observed that Shah Wali Allah profited greatly both academically and spiritually from his hajj (pilgrimage). Spiritual perfection was a gift of which he was very proud of completion of hadith studies was some thing which was hard to be attained in India, a land where it had been nearly ignored through the ages. Travelling, which is a part of education, was itself a boon. Inspired erudition was afforded to him by his learned teachers. All this made him matured mentally and transformed spiritually. Now he was fully equipped with the essential qualities for launching his reform movement to reunite the disrupted and disintegrated Muslim people into a harmonious whole. How far he succeeded in his object is not what we are concerned with at the moment. How far he did manage to provide the Muslim India with the requisite guidance is evident from his works especially his monumental work *Hajjat Allah al-Balighah*.

### **His Activities After Return From Hajj**

On his return from Hijaz to Delhi in 1145 A. H. Shah

Wali Allah resumed his duties as Principal (sadr) of Rahimiyyah Madrasah. He made an overall change in the method of teaching. Parting with the old system of placing one class under one teacher he appointed separate lecturer for each subject.<sup>38</sup> Another revolutionary step taken in this policy was the introduction of a new scheme in the curriculum. One of the salient features of this scheme was that it laid greater emphasis on the study of text of the Qur'an with little reference to the exegesis (tafsir) of the words of Allah. <sup>39</sup> This was still a greater stride from the well-established practice of the Muslim educational institutions of the medieval ages. The placement of the study of *Muwatta* of Imam Malik prior to the higher study of the Qur'an in this scheme is also significant.<sup>40</sup>

Now the Shah devoted himself exclusively to three things, writing and teaching of *ma'rifat* (mysticism) and Hadith amongst his disciples. In this period what he received in Kashf (mystic experience) and dreams, he committed it to writing.<sup>41</sup>

By now his popularity as an educationist spread far and wide and the students began to flock to his madrasah, where he continued teaching till his death.

### **His Demise**

Shah Wali Allah breathed his last in Delhi on Saturday, the 29th of Muharram 1176 A.H./ 21st August 1762 A.C.<sup>42</sup> when he was sixty one years and four months old, during the reign of Shah `Alam II (1759-1806 A.C.). He was buried at Mahandiyan adjacent to the Khuni Darwajah.<sup>43</sup>

He left behind him a galaxy of worthy pupils who were responsible for the spread of Hadith studies in the subcontinent. Of his distinguished pupils who read hadith with the Shah, the name of Qadi Thana Allah Panipati, known as the Bayhaqi al-waqt, Muhammad Ashiq Phulati, Khwajah Amin Wali Allahi,

Khayr al-Din Surati, Rafi al-Din Muradabadi, Muhammad Ilahabadi and others.<sup>44</sup>

## **The Works of Shah Wali Allah**

The Shah's writings cover all branches of traditional Islamic learning, such as Qur'anic translation, rules and the principles of interpretation of the Qur'an (usul al-tafsir), hadith, fiqh, kalam (Scholasticism), *munazarah* (religious polemics), *aqa'id* (theology), sufism, biographies, poetry, religious and political correspondence, etc. Some authors put his works at over two hundred, although Abu Muhammad Rahim Bakhsh, an early biographer of Shah Wali Allah, puts the number at forty five.<sup>45</sup> According to Rizvi the number of known titles is about seventy, but half of these works are only short treatises of four to five pages.<sup>46</sup> Some others are of the opinion that the Shah wrote as many as one hundred books and treatises.<sup>47</sup> Mazhar Baqa gives a list of 70 books and *risalahs*.<sup>48</sup> Hence, as time passes the list is growing.<sup>49</sup> The maximum number known so far fluctuates between sixty and seventy.<sup>50</sup>

Subject-wise names of his works are given below:

Works on the Qur'an

### ***Fath al-Rahman* (Persian)**

It is a persian translation of the Qur'an. The rendering is neither too literal nor too idiomatic. Marginal notes are occasional and brief. The translation was made with a view to facilitating the Quranic study to those Muslims who were not well-versed in Arabic.<sup>51</sup>

### **2. *Al-Fawz al-kabir fi Usul al-Tafsir* (Persian)**

This work deals with the principles of the Qur'anic exegesis and a discussion on the abrogation of certain verses of the Qur'an, *Nasikh* and *Mansukh*. In this book Shah Wali Allah concluded that the number of the abrogated verses can not be more than five in total.<sup>52</sup>

### **3. *Fath al-Khabir* (Arabic)**

It is a small book on the essentials of tafsir. The work actually forms the fifth chapter of *al-Fawz al-Kabir*, but according to Shah Wali Allah's own explanation, it may be treated as an independent book too.

### **4. *Al-Muqaddimah fi Qawanin al-Tarjamah* (Persian)**

This is a small treatise on the principles of translation. It is an independent work and must not be confused with the *Muqaddimah* to the *Fath al-Rahman*.

### **5. *Tawil al-Ahadith* (Arabic)**

This book deals with the rational interpretation of extraordinary and miraculous incidents connected with the lives of the prophets mentioned in the Qur'an. Shah Wali Allah maintained that the miracles are in fact ordinary happenings but they look mysterious, because their causes are either obscure or rare or else unfamiliar to the lay man. The book has much to offer to the new Mu'tazilites. Sir Sayyid Ahmad Khan's commentary of the Qur'an and the writings of Mr. Ghulam Ahmad Pervez bear an ample testimony that these authors have been greatly influenced by Wali Allah's rationalism.

## **(ii) Works on and Related to Hadith**

1. *Arba'una Hadithan Musalsalatan bi'I Ishraf fi Ghalib Sanadiha*.<sup>53</sup>
2. *Al-Durr al-Thamin fi Mubashshirat al-Nabiy al-Amin* (Arabic).<sup>54</sup>
3. *Al-Fadl al-Mubin fi Musalsal min Hadith-Nabiy al-Amin* (Arabic) mostly known as Musalsalat.
4. *Al-Nawadir min Ahadith Sayyid al-Awa'il wa'I-Awakhir* (Arabic)

5. *Al-Musawwa fi Ahadith al-Muwatta* (Persian).<sup>55</sup>
6. *Al-Musaffa fi Ahadith al-Muwatta* (Persian).<sup>56</sup>
7. *Sharh Tarajim Ba'd Abwab Bukhari* (Arabic).
8. *Al-Irshad ila Muhimmat 'Ilm al-Isnad* (Arabic).

(iii) *Hadith-based fiqh and Rationale of Religion.*

### **1. Hujjat Allah al-Balighah (Arabic)**<sup>57</sup>

(iv) *Scholasticism* (kalam)

1. *Qurrat al-Annayn fi Tafdil al-Shaykhayn* (Persian)
2. *Al\_ Aqidah al-Hasanah* (Arabic)
3. *Al-Muqaddimah al- saniyyah Ii Intisar al-Firqah al-Sunniyyah* (Persian)<sup>58</sup>

(v) *Fiqh and Usul al-Fiqh*

1. *'Iqd al-Jid fi Ahkam al-Ijtihad wa'I Taqlid* (Arabic).<sup>59</sup>
2. *Al-Insaf fi Bayan Sabab al-Ikhtilaf* (Arabic). <sup>60</sup>

(vi) **Mysticism (tasawwuf)**

1. *Al-Qawl al-jamil fi Sawa al-Sabil* (Arabic)
2. *Al-Tafhimat al-Ilahiyyah* (Arabic and Persian)
3. *Fuyud 'al-Haramayn* (Arabic).<sup>61</sup>
4. *Hama 'at* (Persian)
5. *Sata'at* (Persian)
6. *Lamahat* (Arabic)
7. *Lama'at* (Persian)
8. *Al-Khayr al-Kathir* (Arabic)
9. *Al-Budur al-Bazighah* (Arabic)
10. *Shifa'al Qulub* (Persian)
11. *Al-Intibah fi salasil Awliya Allah wa Asanid warithi Rasul-Allah* (Persian).<sup>62</sup>
12. *Hawami' Sharh Hizb al-Bahr* (persian)

13. *Kashf al-Ghayn Sharh Rubaya'tayn* (Persian).
14. *Altaf al-Quds* (Persian).
15. *Fath al -Wadud li Ma'rifat al Junud* (Arabic).
16. *Awarif* (Arabic).

**(vii) History and Biographies**

1. *Surur al-Mahzun* (Persian).<sup>63</sup>
2. *Izalat al-Khafa' an Khilafat al-Khulafa* (Persian, partly Arabic).<sup>64</sup>
3. *Anfas al-'Arifin* (Persian)

This book consists of the following seven treatises:

- a. *Bawariq al-Wilayat*, biography of Shaykh 'Abd al-Rahim, father of Shah wali Allah.
- b. *Shawariq al-M'rifat*, Biography of his uncle, Shaykh Abu al-Rida Muhammad.
- c. *Al-Imdad fi Ma'thir al-Ajdad*, biography of the Shah's other relations.
- d. *Al-Nabidhah al-Abriziyyah fi al-Aziziyyah*, biographical account of the ancestors of Shaykh `Abd al-`Aziz, maternal great grand father of Shaykh `Abd al-Rahim.
- e. *Al-Atiyah al-Amdinah* (or *al-Samdiyyah*) *fi anfas al-Muhammadiyyah*, biography of the Shah's maternal grand father Shaykh Muhammad Phalti (or Phulati).
- f. *Al-Insan al-`Ayn fi Masha'ikh al-Haramayn*, biographical account of the sufis and scholars of Makkah and Madinah.
- g. *Al-Juz'al-Latif fi Tarjamah al-`Abd al-Da'if*, Shah Wali Allah's own authobiography.

**(viii) Grammar**

1. *Sarf Mir* (Persian)



**(ix) Poetry**

1. *Atyab al-Naghm fi Madh Sayyid al-`Arab wa'l 'Ajm* (Arabic)
2. *Diwan Ash'ar `Arabi* (Arabic) (Unpublished).<sup>65</sup>
3. *Qasidah-i-Natiyyah Hamziyyah* (Arabic).

**(x) Maktubat (Letters)**

1. Shah Wali Allah ke siyasi Maktubat (Persian).<sup>66</sup>
2. Letters contained in Hayat Wali (Arabic).<sup>67</sup>
3. Letters contained in Kalimat Tayyibat (Persian).
4. *Maktub 'al-Ma`arif ma Makatib Thalathah* (Persian).
5. *Maktubat ma' Manaqib Bukhari wa Fadilat Ibn Taymiyahn* (Persian).<sup>68</sup>

**(xi) Miscellaneous**

1. *Al-Sirr al-Maktum fi Asbab Tadwin al-`Ulum* (Arabic)
2. Risalah Danishmandi (Persian).<sup>69</sup>
3. *Al-Nukhbah fi silsalah al-Suhbah* (Arabic).
4. *Al-I'tisam* (Arabic).
5. Hashiyah Risalah Lubs Ahmar (Arabic).
6. *Risalah fi tahqiq Masail Shaykh Abd al-Baqi al Dihlawi* (Arabic)
7. *Wasiyyat Namah* (Persian)
8. *Nihayat al-Usul*
9. *Al-Anwar al-Muhammadiyyah*
10. *Fath al-Islam* (Persian)
11. *Kashf al-Anwar* (Persian)
12. *Risalah Dar Radd-i-Rawafid* (Persian).
13. *Al-Tanbih`ala ma yahtaju` I'layhi al-Muhaddith wa'l Faqih* (Arabic).

14. *Al-Dhikr al-Maymun*
15. *A'rab al-Qur'an*
16. *Athar al-Muhaddithin*
17. *Ajwabah 'an Thalath Masa'il*
18. *Risalah fi Mas'alah 'Ilm al-Wajib*
19. *Risalah al-Dihlawi*
20. *Al-Anfas al Muhammadiyyah*
21. *Asrar-i-Fiqh.*
22. *Mansur.*
23. *Al-Maqalah al-Wasiyyah fi al -Nasihah al-Wasiyyah.*
24. *Asrar al-Muhaddithin.*
25. *Radd-i- Gawhar-i-Murad.*

There are some controversial works which according to some writers, are not the works of Shah Wali Allah, but they go as such. But some authors include them into the works of the Shah.<sup>70</sup> These are as follows:

1. *Ma yajibu Hifzuhu l'al-Nazir.*
2. *Fayd-i`Amm*
3. *Rasalah-i-Aw`ail.*
4. *Qawl-i-Jali*
5. *Tuhfat al -Mubin*
6. *Al-Balagh al-Mubin.*
7. *Qurrat al-'Aynayr fi ibtal Shahadat al-Husayn*
8. *Al-Jannat al-Aliyah fi Manaqib al-Mu'awiyah*
9. *Qawl-i -Sadid.*
10. *Isharah-i-Mustamarrah.*

## Notes and References :

### 1. Explain

- (i). Awrangzib 'Alamgir - 16058-1707 A.C.
- (ii). Shah 'Alam I 1707 -1712 A.C
- (iii). Jahandar Shah 1712 - 1713 A.C
- (iv). Farrukh Siyar 1713 -1719 A.C.
- (v). Rafi 'al-Darjat 1719 -1719 A.C.
- (vi). Rafi al-Dawlah 1719 - 1719 A.C.
- (vii). Muhammad Shah 1719 - 1748 A.C.
- (viii). Ahmad Shah 1748 - 1754 A.C.
- (ix). 'Alamgir II 1754 - 1759 A.C.
- (x). Shah Jahan III 1759 - 1759 A.C.
- (xi). Shah Alam II 1759 - 1788 A.C.

2. Fazlur Rahman, "The Thinker of the Crisis: Shah Wali Allah", *The Pakistan Quarterly*, Vol. VI, No.2 (Karachi, Summar, 1956), pp. 44-46.

3. Shah Wali Allah, *Tafhimat-i-Ilahiyah*, Vol. I (Hyderabad, 1970), pp. 202-203, (henceforth the source is cited as Tafhimat).

4. Mirza Hayrat Dihlawi, *Hayat-i-Tayyibah* (Lahore, 1958), p. 19; cf., A.D. Muztar, *Shah Wali Allah* (Islamabad: National Commission Historical and Cultural Research, 1979) , p. 11.

5. Shah Wali Allah, *Insaf fi Bayan Sabab al Ikhtilaf* (Delhi: Majtaba- i press, 1909), (henceforth the source will be cited as Insaf); *idem Hujjat*, Vol.I, p. 362

6. *Hujjat*, Vol. I, pp.355-60; *Tafhimat*, Vol. i, p.p. 202-12

7.Cf; Mazhar Baqa. *Usul-i-Fiqh awr Shah Wali Allah* (Islamabad: Islamic Research Institute, 1973), pp. 20-21.

8. The Philosophy of Wahdat al Shuhud (Phenomenological monism) propounded by the Mujaddid Alf Thani and that of Wahdat al-Wujud (ontological monism) interpreted by Muhiy al-Din Ibn al-'Arabi.

9. Cf. 'Mohar 'Ali, *History of the Muslims of Bengal*, vol. 1A (Riyad :

Imam Muhammad Ibn Sa'ud Islamic University, 1406/1985), pp. 392; 457.

10. Shibli Nu'mani, *'Ilm al-Kalam* (Aligarh, n.d.), P. 109; cf., A.D.

Muztar, op. cit., p. 90

1. Shah Wali Allah, *al-Juz'al Latif fi Tarjamah al-'Abd al-Da'if*, an autobiography, trans. by Hidayat Husain, "The Persian Autobiography of Shah Wali Allah bin 'Abd al-Rahim al-Dihlawi: its English translation and a list of his work", *The Journal of the Asiatic Society of Bengal*, Vol. VIII, N.S. No. 4 (Calcutta, April, 1912), p. 161, (hereafter if is cited as *al-Juz' al-Latif*).

2. Shah Wali Allah, *Tafhimat Ilahiyyah*, Vol. II (Haydarabad, Pakistan, 1967). pp. 185 - 6, (hereafter it is cited as *Tafhimat*). One day while visiting the tomb of Khwajah Qutb al-Din Baktiyar Kaki (d. 633 H./1236 A. C.), 'Abd al-Rahim received an inspiration from the Kaki that a son would be born to him and that he should name the boy Qutb al-Din after his (Qutb's) name. Shah Wali Allah, *Anfas al-'Arifin* (Delhi, 1315 H./1897), P. 44 (hereafter the source is cited as *Anfas*).

3. A.S. Bazmee, "Al-Dihlawi, Shah Wali Allah, "*The Encyclopaedia of Islam* new edition, vol. II (Leiden: E.J. Brill, 1965), P. 254; G.N. Jalbani, *Life of Shah Wali Allah* (Delhi: Indarah-i-Adabiyat-i Delhi), P. 13- A. D. Muztar, *Shah Wali Allah* (Islamabad: National Commission on Historical and Cultural Research, 1979), P.37

4. So far as our knowledge goes, Wali Allah did not adopt the Shah for himself nor had it been given by his father. Probably, his disciples and followers rendered his self adopted submissive epithet al-Faqir, into the honorific title Shah (Prince of devotees). He was, no doubt, the prince of the mystic world and Imam of Hind in respect of Shari' ah.

5. *Anfas al-'Arifin*, p. 158

6. *Ibid.*, p. 158-68; A. D. Muztar, op. cit, p.40

7. *al-Juz al-Latif*, P. 162. The title of the book is *al-Fawa'id al Diya'iyah*, but is known in India by this name. It is a commentary on *Ibn Hajib's al-Kafiyah* a book on Syntax (nahw).

8. *Ibid.* The bride was the daughter of Shah Wali Allah's maternal uncle, Shaykh 'Ubayd Allah Siddiqi of phulat, a village in the district of Muzaffarnagar (India). The secret of this haste was soon unveiled by the turn of events. Soon after the marriage death entered the family. Shah Wali Allah's mother-in-law, the maternal father of his wife, Fakhr-i-alam, the son of his uncle, shaykh Abu al-Rida; his father shaykh Abd al-Rahim passed away within the span of less than two years. Shah Wali Allah says, "This union was totally dispersed and every one came to know that if the marriage

- had not been celebrated so soon it would have been impossible to come to pass for years thereafter. *Al-Juz'al-Latif*, pp. 162-63.
9. Sayyid Abu I Hasan Ali Nadawi, *Tarikh Da'wat wa 'Azimat*, Vol. V (Lucknow: Majlis-i-Tahqiqat wa Nashriyat i Islam, 1404/1984), P. 105; Mazhar Baqa, *Shah Wali Allah Awr Usul -i-Fiqh* (Islamabad: Islamic Research Institute 1973), pp. 55-56
10. S.A.H. 'Ali Nadawi, op. cit, pp. 105-6. The name of the lady was Bibi Iradat. According to Mazhar Baqa, the lady was the daughter of Sayyid Hamid `Ali Sunipati op. cit., p.56
11. S. M. Ikram. *Rud-i-Kawthar* (Lahore: Firoz and Sons, 1958), pp. 564; 574; cf. Mazhar Baqa op. cit., p. 56.
- 12 S A. H. 'Ali Nadawi, op. cit., p. 107. According to Mazhar Baqa the daughter was born of the first wife. *Usul fiqh awr Shah Wali Allah*, P.56
13. *Al-Juz'al Latif*, p. 163; *Tafhimat*, Vol. II, p. 167. cf., S.A.A. Rizvi op. cit. p. 214. The Naqshbandiyah order was founded by Khwajah Baha al-Din Muhammad al-Bukhari al-Naqshbandi (718 H/1388). Khwajah 'Ubayd Allah known as Khwajah Khwurd (Younger Khwajah), the son of Khajah Baqi Billah, was an ardent supporter of the *Wahdat al-wujud* (ontological monism) and sama (sufi song and music). These had made his teachings different from those of Mujaddid Alf Thani.
- 14 *Al-Juz'al-Latif*, p. 163
15. Ibid.
16. *Al-juz'al-Latif*, pp. 163-5
- 17 *Ibid.*,p.165
18. A.D. Muztar, op. cit. p. 46; quoting the *Diwan of Shah Wali Allah*, p. 146. A.A.Rizvi and M. S. Hasan Ma'sumi mention the year as 1731 in place of 1730 which does not correspond to the lunar year 1143.
19. *Al-Juz'al-Latif*, p. 166. According to A.D. Muztar the Shah returned home on 16th on Rajab 1145/and January 1733. For details vide, A.D.Muztar, op. cit, p. 47, f, n ; S.A.A Rizvi, mentions 31, December 1732 A.C
20. M.S. Hasan Ma'sumi, op cit. P. 343, cf, al-Juz'al-Latif, p.166.
21. Vide *Anfas*, pp. 184--20
22. M. S. Hasan Ma'sumi, op. cit., p. 343; Rahim Bakhsh, *Hayat-i Wali* (Lahore: Maktabah-i-Salafiyyah, 1955), p.90 cf. Muhsin al-Taymi, *al-Yani al-Jani*, p.117

23. S.A.A. Rizvi, op. cit. p. 515.

24. M.S. Hasan al Ma'sumi, op. cit. p. 343. The idea of a *mujaddid* has its origin from a Hadith "Allah will raise after every century a person from my community who will revive my religion." vide Tafhimat, Voi. 1, p.40

25. *Fuyud al-Haramayn* (Lahore, 1947), P. 44 (Henceforth it will be cited as Fuyud). سلكتى رسول الله صلى الله عليه وسلم، وربانى بيده فاتا أوسيه وتلميذه بلا واسطه بينى وبينه.

"The Prophet (sm) guided me to travel along (sufi) path and brought me up with his own hands. so I am his uways (disciple) and a direct pupil of him without any medium between me and him. Cf., *al Furqan*, p. 220. Uwaysiat is a mystic term. It means getting direct spiritual guidance from the Prophet (Sm). The term comes from Uways' the Famous saint of Qaran . It is Generally Kown and Believed that Uways, a contemporary of the Prophet, had not had the privilege of seeing him, but nevertheless, mystically received guidance from him (sm.) Uways was a historical personage who lived at Kufa and that Umar and Ali met him at a place near Arafat. Vide M.S. Hasan al-Masumi op. cit. p.344, f.n.

26. *Tafhimat*, Vol. II, PP. 600, 112, 159, 160; *Fuyud*, pp. 127, 229-39, 297, 298; cf., S.A.A. Rizvi, op. cit. P. 216;

27. Shah Wali Allah, *Insan al-Ain fi Masha-ikh al-Haramyan*, appended to *Anfas*, p. 426.

28. *Ibid.* p. 191

29. Rahim Bakhsh Dihlawi, *Hayat-i-Wali* (Lahore, 1972), p. 437

30. Muhammad Muhsin al-Taimi al-Tirhuti, *al-Yani al-Jani fi Asanid Shaykh 'Abd al Ghani* (Bereily, 1287 H.), P. 81; cf. Manazir Ahsan Gilani, "Agush-i-Mawj ka Durr-i-Tabindah ya Islami Hind ka Tufani Ahd mayn khuda ka Ik wafadar bandah," *al-Furqan*, Shah Wali Allah Number, Vol. VII, Nos. 9-12 (bereily, 1359 H./1941 A.C.), P.212. (henceforth the source is cited as al-Furqan.)

31. Al-Juz, *Alzus ' al-Latif*, p. 166; *Tafhimat* Vol. 1, p. 72

32. Abu Bakr Muhammad Ibn al-Arabi al-Hatimi al-Ta'i known as Shaykh Akbar, was born in Murcia in Southern Spain, in a family of pure Arab blood on the tribe of Tai. Ibn al- Arabi had a theophenic vision of the invisible hierarchy ruling the universe, consisting of the Supreme Pole (qutb); the two Imams; the four pillars (*awtad*) governing the four cardinal points; the seven 'Substitutes (abdal) the influence of each of whom reigns over one of the climates; the twelve 'Chiefs (*nuqaba*) dominating the twelve signs of the Zodiac and the eight nobles (*nujaba*) corresponding to the eight heavenly spheres.

He initiated into the Divine mysteries by Khidr (or al-Khadir), the prophet. [wali] who initiates men directly into the spiritual life without their becoming attached to a regular initiatic chain. He received the mantle (Khirqah) of khidr from 'Ali bin Jami who himself directly received it from the 'green prophet' [Khidr]. Sayyid Husain Nasr, *Three Muslim Sages* (Harvart: Harvart University Press, 1964), pp. 92-96.

33. According to this philosophy the Creator and the creation are identical as opposed to the philosophy of *Wahdat al-Shuhud* expounded by Mujaddid Alf Thani (d. 1624 A.C.). For details vide Shah Wali Allah, "Maktubat al-Madani, "Tafhimat, vol. II. pp. 261-271.

34. Cf., Mazhar Baqa, op. cit. pp. 60-62.

35. *Al-Juz'al-Latif*, pp. 164-5.

36. *Tafhimat*, Vol. II, pp. 286-7; Muhammad Ishaq, *India's Contribution to the study of Hadith Literature* (Dhaka, 1955), P. 173.

37. Shah Wali Allah, *Muqaddimah Fath al-Rahman*, p.4.

38 Shah 'Abd al-'Aziz, *Malfuzat-i-Aziziyah* (Mirut: Mujtaba'i press, 1314 H.), P. 40. (henceforth the source is cited as *Malfuzat*).

39. *Tafhimat*, Vol. II, pp. 295-25.

40. *Ibid*. For details vide Manazir Ahsan Gilani. "Agush-i-Mawj Ka Ik Durr Tabindah" *al-Furqan*. pp.223-25

41 *Malfuzat*, p. 40; Manzir Amsan Gilani, *al-Furqan*, pp. 221-24.

42 *Malfuzat*. p.40; S.A.H. 'Ali Nadawi, op. cit. p. 127

These two Sentences indicate the date of death:

43. Muhammad Ishaq, op. cit., p. 174

44. *Abid*.

45. Mawlana Rahim Bakhsh Dihlawi, *hatat-i-Wali* (Lahore, 1972), pp, 296-317.

46. S.A.A. Rizvi, op. cit., p. 221

47 Mu'in al-Din Ahmad Khan, "*Shah Waliullar Samaj Samaskar Porikalpana*" (Bangali), *Bangla Academy Patrika*, Vol. II, Nos. 2-3 (Dhaka: Bangla Academy, 1365 B.E.), P.13., qoted Asaf, A.A. Fyzee" *Islamic Law and Thoelogy in India, Middle East Journal*, Nol, VII, No. 12 (Washington, 1954), pp. 163-83

48 Mazhar Baqa, op. cit. pp. 65-73.

49 Ghulam Husayn Jalbani mentions only the published works which are

more or less fifty. *Shah Wali Allah Ji Zindagi* (Hydrabad (pak. 1973), p. 38. Muhammad Manzur Nu'mani gives the names of 46 books. According to some men the number reaches hundreds; Manzur Nu'mani, *al-Furqan*, pp. 388-89. According to Hafiz Ibrahim Sialkuti, the number exceeded two hundred. Ibrahim Sialkuti, *Tarikh-i-ahl-i Hadith* (Lahore, 1953), p. 16.

50 The reason is that some of the books are still disputed. Some scholars include them while the others exclude them from the list. *Tuhfat al Muwahidin and al-Balagh al-Mubin* make an example in this regard.

51. It should not assume that *Fath al-Rahman* was the first translation of the Qur'an in Persian language. Several translations of the Qur'an in Persian had been made before hand. In this regard Shah Wali Allah writes in the preface to the *Fath al-Rahman*, "Divine inspiration prompted this humble self to examine the existing translations of the Qur'an. He began to examine them in order that he might introduce and popularize the best one among his contemporaries. Some translations were unacceptable long while some briefer ones corrupted the text. Finding none satisfactory he decided to make a new translation himself." Then he undertook to translate the Holy Qur'an in Persian. He finished the translation in 1151/1738. *Fath al-Rahman*, (Karachi and Lahore: Taj Company, n.d.), pp. alif-ba; cf. S. A.A. Rizvi, op. cit., pp. 230-31.

52. These are: 2:180; 10: 65; 22; 52; 28: 12; 29:2. *Al-Fawzal-Kabir*. (Lahore, n,d,), pp. 15-16.

53 It is the collection of the forty hadiths of the Prophet which envelop all most all the fundamentals of Islam. This is also called *chihl* Hadiths.

54. This risalah consists of those forty ahadit which, Shah Wali Allah claims, were either related to him by the Prophet in the dreams directly without any medium or had reached him from his father (through one medium) or else through more than one medium. Vide Mazhar Baqa, op cit. p. 66, f.n.2.

55. The book is an Arabic commentary of *al-Muwatta* of Imam Malik. The work intends to find a compromise between the differences of the Hanafi and the Shafi'i *madhhabs*. The author, therefore, explains the traditions contained in this book with a greater stress upon the rulings of Abu Hanifah and Shafi'i Little reference is made to the verdicts of the doctors of other *madhahib*.

56. It is also a persian commentary of *Muwatta* of Imam Malik. In this work the author desires to find a formula for making conciliation and compromise among the contentious schools of Sunni fiqh. For this purpose he wanted to select the traditions which would be acceptable to all the schools. He therefore, wrote a commentary on al Muwatta explaining the



Traditions by way of Ijtihad. It is a posthumous work of Shah Wali Allah. Five or six months after his death Muhamad Ashiq and Muhammad Amin edited it in Shawwal 1179 H.A.D. Muztar, p. 179.

57. The book is the author's *magnum opus*. The idea to write the book came to the Shah as a divine inspiration in Makkah and it was completed in Delhi at the urgent request of his disciple Shaykh Muhammad Ashiq. The work examines aspects of the development of Hahith, fiqh, Kalam and the rationale (israr) for the rules of the Shari'ah. In this book the dogmas of Islam are rationalised. This may also be called a book of Fiqh Hadith.

58. Cf., Mazhar Baqa, op. cit., p. 71

59. This is a special type of work in which the Shah has dealt with the problems of Ijtihad and Taqlid. It is a unique essay of the Shah on this specific subject. It is fully utilized in this dissertation.

60. The book is a history of the evolution of the four schools of law. The causes that led to their foundation are traced in the differences of opinion over various problems of Islamic law among the early Muslims.

61. It deals with the author's spiritual experiences that he had obtained through the visions at the holy precincts of Makkah and Madinah.

62. The book consists of two Parts. part one deals with the different sufi orders and part two desls with the asanid (chains of narrators) of the Hadiths and fiqh.

63. It is a Persian translation of *Nur al-Uyan fi Talkhis Siyar al-Amin wa al-Ma* mun of Ibn Sayyid al-Nas, cf., Mazhar Baqa, op. cit., p. 69.

64. It deals with the justification of the order of the succession of the first four Caliphs of the Prophet and a more detailed discussin of the superiority of the first two Caliphs and different forms of caliphate. There is no such a high standard work in entire history of Islamic literature like this one. Manzur Nu'mani, al-Furqan, p. 386.

65. Shah Abd al-'Aziz collected it. cf. Mazhar Baqa, op. cit. p. 70

66 These letters have been presented in a book form by Professor Khaliq Ahmad Nizami, named, *Shah Wali Allah ke siyasi Maktubat*.

67. Rahim Bakhsh, Hayat Wali op. cit. p. 371.

68. Cf. Mazhar Baqa, op. cit. p. 70

69. It deals with the methods of teaching and wirting. The author learnt it from his father. Risalah Danishmandi (Delhi, 1321 H.), p. 13

70. Cf., Mazhar Baqa, op. cit., p. 74; A.D. Maztar, op. cit., pp. 189-190 This view may not be correct, because these works seriously contradict the existing practice of the people of this subcontinent. So the 'Ulama of the conservative nature possibly, have cropped up with this idea, so that their conservatism may stand.



## CHAPTER II

# IJTIAHAD : MEANING, IMPLICATION AND BASES

### A. Philological Meaning

The Arabic word *Ijtihad* philologically means exertion, effort, striving, searching, endeavour and so on. It is derived from *jahd* or *juhd* (pl. *juhud*). *Ijtihad* and *tajahud* signify to exert utmost capacity (*al-was'* or *al-wus'*) and ability (*majhud*). These derivations are based on three letters, *jim-ha-dal*.<sup>1</sup> The word *Ijtihad* is made to the measure (*wazn*) of *bab Ifti'al*. *Ijthihad fi al-amr* means, one's exertion to the utmost in the affair. So philologically *Ijtihad* means to exert oneself to the utmost to attain an object involving hardship. It is all the same as to whether it is perceptive (*hissi*), as exerting one's utmost capacity in lifting a huge stone, or abstract (*ma'nawi*), as endeavouring oneself in extracting (*istikhrāj*) a rule (*hukm*) which may either be rational (*'aqli*) or-philological (*lughawi*) or else legal (*Shar'i*)<sup>2</sup>.

The word *jihad* another derivative from the same root: *jahd* or *juhd* also means an exertion or striving including waging war or giving battle when necessary. The word *jihad* and *mujahidah* are made to the measure (*wazn*) of *bab mufa'alah*, the characteristic of which is to indicate mutual confrontation. This is the nature of a battle.

Moreover, *Jihad* implies selfless fighting in the way of Allah for the cause of Islam. The meaning of *Jihad* is deeper and more exhausting than any other derivatives of the root, *jahd* or *juhd*. In Islamic terminology *jihad* means physical exertion or fighting in the way of Allah, and *Ijtihad* means mental and

intellectual exertion in search of a rule for the solution of a given problem in the light of the Qur'an and the Sunnah. The Qur'an is a guidance for human beings but sometimes it becomes difficult to elicit guidance under changing circumstances without having recourse to Ijtihad.

## B. Technical Meaning

Before we enter into the main theme let us see Shah Wali Allah's definition of Ijtihad. In his opinion, "The nature of Ijtihad as understood from the discourse of the learned doctors ('ulama') is to exhaust one's exertion in comprehending the derivative rules of Shari'ah by means of its detailed evidences (*adillah tafsiliyyah*)<sup>3</sup> whose genera being based on four categories of the primary sources, viz. the holy Book of Allah, the Sunah or the precept and examples of the holy Prophet (Sm), the Ijma'. (consensus of the Muslim Community) and the Qiyas (analogy)"<sup>4</sup>. In Another place the Shah defines Ijtihad in the following words: "In point of fact, the meaning of Ijtihad is that a *Mujtahid* must know a greater portion of the rules of the Islamic jurisprudence (fiqh) by means of the detailed evidences (*adillah tafsiliyya*) i.e., from the Book of Allah, the Sunnah of the holy Prophet (Sm), the Ijma and the Qiyas and understand that every rule of shari'ah is dependent on its evidence or connected with it, and one should acquire a firm opinion (*zann qawi*) regarding those evidences"<sup>5</sup>

If we look into the books on usul al fiqh of the past and present closely, we find various definitions of the different jurists on this *subject* which are relevant to our topic of discussion. Before analysing the definitions of Shah Wali Allah, we may consider those definitions and give brief notes on them. These may be classified into three groups.

1. The first group is represented by the following definitions:

(a) According to al-Baydawi, "Ijtihad means to exhaust [one's] exertion in understanding the rules (*ahkam*) of Shari'ah (canon-law).<sup>6</sup>

(b) Al-Shirazi says : "Ijtihad in the terminology of the Muslim jurists is to exhaust one's utmost capacity (wus') and to spend endeavour in understanding the rule of shari'ah"<sup>7</sup>

(c) According to al-Fatuhi : "[It is] the utmost exertion of a jurist to comprehend the rule of Shari'ah"<sup>8</sup>

(d) Al-Razi defines : "Ijtihad means to exert utmost capacity in considering a case in which one should not be blamed due to this exhaustive exertion therein."<sup>9</sup>

In this group of definitions emphasis has been given on the generalisation instead of specification, as for example it includes the quest of positive (*qat'i*) as well as hypothetical (*zanni*) rules in the sphere of Ijtihad. It includes also rules of shari'ah in general irrespective of its practical application (*'amali*) or doctrinal belief (*i'tiqadi*), and the Ijtihad of the jurists (*faqih*) and non jurists like muhaddithun and scholastic theologians (*muakalli'num*), etc. In short the legists belonging to this group hold a liberal view tending towards roominess in the sphere of Ijtihad.

2. The second group consists of the following legal theorists (usuliyyin):-

(a) According to al-Ghazali : "Ijtihad in the opinion of the learned doctors (*'ulama'*) is to make every effort by a mujtahid (who applies individual judgment) in seeking knowledge regarding the rules of shari'ah.<sup>10</sup> Then he says in this respect: "The full-fledged Ijtihad is to exert utmost capacity in searching something so as to feel oneself unable (*'ajz*) to proceed any further".<sup>11</sup> This definition of al-Ghazali is followed by *Ibn-al-Qudamah*.<sup>12</sup>

(b) 'Ala' al-Din al Bukhari says, "To make utmost effort in searching knowledge as to the rules of Shari'ah"<sup>13</sup>

In these definitions emphasis has been given on knowledge (*'ilm*) in general comprising opinion based knowledge (*zanni*) and positive one (*qat'i*). Here knowledge

means general, perception (*mutlaq al-idrak*). These are likewise liberal views similar to that which are entertained by the first group, for side tracking the term jurists (*faqih*) in their definitions.

3. The third group comprises following jurists:

(a) According to al-Amidi, "Ijtihad means exerting utmost extent in searching a hypothetical opinion (*al-zann*) in a matter as to the rules of shari'ah so that one may feel himself unable ('ajz) to search any further".<sup>14</sup>

(b) Ibn -al Hajib defines: "Exertion of a jurist to the utmost to form an opinion (*zann*) as to the rule of Shari'ah."<sup>15</sup>

(c) The definition of Muhibullah Bihari: "Ijtihad means a jurist's exertion to the utmost in adducing an opininon based knowledge as to the rule of Shari'ah."<sup>16</sup>

In the third category what is common to all theorists is the application of the terminology of *zann* (hypothetical opinion). To them the knowledge attained by Ijtihad is *zanni* <sup>17</sup> (not *qat'i*-decisive). In this group the definition of al-Amidi is also devoid of the condition of *faqih* (jurist) such as the definitions of the first group. So the above definitions are not beyond criticism in the eyes of a great number of jurists.

The above categorisation is due to the emphasis laid down by some on certain key words in their definitions that tend to distinguish one from another though ultimately all the definitions lead to the same objective of individual exertion as to the issues of Shari'ah.

In order to avoid the crux of the definitions cited above a modern scholar defines Ijtihad as follows: "Excercising utmost capacity by a jurist to form an opinion (*zann*) as to the practical or demonstrable ('amali) rule of Shari'ah in such a manner that he (jurist) feels himself quite unable ('ajz) to do excess therein"<sup>18</sup> To his opinion this definition is an exhaustive and logical one for the prerequisite key words and conditions

necessary for an exhaustive (*jami 'wa mani'*) definition are present there. According to this definition an Ijtihad should be formed by a faqih<sup>19</sup> not by such person who is not a *faqih*. Similarly the word '*hukm*' and *shari'* exclude exertion for attaining an object other than the rule of shari'ah. Condition of *zann* excludes exertion regarding the decisive rules of shari'ah. The stipulation of Shari'ah (canon-law) excludes those rules which are not pertaining to Shari'ah, as rational (*'aqli*) or perceptible (*hissi*) matters. The word 'practical' (*'amali*) excludes the doctrinal belief (*i'tiqadi*). But this may also be criticised, because doctrinal belief is also included in the scope of Ijtihad<sup>20</sup> according to some doctors.

Now we may consider the definitions presented by our eighteenth century Indian scholar, Shah Wali Allah.<sup>21</sup> Pleading for roominess (*was'*) in the arena of Ijtihad and liberating it from the stereotyped ideas of the jurists of the past, he defines Ijtihad without hedging it round by such stipulations that may lead to narrowness in the idea of Ijtihad. With this end in view Shah Wali Allah discards the terminology *fiqh* and *zann* from his definition of Ijtihad in *al-Iqd al Jid*.<sup>22</sup> This motive of the Shah is evident from the following discourse.

In a place of *Tafhimat* Shah Wali Allah observes that a *muhaddith* is not bound by the rule of Ijtihad deduced by another *mujtahid*, such as the dawn needs no lamp. His (*muhaddith*'s) ideal is divine revelation (*wahi*) and prophetic knowledge.<sup>23</sup> He compares a *muhaddith* with dawn (*al-ishbah*). The Shah does not subscribe to the old stereotyped idea of the *fiqh*. So a *muhaddith* may exercise Ijtihad as a *faqih* does.

Some legal theorists (*usuliyyun*) say that the term jurist (*faqih*) should be taken as understood (*muqaddar*) in the Shah's definition, because the Ijtihad of non jurist is not acceptable to them<sup>24</sup> This does not, however, seem to hold good, for such an understood implication, as a rule, is not tenable in matters of

definition. Definitions must be clear and self supported. Because the wording of the Shah applied herein is well thought of and categorical.

According to Shah Wali Allah the rules established by means of Ijtihad give the benefit of both opinion-based knowledge (*zann*) and positive knowledge (*'ilm qati'i*) regarding a rule of shari'ah. So he also does not mention the term *zann* in this definition. His stand-point is in consonance to those theorists who hold the idea that the knowledge achieved through Ijtihad is unconditional (*matlaq al-idrak*), which includes opinion based knowledge (*zanni*) as well as positive knowledge (*qat'i*).<sup>25</sup> This view is also concordant with that of Ibn Taymiyyah.<sup>26</sup>

Some ones say that the word *zann* is understood in the first definition of the Shah pointing to the second definition of the Shah in which the term *zann* is mentioned.<sup>27</sup>

The view of 'Allamah al-Shatibi accords with the above view of Shah Wali Allah. According to al-Shatibi, Ijtihad means to exert utmost endeavour to attain the knowledge (in general) of the rules of Shari'ah or to make congruity among them. He is of the opinion that the premises of fiqh consists of decisive knowledge. So the conclusion of fiqhi argumentation will also be decisive.<sup>28</sup>

Ibn al-Human (d.861H.) also applies Ijtihad both to decisive (*qat'i*) and opinion-based (*zanni*) knowledge.<sup>29</sup>

'Allamah Iqbal, a spiritual disciple of Shah Wali Allah says that Ijtihad means to exert with a view to form an independent judgement on a legal question. He does not like to present Ijtihad with such conditions which are well-nigh impossible of realization in a single individual. Such an attitude seems exceedingly strange in a system of law based mainly on the ground work provided by the Qur'an which embodies an essentially dynamic out-look on life.<sup>30</sup>



### C. An Important Note on a Wrong Idea about Ijtihad.

Shah Wali Allah rejects a wrong idea that Ijtihad should be formed in those issues in which no reply has been given or no effort has been made by the early doctors. He reiterates that it is to be understood from his definition that Ijtihad is wider than (i.e. not confined to) the exhaustive endeavour to comprehend the ruling (*hukm*) worked out by the earlier scholars, no matter whether such an endeavour leads to agreement or disagreement with those earlier scholars. It is wider also than (i.e. not limited by) the consideration whether this endeavour is made with the aid receive from some of the earlier scholars, in being informed of the formulation of the categories of the problems as well as deriving the sources of the judgements (*makhadh al-ahkam*) from detailed arguments, or without the help from them.

Then what is to be thought in the case of one who remains in agreement with his teacher (Shaykh) in greater number of problems and at the same time he knows the argument of every ruling (*hukm*), and he is satisfied with that argument, and stands on the insight of the affairs, that he is not a *mujtahid*, is a wrong assumption. In this way, the belief that a *mujtahid* is not to be found now-a-days, relying on the former supposition, is setting a corrupt belief upon another corrupt belief.<sup>31</sup>

Form the above discourse of Shah Wali Allah we may derive the following points:

1. It is not necessary for Ijtihad to make endeavour in understanding only such an issue, the answer of which has not yet been given by the early doctors. Rather if anyone makes one's endeavour in understanding a matter of shari'ah which has already been discussed by the early 'Ulama' it is all the same whether such an endeavour becomes in accordance with or contrary to those early doctors, is called Ijtihad.

2. It is also not the condition for Ijtihad to comprehend a rule of Sahri'ah by means of one's self utmost effort without the

aid of any early scholars, rather if it is achieved by the help of the early scholars it is nevertheless called Ijtihad.<sup>32</sup>

Here Shah Wali Allah likes to apprise his view point that this definition is not only applicable to the *mujtahid-i-mutlaq* (the absolute *mujtahid*) but it also applicable to the *mujtahid muntasib* (related or dependent *mujtahid*). So the existence of the *mujtahid* below the position of the *mujtahid-i-mutlaq*, according to Shah Wali Allah, is necessary in all ages.<sup>33</sup>

This reference rejects the view that after a certain period especially after the four Imams the door of Ijtihad is closed. 'Abd al-'Ali Bahr al-'Ulum says, "Some people emphatically say that after 'Allamah. Nasafi (d. 710 H.) the door of Ijtihad even *fi al-Madhab*) has been closed, and the absolute Ijtihad has terminated after the four Imams, i.e. after the third century Hijrah. So the Taqlid<sup>34</sup> (Imitation) of these Imams is obligatory. This kind of assertion can not be substantiated by convincing arguments.<sup>35</sup>

#### **D. Bases of Ijtihad.**

In the beginning *Ijtihad* was expressed by the terminology of *ra'y* (judgment based on one's rational opinion). As against *ra'y* the terminology of *'ilm* (knowledge) was used. It meant the knowledge of the Qur'an. In this context the meaning of Ijtihad was (in absence of the knowledge of hadith or the Qur'an) to give judgment by a person in accordance with his own opinion basing on the Qur'an or Hadith, though he could not present any particular verse or hadith in its support directly. In its wider sense, *ra'y* has been equated with Ijtihad.<sup>36</sup> At the same time *qiyas* and *ra'y* were considered one and the same in its formative phase. Thus it appears that the terms *ra'y*, *qiyas* and Ijtihad were to a great extent, synonymous words in the early period and even after al-Shafi'i. There had been an unmistakable lack of differentiation of meaning among the three terms. But what appears to be definite is the generic nature of *ra'y* whose variegated *forms constituted* *qiyas* and Ijtihad. They did not

distinguish one from the other and some times called *ra'y* as *istihasan*. In fact *ra'y* means to set the conjecture of harm (*harj*) or general expedience (*maslahah*) as the 'illah of the judgment (*hukm*) whereas *qiyas* means to deduce (*istinbat*) illah (connecting cause) from the testamentary (*mansus*) evidence upon which the judgment revolves. Imam Shafi'i has vehemently rejected this kind of *ra'y*<sup>37</sup> This meaning and idea has been adumbrated in a Hadith of the holy Prophet (sm). It is narrated that when the Prophet (sm) intended to send Mu'adh to al-Yaman as governor, he asked him as to how he would decide cases coming up before him. "I will decide matters according to the Book of Allah", said Mu'adh. But if you find no direction in the Book of Allah"? "Then I will act according to the Sunnah of the Prophet of Allah". "But if you fail to find out any guidance in the Sunnah"? said the Prophet (sm). "Then I will exert utmost to form my own judgment (*ajtahidu bi ra'i*) and act on that, I will spare no pains (*la alu*) in doing so," replied Mu'adh. Then the Prophet (sm) put his hand on his chest and said, "Praise be to Allah who successfully enabled the messenger of His Messenger to achieve a goal by which His Messenger is pleased"<sup>38</sup>

The idea of Ijtihad is also referred to the well-known verse of the Qur'an, "And those who exert in our cause we will certainly guide them to our (right) paths."<sup>29</sup> The verse indicates that as soon as one exerts with might and main with constancy and determination the mercy and light of Allah come to meet him.

The expression of Ijtihad occurs in another Hadith saying, "when the judge (hakim) gives a verdict after doing utmost effort, he deserves double reward in case he hits upon the truth and gets single reward, in case he happens to err, the reward he earns for making utmost effort"<sup>40</sup>

According to Imam Shafi'i permission of Ijtihad is well understood by the verse, "Then turn your face towards the sacred mosque and wherever you are , turn your faces towards

it".<sup>41</sup> Now whosoever is far away from the home of Allah i.e. Ka'bah or from Makkah is asked to turn his face towards Ka'bah. In facing Ka'bah one may attain accuracy or one may commit a mistake. He, however, remains unaware, but earns reward as he tries to be obedient to the command of Allah

This verse and a great many others obviously invite believers to use their intellect to correct their direction towards the Ka'bah when they are away in distant places of the world and thus acquit and discharge themselves of the obligation imposed on them by Allah.

Ijtihad, therefore, plays an important role in understanding the Qur'an and the Sunnah, in so far as their injunctions commandment and prohibitions are concerned. Sometimes these commandments are clear and sometimes they admit interpretation. A rational effort for understanding implicit decisions is, therefore, urged upon in verses: "*afala yatadabbarun al-Qur'an*, "do they not think deep in the Qur'an."<sup>42</sup> "Thus we explain the signs in detail to a people that understand,"<sup>43</sup> Surely in the night and day are the signs for men of understanding"<sup>44</sup>, and so on. These verses imbibe the intellect of man to take recourse to thinking (*tafakkur*) and reasoning. Hence, Ijtihad may be considered as making a possible endeavour to obtain a preferable judgment from a religiously indicated decision in a particular case.

The companions of the Prophet agreed upon the permissibility of Ijtihad. It was their practice that when a new incident appeared regarding *halal* and *haram* before them and they became unable to find any verse of the Qur'an or Sunnah of the Prophet relevant to the problem then they resorted to Ijtihad. This became customary during the Khulafa' Rashidin and in the age of the Sahabah<sup>45</sup>. It is reported from Qadi Shurayh that "Umar (R.) sent to him the following directive :

'If such a case is present before you the decision of which is present in the Book of Allah, then decide the case accordingly.

And if a case is present before you the decision of which is not available in the Book of Allah then look into the Sunnah of the Prophet (sm.) and give decision according to the Sunnah. If any problem is present before you and both the Book of Allah and the Sunnah are silent about it, then decide the matter according to the agreement and consensus of the earlier people. If a matter is present before you in which both the Book and the Sunnah are silent even none of the early generations (al-salaf) has replied about it, in such a situation you may adopt either of the following means, (a) resort to Ijtihad (individual judgment) and decide the case instantly, or (b) delay its implimentation for further deliberation. And I think the latter is better for you.<sup>46</sup>

It is reported that when Ibn 'Abbas was asked of a problem he replied, according to the verdict of the Qur'an. If it was not found in the Qur'an, he replied according to the decision of the Sunnah. If it was not found in the Qur'an or in the Sunnah, he replied to the qustion, on the basis of the decision of Abu Bakar (R.) and 'Umar (R). But when he did not find any precedence from them then he decided the problem on the basis of his individual opinion<sup>47</sup>.

It is narrated from 'Abd Allah Ibn 'Ata, 'Mujahid and Malik bin Anas (R.) that they used to say, "There is none, besides the Messenger of Allah(sm.) whose words would not be partly acceptable and partly unacceptable,<sup>48</sup> i.e. there is none besides the Prophet whose words are infallible." It implies that the scope of Ijtihad is never final, since beyond the Ijtihad of one there remains the scope for the Ijtihad of others. In a word, there is no finality in Ijtihad. Therefore, from a purely logical point of view, the very concept of Ijtihad implies that its door remains always open. Permission and continuaty of Ijtihad in the decision of the prior *mujtahid* is expressed here. Shah Wall Allah is a great exponent of this view.

So Ijtihad has got a strong base in the legal position of Islam. It is not something extraneous to Islam, rather it is an

integral part of Islamic process. Iqbal says, "It is the principle of movement in the structure and nature of Islam."<sup>49</sup>

### Note and Refereaces :

1. Abu'l Fadl Jamal al-Din Muhammad Ibn Manzur, *Lisan al-Arab*, vol.3, p.133; Hasan Ahmed Mar'i, *Al-Ijtihad fi al-Shari'ah al-Islamiyyah wa Buhuth Ukhra* (Riyad: Imam Muhammad Ibn Sa'ud Islamic University, 1404/1984), p. 11. (henceforth the source will be referred to as ISI)

2. *Ibid.*, Sayf al-Din abu'l Hasan Ali al-Amidi, *al-Ihkam fi usul al-Ahkam*, vol.3 (Riyad, al-Mua'assisah al-Nur, n.d.) p. 152; Abu Hamid Muhammad al-Ghazali, *Al-Mustasfa min'Ilm al-Usul*, Vol. 2 (Egypt: Amiriyyah press, 1324 H.), p 350. Wahbah al-Zuhayli, *ISl*. pp. 167-8.

3. *Adillah tafsiiliyyah* - detailed evidences are those evidences in which every evidence indicates to a particular rule, for example, establish salah; on the other hand, *adillah ijmaliiyah* are those general principles which constitute the subject matter of fiqh (Islamic jurisprudence), for example, basically every thing before ascribing to or attributing a condition or injuntion, is permissible (*mubah*) in Shariah. Mazhar Baqa, *Usul-i-Faiqh awr Shah Wali Allah* (Islamabad: Islamic Research Institute, 1973), pp. 424-5, f.n.3; Ali Hasbullah, *Usul al-Tashri'i al-Islami* (Egypt: Dar al-Ma'arif, 1183'19640, pp. 3-4.

4. Shah Wali Allah Muhaddith Dihlawi, *Iqd al-Jid fi Ahkam al Ijtihad wa al-Taqlid*, Urdu tr. by Muhammad Ahsan Siddiqi, *Suluk Marwarid*, (Delhi: Mujtaba i Press, 1344 H.). p. 2 (hereafter the source will be referred to as *Iqd al-Jid*. The text :

حقيقه الاجتهاد على مايفهم من كلام العلماء استفراغ الجهد فى ادراك الاحكام الشرعية الفرعية عن ادلتها التفصيليه الراجعة كلياتها الى اربعة اقسام الكتاب والسنة واجماع والقياس.

5. Shah Wali Allah, *Izalat al-Khafa'an Khilafat al-Khulafa*, Vol.1, Urdu tr. by Muhammad 'Abd al-Shukur, *Khashf al-Ghita 'an al-Sunnat al Bayda* (Karachi: Nur Muhammad Karkhana-i-kutub. n.d.), p. 21. (Hereafter the source will be referred to as *Izalat al-Khafa*). The text :

واصل معنى الاجتهاد ان است که جمله عظیمه از احکام فقه دانسته باشد بادلہ تفصیلہ از کتاب وسنۃ واجماع وقیاس وهر حکم رامنوط بدلیل او شناخه باشد وظن قومى بهمان دلیل حاصل کرده،

6. Jamal al-Din Abd al Rahim al-Asnawi, *Nihayat al-sul fi Sharh Minhaj al-Usul*, Vol. 3 (Egypt : al-Tawfiq al-Adabiyah Press, n.d.), p. 169. (Henceforth the source is referred to as *al-Asnawi*). Cf. ISI, p. 12.

الاجتهاد استفراغ المجهود فى درك الاحكام الشرعية

7 Abu Ishaq Ibrahim al-Shirazi, *al-Lam 'fi Usul al-Fiqh* (Egypt: Mustafa al-Babi Press, n.d.),p. 73

الاجتهاد فى عرف الفقهاء الاستفراغ الوسع وبذل المجهود فى طلب الحكم الشرعى.

8. Taqi al-Din Abu'I Baqa al-Fatuhi, *Sharh Kawkab al-Munir* (Egypt: al Sunnah al-Muhammadiyah Press, 1372 H.). p. 294

استفراغ الفقيه وسعه لدرك حكم.

9 *Al-Asnawi*, Vol.3,p.169; cf. ISI. p. 12

بانه استفراغ الوسع فى النظر فيما لا يلحقه فيه لوم مع استفراغ الوسع فيه.

10 Abu Hamid Muhammad *al-Ghazali, al-Mustasfa min 'Ilm al-Usul*, vol.2 (Egypt: Amiriyah press, 1324 H.), p. 250; cf. ISI-p 12.

11. *Ibid.*

12. Mawfiq al-Din Abd Allah Ibn al-Qudamah (d.620 A.H.).

13. 'Ala al-Din Abd al 'Aziz al-Bukhari, *Kashf al-Asrar Sharh Bazdawi vol-4* (Egypt 1394 H.), p. 14. The text :  
بزل المجهود فى طلب العلم باحكام الشرعية.

14. Sayf al-din al-Amidi, *al-Ihkam fi Usul al-Akham*, vol.4 (Riyad, Muassisah al-Nur, n.d.),p. 162. Ibn Budran defines Ijtihad in the same manner as al-Amidi does. See Ibn Budran Abd al-Qadir, *al-Madkhal ila Madhhab al-Imam Ahmad bin Hanbal* (Egypt: Muniriyah Printing House, n.d.), p. 189.The text :

اجتهاد استفراغ الوسع : فى طلب الظن بشئ من الاحكام الشرعية على وجه يجس من النفس العجز عن المزيديه

15. Abu Amr Ibn al-Hajib, Malikiite, *Mukhtasar al-Muntaha al Usul*, vol. 2 (Egypt : Bulaq, 1316, H, p. 289

استفراغ الفقيه الوسع لتحصيل الظن بحكم شرعى.

16 Muhibb Allah bin 'Abd al-Shakur al-Bihari, *Musallam al-Thubut*, vol.2 (Egypt: Amiriyah press, 1324H.). P.362

اجتهاد بزل الطاقة من الفقه فى تحصيل حكم ظنى شرعى.

17. There are some confusing words demanding clarification. They are as follows:

(i) *Zann* : The Jurists mean by *zann* the case in which the side of knowledge over balances ignorance, though without any evidence in its support.

(ii) *Taharri* : It means the determination of a fact, which it is impossible to ascertain by means of intuitive conviction. A person is said to resort to *taharri* when he turns to his heart, that is to his intuitive faculty in order to find the truth. Resort to this method is allowed when the thing desired to be known is involved in doubt (*shakk*), and other evidence is not available, since in such a case it is the only means of getting at the truth. N.P. Aghnides, *Mohammedan Theory of Finance* (Lahore: the premier Book House, 1961), p. 126.

(iii) *Shakk* (doubtful opinion). It is the state of mind in which knowledge and ignorance ('Ilm wa jihl) just balance each other. Ibid.

18. Hasan Ahmad Marb'i, ISI. p. 14

بزل الطاقة من الفقيه لتحصيل حكم ظنى شرعى عملى على وجه يحس من النفس العجز عن التريد فيه.

19 *Faqih* (jurist) is one who possesses such a mental faculty or talent (*malakah*) by means of which he becomes able to deduce the practical rules of Shari'ah from its derivative (detailed) evidences, *Ibid*. The *faqih* is synonymous to the term *mujtahid* and the term *fiqh* is to that of *Ijtihad*. Ibid. p. 168. In this situation the definitions of *Ijtihad* may be devoid of the stipulation of '*faqih*'; cf., '*Iqd al-Jid*, p. 6.

20 See *Infra*. p. .... f.n. 22

21 See *Supra* p. ....

22 '*Iqd al-Jid* p. 6; see *Supra* p. .... The Shah mention here the term '*ulama*' in place of *fuqaha*. The term '*ulama*' (learned doctors) bear wider connotation than the word *faqih* (jurist). The term '*ulama*' includes *fuqaha*, *muhaddithun* (doctors of Hadith), *mutakallimun* (scholastic theologians), *mujaddidum*



- (rejuvenators), etc. Each section of these categories has a share in Ijtihad even though partially.
23. *Tafhimat*, vol. ii, p. 159.
  24. Mazhar Baqa, *Usul-i-Fiqh awr Shah Wali Allah* (Islamabad: Islamic Research Institute, 1967), p. 425
  25. *Supra*, p. 32 cf., *al-Asnawi*; al-Razi, al-Baydawi, al-Shirazi, al-Fatuhi, etc. *Iqd al Jid*. p. 2.
  26. Husain Ahmad Mari'i op. cit., p. 23
  27. Mazhar Baqa, op. cit., p. 426
  28. Abu Ishaq Ibrahim al-Shatibi, *al-Muwafiqat*, vol.4 (Egypt: Maktabat al Tijariyah al-kubra, n.d.), p. 89; Khalid Mas'ud "*Ijtihad ka Tarikhi Pas Manzar*" *Fikr wa-Nazr*, vol. 15, Nos 7-8 (Islamabad: Islamic Research Institute, 1978), p. 34
  29. Wahbah al-Zuhaili, ISI, p. 168. He quotes from Muhammad Ibn Amir al-Hajj, *al-Taqrir wa al-Tahrir*. It is a Sharh of Kamal al-Din Muhammad Ibn Human's *al-Tahrir*. *al-Asnawi*, Vol.2,p.232. Ibn Human says: It (Ijtihad) means an exertion of a jurist to achieve the knowledde of the rule of Shari'ah pertaining either to rational (*'aqli*) or traditional (*naqli*) or else decisive (*qat'i*) or hypothetical (*zanni*)." His definition is wider than those of other jurists, for this definition includes both the rational (*aqli*) and traditional (*naqli*) questions and decisive and hypothetical knowledge. Ibn Amir al-Hajj, *al-Taqrir wa'l Tahrir*, vol.3 (Egypt: Bulaq press, n.d.), p. 291.
  30. 'Allamah Sir Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Sh. Muhammad Ashraf, 1965), pp. 148-149.
  31. *Iqd al-Jid* pp. 6-7, Shah Wali Allah, *Al-Musaffa (Muqaddimah)*, a persian commentary on *al-Muwatta* of Imam Malik. (Delhi: Kutab Khanah Rahimiyyah, 1346 H.), p.11; (henceforth the source will be cited as *al-Musaffa*.)
  32. cf., *al-Musaffa*, p. 11.
  33. Mazhar Baqa, op. cit. p. 426; Zakariya al-Barri ISI. p. 249. cf., Muhammad bin 'Ali al-Shawkani, *Irshad al-Fuhul* (Cairo: Muniriyan printing House, n.d.), pp. 235-238

34. *Taqlid* means to follow an authority or a man whose opinion is not considered as source of Shari'ah, without questioning or seeking argument therein. Muhammad Taqi 'Uthmani, *Taqlid Ki Shar'i Haythiyyat*. (Karachi: Maktaba Darul 'Ulum, 1396 H.), p. 14. For details vide chapter on 'Taqlid' of this Work.

35 ' Abd al-'Ali Bahr al-Ulum, *Fawatih al-Rahmut Sharh Musallam al-Thubut*, (Egypt: Bulaq, 1325 H.), p. 524.

36. Al-Shafi'i *al-Risalah*, ed. Ahmad Muhammad Shakir (Cairo: Mustafa al Babi Press, 1358/1940), p. 477.

37 Shah Wali Allah, *Hujjat Allah al-Balighah*, Urdu tr. by Abu Muhammad Abd al-Haq Haqqani, vol.1 (Duband, India: Kutub Khanah Rahimiyh, 1302H.), pp. 346-7. (Henceforth the source is referred to as Hujjat).

38. Abu Daud " Ijtihad al-Ray fi'l Qada", vol.2 (Cawnpore: al-Nami press, n.d.), p. 505. The Hadith is narrated from Abu Awn who narrated from al-Harith bin 'Amr, the nephaew of Mughirah bin Shu'bah, who narrated it from some people of Hims who were the companions of Mu'ahdh. *Ibid. Sunan al-Darmi*, Vol.1, (Dmascus: I'tidal press, 1349 H.), p. 60. As the Hadith is *mursal* (i.e. the connection with the Prophet is severed in the isnad) some questions arise here regarding genuineness and acceptability of the hadith. Abu 'Abd Allah al-Juzqani (d. 543 H.) quoted this hadith under the heading of *Mawdu'at* (spurious). According to him the hadith is rejected, for he tested its sanad (chain of narrators) but did not find any other sanad except this single one. This is narrated by a group of people only from Shu'bah. The narrator of the hadith Harith bin 'Amr is an unknown person (majhul) and the companions of al-Mu'adh, the inhabitants of Hims are also unknown person. This kind of isnad is not reliable. Al-Tirmidhi also narrates the hadith through the above *sanad* and says that its sanad is not *muttasil* (i.e. the connection with the Prophet is not well-linked in respect of *isnad*) Imam al-Bukhari says that the hadith is not genuine. Ibn Hazm ascribed this hadith to some *ahl al-ra'y* who sought Prophetic support for his liberal recourse to undisciplined *ra'y*. He also held that its isnad was not genuine because of the obscurity of a reporter. Some claim the unanimity of the *muhaddithun* of its rejection. The author of *al-Ta'liq al-Mahmud*, Fakhru-l-Hasan Ganguhi says that the hadith is narrated through several

sanads. It is narrated from 'Ibn Mas'ud, Zayd bin Thabit and Ibn Abbas (R). Al-Bayhaqi narrates them in his *Sunan*, cf. *Sunan Abu Da'ud*. p. 505 f.n. We may mention here the discourse of Mawlana Yusuf Binnuri in this respect for throwing further light on it. Mawlana Binnuri says that the narrator of the hadith, Harith bin 'Amr was not a man of unknown personality or unreliable narrator. A great many *muhaddithun* and *fuqaha* like Thawri, Abu Hanifah, etc. narrated the hadith from this Abu Awn. Many jurist *tabi'un* accepted this hadith as a reliable evidence. Some critics in order to prove the hadith weak, ascribe the companions of Mu'adh as unknown (*majhul*). But he refutes this ascription in the following manner:

1). The companions of Mu'adh were well-known for their piety and integrity. None of them was charged with unreliability (*jarh*). Khatib Baghdadi says that the reporting of Harith bin Amr from the companions of Mu'adh without mentioning their names is a proof of the fact that the hadith is mashur (famous) and its reporters (*rawis*) are numerous. Qadi Abu Bakr Ibn al-Arabi supports this view. The knowledge, accomplishments and piety of Mu'adh were recognized by all. So those qualities were obviously present in his companions. A man is known by his companions that he keeps.

2). Ibn Abu Khayshamah narrated, "I heard from Harith bin 'Amr, the nephew of Mughirah bin Shu'bah who narrated from the companions of the Prophet who narrated from Mu'adh bin Jabal. This is supported by Ibn 'Abd al Barr. This indicates that the companions of Mu'adh belonged to the companions of the Prophet (sm). The Sahabah (the companions of the Prophet) all were truthful and men of integrity. Moreover, the text of the hadith is well known (*mashur*) and well-circulated among the Muslim jurists who in turn frequently quote it in their books. Mursal hadith is acceptable to Shah Wali Allah with the following conditions:

If a mursal hadith is strengthened by a circumstantial evidence (*qarinah*), e.g. if it is supported by a *mawquf* or *da'if* (weak) hadith of a sahabah or by a mursal hadith of another narrator but the narrators of the two hadiths are different. Or it is supported by a great many scholars or *qiyas* (analogy), or with the hints of a verse or else when it becomes clear that the narrator did not related hadith, by way of *irsal* except from the reliable person. But the position of such a hadith will be less than the musnad hadith. cf., Hujjat,

pp. 338-9.

This view of Shah Wali Allah is in consonance to that of Imam al Shafii. cf. Mazhar Baqa, op. cit. , p. 210.

3) Khatib al Baghdadi has narrated this hadith through another *sanad*. This *sanad* runs thus:

Ubadah bin Nasi narrated from 'Abd al-Rahman bin Ghannam who reported it from Mu'adh. This *isnad* is *Muttasil* (closely linked). cf. Khalid Mas'ud, "Ijtihad ka Tarikhi pas Manzar" *Fikr-o-Nazr*, Voi. 15, Nos. 78, (Islamic Research Institute, January-February, 1978), pp. 32, 51-52 f.n.

39. 29:69

40. Imam al-Shafi'i, *al-Risalah*, (ed.) Ahmad Muhammad Shakir (Cairo: Mustafa al Babrial Halabi press, 1358/1940), p.404; Saghir Hasan Ma'sumi. "Ijtihad Through Fourteen centuries," *Islamic Studies*, Vol. XXI, No. 4 (Islamabad: the Islamic Research Institute, 1982), p. 39; N.P Aghnides, op. cit. pp. 73-74

41. 2: 144; 2: 150; Al-Shafi'i, op. cit. p. 487.

42. 4: 82; 47:24

43. 30:28

44. 3: 189

45. Wahbah al-zuhayli, ISI p. 170; vide Abu Muhammad 'Ali Ibn Hazm al Zahiri, *Al-Ihkam fi Usul al-Ahkam*, vol. 6 (Cairo : Asimah Press h.d.) p. 785.

46. Sunan al-Darmi, vol. 1 (Madinah Manawwarah, 1386 A.H.), p. 55. Muhammad Taqi 'Uthmani, *Taqid ki Shar'i Haythiyat* (Karachi: Darul 'Ulum Press, 1396 A.H.), p. 110

47. Ibid: Taqi Amini, op. cit., p. 111

48. Shah Wali Allah, *Hujjat Allah al-Baligha*, vol. 1, Urdu Tr. by Abu Muhammad 'Abd al-Haq Haqqani (Deoband: Kutub Khana Rahiyaimyah, 1302 H.), p. 353. (henceforth the source is referred to as *Hujjat*).

49 'Alamah Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: SH. Muhammad Ashraf, 1965), pp. 146-148.

## CHAPTER III

# THE NECESSITY OF IJTIHAD

### A. CONSIDERATION OF THE ADMISSIBILITY OF VACUUM IN THE CONTINUITY OF MUJTAHIDS

The author of *Musallam al-Thubut* is of the opinion that the vacuity of mujtahids at the time of appearance of the signs of Resurrection is admissible. There is no difference of opinion about it.<sup>1</sup> In respect of other occasions the '*ulama*' are divided in their opinions:

1. According to the Hanafites vacuity (*khuluw*) of *mujtahids* is admissible, this is also narrated from al-Ghazali and al-Qaffal.<sup>2</sup>

In the view of the Hanbalites vacuity of age from *mujtahid* is not permissible. To them existence of *mujtahid* in every age is necessary, because it is a collective obligatory duty (*fard kifayah*) of the Ummah.<sup>3</sup>

3. The Malikites are of the opinion that the existence of the *mujtahid fi'l madhhab* is necessary for all times.<sup>4</sup>

4. According to the main stream of the Shafi'ites the existence of the *mujtahid muntasib* (absolute but affiliated) is necessary for all ages.<sup>5</sup> Some Shafi'ite doctors, like al-Amidi, al-Razi, al-Rafi'i, etc. follow the Hanafites, and some others, like Abu Ishaq, Zabaydi, Ibn Daqiq al-Ad follow the Hanbalites in this issue.<sup>6</sup>

Thus, the upholders of the permissibility of the vacuity of *mujtahids* argue as follows:

1. The Prophet (sm.) said, "Islam began as stranger and it will eventually return to as it began."<sup>7</sup>

2. The saying of the Prophet, "Verily Allah will not seize learning from the servants by one stroke, rather He will seize learning by means of seizing the learned 'Ulama till there will remain no learned person; then people will make the ignorant (*jahil*) their leaders, they (people) will seek guidance from them, then they will give *fatawa* (verdict) without proper knowledge, and they themselves will go astray and make others go astray."<sup>8</sup> The opinion upholding improbability of vacuum in the continuity of *mujtahids* contradicts these *ahadith*.

The exponents of the non permissibility of vacuum in the succession of the *mujtahids* present the following arguments in their favour:

1. The Prophet (sm.) said, "A group of my Community will continue to demonstrate the truth till the coming of the decree of Allah and the appearance of Dajjal."<sup>9</sup> The theme of this Hadith does not stand the ground, if vacuity is admitted in the continuity of people understanding the truth.

2. Understanding of religion (*din*) and exercise of Ijtihad therein is a collective obligatory duty on the Community. If the entire Community fails to carry it on, it will incur sin. So vacuity of times from the *mujtahids* means the agreement of the Community on wrong. This is improbable since the Community will never be united upon a wrong course.

3. Ijtihad is the method of understanding the rules of Shari'ah. If vacuity is allowed, a deadlock in the rules of Shari'ah will be necessitated, which is nonsense.<sup>10</sup>

4. The verdicts mentioned above indicating non-existence of *mujtahids* mean the mujtahid mustaq. Not the muntasib or other categories of the mujtahids.

## **The view point of Shah Wali Allah**

According to Shah Wali Allah existence of the Mujtahid *mutlaq muntasib* (absolute but affiliated *mujtahid*) is necessary for all times. The view-points of Shah Wali Allah on this issue is

is in consonance to that of the main stream of the Shafi'ites who uphold the necessity of the existence of, at least, the mujtahid *mutlaq muntasib* for all ages.<sup>11</sup>

With reference to Jalal al-Din Suyuti Shah Wali Allah quotes the viewpoints of Ibn Salah, Nawawj and Rafi'i in this regard. The sum and substance of their ideas are as follows:

Since Ijtihad is a collective obligatory duty (*fard kifayah*), the existence of the *mujtahids* in every age is necessary. But the existence of the *Mujtahid mustaqi* (absolute mujtahid) is not necessary, because the existence of the *mujtahid mustaqill* has been disappeared from the beginning of the fourth century of Hijrah. Now-a-days the existence of the *mujtahid mustaqill* is not possible. The existence of the *mujtahid muntasib* will continue till the days of Resurrection, and in the eye of Shari'ah whose absence is not permissible, because the Ijtihad of this kind is a collective responsibility, if people of a given period show laxity or give it up totally, then all of them will be held responsible and become sinful and disobedient. The 'Ulama' have explained this matter very clearly. This obligation can not be fulfilled by the mujtahid muqayyid (conditional mujtahid).<sup>12</sup>

In the Musaffa the Shah gives emphasis on the necessity of Ijtihad and non-admissibility of the vacuity of the mujtahids. He says:

Ijtihad is a collective obligatory duty (*fard kifayah*) in every age. Ijtihad here does not mean the absolute one (*mustaqill*), like the Ijtihad of Imam al-Shafi'i, in understanding the integrity of narrators and their disparagements, and acquiring knowledge of Arabic language and the like, without being dependent on other persons. Similarly comprehension of the preceding Ijtihadi activities without the help of others, rather one should know the rules of Shari'ah from its details evidences, no matter even though the derivation and research methodology might be in accordance with the verdict of the Imam of a *madhhab*. It is said that Ijtihad in every age is *fard Kefayah* on

the ground that the occurrences of events are numerous and unlimited and comprehension of the rules of Allah is obligatory. The books and compendiums made in this connection are insufficient. Moreover, there are so many controversies in these connection that their solution is not passible without referring to the original evidences. But the paths of referring back to (original) *mujtahid* have almost been cut off. So the solution can not be achieved without having recourse to the rules of Ijtihad.<sup>13</sup>

This act of finding solutions is, no doubt, the functions of the *mujtahids*. So the vacuity of Mujtahid is not admissible. In short, Ijtihad is a legal necessity and therefore, no age would be without a Mujtahid. Moreover, there are certain qualifying conditions that must be met by the mujtahids, conditions like juridical expertise and erudition which transform Ijtihad into an essentially exclusive process.

Finally, the scholars of the Shari'ah probed most emphatically by means of both reason and revelation, that the need of Ijtihad would always exist. One of their major arguments in support of this is to point out, the texts of the sources of legislation are finite while the occurrence of events requiring legal rulings is continuous. Likewise it is essential that every age should have a mujtahid capable of interpreting the judgment of Allah,<sup>14</sup> and that, it is the responsibility of the 'Ummah to ensure that such scholars continue to be produced; otherwise the entire Ummah can be held responsible for having committed wrong.

Such group-responsibility is called *fard kifayah* in the terminology of Shari'ah, and it is possible that the claim that the door of Ijtihad had been closed was aided in part by the common perception that Ijtihad itself a *fard kifayah* and not an individual responsibility (*fard 'ayn*). That being the case, one must suppose, it is enough that a few specialized Shari'ah scholars undertake the responsibility for Ijtihad, and only those who are qualified may be held responsible.



This common perception however, represents a faulty understanding of the *fard kifayah*. In fact, *fard kifayah* is of more importance than the *fard'ayn* (individual duties), because, *fard kifayah* is the concern of the entire Ummah. The reason for this is that, the *fard kifayah* duties usually concern principles by which the Ummah proves to be the Ummah, contributes to civilization, and promotes humanity's mission as khalifah.

## **B. IS THE GATE OF IJTIHAD CLOSED?**

### **The General View of the Issue**

The world of Islam and Islamic scholarship are by now familiar with the proposition that, "The gate of Ijtihad in Islam is closed." Nobody quite knows when the gate of Ijtihad was closed or who, exactly closed it. There is no statement to be found anywhere by any one about the desirability or the necessity of such a closure, or of the fact of actually closing the gate, although one finds judgments by later writers, that the gate of Ijtihad has been closed.' Such judgments are passed on earlier stages of affairs and do not, so far as we can see, refer to any given statement about the closing of the gate of Ijtihad. It may, however, be safely concluded that whereas the gate of Ijtihad was never formally closed by any one that is to say, by any great authority in Islam, nevertheless a state of affairs had gradually but surely come to prevail in the Muslim world where thinking on the whole, and as a general rule got closed.

We shall find, among other's thing, so far as jurisprudence is concerned, the gate of Ijtihad was never formally closed but that a gradual contradiction of thinking occurred over a period of several centuries through various causes, and that, hence the treatment of Ijtihad in the juristic literature became rather formal even at the hand of liberal medieval thinkers.<sup>15</sup> Many Muslim Thinkers, like Mawlana Ashraf 'Ali Thanavi, entitled Hakim al-Ummah (the arbitrator of the community), were the propounders of the closure of the door of Ijtihad.

Controversy between the orthodoxy and rationalism was to some extent responsible for this situation. Certain consequences of the dogmatic attitudes propounded and accepted by the orthodoxy reacted on the bases of law. Since, for example, the orthodoxy first rejected the position of the Mu'tazilah on the role of reason ('aql) this anti-rational theological position affected their attitude to legal thought also and their standard works formally deny any role to reason in law-making. Even one of the most rational and liberal-minded representatives of the orthodoxy al-Amidi (d. 631 H.) states:

"You should know that there is no judge except God and there is no judgment but His. A necessary entailment of this proposition is that reason can not declare things to be good or bad, and that, it can not necessitate gratitude towards the bestower of bounties. There is, indeed, no rule before the revelation of the Shari'ah."<sup>16</sup>

This is the most fundamental point on which dogmatic theology and its formulations have entered into jurisprudence. The formalism of juristic thinking is due also to the formalism of the *kalam* (scholastic theology). Actually, the attempt to integrate jurisprudence into the larger field of Islamic thought is in itself not to be derided but, on the contrary, to be commended and encouraged.<sup>17</sup>

The contradiction in the Sunni system was another anomaly in the Islamic methodology. Ibn Taymiyah pointed out that one and the same person,

"when he is a theologian, believes in a rigorous determinism and impotency of the human will, but when he behaves as a *faqih* either in the capacity of a *qadi* or a *mufti*, he has to assume freedom and efficacy of the human will"<sup>18</sup> That is, according to the natural presumptions of law man is free and responsible but the Sunni *Kalam* considers man to be a divine automaton. There are also other inconsistencies, for example, the majority of the theologians even to this day hold that, in

matters of belief, particularly in the case of the existence of God and Muhammad's Prophethood, authority alone is insufficient; and that, this belief must be grounded by all Muslims in reason. But in the field of law they teach *taqlid* at least to the majority of Muslims and in practice to all Muslims. These contradictions become accentuated when Kalam theology enters into jurisprudence. Now it is the unanimous verdict of the Sunni jurists ever since the development of *Kalam* theology that reason has no role in law since it cannot declare things to be good or bad (*husn wa qubh*). There was no trace of it in the earliest schools of the Hijaz and 'Iraq.

This is, however, one side of the picture: We have to see the other side in order to convince ourselves that the picture drawn above of the complete inanity of human reason is not true. "The two pictures may be mutually contradictory; in fact, they are patently so and this is a result of the starkly formal character of this juristic literature. However, in the fact of the evidence, it is impossible to conclude that the "gate of Ijtihad was closed."

Ijtihad, then, is a necessity not only for an ordinary Muslim but even for the Prophet himself. So far as the ordinary Muslim is concerned it will be of varying qualities due to the capacities of people but the important point to note is that every body must 'exert himself'. There will be a very large number of people who are not able enough to do original thinking; but these also are capable and must exercise this capacity of reaching a broad judgment as to which of the two or more conflicting opinions is or is likely to be true.

Ijtihad then, is the necessary duty of a Muslim according to his capacity. Methodologically, devoid of an age from Ijtihad and the closure of its gate are neither permissible nor imaginable. The 'Ulama' have been divided into two groups in replying to this question:

1. The door of Ijtihad has been closed from long since. There is no existence of the *Mujtahid mullaq* (absolute mujtahid). This is narrated by Ibn Hamdan from some Imams of the *Hanbali madhhah*. Similar view has been narrated by al-Nawawi in his work *Sharh al-Muhadhdhab*.<sup>19</sup> Al-Rafi'i says, "As if the people of today are agreed upon the fact that there is no existence of the mujtahids to day." Al suyuti has mentioned this view.<sup>20</sup>

2. The door of Ijtihad will remain open for ever. This view has been narrated by numerous 'ulama; such as Ibn Hamdan, Ibn Muflah, Ibn 'Uqayl, the Hanbalites and Qadi 'Abd al-Wahhab al-Malikite.<sup>21</sup>

Claiming ijma on the continuation of Ijtihad they argue that, it will continue as it had been continued in the past. Allah says, "Think, people of understanding!" Here Allah has given a general command to people of understanding to think. There is no specification of time and place. Allah also says. "Consult them in the affairs"<sup>22</sup> Thinking and Consulatation can take place only in those things wherein a rule is arrived at through Ijtihad and not through revelation.<sup>22</sup> So Ijtihad is obligatory in every age. Indeed, the history of Islamic jurisprudence indicates that the procession and succession of the *mujtahidun* will never discontinue even though their number may be small such as the age of Ibn Taimiyah. <sup>23</sup>

The truth is that those who uphold the idea of the closure of the door of Ijtihad do not depend on the verses of the Qur'an or the Sunnah. They give verdict according to some jurists being possessed by passion and whim without following the writings of the 'ulama' regarding the rules and conditions on which Ijtihad is based. Then, they give *fatawa* of the closure of the door of Ijtihad, depending upon the formula of sadd al-dhara'i, prevention of the means of harm.<sup>24</sup>

This formula may, of course, be practised when it does not result in causing any greater harm, Indeed, the closing of the

door of Ijtihad will entail the greatest harm and prove more dangerous than the existence of a claimant possessed by passion, because he may be inclined to the truth in a golden moment but harm of the declaration of closing the gate of Ijtihad and its entailments may not be possible to avert. Its harm will effect not only an individual or individuals, rather may extend to the Ummah as a whole, nay to the very life blood of Islamic thought causing standstillness in the free thinking. It means to make Shari'ah narrow. This is contrary to the consensus of the Muslims of all ages.

Hayder Effendi, a modern Turkish Authority on fiqh, in his *Durar al-Hukkam*, says that the door of Ijtihad was not closed (*sadd*) by an external course but that it closed by itself through mere absence of mujtahids.<sup>25</sup> According to the theory, the *mujtahid* is not only free in his thinking but is bound to be so, and there is no a *priori* reason why a person today might not be able to combine in himself the necessary qualities required by the Muslim doctors themselves.

It is not, therefore, a matter of surprise to find among earlier doctors strong statements condemning the belief of the closure of the door and refuting it by theoretical arguments. For example, al-Zarkashi, expressing great astonishment that such a belief should have arisen at all, says:

"If the people, upholding the vacuity of *majtahids*, are thinking of their contemporaries, it is a fact that, they have had contemporaries like al-Qaffal, al-Ghazali, al-Razi, al-Rafi'i and others, all of whom have been full mujtahids; and if they mean by it that, their contemporaries are not endowed with and blessed by Allah with the same perfection, intellectual ability and power, or understanding, it is absurd and a sign of crass ignorance; finally, if they mean that the previous doctors had more facilities, while the later ones had more difficulties, in their way, it is again nonsense, for it does not require much understanding to see that Ijtihad for the later doctors

(*muta'khirin*) is easier than for the earlier doctors. Indeed, the commentaries on the Qur'an and the Sunnah have been compiled and multiplied to such an extent that the *mujtahid* of today has more materials for interpretation than he needs. Our early good generations (*al-Salaf*) undertook journey from one region to another region of the world for collection of even a single Hadith. There is no scope of opposing this fact for one who possesses a sound understanding and balanced reasoning.<sup>26</sup> Similar views have been expressed by al-Shafi'i and others.<sup>27</sup>

The verdict of Zarkashi gives emphasis on the truth that he who seeks the books of the later scholars gets many living examples of the absolute Ijtihad. For example, the books of Ibn Taimiyah, Ibn al-Qayyim al-Jawziyah, al-Ghazali, 'Izz al-Din bin 'Abd al-Salam, Ibn Daqid al-'Id, Ibn Hajr al-Asqalani, al-Suyuti and others who attained to the status of *mujtahid*, although they were men of those ages how could it be considered to be devoid of the *mujtahids*.<sup>28</sup>

Al-Shahrestani says: On the whole, we know very definitely that the incidents and events occurring in rituals and transactions (*'ibadat wa tasarrufat*) do not admit any limitation or number and we also know definitely that every incident is not supported by *nass* (revealed evidence) nor it is imaginable too. The *nusus* are limited and the incidents are unlimited object that can not be encompassed by the limited one. Indeed, Ijtihad and *qiyas* mean to take warning (*i'tibar*).<sup>29</sup> Eventually, there must be an Ijtihad against every new incident.<sup>30</sup>

Al-Shatibi says: "In fact, the incidents are unlimited, so it is not sound to put them under the limited evidences, so keeping the door of Ijtihad and *qiyas* open is necessary regarding those events the rules of which are not evident nor there is any Ijtihad of the earlier, ..... So Ijtihad is necessary for all ages."<sup>31</sup>

"Allamah al-Suyuti writes:

"The rank of Ijtihad is not impossible. It is surviving to this age. Its loss will result in the agreement of the Ummah on

falsehood and this is absurd."<sup>34</sup>

Shah Wali Allah's categorical comment on the issue is as follows:

Some Ijtihad-based problems are of such nature that their replies had not been given before, because when the occurrences are successive and consecutive and the door of Ijtihad is open, one may extract them (problems) either direct from the Book of Allah or the Sunnah of the Prophet or else from the verdicts of the earlier generations (*al-Salaf*) without depending on his Imam. But the number of this kind of problems becomes small in respect of those the replies of which had been given beforehand and this scholar is regarded as the *mujtahid muntasib* (affiliated *mujahid*).<sup>35</sup>

This discourse of the Shah indicates two things:

- (1) The door of Ijtihad is wide open till now;
- (2) The rank of the *mujtahid muntasib* will continue without stopping at any time or place.

How nice the verdict of some 'Ulama' like Ibn Taimiyah, al Suyuti and the propounders of al-Salafiyah al-Hadithiyah Movements is, when they admit of the continuation of openness of the door of Ijtihad for one who fulfils its conditions.<sup>34</sup>

The list of the traditional conditions, given in the section of the "conditions of Ijtihad," is no doubt seemingly imposing and, at first glance, seems difficult to fulfil. But when one closely examines this list and its contents, it does not seem to us an over requirement. Of course, for the earliest mujtahids in Islam these disciplines did not exist. There were very few materials that they had to study, because these materials did not exist in their days and, in fact, it is they and their successors who have created these materials. As history progresses and as the Muslims recede from the original sources, their task in one sense becomes weightier, because in addition to possessing the essential intellectual equipment, the historical materials that they

have to study increase every day.

When, therefore, Iqbal says "The theoretical possibility of these degree of Ijtihad (i.e., Ijtihad Mutlaq) is admitted by the Sunnah, but in practice it has always been denied ever since the establishment of the schools, inasmuch as the idea of complete Ijtihad is hedged round by conditions which are well-nigh impossible of realization in a single individual,"<sup>35</sup> he cannot be referring to any stated conditions by jurists but simply to their unwillingness to perform Ijtihad or to allow it to be performed. Theoretically speaking, the conditions of Ijtihad are not, after all, too difficult of attainment. The essential point, however, is that, in actual practice, as Iqbal tells us, this Ijtihad in practice has been the result not of externally over-strenuous qualifications but because of a desire to give permanence to the legal structure, once it was formulated and elaborated, in order to bring about and ensure unity and cohesiveness of the Muslim *Ummah*. Subsequently, as Iqbal tells us after the destruction of the Baghdad caliphate and the break-up of the political unity of the Muslim World, the religious leadership concentrated all the more on ensuring the unity of the *Ummah* through law and other institutions. Such unity has, no doubt, reigned in the Muslim World but at the cost of inner growth as the Muslim World suddenly discovered under the impact of the foreign powers during the eighteenth and nineteenth centuries. But at the theoretical level the door of Ijtihad has always remained open and no jurist has even closed it. To the causes enumerated by Iqbal must also be added the gradual deterioration of intellectual standards and the impoverishment of the intelligentsia of Islam over the years through a gradual narrowing down of the educational system.<sup>36</sup>



### C. Historical Survey of the Issue

Following the lead referred by Iqbal in his *Reconstruction*, it would be worthwhile here to undertake a brief historical survey of the issue.

In a recent publication, Taha al-Alwani remarks that death of Ibn Jarir al-Tabari being 310 H/922 A.C. marked the beginning of the crisis of fiqh, that continues even to this day. At that time Islamic fiqh took a very serious turn and near the end of the fourth Hijri century; its most negative effect began to be apparent. It was then that the thinking of scholars was seriously influenced by the apprehension that certain rules, through their citing permission obtained as the result of the misuse of fiqh, were exploiting the things held dear by the Ummah.<sup>37</sup>

Thus, it was out of fear that the idea of closing the door of Ijtihad was born. This essentially defensive notion was accomplished by stipulations to the effect that recourse might only be had to the Ijtihad made by the scholars of the earliest generations that no change could be made to the Ijtihad performed by them; and that, any opinion that did not conform to their opinions should be rejected.<sup>38</sup>

In this way, the sun set on true *ijtihad*, and in its place there comes mere *taqlid*, which allowed the state of legal and intellectual lassitude to become widespread. Moreover, the ties of the Ummah to the two sources of legislation, the Qur'an and the Sunnah, and to the other sources weakened and then fell away entirely. Finally, fiqhi studies were confined in a few specific text books, commentaries on those text books, commentaries on the commentaries and annotations on the commentaries on the commentaries.<sup>39</sup>

It will be worthwhile here to note that the attempts, to quell academic freedom in our history, and of course that includes freedom in the discipline of fiqh, may be traced back to quite an early date.

Perhaps the most wellknown of all such attempts was that of Abu Ja'far al-Mansur to compel all Muslims to follow the teachings of Imam Malik as recorded in *al Muwatta* and to prohibit them from Ijtihad outside of or in contradiction to that work.<sup>40</sup> A similar example may be had from the agreement between Harun al-Rashid and his chief legal advisor, the Qadi, Abu Yusuf that through limiting the appointments of judges and muftis to followers of Abu Hanifah, people would be compelled to follow the *Hanafi madhhab*. Likewise al-Mamun commanded that all his subjects adopt the teaching of the Mu'tazilah in matters of theology.

Proactively speaking, the result of all of these attempts was to prepare the Ummah, mentally and intellectually, for tacit acceptance of the doctrine that the door of Ijtihad had been closed.

The Ummah's intellectual decrepitude reached its lowest ebb under the 'Abbasid rulers in the fifth Hijri century when closure of the door of Ijtihad became a matter of state policy and academic doctrine. Indeed, this was tantamount to a proclamation of the Ummah's mental and intellectual inability to confront the factors of deterioration and decline. Finally, even though a few thinkers and *mujtahidum* did appear after this period, the general torpor in academic and fiqh circles had spread to such an extent that the efforts of individuals were no longer of use in preserving the Ummah from the elements of dissolution.

We may now proceed to study the question of Ijtihad as a question of methodology that was affected by positive and negative factors in its historical development.

Those who are opposed to an Islamic solution for contemporary society often charge that the door of Ijtihad was closed at a very early date in the history of Ummah and that Islam teaches that no one is to exercise Ijtihad on issues not dealt with by the early Imams. By further implication, the opposition

means to say that Islam is essentially a historical phenomenon whose days has come and gone. Thus they open the way for their own ideologies and pretensions. The question may be studied from the following viewpoints:

First, all Muslims, specialists and non specialists alike, agree that Ijtihad is a legal and vital necessity as well as a permanent religious responsibility. This understanding is substantiated by texts from the Qur'an and the Sunnah, and by reason and all of this is documented in those works on *usul al-fiqh* that deals with the subject of Ijtihad and its basis and importance.

Thus, the assertion that the door of Ijtihad is closed is one that is contrary to all of these sources of evidence. Indeed, never during any period of history was there a consensus among Muslims that this door had been closed. That was because Muslims knew that the guarantee for the preservation and continuation of the Shari'ah was in the vitality of the institution of Ijtihad, and the succession of qualified *mujtahidun*, one after another continued down through the ages.

Undoubtedly, Ijtihad as an institution suffered more from factors inhibiting the Muslim mind than it did from any imagined loss of the institution itself. There seemed to be no end to the kind of distorted thinking that produced the notions that the earlier generations had left nothing for the later ones, that Ijtihad should be avoided, because it included the possibility of error, and that the door of Ijtihad had to be closed so as to ensure that the unqualified persons do not enter it, and so on. For various reasons and with different intentions, some good and some not, rulers and scholars alike were encouraged to adopt the position that the door needed to be closed. The intention of the rulers in this regard was that the *Ummah* should not feel free to express opposing opinions, even in academic matters, lest the people make a habit of vocalizing all of their opinions, including political opinions. The point was finally reached where certain

rulers actually issued edicts banning even fully qualified scholars from the exercise of *Ijtihad* or the issuance of *fatawa* on particular questions unless their *Ijtihad* and *fatawa* were in agreement with the positions taken by the rulers on those issues.<sup>41</sup>

Secondly, the claim that the door of *Ijtihad* had been closed did never rely on authentic Shari'ah evidence or on the argument that there was no need for *Ijtihad*. Indeed, the scholars of the Shari'ah proved most emphatically, by means of both reason and revelation, that such need would always exist. One of the major arguments was to point out that the texts of the sources of legislation are finite while the occurrence of events requiring legal rulings is continuous.<sup>42</sup>

The concept of *Ijtihad* is similarly misunderstood. In the past, it was long supposed to be limited to the sphere of *fiqh*. And in the present, its meaning has been so diluted that it no longer retains its original Islamic content, but is used instead to denote any sort of intellectual activity, regardless of its nature of ideological base from which it is originated or toward which it is directed. To some contemporary writers *Ijtihad* means Westernization, to some modernization, to some enlightenment, secularism, atheism, change, even the nullification of all Shari'ah laws and freedom from the teachings of the source texts. All of this has contributed to making the question of whether or not the door of *Ijtihad* is still open a reason for the division of people into several groups.<sup>43</sup>

Thirdly, now it will be necessary to discuss *taqlid*, the opposite of *Ijtihad*. It is very interesting to note that almost none of the early scholars of *usul* attempted with any clarity to trace *taqlid* to a legitimizing source in the texts of the *Qur'an* and *hadith* and even to defend it or to consider it as an absolutely accepted Shari'ah concept. Rather the most that those early scholars had to say about *taqlid* was that it was a legal concession given on the basis of necessity.<sup>44</sup>

In the same way that the progress of Ijtihad was impeded in a gradual manner, until finally some of the later generations thought it to have been discontinued and its door closed, *taqlid* also came about gradually. Indeed, the Muslims did not take to *taqlid* until a number of factors, each of which took some time to develop had, materialized. Essentially, the reason for this was that *taqlid* was alien to the Muslim mind, far removed from the nature of the *tawhid* that enlightened that mind. Moreover, *taqlid* was unknown in the first two centuries of Islam.

In this regard Shah Wali Allah says that the people were not united on particular *madhhab* in the first and second centuries of Islam. The Shah quotes here Abu Talib al-Makki, the author of *Qut al-Qulub*, as saying: These books and compendiums are recent creations. Likewise, the same is true of quoting others as authorities, of issuing *fatawa* only on the basis of a single *madhhab* in regard to all that occurs, and of studying only that one school of *fiqh*. Certainly, that was not the way of the people in the first and second centuries."<sup>45</sup>

Nonetheless, circumstances were such that certain people supposed, albeit mistakenly, that *taqlid* was a solution. Thus, the process of Ijtihad was arrested. Amin al-Shinqiti observes that *taqlid* of a *madhhab*, in effect, is tantamount to disregarding the Qur'an and the Sunnah. He writes: "This disregard for the Qur'an and the Sunnah, and the belief that they may be dispensed with through recourse to the recorded *madhabib* followed by the great majority of Muslims is among the greatest of calamities ever to befall the Ummah in the centuries of its history."<sup>46</sup>

Now we can plausibly say that those who call for the door of Ijtihad to be closed needlessly backed themselves into a position for which there were alternatives. Likewise they acted in haste when, in actuality, there was ample time to decide the matter without rushing. But ultimately they closed what should have remained open and left open what should have been closed;

they closed the door of Ijtihad but left it open for *Kalam* (scholastic theology).

Actually, they thought that Ijtihad was a factor in the creation of divisions among Muslims. But that was true only in regard to the kind of Ijtihad exercised in the field of *'ilm al-kalam*. That is an area where all serious scholars agree that there is no scope for Ijtihad and where there is no plurality of what can be correct. In matters of belief the truth is exclusive; and the safest way to arrive at it is to take it directly from the Eternal and All-knowing. Indeed, it was the delving into matters of belief that caused schisms in the *Ummah* and destroyed its unity, so that, its entire being was weakened and its very existence threatened. The end result of this was that the *Ummah* split up into sects and sub-sects.<sup>47</sup>

The sects discussed by the Muslim doctors, all of these were sects that grew out of opinions on obscure points of theology, rather than as any result of Ijtihad exercised on issues of law and civilization.

Even the unfortunate events that took place at various times in our history, events which may have seemed to be the result of differences over points of *fiqh*; in fact, had it not been for the questions of theology that were at the crux of these disputes, the differences in *fiqh* would never, on their own, have kindled the flames of open discord.<sup>48</sup>

Now we safely say that when there is no revealed evidences nor any rational basis of the closure of the door of Ijtihad, we may naturally go back to the original command of openness of the door of Ijtihad for ever. The claim of the closure of the door of Ijtihad is but a void one and an argument weaker than the house of the spider if we realize.

## Notes and References :

1. Muhibb Allah Bihari : *Musallam al-Thubut*, vol. II (Egypt: al-Matha'ah al-Muniriyyah, Bulaq, 1325 H.), p. 399; Tahrir, p. 546. It is assumed that the existence of the mujtahid mutlaq (absolute mujtahid) has been ended

with the four Imams. After Nasafi the vacuity of age from the Mujtahids had become certain. But Bahr al-Ulaum criticizes it very vehemently and calls it following of passion and misguidance. 'Abd al-'Ali Bahr al-Ulum, *Fawatih Sharh Musallam*, Vol. II (Egypt: al-Matba'ah al-Muniriyyah, Bulaq, 1325 H.), P. 399.

2. Ibid., al-Ghazali, al-Mankhul, p. 484; cf. Hasan Ahamad Mai'i, ISI, p. 121.

3 Abu Zahrah, *Usul al-Fiqh* (Egypt: Dar al-Fikr al-'Arabi, 1377 H./1957 A. C.), P. 377; Taqi al-Din al-Fatuhi, *al-Kawkab al-Munir* (Qairo: al Sunnah al-Muhammadiyah Press, 1372, H.), p. 418; ISI p. 121.

4. Abu Zahrah, op. cit., p. 380

5. Cf., Mazhar Baqa, op cit., p. 463

6. *Al-Muwafiqat* by al-Shatibi, Vol. III, p. 172; Irshad p. 253.

7 Hasan Ahmad Mar'i ISI, p. 121.

8. The Hadith is narrated by Imam Ahmad in his Masnad; al-Bukhari and Muslim in their Sahih; al-Tirmidhi and Ibn Majah; ISI, p. 178.

9. The Hadith is narrated by al-Bukhari, Muslim, Tirmidhi Abu Dawud, Ahmad bin Hanbal and Hakim; cf. Hasan Ahmed Mar'i, ISI., p. 122.

10 Al-Amidi, op, cit., vol. IV, p. 234 cf., Hasan Mar'i, ISI, p. 122.

11 Vide Mazhar Baqa, op. cit. p. 463.

12 *Insaf*, p. 65. The position of the mujtahid muqayyid is below the position of the muntasib. For the details of the categories of the mutahids vide supra, the section of the classification of the mujtahids; cf. Jalal al-Din Suyuti, al-Radd ila man Akhlada fi al-Ard wa Jahila 'anna al-Ijtihad fi kulli 'Asr Fard.

13 Shah Wali Allah, *Muqaddimah Musaffa Sharh Muwatta*, vol. I (Delhi; Rahimiyah Library, 1346H.).

14. Vide Jalal-al-Din al-Suyuti, *Kitab al-Radd'ala man Akhlada ila al-Ard Wa jahila 'anna al-Ijtihad fi Kulli 'Asr Fard*, ed. al-Shaykh Khalil al-Mis (Beirut: Dar al-kutub al-'Ilmiyyab, 1403 H./1983 A.C.), Taha J.al- Alwani, op, cit. pp. 333-34.

15. Fazlur Rahman, *Islamic Methodology in History* (karachi: Central Institute of Islamic Research, 1965), p. 150

16. Al-Amidi, *Kitab al-Ihkam fi Usul al-Ahkam*, vol. I (Cairo, 1332/1914), p. 113, cf. Fazlur Rahman, op. cit., 151.

17. Fazlur Rhaman, op. cit., p. 152

- 18 Ibn Taymiyah, *Majmu'at al-Rasa'il al-Kubra*, vol. 1, (Cairo, 1323 H. pp.362
19. Muhiy al-Din al-Nawai, *Muqaddimah Sharh al-Muhadhdhab*, vol. 1 (Egypt: Matba'ah al-Asimah, n.d.), p. 80, (hence-forth it is cited as al Muhadhdhab).
- 20 Taqi al-Din al-Fatuhi, *al-Kawkab al-Munir* (Egypt: al-Matba'al al-Sunnah al-Muhammadiyah, 1372 H.), p. 417.
21. Ibid, p. 492. For the arguments of both the groups see the first portion of this section.
- 22 For further traditional evidences see Supra, sub-chapter Bases of Ijtihad, pp. 33-37
- 23 Ibn Badran, *al-Mudkhal ila Madhhah al-Imam Ahmad bin Hanbal* (Egypt: Dar al-Taba'ah al-Muniriyah, n.d.), p. 192
- 24 Sadd al-dhara'i means prevention from such a means leading to bad end.
- 25 Wahbah al-Zuhayli, ISI. p. 179; cf., Badr al-Din Ahammad al-Zarkashi, *al-Bahr al-Muhit*.
- 26 Wahbah al-Zuhayli, *IS*, Ip. 179; cf., Badr al-Din Muhammad al-Zarkashi *al-Bahr al-Muhit*. cf., Professor Muin Uddin Ahmad Khan, Shah Wali Allaha *Samaj Samaskar Parikalpana*, Bangla Academy Patrika, vol.II, Nos 2-3, Dhaka : Bangla Academy, 1965 B.E.), P. 18.
- 27 N.P. Aghnides, op. cit., p.120.
- 28 Wahbah al-Zuhayli, *ISI*., pp. 179-80; cf., Irshad al-Fuhul, p.224.
29. Allah says, "Take warning, then o ye with eyes (to see)", 59:2.
- 30 Al-Shahrastani, *Kitab al-Milal wa al-Nihal*, Vol. 1, pp. 199-205; ISI, p. 195.
31. Al-Shatibi, *al-Muwafiqat*, Vol.IV, P. 104.
- 34 Al-Suyuti, *Kitab al-Radd ala man Akhlada ila al-Ard wa Jahila anna at Ijtihad fi Kulli 'Asr Fard*, ed. al-Shayk Khalil al Mis (Beirut: Dar al-Kutub al-Ilmiyah, 1403 H. /1983 A.C.), p. 24
- 35 Insaf, pp. 60-61.
- 34 Abu Zahrah, Ibn Taimiyah, p. 451; Al-Suyuti, *al-Radd'ala man Akhlada ila al-Ard*, pp. 3-13; ISI, p. 195.
- 35 Cf. Fazlur Rahman, op. cit., pp. 171-72.
- 36 Ibid.
- 37 Ibn Jarir al-Tabari is regarded as the last of the acknowledged mujtahids.



cf., Taha J. al-'Alwani, "The Crisis in Fiqh and the Methodology of Ijtihad", *The American Journal of Islamic Social Sciences*, vol.8 No. 2, U.S.A. (1991), p. 317.

38. *Ibid.*, It would not be out of place here to mention that if the process of Ijtihad had included an inherent capacity to reform itself and provide the necessary safeguards against its being misused, and against the Muslim *mujtahids* being negatively influenced by outside pressures, the scholars of this time might have found another way out of the problem away other than closing of the door of Ijtihad and insisting on *taqlid*.

39. Contrast this sorry state of affairs with the way that the earliest scholars used to approach the business of fiqh. Muhammad Zahid al- Kawthari wrote, in al Bannuri's introduction to *Nasb al-Rayah* by al-Zayla'i, "The most obvious of the features that distinguished the legal school of Abu Hanifah was that it was a school of *Shura*, (mutual consultation)". It is reported that Abu Hanifah made his school of legal thought a school of *Shura* such that he never monopolized the process of Ijtihad to the exclusion of others. This was what his Ijtihad of the matter had led him to believe; and this was the way that he emphasized the good will for Allah, for the Prophet, and for all the Muslims. Thus he used to toss out questions one after another, and listen to what the others had to say about them, only then would be given his own opinion. Thereafter, they would debate back and forth, sometimes for as long as a month, before they would agree on something, and their decision would be recorded. Indeed, this was the method followed by most of the other great Imams of fiqh in the early stages. See Zayla'i, *Nasbal-Rayah*, 2nd. ed. (Beirut: Dar Ihya'al -Turath al-'Arabi, 1973), pp. 37-8.

40 *Insaf*, p. 24.

41 Taha J. al-'Alwani, "*The crisis in Fiqh and the Methodology of Ijtihad*", *The American Journal of Islamic Social Sciences*, vol. 8, No.2 U.S.A.,

42 *Ibid.*, pp. 333-4.

43 *Ibid.* .

44 Al-Shawkani, *al-Qawl al-Mufid fi Adillat al-Ijtihad wa al-Taqlid* (Cairo: Mustafa al-Babi al-Halabi, 1347 H.), p.3; cf., I.J. Al-'Alwani,

45. Shah Wali Allah, *Insaf fi Bayan Asbab al-Ikhtilaf*, urdu trans. by Muhammad Ahsan Siddiqi, named, *Kashshaf* (Delhi: Mujtaba'i press, 1909), p. 57, (henceforth the source is cited as *Insaf*).

46 Amin al-Shinqiti, *al-Qawl al-Sadid fi kashf haqiqat al-Taqlid* (Cairo: Dar al-Sahwah, 1985), p. 107; I. J. al-'Alwahi, *op. cit.*, p. 335.

47. I. J. al-'Atwani, *op cit.*, p. 337

48 *Ibid.*



## CHAPTER 1V

# IJTIHAD OF THE HOLY PROPHET

### A. General View of the Issue

The learned doctors differ in their opinions as to the admisibility of the Prophets's Ijtihad. Some of them oppose it on the rational basis and some others admit its admissibility for him (sm.). The upholders of the admissibility again differ as regards its practical occurrence from him, and those who support its practical occurrence, yet differ as regards his committing mistakes therein. Al-Shawkani says, "The 'Ulama' agreed upon that the Holy Prophet as well as all other Prophets was permitted to make Ijtihad in matters of warfare (*harb*) and worldly affairs and this had been occurred practically during the life times of the Prophet."<sup>1</sup>

It is understood from the above discourse of al-Shawkani and other legists that excrcise of Ijtihad in matters of warfare and worldly affairs is agreed upon. Many *Sahih* Hadiths indicate that the Prophet used to exercise Ijtihad in those matters in the face of difference of opinions. After a good deal of debate with his companions the truth became obvious, then the Prophet turned back from his opinion to the preponderant one.

In many cases, in the absence of revelations, the Prophet gave his dicision with Ijtihad and his decision became binding upon the followers. However, the Prophet made it clear that his decisions on purely technical matters requiring professional knowledge were not binding . In this regard the Prophet says, "I am only a human being, when I command you to do someting relating to your faith, you must take in and when I ask you to do something from my opinion, then mind that I am only a man."<sup>2</sup>

Secondly, Ijtihad in the judicial decision was also agreed upon. It is narrated from Umm Salmah that the Messenger of Allah said, "verily you argue one against other to get a decision from me. May be some of you argue better than his apponent and I decide the case accourding to what I hear. Now if I give you something which really belongs to his brother, verily I decide it for him a piece of hellfire."<sup>3</sup> Al-Asnair hass narrated the consensus of the Community on thıs and said "As for the judicial decision the exercise of Ijtihad is permissible."<sup>4</sup>

Thirdly, the issue of intervention of the Prophet in the pollination of the date Palm indicates the admissibility of Ijtihad of the Prophet.<sup>5</sup>

Fourthly, in order to encourage Ijtihad the Prophet consulted his companions in conformity with the Qur'anic injunction, " And consult them in affairs (of moment)."<sup>6</sup> The Prophet decided the case of the prisoners of Badr in accordance with the suggestion of Abu Bakr. He dug out trenches in the battle of Ahzab according to the advice of Salman Farsi and led compaigns and so on. Consultation and advice do not take place but in the Ijtihadi matters.

The Prophet was always desirous that his follower should develop insight and keen understanding in matters related to faith and thus earn their reward. He, therefore, said, "And when Allah intends good deeds from His servant He gives him good understanding concentering religion."<sup>7</sup>

It is to be noted that the Prophet preferred to consult his well known devotees, like the first four caliphs, `Ubaiy bin ka'ab, Mu'adh bin Jabal, Abu 'Ubydah and others. All these inicate that the Prophet was commissioned to make Ijtihad.

These were the agreed upon occasions, but there are some controversial matters regarding the Ijtihad of the Prophet.

According to the general jursists it is rationally permissible for the Prophet to make Ijtihad in such a matter where there is no textual verdict (*nass*). But some ones oppose

this view and say that Ijtihad of the Prophet in such a matter where there is no *nass* is not permissible rationally. They argue that practice on Ijtihad means the practice on assumption (*zann*), whereas the Prophet was able to act on the basis of conviction (*yaqin*), by waiting for *wahi*. So it is not admissible for the Prophet to make Ijtihad with having the possibility of revelation, because this means practice on assumption which is not permissible.<sup>8</sup>

Secondly, if Ijtihad were permissible for him, it would have been other than the *nass*, then it would have been proved hypothetical and its opposition would be permissible like the Ijtihad of ordinary person. This is not acceptable rationally.

These arguments are rejectable, because the Ijtihad of the ordinary mujtahid bears the possibility of error but in the Ijtihad of the prophet there is no possibility of error, for the Prophet never remained constant on it, Allah informed him of the error immediately. So his Ijtihad was as good as decisive like the *nass*, its opposition was liable to unlawful and unbelief.<sup>9</sup>

There is another type of controversy in this matter that whether the Prophet (sm) was duty-bound to make Ijtihad or not and even was Ijtihad permissible for him at all? There are as many as five opinions:

1. The Prophet was duty-bound to wait for revelation but if revelation would not come and there was the possibility of missing the occurrence without ruling, if delayed, for revelation (*wahi*), then he was bound to make Ijtihad. This is the preferable view of the Hanafites.<sup>10</sup> Then if he remained constant on this Ijtihad, its validity became decisive and its contradiction was unlawful, The Hanafites call it the silent *wahi*.<sup>11</sup> Ibn Amiral-Hajj writes that although some ones have mentioned that this waiting period was three days; but right verdict is that time changes in accordance with the change of incidents.<sup>12</sup>

2. The Prophet was duty-bound to make Ijtihad without waiting for revelation. This is the opinion of Imam Malik,

al-Shafi'i, Ahmad bin Hanbal, the general hadith folk (*ahl al-hadith*) and the majority of legists. This is also narrated by Abu Yusuf and al-Amidi.<sup>13</sup>

3. The Prophet was neither duty-bound to make Ijtihad nor was it even permissible for him. This is the opinion of a group of the Shafi'ites, like the Ash'arites and the majority of the Mu'tazilites.<sup>14</sup> This is also the *madhhab* of deniers of *qiyas* (analogy), like Zahirites and the Imamiyyah.<sup>15</sup>

4. Ijtihad was permissible for the Prophet in worldly affairs and warfares and not in religious matters and Shar'i affairs.<sup>16</sup>

5. It was permissible only in the cases of warfares.<sup>17</sup>

6. Juristic silence (*tawaqquf*) : The two Mu'tazilite doctors, Qadi'Abd al-Jabbar and Abu'I Hasayn al-Basri uphold this view and they are followed by al-Ghazali. They keep themselves silent regarding the obligation and option of the Prophet in making Ijtihad.<sup>18</sup> Al-Shawkani says that according to al-Shafi'i nothing can be said assertively regarding the permissibility and non-permissibility of the Ijtihad for the Prophet. Abu Bakr Baqillani and al-Ghazali accept this view.<sup>19</sup>

From the above discussion it is understood that the majority of the Sunni jurists, either conditionally or unconditionally, are in favour of the permissibility of Ijtihad for the Prophet.

## **B. Viewpoints of Shah Wali Allah**

With some reservations Shah Wali Allah follows the majority of the jurists regarding this issue. He says that the treasures of Islam narrated from the holy Prophet and recorded in the books of Hadith are of two kinds:

1. The sciences and wisdom that related to the Prophetic mission (*tabligh al-risalah*). In this respect Allah says, "So take what the Apostle assigns to you, and deny your selves that which he withholds from you".<sup>20</sup>

2. The affairs which are not related to the Prophetic mission.

The Sciences and wisdom related to the Prophetic mission are again of several categories:

i) The sciences related to the life Hereafter and the Resurrection (*'ulum al-ma'ad*) and the miraculous nature of the Angelic world (*'aja'ib al-malakut*). These are entirely based on revelation (*wahi*). There was no scope of Ijtihad on the part of the Prophet (sm.).

(ii) The ordinances related to the canonical laws of Islam, apprehension of religious observances (*'ibadat*), the process of social development or house-hold administration (*irtifaqat*), virtues of deeds and the feats of the doers; some of them are based on revelation and some others on Ijtihad.

iii) To this category belong the general salutariness (*masalih mutlaqah*) and independent judgment (*hukm mursalah*) of Shari'ah free from times and places, as the description of good and bad morals; these are mostly based on Ijtihad, i.e. Allah taught him (sm.) the laws of social life and its rights and duties, then the Prophet derived knowledges and its rationale from them and made them general principles.<sup>21</sup>

The sciences which are not related to the prophetic mission are again of two kinds:

i) Some of them depend on experience, such as the practice in medicine (*tibb*) or the saying of the Prophet, "you should keep very dark horse having white spot on its forehead."<sup>22</sup>

ii) Sometimes the Prophet did somethings out of habits not by way of *ibadat*, or he did them accidentally not intentionally, and so on.<sup>23</sup> This were Ijtihadi matters.

The sum and substance of the above discourse is that the matters related to the worldly affairs and the warfares are mostly based on Ijtihad and the matters related to religion (*din*),

excluding life Hereafter and the Angelic world are either based on Ijtihad or on revelation (*wahi*).

In the Hujjat Allah al-Balighah Shah Wali Allah says that there are two kinds of abrogation (*naskh*) : That some times the prophet would consider the pros and cons of the social salutariness or the aspects of obedience, and adjusted them properly with the rule of Shari'ah through Ijtihad. But Allah did not keep him constant on that Ijtihad, rather He would inform him (sm.) of the actual rule of that issue either by revealing a verse in accordance to the issue or by replacing the Ijtihad by another new one which became established in his mind. The example of the first category is that the Prophet commanded to perform Salah facing *Bayt al -Maqdis*, after this the verse of the Qur'an revealed abrogating this command. The example of the second aspect is that the Prophet prohibited preparation of *nabidh* except in the water-skin (*siqa*). But later on he said, "Do not drink intoxication liquor (*muskir*)". The reason was that, considering intoxication an implicit element the Prophet put the explicit cause, i.e. preparation of *nabidh* in the vessels having no pores in which intoxication (*sukr*) forms quickly, in its place. Then the Prophet changed his Ijtihad and fixed intoxication as the basis and cause of judgment (prohibition).<sup>24</sup> This is the example of changing the rule (*hukm*) with the change of times and places (i.e causes).<sup>25</sup>

It becomes evident from the above discussion that the Shah was the upholder of the admissibility of Ijtihad for the Prophet (sm.) in every matter and its practical occurrence (*wuqu'*) thereof, no matter it may either be in religious matter or worldly affairs or else in warfares. He further upholds that the Ijtihad (unchanged) of the Prophet stands in place of *wahi*, because Allah protected him from remaining firm on error.<sup>26</sup>

It is also reflected from the discourse of Shah Wali Allah that he advocates the permissibility of Ijtihad for the Prophet in general without waiting for revelation when an issue arises. This



view of the Shah is in consonance to the view of the Shafi'ites and general Hadith-folks. Here analogy (*qiyas*) demands this pursuit, because in the cases of difference arising between the Hanafites and the Shafi'ites the Shah generally follows the Shafi'its doctors.

The summary of the above discussion is that the prophet was rationally entitled to make Ijtihad and legally he was even duty-bound to exercise it. The Hanafites opine that the Prophet was to wait for *wahi* till the incident does not expire, are the *wahi* is debyed. delayed.

### **The Prophet exercised Ijtihad practically (fi'lan)**

The Prophet made Ijtihad and with few rare exceptins in all cases he arrived at right decision but in a few cases wherein the decisions turned out to be inappropriate were later on corrected. Yet Allah did not close the door of Ijtihad for him; rather left him alone to exercise Ijtihad. In such cases Allah sent revelation to him imforming him of the preferable rule; so that, he would not remain constant on error, and Allah expressed for him the truth and correctness of those Ijtihad. The companions learnt the rules of exercising Ijtihad from the Prophet and the nature and the methods of considering the salutariness of the creatures and the application of Shar'ah to the activities of the mankind. Nothing prevented them from this practiice. In doing so, if they hit the target, they were to be rewarded doubly and if they committed a mistake after endeavouring their utmost in understanding the truth, would get single reward. The companions got tranining in the hands of the Prophet Some of them exercised Ijtihad in the presence of the Prophet and some of them were sent to other places being appointed as the governors and made ijthihad according to the need of the situation. So Allah taught his companions to make it in his presence as well as in his absence. The mujtahids of this Community took it from these exalted compannions. They learnt and taught others till we got voluminous treasure of *fiqh* with which we feel proud of. These are the guide-lines from which

every human being who thinks about this blaze shari'ah, gets the lights of guidance.<sup>27</sup>

### C. Specific Circumstances of the Prophet's Ijtihad

Ijtihad takes place in the following cases :

1. To determine the intended meaning of the hypothetical statement (*nass zunni*), because it is fit for having variegated meanings.

2. To give preference of one evidence over another when contradiction arises.

3. To reach an unexpressed thing by means of expressed one, more precisely to know the unknown by means of the known (*ilhaq al-maskut bi'l mantuq*) because of the existence of a common meaning in between them i.e. *al-qiyas*.

4. Application of the general rules to a particular case.<sup>28</sup>

These are the four forms of Ijtihad. Qiyas (anology) is one of them. So every *qiyas* is Ijtihad but every Ijtihad is not *qiyas*. This is called the relation (*nisbah*) of '*amm wa khass min wajhin*. The Ijtihad of the general mujtahids includes all these forms but the Ijtihad of the holy prophet takes place only in the last two categories. The following discussion may clarify the modes of Prophet's Ijtihad.

As for the first mode, it means determination of meaning of the hypothetical statement through Ijtihad. This is not the occasion of the Prophet's Ijtihad; because the meaning of the textual statement was evident to him, for he was the recipient of revelation. Nothing was hidden on him. Some of them were clear from the beginning and some of them were being informed before practice.<sup>29</sup>

As regards the second mode, it means to give preference to one evidence over another when contradiction arises. This is also not the place of his Ijtihad. Contradiction (*ta'arud*) does not take place between the decisive matters, it takes place between hypothetical matters, either in respect of text (*matn*) or in the

chain of narrators (*sanad*). This takes place in case of *khabr ahad*.<sup>30</sup> So contradiction is not applicable to the Prophet, because he was the speaker of it, knew its meaning and significance well.<sup>31</sup>

Third mode means to reach at an unknown proposition by means of the known on the basis of a factor common between the two i.e. the known and unknown. This is called *qiyas*. The prophet was duty-bound to make Ijtihad like his Ummah.<sup>32</sup> Allah commands, "Take warning, O ! the people having eyes." The command was common to all. This is the place of Ijtihad of the Prophet.

The fourth mode indicates to place particulars under general rules and the derivatives under the general principles. this is also the place of the Prophet's Ijtihad.<sup>33</sup>

This last mode of Ijtihad has been clarified by Shah Wali Allah in the following words:

"It was not imperative for him (sm.) to deduce his Ijtihad only from the clear statements, rather in many cases Allah would inform him of the objective of Shari'ah and the rule of legislation, facilitation and judgements, then he would clarify these objectives perceived through revelation with the help of the rule.<sup>34</sup> This fourth form of Ijtihad was special for the Prophet, and his Ummah has no share therein."<sup>35</sup>

Clarifying the general principle the Shah says, one of these general principles is that when a revelation was sent regarding a rule of Shari'ah, he was informed of its rationale and cause, then he was apt to grasp the salutariness (*maslahah*) and set up a cause of it and based the rule on this cause. This was the *qiyas* of the Prophet. But the *qiyas* of his community is to find out a cause (*'illah*) from the original statement (*asl*) then to base the rule of the new incident on it.<sup>36</sup>

The gist of the issue is that, the Prophet made Ijtihad when he feared to miss the occasion if waited for Wahi. And his

Ijtihad was encompassed by revelation from every side. Wherein correction was needed Allah explained to him the purport of the fact therein. This was the practice of the Prophet to teach his Uommunity and the nature of deduction of the rules of Shari'ah. So none should refrain from it for fear of committing mistakes in it.

Although the authority of legislation was preserved for the Prophet alone, nevertheless the companions were accustomed to make Ijtihad. The Ijtihad of this period was not the source of legislation, rather revelation (*wahi*) was only source of law. This was the Muhammadiyah School, the `Ulama of this Community sucked from its flowing spring right from the date of the companions till the age of ours and it will continue upto the day of resurrection and they preserved its wide cloak which include the incidents and issues of every country for all ages.

### Notes and References :

1. Muhammd al-Shawkani, *Irshad al-Fuhul ila Tahqiq al-Haqq min 'Ilm al Usul* (Cairo: Dar al Taba'ah al-Muniriyyah, n.d.), p. 278; cf., *ISI.*, p. 34.

2. *Muslim*, 43, pp. 139-41; Masnad Imam Hanbal, p. 169; cf., M. S. Hasan Ma'sumi, *op. cit.*, p. 42.

3 Sahih Muslim, "*Kitab al-Aqdiyah*" vol. iii, p.3, cf., M. S. Hasan Ma'sumi, *op. cit.*, p. 42

4. Al-Subki, *al-Ibhaj*, vol. iii (Cairo, n.d.), p. 170; cf., *ISI.*, p. 35.

5 The fact of the matter is that when the Prophet migrated to Madinah he saw that people used to pollinate their date palms. The Prophet showed his repugnancy to this activity and prevented them from doing so. Due to giving up this practice production of date fruits decreased and quality became inferior. This was informed to the Prophet. Thereupon the Prophet said that they knew better worldly affairs and he was more qualified in religions matters. *ISI.*, p. 35; *Hujjat*, vol. i., p. 301

6. 3: 159

7. *Jami'al-Bukhari*, Vol. I (Karachi, 1961), p. 10

8. *Al-Mustasfa*, Vol. ii, p. 355, cf., *ISI.*, p. 36.

9. *Kashf al-Asrar*, Vol.iii, p. 209, cf., p. 37
10. *Taysir al-Tahrir*, Vol. IV, p. 183.
11. *Ibid.*, p. 184.
- 12 *Ibn Amir al-Hajj, al-Taqrir* vol. iii (Cairo: The Bulaq press, 131 H.),  
P. 294; (henceforth the source is cited as *al-Taqrir*).
- 13 Al-Amidi, *al-Ihkam*, vol. Iv (Riyad: Muassisah al-Nur, n.d), p. 165; *ISL.*, pp. 37-38.
- 14 Muhibb Allah al-Bihari, *Musallam al-Thubut*, Vol. II (Egypt: the Muniriyah press, 1325 H.), p. 366; *ISI*; p. 35.
- 15 Al-Shawkani, *Irshad*. p. 255. Imamiyyah means the twelver Shi'ahs.
- 16 *Taysir*, Vol. II. p. 185.
- 17 *Ibid.*
18. *ISL.*, p. 47
- 19 *Al-Shawkani*, op. cit., p. 256; cf., *mazhariaqa, op. cit.*, pp. 459-60.
- 20 59: 7; cf., 'Abd Allah Yusuf 'Ali, *The Holy Qur'an* (U.S.A.: Amanah corporations, 1983).
- 21 *Hujjat*, Vol 1, pp. 300-1.
22. *Ibid.*, pp. 301-2
- 23 *Ibid.*, p. 302. For details see *Hujjat*, Vol. 1, pp. 301-2.
- 24 *Hujjat*, Vol. I. pp. 289-90
- 25 *Ibid.*, p. 290.
- 26 *Ibid.*, p. 301.
27. *ISL.* p. 56.
- 28 *ISL.*, pp. 56-7
- 29 *Musallam*, Vol. II, p. 366; *ISL.*, p. 37.
- 30 It means a hadith narrated by a single rawi in any stage, vide *infra*. p.87
- 31 *Musallam*, Vol. II, p. 366; *ISL*; p. 37.
32. *ISL.*, p. 38.
33. *Ibid.*
- 34 *Hujjat.*, Vol. I, p. 301.
- 35 *Ibid.*, p. 254.
- 36 *Ibid.*, Vol. I, p. 255; *Mazher Baqa, op. cit.*, p. 463.



## CHAPTER V

# REQUISITE CONDITIONS OF THE ABSOLUTE MUJTAHID

*Shah Wali Allah Lays Down the Following Conditions as Requisite for Absolute Mujtahid:*

A Mujtahid must know as much of the Qur'an and the Sunnah as is relevant to the judgment involved and must know the occasions of the Ijma' (the consensus of the Muslim Ummah), the conditions of the *Qiyas* (analogy) and the method of arranging the premises properly in a case of analogy (*kayfiyat al-nazar*), the Arabic language, the abrogating ordinances (*nasikh*) and the abrogated ordinances of the Qur'an (*mansukh*) and the integrity of the narrators (*rawis*).<sup>1</sup> The knowledge of scholastic discourses (*al-kalam*) and jurisprudence (*fiqh*) is not necessary for it. The knowledge of fiqh (jurisprudence) is not a condition of Ijtihad.<sup>3</sup>

Shah Wali Allah buttresses these five requirements by quoting the opinion of Abu Muhammad al-Baghawi of Herat (d. 510/1117 or 516/1122). Al - Baghawi says:

A *mujtahid* is one who combines in himself the five categories of knowledge, (1) adequate knowledge of the Book of Allah, (2) the knowledge of the Sunnah of the Apostle of Allah (sm.), (3) the knowledge of the verdicts (*aqawil*) of the 'Ulama' of the early good generations<sup>4</sup> (*al-salaf*) concerning their consensus and their differences, (4) a sound knowledge of Arabic language and (5) the knowledge of analogical deduction (*al-qiyas*) which is the method of eliciting (istimbat) the rule (*hukm*) from the Qur'an and the Sunnah in such cases when the judgment is not available unequivocally in the statute (*nass*) of

the Qur'an or the Sunnah or the Ijma (consensus of the Ummah)<sup>5</sup>. From the above discourse we get five conditions which are pre-requisite for a full-fledged *mujtahid*. These are as follows:

- 1) The knowledge of the Qur'an.
- 2) The knowledge of the Sunnah of the Prophet (sm.)
- 3) The knowledge of Ijma (consensus of the community of Islam)
- 4) The knowledge of *Qiyas* (analogy).
- 5) The knowledge of Arabic language.

Each of these prerequisites is discussed below:

### **A. The knowledge of the Qur'an.**

It is necessary for a *mujtahid multaq* to know the following matters to a greater depth in respect of the knowledge of the Qur'an:

i) The knowledge of the verses of the Qur'an relevant to the judgements involved is essential.<sup>6</sup> The knowledge of the whole of the Qur'an as well as the knowledge of Quranic stories (*Qasas*), similitudes (*amthal*) is not necessary. It is also not the condition for a *mujtahid* to get those verses relevant to the rules of law by heart, rather the knowledge of the places where these verses occur is necessary; so that, in time of need he may refer to them.<sup>7</sup> According to al-Gahazali, al-Razi, Ibn al-'Arabi and many other legists (*usuliyyin*) the number of the verses relevant to the rules of Shari'ah is five hundred only.<sup>8</sup> But Ibn Daqiq al-'Id does not accord the view. He says that the legists who limit these verses only to five hundred intend to say that the indication (*dalalat*) of these five hundred verses on the rules of Shari'ah is direct and spontaneous not by way of indication.<sup>9</sup> Shah Wali Allah did not limit their number. It seems that he shows the opinion of the legists who maintain that sometimes the commands of Shari'ah may be deduced from the stories (*qasas*), similitudes (*amthal*), admonition (*tadhkirah*) and the like.



ii) The knowledge of the Book of Allah in respect of *Qir'at* (recitation) and *tafsir* (exegesis) is necessary for a mujtahid.<sup>10</sup> According to some jurists, philological and legal (*lughawi* and *Shar'i*) knowledge of the Qur'an is necessary for a mujtahid.<sup>11</sup>

iii) Knowledge of the abrogating (*nasikh*) and the abrogated (*mansukh*) verses is prerequisite for a *mujtahid*; so that, he should not depend on the abrogated verses inspite of being existent of the abrogating verse, lest his Ijtihad will be proved null and void. In this situation a mujtahid should have to take recourse to the books written on this subject, knowledge of the entire abrogating and abrogated verses and their memorization (*hifz*) is not the condition, rather it suffices for him to know that the verse or the hadith relevant to the occasion in which he gives *fatawa* is not abrogated but it is firm and established (*muhkam*).<sup>12</sup>

Shah Wali Allah draws the attention to the fixation of abrogating (*nasikh*) and abrogated (*mansukh*) verses. In this connection he states that the companions of the Prophet (sm.) and the generation following them (*tabi'i*) used the term *naskh* (abrogation), literally means the replacement of one thing by another. To the later scholars *naskh* amounted to the replacement of some ordinances containing in the verses by other verses. This may happen in two ways: firstly an ordinance remains in vogue for a certain period after which it is no longer valid. Secondly, the sense of an ordinance may change. The first category is related to the past Shari'ah and the second one is applicable to the Shari'ah Muhammadiyah. The latter occurs in the form of modification or restriction as occasion demands. Shah Wali Allah says that the second category of abrogation may occur at a time when in view of any public weal (*maslahah*) or social chaos a new ordinance is passed, the time comes when this situation becomes nonexistent, then the rule is changed.<sup>13</sup> According to the later scholars the number of abrogated verses extended to five hundred, but others believed that they were

unlimited. On the basis of Ibn al-Arabi's arguments, Shaykh Jalal al-Din al-Suyuti (d.911/1505) in his famous work *al-Itqan fi'Ulum al-Qur'an*, set the number of abrogated verses at twenty, but after a lengthy discussion the Shah concluded that the number of these verses was a mere five.<sup>14</sup>

iv) The knowledge of the divisions of the words or verses of the Book of Allah is necessary. The following is the summary of the divisions:

The summary expression (*mujmal*), the elucidated versions (*al-mufassar*), the particular (*khass*), the universal or general (*'amm*), the verses of established meaning (*al-muhkam*), the allegorical or mystical terms (*al-mutashabih*), clear or directly implied (*sarih*) metonymy or indirect declaration (*kinayah*), disapprovals (*al-karahiyah*) prohibition (*tahrim*), permissions (*ibahat*), approvals (*nudub*), obligations (*wujub*), absolute (*mutlaq*), limited (*al-muqayyid*), well expressed (*al-mubayyin*), etc.<sup>15</sup> There are also other words and verses which are not mentioned by the Shah, such as the common or collective term (*mushtarak*), interpreted or preferred (*mu'awwal*), clear statement (*nass*), hidden (*khafi*), ambiguous or difficult (*mushkil*) real or direct meaning (*haqiqat*) metaphor or figurative expression (*majaz*).<sup>16</sup>

There are other division of words which are called the method of deducing evidences, such as the word expressing literal meaning of the statement (*ibarat al-nass*), demonstrative meaning of the statement (*isharat al-nass*), indicated or implied meaning of the word (*dalalat al-nass*), and exigency or required meaning of the statement (*iqtida'al-nass*).<sup>17</sup>

The knowledge of some additional things are also necessary regarding the above mentioned divisions of the Qur'an. They are as follows :

(a) Derivative knowledge of these divisions.

(b) Knowledge of terminological or technical (*istilahi*) meaning of the divisions.

(c) Knowledge of the arrangement (*tartib*) of them i.e whichever meaning is preferable at the time of arising any contradiction.

(d) Knowledge of the rank and position of the divisions i.e., whichever of them is decisive (*qat'i*) and whichever is hypothetical (*zanni*) or whichever commands instant action and which compels to keep silent (*tawaqquf*), such as the verses of established meaning (*muhkam*) and allegorical sense respectively.<sup>18</sup>

The Muslim jurists have made the mode of extracting evidence and method of deduction easy by means of inventing these divisions without which the path of Ijtihad would have become troublesome.

## B. SUNNAH.

A *mujtahid* must know the following matters regarding the Sunnah:

(i) A *mujtahid* must know that much of the Sunnah which are relevant to the rules of Shari'ah and not the rest which contain stories (*qasas*) informations (*akhbar*), admonitions (*mawa'iz*) and the ordinances of the life hereafter (*akhirah*).<sup>19</sup>

According to the majority of the jurists the number of the hadith relevant to the rules of *shari'ah* (hukm al-Shari'ah) is three thousand.<sup>20</sup> Some jurists are of the opinion that the ahadith relevant to the commands of Shari'ah are five hundred only.<sup>21</sup>

Shah Wali Allah did not mention any number of the *ahadith* relevant to the commands of Shari'ah. He possibly adopted this tactic intentionally, because any categorical limitation may stand on the way of Ijtihad. One thing is remarkable here that the Shah maintains that both the aspects of shari'ah, i.e. '*amaliyyah* (functional) and '*itiqadiyyah* (pertaining to inner belief) come under the scope of Ijtihad. So the number of *ahadith* mentioned above may be applied to the functional (*amaliyyah*) side of Shari'ah. The number may

increase when Ijtihad is made in the case of *Shari'ah I'tiqadiyyah*. This idea of the Shah may be had from his very definition of Ijtihad where he simply mentions '*akkam al-Shari'ah*' and unlike other jurists he does not mention the stipulation of "*al-ahkam al-shari'ah al-amaliyyah*."

(ii) It is not the condition for a mujtahid to search the *ahadith* of different categories, rather it may suffice him to have with him any genuine (*Sahih*) book of tradition which includes all the Prophetic traditions connected with the rules of Shari'ah like the Sunan al-Tirmidhi, al-Nasa'i or Sunan of Abu Dawud, etc.<sup>23</sup>

(iii) Of the Sunnah a mujtahid must have the knowledge of *nasikh* (abrogating), *mansukh* (abrogated), particular (*khas*), the universal or general (*'amm*), the collective terms (*mushtarak*), the summary meanings (*mujmal*), the detailed expression (*mufassar*) the fundamental meanings (*al muhkam*), allegorical meanings (*mutashabih*), the disapproval (*karahiyah*), prohibition (*tahrim*), permission (*ibahah*), approval (*nudub*), obligation (*wujub*), absolute term (*mutlaq*), limited one (*muqayyid*). well described (*mubayyin*), etc.<sup>24</sup>

(iv) In addition to this a *mujtahid* must know the following divisions of the hadith: *Shahih* (sound), *da'if* (weak), *masnad*, *mutawatir*, *ahad*, *muttasil*, *munqata*, etc.<sup>25</sup>

(v) A *mujtahid* must know the conditions of the narrators (*ruwat*) disparaging their integrity or establishing it (*jarh wa ta'dil*).<sup>26</sup> But in respect of every *hadith* whose acceptability has been agreed upon by the earlier generations (*al-Salaf*) or integrity of whose has reached the position of *tawatur*;<sup>27</sup> then it is not condition for him to go into discussion regarding the integrity of the narrators.<sup>28</sup> And in respect of narrators, besides that category, their integrity must be discussed.<sup>29</sup> This is the view point of al-Ghazali and most of the jurists in this respect.

It is not necessary for a mujtahid to memorize the history and conditions of the narrators; rather he should be well acquainted with the books written on disparaging their (narrator's) integrity or establishing it (*jarh wa ta'dil*). Now-a-days it will suffice him to depend upon the scrutiny or integrity (*ta'dil*) of the reliable Imam well versed in the sciences of *hadith* literature, such as al-Bukhari, Muslim, al-Baghawi, Saghani, etc.<sup>30</sup>

(vi) A mujtahid must know the order of preference of the Sunnah over the Book of Allah and vice-versa, so much so that if he finds a Prophetic tradition not tallying with apparent meanings of the Qur'an, he should be guided rightly to find out its bearing (*mahmal or the cause of discrepancy*). Because the Sunnah is the interpretation of the Holy Qur'an and must not contradict it. But if there is a contradiction between the apparent meaning of the Sunnah and the Qur'an, then the mujtahid should find out a room for making congruity between them, remembering that the sunnah is explanatory to the Qur'an and not contradictory to it.<sup>31</sup>

(vii) To derive benefit from the Sunnah in the course of Ijtihad the knowledge of the times of the Prophet (sm.) is necessary. In this regard it is necessary to understand the political, social and living conditions of the Prophetic period, then in the light of these conditions it should be perceived that in what way and how far of the problems, and mores and habits of people had been taken by the Prophet during his time. In this regard Shah Wali Allah says, "If you like to go deep into the means of the Shari'ah, first you should study deeply the conditions of the earlier illiterate Arabs in which the Prophet (sm.) was sent and this condition is the raw materials of the Shari'ah of the Prophet."<sup>32</sup>

So in the formative period of Islamic law the illiterate Arabs were the grounds of experiments and their conditions were the background of Shari'ah. This is the special opinion of

the Shah regarding understanding the Sunnah. otherwise there is no major difference of opinion between the Shah and the majority of jurists regarding the knowledge of Sunnah. More precisely, Shah Wali Allah gives emphases on the customs and conventions of the Beduins prevalent in the time of the Prophet (sm.).

### C. IJMA'

The various views of the Muslim scholars concerning Ijma' may be summed up as follows:

In the terminology of the Muslim jurists, Ijma' means, a consensus of opinion of the Muslim mujtahids, or an agreement of them in a particular age on a question of Shari'ah.<sup>33</sup> This definition excludes both the non-Muslims and non-mujtahids. Shah Wali Allah defines Ijma' as follows: "You should not understand Ijma' as the agreement of the entire *mujtahids* of a given period, without the exception of any one on any issue; because this kind of Ijma' has not yet been held nor is rationally possible to be held. Rather it means that when the Khalifa after consulting with the men endowed with sound opinion (*dhawi al-ra'y*) or without consulting them, gives a ruling which passes through the country and gets established in the Muslim world".<sup>34</sup> Shah Wali Allah presents the following Hadith as the base of Ijma, "You must hold fast my sunnah (precept and example of the Prophet) and the Sunnah of the (four) rightly guided caliphs (*Khulafa rashidum*) after me".<sup>35</sup>

This meaning of Ijma' is the result of the high thinking and subtle art of Shah Wali Allah. The issues wherein the Ijma' is supposed to be held, are of this nature, i.e., the ruling issued by the Caliph and opposed by none, and it got established in the Muslim world and thereby became the authoritative source (*hujjah*) of Sahri'ah. The above definition indicates that the Shah recognizes only the Ijma of the Shahabah particularly of the *Khulafa Rashidun* (*khalifah khassah*). This restricted view of Shah Wali Allah is in consonance to that of Imam al-Shafi.<sup>36</sup>

In this respect Imam al-Shafi'i says, " none of the Sahabah or *tabi'i* or *tab'tabi'i* claims of holding any Ijma', on an issue except the personal obligation (*fara'id*) incumbent upon every Muslim, such as, the five times Salah and prohibition of wine, etc. But its existence is admitted by the way that the entire 'Ulama' of an age followed a rule that has been narrated from the earlier generation too in the likewise manher. This is technically called Ijma.'<sup>37</sup>

Since the Ijma is the third and an important source of Islamic law, so a *mujtahid* must know about this source of Shari'ah. The following is the view point of Shah Wali Allah regarding the knowledge of Ijma' required by a *mujtahid*.

i) A *mujtahid* must know the occasions or places (*mawaqi*) of the consensus of opinion of the Muslim Community.<sup>38</sup> This is the unanimous opinion of the Muslim jurists in this regard. According to Imam Shafi'i the knowledge of the places and occasions of contention (*mawaqi'al-khilaf*) is also necessary for him.<sup>39</sup>

ii) In a place quoting al-Baghawi, the Shah says that a *mujtahid* must know the verdicts (*aqawil*) of the learned doctors of the earlier generations (*al-Salaf*) in respect of their agreement and their difference of opinions so that the occasion of violating the Ijma' or choosing of a third opinion will not arise in a problem where two different opinions are present.<sup>40</sup>

iii) Quoting from vague? al-Anwar, the Shah presents another version which is slightly different from the above discourse. He writes that a *mujtahid* should know the verdicts (*aqawil*) of the 'Ulama amongst the companions (*Sahabah*) and of those who come after them in respect of their agreement and differences.<sup>41</sup>

(iv) But it is not necessary for a *mujtahid* to grasp all occasions or places of agreement and difference, rather it suffices him to know in respect of the issue whose judgement he would give that his verdict does not contradict the consensus (*ijma*) to

the extent that he would know that it conforms to the verdict of some earlier jurists (*mutaqaddimin*) or he would have a preponderant opinion to the effect that the earlier jurists did not have any say about it, rather it has cropped up at his time.<sup>42</sup>

v) A *mujtahid* should know that much of verdicts or opinions (*aqawil*) of the companions of the Prophet (sm.) and their followers (*tabi'i*) which are related to the ordinances of Shari'ah. And he should also know the greater option of the *fatwa* (legal opinion) of the jurist-consults of the Muslim community; so that, his judgment (*hukm*) does not stand opposed to their opinions so not as to violate the consensus of the Community (*ijma'al-ummah*).<sup>43</sup>

Here it is remarkable that al-Baghawi (whom Shah Wali Allah quotes in narrating the conditions of the *mujtahid*) ascribes the stipulations of the knowledge of the verdicts of the earlier generations (*aqawil al-Salaf*) recording their consensus (*ijma*) their differences of opinion (*ikhtilaf*), in place of the knowledge of the occasions of the consensus of opinion (*mawaqi' al-ijma'*) as one of the qualifications of a *mujtahid mutlaq*. This quotation clearly proves that the opinion of al-Baghawi and that of Shah Wali Allah is consistent to the *madhhab* of Imam Shafi'i who ascribes the necessity of the knowledge of difference of opinion along with the knowledge of agreement of the Salaf, for a *mujtahid*.

Furthermore, al-Baghawi did not mention the stipulation of the knowledge of *ijma'* but in its place he mentioned the word "*aqawil 'ulama' al-Salaf*" (the verdicts of the doctors of the earlier generations).<sup>44</sup> In another place quoting from al-Anwar, the Shah mentions the stipulation requiring '*Ulama' al-Sahabah wa man ba'dahum* (the verdicts of the learned doctors amongst the companions and those who follow them).<sup>45</sup> Possibly this is the special view of Shah Wali Allah that since the *Ijma'* holds simply a part of the opinions and verdicts of the Sahabah and the Salaf,<sup>46</sup> so the knowledge of the verdicts of the *Sahabah* and al-Salaf automatically include the knowledge of '*Ijma'*'.



Shah Wali Allah recognizes the *Ijma'* of the early good generations (*al-Salaf al-Salihin*) as positive and decisive (*qat'i*) evidence of Shari'ah. So he indicates to this view by quoting al-Baghawi, a Shafi'i doctor. In this regard the Shah's view-point is in consonance to that of al-Shafi'i.<sup>47</sup>

For further clarification, we may put it in the following manner: Shah Wali Allah mentions *aqawil al-Salaf* instead of '*ilm al-Ijma'*'. The Shah prefers to quote al-Baghawi and the author of *al-Anwar* in this regard to express the idea that the existence of *Ijma'* after Sahabah was practically closed though it is theoretically agreeable to him, So if there is any *Ijma'* it was held at that period. The knowledge of *Ijma'* is only a part of the knowledge of "*aqawil al Salaf* or *aqawil al-Sahabah* and *tabi'i*." In this respect, the Shah follows Imam Shafi'i and the doctors of his *madhhab*. So the Shah did not mention anywhere the words "*ilm al-Ijma'*" (the knowledge of *Ijma'*) but some where he says "*mawaqi' al-Ijma'*" and some where "*aqawil al-Salaf*" and some where else "*aqawil al-Sahabah* and *Tabi'i*".

## D. THE KNOWLEDGE OF QIYAS (ANALOGY)

*Qiyas* (analogy), the fourth source of the Muslim law is subsidiary to the Qur'an, Hadith and *Ijma'* (the consensus of opinion of the Muslim Ummah).

In the parlance of the Muslim law, *Qiyas* is "to extend (*ta'diyah*) the (Shari'ah) value (*hukm*) from the original case (*asl*) over to the subsidiary (*far'*), by reason of an effective cause (*'illah*) which is common to both cases and can not be understood from the expression (concerning the original case) alone";<sup>48</sup> or to measure a derivative matter (*far'*) with the original authority (*asl*) as to the value (*hukm*) and cause (*'illah*).<sup>49</sup> For example, if a certain act (*far'*) has been prohibited in the Qur'ah or the Sunnah, other acts (*far'*) common with that act in regard to the *'illah* for which the prohibition has been decreed, are likewise prohibited.

According to Shah Wali Allah, Qiyas is the method of eliciting (*istinbat*) judgment from the Qur'an and the Sunnah when the judgment is not available clearly in the statute (*nass*) of the Qur'an or the Sunnah or the Ijma (the consensus of opinion).<sup>50</sup> More precisely, Qiyas means to deduce an effective cause ('illah) from the unequivocal judgement (of Shari'ah) which constitutes the cardinal factor of the judgment (*hukm*).<sup>51</sup>

The following degree of knowledge is necessary for a *mujtahid* in this respect:

i) A *mujtahid* must know the condition of Qiyas and the method of arranging the premises properly in case of analogy (*kayfiat al-nazar*).<sup>52</sup>

ii) The knowledge of Qiyas jali and Qiyas khafi<sup>53</sup> and the method of distinguishing the sound (*sahih*) Qiyas from the perverted one (*fasid*) is also necessary for a *mujtahid*.<sup>54</sup>

iii) knowledge of the methods (*turuq*) of deduction (*istinbat*) and that the various view-point of making congruity between the two contradictory statements, is also necessary.<sup>55</sup>

iv) A *mujtahid* must know the principles of Qiyas with its various modes of deduction, i.e. its conditions, classifications, legal value (*hukm*), constituents (*arkan*), etc.<sup>59</sup>

v) *The knowledge of some principles for coining new laws:*

The knowledge of some additional principles of legislation which come in trains of Qiyas is also necessary for the *mujtahid*. Since the sphere of Ijtihad is very wide, one should fulfil all the requirements of the Shari'ah which are not met with clearly in the Qur'an or the Sunnah or Ijma or Qiyas. The great *mujtahids* of Islam have endeavoured to meet these demands by various methods. These are collectively called *turuq al-istidlal* (the methods of seeking argumentation).

The literal meaning of the term '*istidlal*' is to seek argumentation (*talab al-dalil*); and in the terminology of the

jurists, 'an argument apart from the clear statements of the Qur'an, the Sunnah the *ijma*' and the *Qiyas* (analogy).<sup>57</sup>

Sometimes such a new occurrence takes place that its ruling (*hukm*) may not be found in the four fundamentals of Shari'ah, then a *mujtahid* takes the help of some additional principles, such as *al-istihsan*, *al-masalih al-mursalah*, *al-istishab*, *istiqra*, previous dispensations, customs and usages (*al-'urf wa'l 'adat*) and so on. These are not the unaminously acceptable principles. The Muslim jurists differ regarding their acceptability and validity as the evidences of Shari'ah. The different jurists have their own view-points in this respect. Shah Wali Allah has discussed these principles in the different parts of his various works. They need to be briefly discussed.

### a) Istihsan (juristic preference)

The word *istihsan* literally means to hold some thing for the good, right or considering a thing to be good of preferring it.<sup>58</sup> It technically denotes "the abandonment of the opinion to which reasoning by analogy (*qiyas*) would lead, in favour of a different opinion supported by stronger evidence."<sup>59</sup> Such a departure from *qiyas jali* may be based on evidence found in the Sunnah or the *ijma*, or necessity (*darurah*), or on what the upholders of *qiyas* claim to be another kind of *qiyas (khafi)* which, though it does not so readily occur to the mind as the first *qiyas*, in reality is stronger than it.<sup>60</sup> Departure from *qiyas* in the three former cases is held by all four schools to be legitimate. For example, *bay'salam* (sale of future goods for present cash) and location (*ijarah*),<sup>61</sup> though both contrary to *qiyas*, being sales of non-existing goods, have been justified by the Sunnah; or *istisna'* (placing an order with an artisan), although contrary to *qiyas* for similar reasons, has been justified by *ijma'*,<sup>62</sup>

However, departure from one *qiyas* in favour of another *qiyas*, that is, in favour of *istihsan*, has been a subject of hot controversy and bitter attack; especially on the part of al-Shafi'i and his disciples. It is related of Shafi'i that he exaggerated in

denying *istihsan*, for he said, "He who uses *istihsan* places himself in the place of Allah as legislator.<sup>63</sup> It means 'to gratify senses' (*istihsan taladhdhudh*),<sup>64</sup> and the opinion based on *istihsan* is null and void.<sup>65</sup> Al-Shafi'i wrote a chapter in *Kitab al-Umm* on the rejection (*ibtal*) of *istihsan* and blames it in many places.

The Hanafi doctors have strongly denied this sort of accusation. They hold that, "When two *qiyases* oppose each other one of them must be preferred, when a preference is possible, and the *qiyas* preferred is called *istihsan* in order to indicate that it is the better fitted of the two.<sup>66</sup> Finally, *istihsan* is the very name of a non-apparent *qiyas* (*qiyas khafi*). So Imam Abu Hanifah uses *istihsan* profusely but he does not use *maslahah* nor *istishab* in this regard.

The expressions found in the discourse of Shah Wali Allah prove that he upholds the opinion of Imam al-Shafi'i in this regard. Like Imam Shafi'i he criticises *istihsan* so vehemently that he calls it some times the cause of 'alteration' (*tahrif*) in religion, and some times the cause of 'slander' (*iftara*).<sup>67</sup> Criticising *istihsan* on behalf of Imam Shafi'i, Shah Wali Allah says that, some jurists confuse *ra'y* (rational opinion), which has no place in Shari'ah, with *qiyas* (analogy) which is recognized by Shari'ah. They do not distinguish one from other. Sometimes they call *ra'y istihsan*. In fact, *ra'y* means to set up presumption of harm (*haraj*) or common weal (*maslahah*) as the '*illah*' (effective cause) of rule (*hukm*), whereas *qiyas* means to deduce '*illah*' from the testamentary evidence (*al-hukm al-mansus*) and this ('*illah*') constitutes the basis of the rule. Imam shafi'i vehemently rejects this kind of *ra'y*. He says that he who uses *istihsan* as evidence he intends to become a law giver (*shari*).<sup>68</sup> Due to this view-point Shah Wali Allah does not mention *istihsan* as the condition of Ijtihad.

## **b) Istislah or Masalih Mursalah**

It consists in prohibiting or permitting a thing simply because it serves a "useful purpose" or public good (*maslahah*),

although there is expressed evidence in the revealed sources to support such action.<sup>69</sup> *Istislah*, has been called by some one, "independent deduction" (*istidlal mursal*), or simply "deduction" (*istidlal*). Al-Ghazali defines *istislah* as establishment of a legal principle (*hukm*) for which there is no evidence in the sources, but which is recommended by reason as advantageous.<sup>70</sup> According to al-Khawarizimi, "useful purpose" (*maslahah*) means the protection and preservation of the objects (*maqasid*) of the Shari'ah by warding off mischief from humanity.<sup>71</sup>

This is called Maliki system of deduction; because Imam Malik uses this principle abundantly irrespective of any limitation. Other schools prohibit its use.<sup>72</sup> But the fact is that other schools have used it with restriction and limitation.

Imam Shafi'i criticises *istihsan* and *masalih mursalah* vehemently and al-Ghazali follows suit.<sup>73</sup> It should be remembered that according to Imam Shaif'i *istihsan* and *masalih mursalah* are the same thing.<sup>74</sup>

Imam Malik and Ahmad bin Hanbal accept it as the method of deducing evidence.

## The View of Shah Wali Allah in this Respect

Like Imam Shafi'i, Shah Wali Allah does not accept both *masalih mursalah* and *istihsan* as these principles are invented to gratify passion, without any evidence.<sup>75</sup> He further says, "*istihsan* is one of the causes of alteration (*tahrif*) in religion. Its nature is that one understands by crooked means some secrets (*asrar*) of Shari'ah, then he prescribes it as law to the people whenever he thinks it exigent or beneficial (*maslahah*), by applying his own reason (*'aql*).<sup>76</sup> This is the spear with which the Shah targets both *istihsan* and *istislah* at the same time.

According to Shah Wali Allah the principle of *masalih mursalah* and deduction of rule (*hukm*) with *masalih mursalah* were special only for the Prophet (sm.) and the function of the

Ummah is to deduce *hukm* by means of effective cause (*'illah jami'ah*) not by means of *maslahah*. So no *mujtahid* is permitted to deduce *hukm* by means of *maslahah* or *istihsan*.<sup>77</sup>

It may be noted here that due to his criticism against *intihsan* and *istislah*,<sup>78</sup> some doctors blame Shah Wali Allah, notwithstanding their enthusiasm to prove the Shah as a Hanafi in respect of madhhab.<sup>79</sup> This is unjustified and contrary to objective judgment.

### **c) Istishab (relational judgement)**

The principle of *istishab* has been introduced by al-Shafi'i. Its literal meaning is "continuation of companionship" (*Istimrar al-Sahbah*) or "accompanying" (*mushabah*).<sup>80</sup> In the terminology of Islamic jurisprudence it means, 'When the existence of a thing has been once established by evidence, even though latterly some doubt should arise as to its continuance in existence, it is still considered to exist.'<sup>81</sup> According to al-Shawkani, "Continuation of a thing until some changing elements of it are found,<sup>82</sup> it is called *istishab al-hal*, if the present is judged according to the past, and *istishab al-madi*, if the converse is the case.'<sup>83</sup>

This principle is admitted by Abu Hanifah also, but only to refute an assertion (*da'wa*), that is, as a instrument of defence (*daff' da'wa*) and not to establish a new claim. According to all Shafi'i, however, it may be used for both the purposes of defence and assertion. The Hanafites hold that the establishment of the existence of a fact is no evidence of its continuance in existence and therefore, they say, the continuance of the Muslim law after the death of Muhammad (sm.) does not rest on the principle of *istishab*, as the Shafi'ites claim, but on the basis of the hadith that the Muslim Shari'ah will never be abrogated.<sup>84</sup>

The principle of *istishab* is a limited principle. It only applies to cases where there is no evidence obtainable, and at best, it establishes the continuance of a fact in existence, which was already proved to have existed.<sup>85</sup> Nevertheless, in the

extended scope given to it by al-Shafi'i, it requires considerable importance, especially in questions of fiqh.

The issue of a missing person (*al-mafqud*) may be cited as the example of *istishab*. The missing person (*al-mafqud*) is treated as living in case of his own property until either his death news is established or the judge (*qadi*) declares him dead. But in this situation he will not get any new right i.e. inheritance. For example, if any person dies during this uncertain period the missing person will not receive any share (*tarkah*) of his (dead testator's) property instead of his being an inheritor of him. The share of the missing person will remain suspended (*mawquf*), if it is proved that he (*al-mafqud*) was alive at the time of the death of his testator (*muwarrith*) then he will get his share, but if his survival is not established and the qadi declares him dead then the missing person will get no inheritance from the property of his testator. But the property of the *mafqud* still will remain under his ownership until the qadi declares him dead. After the declaration of the qadi the property of the *mafqud* will be distributed among his heirs.<sup>86</sup> This is the opinion of *hanafi madhhab* and Imam Malik follows suit. But according to al-Shafi'i the *mafqud* will inherit too.<sup>87</sup>

The principle of *istishab* is admitted by Shah Wali Allah as the argument (*hujjah*) of Shari'ah as an instrument of defence and assertion as al-Shafi'i does.<sup>88</sup>

Since the Zahirites do not recognize *qiyas* they are obliged to meet the crises by adopting *istishab* in lieu of *qiyas*. So they use *istishab* abundantly, as the propounders of *qiyas* do with *qiyas*.

#### **d) The knowledge of the Previous Dispensations (*Shara'i 'Sabiqa*)**

Many previous laws are retained by Islam and they have got forces of law either in toto or with some modifications. The knowledge of them is necessary for the mujtahid. The opinion generally accepted by the Hanafite jurists is that previous laws

and regulations, in view of their great distortion at the hands of their voteries, are valid for the Muslims only in so far as they have been confirmed by the Islamic Shari'ah.<sup>89</sup> For example, "O ye who believe! fasting is prescribed to you as it was prescribed to those before you".<sup>90</sup> As regard the dispensations which are mentioned in the Qur'an and the Sunnah but there is no evidence of their abrogation or confirmation in revealed statements (*nass*) of Shari'ah whether these are binding on us or not? According to the Hanifites this is binding on us as law.<sup>91</sup> But according to al-Shafi'i it is not binding on us.<sup>92</sup> Shah Wali Allah follows al-Shafi'i in this regard.<sup>93</sup>

#### e) **The knowledge of Customs and Usages ('Urf wa 'Adat)**

It is recognized that customs and usages which prevailed in Arabia at the advent of Islam and which were not abrogated by Islam, have got the force of law. On the same principle, customs and usages prevailing anywhere, as and when neither opposed to the spirit of the Quranic teachings nor expressly forbidden by the Qur'an, would be admissible, because according to a well known maxim of the jurists, "Permissibility is the basic principle". And, therefore, what has not been declared unlawful is permissible. In fact, as customs are recognized by a vast majority of the people, are looked upon as having the force of *Ijma'* and, hence, it has precedence over a rule of law derived from analogy.<sup>94</sup> The only condition required is that it must not be opposed to a clear text of the Qur'an or a reliable hadith of the Prophet (sm.) The Hanafi law lays special stress on the value of customs and usages. It is thus laid down in *al-Ashbah wa Naza'ir*, "Many decisions of law are based on usages and customs, so much so that, it has been taken as a principle of laws."<sup>95</sup> The opinion of Shah Wali Allah is very much clear in this respect. He says, He says, " The customs of a tribe (*qabilah*) or the moreses of a country have full access in



Shari'ah. Islamic rule of Shari'ah changes with the change of time and place, as for example, when rain pours down from the sky pure and delicate in nature, but after its falling on the earth weather and soil influence it. So the water of one region differs from that of the other region.<sup>96</sup>

Understanding of the ups and downs of the changing conditions of the age and the customs and usages of every nation and society, in order to determine the occasions and places of the rules of Shari'ah in accordance with those changing situations, and so on, is not an easy matter. It requires deep knowledge, long experience and wide research and exertion. The above mentioned principles of deduction, other than the original four sources of Shari'ah, can fulfill those needs which arise in new and changing conditions. We may call them the supplements or appendices of *qiyas* proper. So they have been discussed in the train of *qiyas*. Shah Wali Allah recognizes some of these principles as the modes of deduction and refuses others.<sup>97</sup> The words of *Izalat al-Khafa* cover the purpose where he says, "the knowledge of different methods of deduction (*'ilm turuq-i-istinbat*) is necessary for the mujtahid.<sup>98</sup> These modes of *istinbat* include some principle as the aspects (*ujuh*) of *qiyas* and useful purposes of Shari'ah (*maslahah*).

## **E. The Knowledge of Arabic Language**

All the commands of Shari'ah, the knowledge of which is necessary for Ijtihad, are written in classical Arabic language. Though numerous translations works have been made which can help us draw benefit from them, but the degree necessary in the arena of ijtehad, translation works can not fulfil them. For every language has special traits which would be found in the writings and styles of that very language. Translation can not represent that very speciality.

So the knowledge of Arabic language is necessary for the fitness of Ijtihad. In this respect Shah Wali Allah says, "It is incumbent for a mujtahid to possess the knowledge of Arabic

language which has come down in the Qur'an and the Sunnah in matters of ordinances of the Shari'ah not the encompassing knowledge of the entire vocabulary of Arabic language that he should exert himself to the utmost in acquiring linguistic knowledge in order to understand the real purport of Arabic phrases to an extent which may guide him to the intended meanings of the different context and circumstances. Because the ordinances of Shari'ah have been revealed in Arabic language. So he who is not acquainted with Arabic language will not arrive at the real intention of the Law-giver, the Prophet.<sup>99</sup> In order to express the degree and extent, the Shah says that the knowledge of Arabic language in respect of philology (*lughah*) and grammar (*nahw*) is necessary for the mujtahid.<sup>100</sup>

Some scholars are of the opinion that the sciences, like *sarf* (etymology), *nahw* (syntax), *Lughah* (philology) and '*ilm al-ma'ani wa'I-bayan* (rhetoric and prosody), come under the perview of Arabic language. So the mujtahid must know them.<sup>101</sup>

It is said that the mujtahid must possess the knowledge of *lughah* and *nahw* so much so that he can be able to understand the address (*khitab*) of the Arabs and their mores and conventions, that is, the meanings of the words, like *Zahir* (literal), *nass* (clear statement), *mufassar* (elucidated), *muhkam* (established or fundamental), *mujmal* (summary expression), *mutashabih* (allegorical or maystical), *sarih* (direct meaning or explicit), *kinayah* (metonymy), *haqiqat* (real), *majaz* (metaphorical, '*amm*(general), *khass* (particular), *mutlaq* (absolute) *muqayyad* (conditonal), *mushtarak* (homonomous), *fahwa* (signification), *Iahn* (slang) *mafhum* (understood), *mufrad* (single word), *murakkab* (compound word), *kulli* (universal), *juz'i* (particular), *taraduf* (synonymous), *tabayyun* (explanatory) *mantuq* (spoken), *ibarat* (literal), *isharah* (demonstrative), *iqtida* (required meaning of the statement), *tanbih* (caution), *ima* (hints), and so on.<sup>102</sup>

It is not necessary for a mujtahid to become a versatile like, *Asma'i* in philology and Khalil and Mubarrad in *nahw*.<sup>103</sup>

But it should be remembered that although it is not necessary for a mujtahid to become a versatile like *Asma'i*, *Kahalil* and *Mubarrad* in philology and grammar, nevertheless it is understood from the above discussion, that he should possess the ability of reasearch, subtleness of observation and deep understanding in Arabic.<sup>104</sup>

The Spanish scholar al-Shatibi says that the knowledge of Arabic language has three stages, (1) beginner's knowledge, (2) mediocre's knowledge, and (3) perfect man's knowledge. He who is beginner in Arabic he is beginner in the knowledge of Shari'ah. He who is mediocre in Arabic he is mediocre in the knowledge of Shari'ah too. And he who is perfect in Arabic he is also mature in the Shari'ah knowledge. So far as a person is not perfect in Arabic as well as in Shari'ah knowledge, he will be a remiss and the verdict of remiss will not be an argument (*hujjah*) of Shari'ah.<sup>105</sup> Al-Shatibi further says that a person will not be called a mujtahid untill the vocabulary of the Arabs and their phrases become a spontaneous attribute for him.

To get all these branches by heart is not necessary for a mujtahid but it will suffice him to achieve the ability of deducing rule from the authoratative books of Shari'ah concerned.<sup>106</sup>

After describing these five conditons, i.e. knowledge of the Qur'an, the Sunnah, the Ijma, the Quyas and Arabic language, Shah Wali Allah wirtes that when a person knows the major portion of each of these branches of knowledge he becomes a mujtahid. The exhaustive knowledge to the extent of leaving no stones untruned is no condition. If he lacks the knowledge of any one of these five branches of knowledge then his option is *taqlid* (imitation) and not to indulge in Ijtihad, even though he happens to be a profoundly learned in the *madhhab* of any one of the Imams of the earlier good generations of the Muslims (al-Salaf). It is also not permissible for such a person

to entangle himself with the position of a judge (*qadi*) or to be a candidate for the position of a *mufti* (the jurist consult).<sup>107</sup>

It should be remembered that the combination of all the five branches of knowledge in a mujtahid is not enough. He must shun evil passions and innovations (*bid'ah*), clad himself with robes of piety and abstain himself from the capital sins (*kaba'ir*), not persisting in venial sins (*sagha'ir*), then it is permissible for him to take up the responsibility of the office of judge and may exercise his personal discretion in matters of Shari'ah using Ijtihad and may pronounce *fatwa* (legal opinion). And he who does not fulfil these conditions he must imitate him who combines in himself these conditions in matter that occurs to him.<sup>108</sup>

Two things emanate from the above statement, (1) that a mujtahid must be pious and (2) that a *qadi* or a *mufti* must be a mujtahid. In short, only the person who is learned, pious and orthodox may be a mujtahid. It also indicates that '*adalah* (integrity), which will be discussed later on is not the condition of Ijtihad.

### Some Additional Conditions

1. According to al-Ghazali a mujtahid must be just and a man of integrity (*'adil*).<sup>109</sup> But as a matter of fact, '*adalah* (integrity) is the condition for acceptance of *fatwa* from a *mufti* not the condition for the fitness of Ijtihad. This is also the opinion of Ibn Human.<sup>110</sup> Some say that al-Ghazali also turned back from his early opinion, for he himself says in a place that '*adalah* is the condition for the acceptance of *fatwa* not for Ijtihad.<sup>111</sup>

2. According to al-Shatibi the knowledge of the objectives (*maqasid*) of Shari'ah, in coining the rules (*ahkam*) is necessary for a mujtahid.<sup>112</sup> That is he should know the useful purpose (*masalih*) of the people and their mores considering salutary

purposiveness (*maslahah*) in eliminating evils and bringing benefits. It may be remembered that Islamic law aims at protecting five things, religion (*din*), life (*nafs*), reason or intellect (*'aql*), offspring (*nasl*) and property (*mal*).<sup>113</sup> So the understanding of the statutes (*nusus*) of Shari'ah and their application to the respective occasions and places depend on the knowledge of the aims and objects of Shari'ah. Realizing this end in view 'Umar (R.) postponed the punishment of cutting hand for the crime of theft in the year of ramadah when the famine became intensified among the people, because then the protection of life (*nafs*) got the priority to that of property (*mal*). The knowledge of the useful purposes (*masalih*) regarding this world and the world to come (*akhirah*) comes under the study of *maqasid-al Shari'ah*. For he who ignores his age he ignores himself.

3. According to Imam Shafi'i a mujtahid must possess sound understanding and good estimation (*husn-i-taqdir*).<sup>114</sup>

4. According to some doctors he must possess perfect character, sound faith and right intentions and truthfulness.<sup>115</sup>

5. The knowledge of the methods of making congruity (*tatbiq*) between two contradictions is necessary for a mujtahid.<sup>116</sup> Tatbiq (congruity) is the special philosophy of Shah Wali Allah. He always tried to minimise differences prevalent amongst the different *madhahib* (schols of law), thoughts and the statutes (*musus*). There are some controvestial conditions which are as follows:

#### **a) Knowledge of Fiqh (Islamic Jurisprudence)**

Some doctors are of the opinion that a mujtahid must have the knowledge of fiqh, its general principles and derivative rules. This is the *madhhab* of Abu Ishaq Shirazi, Abu Mansur and al-Ghazali.<sup>117</sup> But knowledge of entire methods of the jurisprudence is not necessary, rather the ability to trace the places and occasions is enough when necessity arises. In this respect al-Ghazali says, "Ijtihad can only be achieved now-a-days

with the pursuit of the knowledge of fiqh which is the way of acquiring of critical understanding (*al-dirayah*) of issues now a days. But this was not the way of acquiring knowledge at the times of the companions (R.) of the Prophet.<sup>118</sup>

Shah Wali Allah does not uphold the opinion of al-Ghazali and others in respect of the knowledge of fiqh. In reply to al-Ghazali, the Shah says that al-Ghazali's view points out to the fact that Ijtihad of the category of *mujtahid muntasib*<sup>119</sup> (affiliated mujtahid) is not accomplished without the analytical knowledge of explicit statements (*nusus*) of *mujtahid i-mustaqill* (absolute mujtahid).<sup>120</sup> Similarly the absolute *mujtahid* must know the relevant discourse of the companions (R.), the successors of the companions *tabi'i* in matters of fiqh.<sup>121</sup> So to say clearly, the knowledge of fiqh is not necessary for Ijtihad.<sup>122</sup> The purport of the narration of al-Ghazali is that the knowledge of the verdicts of the earlier good generations (*al-Salaf*), which forms the part of fiqh is necessary for the accomplishment of Ijtihad.

Here arises another question that in a place of his work, *Izalat al-Khafa*, Shah Wali Allah himself ascribes the knowledge of fiqh to the mujtahid. He says, "In fact, a mujtahid is one who knows a major portion of rules (*ahkam of fiqh* by means of its details evidences, the Book of Allah, the Sunnah, the Ijma 'and the *Qiyas* and he also knows that every rule is connected with this evidence by a common cause (*'illah*) and he has a preponderant presumptive knowledge (*zann qawi*) of it.<sup>123</sup> The reply is simple, that fiqh means the verdict of the earlier good generations (*al-Salaf*), not the fiqh of general term, as it is understood from his above discourse.

b) The knowledge of *'ilm al-Kalam* (scholastic theology) is not necessary for mujtahid<sup>124</sup>.

3) The knowledge of the principles of dogmatic belief (*usul-al i'tiqad*) is necessary for ijtihaad.<sup>125</sup> But the Shah quoting al-Ghazali says that it is not the condition for a *mujtahid* to know

the principles of dogma (*i'tiqad*) in the self-same ways as the *mutakallimun* (the scholastic theologians) do,<sup>126</sup> i.e. the arguments as they write them down in details. So the Shah differs from al-Ghazali in this way.

According to the Mu'tazilah the knowledge of the principles of the religion (*usul al-din*) is necessary for a *mujtahid*, as opposed to the *jumhur* (the majority). Some say that the knowledge of Essence of Allah, as His existence and Attributes, is necessary but the knowledge of subtleness (*daqa'iq*) of the principles of religion is not necessary. This is the compromise between the Mu'tazilas and the *jumhur*. It is also the opinion of Imam Ghazali and Amidi.<sup>127</sup>

Moreover, a person whose witness is not acceptable on account of his committing sinful innovation, his appointment to the post of *qadi* (judge) is not admissible.<sup>128</sup> And likewise the appointment of him who does not uphold Ijma '(the consensus of opinion) as the argument of Shari'ah, as the Khawarij, or he who does not accept *Khabr al-Ahad*<sup>129</sup> as the case of the *Qadriyyah*<sup>130</sup> or else him who deny the *Qiyas* (analogy), as the Shi'ites (*rawafid*) is not admissible.<sup>130</sup>

According to al-Ghazali the knowledge of rational argument (*dalil 'aqli*) is necessary for a *mujtahid*. But Shah Wali Allah and other 'Ulama'; do not uphold this opinion, because the Ijtihad bases on the evidences of Shari'ah, not on the rational sciences and sense (*hissi*).<sup>131</sup>

It must be kept in mind that a combination of all these virtues is necessary only for the person who intends to be a full *mujtahid* (*mujtahid mutlaq or mujtahid fi'l Shari'ah*) i.e., a *mujtahid* who may express an opinion on every question of the Shari'ah. Hence one is allowed to enter the rank of *mujtahid*, although one has mastered only a part of the required sciences, provided that one exercises Ijtihad only on question falling within that part, for instance, if one knows only the subject of inheritance, he may form an opinion on points included in the

field known to him, since it is not necessary for the juris-consult (*mufti*) to be able to answer every question. Thus is related of Malik that he was asked forty questions concerning thirty six of which he answered, "I do not know". Similarly, the companions and all the great mujtahids have not answered every question that was put to them. However, some doctors have questioned the legitimacy of the 'splitting' (*tajazzi*) of Ijtihad, that is whether a person should be allowed to reach independent opinion within the branch of *fiqh* which he has mastered, if he is not acquainted with the entire subject of *fiqh*.<sup>132</sup>

It may be noted that simply the knowledge of *fiqh* and *usal al-fiqh* is not sufficient in the modern times. In modern age some occurrences indicate to the insufficiency of the principles of *qiyas*. So the knowledge of new things and modern invention is also necessary for the fitness of Ijtihad.<sup>133</sup> This condition may be included in the knowledge of the objectives of Shari'ah.

### **The knowledge of Some Logical Methods**

We have so far been examining the traditional Islamic principles of legislation adopted by the jurists in general. Some times a *mujtahid* needs to take the help of some logical (*mantiqi*) methods to solve the problem in which there exists no *nass* nor *ijma'* or *qiyas* Shar'i, i.e. which are not covered by the traditional Islamic jurisprudential principles. In this connection Shah Wali Allah proposes to adopt the following logical methods:

1. *Qiyas iqtirani*,
2. *Qiyas istithna'i*
3. *Hads*,
4. *Istiqra'*.

In the Hujjat, Shah Wali Allah writes that there are various degrees of understanding, the inner motive of speaker (*mutakallim*) by the audience in respect of explicitness and implicitness of meaning. One of them is that which becomes



evident from the very content of the discourse. These are mainly of three kinds:

### 1. *Qiyas iqtirani* :

It means insertion of particular under universal or inclusion of species under genus. For example:

"The wolf possesses canine teeth,  
All that possesses canine teeth is prohibited<sup>134</sup> (*harm*),  
[The tiger is prohibited.]

However, *qiyas iqtirani* is a logical inference in which conclusion or the proposition of the conclusion is not actually mentioned in the premises but the premises imply conclusion automatically.<sup>135</sup>

### 2. *Talazum wa tanafi* (inseparability and separability);

It means inseparability between two rules or judgment (*hukm*) without determination of rational cause (*'illah*). This happens in case of conditional or hypothetical inference (*qiyas sharti*). It is also called *qiyas istithna'i*.<sup>136</sup> However, if the conclusion of an inference or the proposition of the conclusion is actually (*bilfi'l*) mentioned in the premises, then it is called *qiyas istithna'i* or *sharti* (conditional inference),<sup>137</sup> i.e. to say more precisely the absence of evidence implies the absence of rule and vice versa. For example:

لو كان الوتر واجباً لم يؤد على الراحة لكنه يؤدى كذلك

"If *witr* prayer were obligatory, it would not have been performed on the riding camel, but it had been performed as such i.e. on the riding camell."<sup>138</sup>

[*Witr* prayer is not obligatory]

Both *qiyas iqtirani* and *qiyas istithna'i* are mediate deductive methods of logic (*mantiq*).<sup>139</sup> If the premise of an inference (*qiyas*) is sufficient to justify the conclusion the inference is said to be deductive.

### 3. Qiyas shar'i

Qiyas Shar'i means comparing or measuring of likeness (derivative) with likeness (original) on the basis of a common rational cause ('illah), or to extend the rule (*hukm*) of the original text (*nass*) to the derivative or to a particular case (*far'*) on the basis of a rational cause ('illah).<sup>140</sup> An example of this analogy is that, a certain woman once asked the Prophet whether she could perform the Hajj on behalf of her deceased mother who had been under such an obligation. The Prophet replied, "Tell me if your mother were indebted to some one, would you not pay off her debt?" The woman replied that she would have certainly paid off her debt. The Prophet thereupon said that the debt of Allah was more deserving and should be settled; for Allah is more entitled to redemption.<sup>141</sup> This is the example of *qiyas shar'i* in which the rule is extended from the payment of debt to that of performing Hajj on behalf of other.

Now we may discern the difference between logical inference (*qiyas mantiqi*) and *qiyas shar'i* (legal analogy).<sup>142</sup> The logical inference is one in which conclusion is drawn from two or more propositions taken together.<sup>143</sup> The certainty of its conclusion depends upon the correctness of the premises (*muqaddimah*) and validity of figures.<sup>144</sup>

In a place Shah Wali Allah further says that conviction and certitude (*yaqin*) can be perceived by means of two things, (1) *qiyas* which may either be *iqtirani* or *istithna'i* provided that their premises must be true and their figures<sup>145</sup> (*ashkal*) should also be valid and (2) *hads*<sup>146</sup> (guess work) or induction per simple enumeration.

### 4. Hads (or hadas-guess)

It is an inductive method of logical inference in which we proceed from the particular to universal. Shah Wali Allah defines it as follows; "*Hads* is one in which all premises are not mentioned, rather intellect proceeds to the target by means of an inductive leap (*tafra'*).<sup>147</sup> For example, we conclude that the

moon derives light from the sun, observing that the condition of the moon changes with the change of the location of the sun, i.e. when the moon comes nearer to the sun its light becomes increased and *vice-versa*.<sup>148</sup>

### 5. *Istiqrā'* (Induction):

It is the inference involved in establishing generalization by the observation of particulars. It proceeds from known to unknown and particular to universal. As an inductive argument its conclusion is probable as opposed to the conclusion of the deductive argument. However, inductive arguments differ in their degrees of probability. The more observation of particulars the higher the probability.<sup>149</sup>

In fact, *istiqrā'* is an inductive method of logical inference (*qiyas mantiqi*).<sup>150</sup>

Following al-Shafi'i, Shah Wali Allah adopts it as a principle of inferring rules. He has adopted this method in many occasions, for example :

1. He established superiority of Abu Bakr through *istiqrā'*, i.e. by observation of the previous Shari'ah and the personal virtues in respect of undertaking truthfulness (*siddiqiyat*), suffering martyrdom (*shahidiyat*) and accepting discipleship (*hawariyyat*).<sup>151</sup>

2. The Shah resolves the issue of turning the face towards the ka'bah and turning the back to the same at the time of responding the natural call, by adopting *istiqrā'*.<sup>152</sup> Following al-Shafi'i the Shah holds that turning the face or back towards the *Ka'bah* is not prohibited when it happens in the building, but it is prohibited when it happens in the open place. But according to the *Hanafites* the prohibitions is general.

3. The problem of performing two *Salahs* together at one time, has also been decided by *istiqrā'*.<sup>153</sup>

Shah Wali Allah adopts these logical methods for solving the *Shar'i* issue where there is no textual statutes (*munsus*) nor

*ijma'* or *qiyas*. It was a proper thinking of a great *mujtahid*.

## Notes and References :

1. *'Iqd al-Jid*. p. 7.

2. *Ibid*.

3. *Ibid*. According to al-Ghazali, knowledge of fiqh (jurisprudence) is a condition for Ijtihad now-a-days. *Ibid*.

4 Al-Salaf consists of the age of the Sahabah *tabi'i* and *tab'tabi'i*, i.e. companions, the companions of the companions and their followers.

5. *'Iqd*. pp. 7-8. these conditions are accepted by those jurists who acknowledge the Ijma and the *Qiyas* as the evidences (*hujjah*) of Shari'ah. cf., Mazhar Baqa, *op. cit.*, p. 430.

6 *'Iqd*, pp. 7-85; Shah Wali Allah, *Insaf fi Bayan-i-Sabab al-Ikhtilaf*, Urdu Tr. by Muhamad Ahsan Siddiqi (delhi: mujtaba' i press. 1909), p. 71. (hereafter the source is referred to as *Insaf*).

7. *'Iqd al-Jid*, pp. 8,85; al-Ghazali, *al-mustasfa Min'Ilm al-Usul*, Vol. 2 (Egypt: Muniriyah Press, 1325 A. H.), p. 350; cf., *Izalat al-Khafa'*, Vol. 2, p. 23.

8. Al-Ghazali, *op. cit.*, Vol. 2, p. 250; Mulla Ahmad Jiwan, *Nuru'l Anwar*, Vol. 1 (Dhaka: Imdadiyah Library, 1396/1976), p. 5. (Henceforth the source is cited as *Nuru'l Anwar*). Ibn Amir al-Hajj clarifies that this number (500) apparently correct as their application and indecation to the commands of Shari'ah is direct and unequivocal, otherwise the limitation of those verses relevant to the rules of Shari'ah only to five hundred might not be admissible, because some times the rulings of Sharir'ah is deduced from the verses of *qasas* (stories), *amthal* (similitudes), etc. cf., *al-Taqrir wa'l Tahrir*, Vol. 3 (Egypt: Bulaq Press, 1316 - 17H.), p. 292; Muhammad al-Shawkani, *Irshad al-Fuhul ila Tahqiq al Haqq min 'Ilm al-Usull* (Egypt, Mustafa al-Babi al-Halbi, 1356/1937,) P. 250 (Henceforth these are citad as al Tahqiq and Irshad respectively).

9. Wahbah al-Zuhayli, *ISI*, p. 182.

10. *Izalat al-khafa'*; Vol. 1. p. 13.

11 Wahbah al-Zuhayli, *ISI*, p. 182; cf., Sa'ad al-Din Mas'ud al-Taftazani, *Al-Talwih 'Ala al-Tawdih*, Vol. 2 (Egypt: Muhammad 'Ali Press, 1377/1957), p. 117, (henceforth it is cited as *Talwih*).

12. Al-Ghazali, *op. cit.*, Vol.2, p. 102; *Irshad al-Fuhul*, p. 222; cf., Wahbah al-Zuhayti, *ISI*, p. 183.

- 13 Hujjat, Vol. 1, p. 122; Taqi Amini, *Mas'ala-i-Ijtihad Par Tahqiqi Nazar* (Ajmir: Idarah 'Ilm wa 'Irfan, 1382/1962), p. 109.
14. Shah Wali Allah, *Al-Fawz al-Kabir fi usul-i-Tafsir* (karachi, 1383/1963-64), pp. 56-57; Sayyid Athar 'Abbas Rizvi, *op. cit.*, p. 1235.
- 15 '*Iqd-al Jid*, pp.78;85.
- 16 Taqi Amini, *op. cit.*, p. 100; *Nuru'i Anwar*, pp. 11-15; 211-228.
- 17 Taqi Amini, *op. cit.*, p. 100
- 18 *Ibid.*, pp. 106-7
- 19 '*Iqd.* pp. 78. 85; Insaf, p. 71; *Hujjat* vol.2, p. 350
- 20 Abu Bakr Muhammad Ibn al-'Arabi, *Tafsir Ayat al Ahkam, Naru' l Anwar*, Vol. 1, p. 5, vol.2, p. 169; Irshad al-Fuhul, p. 251; Mazhar Baqa, *op. cit.*, p. 432.
21. *Al-Taqrir*, vol. 3, p. 292; cf., Mazhar Baqa, *op. cit.*, p. 432, f.n 2. It is narrated from Imam Ahmad bin Hanbal that when a person acquires the knowledg of five lac ahadith then he is fit for giving fatwa. Ibn Amir al Hajj says that this observation of Ibn Hanbal is based on the cautiousness or it is applicable only to a perfect jurist, because Ibn Hanbal himself alleged in a place that the number of basic ahadith on which the knowledge of shari'ah depends, would be one thousand two hundred. Irshad. p. 25
- 22 '*Iqd.* p. 6
- 23 *Ibid.*, p. 86. According to al-Taftazami a mujtahid should have the knowledge of lexicographical and legal meaning of ahadith. *Talwih*, vol. 2, p. 117; Mazhar Baqa. *op. cit.*, p. 433.
24. '*Iqd.* pp. 7-9, 85. For the details vide the section discussed regarding the divisions of the Qur'an, *Supra*. pp. 84-5.
- 25 *Ibid.* A hadith is called *Shahih* (sound) when its *sanad* (chain of the narrators) is *muttasil* (closely interlinked) and its narrators (*rawi*) are just ('*adil*) possessing a sound intellectaul sharp memory (*tomm al dabt*) and the hadith is not *mu'allal* (defective) nor shadh (deferred as against preferred one). Sayyid 'Amim al-Ihsan, *Mizan-al-Akhbar* (Dhaka: Qur'an Manzil, n.d.), p. 7. *Da'if* hadith is that in which the above mentioned conditions of a sahih hadith is absent, i.e., its *sanad* is defective, so the muhaddithun do not accept it generally. *Ibid.*, p. 14. Masnad: If the sanad of a marfu hadith is *muttasil* (closely interlinked) is called masnad. *Ibid.*, p. 10. Mutawatir: when the number of narrators in every stage (*tabqah*), from the first to the last, are so profuse that it becomes rationally impossible to assume them to be liars in view of their large number and diversity of residence and are beyond criticism and disparagement (*jarh wa tanqid*). *Ibid.*, p. 3. Ahad: a

hadith is called *Khabr al-Ahad* when it is transmitted by one or two or even more, provided their number falls short of that required for the mutawatir, *Ibid.*, p. 3; cf. N.P. Aghnides, *op. cit.*, pp. 40; 44. Muttasil: when the chain of narrators is closely interlinked, i.e. there is no gap in the chain of narrators. *Munqata'* is that in which a narrator becomes dropped in any stage, as opposed to *muttasil*. *Ibid*, p. 20.

26 'Iqd, p. 85; cf., Talwih, vol. 2, p. 117.

27 See Supra, f.n. 25 (mutawatir).

28 'Iqd., p. 86.

29 *Ibid*. Al-Ghazali, *op. cit.*, vol. 2, 353.

30 Al-Gahzali, *op. cit.*, vol. 2, p. 353; cf., Mazhar Baqa, *op. cit.*, p. 433 f.fn. 2, This liberal agreement of the jurists is due to elapsing a long time and creating a long gap between the narrators and us. Now it is almost impossible to discuss regarding their integrity ('*adalah*) and disparagement (*jarh*). So we are to depend upon those Imams whose trustworthiness is accepted by the Muslim Ummah.

31. 'Iqd, p. 8; Taqi Amini, *op. cit.* p. 117

32 *Hujjat*, vol. 1. p. 292; Taqi Amini, *op. cit.*, pp. 113-15.

33. *Nurul Anwar*, vol. 2. p. 316; N.P. Aghnides, *op. cit.*, p. 61., cf., Mawlana Muhammad Ali, *The Religion of Islam* (New Delhi: S. Chand & Co. n.d.), p. 106.

34 *Izalah*, Vol. 1, p. 100.

35 *Ibid.*, It is narrated by Abu Dawud, *Sunan*, vol.4. p. 281. Muhammad Ibn Majah, *Sunan*, vol. 1 (Egypt : al-Tajiriyah Press, n.d.), p. 20.

36 Muhammad Abu Zahrah, *op. cit.*, p. 424; cf. *Izalah*, vol. I, pp. 100; 407, 213.

37 *Ibid.*, pp. 423-24; 428.

38 *Iqd*, p. 7

39. Muhammad Abu Zahrah, *Usul al-fiqh* (Egypt: Dar al-Fikr al-'Arabi, 1311/1957), p. 369.

40 'Iqd, p. 8., *Izalah* Vol. 1, p. 13.

41 'Iqd, pp. 85 86.

42 *Ibid*, p. 86. This is also the opinion of al-Shafi'i and al-Ghazali. Muhammad Abu Zahrah, *op. cit.*, Vol. 2, p. 351.

43 *Ibid*, p. 9.

44 *Ibid*, pp. 8-9; *Izalah*, Vol. 1, p. 13.

45 'Iqd, pp. 8; 85-86; *Izalah*, Vol. 1, p. 13.

46 *Salaf* Literally means the predecessors and technically those of the predecessors who are followed as authority, e.g., the companions are *Salaf* for Abu Hanifah. N.P. Aghnides, op. cit., p. 48, f.n.1. *Salaf* generally means three venerated predecessors, i.e. the *Sahabah*, *tabi'i* and *tab'tabi'i*. Shah Wali Allah maintains a restricted view regarding the extent of al-*Salaf* as it is understood from his discourse mentioned above. To him the period of *Shahabah* especially the time of the *Khulafa Rashidun* constitutes the best age (*Khayr al-qurun*), so to him *Salaf* include the period of *Sahabah* only. In its support he quotes the Hadith, "The best of the mankind are the people of my period, then those who are adjacent to them", In explaining the Hadith he says that the first period was the time of the Prophet (sm), the second period was the times of Abu Bakr and 'Umar (R.) and the third period was the khilafat of 'Usman (R.) upto twelfth year of his khilafat and then trial (*fitnah*) Spread out. *Izalah*, vol-2, p. 566.

47 Imam al-Shafi'i recognizes the *Ijma* i.e. the unopposed opinions of the *Sahabah* as cogent (*qat'i*) evidence of Shari'ah, but he is silent about the opinions of *tabi'i*. Mahammed Abu Zahrah, op. cit., p. 485. But his followers, like the author of *al-Anwar* and al-Baghawi recognize the verdicts (*aqa'wil*) of the *Sahabah*s and the *tabi'un* i.e. the followers of the companions of the Prophet (sm.). This is also the view of Shah Wali Allah. 'Iqd. pp. 8;9;85.

48 Cf, *Towdih*, p. 444; p. N. Aghnides, op.cit-p, 71.

49. *Nuru'l Anwar*, Vol. 2, p. 323.

50 'Iqd, p. 8.

51. *Hujjat*, vol. 1. pp. 346-7.

52. 'Iqd, p.7.

53. *Qiyas jali* (apparent *qiyas*) is that in which the effective cause ('illah) is evident, on the other hand *Qiyas Khafi* (non-apparent *Qiyas*) is that in which the effective cause is not evident.

54 'Iqd, p. 86.

55 *Izalah*, 1, pp. 13, 21.

56 *Nurul Anwar*, Vol. 2, p. 356; *al-Talwih 'ala-al-Tawdih*, Vol. 2., p. 117. Some jurists ascribe the condition of the knowledge of *usul al-fiqh* in place of *Qiyas*, cf., *Mazhar Baqa*, op. cit., p. 435, f.n. 5.

57 Al-Amidi, op. cit., Vol. 3, p. 119.

58 N. p. Aghnides, op. cit., p 91; Mawlana Muhammad 'Ali, op. cit., p. 105, cf. *Tawdih* vol. 2, p. 81.

- 59 N. P. Aghnides, *op. cit.*, p. 91.
- 60 *Ibid.*, pp. 91-2.
- 61 Location (*ijarah*) is considered as a case of sale of non-existing goods, because the benefits from the use of the object leased accrue only in the future. *Ibid.*, p. 92, *f.n.* 2.
62. The antagonist will refer this permission to *al-ijma*, 'not to al *Istihsan*.
63. *ibid*, p. 92; *al-Mustasfa*, vol. 1, p. 274.
64. *Al-Risalah*, p. 507.
- 65 *Irshad al-Fuhul*, p. 240, cf., Muzhar Baqa, *op. cit.*, p. 391.
66. N. P. Aghnides, *op. cit.*, p. 92, cf., 'Abd-al-Aziz bin 'Ali al-bukhari, *Kashf al-Asrar* (Constantinople, 1307 H.). p. 1123. (Henceforth it is cited as *Kashf*.)
- 67 Hujjat, vol. 1, pp. 284; 147; 169; *Al-Fawz-al-Kabir*, pp. 8-9 cf., Mazhar Baqa, *op. cit.*, pp. 377-402.
68. *Hujjat*, vol. 1, pp. 346-7; 305.
69. N. P. Aghnides, *op. cit.*, p. 99
70. *Ibid.*
71. *Ibid.*, 'Allamah Iqbal quoting al-Shalibi says, " The Law of Islam aims at protecting five things-*din* (religion), *Nafs* (life), *Aql* (intellect or reason), *Mal* (property) and *Nasl* (off spring)". Sir Muhammad Iqbal, *op. cit.*, p. 169. This five things are called *al-kulliyat al-khams*.
72. *Ibid.* p. 100
73. Mazhar Baqa, *op. cit.*, p. 405; *al-Mustasfa*, Vol. 1, pp. 274; 294; 310-11. Mazhar Baqa, *op. cit.*, p. 405 cf., 'Ali Hasbullah, *Usul al-Tashri'i Al-Islami* (Egypt: Dar al-Ma'arif, 1383/1964), p. 145.
- 75 Cf. Mazhar Baqa, *op. cit.*, p. 409.
- 76 Hujjat, Vol. 1, p. 284.
- 77 *Ibid.*, pp 301, 1089; cf., Mazhar Baqa, *op. cit.*, p. 410.
- 78 Mazhar Baqa, *op. cit.*, p. 411.
- 79 *Ibid.*, pp. 37-41.
- 80 J. M. Cowan (ed.) *Dictionary of Modern Written Arabic* (New York, 1976); Muhammad Abu Zahrah, *Usul al-Fiqh* (Egypt: Dar-al-Fikr al-Arabi, 1377/1957), p. 283.
- 81 N. P. Aghnides, *op. cit.*, p. 100.



- 82 *Irshad al-Fuhal*, p. 237.
- 83 N. P. Aghnides, *op. cit.*, p. 100.
- 84 *Ibid*, pp. 100-1; *cf.*, Mazhar Baqa, *op. cit.*, p. 416
- 85 *Ibid* N. P. Aghnides *op. cit.*, P. 101; *cf.*, Tawdih, p. 527.
- 86 For details vide Mazhar Baqa, *op. cit.*, p. 416.
- 87 *Ibid*; Abu Zahrah, *Imam Malik*, p. 333, *Tawdih*; Vol. 2, p. 101, *Usul al-Tashri'i al-Islami*, p. 107.
- 88 Shah Wali 'Allah, *Sharh Tarajim, Ba'd Abwab al-Bukhar*, (Hydarabad (deccan): Da'irah al-Ma'arif, 1368/1949), p. 42, (Henceforth it is cited as *Sharh Tarajim*); Shah Wali Allah, *Qurrat al-'Aynayn fi Tafdil al-Shaykhayn* (Delhi: Mujtaba'i Press, 1310 H.), p. 305. (Henceforth it is cited as *Qurrat al-Aynayan*); Shah Wali Allah, *al-Musaffa wa Musawwa fi Ahadith al-Muwatta*, vol-1 (Dilhi: Rahimiyah Press, 1346 H.), p. 28. 9. Henceforth *al-Musaffa wa al-Musawwa*). For details vide Mazhar Baqa, *op. cit.*, p. 421.
- 89 N. P. Aghnides, *op. cit.*, p. 104; *al-Tarhib wa i Tartib*, Vol. 2. p. 277.
- 90 2: 189.
- 91 Mawlana Muhammad 'Ali, *op. cit.*, p. 106; Mazhar Baqa, *op. cit.*, p. 281.
- 92 Mazhar Baqa, *op. cit.*, p. 381.
- 93 *Musawwa*, Vol. 2, pp. 106-7, *cf.* Mazhar Baqa, *op. cit.*, p. 381-2. f,n, 87, 88,89, 90, 91, 93 dropped. pl. add.
- 94 Mawlana Muhammad 'Ali, *op. cit.*, p. 106
- 95 *Ibid*, *cf. al-Ashbah wa al-Naza'ir* by Ibn Nujaym. *Tafhimat*, vol. ii, p. 20, No. 15.
- 97 They have been discussed in their respective places, see *Supra*, pp. 40-50.
- 98 *Izalat al Khafa*, vol. i, p. 21.
- 99 *Iqd al-Jid*, pp. 8-9, quoting al-Baghawi; *cf.*, *al-Shatibi al-Muafiqa*, Vol. iv, p. 61.
100. *Izalat al-khafa*; vol. i, p. 21; *al-Mustasfa*, vol. ii, p. 352; Amidi, *op. cit.* vol. iii, p. 139.

- 101 *Talwih*, Vol. ii, p. 117; *Ghayat al-Usul*, p. 148, Mazhar Baqa, *op. cit.*, p. 436.
- 102 Mazhar Baqa, *op. cit.*, p. 436; *al-Mustasfa*, vol. ii, p. 352; *al-Amidi*, *op. cit.*, Vol. iii, p. 139.
- 103 Mazhar Baqa, *op. cit.*, p. 436.
- 104 Al-Shatibi, *al-Muafiqat*, Vol. iv, p. 61; Abu Zahrah, *Usul al-Fiqh*, p. 366.
- 105 Al-Shatibi, *op. cit.*, Vol iv, p. 60.
- 106 Al-Shawkani, *Irshad al-Fuhdul*, p. 251.
- 107 *Iqd al-Jid* P.9. cf. *al-Mustasa*, vol. i, p. 221.
- 108 *Ibid*. The Shah relates it quoting al-Baghawi.
- 109 *Al-Mustasfa*, Vol. ii, p. 350. 'Adil (a man of integrity) is one who does not commit capital sins (*Kaba'ir*) nor insisting in venial sins (*Sagha'ir*) and abstains from that which affects morality.
- 110 Mazher Baqa, *op. cit.*, p. 437; *Tahrir*, p. 524; cf., *al-Mudkhal fi Madhhab al-Imam Ahmad bin Hanbal*, p. 183.
111. *Al-Mustasfa*, Vol. ii, p. 350.
- 112 *Al-Shatibi*, *op. cit.*, Vol. iv, p. 56.
- 113 *Ibid*.
- 114 Abu Zahrah, *op. cit.*, p. 373; mazhar Baqa, *op. cit.*, p. 438.
- 115 N. P. Aghnides, *op. cit.*, p. 115. Shah Wali Allah did not mention those conditions any where. Some one says that since these are very basic things to be the conditions of a mujtahid. so he who does not mention them as the particular conditons possibly he means as understood.
- 116 *Izalat al-Khafa*, Vol. 1, p. 13; *Iqd-al-Jid*, p. 42.
- 117 *Irshad*, p. 252; Mazhar Baqa, *op. cit.*, p. 439; Hasan Ahmad Mar'i, *ISI*, p. 30; Taqi Amini, *op. cit.*, pp. 134-35.
- 118 *al-Mastasfa*, Vol. iii, p. 353; *Iqd al-Jid*, p. 7.
- 119 This is the second category of Mujtahid.
- 120 This is the first category of mujtahid.
- 121 *Iqd al-Jid*, p. 7.
- 122 *Ibid*.
- 123 *Izalat al-Khafa*, Vol. i. p. 21.

124 'Iqd al-Jid, p. 7.

125 *Ibid*, p. 87. Since the Shah does not mention the condition of the 'amalīyyah (paractical) so his very definition includes the dogmatic belief (*i'tiqad*) as well as practical rules of Shari'ah vide *Iqd*. p. 6; *Nurul Anwar*, Vol. i, pp. 4-5.

126 *Ibid*.

127 Mazhar Baqa, *op. cit.*, p. 438; *al-Taqrir*, vol. iii, p. 292; *al Mustasfa*, Vol. ii, p. 352; Amidi, *op. cit.*, Vol. iii, p. 239.

128 *Iqd al-Jid* p. 87. Khabr al-Ahad is one in which there will be a single reporter (*rawi*) in any stage of the chain (*sanad*).

129 *Qadariyyah*, the upholders of the free will of man as opposed to the Jabriyyah.

130 "*Iqd al-Jid*, p. 87.

*al-Mustasfa*, vol. ii, p. 350; *Irshad*, p. 252; cf., Mazhar Baqa, *op. cit.*, p. 438.

132 N. P. Aghnides, *op. cit.*, pp. 115-16.

133 Khalid Mas'ud, "Ijtihad ka pas Manzar," *Fikr was Nazar* (1978), p. 53 f.n.

134 *Hujjat*, Vol. 1, pp. 319-20

الذنب ذوقاب وكل ذى خاب حرام فالذنب حرام

135 *Izalat al-Khafa*; vol. 1, p. 105.

136 *Hujjat*, vol. i, p. 320; *Izalat al-khafa*, vol. i, p. 105, f.n. 1. If the *illah* is determined then it becomes qiyas Shari'i *Irshad*, p. 236.

137. *Hujjat*, vol. 1, p. 320; *Jam*, vol. ii, p. 343 Mazhar Baqa, *op. cit.*, p. 376.

138. *Hujjat*, Vol. 1, p. 320; *Musawwa*, Vol. i, p. 147. According to al-Shafi'i performance of witr on the riding animal is permissible, because it is not *wajib* but the Hanafites do not admit its permissibility, because it is *wajib* to them. Shah Wali Allah follows al-Shafi'i in this regard.

139. Deductive inference is of two kinds, immediate and mediate. For details consult any book of logic.

145. Figure (*Shikl*) is the form of Syllogism (a kind of mediate inference) as determined by the positions of the middle term (*hadd awSAT*) in the premises (*muqaddimah*). There are four possible positions of the middle

term, therefore, there are four figures. The middle term is that which occurs in both the premises but is absent in the conclusion.

146. *Ilalat al-khafa*; Vol. i, pp. 104-5.

147. *Ibid*, p. 105

148. *Ibid*.

149. Abu Yahya Zakariyah al-Zinjani, *Ghayat al-Usul* (Egypt: 'Isa al-Babi al-Halabi, n.d.), p. 138.

150. Qadi al-Qudat Taqi al-Din, *al-Ibhaj sharh Minhajj*, vol. ii (Egypt: al-Maktabah al-Muhammadiyah al-Tijariyah, 1340 H.), p. 114.

151. *Izalat al-Khafa*, Vol. ii, p. 455.

152. *Musaffa*, vol. i, p. 41.

153. *Ibid*. pp. 148-149, cf. Mazhar Baqa, *op. cit.*, pp., 379-80. Performing two Salahs together on journey is permissible to al-Shafi'i. Shah Wali Allah follows suit. But according to the Hanafites this is not permissible except in the Hajj.

## CHAPTER VI

# CLASSIFICATION OF THE MUJTAHIDS

Since *Ijtihad* means an utmost exertion to arrive at a decision in a *Shar'i* matter on the basis of the four fundamental sources of Shari'ah, hence a person who takes upon himself the function of exerting is called a *mujtahid*.

There is a difference of opinion among the jurists of the Hanafi and Shafi'i *madhhabs* about the classification of *mujtahids* basing on the degree of independence and scope of research.

Shah Wali Allah quoting Shafi'i doctors, like al-Rafi'i, al-Nawawi and others divides the mujtahids into four categories:

1. *Mujtahid mutlaq mustaqill* (absolute mujtahid).
2. *Mujtahid mutlaq muntasib* (absolute but affiliated mujtahid).
3. *Mujtahid fi'l madhhab* (mujtahid within the school of law).
4. *Mujtahid fi'l- futiya* (mujtahid in particular issues) or *al-mutabahir fi'l madhhab* (versatile in the madhhah).<sup>1</sup>

Ibn al-Kamal al-Wazir in his treatise *Tabaqat al-Fuqaha* classifies the mujtahids into seven categories:

### 1. *Al-mujtahid fi'l Shar'* (i.e. absolute mujtahid).

The mujtahids of this type have established a legal system (*madhhab*) of their own and are called founders of legal schools (*sahib madhhab*). Imam Abu Hanifah, Malik, al-Shafi'i, Ahmad bin Hanbal, Layth bin Sa'd, Ibn Jarir al-Tabari, Awza'i, Da'ud al-Zahiri and Thauri belong to this group. Each of them originated a typical system of *usul al-fiqh*.

**2. *Al-mujtahid fi'l madhhab*** (the mujtahids within the school of law)

They are the disciples of the formers, like Imam Abu Yusuf, Mohammad bin Hasan, Zufar, in the *madhhab* of Abu Hanifah, Ibn al-Wahb in the *Maliki madhhab*, al-Mazani in the *Shafi'i madhhab* and Ibn Taymiyah in the *Hanbali madhhab*.<sup>2</sup>

**3. *Al-Mujtahid fi'l masa'il*** (the mujtahids of particular problems).

The jurists, like al Khassaf, Abu Jafar al-Tahawi, Abul Hasan al-Karkhi, Shams al-a'immah al-Halwani, Shams al-a'immah al-Sarakhsi, Fakhr al-Islam Bazdawi, Fakhr al-Din Qadikhan belong to this category. They have not opposed the founder of *madhhab* either in the principles or in the derivatives (*furu'at*), 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.

**4. *Ashab al-takhrij*** (the mujtahids in deriving rules on the principles of his *madhhab*), like al-Razi and others. They are not able to form absolute Ijtihad, but being well conversant with the principles and the particular applications decided by the former, indicating which view is correct in case of ambiguity or contradiction.

**5. *Ashab al-tarjih***

Doctors who are able to give preference to one point over other, when two or more verdicts (*nusus*) contradict, like Abu'l Hasan al-Marghinani and Abu'l Hasan al-Quduri. When there are several views on the same point they indicate which is correct view, by means of some such expression as, "this is correct" (*sahih*), or "the *fatwa* is rendered according to this view, (*'alayhi al-fatwa*) and so on.

**6. *Ashab al-tamiz***

Doctors who can distinguish between the strong and the weak and between *zahir* (well circulated) and *nadir* (rare)

reports. They are the authors of the reliable texts (*al-mutun al-mu'tabarah*) like, the *kanz*, the *Mukhtasar*, the *Wiqayah* and the *Majma*. They include in their books only the views that have been considered reliable.

### 7. *The Muqallid (imitators)*

Who lack the powers of the preceding, and do not distinguish between the lean and the fat, right and left, but on the contrary gather together whatever they find.<sup>3</sup>

Ibn al Kamal counts the first three groups in the category of mujtahids and the remaining four in the *muqallids* (imitators). Hanafi doctors generally accept the classification of Ibn al-Kamal.

The *mujtahid fi'l-Shar'* of Ibn al Kamal, the *mujtahid mustaqill* of Rafi'i and Nawawi and the *mujtahid mutalaq* of the Hanafites bear the same connotation. It is applicable only to the founders of the *madhhabs*. The *mujtahid muntasib* of Rafi'i and Nawawi and the *mujtahid fi'l madhhab* of Ibn al-Kamal convey the same purport, i.e, they are *muqallids* (imitators) of their Imams in the fundamentals, but they form Ijtihad in the derivatives or particulars. Both the *Mujtahid fi'l masa'il* and *ashab al-takhrij* of Ibn al Kamal are exactly the *mujtahid fi'l madhhab* of al Rafi'i,<sup>4</sup> i. e. according to Shawafi'). The *mujahid fi'l-futiya* or the *mutabahir fil-madhhab* of the Shafi'ites is followed by Shah Wali Allah, and the *ashab al tarjih* of the *Ahnaaf* stand on the same plain.<sup>5</sup>

Ibn al-Kamal and Ibn Hajr did not count the *Ashab tarjih* and *mujtahid fi'l futiya* in the category of mujtahid, because their main function is to give preference of one verdict over the other when they contradict each other, and not to deduce the rules of Shari'ah what is called Ijtihad. Abu Zahrah hesitates to call them mujtahids.<sup>6</sup> Shah Wali Allah and the Shafi'ites like Rafi'i and Nawawi call it Ijtihad.<sup>7</sup> This proves that the Shah upholds a broad idea and suggests a wide scope of Ijtihad. He does not want to restrict the scope of Ijtihad. This is why the Shah

chooses the classification of Shawafi' in lieu of *Ahnaf* in respect to typology of the mujtahid and writes them of four categories.<sup>8</sup>

Shah Wali Allah tries to make understand the different kinds of mujtahids by citing an example:

A medical practitioner (*al-tabib*) of the modern time is not free from either of the conditions, whether he follows the Greek physicians or Indian ones. The first physician of Greece or India is just like the *mujtahid mustaqill*. Then if the follower practitioner (*tabib*) knows the characteristics of medicine, the genus and species of diseases and the methods of preparation of syrups and balms by virtue of his own intellect in such a way that although he becomes informed and aware by imitating the former physicians, as if he knows the characteristics of the drugs about which no solution was given prior, and he explains the causes of diseases, observes their symptoms and find out remedy in a such away that as if it was not discussed by the formers. In some cases he opposes the former doctor's opinion. Then he holds the rank of the *mujtahid muntasib* (affiliated mujtahid). But if he accepts them (all the technics of medicine) from the former physicians in toto without self confidence, and his main objective is to prepare syrups and balms according to the methods of former *tabib*, like the most of the physicians of the later times. Then he is regarded as the *mujtahid fi'l madhhab* (mujtahid withing the school of jurisprudence).<sup>9</sup>

Now the details of the four types of mujtahids will be discussed, as depicted by Shah Wali Allah in different places.

### **A. The Absolute Mujtahid.**

The absolute mujtahid is one who possesses the capacity or faculty of deducing the rules of Shari'ah by means of its details evidences without obeying any particular Imam<sup>10</sup>. The absolute (*al-Mustaqill*) mujtahid is distinguished from other categories by three characteristics:



a) The right of free disposal (*tasarruf*) over the principles (usul) on which his *mujtahadat* (judgment by Ijtihad) are based or from which he deduces the problems of *fiqh*.

b) Pursuit of the Quranic verses, the Prophetic Traditions and the traditions of the companions for the sake of understanding the rulings (*ahkam*) of Shari'ah which have been decided before, and for choosing some of the contradictory evidences (*adillah*) over others and explaining the preferable one of its probabilities, and apprehending of the source of judgements out of these evidences.

c) And the right to reply to those issues (*masa'il*) which have not since been decided by the early good generations, basing on those evidences on which the early doctors based.<sup>11</sup>

In short, he has a discretion or a free disposal and right of interpretation in the circumstances discussed above and he is considered superior to his contemporaries and wins the race in the field of contest.<sup>12</sup>

In another place the Shah adds a fourth characteristic to these categories that his acceptance (*qabul*) and recognition is heavenly inspired. Congregations of 'Ummah; *mufasssir*, *muhaddith*, *usuliyyin* and the learned jurists are attracted by his knowledge. Thus a long period elapses till his acceptance enters into the depth of the hearts of elites.<sup>13</sup> i.e. he becomes acceptable by all and sundry.

### ***B. The Affiliated Mujtahid:***

The affiliated mujtahid (*mujtahid muntasib*) is one who acknowledges the principles of his teacher (*shaykh*) and takes help profusely from his (*shaykh's*) discourse in following up the evidences and getting information on the source (*ma'khadh*) and yet he remains fully confident of the rules (*ahkam*) in respect of the evidences and is capable of eliciting issues from these evidences (*adillah*), whether he exercises much eliciting or less, does not matter.<sup>14</sup> In other words, he who bases his Ijtihad on

the principles (*usul*) of his teacher (*Imam*) to whom he is affiliated but he himself is not the founder of the rules of his Ijtihad but he forms Ijtihad in all particular cases, or he who is imitator of his Imam in the principles but form Ijtihad in the particular (*furu'*) issues. In another place the Shah explains the characteristics of the affiliated mujtahid in the following manner:

i) The affiliated mujtahid is a followers of the absolute mujtahid (*mujtahid mustaqill*). He acknowledges and accepts the first of the three characteristics of the absolute mujtahid and puts himself on equal footing with the absolute mujtahid in the second characteristic, discussed above in the context of mujtahid *mustaqill*.<sup>15</sup>

ii) The *mujtahid muntasib* also fixes up the order and arrangement of evidences, rules of deduction and the methods of reconciliation between the two contradictory evidences, and he (the *muntasib*) adopts all these things from the mujtahid *mustaqill*.<sup>15</sup>

iii) The chief objective of this kind of mujtahid (*muntasib*) is to know the issues which have already been replied by the mujtahid, from the detailed evidences, criticising and scrutinizing (*tahqiq*) their sources and giving preferences to one over others. These important functions will not be fulfilled without following up of a Imam who tried his best for understanding the issues and bringing to bear evidences upon every subject. Had he not been in that position, it would have been difficult for him to understand the issues.<sup>17</sup>

There is no doubt that this learned follower may contradict or rectify some things which have already been decided by his Imam. If his contradiction or rectification is less than his conformity, he will be regarded as the man of rank and reason (*sahib wajh*) in the *madhhab*. but if his rectifications (and contradictions (*istidrak*) are much more than his conformity then he will not be counted as the person of rank and reason (*ashab al-wujuh*) in the *madhhab*, because of his raising head above the

normal *label* of his *madhhab*. Yet by and large he will be affiliated to the Imam of the *madhhab* distinguishing himself from the other who imitates another Imam in respect of fundamentals (*usul*) and derivatives (*furu'*) of his *madhhab*.

Sometimes his (*muntasib*'s) *mujtahadat* (points of investigation) remain unreplied by the early mujtahid. Since occurrences are happening continuously and the door of Ijtihad is open, he (*muntasib*) takes up issues and deduces their judgements direct from the Book of Allah, the Sunnah of the Prophet (sm.) and the *athar* of the early good generations (*al-salaf*), without depending on his Imam, but the problems of this sort become very meagre in comparison to those which have already been decided.<sup>18</sup>

iv) In a place of '*Iqd al-Jid*, Shah Wali Allah says that the gist of this discussion is that a *mujtahid mutlaq muntasib* is one who combines in him the knowledge of Hadith and fiqh narrated by his Imam and the principles of fiqh (*usul al-fiqh*) like the great '*Ulama*' of the Shafi'i school. Though they (*al-nuntasibs*) happen to be numerous among themselves, yet they are handful in comparison to the other categories of the mujtahid.<sup>19</sup>

The *mujtahid muntasib* are divided into two categories:

i) Affiliated yet independent (*muntasib mutlaq*) and ii) Affiliated with limitation (*muntasib muqayyid*).

If such an issue arises before the *muntasib* (affiliated *mujtahid*) about which no clear statement (*nass*) of the absolute mujtahid (*mustaqill*) is present, then the *muntasib* deduces judgement direct from the evidences of Shari'ah like the *mustaqill*. He is then called mujtahid muntasib mutlaq (affiliated but independent). But if he deduces judgment by means of the purport of speech (*fahwa-i-khitab*) and pursuit of '*illah* (cause) in accordance with the verdicts of *mustaqill* (absolute *mujtahid*) then he is called *muntasib muqayyid* (conditional muntasib).<sup>20</sup>

## The Modus Operandi of the Mujtahid Muntasib

Shah Wali Allah sums up the work-plan of the *mujtahid muntasib* in the following manner:

The problems related by Imam Malik, al-Shafi'i, Abu Hanifah, Thawri and other mujtahids, whose *madhahib* and *fatwa* are well-founded, refer to the Muwatta of Malik, Sahih al-Bukhari and the Sahih of Muslim and then to the Hadith of al-Tirmidhi, abu Da'wud and al-Nasa'i, then whichever problem conforms to the Sunnah of the Prophet (sm.) either explicitly or implicitly, they accept it and rely upon the same. And whichever issue clearly contradicts the Sunnah they reject it and dispenses with its practice. And whichever is contradictory to *ahadith* and *athar* are found therein, they apply Ijtihad to make congruity (*tatbiq*) among them either by means of rendering the *mufassir* (self evident) or decisive one over the *mubham* (ambiguous) or by reconciling all the hadiths in one form or other. Then if the issue pertains to the category of *sunnah* and *adab* (etiquettes), they regarded them as Sunnah in all respects. If the issue pertains to the category of *halal* (lawfulness) and *haram* (prohibition) or to the jurisdiction of justice (*qada*), and the Companions (*sahabah*), they categorize the issue into two or more sets of opinions, so as to deny none of them while accepting any one of the problems. They consider roominess therein, provided that the Hadith and *athar* (traditions of *Sahabah*) bear witness to every side. Then they exhaust their efforts in understanding the best and preponderant one either by dint of the strength of narration (of the Hadith) or on account of the practice of majority of the Companions of the Prophet on it, or for its being the madhhab of majority of the mujtahids or else for its being corollary to the analogy (*qiyas*) according to its similitudes. Then they act upon this strongest decision while denying none of those who accept any other set of opinion. If, however, they do not find pertaining to this issue any Hadith from the first two categories, they (*al-muntasib*) cast their eagle eyes in searching the witnesses of their verdicts from the

traditions (*athar*) of the third category of the books of Hadith.<sup>21</sup> Then they also ponder over the evidence and causal connection (*'illah*) understood from the discourse of the companions and the followers of the companions. Then if their conscience is satisfied with whatsoever, they accept it. But if the conscience is not satisfied with whatever they described, rather it is satisfied with other than it, and the issue pertains to the category that falls into the domain of Ijtihad (individual judgement) of the *mujtahid*, and no prior consensus (*Ijma'*) was formed thereof, and moreover, if they find any clear evidence lying with them in favour of other view, they accept this (second) view seeking the help of Allah and relying upon His favour. But if there does not stand with them any clear evidence they follow the great majority (*al-suwad al-a'zam*).

However, the issue in which there is no clear version nor any correct explanation coming down from the early generations (*al-salaf*), they make utmost exertion in pursuit of the clear statute (*nass*) or any indication from the Book of Allah and the Sunnah of the Prophet or from the *athar* (practice) of the companions and the followers of the companions (*tabi'un*). Then if they find any evidence in their favour they give verdict accordingly. But it is not their wont to imitate any single person in all his verdicts whether their (*muntasibs'*) conscience are satisfied with it or not, i.e. they do not accept a single person blindly.<sup>22</sup>

Shah Wali Allah makes it clear that this method of the *mujtahid muntasib* is the replica of the working method of the researchers amongst the jurio-traditionalists (*fukahha muhaddithin*) who are handful in number and different from the literalist (*zahiriyah*) *qiyas* (analogy) nor *ijma'* (the consensus). They are also different from those early doctors (*mutaqaddimun*) of the people of Hadith who do not pay any heed to the opinions of the *mujtahids*, rather they resemble more to the people of hadith, because they adopt the same methods regarding the verdicts of the *mujtahids* as to what the people of Hadith did in the issues of the *Sahabah* and *tabi'un*.<sup>23</sup>

In another place Shah Wali Allah sums up the working method of the *mujtahid muntasib* in the following words:

As against the activities of the *mujtahid mustaqill* (absolute mujtahid) the modus operandi of the *muntasib* is that while the *mustaqill* discusses the problem in every subject thread bare and writes down a reasonable quantity of the important issues, the *muntasib* memorises some portions of the *tafsir* (exegesis) of the Qur'an, the Prophetic Sunnah, the *athar* of the early generations (*al-salaf*), the Arabic language and the methods of deduction (*istinbat*) and thinks over the issue discussed by the *mustaqill*. If he (*al-muntasib*) finds there any clear statement (*nass*) or a verse of the Qur'an or a Hadith bearing a corollary or contradictory meaning regarding that issue, that becomes his decision. If he does not find any evidence but all aspects of the issue become evident to him, he accepts it. But if he does not find a contradictory opinion nor a real or probable aspect of the issue is evident to him, he either depends on the verdict of the *mustaqill*, or keeps himself silent.<sup>24</sup>

### **C. Al-Mujtahid fi'l-Madhab (the Mujtahid within the School of Law).**

The *mujtahid fi'l-madhab* is one who is next to the *mujtahid muntasib*<sup>25</sup> (independent but affiliated) in status. He is imitator (*muqallid*) of his Imam in those matters where his Imam's clear statements (*nass*) exist. But he knows the methods of the Imam and the basic principles of his (Imam's) *madhab*.<sup>26</sup> So when such an incident occurs for which there is no clear verdict (*nass*) of his Imam, he exercises Ijtihad in accordance with the rules of his Imam's *madhab* and derives its judgement from his verdicts in the same manner as his Imam did.<sup>27</sup> In other words, the mujtahids within the school of law do not oppose the founder of the school, either in the principles or in the particular applications (*furu'at*), rather they satisfy themselves with determining the law in regard to particular cases which the Imam had left undecided, using the principles

established by him. The jurists, like al-Khassaf, Abu Ja'far al-Tahawi, Abu'l Hasan al-Karkhi, Shams al-A'immah al-Sarakhsi, Shams al-A'immah Halwani, Fakhr al-Islam Bazdawi and Fakhr al-Din Qadikhan in *Hanafi madhhab*, al-Abhari, Ibn Abi Zayd, Ibn Abi Zamin, etc. in the Maliki *madhhab*, al-Maruzi, al-Asfar'iyini, Abu Ishaq al-Shiraji, etc. in the Shafi'i *madhhab* and al-Kharkhi etc. in the Hanbali *madhhab*, belong to this category. They existed right from the middle of the 4th century H. down to the late 5th century H.

The *mujtahid fi'l madhhab* is also called the *mujtahid al-muqayyid* (conditional *mujtahid*). It has been understood from the above discourse of Shah Wali Allah<sup>28</sup> that *mujtahid fi'l madhhab* and the *mujtahid muntasib muqayyid* connote the same meaning. He defines muntasib muqayyid as, "he who derives his judgement by means of the purport of the address or pursuit of logical cause (tard-i-'illah) in accordance with the verdicts of his Imam (*mujtahid mustaqill*)", is called *mujtahid muntasib al-muqayyid* (affiliated *mujtahid* with limitation). The Shah expresses the same thing in other words regarding the *mujtahid fi'l madhhab* that the *mujtahid fi'l-madhhab* is next to the *mujtahid muntasib mutlaq* but equal to the *mujtahid muntasib muqayyid* in rank.

The Shah further says that the most important concern of the *mujtahid fi'l madhhab* is to understand the issues asked by seekers of *fatwa* (legal decision) regarding which no doctors of yore has given any decision. He feels more need of an Imam to follow him in those principles (*usul*) which have been well-arranged and made easily accessible by him (Imam) in every subject, than the *muntasib mutlaq*.<sup>29</sup>

Some times he (*mujtahid fi'l-madhhab*) rectifies or contradicts the decisions of his Imam by means of the Qur'an or the Sunnah of the Prophet or the *athar* (practices) of the *salaf* or else the *Qiyas* (analogy), but his rectifications or contradictions become less than conformity.<sup>30</sup>

We have already discussed the three distinguishing

characteristics of the *mujtahid mustaqill*<sup>31</sup> (absolute mujtahid). *The mujtahid fi'l-madhhb* accepts the first and the second characteristics of the *mustaqill* in toto and puts himself on the equal footing with the *mustaqill* in the derivatives following the method of the *mustaqill*.<sup>32</sup>

There are some problems of the *mujtahid fi'l madhhab* which the Shah sums up into three issues (*mas'il*). They are as follows:-

### **The first Issue**

It is necessary for the *mujtahid fi'l madhhab* to know as much of the Prophetic Traditions (*sunnah*) and the practices (*athar*) of the companions as they may enable him to desist from contradicting the genuine Traditions and the agreement (*ittifaq*) of the early generations (*al-salaf*). And he should also acquire the knowledge of the evidences of Islamic jurisprudence (*fiqh*) which would enable him to understand the sources of his Imam's verdicts.<sup>33</sup>

Quoting from the *Fatwa Sirajiyah* the Shah explains the meaning of the above theme. He says that none should give *fatwa* without knowing the verdicts of the 'ulama' and he ought to know also whence they said. And he should further know the social intercourse (*mu'amilat*) of the people. Then if he knows the verdicts of the 'ulama' but he does not know their *madhahib* then if he is asked of any problem and he (the *mujtahid fi'l madhhab*) knows the agreement of 'ulama' whose *madhahib* are acceptable, then there is no harm to say : "This is permissible or this is not permissible." Here his judgment will be by way of narration or citation (*hikayah*). If the problem is of such nature that the 'ulama' have differed therein then he will say : "This is permissible according to the opinion of so and so." In such a situation he has no option to reply according to the opinion of some one until and unless he knows their arguments (*hujjah*).<sup>34</sup>

It is narrated from Abu Yusuf, Zufar and 'Afiyah bin Zayd that they used to say : "It is not lawful for any one to give



*fatwa* with our verdicts until and unless one knows that from where we have said."<sup>35</sup>

In spite of having all qualities, it is indispensable for a *mufti* to become an apprentice of a teacher in order to have guidance regarding *fatawa*. Because there are many issues (*masa'il*) which have been decided by our Imams in accordance with the customs and social intercourse of the people of the country. So it is necessary for every *mufti* to consider the customs and conventions of the people of the land and according to the need of those matters which do not contradict the Shari'ah.<sup>36</sup>

The objective of quoting these words is that there is a distinction between the *mufti* (jurist-consult) who himself derives issues (*sahib takhrij*) and the *mufti* who is well-versed in the madhhab (*al-mutabahir fi'l-madhhab*) of his Imam and gives *fatawa* by way of narration not in the manner of *ijtihad*.<sup>37</sup>

The above discussion means that the *mufti* must be a *mujtahid*, otherwise he will not be eligible for giving *fatwa* from himself directly. He holds the position of the *mujtahid fi'l-madhhab*. He may also be called the *sahib takhrij* (he who extracts issue) or *ahl al-tatbiq* (he who makes congruity).

We may sum up the functions of this category of the *mujtahids* in the following words:-

They can solve cases which come before them by giving reasons for their judgements or decide on cases which have not been settled by previous *mujtahids*, but in both the cases their decisions must always be in absolute accordance with the opinion of the *mujtahids* of the first and second categories and with the principles which guided them (1st and 2nd categories).

## The Second Issue (mas'alah) Regarding the Category of Problems:

The Shah writes that the rule with the argumentative (*muhaqqiq*) jurists (*fiqih*s) is that the problems (*masa'il*) of *fiqh* (Islamic jurisprudence) or the writings of the *mujtahids* are of four kinds.

1) The problems (*masa'il*) which have been recorded in and established by the *Zahir-al-Madhab*<sup>38</sup> (the established doctrines of the Hanafi School), are called *usul* (principles).

The legal effect (*hukm*) of this category is that the *mujtahids fi'l-madhab* accept it under all circumstances whether it becomes in conformity to the fundamental principles (*usul*) or contradicts them. For this reason the author of *Hidayah* and the others belabour these in differentiating the problems of genus (*tajnis*).<sup>39</sup>

2) The 'Rare' (*Shadh*) Report<sup>40</sup> narrated by Imam Abu Hanifah and his two disciples, Abu Yusuf and Muhammad:

The legal effect (*hukm*) of this category is that the *mujtahids* do not accept it except when it conforms to the fundamental principles. This is why in some places of *Hidayah* and the other books several rare reports have been corrected according to the circumstances of the evidence.<sup>41</sup>

3) The derivations and deductions of the later scholars (*al-muta'khhirin*) upon which the majority of the 'ulama' agreed.

The legal consequence (*hukm*) of this kind is that the *mujtahid fi'l-madhab* gives *fatawa* on the basis of it under all circumstances.<sup>42</sup>

4) This kind is also the derivations and deductions from the later scholars on which the majority of the 'ulama' do not agree.

It is as a rule, the *mufti* will place it with the fundamental principles (*usul*) and tally the same with the precedences of the

early generations (*al-salaf*). Then if the *mufti* finds it in conformity with the fundamentals he will accept it, otherwise he will leave it off.<sup>43</sup>

### The Third Issue

When a problem (*mas'alah*) becomes controversial between Imam Abu Hanifah and his two disciples, Abu Yusuf and Muhammad, then its legal effect (*hukm*) is that the *mujtahid* within the school (*mujtahid fi'l madhhab*) ought to choose from their verdicts the strongest one in respect of evidence (*dalil*) and reasonable one in respect of causation (*ta'lil*) and most beneficent to the people.<sup>44</sup> This is why a group of Hanafi 'ulama' gives *fatawa* according to the opinion of Imam Muhammad regarding the purity of used water<sup>45</sup> (*al-ma'al-musta'mal*). They also give *fatawa* according to the verdict of Abu Yusuf and Muhammad regarding the starting point (*awwal al-waqt*) of the 'Asr and 'Isha' prayers and in the permissibility of *al muzari'ah* (share cropping).<sup>46</sup>

Similar is the case in the madhhab of Imam Shafi'i; for example, the *distant* relatives (*dhawi al-arham*) are deprived of inheritance (*mirath*) according to the *madhhab* of Imam Shafi'i. But the later doctors (*al-muta'khirun*) of the Shafi'ites school have given *fatawa* in favour of their getting inheritance in view of the lack of arrangement of the public treasury (*bayt al-mal*). The books of Hanafi and Shafi'i jurists are full of such examples of giving *fatawa* against the madhhab.<sup>47</sup>

Shah Wali Allah holds a peculiar view in this regard. That the *mujtahid* (*mufti*) within the school of Shafi'i or well-versed in it (*al-mutabahir fi'l-madhhab*, wherever in an issue he feels necessary of looking at other *madhhabs* besides his *madhhab* he should choose the *madhhab* of Imam Ahmad bin Hanbal, because he was a most honourable disciple of al-Sahfi'i in respect of knowledge and trustworthiness. In fact, his (*Ahmad's*) *madhhab* is a branch of Shafi'i's madhhab.<sup>48</sup>

It may be assumed from the above discussion that Shah Wali Allah holds very liberal attitude in giving *fatwa*. He maintains that there is roominess not narrowness in Shari'ah. So the giver of *fatawa* or *mujtahid* should consider the condition and circumstance of the seeker of *fatawa*. Considering this he can violate the standing *madhhab* of his Imam and the *madhhab* of the seeker of *fatwa*, if necessary, in giving *fatawa*. For, in Shari'ah there is easiness (*yasr*) not hardship (*'usr*).

His preference to the *madhhab* of Ahmad bin Hanbal in violating the *madhhab* indicates his staunch attachment to hadith, because Ahmad bin Hanbal's *madhhab* is based mainly on Hadith. He prefers, even a weak Hadith to *qiyas* (analogy) or *ra'y* (rational opinion).

#### **D. The Mujtahid fi'l Futiya or al-Mutabahir fi'l Madhhab (the mujtahid of legal decision or the versatile in the madhhab).**

He who is versatile scholar in the *madhhab* of his Imam and memorises the books of his *madhhab* and becomes capable of preferring one verdict to other and one aspect of his Imam to others is called *Mujtahid al-Futiya* or *al-Mutabahir fi'l madhhab*. He is next to *the mujtahid fi'l madhhab* in respect of rank.<sup>49</sup> There are three issues in this section.

##### **The first Issue:**

##### **Concerning the Conditions and Limitations of a Mujtahid of this Category.**

i) He should possess a sound understanding, having knowledge of Arabic language, styles of discourse, the degrees (*maratib*) of preference and ability of understanding the meaning of the words and language of the Arabs. It should not be difficult for him to understand a term as limited (*muqayyid*) which apparently looks absolute (*mutlaq*) but it is actually used for limited meaning and vice-versa.<sup>50</sup>

ii) It is also obligatory on him (the versatile) not to give *fatawa* except on one of the two alternatives dwelling either on (i) a reliable sound *sanad* (chain of reporters) tracing back to his Imam, or (ii) referring the issue to a famous book circulated hand to hand.<sup>51</sup>

The Shah adds here some issues which necessarily come forth out of the above mentioned propositions.

The method of transmission of the imitating mufti<sup>52</sup> from the *mujtahid* will be confined to one of the two cases. (1) Either there will be a *sanad* for him referring back to the *mujtahid*, or (2) he takes the issue from a well known book profusely circulated from hand to hand, as the books of Muhammad bin Hasan, Muwatta of Imam Malik and the similar famous books of other mujtahids. Because these books achieve the status of the *khabr mutawatir*<sup>53</sup> or *mashhur*<sup>54</sup>. On this analogy Imam al-Razi says that if any edition of *al-Nawadir* (rare books)<sup>55</sup> is found in these days, it will not be lawful to trace its contents back to imam muhammad nor to Abu Yusuf, because these are not famous in these days nor are well-circulated in the public. But when any report of *al-Nawadir* is found, for instance, in a famous book, like *Hidayah* or *al-Mabsut*, then it will be reliable on the basis of that book.<sup>56</sup> That is the *muqallid mufti* must see it that he is quoting correctly in respect of *sanad* or narrating it from a well-known book circulating in the hands of the public.

There has been considerable divergence of opinion as to the amount of learning a person must possess in order to be qualified to give *fatwas* but the generally accepted opinion is that a *mufti* must be a *mujtahid*. A person, however, who is not a *mujtahid*, nor the *Sahib tarjih*, allowed to give *fatawa* by quoting the opinions of others, provided he conforms to the rules concerning transmitters (*rawi*). Such a person, according to the author of the *Fath al-Qadir*, when asked about a point, must not give his answer as final; for example, he must not say : "The answer of your question is this," but on the contrary, he must

relate the various opinions on the point, as for example, abu Hanifah said on this point so and so," and leave it to the *mustafti* (seeker of *fatwa*) to follow the opinion that appeals to his intuition as the correct one. Ibn Humam, the author of the *Fath al-Qadir* here interjects the opinion that, although it is advisable for the person giving the *fatwa* to quote all the opinions on the point, it is not necessary to do so, it being permissible to mention only one of them.<sup>57</sup>

### **The Second Issue:**

The provable matter of this issue (*mas'alah*) is that what will be the practice of the *mujtahid fi'l-futiya* or the *mutabahir fi'l madhhab* when he finds a *sahih* Hadith contradictory to his *madhhab*, then should he accept the Hadith and abandon his *madhhab* on that issue?

The issue entails a long discussion. Shah Wali Allah quotes here three verdicts from the *Khizanat al-Riwayat*.

1. He will accept the Hadith and give up his *madhhab* on that issue. The details of this view is that the '*alim* who knows the meaning of the Quaranic Text and the Prophetic Tradition and he is also a man of cognizance (*ahl al-dirayah*) and to whom the soundness of the Tradition has been established, then it is permissible for him (non *mujtahid 'alim*) to act on the Hadith even though it is contradictory to his *madhhab*. Shah Wali Allah quotes here sayings of different Imams in support of his view-point. Once Imam Abu Hanifah (R.) was asked as to an opinion passed by him and the book of Allah contradicts it. He replied, "Abandon my opinion for the book of Allah". Then he was asked, when the Hadith of the Prophet (sm.) contradicts it? He replied as above. He was again asked, when the verdict of the companions (*Sahabah*) contradicts it? He said "Abandom my opinion for the verdict of companions."<sup>58</sup> Imam Abu Hanifah used to say, "When a Hadith proves sound then that is my *madhhab*"<sup>59</sup>.

Al-Bayhaqi has narrated in his Sunan that Imam Shafi'i would say, "When I pass an opinion and the Prophet (sm.) has said contradicting my opinion, then whatever of the Hadith of the Prophet proves genuine, is preferable. So, do not imitate me".<sup>60</sup> Al-Daraki, a Shafi'i scholar, sometimes would give *fatwa* conforming neither to the *madhhab* of al-Shafi'i, nor to that of Abu Hanifah. When he was asked of that contradiction, he replied with anger: "So and so narrated from the Prophet like this, and the acceptance of the Hadith is preferable to the acceptance of the verdicts of both Abu Hanifah and al-Shafi'i when they happen to contradict Hadith".<sup>61</sup>

Shah Wali Allah quotes here the discourse of *Hidayah* regarding the issue of fasting (*sawm*) of him who gets cupped. That is, if a person gets cupped and he assumes that it breaks his fast and thereafter he takes meals willingly, then both *qada* (fulfilment) and *kaffarah* (legal expiation) devolve on him. Because the assumption was not supported by the evidence of Shari'ah. But when a jurist (*faqih*) gives him *fatwa* of breaking fast, then he will not be liable to pay *kaffarah*, because the *fatwa* is the evidence of Shari'ah in his case. Similarly, if a reliable Hadith reaches him in this regard and he relies upon it, then he will not also be liable to pay *kaffarah*, because the saying of the Apostle of Allah (sm.) is not less in status than the verdict of the *mufti*. since the verdict of the *mufti* is appropriate to become an evidence of Shari'ah, so the saying of the Apostle of Allah (sm.) is more deserving to be so.<sup>62</sup> Referring to the author of al *Manadi*, Shah Wali Allah says that preference of Hadith to the *madhhab* is a unanimous opinion of the Muslim jurists.<sup>63</sup>

2. That, if the versatile (*al-mutabahir*) in the school does not combine in himself the requisite instruments of Ijtihad (*alat al-Ijtihad*), his practice on Hadith as against his *madhhab* will not be permissible. Because he does not know as to whether the Hadith is abrogated or interpreted otherwise, or else a firm one (*muhkam*) borne by literal meaning. Ibn al-Hajib (d.646 H.) the

author of the *Mukhtasar*, and his followers incline towards this opinion.<sup>64</sup>

This view has been refuted by the Shah. In support of the refutation. Shah Wali Allah argues that if it is meant that the lack of positive knowledge (*yaqin*) by negating the knowledge of the probabilities of being the *Hadith mansukh* or *muawwal* or *muhkam*, then the *mujtahid* also does not attain positive knowledge by means of it. The *mujtahid* bases most of his *Ijtihadi* affairs on the preponderant assumption (*zann ghalib*). So the versatile (*al-mutabahhir*) may act on Hadith as against his *madhhab* on the basis of this *zann ghalib*.<sup>65</sup>

3. Shah Wali Allah says that, the acceptable view herein is that which has been chosen by Ibn al-Salah and followed by al-Nawawi who judged it sound. He says that if a follower of Shafi'i finds a Hadith contradicting his *madhhab*, then it should be observed whether the requisite qualifications are fulfilled by him in general or whether these are fulfilled in the particular subject of problem, then it will be permissible for him to act proportionately on the Hadith independently. But if he does not fulfil the conditions of *Ijtihad* and the contradiction of Hadith troubles him and does not find any satisfactory answer for opposing Hadith, then it is permissible for him to act on it provided any independent Imam other than al-Shafi'i has acted upon it. That will be an excuse in abandoning the *madhhab*. Al-Nawawi called it good and confirm the same.<sup>66</sup> This is the chosen view of the Shah.

### **The Third problem regarding choosing the Madhhab of the other Imam as against the Madhhab of His Imam.**

When the versatile in the *madhhab* intends to act in a particular question (*mas'alah*) in accordance with the *madhhab* of the other Imam as against the *madhhab* of his own Imam, is it permissible for him to do so? Shah Wali Allah says that the Muslim jurists differ therein. These are as follows:



Al-Ghazali and a small group of Jurists deny it. But it is a weak opinion to the majority of 'ulama" (*jumhur*).<sup>67</sup>

But most of the jurists has gone towards the permissibility of the practice against his Imam's *madhhab*. For example, Al-Amidi (d.631 H.), Ibn al-Hajib (646 H.), Ibn al-Hajr, al-Ramali and a group of Hanafi and Maliki jurists. It is such a matter on which a unanimity of the later (*muta'akhirin*) *muftis* of the four *madhhabs* has been held, though they differ regarding the conditions of its permissibility. Shah Wali Allah relates here some versions of different 'ulama':

Some say that the versatile (*al-mutabahir*) should not depart from the issue which he has already practised upon by way of imitation in particular issue, for instance, repeating those *salat* which were performed on the basis of prior *madhhab*. The Shah calls it a sound opinion in respect of argumentation.<sup>68</sup>

Some ones say that the versatile should not turn back from that which he performed categoriwise (*bi-jins*). This has been refuted too. Because this is not a case held by the unanimity, rather the greater portion of the reports narrated from the early generations (*al-salaf*) point to the contrary, in favour of practice against particular *madhhab* as they themselves practised unfetteredly.

Others say that, he (the versatile) should not pick out concessions (*rukhsah*) merely, i.e. choosing that which is easier to him. This view is rejected too. Because when the Prophet (sm.) was given option he used to choose that is easier of the two alternatives until it would fall into sinfulness. It, however, is said that, the meaning of *rukhsah* (concession or cheapness) is that which is not supported by the evidence, rather the sound evidence goes against it, for instance, the permissibility of temporary marriage (*mut'ah*) and *al-bay' al-sarf*.<sup>69</sup> Similarly, one becomes impious (*fasiq*) by picking out from each school what is most agreeable to him, for instance, the drinking of *mabidh* (a kind of wine prepared from grapes and dates) from

the school of 'Iraq, temporary marriage (*mut'ah*) from that of Makkah, etc.<sup>70</sup> The author of *Taqrir* sees no objection to this practice.<sup>71</sup>

Some say that the condition of departing from the previous school is that one should not concoct (*yalaffiqu*) an issue in such a manner that it may constitute an unacceptable or impossible situation to both the Imams. It is said that the prohibited concoction (*talfiq*) is that which constitutes an impossible situation in a single issue, for instance, performing of ablution without seriality (*bila tartib*) and then coming out of fluid blood in the same issue not in two issues taken separately, for instance, when one purifies one's cloth according to the *madhhab* of Imam Shafi'i and performs *salah* according to that of Abu Hanifah.<sup>72</sup>

Some others say that the condition of practice against the *madhhab* is that the *madhhab* or issue which one intends to follow, will not belong to that category in which the judgment of the Qadi becomes null and void.<sup>73</sup>

But some say that the versatile's conscience should be broadened, i.e. he must have clear understanding to the issue in which he imitates other Imam. Broadening of conscience can not be imagined except in the case of the versatile in the *madhhab*.<sup>74</sup>

It is also said in this regard that when the versatile follows the majority of the 'ulama' or the well-known verdicts of the jurists, then his deviation from the *madhhab* of his Imam will be good and when it becomes to the contrary, then it will be bad.<sup>75</sup> This is a weak opinion.

After mentioning the sum and substance of the opinions of the learned doctors in this regard Shah Wali Allah expresses his opinion that there are three aspects of departing from certain particular doctrines of the school (*madhhab*) to which a versatile has pledged allegiance; (1) Permission (2) Preference and (3) Obligation (*wujub*). These are as follows:

(1) The departure from the *madhhab* is permissible provided that it does not dissolve the judgment of the judge (*qada'al-Qadi*), all the same whether the dissolution takes place due to the conjunction (*ijtima'*) of such two meanings every one of which is correct when taken separately, for instance, marriage without the presence of two full witness and publicity,<sup>76</sup> or it takes place due to other than the conjunction of two meanings.<sup>77</sup>

(2) In respect of preferring the *madhhab* of the other Imam, there lies the conditions of broadening of the conscience (of the versatile) which might on account of having clear evidence of *shari'ah* or due to great frequency of action on it amongst the early generations, or else its being more cautious (*ahwat*) or even owing to its being a means of deliverance from a bottle-necked situation that makes it impossible to obey the direction of the Prophet (sm.) that, "When I command you with an affair you should do it according to your ability". And other selfsame ways acceptable in the eye of *Shari'ah* and not from mere passion of pursuing the worldly affairs.<sup>78</sup>

(3) As regards obligatoriness of practice (*'aml*) against one's own *madhhab*, there lies the condition of involvement of the right of another over him; so that, the *qadi* (judge) gives judgment against his *madhhab*, i.e. in this situation practice against *madhhab* becomes obligatory.<sup>79</sup>

It should be remembered that it is the style of Shah Wali Allah that he mentions the chosen and preferable opinion at the end of his argumentative discussion and quotes opinion from the works of distinguished jurists in support of his stand. Following this practice, the Shah sums up the above discussion by saying that, once a versatile imitates an Imam or *mujtahid* in an issue, i.e. acts upon it, he will not turn back on that issue. But in other issues the preponderant opinion lies with permissibility of turning back on account of the saying of Allah, "Ask the men of learning if you do not know"<sup>80</sup>

So the opinion regarding obligation of turning back upon the Imam whom he (the versatile) has imitated first in another issue, involves restricting of the general import of the above clear verse which stands in the stead of abrogating of the Quranic verse. And on account of the saying of the Prophet (sm) that, "My companions are like the stars, whomsoever of them you follow, you would get right guidance."<sup>81</sup> Moreover the common people (*al-'awamm*) of the early generations (*al-salaf*) used to seek *fatwa* from the jurists regardless of turning to any particular person facing no denial from any quarters. So it got into the place of the consensus (*ijma'*) on permissibility.<sup>82</sup>

### **The Position (kayfiyah) of the Mujtahids in the Four Madhahib.**

Shah Wali Allah writes about how long and what kind of *mujtahids* had appeared in the four schools of law. He displays his impression on every *madhhab*.

He says that the existence of the *mujtahids mutlaq muntasib* (the independent but affiliated *mujtahid*) disappeared after the third century of Hijrah in the *madhhab* of Abu Hanifah. Because the condition of this kind of *mujtahid* is that he must be a *muhaddith* of grade one. Engrossment of the Hanafi savants in the science of Hadith was negligible in the past and it is meagre in the present times too. But the existence of only the *mujtahid* within the school has been continuing. He who says that the minimum requirement for the *mujtahid* is to memorize the book *al-Mabsut* by Imam Muhammad bin Hasan, he means the *mujtahid* within the school of law (*mujtahid fi al-madhhab*).<sup>83</sup>

The number of the *mujtahid muntasib* was small in the *madhhab* of Imam Malik. Even though any person reaching this position isolatedly from amongst the Malikite jurists, was not counted as the man of prominence (*sahib wajh*) in the *madhhab* due to his isolation, such as the position of Ibn 'Abd al-Barr (Abu'Umar) and Qadi Abu Bakr Muhammad Ibn al 'Arabi (d. 546 H.).<sup>84</sup>

The number of this kind of *mujtahids* in the *madhhab* of Ahmad bin Hanbal was also small in the past as well as in the present times. The *mujtahids* of different categories had been appearing until expiry of the ninth century of Hijrah. Then this *madhhab* disappeared in most of the countries. A countable few upholders are found in Egypt and Baghdad. It is remarkable that the position of the *madhhab* of Imam Ahmad, in relation to that of Imam Shafi'i, and the *madhhab* of Abu Yusuf and Muhammad, in relation to that of Imam Abu Hanifah stands on the same ground, except that the *madhhab* of Ahmad bin Hanbal was not merged to the *madhhab* of al Shafi'i, whereas the *madhhab* of Abu Yusuf and Muhammad had merged to that of Abu Hanifah. It will not be difficult to record the *madhhab* of both al Shafi'i and Ahmad as single one on the part of him who understands them properly.<sup>85</sup>

As for the position of the *madhhab* of Imam Shafi'i it might be said that there arose numerous *mujtahid mutlaq*,<sup>86</sup> *mujtahid fi'l-madhhab* (*mujtahid* within the school), fundamental legists (*usuliyin*), the scholastic theologians (*mutakallimin*), the *mufasssir*, commentators of the Hadith, compared to other *madhhabs*. In respect of *isnad* (chain of reporters) and *riwayat* (transmissions) it is a more apposite and relevant, in respect of registering the limits of clear statements (*nusus*) of Imam, it is stronger than other, in respect of making distinction between the verdicts of the Imam and the opinion of the disciples; it is more strict in respect of preferring one opinion or argument to other. These things will not be hidden upon him who has long experience in the science of different schools of law.<sup>87</sup>

The early disciples of Imam Shafi'i were the absolute *mujtahids*. There was none who imitated Imam Shafi'i in entire *Ijtihadi* issues till the appearance of Ibn Surayj who laid the foundation of the rules and regulations of *taqlid* and deduction (*takhrij*). Then appeared his (Ibn Surayj's) disciples who followed his path and chose his manners. That was why he was counted among those *mujaddids* (renewers) who were to appear on the eve of each century.<sup>88</sup>

It should also be remembered that the components of the *madhhab* of Imam Shafi'i is the record of the Prophetic Traditions (*ahadith*) and the practice of the companions (*athar*). No other *madhhab* had got the opportunity like this *madhhab*. Imam Shafi'i laid the foundation of his *madhhab* upon the *Muwatta* of Imam Malik. other constituents (*maddah*) of his *madhhab* are *Sahih* of al-Bukhari. *Sahih* of Muslim, *Sunan* of Abu Dawud, *Jami'* of Tirmidhi, Ibn Majah, al-Darimi, then *masnad* of al-Shafi'i, *Sunan* of Nasa'i, *Sunnan* of Daraqutni, *Sunan* of al-Bayhaqi, *Sharh Sunnah* of al Baghawi, etc.<sup>89</sup>

Tracing importance upon the Shafi'i *madhhab* the Shah says that he who displays enmity to the *madhhab* of Imam Shafi'i shall be deprived of the status of the absolute *mujtahid*.<sup>90</sup>

### **Some Useful Discourses as Regard proffering Fatwa**

The '*ulama*' differ in giving *fatwa* (formal legal opinion) with forsaken rare narrations (*riwayat al-shadhdhah al-mahjurah*) with a view to drawing benefit from them. It is in al-Sirajyyah that, the *fatwa* would generally be acceptable according to the verdict of Abu Hanifah, then on the verdict of Abu Yusuf, then on the verdict of Muhammad Ibn al-Hasan, then on the verdict of Zufar bin Huzayl and al-Hasan bin Ziyad. It is said that when in an issue Imam Abu Hanifah is on the one side and his two great disciples (*Sahibayn*) are on the other side, then the *mufti* has his discretion to choose any side. But the first opinion is more correct, provided that the *mufti* is not a *mujtahid*.<sup>91</sup> Because Imam Abu Hanifah was the greatest learned man of his time; even al-Shafi'i said that all the people belong to the greater family ('iyal) of Abu Hanifah in matters of fiqh.<sup>92</sup> The author of *al-Mudmarat*,<sup>93</sup> adds somethings more along with the above discourse that, "If one of the disciples (Abu Yusuf or Muhammad) is with Abu Hanifah then the *mufti* must take to the verdict of the two. But when the '*ulama*' regard it salutary (*maslahah*) to take to the verdict of that single one, then the *mufti* would follow their ('*ulama*'s) salutariness, just as the jurist Abu

al-Layth has accepted the opinion of Zufar in case of sitting of the sick for *salah* (prayer), that he will sit just like the sitting of the *musalli* (sayer of prayer) in *tashahhud* (sitting for reciting *al-tahiyyatu*), because it is easier for the sick, even though the verdict of the other Imams of the Hanafi *madhhab* is that the sick will sit, in lieu of *qiyam* (standing), cross legged or guttering cloths behind the hips (*muhtabiya*) in order to keeping distinction between sitting for *tashahhud* and the sitting in lieu of *qiyam* (standing position in prayer). But it is more troublesome for the sick, because he is not accustomed to sitting like that.

So keeping the common weal (*maslahah*) of the time in consideration, the Shah regards it permissible to accept the verdict of a single doctor from amongst many doctors.<sup>94</sup>

Referring to *al-Qunayah*,<sup>95</sup> Shah Wali Allah says that in cases relating to the dispensation of justice, the *fatwa* should be given according to the verdict of Abu Yusuf on account of his greater knowledge through experience in this respect.<sup>96</sup>

Referring to *kasf* of al-Bazdawi, the author of '*Umdat al-Ahkam* states that, it is commendable for the *mufti* to choose concession (*al-rukhsah*) in order to make a matter easy for the commoners (*al-'awamm*). For instance, the permissibility of performing ablution with the residual water of *hammam* (baths) and performing of *salah* in the clean places without *musalla* (the mat on which prayer is performed) and nonavoidance of the soil of the public roads of such places which the '*ulama*' have given verdict about its cleanliness for the performance of prayer and making *tayammum*.<sup>97</sup>

It is also narrated in *al-Qunayah* that it is incumbent on the *mufti* to give *fatwa* that would be easier for the people, espacially with respect to the weak. because the Prophet (sm.) said to Abu Musa al-Ash'ari and Mu'adh bin Jabal when he (sm.) sent them to al-Yaman, "Be easy and not be troublesome".<sup>98</sup>

In this respect Shah Wali Allah quotes an example from *'Umdat al Akkam* that left-over (*sur*) of the dog and hog is defiled (*najis*) as opposed to Imam Malik. If a *mufti* gives *fatwa* according to the *madhhab* of Malik, it will be valid.<sup>99</sup> Advocating seeking of the easiest thing he (the Shah) says, "I do not know whatever evidence of Tradition and reason is there that desists seeking easiest thing? If a person seeks the easiest courses for himself of the verdict of a *mujtahid* having access to Ijtihad, then I do not know that the Shari'ah ever blamed him for this. The Messenger of Allah (sm.) used to love what becomes lighter upon his *Ummah* (community).<sup>100</sup> Here we notice that seeking of easier ways in performing the ordinances of *Shari'ah* is not blameworthy.

#### E. PIECE-MEAL IJTIHAD (*TAJAZZI' FI AL-IJTIHAD*)

It is a matter of controversy that whether it is permissible for a person to make *Ijtihad* in one subject of *Shari'ah* or in a particular issue or not. The opinions of the jurists differ in this question. Some doctors have questioned the legitimacy of piece-meal Ijtihad (*tajazzi'*); but others uphold the view of permissibility of it even though one is not acquainted with the entire subject of fiqh.

It may be noted that a combination of all five virtues<sup>101</sup> is necessary for the person who intends to be a full *mujtahid* (*mujtahid mutlaq*) i.e., a *mujtahid* who may express an opinion on every question of Shari'ah. Hence, one is allowed to enter the rank of *mujtahids*, although one has mastered only a part of the required sciences, provided that one exercises Ijtihad only on questions falling within that part.<sup>102</sup> For instance if one knows only the laws of *qiyas* (analogy), though he may not know the science of Sunnah, or if he knows only the subject of inheritance, he may form an opinion on points included in the field known to him, since it is not necessary for the *mufti* to be able to answer every question. Thus, it is related of Imam Malik



that he was asked forty questions concerning thirty-six of which he answered, "I do not know". Similarly, the companions (*sahabahs*) and all the great *mujtahids*, have not answered every question that was put to them.<sup>103</sup>

The majority hold that the partial *mujtahid* is not entitled to independence of opinion outside of his speciality and like the *muqallid* (imitators) must apply to a *mujtahid* for an opinion on such matter. This applies only in case the splitting of Ijtihad is granted to be legitimate in the contrary case, the limited *mujtahid* rely on the opinion of the full *mujtahid* even on points falling within his own speciality.<sup>104</sup>

Shah Wali Allah in his monumental book *Hujjat Allah al-Balighah*, writes that according to the general jurists (*jumbun*) splitting (*tajazzi'*) of Ijtihad is permissible.<sup>105</sup> In *'Iqd al-Jid* the Shah quoting from *al-Anwar* writes, "It is permissible for a person to make Ijtihad in one subject (*bab*), not in the other subject (of *fiqh*)".<sup>106</sup> These versions of Shah Wali Allah clarifies that he is an upholder of piece-meal *Ijtihad* like the general jurists.

Since the issue is controversial it needs discussion; so that, an evilmorger may not have a chance to misinterpret it according to his sweet will.

There are four *madhahib* of jurists in this respect. They are as follows:-

### **1. The First Madhhab**

The first madhhab is the *madhhab* of the upholders of the permissibility of the splitting (*tajazzi'*) of *Ijtihad*. They are the general (*Jumbur*) jurists of the Shafi'ite school like al-Amidi, Ibn Subki, Ibn Daqiq al-'Id, al-Rafi'i, Safi al-Hindi, al-Ghazali, etc, the doctors of Hanafi *madhhab*, like Kamal Ibn al-Human, the author of *Musallam al-Thubut*, and the doctors of the Hanbali *madhhab*, like Ibn Taymiyah, Ibn al-Qayyim, etc. The Mu'tazilites, like Abu 'Ali al-Jubba'i, Abu 'Abd Allah al-Basri,

etc. follow suit. They claim that *Ijtihad* takes place in the entire subject of *fiqh* as well as in the particular section, even in the specific issue too. They put the following arguments :

a) The Prophet (Sm.) said, "give up that which pushes you to doubt for that which does not push you to doubt."

*Taqlid* entails doubt (*rayb*), so practice on *taqlid* is a doubtful thing. But the practice followed by argument becomes free from doubt and suspicion. This indicates that the incumbent (*mukallaf*) is bound to practice *Ijtihad* in that subject or issue wherein he fulfils the conditions of *Ijtihad*.<sup>107</sup>

b) The Prophet (Sm.) said, "Seek *fatwa* from your own self although a *mufti* gives you *fatwa*." There the command of the Prophet for seeking *fatwa* (legal decision) from one's own self (*nafs*) is indicating to preferring *Ijtihad* of one self over that of other. So the practice after one's *Ijtihad* in those issues in which one fulfils the conditions is obligatory.<sup>108</sup>

c) The partial *mujtahid* understands the rule from the evidences set up by the law giver (*al-Shari'*). So he understands the command (*hukm*) of Allah directly, it becomes obligatory on him to follow it and he has no scope of giving it up, and he is bound to make *Ijtihad* in which he fulfils the conditions.

d) They further argue that many a *mujtahid* was asked about the command of Shari'ah, they answered to some questions and other were left unanswered as one sees in the case of Imam Malik, when he showed his inability about thirty six question out of forty.

## 2. The Second Madhhab.

This is the *madhhab* of those who maintain the view that partial *Ijtihad* is not permissible. Following Abu Hanifah, al-Finary and some jurists are of the opinion that, if a learned doctor does not combine in himself the complete knowledge of *fiqh* he can not exercise *Ijtihad* in some subjects apart from the *Ijtihad* of some particular issues. Al-Shawkani follows them in this issue.<sup>109</sup> Their arguments are as follows:

the one who searches for a rule of *Shari'ah*, if he does not know the entire provisions of *Shari'ah*, and is not able to comprehend every evidence of *Shari'ah* then it is not permissible for him to exercise *Ijtihad*, because some times the rule under consideration becomes related to such an evidence about which he is ignorant then the ruling in such case shall not be sound. So piece-meal *Ijtihad* is not permissible.<sup>110</sup>

We may answer to the above claim that their argument is not feasible; because there is no *mujtahid* who knows every provision (*nass*) of *Shari'ah* and encompasses the entire evidence; otherwise some of the *mufti* would not remain silent in giving fatwa, as we see in the case of Imam Malik.

### 3. The Third Madhhab

This is the *madhhab* of the jurists, like Ibn Hajib and others who keep silent (*tawaqquf*) in this regard. They presented the evidences of both the groups and kept themselves silent from preferring one over other; possibly they observed there some contradictory argument; and decided to keep themselves silent.<sup>111</sup>

But as a matter of fact, there is no contradiction between the evidences; because the evidences establishing the permissibility of splitting of *Ijtihad* there is no objection against it. On the other hand, the evidences, negating the permissibility, are not appropriate for establishing their claim. So it becomes necessary to give preference of the view of permissibility of partial *Ijtihad*.

### 4. The Fourth Madhhab

That the splitting of *Ijtihad* is permissible in connection with the problems of *fara'id* (as the issues of inheritance) and not in other subjects of fiqh. So the partial *Ijtihad* is permissible for one who knows the evidences and textual provisions of law of inheritance, although he is not acquainted with the evidences of the other subjects. Al-Fatuhi ascribes this *madhhab* to none but al-Nawawi who ascribes it to Ibn al-Sibagh, a Shafi'ite jurist.<sup>112</sup>

They argue that there are some special evidences regarding the subject of inheritance, which have no connection with the rest of the subject of *fiqh*. So partial *Ijtihad* is permissible only in the subjects of inheritance (*mawarith*). When one knows its evidences and his ignorance of the other subjects will not prevent him from doing so. On the otherhand, the partial *Ijtihad* in the issues other than the inheritance is not acceptable.<sup>113</sup>

It seems to be a lame excuse. We may refute it. Because there is no difference between the law of inheritance and the others evidences of *Shari'ah*. So he who combines in him the requisite qualifications of *Ijtihad* in any one of the fiqhi issues, it is all the same whether the qualifications are found in him either in connection with the law of inheritance or other than it. So every one is permitted to exercise *Ijtihad* in that issue in which one fulfils the conditions of it.

The above arguments are enough for our claim of partial *Ijtihad* and the *mujtahid* is obliged to make *Ijtihad* when he fulfils the conditions of it.

Quoting Zamalkani Ibn Amir al-Hajj writes that the conditions necessary for a *mujtahid* are of two kinds, (1) general conditions, as the ability of deduction (*istimbat*), understanding of the context and sequences of discourse, the knowledge of evidences qualified to be acceptable or liable to reject, and (2) special conditions, i.e. the knowledge of circumstances and evidences relevant to the issue or subject under consideration.

As for the first category of conditions it is necessary for a *mujtahid* to combine in him the knowledge of entire evidences and rules. In such a case piece-meal *Ijtihad* is not permissible.

In case of second category of conditions, a *mujtahid* is permitted to make piece-meal *Ijtihad*. In that situation *Ijtihad* becomes obligatory for him who is qualified in this particular subject or issue and *taqlid* is prohibited for him.<sup>114</sup>

It is known from the above discourse that partial *Ijtihad* is on the whole permissible to the generality (*Jumhur*) and a *mujtahid* can exercise *Ijtihad* in one subject or in a particular issue though not in the others. This issue needs a discussion lest an ill-motivated person should try to pretend to claim to be a *mujtahid* in the veil of this concession.

We know that the prerequisite qualifications of a full-fledged *mujtahid* are mainly five, the knowledge of the Book of Allah, the Sunnah of the prophet the *ij'ma'*, the *qiyas* and Arabic languages. But in case of a partial *mujtahid*, is the knowledge of all the five disciplines necessary or not?

Those who are the upholders of the opinion of partial *Ijtihad* unanimously say that it is sufficient for the partial *mujtahid* to know the relevant evidences of the issues under consideration. Among the five disciplines of knowledge only the knowledge of three i.e. the Qur'ah the Sunnah and the *Ijma* is necessary, the knowledge of *qiyas* and the Arabic language is not necessary.<sup>115</sup>

The condition of the knowledge of only three disciplines is not tenable, because the knowledge of the *qiyas* and Arabic language is very significant one in this respect. The *qiyas* and Arabic language are not too easy things to be sought in connection with a particular issue. The knowledge of the *qiyas* and Arabic is also necessary for the partial *mujtahid*, in order to give verdict about an issue even after the investigation and clarification of the respective issue by means of the Qur'an, Hadith and *ijma'* only. The necessity of the knowledge of the *qiyas* and Arabic can be imagined from the remark of some jurist that since the knowledge of the Book is necessary for the *mujtahid*, there is no need of mentioning the knowledge of Arabic as an independent condition, because understanding of the Book of Allah depends on the knowledge of Arabic language.<sup>116</sup>

Moreover, it is possible, rather very much usual for a person to seek the meaning of every word used in Arabic language in the books of dictionary but it is not possible for him to determine the characteristics of every word that whether it is particular or general, literal (*haqiqat*) or metaphoric (*majaz*), etc. Experience is necessary for this. This talent comes of pursuit of the subject. So ignorance of the knowledge of Arabic is a disqualification for any sort of *Ijtihad*.

As regard the knowledge of *qiyas* (analogy) the basic thing therein is to understand the modes of argumentation as well as the methods of arranging the premises properly, in a case of analogy.<sup>117</sup> It creates the faculty of deduction (*istinbat*) in *mujtahid*. If a person wants to find out the methods of arrangement of premises and the modes of seeking argumentation by looking over a book instantly without straining the mental faculty, then it will be the practice of a fool. So the knowledge of the *qiyas* cannot be avoided for the sake of straining mental faculty.

If we look into the books of *usul al-fiqh*, we see the majority of the jurists have given stress on the attainment of the mental faculty (*malakah*). Let us observe the following definitions of *Ijtihad* to determine a *mujtahid*.

**1. Ibn-al-Subki Writes :** "*Mujtahid* is one who is mature (*baligh*) sane (*'aqil*), i.e. possessing the mental faculty (*malakah*) with which he understands the known issues".<sup>118</sup>

**2 According to Ibn Amir al-Hajj.** "*Mujtahid* is one who is mature, sane possessing such a talent (*malakah*) with which he becomes able to draw conclusion on the rule of *Shari'ah* from its sources".<sup>119</sup>

**3. Al-Shawkani Says:** "The *mujtahid* is the *faqih* spending his utmost capacity in order to achieve the hypothetical opinion (*zann*) as to the rule of *Shari'ah* and he must be matured and sane possessing a talent which enables him to deduce the rules from its sources."<sup>120</sup>

The above definitions show that the stipulation of the '*malakah*' as the qualification of the *mujtahid*, is not only ascribed to the full-*mujtahid* (*mujtahid muttaq*), but also to the *mujtahid* in general including partial *mujtahid*.

So the basic quality of a *mujtahid* is the acquisition of the ability of deduction (*istimbat*). The role of *qiyas* is most important in developing this talent. Then comes the role of the knowledge of Arabic language. So after acquiring sufficient knowledge of the *qiyas* and Arabic language, the talent of deducing the rules develops in the *mujtahid*. Now it becomes easy for him to draw conclusion and deduce rules from the Qur'an, the Sunnah and *ijma'* easily, whether he does it in some problems or in the entire subject of *fiqh*. That is why 'Allamah Shawkani observes that when the *malakah* (mental faculty) becomes perfect, then its possessor becomes able to exercise *Ijtihad* in any problem.<sup>121</sup>

Since Shah Wali Allah counts the versatile in the *madhhab* (*al-mutabahir fi al-madhhab*) as the *mujtahid*, as opposed to the doctors of the Hanafi *madhhab* who include them into the *muqallid*, the partial *Ijtihad* automatically comes under the pervue of the permissibility.<sup>122</sup> This viewpoint of the Shah shows the roominess in the sphere of *Ijtihad* again and again.

## Notes and References

1. '*Iqd al-Jid*, pp. 10-11; Ibn Hajr accepts this classification; cf. Khalid Mas'ud, "Ijtihad ka Tarikhi pas Manzar", *Fikr wa Nazor*, Vol. 15, Nos. 7-8 (Islamabad: Islamic Research Institute 1978), p. 41. This author did not mention the *mujtahid fi'l Futiya*.'

2. Some ones regard Abu Yusuf and Muhammad bin Hasan as *mujtahid mustaqill* (absolute *mujtahid*), because they overtake Abu Hanifah in many cases. Saghir Hasan al-Ma'sumi, "Ijtihad through fourteenth century", *Islamic Studies*. Vol. XXI. No. 4 (Islamabad: Islamic Research Institute, winter 1982, P.62.

3. N. P. Aghnides, *op. cit.*, pp. 116-18; Khalid Mas'ud, *op. cit.*, pp. 40-41; Mazhar Baqa *op. cit.*, pp. 426-27; cf, Ibn Kamal, *Tabqat al-Fuqaha* quoting Zahid al-Kawthari, *Husn al-Taqadi fi Sirat al-Imam Abu Yusuf al-Qadi*, (Qairo: Dar al-Anwar, 1948), p. 25, f.n.

9. *Al-Insaf*, pp. 74-75. Here the Shah does not mention the fourth category, i.e. *mujtahid fi'l futiya*. That is why some ones argue that the *mujtahid fi'l futiya* (or *fitya*) is not the mujtahid at all in respect of technical meaning, rather it bears the literal sense of the term. Vide Mazhar Baqa, *op. cit.*, pp. 428-29 f.n. This view is contrary to the philosophy of the Shah because he finds roominess in the *Ijtihad*, not narrowness. *Ijtihad* basically is to make utmost endeavour in *Shar'i* matter and a mujtahid of this category does so in his research as an expert (*mutabahir*) of his *madhhab*. As a matter of fact, the Shah cites this example to show the difference between the *mujtahid mustaqill*, *mujtahid muntasib* and *mujtahid fi'l madhhab*. So none should bother regarding the *mujtahid fi'l futiya* here. For details vide, Zakariya al-Barri, *ISI*, p. 251.

10. Hasan Ahmad Mar'i *ISI*, p. 19; Three doctors of the family of Taimiyah, *al-Musawidah fi Usul al-Hanabilah* (Qairo: al-Madani Press, n.d.), p. 536; Ibn Budran, *al-Mudkhal ila Madhhab al-Imam Ahmad bin Hanbal* (Cairo: Dar al-Taba'ah al-Muniriyyah. n.d.), p. 184.

11. *'Iqd al-Jid*, p. 10; *Insaf*, pp. 72-73.

12 *Insaf*, pp. 73-74.

13 *Ibid.*

14 *'Iqd al-Jid*, p. 10.

15 See *Supra*, pp. 117-118 .

16. *Izalat al-khafa*, Vol. ii, p. 83; *Insaf*, p. 58; Mazhar Baqa, *op. cit.*, p. 441.

17 *Insaf*, pp. 59-60

18 *Ibid.*, pp. 60-61. Here we see that Shah Wali Allah is a great propounder of the thesis that the door of *Ijtihad* is always open. This problem will be discussed later on.

19 *'Iqd al-Jid*, p. 42.

20 '*Izalat al-Khafa*', vol ii, p. 84; Mazhar Baqa, *op. city.*, p. 441. For the details of the *mujtahid muqayyid*, vide the section '*mujtahid fi'l madhhab*' of this work.

21. *'Iqd al-Jid*, pp. 42-43. Shah Wali Allah divides the books of traditions into 5 categories they are as follows :

i) Muwatta of Imam Malik, Sahih al-Bukhari and Sahih of Muslim.

ii) Sunan Abu Dawud, Jami' al-Tirmidhi, Sunan Nasa'i and Musnad Ahmad. Razin and Ibn al-Athir have mentioned this dividion in their books, Tajrid Sihah and Jami'al Usul respectively.



iii) The third category comprises of those *masanid*, *Jawami'* and *Musannifat* which were compiled by the predecessors or the contemporaries or the successors of al-Bukhari and Muslim. These are *Musnad Abu 'Ali*, *Musannaf 'Abd al-Razzaq*, *Musannaf Abu Bakr bin Shaybah*, *Bayhaqi*, *Tahawi*, *Tabrani*, etc.

iv) Ibn Habban's *Kitab al-Du'afa'* Kamil of Ibn 'Adi, books of al-Khatib, Ibn 'Asakir, Juzqani, Abu Na'im, *Musnad of Khawarizimi*, etc.

v) The *ahadith* of this category are collected by the irreligious linguists and innovators, like Shi'ah and Mu'tazilah who base their religious beliefs on those fabricated traditions. *Hujjat*, Vol. i, pp. 311-18; *Mazhar Baqa*, *op. cit.*, p. 443, f.n.

22 ' *Iqd al-Jid*, pp. 42-444. For having details informations and avoiding doubt Shah Wali Allah suggests here to go through the books of Bayhaqi and *Kitab Mu'alim al-Sunan* of al-Baghawi in connection with the *mujtahid muntasib*. cf., *'Iqd al Jid*. p. 44.

It is remarkable here that the authors and works mentioned above by Shah Wali Allah belong to the Safi'i school of law. This tacitly indicates the Shah's inclination towards that school.

23. *Ibid*, p. 44.

24. *Izalat al-Khafa'*, Vol. ii, p. 83.

25. He who imitates his Imam in the principles (*usul*) but exercises *Ijtihad* in particular applications (*furu'at*) is called *al-mujtahid fi'l madhhab*.

26. *'Iqd al-Jid*. p. 11.

27. *Ibid*. He may also he called *Sahib al-takhrij*.

28. *Supra*, p. 76. He divides *mujtahid muntasib* into *muntasib mutlaq* and *muntasib muqayyid*.

29. *Insaf*, p. 61.

30. *Ibid*.

31. See *Supra*, p. 124-25 [Page will be fixed after final draft]

32. *Insaf.*, p. 74.

33. *'Iqd al-Jid*, pp. 44-46.

34. *Ibid.*, p. 45,

35. *Ibid.*, pp. 45-46.

36. *Ibid.*, p. 46.

37. *Ibid.*, pp. 46-47. It is narrated that memorizations of al-Mabsut

of Imam Muhammad, acquisition of the knowledge of abrogating, abrogated verses, *al-muhkam* (well-established) and *mu'awwal* (interpreted) verses, the knowledge of the usages of the people and their customs and conventions are necessary for giving *fatwa*, Ibid., p. 46.B

38. This is also called *Zahir al-Riwayat* recorded in the six famous works of Imam Muhammad bin Hasan al-Shaybani (d. 187 H.), a disciple of Imam Abu Hanifah (R.). These are (i) *al-Mabsut* (ii) *al-Jami'al-Saghir* (iii) *al-Jamaai'al-Kabir* (iv) *al-Siyar al-Kabir* (v) *al-Siyar al-Saghir* and (vi) *al-Ziyadat*. These are the source-books of the *Hanafi madhhab*. These books contain the views and opinions of Abu Hanifah and his disciples Abu Yusuf, Muhammad, Zufar and Hasan bin Ziyad. There are other books which are also included into the *Zahir al-Riwayat*, as *al-Muntaqa* of al-Hakim and *al-Kafi* of the same author. *Sharh Wiqayah (muqaddimah)* p.9; N.P Aghnides, *op.cit.*, pp. 120; 175-76.

39. *'Iqd al-Jid*, p. 47. The jurists endeavour much in determining differentiating attributes of the genus and species. This holds the section of *fiqh* known as *ashbah wa naza'ir*.

40. Ibid. This is called *al-Nawadir* (rare-reports). These are not recorded in the *Zawahir al-Riwayat*. These are recorded in the following books, such as *al-kaisaniyyat*, *al jurjaniyyat*, and *al-Ruqqayat* of Imam Muhammad, the books are known as *al-Amali* (a compendium), the books, written by Hasan bin Ziyad (*al-Mujarrad*), Zufar, *Nawadir* of Ibn Samah, *Nawadir* of Hisham. and *Nawadir* of Ibn Rustam. *Sharh Wiqayah (muqaddimah)*, Vol. 1, pp. 9-10; N. P. Aghnides, *op. cit.*, p. 120.

41. *'Iqd al-Jid*. p. 47.

42. Ibid.

43. Ibid. The last two, i.e. third and fourth categories of the Shah are combinedly known in the Hanafi *fiqh* as *al-Waqi'at*. These are the deductions (*takhrij*) of the later *mujtahids* (*al-muta'khhirin*), like the disciples of Imam Muhammad and their followers. The first book written on this subject was *al-Nawazil* of Abu'l Layth al-Samarqandi. It was followed by al-Natifi's *Kitab Majmu'al-Nawazil wa'l Waqi'at* and the compendium of al-Sadr al-Shahid. Later writers compiled works in which they put together the views contained in those earlier books. Fakhr al Din Qadikhan (d. 592 A.H.) and Radi al-Din al-Sarakhsi belonged to this sort of writers. *Sharh Wiqayah (muqddimah)*, vol. i, p. 10; N.P. Aghrides, *op. cit.*, pp. 120-21.

44. *'Iqd al-Jid*, 49.

45. *Ibid*. The water used for removing religious impurity (*najas*) or

ablution, called *al-ma'al-musta' mal*, used water. Its legal effect (*hukm*) is that it involves gross impurity (*najasah ghalizah*) in the opinion of Abu Hanifah, but it is a minor impurity (*najasah khafifah*) according to Abu Yusuf. Imam Muhammad says that it is pure but not purifier. According to Imam Malik and al-Shafi'i it is pure (*tahir*) and purifier (*mutahhir*) too. *Sharh Wiquyah* vol.i (Delhi: 'al-maktabah al-Rashidiyah 1368/1949), pp. 144-8.

46. *'Iqd al-Jid*, P. 49, *Muzaribah* is a system of temporary Share cropping, a contract between the tiller and the owner of the land on the production. The system is wrong (*fasid*) in the opinion of Abu Hanifah but permissible to Abu Yusuf and Muhammad. Ibrahim bin Muhammad al-Halabi, *Multaqa al-Abhur*, Vol. ii (Benaras: Sulaymani Press, 1919), P. 92. According to Abu Hanifah the starting point (*awwal al-waqt*) of the 'Asr prayer is when' the shadow (*zill*) of a thing extends to its two equals excluding the original noon-shadow (*fa'i zawal*). But according to Abu Yusuf and Muhammad, *awwal al-waqt* of 'Asr is when the shadow of a thing extends to its equal length excluding the original afternoon shadow. The starting point of 'Isha' prayer begins from the disappearance of the evening glow (*shafaq*). The evening glow (*shafaq*), according to Abu Yusuf and Muhammad is the redness (*humra'*) that appears in the west horizon after the sunset. But according to Abu Hanifah it is the whiteness (*biyad*) that appears in the west horizon after disappearing of the redness (*humra*). *Sharah Wiquyah*, Vol. i, PP. 144-8.

47. *'Iqd al-jid*, p. 49.

48. *Ibid*.

49. *Ibid.*, PP. 11; 51. For details vide *Supra*, section 11. According to Hanafi madhhab the jurists of this kind are not counted as *mujtahid*, rather they are *muqallid*.

50. *Ibid*. p. 51

51. *Ibid*. This is quoted by the Shah from *Bahr al-Ra'iq* of Ibn Nujaym (d. 970 A. H.).

52. It is the established opinion of the Islamic legists (*usuliyyin*) that the *mufti* must be *mujtahid* not *muqallid* but the imitating *mufti* is not *mujtahid*, rather only a transmitter of the verdicts of the *mujtahid* by getting them by heart. *Sharh Wiquyah* vol. i, p. 11.

53. The *mutawatir* is the report of a people numerically indefinite (*la yuhssa' adaduhum*) whose agreement upon a lie is inconceivable, in view of their large number, reliability (*'adalah*) and diversity of residence. This

number remains uncountable from first to last, and textually, it is related to sense or perception (*hiss*) not to reason (*'aql*). *'Adalah* is not a condition herein. It engenders positive knowledge (*yaqin*), N. P. Aghnides, op cit. p. 40; 'Amin al-Ihsan, Mizan al-Akhbar (Dhaka: Qur'an Manzil, n.d.). p. 3; *Tawdih*, p. 358; *Minhaj*, Vol. II, p. 77.

54. The *mashhur* (lit. widespread) is a report originally supported by a few individuals (*ahad*), i.e. more than two transmitters (*rawi*) in every stage (*tabqah*), but later spread and transmitted by a numerically indefinite people whose agreement upon a lie is inconceivable, but the number falls short of that required for *mutawatir*. Some call the *mashhur mustafid*, if there were at least three individuals. It engenders conviction but not positive knowledge (*yaqin*). N.P. Aghnides, op. cit. p. 44; Amim al-Ihsan, op. cit., p. 3.

55. Vide *Supra*, f.n., 40.

56. *'Iqd al-Jid*, pp. 51-52. The Shah quotes here from *al-Nahral-Fa'iq*.

57. N.P. Aghnides, of. cit., p. 122, cf. Ibn Humam, *Fath al-Qadir*, Vol. VI, P. 360.

58. *'Iqd al-Jid.*, pp. 53-54.

59. *Sharh Wiqayah (maqaddimah)* p. 14.

60. *'Iqd al-Jid*, p. 54.

61. *Ibid*, pp. 54-55.

62. *Ibid*, p. 55. The Hadith in this regard is that, what has been reported by Shaddad bin Aws that, the Apostle of Allah (sm.) Said "the fast (*sawm*) of both the cupper and the cupped gets spoiled. The Hadith is narrated by Abu Dawud and Ibn Majah.

63. *Ibid.*, p. 56. A contradiction to this issue has been reported from Abu Yusuf. He says that the duty of the illiterate person (*al-'ammi*) is to imitate the jurists (*faqih*s) due to the lack of guidance on his part towards understanding the actual interpretation (*ta'wil*) of the Hadith, and he fails to do his duty, so the *kaffarah* will be obligatory on him. The interpretation of the Hadith according to Abu Yusuf, narrated in this regard is that, the fast (*sawm*) of both the cupper and the cupped becomes nearer to be broken due to getting weak and possibility of entering blood into the throat respectly. Literal meaning of the Hadith is not applicable, rather precautionary meaning is meant here.

64. *Ibid*.

65. *Ibid.*

66. *Ibid.* pp. 57-58; *Hujjat*, vol. i. p. 158.

67. *'Iqd al-Jid.* p. 58.

68. *Ibid.* p. 60.

69. *Ibid.* p. 61. *Mut'ah* (conditional temporary marriage) has been abrogated by Sahih Hadith. cf. Abu Dawud, Vol. i, *bab "Nikah al-Mut'ah"*. *Mut'ah* was permissible in the beginning of Islam just like taking of dead flesh at the time of dire necessity. '*Bay 'sarf*' is the system of exchanging of gold and silver (*naqdayn*) against similar price-standard hand to hand (*yadan bi yadin*). It has four forms. (1) The articles of exchange are of different species but their weights are equal, for instance selling one tola of silver in exchange of gold, (2) the articles are of different species and their weights are also different, as selling of one tola of gold in exchange of two tolas of silver. (3) The articles are of the same species '*naw'* and their weight is also the same, and (4) the articles are of the same species but their weights are different, as exchange of one tola of gold against one and one fourth (1.25) tolas of gold. This fourth form is unlawful to the majority (*jumhur*) of the *muhaddithun*. But some ones consider this exchange also as valid. Their basis of argument is the Hadith of Usamah narrated in the Sahihayn as well as in the other collections that, the Prophet (sm.) said, "The sale of exchange that takes place hand to hand (*yadan bi yadin*) there is no usury; credit involves usury". This Hadith is rejected by the majority of the *muhaddithun*. Here this rejected form is under consideration.

70. *Ibid.* pp. 61-62. *Nabidh* is one kind of drink prepared from date, grapes, honey, wheat and barley. It is *halal* until it is fermented and turned into intoxicating element. But after turning into intoxicating element it becomes prohibited drink and impure (*najas*) like wine, to the majority. Vide Abu Dawud. Vol. ii, "*bab 'fi sifat al-nabidh"* and "*bab'fi nabidh al-basr*, pp. 521-22

71. N. P. Aghnides, *op. cit.*, p. 125; cf., *al-Taqrir Wa'l Tahrir* by Muhammad bin Muhammad Ibn Amir al-Hajj (d. 879 H.).

72. *'Iqd-al-Jid*, p. 62. Ablution (*wadu*) without maintaining seriality (*tartib*) is invalid to Imam Shafi'i and coming out fluid blood makes *wadu* null and void according to Imam Abu Hanifah.

73. *Ibid.*, p. 63.

74. *Ibid.*

75. *Ibid.*

76. Marriage does not dissolve in both the cases unanimously.
77. *Ibid.*
78. *Ibid.* p. 64.
79. *Ibid.*
- 80 21: 7.
- 81 The Hadith is narrated by 'Umar (R.) in the *Mishkat*.
- 82 '*Iqd'al-Jid*, p. 65. Here the Shah quotes from *Mukhtasar Muntaha al-Usul* of Abu 'Amr Ibn al-Hajib (d. 646 H.), a Malikite jurist.
83. *Insaf* p. 77
- 84 *Ibid.*
- 85 *Ibid.*, p. 78.
- 86 *Mujtahid mutlaq* is of two kinds, *mustaqill* and *muntasib*.
- 87 *Ibid*, pp. 78-79.
- 88 *Ibid.* Ibn Surayj was regarded as the *mujtahid* of the third century of Hijrah.
89. *Ibid.*, p. 79.
90. *Ibid*, p. 80
91. *Ibid.*, pp. 71-73. cf. *Sharh Wiqayah (muqaddimah)*, Vol. i, pp. 13-15. According to the author of *al-Hawi al-Qudsi*, Jamal al-Din (d. 600 A. H.): the strenght of evidence will be considered in preferring any side. *Sharh Wiqayah* vol. i, p. 13. But this consideration shall come true for him who is able to give preference of one opinion to other i.e. in case of a *mujtahid*. So there is no difference between the two verdicts.
92. *Ibid*, p. 72.
93. Yaqub bin 'Umar.
94. *Insaf*, p. 72.
95. Najm al-Din Mukhtar al-Zahidi (d. 658 H.), *Qunayyat al Munayah*.
96. '*Iqd al-Jid*, p. 73.
97. *Ibid.*
98. *Ibid*, p. 74. Vide *Sharh al-Jami' al-Saghir*.
99. *Ibid.*
- 100: *Ibid.*, p. 93; cf., Ibn Humam, *Fath al-Qadir*.
101. The knowledge of the Qur'an, the Sunnah, the ijma,' the qiyas

- and Arabic. These conditions have been discussed in connection with the conditions of the mujtahid. vide, supra, PP. 76-104
102. 'Iqd al-Jid, P. 86; N. P. Aghnides, op. cit., P. 115.
  103. N. P. Aghnides, op. cit., PP. 115-16.
  104. *Ibid.* cf. Ibn Amir al-Hajj, *al-Taqrir wa'l Tajir*, Vol. III (Egypt: Bulaq Press, 1317 H.), p. 344, (henceforth the source is referred to as *al-Taqrir*).
  105. *Hujjat*, Vol. I, p. 370.
  106. *'Iqd al-Jid*, p. 86.
  107. *Musallam al-Thubut*, Vol. II, p. 364; *ISI*, p. 126.
  108. *ISI*, p. 126.
  109. *Irshad al-Fuhul*, p. 137; *ISI*, p. 127
  110. *Musallam al-Thubut*, Vol. II, p. 365; *ISI*, 127
  111. Ibn al Hajib, *Mukhtasar*, Vol. II (Cairo: al-Amiriyah Press, n.d.), p. 290.
  112. Mahi al-Din al-Nawawi, *Muqaddimah al-Majmuu'a*, Vol. 1 (Cairo: al-'Asimah press), p.71; Taqi al-Din Abu'l Baqa 'al-Fatuhi al-Halabi, *al-Kawakib al-Munir* (Cairo: al-Sunnah al-Muhammadiyah press; 1372 A. H.), p. 398.
  113. *ISI*, p. 128.
  114. Ibn Amir al-Hajj, *al-Taqrir wa Tahrir* (Egypt: Bulaq press, 1116-1317 H.) p. 294; cf. Mzhar Baqa, *op. cit.*, p. 450.
  115. Mzhar Baqa, *op. cit.*, p. 451.
  116. Jamal al-Din 'Abd al-Rahim al-Asnawi, *Nihayat al-sul fi Sharh Minhajj al-Usul*, Vol. III (Egypt: al-Maktaba'al-Mahmudiyah al-Tijariya, 1340 H.), p. 176; cf., Mazhar Baqa, *op. cit.*, p. 452.
  117. *'Iqd al-Jid*, p. 7.
  118. 'Abd al-Wahhab Taj al-Din Ibn al-Subki, *Jam' al-Jawam'i*, Vol. II. (Egypt: Mustafa al-Babi 1356/1937), p. 382. (Here after the source will be cited as '*Jam'*).
  119. *Al-Taqrir*, Vol. III, p. 291.
  120. *Irshad al-Fuhul*, p. 250; cf., Mazhar Baqa, *op. cit.*, p. 452.
  121. Mazhar Baqa, *op. cit.*, p. 453. This View of showkani indicates to the non permissibility of the splitting of *Ijtihad*.
  122. Vide *'Iqd al-Jid*, pp. 51-58.





## CHAPTER VII

# RULES OF SCRUTINIZING THE JUDGMENT OF THE CONTENDING MUJTAHIDS

### A. The General View of the Issue

Before discussing the issue we should know some facts related to it.

First, a person is not deserving to be called a *mujtahid* until he exerts his utmost capacity for attaining the rule (*hukm*) of *Shari'ah*.

Secondly, when he exerts his best and attains a probable opinion (*zann*) regarding the rule of *Shari'ah* then he must act upon it in accordance with his preponderant opinion.

Thirdly, when he acts upon the *Ijtihadi* rule attained through the opinion-based knowledge, then he surely achieves what was sought from him of exertion and he will be rewarded for this exertion. This is unanimous view of the jurists, except a countable few, as Bishr al-Marisi, Abu Bakr bin al-Asm and their followers who find one guilty of sin who makes a mistake, for they are of the opinion that there is a decisive (*qat'i*) evidence against every *Ijtihadi* rule, whoever attains it is correct and whoever misses it, is wrong and sinful.

Fourthly, the discussion is limited only in matters pertaining to reasons (*'aqliyat*) and not the decisive rules of *Shari'ah*, because they are the subject matters of scholastic theology (*'ilm al-kalam*).

When the affair is so, a question arises here that, is every *mujtahid*, or only one is correct in matter of *Ijtihad*? This question is based on another question that whether the truth, in

matter of *Ijtihad* is one or many. The learned doctors are broadly divided into two *madhahib* regarding this question.

## **The First Madhhab: The Truth Is One**

According to the jurists of this *madhhab* the truth (*haqq*) in Ijtihadi matters is one and only one *mujtahid* is correct therein.<sup>1</sup> This is followed by the majority of fundamental jurists (*usuliyyun*) of the orthodox Sunni Schools including four Imams. Muhibbullah al-Bihari, 'Abdal-'Ali, the commentator of *Musallam al-Thubut*, al-Fatuhi and al-Ghazali in a verdict of *mankhul*, follow suit.<sup>2</sup> Their arguments are as follows:

1) Allah, the Exalted, said, "And remember Dawud and Sulayman, when they gave judgment in the matter of a field into which the sheep of certain people had strayed by night: We did witness their judgment. To Sulayman we inspired the right understanding of the matter; to each of them we gave judgment and knowledge".<sup>3</sup> This verse indicates to the fact that sulayman (A.S) was gifted with special understanding about the truth of the matter and the truth was only one with which Sulayman decided the case.<sup>4</sup>

Al-Gahazali lodges objection against the above argument. He says that how can it be sound to say that both Dawud and Sulayman gave verdict by means of *Ijtihad*, whereas some jurists are of the opinion that rationally the Prophets are not permitted for making Ijtihad and some ones say that, it is prohibited for them traditionally (sam'an)?" Moreover, those who consider permissibility of *Ijtihad* for the Prophets assign mistake to the Prophets in doing so. And how was it possible to ascribe a mistake to Dawud and wherefrom did they realize that he (Dawud) had decided the case with *Ijtihad*?

In reply to Ghazali's objection the upholders of the above *madhhab* say that the decision taken by Dawud and Sulayman was *Ijtihadi*. Had it been with wahi, it would have not been

possible on the part of Sulayman to contradict the decision of Dawud (A.S.) and similarly, Dawud must not turn back from his decision to that of Sulayman. So the Judgment was *Ijtihadi*. Moreover, the permissibility of *Ijtihad* for the Prophets can not be denied rationally and traditionally, nor is it prohibited to occur a mistake in their *Ijtihad*. Because the *qiyas* is a part of *Ijtihad*. Allah commands, "Do they not reflect?" Our Prophet (sm.) used to exercise *Ijtihad* and some times made mistake, but he did not linger on the mistake. Allah informed him of the truth. This proves that they (Dawud and Sulayman) exercised *Ijtihad* and Sulayman hit the target and Dawud missed it. Since the truth is only one so one, was correct and the other was wrong but excused.<sup>5</sup>

2) The saying of Allah, "None realizes its hidden meanings (interpretation) but Allah and those who are thoroughly versed in knowledge"<sup>6</sup>

This verse means that in matters of *Ijtihad* and *istinbat* (extract) there is a fixed truth which is to be attained by a *mujtahid* (*al-rasikh*). So he who attains it, is correct and he who misses it makes a mistake, but he is rewarded and not sinful. Because, he did what was obligatory to him, to make *Ijtihad*.<sup>7</sup>

3) The saying of the Prophet (sm): "when a judge gives decision by means of *Ijtihad* and attains accuracy (*asaba*), he deserves double reward and when he decides by means of *Ijtihad* but misses the target (*akhta'*) he gets one reward<sup>8</sup>. There are many *ahadith* bearing this sense and substance.

4) The strongest argument in this regard, is the *Ijma* (the consensus) of the companions (*sahabah*) on the occurrence of error (*khata'*) to the *Ijtihad* profusely. None of them denied other in committing error in their individual judgement. So it had become a consensus that the truth (*haqq*) is only one in *Ijtihadi* matters. Its glaring example was the decision taken by Abu Bakr regarding the meaning of *kalalah*, that is, when a serious controversy arose regarding the meaning and interpretation of

the word *'kalalah*, most of the Companions expressed their inability in replying to the question. It is narrated by 'Uqbah bin 'Amir Juhayni that the Companions had never faced such kind of difficulty as they faced in understanding the meaning of *kalalah*. Abu Bakr got prepared to reply to the question. He said, "When I shall say in this regard I shall say it according to my personal opinion. If it is correct, then it is from Allah, but if it is wrong then it is from me and from the devil (*Shaytan*). I mean, *kalalah* is one who leaves no father (i.e. father, grand father, and upwards) nor children (i.e. sons, grand sons, and downwards)." <sup>9</sup> Another example of this issue is that narrated by 'Umar, that when he gave a decision to a case, a man said, "By Allah, this is true". Then 'Umar replied that he did not know whether he had attained the truth or not, but he had left no stone unturned in this matter" <sup>10</sup>. There are many examples in this respect reaching to the limit of certainty.

From the above examples we can assert that the truth with Allah is one, he who attains it after utmost endeavour is right and rewarded doubly, one for his exertion and one for his attaining the truth, and he who misses it, is wrong, Yet he is not sinful, rather is rewarded once, for his utmost exertion.

This is the meaning of the verdicts of Abu Hanifah. "Every *mujtahid* is correct and the truth, with Allah is one". And. "Every *mujtahid* is correct (*musib*): that is every *mujtahid* endeavours his best in getting the expected evidences, and the truth with Allah is one. So he who attains it, becomes correct from the beginning to the end and he who misses it, becomes correct in the beginning and imstakes at the end" <sup>11</sup>

## **The Second Madhhab: the Truth Is Multiple**

According to the opinion of this *madhhab* every *mujatahid* is right in his findings and that the truth (*haqq*) is not one but multiple (*mut'addad*). There is no specific rule (*hukm*) in an incident wherein there is no clear statement (nass.) of Shari'ah. The rule with Allah concerning every situation is that

whither the thinking or presumption of a *mujtahid* leads him.<sup>12</sup> This startling principle is enunciated by al-Amidi, Abu Bakr al-Bakillani, al-Ghazali, Abu'l Hasan al-Basri, al-Jubba'i and other Mu'tazilites. This group argues in the following manners:

First, the same verse of the Qur'an with which the first group have argued, "To each of them we gave judgment and knowledge". Interpreting the verse they say that both Dawud and Sulayman were correct in their *Ijtihadi* judgment, otherwise Allah would not say that both of them were provided with judgement and knowledge (*hukm wa 'ilm*). This is the proof of correctness of every *mujtahid*, because, falsehood (*batil*) and error (khata') imply injustice (*zulm*) and ignorance (*jihl*) not judgment and knowledge. Whoever gives judgement to the contrary of the judgment of Allah, must not be attributed as one who judges according to the direction of Allah. So in matter of *Ijtihad* the truth is that which the *mujtahid* has concluded.

The majority of the jurists do not accept the above argument. They refute the argument by banking on a technical point that the words *hukm* and *'ilm* are indefinite noun (*ism nakirah*) put in the context of attestation (*ithbat*). When indefinite noun is put in the context of attestation it does not imply generality (*'umum*). So the verse does not indicate the meaning, that both Dawud and Sulayman were given judgment. The possible interpretation of the verse is that both of them were gifted with the knowledge of various aspects of *Ijtihad* and different methods of dispensing judgment. So to make a mistake in a particular issue does not prevent it from applying the verdict to generality, i.e. assignment of knowledge and judgment in general. Thus, that argument with this verse stands cancelled.

Secondly, according to this group the above verse implies the probability, that both Dawud and Sulayman (sm) were allowed to decide the case with *Ijtihad*, and they gave verdict accordingly and both of them are truth finders. Then *wahi* revealed supporting the *Ijtihad* of sulayman as opposed to Dawud. So it became a specific truth after revealing *wahi*.

But this argument is also not acceptable to the general jurists, because when the verse revealed in favour of Sulayman then the decision taken by Sulayman turned out to be a specific truth and Dawud's decision fell out of step<sup>13</sup>.

Thirdly, the Hadith of the Prophet, " My Companions are like the stars, whosoever of them you follow, you will get guidance through him"<sup>14</sup>. Following of the Companions irrespective of their differences in the *Ijtihadi* rule of *Shari'ah*, was regarded by the Prophet (sm.) as a guidance. A wrong person can never be a guide, rather it is simply going to ashtray. It proves that every *mujtahid* is correct and the truth is multiple.

The majority of the jurists reject this argument too, because it is based on a weak *Hadith*. If it is supposed to be sound, yet the instruction of following them is not a general case, but the Prophet instructed to follow them in matter of transmitting *Hadith* from him, not in matter of rational opinion (*ra'y*) and *Ijtihad*.<sup>15</sup>

Fourthly, that had the truth been only one none would have been allowed to imitate any one of the 'ulama, but after having recourse to *Ijtihad* and investigation (*taharri*) about him whom he wants to imitate. The fact is not so, rather one has been given choice to imitate any one. The choice of imitation (*taqlid*) indicates equality of the *mujtahids* in respect of their correctness. Because, *Shari'ah* does not give choice but in case of equality. So it is, therefore, established that, every *mujtahid* is correct.<sup>16</sup>

This argument is also not entertainable. The fact is that commoner (*al-ammi*) however, has been given choice to imitate whom he wishes, for he does not know whosoever is the most learned one, aside from his nonunderstanding the sources of the *mujtahids*. So his choice does not mean the correctness of every *mujtahid*.

Now the opinion of the first *madhhab* stands proved. And it is also established that a *mujtahid* is correct in which he

undertakes utmost endeavour for seeking the rule of Allah against which an opinion based evidence (*dalil zanni*) has been fixed prior to Ijtihad, whoso attains the rule (*hukm*) of Allah, gets double reward, and whoso misses it after making exertion, gets one reward.<sup>17</sup>

There is a peculiar group to this context, the Shi'ah sect who believe that truth is one but can be known only through the sinless (*ma'sum*) and infallible *Imam*. This conclusion is drawn from the premise which the Shi'ah hold in common with the *sunnis* that human reason is so fallible that it is unreliable. The *sunnis* and the Shi'ahs are in basic agreement about the inanity of human reason. If the *Sunnis* had been more consistent they should also have relied upon an infallible *Imam*; on the other hand, they necessarily chose to rely on human reason (*qiyas* and *Ijtihad*) and are thus involved in a fundamental contradiction. The net result of their actual position is that human reason, although fallible, is not unreliable which is the only safe and acceptable way for humanity; but this is not what they actually say. It is one of the strange phenomena of the distribution and development of religious ideas of Islam that while shi'ism had adopted so many tenets from the Mu'tazilah theology, it chose to reject the arch doctrine of the Mu'tazilah that, human reason could discover good and evil with some certainty. The reason is perhaps that the idea of the personal authority of the *Imam* had previously imposed itself as a consequence of the political developments and then the person of the *Imam* had also theologically to be invested with infallibility.<sup>18</sup>

The majority of the *sunnis* and the Mu'tazilah, however, while believing in the oneness of truth, allow difference of opinion. They say that although truth is one, it can be reached through reasoning "by an accident. They believe that while the effort of reasoning is absolutely essential, there is no guarantee that every reasoning will hit at the truth and, therefore, profoundly add that even after as human effort, it remains a matter of chance and accident<sup>19</sup>. It is like a treasure-trove which

one may search for and employ clues but its final discovery always hinges on "good luck":. A similar conclusion is drawn by al-Shatibi through a slightly different route. While discussing the question as to whether one can declare certain sects to be outside the pale of Islam and attribute *kufr* to them, al-Shatibi categorically states that it is not possible to locate absolutely the capital errors of these sects; so that, they may be stigmatized as *kufr* (disbelief). This inability to condemn any sect which claims to be Muslim as being outside Islam, is because Allah does not want to expose any one from among the Muslim community, but wants to put upon entire community His mantle of protection. Al-Shatibi clearly says that, erroneous belief and practices can and must be exposed; but it is impossible to locate absolutely the holders of these practices. He says that, one cannot even condemn the Khawarij as complete kafirs even though there is a good deal of predictive *Hadith* about them. It follows that when we try to locate the right path through *Ijtihad* (which we must do) we cannot demand complete unity, 'if we are to locate (the 'correct path') through *Ijtihad*. *Ijtihad* does not require any unanimity with regards to its object. If this be the case with regard to those people about whom there is a textual indication, what about those regarding whom there is no indication whatsoever'?<sup>20</sup>

## **B. The View-points of Shah Wali Allah on this Issue**

Shah Wali Allah expresses his view-point on this issue in details. He divides the problems (*masa'il*) into two categories. First, the rules of Shari'ah from which the veil of ambiguity has been lifted, i.e. they have been clearly stated by the *Shari'ah* and people are bound to obey them. If any person, out of a little doubt, disobeys them, then neither he nor his follower (*muqallid*) will be excused. In fact this type of rulings constitute the fundamental (asl) of the shahi. A person will be considered as religious or an innovator (*bid'ati*) on the basis of his acceptance or rejection of them. There is no scope of opposition



and contradiction in these rules. One who opposes them will not be excused (*ma'zur*). For example, the refusal of the payment of *zakah* after the death of the Prophet (sm.), by a group of the Bedouin. The Companions (*Sahabah*) discussed about the situation and at last they agreed upon the verdict of Abu Bakr (R.) and decided to fight against them who refused to pay *zakah*.<sup>21</sup> and no excuse was considered. We may interpret this view in this way that, the truth is here only one and the wrong doer will not be excused.

Secondly, the rules (*hukm*) in which the evidences are contradictory, the veil of reality has not been lifted therefrom, the responsibility of people has not been established by means of clear statement (*sarih nass*), and due to the contradiction of evidences and nonavailability of the famous *Hadith* the objective of *Shari'ah* has become confused, or no clear evidence (*dalil*) is found in this issue at all, and the attempt of deduction (*istinbat*) and analogy (*qiyas*) goes to different sides. *Ijtihad* is exercised in this type of rules of *Shari'ah*.<sup>22</sup>

As regard the second type of issues the Shah says that, some doctors say that every *mujtahid* is correct but another group say that one is correct and the other is excused (*ma'zur*).<sup>23</sup>

Here we observe that the first type of issues represents the positive (*qat'i*) rules of *Shari'ah* and the second type consists of hypothetical opinion (*zann*).

The following discussion will clarify the view-points of Shah Wali Allah in this respect.

In his monograph, *Iqd al-Jid* written on the problem of *Ijtihad* and *taqlid*, the Shah deals with the issue in further details.

He says that the jurists have differed as to the accurateness of two *mujtahids* pronouncing differently on the derivative issues where there is no decisive (*qat'i*) evidence. Is

every *mujtahid* correct therein or only one is correct? The former view is held by Shaykh Abu'l Hasan al-Ash'ari, Qadi Abu Bakr, Abu Yusuf, Muhammad bin al-Hasan and Ibn Shurayh, and it is also narrated from the multitude (*jumhur*) of the Ash'arite theologians and the Mu'tazilites.<sup>24</sup> The later view is held by the multitude (*jumhur*) of the jurists (*fuqaha'*) and this has also been narrated from the four Imams, Abu Hanifah, Malik, al-Shafi'i and Ahmad bin Hanbal.<sup>25</sup>

Before explaining his own view-points on the issue, Shah Wali Allah gives the grounds of difference as to the rightness of two *mujtahids* in the same issue, i.e. is there any specific verdict (*hukm*) for every given case supported by a conclusive (*qat'i*) or preponderant argument? In this respect the Shah quotes al-Baydawi who upholds that for every particular case there is a specific rule. The following is al Baydawi's discourse:

'The acceptable view is that which comes soundly from al-Shafi'i that in every occurrence there is a fixed verdict upon which there is an indication (*imarah*). Whosoever steps upon it, is right, and whosoever loses it, is wrong, and yet he is not sinful on that ground, because, *Ijtihad*, which is the sum total of the search of evidences, is preceded by arguments (*adillah*), and the indication upon the error comes after the rule (*hukm*). If two differing *mujtahids* were to be regarded true, this would be a concurrence of two contradictions. Secondly, the Prophet (sm.) said, whoso hits the target, shall have two rewards, and whoso misses it shall have only one reward'.<sup>26</sup>

Here we see that one *mujtahid* is correct and another is wrong (*mukhti*); yet he is not sinful (*athim*). According to al-Baydawi the correctness of a *mujtahid* is based on a principle that there is a fixed rule of Allah against every issue supported by an evidence. Whoso attains the rule through the evidence, is correct and whose misses it is wrong. Secondly, in favour of his verdict that only one *mujtahid* is correct in the same issue, al-Baydawi puts two arguments. (1) If two *mujtahids* were

correct, this would have been a concurrence of two contradictions. (2) The above mentioned *Hadith* of the Prophet (sm.) also indicates the correctness of one *mujtahid* and wrongness of the other, although he was not a sinner.<sup>27</sup>

Shah Wali Allah criticizes the opinion of al-Baydawi on the point that only one *mujtahid* is correct. As a general principle, it is not acceptable flatly. Refuting every sentence of al-Baydawi, he discusses the reality that, in some cases both the *mujtahids* are correct and in other cases one is correct and another is not correct. The details are as follows:

1. Refuting the verdict of al-Baydawi, that 'for each given case there is a specific rule (*hukm*) and so on; Shah Wali Allah says that it is imposing a judgment upon unseen affairs without evidence. Attainment of the supposed fixed rule is, to some extent, an unbearable barden for the incumbent. Because it is vague to him.

2. Al-Baydawi quotes the verdict of al-Shafi'i in favour of his opinion that, 'in very incident there is a specific rule based on a sign or indication, whichever *mujtahid* finds it out, is right, and whichever fails to find it out, is mistaken 'etc. Shah Wali Allah says that the meaning of al-Shafi'i's discourse is that, in every particular incident there is a verdict which is the most conformable to the fundamentals (*usul*) and the most fitting of the modes of *Ijtihad*, and upon it there is an evident indication from among the arguments of *Ijtihad*. Whoso finds it out, is correct, and whose fails to find it out, misses the target, but is not sinful.

We adopt this view of al-Shafi'i, because he himself has categorically explained in the opening of his *Kitab al-Umm* that whenever a scholar tells another scholar, "You are mistaken", he means, "you have mistaken from the right path, which the scholars ought to pursue."<sup>28</sup> Perhaps al-Shafi'i means that, when there is a single *hadith* (*khabr wahid*) in a problem, whoever finds it, is correct and whosoever loses it, errs.<sup>29</sup>

3. As regards rational argumentation in negation of the sin of a mistaking *mujtahid* al-Baydawi says, "The *Ijtihad* is

preceded by evidences and the indication on error made, comes after rule (*hukm*) which is out of bound for the *mujtahid*.

Refuting this rational argument of al-Baydawi, the Shah says that Allah has called upon us to worship Him by acting upon that to which our *Ijtihad* guides us, so we seek that which we know summarily, so as to comprehend it minutely.<sup>30</sup> Moreover, *Ijtihad* in itself is an act of pious obedience (*amr ta'abbudi*), and an error made unwillingly in such an act can not be called a sin. Its example is that, when the *qiblah* becomes confused, then he who performs *salah* after proper investigation (*taharri*), is correct although he maybe wrong in deciding *qiblah* actually, but his *salah* will not need be repeated even after knowing the actual *qiblah*.

4. In favour of the correctness of one *Ijtihad*; al-Baydawi argues, "If two different *Ijtihad*s were to be regarded as true, this would be a concurrence of two contradictions".

Shah Wali Allah says as a retort that, these differing *Ijtihad*s are like the alternative prescriptions for expiation (*kaffarah*), all of which are obligatory and yet all of them are not binding.<sup>31</sup>

5. Similarly to prove the correctness of only one *mujtahid*, al-Byadawi quotes the *Hadith*, "He who hits the target gets two rewards and he who misses it gets only one reward."<sup>32</sup>

To refute this argument, the Shah says that this goes against the point he wants to make, because the error (*khat'a*) calls for a reward cannot be regarded as disobedience (*ma'siyah*) or sinning. So it follows that both the judgments of *Ijtihad* should be for Allah, in which case one of them is more meritorious than the other, just as a deliberate act of virtue (*'azimah*)<sup>33</sup> is superior to an easier permission (*rikhsah*).<sup>34</sup> or the verdict that 'one *mujtahid* is correct and the other is not, may happen in the law-court; bcause in fact, only one of the two positions can be established, either the claim of the plaintiff or that of the defendant.<sup>35</sup>

So the above mentioned arguments prove that the opinion of correctness of only one *mujtahid* and wrongness of the other is not acceptable in general. The following discussion will speak the fact of the differences in the issue.

The Shah says that as a matter of fact, the opinion ascribed to the four *Imams*, i.e. only one *mujtahid* out of many, pronouncing on the same issue, is correct, is drawn out from some of their expositions and there is no clear ruling from them in this respect.<sup>36</sup>

It is true that there is no difference of opinion amongst the community (*ummah*) in pronouncing correctness of both the *mujtahids* in an issue wherein the community is given choice either by a clear verse of the Holy Qur'an or the Tradition of the Prophet or by the consensus of opinion (*ijma'*) e.g. seven variant Reading (*al-qir'at al-sab'*) of the Qur'an, the formulae of invocations and the number of *rak'at* in *Witr Prayer*<sup>37</sup> which may be seven, nine, or eleven. Similarly, the 'Ulama' should not differ in attributing both the *mujtahids* as correct, in matters wherein choice has been given by an indication or hint<sup>38</sup>, if not by the clear verses of the Qur'an or the Sunnah, or else by the *Ijma'*.

In a place, Shah Wali Allah has briefly discussed the following four kinds of differences (*ikhtilaf*) and their legal effects (*hukm*) :

1. That, in which the truth is positively determined, and it is obligatory to contradict its opposition, because it is definitely false.<sup>39</sup>

2. That, in which the truth is determined by the preponderant opinion (*ghalib al-ra'y*), the opposite of it is false in respect by predominant opinion

3. That, in which choice has been given positively to adopt any one of the two alternative sides of difference.<sup>41</sup> In such cases every *mujtahid* is right definitely.

4 That in which the choice has been given to accept any one of the two alternatives by means of preponderant opinion.<sup>42</sup> Here every one is right by preponderant opinion.

After giving the summary of differences, Shah Wali Allah gives details of those instances and issues in which sometimes only one *mujtahid* is correct and sometimes every one is correct. The following are the illustrations of the hitting the target by the *mujtahids*.

If the issue in hand is such that the judgment of Qadi is violated by both the alternative ways of settling it, on account of existing therein a sound (*sahih*) and well known unequivocal directive (*nass*) from the Prophet (sm.), and both the *Ijtihads* stand opposed to it, then both will be null and void (*batil*). But yet, sometimes the *mujtahid* may be excused on account of his ignorance of the unequivocal directive of the Prophet until the *Hadith* reaches him, and the argument gets established.<sup>43</sup>

If the *Ijtihad* is made in ascertaining an event which happened before hand but the circumstances threw it into confusion, such as the question of life and death of Zayd, undoubtedly the truth in such a case will be only one of the two alternatives. But the mistaking *mujtahid* will some times be excused in his *Ijtihad*.<sup>45</sup>

If the *Ijtihad* is in a matter which is entrusted with the investigation (*taharri*) of the *mujtahids* and the sources of arguments of both the *mujtahids* are nearer to each other, and none of them is so far from each other in understanding as to make look remiss, and departed from the customs and usages of the people, then both the *mujtahids* are correct.<sup>46</sup>

If the difference of *Ijtihad* is in a matter wherein choice has already been given, like the seven Variant Reading of the Qur'an and the formulae of invocations (*ad'iyah*), Similarly, the practice that which the Prophet (sm.) did in variant ways for making things easy for the people, yet each of the alternative decisions covers the basic welfare (*maslahah*). In such situations both the *mujtahids* are correct.<sup>47</sup>

Shah Wali Allah claims that the above discourse is obvious and very much clear and none should hesitate in accepting this view.<sup>48</sup>

Shah Wali Allah further says that the important matters of difference among the jurists are of many types, they are as follows:

A person receives a *Hadith* and the other one does not. In this case the right one is he who receives the *Hadith*. But the other will be excused.<sup>49</sup>

Secondly, every *mujtahid* engaged in the same issue, has some conflicting *ahadith* and the saying of the companions, and he exercises *Ijtihad* in bringing about congruity (*tatbiq*) between some of them or preferring some over others, and his *Ijtihad* leads to a certain judgment of his own and the difference of above nature appears therein.<sup>50</sup>

Thirdly, that they may differ in the explanation of the words applied and their comprehensive (*jami' wa mani'*) definitions, or in understanding the constituents (*arkan*) of a thing and its conditions in respect of its commission (*dhikr*) and omission (*hadhaf*) and in deducing the *manaf*<sup>51</sup> (common cause) or in application of universal (*kulliyah*) to its particulars (*juz'iyah*) and the like. Thus, the *Ijtihad* of every one leads to a new *madhhab* or path.<sup>52</sup> In such a case both the *mujtahid* are correct.

Fourthly, they may differ in the fundamental issues leading to difference in derivative principles.<sup>53</sup>

Lastly, if the source of difference in making union between the two evidences is the diversity or plurality of the aspects and ways or the *qiyas khafi*, then both the *mujtahids* are correct. For, the objective, in such a situation is to extend co-operation to the giver of *Shari'ah* and to display obedience to his command, and every one of them did so in this regard. This kind of differences are prevalent amongst the jurist of the orthodox schools (*ahl sunnah wa'l jama'at*).<sup>54</sup>

In all the above cases both the *mujtahids* are correct provided that the sources from where they get support are nearer

to each other in respect of meaning and are easily acceptable to the intellect.<sup>55</sup>

### **Importance of Taharri (choice by good sense).<sup>56</sup>**

Here is an important matter to be discussed. What is the legal position of an incumbent (*mukallaf*) or more precisely of a *mujtahid* when he applies his good-sense of investigation (*taharri*) in a confused matter? This question often touches the issue of attainment of correctness of *mujtahids* and missing the truth.

There are often cases where the incumbent may be at a loss as to which is right for him to do. For example, when a man is in the wilderness and wants to pray, but he does not know in which direction the *qiblah* lies, how can he satisfy in his conscience that he has performed his prayer properly? This type of difficulties is removed by the process of *taharri* (incumbent's preference). The legal effect (*hukm*) of *taharri* is that action based on it is valid (*sawab*) in the eyes of *Shari'ah*, and he who mistakes therein is excused.

Shah Wali Allah introducing *taharri* in the context of the legal position of the *mujtahids* in respect of their hitting the target or missing it in the confusing matters, says that, the difference in such matters is to be resolved by having recourse to seek the preferable and the satisfaction of heart (*sukun al-qalb*) by looking into contexts (*qara'in*) of matters. The Prophet (sm.) has pointed out on different occasions that the responsibility of obligation (*taklif*) is to be referred to what the investigation (*taharri*) leads to.<sup>57</sup>

An example of such issue is the *Hadith* of the Prophet (sm.), "The '*Id al-Fitr* of you is on the day when you break fasting, and your '*Id al-Duha* is on the day when you make sacrifice".<sup>58</sup> According to al-Khattabi the meaning of the *Hadith* is that the mistake committed by a person in such a matter which depends on *Ijtihad* is excused. Therefore, if a people exert their utmost and they do not find the new moon but after thirty days.



They did not break their fast till they fulfilled the number of thirty days, then it was established that the month was of twenty nine days, their fast and the breaking of fast are effective and no burden of sin or any blame will be imposed on them.<sup>59</sup>

Another example of this type of exertion is the saying of the Prophet, "when the judge exercises *Ijtihad* and hits the target, he gets two rewards and if he misses it, he gets one reward."<sup>60</sup>

### **C. Roominess in the Shari'ah**

The philosophy behind *Ijtihad* is to make *Shari'ah* easy and dynamic, for, there is roominess not narrowness (*al-yasr lal-'usr*). The following discussion will clarify this theme.

Whoever makes a thorough examination of the clear dictates (*nusus*) of the law giver (the Prophet), his legal decision will get a general principle that the law-giver (*Shari'*) has laid down variegated rules of good conduct comprising ablution, bathing, ritual prayer, poor tax, fasting, pilgrimage, etc. upon which various sects of the Muslims are agreed upon. And he (the Prophet) has laid down for these practices their constituents (*arkan*), conditions and manners, to be observed and has pointed out the disapproved and corrupting things that may happen in these matters, and the devices of making up the loss, and has amplified the discourse in these matters as much as it should be. Then the Prophet (sm.) abstained from working out every details of these constituents, stipulations, etc. by giving comprehensive definitions of them. And whenever he was asked about the particular verdicts relating to these constituents (*arkan*) and stipulations, etc., he would refer them to what the people understood in their minds by the words used in the injunction and would guide them to resolve the particular cases with the general principles and would not add anything more to it except in very few cases under persistent interrogation of the people.<sup>61</sup> An example of this, is that the washing of four limbs is ordained by the Prophet, but he did not clearly define the limitation of

washing, with which it could be realised whether the rubbing is included into the ablution or not, and also the pouring of water is included into the obligation of ablution or not. Nor did he classify water into unconditional (*mutlaq*)<sup>62</sup> and conditional (*muqayyid*), nor did he explain rules regarding the wells and ponds and so on and so forth. This sort of problems frequently occurred, their non-occurrence could not be imagined in the times of the Prophet (sm.).<sup>63</sup>

When a person asked the Prophet with regard to the well of Buda'ah (Bi'r Buda'ah)<sup>64</sup> and the *Hadith* of *Qullatayn* (two qullah)<sup>65</sup>, he did not add any thing in reply with regard to people's understanding of the meaning of the words and with which they habituated among themselves. For this reason Sufiyan Thawri said, "we have had nothing in matters of water but roominess (*wasah*)".<sup>66</sup>

So the Prophet did not bring any thing additional to what was with them. And he ordered people to turn their faces to the *qiblah* in *salah* but he did not teach the method of ascertaining the direction of the *qiblah* and at the same time the Sahabahs used to undertake journey and tried their utmost in deciding *qiblah* and they have had burning need of knowing the method of *Ijtihad*. All these affairs were meant for entrusting others to their judgment in the same way. So were the cases in the most of decisions of the prophet (sm.)

#### **D. Discouragement in Delving into Deeper and Avoiding Much-Ado in the Controversial Matters.**

We understand in pursuance of the Prophet's commands that in keeping off the track of deeper matters of understanding and in avoiding the varieties of the ways of grasping, there is a great salutariness (*maslahah*). And this salutariness is that, those issues refer back to such realities used in common convention summarily and whose comprehensive definition can not be known without difficulties. And sometimes the definition

requires distinction between two difficult propositions by means of such principles and methods the establishment of which may lead them to griefs. And even if these realities are defined and explained, their explanation will not be possible except by means of similar realities and so on and so forth. Then the matter will create a vicious circle, or the matter in certain cases will get concluded by entrusting it to the opinion of the person concerned (*mubtala bih*), whereas the other realities were not more deserving than the first ones in entrusting to these persons concerned. On account of salutariness the Prophet entrusted the realities (*haqa'iq*), in the first instance, to the opinion of the person concerned. And he did not apply any rigidity in controversial matters, whenever the differences were in a matter entrusted to the person concerned.<sup>67</sup>

These were the reasons why the Prophet did not rebuke 'Amr bin al-'As for his understanding of the verse. "Do not put your own hands into destruction,"<sup>68</sup> the permissibility of *tayammum*<sup>69</sup> for the person incurred major pollution due either to sexual intercourse or night pollution, when he was afraid of his life due to severity of coldness. Similarly, the Prophet did not give any blame to 'Umar for his understanding the interpretation of the verse, "Or you have been in contact with women",<sup>70</sup> that this verse was applicable only to the case of merely touching of woman not for major pollution (*janabah*). So the problem of the person who incurred major pollution remained undescribed to him, the person who gets major pollution should not perform *tayammum* at all.<sup>71</sup>

In this context al-Nasa'i narrates from Tariq that a man who got major pollution and did not perform *salah*, i.e. he did not take *tayammum*, then he came to the Prophet and narrated it to him. Then the Prophet called him right. Then another person got polluted and performed *tayammum* and said his prayer, then he came to the Prophet and he also called him correct.<sup>72</sup>

Nor did the Prophet (sm.) blame any one of them who performed the 'Asr prayer late or performed it in due time. For, when all of them were interpreting the saying of the Prophet, "Do not say prayer of 'Asr but in the settlement of Banu Qurayzah",<sup>73</sup> according to their individual capacity of understanding.<sup>74</sup>

Drawing a conclusion from the above discussion, Shah Wali Allah urges that whoso looks carefully the aspects of the discourse of the Prophet, will realize that the Prophet has entrusted the matter to the person concerned's (*mubtala bih*) understanding in those realities which were conventionally practised summarily. Similarly, he (sm.) has entrusted the matter to the incumbents' understanding in bringing about congruity of one with other. Its example is the jurists' delegation (*tafwid*) of many judgments to the person concerned, but there is no blame from the jurists to any one differreing in such a matter.<sup>75</sup>

Secondly, this type of entrustment is that which is agreed upon by the Muslim community, i.e. *Ijtihad* in deciding the direction of the *qiblah* in cloudy weather, and dropping off the blame on any one for following up wherefor his *taharri* leads him. <sup>76</sup>

Thirdly, such salutariness (*maslahah*) is the terminology that has been mentioned by the debators regarding the convention as to dropping the scrutiny of premises of arguments, while arguing, lest the diffusion and confusion of discussion will be indispensable.<sup>77</sup>

Now whoever understands the real nature of the above controversial issue, where the affairs were entrusted to the person concerned will realize the following truths:

1. That, in majority of the cases of *Ijtihad* the truth revolves in between the two extremes of differences.

2. That, in the matter of religion there is roominess, not narrowness.

3. That, to become die-hard or unreasonably stubborn on a matter and to become determined to deny what the opponent says, is not a good course.

4. That, deducing of definitions of the realities, if it aims at bringing intellect closer to understanding of every knower of language, assists to get knowledge. But if this deduction is far from the intellects and distinguishes problems by means of innovated premises, then it will soon lead to a new system of *Shari'ah*, an undesirable thing.<sup>78</sup>

5. And the sound opinion is what 'Izz al-Din bin 'Abd al-Salam has pronounced, "He attains salvation who stands firm on what is agreed upon by the *ulama'* regarding its obligatoriness, and refrains from what they have unanimously prohibited, and permits what they agreed upon to be permitted, and acts upon what they agreed upon to be commendable (*mustahab*) and abstains from what they agreed upon to be heinous (*makruh*)".<sup>79</sup>

Concluding the discussion on hitting the target and missing it by the *mujtahids*, Shah Wali Allah himself gives a sum and substance of the issue. He says:

When the above description regarding the hitting the target by the *mujtahids* is confirmed to you, now you will realize that every ruling in which the *mujtahid* speaks by means of his *Ijtihad*, is to be referred back to the law-giver (the Prophet), either to his word in verbatim or to its '*illah* (cause) derived from his word. And when the affair is as such, there will be two positions in every *Ijtihad*.

(1) That, whether does the law-giver intend this meaning with his discourse or other than it? Or whether does, in his mind, he sets up this '*illah* (cause) as the basis, while discoursing of the stipulated judgment, or not ? Then if the

discussion about the hitting the target of two mujtahids were in consideration of the first position, then either of the *mujtahids*, without specification, must be correct not the other.

(2) That, it is one of the general principles of the *Shari'ah* that the Prophet (sm.) enjoined upon his community explicitly or implicitly, that when his statements (*nusus*) or the meaning of some of his statements become contradictory or variant to them, then they are ordained to have recourse to *Ijtihad* and exhaust the ability in understanding what is the truth therein. Then when anything of them becomes specified to a mujtahid then it becomes obligatory on him to follow it. As the Prophet enjoined on the Community that when the direction of the *qiblah* stands confused to them in the darkness of night then it will be obligatory on them to investigate (*taharri*) and perform *salah* facing to the direction to which their good sense of investigation directs. So, this is the judgment which the law-giver made conditional on the existence of investigation (*taharri*) just as the obligation of *salah* is kept pending on the existence of the time (*waqt*), or like the responsibility (*taklif*) of a boy depends on his attaining of the majority (*bulugh*).

If the discussion of hitting the target of the *mujtahids* is in consideration to the second position, in which the method of *taharri* is regarded, then it requires the observation that if the problem is of such a category in which the *Ijtihad* of the early *mujtahid* stands cancelled, then the new *mujtahid's Ijtihad* will stand null and void decisively. And if there is a genuine *Hadith* of the Prophet regarding this issue but the new *mujtahid* gives verdict against it, then his *Ijtihad* will be null and void. If both the *mujtahids* follow a path which they were required to follow and they do not contradict any genuine *Hadith* nor do they contradict any thing because of which the *Ijtihad* of *qadi* (judge) and *mufti* (jurist-consult) stands cancelled, then both of them are correct.<sup>80</sup>

This view of the Shah makes us alert that although *taharri* has a great importance in the *Shari'ah*, nevertheless the verdict

of the Prophet and the *Ijtihad* of the early *mujtahids* must be honoured and considered respectively.

## Notes and References :

1. The point of controversy is that, is there any particular rule with Allah in every issue before making *Ijtihad* by a *mujtahid* or not? The fact is that the rule (*hukm*) therein is that the *mujtahid* is to follow what his *Ijtihad* leads him to. Shatibi, *Kitab al-I'tisam* vol. III (Cairo, 1332/1914), p. 251.

2. *ISI*. p. 129; Muhibbullah al-Bihari, *Musallam al-Thubut*, Vol. II, (Egypt: Amiriyan press; 1324 H.) p. 380; (henceforth the source is cited as *Musallam al-Thabut*); al-Amidi, *op. cit.*, Vol. IV, p. 183. The opinion of the four Imams in this regard is not based on their clear verdicts, rather it is derived from their statements. *'Iqd al-Jid*, p. 15. But al Amidi writes that each of Abu Hanifah, al Shafi'i, Ahmad bin Hanbal and Abu'I Hasan al-Ash'ari maintains two opinions in this issue. Amidi, *op. cit.* Vol. III, p. 150. The preferable opinion of the Hanafi jurists is that a *mujtahid* may hit the target or make a mistake. Cf., Mazhar Baqa, *op. cit.*, P. 454 f.n.

3. 21: 78. Trans. 'Abd Allah Yusuf 'Ali, the Holy Quran (U.S.A. : Amana Corporation, 1983)

4. *ISI* p. 130; al-Mustasfa, Vol. II, p. 374; al-Amidi, *op. cit.*, Vol. IV, p. 184.

5 Cf. *ISI.*, p.130-31.

6. 3:7.

7 *Al-Mustasfa*, Vol. II, p. 373. *ISI.*, p. 131.

8. *Sunan Abu Dawud*, Vol. II, "Bad fi al-Qadi Yakhti, "p. 503. The Sanad of the Hadith: "It is narrated by 'Ubayd Allah bin 'Umar bin Maysarah who told us from 'Abd al-Aziz bin Muhammad al-Darawardi, (told us) from Yazid bin 'Abd Allah (bin Usama') bin al-Hadi, from Muhammad bin Ibrahim (al-Taymi) from Busr hin Sa'id from Abi Qays, the client of 'Amr bin al-'As, from 'Amr bin al-'As who heard the Prophet saying ..... The Hadith indicates that every *mujtahid* is not correct. One may commit a mistake in *Ijtihad*. This *Hadith* goes against those who claim that every *mujtahid* is correct, because, it admits mistake for either of the *mujtahids*.

'Ijj al-Din bin 'Abd al-Salam makes a congruity between this Hadith and the premise 'every *mujtahid* is correct', that the Hadith is unconditional (*Mutlaq*), it would be referred to such occurrences, like when a judge gives verdict of the execution of Zayd as a murderer of 'Amr, with the evidence of a false witness. The judge does not know the fact that the judgment is not in consonance to the occurrence. The occurrence was that Zayd did not

murder 'Arm. Yet he will be rewarded once, because of obeying the command of Allah in accordance with his preponderant opinion (*zann ghalib*). If the two witnesses were slaves but truthful, then he would also be rewarded for his implimentation of the command and for the salutariness (*maslahah*) of helping the oppressed. *Ibid.* f: n. 4.

9 *Izakat ak-Khafa*, Vol. III., p. 117. Darmi narrated it from al-Sha'bi.

10. *Kashf al-Asrar*, Vol. IV., p. 22; ISI, p. 132.

11. *ISI*, P. 132.

12. Al-Amidi, *op. cit.*, Vol. tv., p. 134; cf, Fazlur Rahman, *Islamic Mthodology in History* (Karachi: Central Instituted of Islamic Research, 1965), p. 162; ISI, P. 132

13. *Al-Mustasfa*, vol. II, p. 373; ISL, p. 131.

14. Al-Amidi, *op. cit.*, Vol. IV, p. 193, *Mishkat "bab manaqib al-Sahabah"* qouting from Razin, who narrated it from 'Umar bin-al-Khattab.

15. Al-Amidi, *op. cit.*, Vol. IV. p. 193; ISI, p. 133.

16. Al-Amidi, *op. cit.* Vol. IV, p. 193' ISI, P. 133.

17. *ISI*., p. 134.

18. Fazlur Rahman, *op. cit.*, pp. 165-6.

19. *Ibid.*, p. 166; cf. al-Amidi, *op. cit.*, vol. IV, p. 146.

20. Fazlur Rhaman, *op. cit.*, pp. 166-7 cf. Al-Shatibi, *op. cit.*, Vol. III. p.216

21 *Izalat al-Khafa*, Vol. I, pp. 406-7.

22. *Ibid.*

23 *Ibid.*

24 *'Iqdal-Jid*, p. 11. A confusion should be removed from here that although the above mentioned Doctors are agreed upon the view that every mujtahid is correct, yet they differ in another basic point as to the determination of truth (*haqq*). According to Abu Yusuf and Muhammad the truth is only one whoso attains it is correct. But Qadi Abu Bakr, Shaykh Abu'l Hasan and the Mu'tazilites maintain that the truth in the *Ijtihadi* matters are multiple, because it (truth) follows the proponderant opinion (*zann ghalib*) of the *mujtahid*, so every rule (*hukm*) to which one's *Ijtihad* guides is correct. Mazhar Baqa *op. cit.*, p. 55.

25. *Ibid.* 7, p. 12

26 *Ibid.* The qoutation is from al-Baydawi's *al-Minhaj*.



27 Here al-Baydawi answers to two supposed questions. (1) If a rule is fixed prior in every issue, then its opposer does not judge according to what Allah has revealed, so he is a transgressor (*fasiq*), for Allah the Exalted says, "whoso judges not in accordance with what Allah has revealed, then they are the transgressors. (5:50). The reply to this objection is that the error maker pronounced judgments in accordance with what he thought right, even though he was wrong in judging according to the revelation. That is, it occurs out of mistake not willfully. The meaning of Allah's warning is knowingly contradiction. If all the *mujtahids* maintaining different opinions in one matter, were not retified as right, then the appointment of an opposing *mujtahid* to an office would not be permissible. But we know that Abu Bakr appointed Zayd inspite of their difference in certain Ijtihadi matters. Al-Baydawi says as a retort that appointment of governorship is not permissible for one who devises falsities (*mubtil*), but a man who commits a mistake in *Ijtihad* is not a falsifier. 'Iqd, al-Jid. pp. 12-13.

28. 'Iqd al-Jid. p. 13. For details consult al-Shafi'i *Kitab al-Umm*.

29. *Ibid.*, p. 14.

30. *Ibid.*

31. *Ibid.* The items of expiation are (1) to free a slave, (2) to keep fast for two months continuously and (3) to feed the needy. These are obligatory alternatively and binding collectively. The idea is that just as there can be two or more alternative prescriptions for *kaffarah*, without being the bar of a concurrence of two contradictions, there can be alternative verdicts of *Ijtihad* to settle a matter.

32. *Sunan Abu Dawud*, Vol. II, "*bab fi qadi yakhti*" (Cawnpore, al-Nami Press, n.d.), p. 503

33. 'Iqd al-Jid, p. 14. 'Azimah (ideal) is the original decree of *Shari'ah* without attaching any accident to it, as the decree of *fard*, *wajib*, *sunnah*, and *nafl*.

34. *Rukhsah* (practical) is the relaxed decree of *Shari'ah* permitted due to attachment of any accident, as the permission of breaking the fast (sawm) of *ramadan* due to undertaking journey, suffering from illness, etc.

35. *Ibid.*

36. *Ibid.*, p. 15. The opinion of the four Imams has been mentioned, *supra*, p. 168, f.n.2

37. *Witr* is performed after the 'isha prayer. it has an odd, and not even number of *rak'at*.

38. *Iqd al-Jid*, p. 15.

39. *Ibid.* p. 15.

40. *Ibid.*

41. *Ibid.*, p. 16.

42. *Ibid.*

43. *Ibid.*; *Izalat al-Khafa*, Vol. 1, p. 407.

45. *'Iqd al-Jid.*, p. 16.

46. *Ibid.* The Shah cites here an example:

Supposing two persons, each of them was called, "Give a dirham from my wealth to a destitute (*faqir*) you might find". Each of them said, "How shall I know that he is a destitute"? And then they were told, "When you exercise *Ijtihad* in the pursuit of circumstances, regarding destitute, and you become sure that he is a destitute, then you may give him the dirham." Then the two man differ in respect of a man, and one of them said that he was a destitute and the other said no. Now if the sources of their arguments are nearer to intellect that there is a scope of accepting the argument of both the persons, then they are both correct. This is because he who put them on this task left the decision to nothing but what would occur to the investigation of the executors as to who is the destitute. And this has come out of his investigation in this matter without any apparent laxity. This is quite opposed to the case in which one of the two gives the dirham to a big merchant possessing servants and grandeur, for the attributor of distitution to him will be reckoned remiss, and his inclination towards this doubtful matter will not be acceptable, i.e. he is wrong. The truth here will be one and the two contradictions will not occur together. Secondly, he who gave the dirham to other than the destitute is obedient no doubt. But whose conjecture coincided with reality would get double reward.

47. *Ibid.*, pp. 17-18.

48. *Ibid.*, p. 18.

49. *Ibid.*; *Izalat al-Khafa*, Vol. I. p. 407.

50. *'Iqd al-Jid*, p. 18. According to some doctors both the *mujtahids* are correct in such a case.

51 *Al-manat*; (lit) place where something is suspended. When a jurist applies a rule to a derivative (*far'*) deducing it from the original Texts (*asl*) i.e. the Qur'ah and the Hadith on the basis of an attribute or factor common to both the *asl* and *far'*, This common attribute is called '*illah* or *manat*.

52 *Ibid.*

53 *Ibid.*

57 *'Iqd al-Jid*, p. 22.

58 The Muslim festivals are held subject to the appearance of the moon. The two *'Ids* are also decided by the appearance of the new moon, which makes the exact dates unpredictable.

59. *Ibid.*

60 *Sunan Abu Dawud*, vol. II, "*bab fi al-qadi yakhti*", p. 503.

61 *'Iqd al-Jid*, P. 23.

62 *Mutlaq* means free from any stipulation, e. g. the water and the water of well respectively.

63 *Ibid.*, pp. 23-24.

64 It is narrated by Abu Sa'id al-Khudri that the Prophet (sm.) was asked about the water of the well of Buda'ah, that the Companions performed ablution with its water. And it was a well in which the cloth stained with the blood of menses, fleshes of dogs and garbages were left. Then the Prophet said, "The water is pure (*tuhur*) nothing makes it impure," al-Tirmidhi narrates the Hadith.

65 It is narrated from Ibn 'Umar that the Prophet was asked about the water found in the jungle, and the four-footed beasts and the ferocious animals drink water therefrom and make water and pass stools therein. Then the Prophet replied that when the water amounted to two qullah (two drums) nothing could make it impure. Al-Tirmidhi narrates the Hadith. Qullah is a drums or jar with bulging belly. It contains usually two and a half *mashaq* of water (about 2.5 maunds). Two *qullah*, contain five *mashaqs*, are equal to 5 maunds. As al-Shafi'i acts upon this Hadith literally and the Shah follows suit.

66. *Ibid.*, P. 24

67 *Ibid.*, pp. 24-25.

68 2; /95

69 *Tayammum* is the emergency substitute of ablution (*wadu*) and bath (*ghusl*) performed with dust or earth when water is not available or the incumbent is unable to use it due to serious illness. For details consult any book of *fiqh*.

70. 4: 43.

71 *'Iqd al-Jid.*, pp. 25-26.

72 *Ibid.* p. 26.

72 *Ibid.* Banu Qurayzah was one of the three Jewish tribes of

al-Madinah. The others were Banu Nadir and Banu Qaynuqa'. A campaign was sent against them due to their treachery against the Muslims. As the situation was very grave, so an expedition was ordered to run promptly. Some of the companions interpreted the words of Prophet and they meant it a sudden attack without making any delay and they performed 'Asr in the way, while some others took it literally and said 'Asr prayer' after reaching in the habitation of the Banu Qurayzah. Al Bukhari narrated this Hadith.

74. *Ibid.*, P. 26.

75. *Ibid.*, pp. 26-27

76. *Ibid.*, p. 27

77. *Ibid.*

78. *Ibid.* , p. 27.

79. *Ibid.*, pp. 27-28.

80. *Ibid.*, PP. 29-31.

## CHAPTER VIII

# TAQLID: MEANING AND SIGNIFICANCE

### A. Philological Meaning

The Arabic word *taqlid* is derived from *qaladah* or *qiladah*, which literally means a necklace or an exquisite poem and so on. *Taqlid* is made to the measure (*wazn*) of *bab tafil*, '*qalladaha qaladah*' means, he made her wear a necklace. Philologically *taqlid* means imitation, copying, unquestioning adoption of concepts or ideas and so on.<sup>1</sup>

### B. Technical Meaning

According to some famous jurists as Ibn Human and Ibn Nujaym *taqlid* means "To act on the opinion of a person without proof whose verdict does not emanate from the sources of *shari'ah*."<sup>2</sup> Al-Amidi defines, "Acting upon the opinion of another person without any positive proof (*hujjat mulzimah*)".<sup>3</sup>

Some others define *taqlid* as the servile adoption of another's opinion without evidence<sup>4</sup>. According to al-Shawkani, adoption of the verdict of a proponent while you do not know from where he said it.<sup>5</sup>

According to the general jurists *taqlid* falls into two categories. *Taqlid ghayr shakhsi* and *shakhsi*.

1. *Taqlid ghayr shakhsi* is that in which no *Imam* or *mujtahid* is specified, rather the *madhhab* of a doctor (*'alim*) is adopted in a particular issue and the *madhhab* of another doctor in other issues. It is called *taqlid* in general (*taqlid mutlaq*).<sup>6</sup> It also may be called literal sense of *taqlid*.

2. *Taqlid shakhsi* is that in which a particular doctor or *mujtahid* is chosen and his opinion is followed in every issue unquestioningly<sup>7</sup>.

Shah Wali Allah does not oppose *taqlid ghayr shakhsi* but he vehemently criticizes and condemns *taqlid shakhsi* in many places of his works. Keeping this end in view Shah Wali Allah advocates translocation (*intiqaal*) and turning back from one *madhhab* to another *madhhab*, if necessary, but the propounders of *taqlid shakhsi* denounce it and some times call it picking out concession (*talaqqut arkhas*) and some times concoction (*talfiq*). Forthcoming discussion will clarify the view-points of the Shah.

Shah Wali Allah has not given any technical definition of *taqlid*, but he analytically discusses the issue throughout his works concerning the subject.

### **C. Shah Wali Allah's View-Points Towards Taqlid**

According to Shah Wali Allah *taqlid* falls into two categories, (1) *wajib* (obligatory) and (2) *haram*. (prohibited).<sup>8</sup>

As regard obligatory *taqlid* he says: *Taqlid wajib* (obligatory) is that which implies indirect pursuance of the Prophetic Tradition. That is to say, if a person is ignorant of the Book of Allah and the Sunnah of the Prophet and is unable to pursue the right course of action as well, then his duty is to ask a jurist as to what verdict the Prophet would have given in such and such issue. Then whatever verdict the jurist gives on the issue he should follow him, all the same whether it has been taken from the clear evidence (*sarih nass*) or deduced from it or else drawn by analogical deduction based on the clear evidence; then all of these categories will be referred to the narration of the Prophet, even though it is implied. This is agreed upon by the Muslim Community regarding its soundness century after century, nay the community as a whole agreed upon this kind of *taqlid* in their system of *shari'ah*. The nature of this *taqlid* is that, his practice on the opinion of the *mujtahid* is conditional that

would accord to the Sunnah. So the *muqallid* would continue to pursue the *Sunnah* as far as possible. But whenever a *Hadith* appears contradicting his (jurist's) verdict, the *muqallid* will throw it away and catch hold of the *Hadith*. All the Imams have directed to it. Imam Shafi'i states "whenever a *Hadith* proves sound that is my *madhhab*, and whenever you see my discourse contradicting *Hadith*, then act on *Hadith* and throw my discourse over board". Imam Malik states "There will be none who would not be taken into account for his discourse nor would it be turned back upon him with the exception of a case pertaining to the Apostle of Allah". Abu Hanifah also states "None ought to give *fatwa* with my discourse who does not know my argument". Ahmad bin Hanbal said, "Do not emulate me nor should you emulate Malik or any other, rather take to the rules of *Shari'ah* whence they have taken, i.e. from the Book of Allah and the Sunnah of the Prophet".<sup>9</sup>

Describing the prohibited aspect of *taqlid* the Shah says: To suppose a jurist to have reached the summit of knowledge, so that, it is impossible for him to commit any mistake, then if there reaches him an unequivocal genuine *Hadith* contradicting the verdict of the jurist, and the *muqallid* does not give it up, or while emulating him (*jurist*) he assumes that Allah has obliged him to follow his verdict, and behaves like a fool hardy, who is restrained from expending his own property. Whenever a *Hadith* reaches him and he firmly believes in its genuineness but does not accept it on account of his obligation being concerned with *taqlid*, i.e. he, as if, is obliged to emulate the said jurist, that amounts to a corrupt faith and dull and incorrigible opinion. There is no support for it either in the tradition (*naql*) or in reason (*'aql*). And no one belonging to earlier centuries practised it, and he has lied in his assumption that whoever is not preserved from doing wrong, is infallible (*ma'sum*) in reality or infallible in respect of the practice on his verdict. Secondly, he has lied in his assumption that, Allah has obliged him to obey his (*muqallad's*) verdict, and that his responsibility concerns him

with his (jurist's) *taqlid*. The following verse revealed in connection with this example, " Verily we are imitating their (forefathers') foot-prints." This was the manner of alterations of the verses by the earlier peoples.<sup>10</sup>

Condemning the blind *taqlid*, Shah Wali Allah says: "By Allah : I bear witness that it (*taqlid*) is a blasphemy with Allah to believe in a man from amongst the community who may commit a mistake or hit the truth, that Allah has made him obliged to follow the man and whichever obligation is prescribed by this man is obligatory. Then, if any genuine *Hadith* reaches him whose authenticity has been attested by the *muhaddithun* and a large number of people practising upon it in their affairs evidently, yet he (the *muqallid*) does not act upon it, because his Imam has not said any thing about it (Hadith). It would amount to far reaching misguidance."<sup>11</sup>

Criticizing *taqlid* the Shah further reiterates that crass imitation is one of the causes of making alterations (*tahrif*) in religion. In a place of *Hujjat* he says that the prohibited *taqlid* is to imitate a fallible person, i.e. other than the Prophet whose infallibility is established. The nature of this sort of *taqlid* is that a certain doctor of the community makes *Ijtihad* in an issue and his followers assume that the *Ijtihad* is definitely or mostly correct, then they reject *Sahih Hadith* found therein. Although *taqlid* itself is not prohibited, but one thing must be kept in mind that a *mujtahid* may either hit the truth or commit a mistake. So the *Hadith* of the Prophet should be taken in consideration in every issue, with the determination that whenever a *Sahih Hadith* is found against *taqlid*, then *taqlid* must be given up and the *Hadith* should be followed<sup>12</sup>.

### **Ibn Hazam's View-Points Towards Taqlid**

According to Ibn Hazam al-Zahiri, *taqlid* is prohibited (*haram*) and under no circumstances it should be practised. He goes to the extent of saying that *taqlid* is prohibited and it is not permissible for any one to adopt the verdict of any person other



than the Apostle of Allah, without demonstrating proof. In this regard Allah says, "Follow what has been revealed to you from your Lord and do not follow any friends besides Him". Similarly Allah says, "And when it is said to them, 'follow what Allah has sent down', they reply, 'nay but we shall do that upon which we have found our forefathers". And Allah admires him who does not imitate, "Convey good tidings to my servants who listen to the discourse and follow the best of it". "If you fall into dispute regarding any matter, then refer it back to Allah and His Apostle, if you believe in Allah and the Last Day". So Allah does not allow to bring the issue of disputation before one besides the Qur'an and the Sunnah. He prohibited by this means, the reference of disputation to the opinion of any one, for it is other than the Qur'an and the Sunnah. The consensus (*ijma'*) of the companions (*Sahabah*) from the beginning to the end, the consensus of the *tabi'un* from the beginning to the end and that of *tab'tabi'un* from the beginning to the end, proved true on remaining aloof and forbidding others from pursuing the verdict of a particular human being from amongst them or from amongst those preceding them, and to take all his verdicts into acceptance. So, whosoever adopts all the verdicts of Abu Hanifah alone or all the verdicts of Imam Malik alone or all the verdicts of al-Shafi'i alone or all those of Ahmad bin Hanbal alone and does not leave off the verdict of the person whom he follows amongst those Imams or else follow the verdict of any other Imam as such besides them, against the verdict of any other whom he does not follow. And he does not rely upon what has come down to him of the Qur'an and the Sunnah, without scrutinizing it in the light of the verdict of that particular person. He surely violates the consensus of the entire community from the beginning to the end without doubt. Such a *muqallid* will not find in his favour any ancestors (*al-Salaf*) nor any Imam from amongst the three good generations and he surely follows the path other than the path of the Muslims. Seeking shelter with Allah from such a position, Ibn Hazam further says that all the jurists have prohibited from imitating them and imitating others. So he who imitates them he surely violates them.<sup>13</sup>

The above discourse of Ibn Hazam includes *taqlid* in general, *shakhsi* and *ghayr shakhsi* i.e. both the permissible and prohibited ones. This is an extreme view in the context of *taqlid* superseding the opinions of other Muslim jurists and Imams. Shah Wali Allah does not approve this sort of wholesale condemnation of *taqlid*, and tries to sort out the permissible from the prohibited ones.

Shah Wali Allah says that the discourse of Ibn Hazam is exclusively applicable to a person who has a share in *Ijtihad* even though in a single issue and to one to whom it has become distinct that the Prophet commanded or from what he prohibited and that it was not abrogated, either by dint of his search after the Prophetic Traditions and the contradictory and conformable verdicts on the issue but he did not find it abrogated, or that he sees a great majority of well-versed '*ulama*' they happen to come across without differentiating any *madhhab* or discriminating any Imam whatsoever, till these *madhhabs* appeared with their biased partisanship of imitation. Some of them would follow their Imam, even though his *madhhab* is far away from proof, considering him as if a prophet sent down to him. This is far from the truth. None of the man of intellect is pleased with it.<sup>14</sup>

Imam Abu Shamah says that whoever is engrossed in *fiqh* ought not to confine himself to the *madhhab* of a single Imam; but he should believe in the genuineness of every issue whatever is nearer to the proof of the Book of Allah and the established Sunnah.<sup>15</sup>

Secondly, the verdict of Ibn Hazam is applicable to an illiterate person ('*ammi*) who initiates a particular jurist viewing that, as if, it is impossible on his (*jurist's*) part to commit any mistake; and that, his verdict is correct certainly; and that, he perceives in his heart that he will not dispense with imitating him even though argument goes against it clearly. In this respect a *Hadith* is narrated by al-Tirmidhi from 'Adi bin Hatim who said,

"I heard the Apostle of Allah (sm.) reciting, 'they (the Jews) made their priests and monks their lords besides Allah'. Then the Prophet commented that they had not been worshipping them (Priests), but when they rendered a thing to be unlawful they treated it as unlawful."<sup>16</sup> Here crass imitation has been compared with the obedience of the Jews to their priests and monks.

Thirdly, the discourse of Ibn Hazam is tenable to one who does not think it permissible for a Hanafi, for instance, to seek *fatwa* from a Shafi'i jurist and vice-versa. Nor does he permit, for instance, a Hanafi to say prayer behind a Shafi'ite Imam, because this attitude violates the consensus of the first centuries, and it also breaks the usages of the Companions and the followers of the Companions.

But the opinion of Ibn Hazam does not hold good in case of a person who does not owe allegiance but to the saying of the Prophet, and he does not believe in the lawfulness of a thing except what Allah and His Apostle have rendered it lawful and vice-versa. But when he does not have any knowledge about the verdicts of the Prophet and the Companions, nor the knowledge of the method of reconciliation between the different discourses of the Prophet, nor regarding the method of deducing issues from the Prophet's discourse, then he follows a rightly guided doctor considering him to be right in his opinion and *fatwa* following the *Sunnah* of the Prophet. Then if any thing appears contradictory to his assumption, he withdraws his dependency instantly without persistence<sup>17</sup>.

Refuting the wholesale prohibition of *taqlid* ascribed by Ibn Hazam al-Zahiri, Shah Wali Allah likes to place the real stand of practising *taqlid*. He says that, in imitating a *mujtahid*, we do not believe in any jurist whatsoever, that Allah has revealed *fiqh* to him and made it obligatory upon us to obey him and that he is infallible (*ma'sum*).

If we follow any jurist owing to our knowledge that he possesses adequate knowledge of the Book of Allah and the *Sunnah* of the Prophet, his verdict will not be devoid of one of the following conditions:

1. That, either it will be from the unequivocal version of the Qur'an and the *Sunnah*.

2. Or it will be deduced from the Qur'an or the *Sunnah* in a form of deduction.

3. Or else, the jurist knows by co-relation (*qarinah*) that the judgment in such a case is related to an 'illah (cause), and he is satisfied at his heart by this knowledge, then he makes analogy of equivocal evidence on the unequivocal grounds, as if he says, "I assume that the Apostle of Allah said, whenever you find this cause, the judgment will be like this thereto." The measured one is included in the generality. Then this verdict will also be traced back to the Prophet. But in this method there is the scope of many assumptions. Had there been no scope of assumption, a believer would not have imitated a *mujtahid*. Then when any *Hadith* reaches us with a sound *sanad* from the Prophet, indicating opposite of the *madhhab*, and if we let aside the *Hadith* and follow that assumption, then who would be more transgressor than us and what would be our plea on the Day to Come.<sup>18</sup>

The above discourse of Shah Wali Allah indicates that he vehemently opposes *taqlid* specially when a man is given the status of a Prophet whose obedience becomes obligatory for us, and a genuine *Hadith* is given up against his (*mujtahid's*) verdict. The Shah condemns this kind of belief and *taqlid* as blasphemy, alteration (*tahrif*) in religion, prohibited, misguidance, and so on.

In his *wasiyat namah*, Shah Wali Allah says : The first *wasiyat* of this destitute servant is that the *Sunnah* must be held fast in matters of belief and practice. Prefer the path of the earlier doctors of the orthodox schools in matter of dogmatic belief.

The affairs that which were not enquired by the earlier generations (*salf salihin*), should be avoided totally. Do not pay any heed to the doubtful and confusing thinking of the rationalists and logicians. In the derivative issues follow those learned *muhaddiths* who combine in themselves the knowledge of the juristprudential *hadith* (*fiqh hadith*). The derivative problems of *fiqh* must be connected to or based on the Book of Allah and the Sunnah of the Prophet. The derivative issues which are connected with or based on the Book of Allah and the Sunnah, should be accepted, and that which are contradictory to them, must be rejected. It is necessary to derive *Ijtihadi* issues on the basis of the Book of Allah and the the Sunnah, for the sake of the Muslim Community. None ought to be away from this position under any circumstances. Do not fallow those biased *fuqaha'*, who imitate a particular *Imam* blindly and give up the Prophetic *Sunnah*. Instead of paying any heed to such kind of *fuqaha'* one should run away from them for the sake of the pleasure of Allah.<sup>19</sup>

In his *Tafhimat Ilahiyyah*, the Shah says: "It is prohibited for a well educated person to imitate any creature of Allah except the Prophet."<sup>20</sup>

The view that emanates from the above discussion is that Shah Wali Allah was dead against *taqlid*. He tried his best to uproot *taqlid* and insist on *Ijtihad* by throwing light on the study and teaching of *Hadith* in the 18th century-India.

## **Shah Wali Allah's Attitude Towards the Four Sunni Madhahib**

In his treatise, *'Iqd al-Jid* he advocates the necessity of adhering to the four *madhahib* of the Ahl al-Sunnah wa'l Jama'at. He finds a great utility or advantage in adhering to these *madhahib* and ascribes a huge irregularity in abandoning them. He advances the following arguments in his support.

It is the unanimous opinion of the Muslim community to rely upon the earlier generations (*al-salaf*) in understanding *Shari'ah*. The *tabi'i* relied upon the *Sahabah* of the Prophet and the *tab'al-tabi'un* (followers of the followers of the Sahababs) relied upon the *tabi'i*. Thus the '*ulama*' of every generation relied upon those who were before them. The reason that indicates its propriety, is that *Shari'ah* will not be understood without the help of traditional evidence and deduction (*istinabat*) from those that preceded him. The traditional evidence does not become established without taking it by every generation from preceding generation without any break. And it is necessary for deduction to know the *madhhabs* of the earlier jurists; so that, it does not become side-tracked from their verdicts, consequently the consensus may get broken. The knowledge of the earlier jurists is also necessary for basing the verdict over their *madhhabs*, and for taking help in course of deduction, from those preceded him. Because all arts, crafts and sciences do not become easy for any one without the close attachment to their masters.

When the truth of reliance upon the verdicts of the ancestors has become determined, then it becomes necessary that their verdicts, upon which reliance was based, should either be narrated through a genuine *sanad* or be recorded in some well-known books. And it is also necessary that these verdicts be well discussed so as to the preferable one becomes defined from their probabilities. And that its generality becomes specified in some places and its abstracts becomes concrete in some places, and the contradictory verdicts become reconciled in it, and the cause (*'illah*) of their judgment becomes evident. Otherwise reliance upon their verdicts will not be proper. Now-a-days, there is no *madhhab* of such quality except these four madhabib. Of course, the *madhhabs* of *Imamiyah* and *Zaydiyyah* are existent in these days but because of their being involved in sinful innovation, it will not be permissible to rely upon their doctrines.<sup>21</sup>

Secondly, the Apostle of Allah said, "Follow the Vast Majority (*al-sawad al-a'zam*)," Since all other *madhahib* got eliminated, in fact, by dint of these four schools of law, so the following of them has become the following of the Vast Majority and to get out of them implies getting out of the Vast Majority.<sup>22</sup>

Thirdly, a long period passed and the ideal age has become remote and trustworthiness has been lost; now it is not permissible to rely upon the verdicts of pseudo 'ulama' from amongst the oppressive judges and the passionate *muftis* even though they relate their verdicts, either directly or indirectly, to one of the earlier good generations who were well-known for their faith and trustworthiness and these verdicts of the *salaf* become reproducing extempore from their memory. We can not also depend upon the verdict of one whom we know not whether did he fulfil the condition of *Ijtihad* or not.<sup>23</sup>

The above discourse of Shah Wali Allah may raise a confusion that, inspite of his deadly opposition to *taqlid* he urges people to adhere only to the four schools of law. To see it abruptly a contradiction is found in the out-look of the Shah. The confusion may be removed in the following manner :

He does not urge people to adhere to a particular *madhhab* by imitating a specific Imam in every issue for all times under compulsion, as the common idea of so-called jurists of our days, what is called *taqlid jumud*, more precisely *taqlid shakhsi*. Shah Wali Allah holds such a kind of *taqlid* repugnant. He inspires people to adhere to the four schools of law taking them as a whole not taking a particular one separately in the entire issues of *shari'ah*, so that translocation from one *madhhab* to another *madhhab* may be easy if necessary. This sort of *taqlid* is permissible to the Shah and none of the *Imams*, and *mujtahids* deny it in the whole history of the Muslim jurisprudence.

Moreover, his emphasis on the adherence to the four schools does not mean any compulsion or obligation to follow them blindly without having the right of getting out of them.

Here he uses two phrases (1) *maslahah 'azimah* and (2) *mufsidah kabirah* <sup>24</sup>, and does not use any word bearing the meaning of obligation (*wajib*) or prohibition (*haram*). He says, " In choosing these four *madhahib* (taken as a whole) there is a great utility or advantage and enormous irregularities in abandoning all of them." <sup>25</sup>

It may be noted that he does not say that, it is obligatory to choose these schools and prohibited to reject all of them. Moreover the Shah does not like to confine himself in any *madhhab* and he feels proud by projecting himself as *faqih muhaddith* and his *madhhab* as *fiqh hadith*.<sup>26</sup> In this regard he says, " After perusal of the books of the four *madhahib* and the principles of their jurisprudence as well as the *Hadith* that are their authority, by the help of Divine light, the way of the jurio-traditionalists (*fuqaha-i-muhaddithin*) proved acceptable to my mind. So I composed this *madhhab* anew."<sup>27</sup> He likened himself to Ibn 'Abbas of his times, and equally devoted in the research of legal problem based on *Hudith*.<sup>28</sup> Personally the Shah was very much opposed to *taqlid*, he tried to found a new school on the basis of *hadith* but he received an inspiration from the Prophet that all four schools should be followed and that the Shah should try to reconcile them. So he surrendered to the Prophet's will.

He believed that he had been requested to adhere to *taqlid* against his wishes because of some subtle reasons, he preferred not to disclose.<sup>29</sup> Possibly, that was why the Shah has emphasised on the adherence to the four *madhahib* as against his wont. Possibly the idea of *fuqaha' muhaddithin* (jurio-traditionalists) was alternative thinking pertaining to his previous plan of a new *madhhab*.

### **C. Middle Course in Taqlid**

In order to balance the above thesis of adherence to the four *madhhabs*, the Shah likes to stress importance on the moderation (*i'tidal*) in *taqlid* by remaining aloof from both the



extremes. He says that the affairs of *taqlid* lie between the two courses i.e. between two extremes on which the majority of the 'ulama' have traversed who have taken to the four schools of law, and to which the Imams of these schools of law have directed their disciples. Shah Wali Allah quoting al-Sha'rani, writes that, it has been narrated from Imam Abu Hanifah who used to say, "It does not behove him who does not know my argument, to give *fatwa* with my discourse".<sup>30</sup> And when he would give *fatwa* he used to say, "This is the opinion (*ra'y*) of Nu'man bin Thabit i.e. on his ownself, ... if any one comes with a course better than this, then it will be more correct." Imam Malik used to say, "There is none who would not be taken into account for his discourse or it would not be turned upon him except the Messenger or Allah." Imam Shafi'i used to say, "when a *Hadith* proves sound, that is my *madhab*". He further said, "When you find my opinion contradicting the tradition of the Prophet, then act on the Tradition of the Prophet and cast my opinion against the wall".<sup>31</sup> Once al-Shafi'i said to his disciple, al-Mazani, "O Ibrahim! do not imitate me in every issue that I say, but think over it for your ownself, for verify it is religion," and so on<sup>32</sup>. These discourses imply that *taqlid* of a *Imam* is permissible until a *hadith* is found contradicting his *madhhab*, but when it contradicts a *hadith* it must be forsaken.

## **Beginning of Taqlid of a Particular Imam**

Giving a brief history of the beginning of *taqlid shakhsi* or *taqlid* of a particular *Imam*, Shah Wali Allah says that before the fourth century of Hijrah (The tenth century A. C.) people had never blindly accepted the decisions of a particular school of law. He then quotes the *Qut al-Qulub* of Abu Talib Muhammad al-Makki (d. 386 H./996 A.C.) on which the *Ihya' Ulum al-Din* of al Ghazali is significantly based. Abu Talib says that the collection of books covering the authorities who issued *fatwas* based on different judicial schools, were later renovations. He also believed the first two generations of the Muslims had not

accepted such authorities. Commenting on these authorities, Shah Wali Allah says that the people of the fourth century were not unanimous on the *taqlid* of any particular school or a person. The condition of the common people was that, in case of agreed upon issues where there was no controversy among the Muslims or the majority of the *mujtahids*, they did not imitate but the giver of law (*Sahib al-Shar'*). They learned the rules of *wudu*, *salah*, *zakat* etc. from their fathers and grand fathers and acted accordingly. When a new incident occurred they sought *fatwa* from any *mufti*, they met without any specification of the *madhhab*. The condition of the special people was that the *muhaddithun* were engrossed in studying *hadith*. They needed nothing for the *shar'i* solution other than a *hadith* and *athar*. ... If they found two contradictory verdicts of the jurists, then they accepted whichever was more reliable among them, no matter whether it belonged to the people of Madinah or Kufah. Among those special personalities were the people of extract (*ahl al-takhrij*) who used to deduce issue when they did not find it in the clear *statutes* and made *Ijtihad* in the *madhhab*. Hence, only the *mujtahids* were appointed *qadis* and *muftis*. Only the *mujtahids* were called *faqihs*.

This period was followed by an era of controversy and conflict in the sciences of *fiqh*. In this regard al-Ghazali described that when the times of the *Khulafa' Rashidun* elapsed, the *khilafat* was transferred to those persons who were not fit for it, nor were they eligible for proffering *fatawas*. When these scholars died and the ignorant caliphs and sultans began to depend on the opinion of the '*ulama'*', the *faqihs* arose in prominence. The '*ulama'*' became so engrossed in the *taqlid* that no unanimity was ever reached between the *faqihs*. Moreover, the *qadis* by this time had also become dishonest tyrants. This situation led to the development of hair-splitting debates in doctrinal matters, the study of ancient and modern histories, the unearthing of strange and unauthentic traditions and the development of the principles of jurisprudence (*usul al-fiqh*). The continued development in the belief of *taqlid* was so responsible for the emergence of a situation in which now those people who were loquacious enough were called *faqihs* even though they were unable to discriminate between sound and weak *ahadith*. Added to this, blind adherence to the infallibility of one's ancestors became widespread.<sup>33</sup>

Although Shah Wali Allah bemoans such developments, he recommends his illiterate ('*ammi*) contemporaries to follow the four Schools of law. However, he opposed the tendency for one school to criticise the ideas of another and argues that the legal schools should not indiscriminately replace the Qur'an and the Sunnah.

Although Shah Wali Allah advises illiterate Muslims to follow the decisions of the *mufti* of the school to which they adhered, he gives them freedom to satisfy themselves with these rulings by consulting different *muftis*.<sup>34</sup> Hence, according to the Shah, the *mujtahids* should rely heavily upon *ahadith* and turn mainly to the *Muwatta* of Imam Malik for guidance.<sup>35</sup>

#### **D. Taqlid of a Particular Imam in India and Trans-Oxiana**

In this regard Shah Wali Allah says that, some times the *taqlid* of a particular Imam becomes obligatory (*wajib*) and some times does not. For example, when an illiterate person is held in a town of India or Trans-Oxiana (Mawara'al-Nahr) where there will be no '*alim* of the *madhhab* of Imam al-Shafi'i or Malik or Ahmad bin Hanbal, nor there will be found any books of their *madhahib* then it is obligatory for him to imitate the *madhhab* of Imam Abu Hanifah and it will be prohibited for him to get out from his (Abu Hanifa's) *madhhab*, because this will amount to throwing off the net work of Shari'ah. On the contrary, when he comes in the Haramayn (Makkah or Madinah) where it will be easy for him to know the precepts of all the schools of law, then it will not suffice him to accept any thing by mere assumption without knowing it reliably, nor should he take to the customs of the ordinary people, nor should he accept any thing from an unfamous book.<sup>36</sup>

#### **The Rule of the Illiterate (al-'Ammi):**

The lowest scale in the hierarchy of intellectual freedom is occupied by the illiterate ('*ammi*). These naturally possess even fewer rights than the *muqallids*<sup>37</sup>, for while the *muqallids* can refer to the law books and ascertain the views of the doctors, the '*ammis* do not even possess the minimum of knowledge required for that, and must apply to the *mujtahids* or the *muqallid*, if they are in doubt concerning a point.

Now we should discuss the view points of Shah Wali Allah in this regard. He says that the crass illiterate has no specific *madhhab*. His *madhhab* is the *fatwa* (formal legal opinion) of the *mufti*. For example, if a fasting person gets cupped or slanders and thinks that it has broken his fast, then he eats. In this situation if the 'ammi does not seek *fatwa* from a jurist nor reaches him any *Hadith* conforming his view, the expiation (*kaffarah*) will be obligatory on him, because it is a sheer ignomance and ignorance is not a plea in a land of Islam. But if he seeks *fatwa* from a jurist who gives him *fatwa*, then no *kaffarah* will devolve on him, because on the illiterate it is obligatory to imitate a 'alim (learned man). When he relies upon his *mufti* he will be excused from whatever he has done even though the *mufti* was in error in his *fatwa*. If the illiterate does not seek *fatwa* but the *Hadith* that, "The cupper and the cupped both have broken their fast (*sawm*)," reaches him and does not know about the abrogation nor about its interpretation, there will be no *kaffarah* according to *tarfayn* (Abu Hanifah and Muhammad), because the apparent meaning of the *Hadith* obligates action accordingly, as opposed to Imam Abu Yusuf, for in his view the illiterate person is not bound to act on the *Hadith* on account of his ignorance about the abrogation of the *Hadith*.<sup>38</sup>

So it is clear from the above discourse of the Shah that the madhhab of the illiterate ('ammi) is the *fatwa* of his *mufti*.<sup>39</sup> The Shah further quotes that when an incident occurs before an illiterate and he seeks *fatwa* from a *mujtahid* and acts according to the *fatwa* of that *mujtahid*, then he is not permitted to turn back upon it, nor to turn forwards the *fatwa* of another person in respect of that self-same incident as per the consensus, as Ibn Hajib and others narrate it.<sup>40</sup> But there is a difference of opinion about the translocation from one *madhhab* to another *madhhab*. The author of *Jam' al-Jawami'* writes that if the translocation occurs before acting upon it, then al-Nawawi says that the accepted course is what al-Khatib and the others have narrated

that, if there is no another *mufti* there, then it will be incumbent on the illiterate to act upon it with that very *fatwa* even though his self is not satisfied. And if there is another *mufti* then *fatwa* would not become' by itself, incumbent upon him on the basis of his sheer *fatwa*, as he can ask other person. But if then the latter contradicts the former, then would arise therein the difference of opinion of the two *muftis*. As for, when an incident other than that, occurs to him, then the soundest course is that it is permissible for him to seek *fatwa* in this incident from another *mufti* who is other than one from whom he sought *fatwa* in the former incident.

Karabsi expresses a firm opinion that it is obligatory on the illiterate to stick to a special *madhhab*. The author of *Jam' al-Jawami'* writes that adhering to a particular *madhhab* is obligatory but it will not be practised upon merely for fun, rather he must choose a *madhhab* which he will imitate in all matters believing in it as preferable or at least equal to other *madhhab* not less preferable to any. Al-Nawawi says what the argument urges upon is that, it is not necessary for him to adhere to a particular *madhhab*, rather he may seek *fatwa* from any one he wishes in order not to picking out concession (*rukhsah*). And whoever prohibits it, he possibly does not rely upon his nonintention of picking out concession. And when he adheres to a particular *madhhab*, then according to the soundest opinion, it will be permissible for him to get out from it.<sup>41</sup> If two *mujtahids* of equal standing give different replies, then the soundest course is that the *muqallid* may choose the opinion of any one of them whom he likes.<sup>42</sup>

### **E. Translocation of the Illiterate from one Madhhab to Another and His Stand in Respect of Madhhab.**

A question arises that whether or not the translocation (*intiqaal* or *rija'at*) of an '*ammi* from one *madhhab* to another is permissible. In this regard the Shah says that, it is not conditional that the *madhhab* of the *mujtahid* be codified. But

when it has been codified, then it is permissible for a *muqallid* to translocate from one *madhhab* to another *madhhab*. It is the opinion of the Muslim legists (*usuliyin*) that if the *muqallid* acts upon according to a particular *madhhab* in an incident, then translocation from it, is not permissible in that issue, but it is permissible in other incidents. And if he did not act upon it, then translocation is permissible in all cases. If he imitates a *mujtahid* in some issues and another one in the other issues, it is permissible, but it is not permissible to the legists (*usuliyin*). If a *muqallid* picks out the easiest course of every *madhhab* then, according to Abu Ishaq, he is a *fasiq* (corrupt). But according to Ibn Abi Hurayrah, he is not a *fasiq*.<sup>43</sup>

According to the author of *al-Anwar*, those who are affiliated to the *madhhab* of al-Shafi'i or of Abu Hanifah, or of Malik, or else of Ahmad bin Hanabal, are of several categories:

Al-'awamm or the commoners. The commoners' *taqlid* of Shafi'i, for instance, branches off from imitating an affiliated *mujtahid* of Shafi'i *madhhab*.

Secondly, those who have reached the rank of exercising *Ijtihad*, and the *mujtahid* does not imitate another *mujtahid*, but he becomes affiliated, for instance to al-Shafi'i for his advancing on his way in exercising *Ijtihad*, presenting arguments and categorizing some of them with others.

Thirdly, the men of the middle course; they are those who have not attained the position of exercising *Ijtihad* but acquired the knowledge of the principles of the Imam, and ability to draw analogy (*qiyas*), in such cases wherein they do not find any clear evidence on the basis of verdict of the Imam. They are the imitators of their *Imam*.

Fourthly, similar is the position of those commoners who accept the verdict of the men of the middle courses, i.e. they are the *muqallid* of the first Imam and not of the men of the middle course because they themselves are *muqallid*.

Al-Harawi said that the *madhhab* of four *Imams* in respect of fundamental principles is that, a commoner (*al-'ammi*) has no *madhhab*. So if he gets a *mujtahid* he should imitate him, and if he does not get a *mujtahid* but gets a versatile in the *madhhab*, he should imitate him, because the versatile would give him *fatwa* according to his own *madhhab*<sup>1</sup>.

The preferable opinion of the jurists is that the commoner when affiliated to a particular *madhhab*, that is his *madhhab*. It is not permissible for him to oppose it. If he is not affiliated to a particular *madhhab*, then whether it is permissible for him to exercise a choice to imitate whichever *madhhab* he likes or not? There is a difference of opinion based on the question that whether imitation (*taqlid*) of a particular *madhhab* is obligatory for him or not? There are two aspect of the issue. [1] Al-Nawawi said that the argument that urges is that, *al-'ammi* (the ordinary person) is not bound to imitate a particular *madhab*. [2] He may seek *fatwa* from whom he likes and with whom he comes across without picking out concession (*rukhsah*).

As for the first aspect of the issue Shah Wali Allah stands on the same plain with al-Nawawi, i.e *al-'ammi* is not bound to imitate any particular *madhhab*.<sup>45</sup> With the reference of al-Nawawi, the Shah further says that the sound view is that even though the commoner imitates a particular *madhhab*, he may get out from this *madhhab*.<sup>46</sup> Shah Wali Allah has a general complain against the commoners of everyplace, that they imitate the *madhhab* of a particular doctor of the earlier time in such a way that they treat the translocation from that *madhhab*, equivalent to getting out from religion itself. As if, he (*Imam*) is a Prophet whom Allah has sent for them (*muqullids*).<sup>47</sup> In the *Taqrir*, it is said that the opinion of later generations is that the *'ammi* can not properly claim affiliation with a school and say, "I am a Hanafi or a Shafi'ite, " because following a certain school implies a minimum of discriminating intelligence and acquaintance with the literature of that school and the illiterate does not possess even that knowledge <sup>48</sup>.

## F. Pick and Choose of Concession and the Easiest Course

There are as many as three opinions in the issue of seeking of concession and choosing of the easiest course in the practice of *shari'ah*:

1. Permissible.
2. Not permissible.

3. If a *muqallid* has chosen to act upon the direction of a particular *medhhab* then it is not permissible for him to pick and choose pertaining to the same issue. In other issues he is at liberty to do as he likes.<sup>49</sup>

Broadly speaking, in the opinion of some jurists it is impiety (*fisq*) to pick out from each *madhhab* what is most agreeable to him,<sup>50</sup> for example, the drinking of *nabidh* (a kind of wine) from the school of 'Iraq 'temporary marriage (*mut'ah*) from that of Makkah, etc. Ibn Amir al-Hajj sees no objection to this practice.<sup>51</sup>

## G. The View of Shah Wali Allah in this Regard.

Shah Wali Allah not only concedes pick and choose from each school of law whatever is most agreeable as permissible, but also considers it more meritorious (*ahsan*).<sup>52</sup>

In respect of the trial and troubles (*fitnah*) that emerged in the midst of the *ummah* after the disappearance of the *Khilafat Rashidah*, Shah Wali Allah says that, one of the causes of the trial was choosing of the hardship in religious rituals and giving up easiness and concession (*rukhsah*) in *Shari'ah*. He reiterates that the Prophet of Allah said, "Verily (the affair of) religion is easy and none should have recourse to hardship in religion."<sup>53</sup> Baghawi has narrated from 'Umayr who said, "I met more than seventy *Sahabahs*, but I did not see any people more agreeable in respect of character and easier in respect of religious affairs than them (*the Sahabahs*)". Ibrahim Nakh'i used to say, "when you get two affairs in Islam, choose the easier one." Imam



Shafi'i says, "When two contradictory matters appear before you choose the easier of them, because the easier one is nearer to the truth"<sup>54</sup>. The Qur'an says, "Allah intends easiness for you; and He does not want to put you to difficulties"<sup>55</sup>. So it is understood from the above verdicts that picking out the easiness and concessions (*rukhsah*) from the four schools of law is more meritorious when the verses of the Qur'an, the famous Hadith of the Prophet, *ijma'* of the *salaf*, *qiyas jali* and *sahih Hadith* do not stand on the way. But there is a controversy between the jurists of the later times. Some of them call this practice of pick and choose as corruption (*fisq*).<sup>56</sup>

In replying to those doctors who are of the opinion that departing from one *madhhab* to another *madhhab* may be permissible on condition that the *maqallid* should not merely pick out concession or easiness. This view has been rejected by the Shah. Because, when the Prophet was given option, he used to choose the easier of the two alternatives until it would fall into sinning.<sup>57</sup>

Ibn Human says that, if a man seeks the easiest course for himself of the verdict of a *mujtahid*, then I do not know that *shari'ah* has ever blamed him for this practice. The Prophet used to love what became lighter upon his community.<sup>58</sup>

Though, according to Shah Wali Allah, *taqlid* of a commoner should be limited within the four *madhhab* taking as a whole, but it is not necessary for him to follow a particular *madhhab* taking separately. But when he dwells in such a place where only one *madhhab* is prevalent and no '*alim* other than that *madhhab* is available, then he should follow the '*ulama*' of this *madhhab*. The Shah also considers it permissible for the commoner who follows a particular *madhhab* to imitate another *Imam* in some issues, if necessary, provided he should not be led by mere passion.

But when he dwells in such a place where the '*ulama*' of every *madhhab* are available, then the *taqlid* of a particular madhhab is not obligatory, rather he may seek *fatwa* from whom he likes. The Shah mentions this view in the various place of his works, as we have seen in the above discussion.

## Notes and References :

1 Abu'l Fadl 'Abd al-Hafiz Balyabi, *Misbah al-Lughat*, art. "qaladah"; J. M. Cowan, ed. *Dictionary of Modern Written Arabic*, art. "taqlid".

2 Amir Badshah al-Bukhari, *Taysir al-Tahrir*, vol. IV, (Egypt; 1351 H.), p. 246, cf., Taqi 'Uthmani, *Taqlid ki Shar'i Haythiyyat* (Karachi: Maktabah Dar al-'Ulum, 1396 H.), p. 14.

3 Al-Amidi, *al-Ihkam fi Usul al-Ahkam*, vol. iii, p. 166.

4 N. P. Aghnides, *op. cit.*, p. 121.

5 Al-Shawkani, *Irshad*, p. 265

قبول قول القائل وانت لاتعلم من اين قاله فقال

These definitions indicate that the opinions of *Imams or mujtahids* do not hold any part of the sources of *Shariah*. It is also to be noted that to turn to the sayings of the Prophet or to the '*ijma`*' or to the opinion of a *mufti*, in case of a illiterate person, or for a *qadi* to the truthful witness, is not *taqlid*, because these are conclusive evidences (*hujjat mulzimah*) for them.

6. cf. Taqi 'Uthmani, *Taqlid ki shar'i Haythiyyat* (Karachi: Maktabah Dar al- 'Ulum, 1396), p. 15.

7 *Ibid.*

8 '*Iqd al-Jid*, p. 69. There are three opinions regarding *taqlid*:

i) Prohibition in general. Ibn Hazm claims consensus on its prohibition.

ii) Obligation in general. This is the opinion of some Hashwiyah.

iii) It is obligatory for the illiterates and prohibited for the *mujtahids*. This is the opinion of the majority of the followers of the four *a-'immah*. cf., Mazhar Baq, *op. cit.*, p. 465.

9. *Ibid*, pp. 69-70, 80-81; *Hujjat*, vol. 1, pp. 370-71.

10. '*Iqd al-Jid*. pp. 70-71.

11 *Tafhimat* vol. I, p. 211; *cf.*, Mazhar Baqa, *op. cit.*, p. 466.

12. Hujjat, vol. I, pp. 285-6.

13. *'Iqd al-Jid*, pp. 34-35; *Hujjat*, vol. I. pp. 363-4.

14 *'Iqd al-Jid*, p. 28, 36, 37; *Hujjat*, vol. I, pp. 364-5.

15 *'Iqd al-Jid*, p. 37; *Hujjat*, Vol. I, p. 365.

16 *'Iqd al-Jid*, p. 38; *Hujjat*, vol. I, p. 366.

17 *Ibids*.

18 *'Iqd al-Jid*, p. 40; *Hujjat*, vol. I. pp. 366-7.

19 *Tafhimat*, vol. ii, p. 288.

20 *Ibid.*, P. 22.

21 *'Iqd al-Jid*, pp. 31-32; *Hujjat*, vol. I, pp. 363-366.

22 *'Iqd al-Jid*, pp. 32-33.

23 *Ibid*, p. 33.

24 *Ibid*, p. 31. *Maslahah 'azimah* or *'ammah* means public welfare, common weal, etc.; *mufsadah* means pervertedness, cause of corruption, imperfection of a legal transaction or irregularity (1st. law). Here the meaning of utility, advantage and irregularity may be taken respectively. There is no sense of compulsion.

25 *Ibid*, p. 31.

26 Shah Wali Allah, *al-Juz' al-Latif*, Eng. Trans. by M. Hidayat Husain, in the *Journal of the Asiatic Society of Bengal*, vol. VII, N.S. No. 4, Calcutta (April, 1912), p. 166 (Persian text, p. 173)

27 *Ibid*.

28 S. A. A. Rizvi, *op. cit.*, p. 247.

29 *Fuyud al-Haramayn*, pp. 227-28; *cf.*, S.A.A. Rizvi, *op. cit.*, p. 246.

30 *'Iqd al-Jid*, p. 80.

31 *Ibid.*, pp. 8-81.

32 *Ibid.*, p. 81

33 *Hujjat* vol. I, pp. 359-362; *Insaf*, p. 59; *cf.*, S.A.A. Rizvi, *op. cit.*, pp. 246-7. This is an extract of a long discourse of the Shah. In *al-Insaf* the Shah says that in the first and second centuries of Hijrah people were not united upon the *taqlid* of a particular *madhhab*. *Insaf*, p. 57.

34 *'Iqd al-Jid*, pp. 76-80.

35 cf., S. A. A. Rizvi, *op. cit.*, p. 249.

36 *Insaf*, pp. 70-72. The Shah quotes this from *al-Nahr al-Fa'iq Sharh kanz al-Daqa'iq*.

37 N. P. Aghnides, *op. cit.*, P. 121. The author means by *muqallid mujtahid fi'l madhhab*. According to this author they are *muqallid*, and *'ammi* are not *muqallid* in the technical term of fiqh.

38 *'Iqd al-Jid*, pp. 76-77.

39 *Ibid.*, p. 78.

40 *Ibid.*, p. 88.

41 *Ibid.*, pp. 78-79.

42 *Ibid.*, p. 80.

43 *Ibid.*, p. 87.

44 *Ibid.*, p. 88.

45 *Ibid.*, pp. 79; 89.

46 *Ibid.*, p. 79.

47 *Tafhimat*, vol. 1, p. 151; cf., Mazhar Baqa, *op. cit.*, p. 479.

The Hanafites generally maintain the same view in this respect, but they attach a condition that this translocation should not be out of passion.

48 N. P. Aghnides, *op. cit.*, p. 125, f. n.

49 *Irshad*, P. 272, cf, Mazhar Baqa, *op. cit.*, p. 479.

50 Abu Ishaq al Marwazi says, so. The name of his work is *al-Kafi fi'l Fiqh*.

51 N. P. Aghnides, *op. cit.*, p. 125. The name of the book of Ibn Amir al Hajj is *al-Taqrir wa'l ahrir*.

52 *Izalat al-Khafa.*, vol. 1, p. 522.

53 *Ibid.*

54 *Ibid.*

55 2: 185.

56 *Izalat al-khafa* ' vol. 1, p. 522.

57 *'Iqd al-Jid*, p. 61.

58 *Ibid.*, p. 93, cf. Ibn Human, *Fath al-Qadir*.

## CHAPTER IX

# CONCLUSION

The present work is an analytical study of Shah Wali Allah's treatise on an important legal problem relating to what latterly Iqbal defined as the principle of movement in the structure of Islam. Shah Wali Allah called it '*Iqd al-Jid fi Ahkam al-Ijtihad wa al-Taqlid*, i.e. the necklace of the rules of intellectual initiative and servile imitation in the sphere of law and life of human beings.

This treatise was undoubtedly one of the mature compositions of the Shah and must have been written during the later stages of his life. Though small in size the present treatise stands on the good stead of Shah Wali Allah's life-long intellectual aspiration for the reformation of the world wide Muslim Community or world Muslim Ummah. As a matter of fact, since his return from Meccan pilgrimage, all his writings graphically points to a single objective, i.e. reformulation of the rules of *Shari'ah* in the perspective of the Holy Qur'an and the Prophetic Sunnah, what Sayyid Amir 'Ali latterly interpreted as the light of the spirit by which the Prophet was inspired, so as to suit the combined demand of pristine Islamic doctrine and historical necessity of the time.

Initially he wanted to integrate all the sectarian denominations of the Muslim society such as Hanafi, Shafi'i, Maliki and Hanbali as well as Shi'ah-Sunni division of the Muslim Ummah into one single entity in the light of the precept and example of the pristine Islam, which may have reflected in the latterly pan-Islamic movement initiated by Jamal al-Din Afghani. But later on his experience, experiments and

inspiration guided him towards a broad synthesis of all rightly guided denominations that eventually induced him to devise a methodology of *tathbiq*; that is to say, a doctrinally valid synthesis that creates roominess, liberalism, enlightenment and broader understanding amongst diverse sections of the people adhering to the religion of Islam.

On the basis of *tathbiq* or synthesis he could then advise the people belonging to the different sectarian denominations to cling to their own *madhhab* or orthopraxis as well as they would, provided it fulfils the injunctions of the Prophetic traditions, in consonance with this latterly spirit of his reformation. He was ready to pursue one's translocation from one *madhhab* to another and else where he even goes to the extent of bewaring the Muslim of doggedly adhering to one single *madhhab* lest he should be alleged to be unadherer to an Imam rather than to Islam. He advises his co-religionists to break through the barricade of the *madhhab* by means of following at least one or few directions of the Imam of another *madhhab* while following his own, so as to keep him clear of the above allegation.

For buttressing the spirit of reformation he opened up the closed door of *Ijtihad* and wrote the present treatise. It represents his accomplished view and judgment on the necessity of reopening the gate of *Ijtihad* in concrete terms and demarcating the extent and limit of *taqlid* or blind imitation of different sectarian denominations of Islam by the commoners without eroding the main body politic of Islam.

In this treatise, '*Iqd al-Jid fi Ahkam al Ijtihad wa'l -Taqlid*, Shah Wali Allah offers an exhaustive definition of *Ijtihad* displaying his liberal attitude, an accommodative roominess therein. He endorses five conditions for the absolute *mujtahids* as presented by al-Baghawi (d. 510 H/1117 A.C. or 516/1122); namely, the knowledge of the Qur'an, the Sunnah of the Prophet, the verdicts of the earlier generations (*aqawil*

*al-salaf*) concerning their agreement and differences, the knowledge of Arabic language and the knowledge and use of analogy (*qiyas*).

Shah Wali Allah adopted a way of synthesis (*tathbiq*) in dealing with the controversy on jurisprudence. He tried to produce inner mobility by introducing an inter-school legal eclecticism. He studied the principles of all the four schools, Hanafi, Shafi'i, Maliki and Hanabali, along with their methods of extracting formulae for laws from the fundamentals and formed an independent opinion. If he sided with a certain school he did so because evidence went in favour of it; and if he differed with a certain school he did so because the arguments supported its case. In either case he was above his personal likes and dislikes. That is why he appears as a Shafi'i this time and Hanafi on the other, a Hanbali this time and Maliki on the other. He was entirely against those who would not budge an inch from the teachings of their favourite schools. Similarly he did not look with approval on the people who totally refused to recognize the other jurists.<sup>1</sup> He has discussed the questions of *fiqh* in a number of books especially the *Insaf*, *'Iqd al-Jid*, *Tafhimat-Ilahiyyah*, *Musaffa* and *Musawa*, *Hujjat Allah al-Balighah*, *Izalat al-Khafa* etc.

Shah Wali Allah was neither a conformist (*muqallid*) nor an extreme non-conformist like the Zahirites. He was a *faqih muhaddith* (jurio-traditionalist).<sup>2</sup> According to him a *faqih muhaddith* is one who accepts or rejects a proposition of an earlier jurist after comparing it with the *hadiths* related by the companions of the Prophet.<sup>3</sup> It is, however, noticed that he was by nature against *taqlid*, but as is his wont, he does not make a complete departure from the settled customs and dogmas of the land he lived in. For himself, therefore, he found conciliatory formula of a *faqih muhaddith* (jurio-traditionalist), but for the Muslim community of India he recommended the *fiqh* of Abu Hanifah. Since the people of India, and Transoxiana (*ma wara al-Nahr*) do not know Arabic, and since Abu Hanifah's *fiqh* is

already current in these lands, the commoners of these countries should follow the Hanafi school of law.<sup>4</sup>

In his opinion *Ijtihad* is obligatory for the '*ulama*' of every age, because with the passage of time human life comes across with numerous unprecedented problems. The people who oppose *Ijtihad* have been subjected to strong censure. The attitude of such narrow-sighted people tremendously annoys him. He encourages *Ijtihad* by saying that one should not mind such ignorant '*ulama*' who traverse the path of conformity (*taqlid*), like a camel driven by the nose string, goes along not knowing to where it is driven. They live in a world of their own making, and hence, are incorrigible. The aim of such people is merely to indulge in dispute and conflict.<sup>5</sup>

*Ijtihad* could not possibly have been exercised until the stronghold of rigid conformity was broken. The Shah categorically says that the findings and rulings of the elders of the jurists are not as sacred as the Divine revelation. The older jurists were not infallible, hence it was not obligatory for the Muslims to obey them as is done in the case of an infallible Prophet.<sup>6</sup> None of the *Imams* wished to be imitated by his followers blindly.

The rulings of the older jurists could be used with benefit however. In case, the ruling of a school created difficulty and could not be applied usefully enough, a ruling from another school could be borrowed for application. To the Shah *Ijtihad*, in principle, cannot be restricted, nor can it be declared as forbidden. But the right of *Ijtihad* can not be given to every one. It should be exercised only by those '*ulama*' who are fully conversant with the Islamic sciences. It would be wrong to give a *fatwa* without fully understanding the impetus of the matter.<sup>7</sup> Those who do not possess the requisite qualifications for exercising independent judgment The best course for them is to follow one of the schools of *fiqh* which have been recognized by the orthodox Muslim world as the authentic schools of the



Islamic law.<sup>8</sup> The Shah says that there is a great salutariness in adhering to these schools<sup>9</sup>

*Ijma'* a source of Islamic law, receives due importance as one of the basis of *Ijtihad*. But Shah Wali Allah pointed out that the only corpus of fiqh on which real *Ijma'* or consensus could be said to exist, was what had come to be established by the end of the reign of Hadrat 'Umar, the Second Caliph.<sup>10</sup> This was done to remove the sanctity that had come to be attached to later decisions and rulings. In this way he widened the scope of further *Ijtihad* and minimized the importance of the differences of opinion in the fields of the details of *fiqh*.<sup>11</sup>

Allah is not unduly harsh or unduly lenient to anyone. It should, therefore, be remembered that in preaching religious injunctions or exercising *Ijtihad*, the *Imam* should be moderate in giving judgment. The rationale of religion is to extend facility and not to put hardship.<sup>12</sup> To insist upon the observance of matters which are not of fundamental bearings is not what Islam intends. The Prophet was well aware of the fact that too many restrictions create too many hardships.<sup>13</sup> He (sm.) therefore, spelled out the fundamental principles of Islam, but left the subsidiary matters unregulated and did not lay down detailed provisions. The apparent object of the Prophet in doing so was that, details should be left to the discretion of the incumbent. The Prophet furthermore points out that, in the majority of cases the truth lies between two extremes of difference of interpretation by jurists; that a broad outlook is preferable for the expression of opinion in religious matters.<sup>14</sup> In the matter of religion there is roominess (and not narrowness) and that being so unreasonable stubbornness and determined to deny what the opponent says, is ridiculous.<sup>15</sup>

Although Shah Wali Allah advised illiterate Muslims to follow the decisions of the *mufti* of a school to which they belonged, he gave them the freedom to satisfy themselves with these rulings by consulting different *muftis* of other schools.<sup>16</sup>

However, according to the Shah the *mujtahid* should rely heavily upon *ahadith* and turn mainly to the *Muwatta* of Imam Malik for guidance. So translocation from one *madhhab* to another *madhhab* is permissible to him, if necessary. To remain strictly limited in a particular *madhhab* even in case of crying need, is not a thing intended by *shari'ah*. The *madhhab* of *fuqaha' muhaddithin* (jurio-traditionalists) is that, they do not follow a particular doctor ('*alim*) in all his verdicts.<sup>17</sup> A *mujtahid* does not imitate (*taqlid*) another *mujtahid*. The commoner (*al-'ammi*) has no particular *madhhab*. He may ask *fatwa* from any '*alim* with whom he comes across, for he is his imam.<sup>18</sup> Thus, the Shah tries to uproot the *taqlid shakhsi* bringing about a balance and middle course in *taqlid*.

In his *Wasiyat Namah*, the Shah advises people that in respect of derivative problems of *shari'ah* they should follow those doctors of *Hadith* who combine in themselves comprehensive knowledge of *fiqh* and *Hadith*, the details of *fiqh* must be tallied with *Hadith*. The issues that conform with *Hadith* should be accepted and that which contradict it must be rejected. None should hear the verdicts of those diehard *fuqaha'* who imitate a particular '*alim* blindly and give up the Sunnah of the Prophet. None should pay any heed to this kind of diehard *fuqaha'*, rather should keep oneself aloof from them for attaining the pleasure of Allah.<sup>19</sup>

We may say that Shah Wali Allah was the first person in this subcontinent who raised hue and cry against *taqlid* and claimed that the door of *Ijtihad* remains opened for all times and climes. No writing of any Indian scholar was found on the subject of *Ijtihad* before him. We see that Shah Wali Allah wrote his nonograph entitled '*Iqd al-Jid fi Ahkam al-Ijtihad wa al-Taqlid* for the first time.<sup>20</sup> When the ice was broken by the Shah, some scholars followed suit in this regard. But the solution of the problem has not yet been made as it was expected.

The Hanafi '*ulama*' of the subcontinent resolved that after the death of 'Allamah Nasafi the door of *Ijtihad* had been closed and they should have to take recourse to *taqlid*. This attitude of the '*ulama*' was unbearable to the Shah. He moved heaven and earth to introduce the exercising of *Ijtihad* in place of blind *taqlid*. He maintains that the existence of *mujtahid* in every age is necessary.

After a wide circuit made around the sphere of *Ijtihad*, we feel that now-a-days *Ijtihad* is more necessary than any time of the past, because the multitude of events and net-work of public welfare, whether these are individual or national or else international, must be made applicable and adjustable to the *Shari'ah* and that they must be considered in the frame-work of the magnanimous Islamic law which aims at preserving the welfare of all human beings. And what is considerable is that, issues and their solutions change in accordance with the change of times and climes.

Last but not least, keeping in view the present vehemently critical overall situation confronting the numerous newly emerged independent Muslim States, we may furthermore figure out the problems and prospects that have already arisen or likely to arise in near and distant future in the international field of diplomatic relations, in the national field of economic development and social growth which *Shari'ah* would require to give progressive and dynamic coverage of the ten billion strong Muslim Ummah is going to maintain Islamic ideal in the context of a highly scientifically and technologically developed virile, throbbing, vibrating life obtaining in the twenty first century global situation.

It would not escape attention of any intelligent observer of the huge Muslim ummatic situation that one fortunate step of advancement of the *Ummah*, namely acquisition of political independence by around 60 Muslim countries out of post-second World War political dynamics, is being mortally devoured by a

second trend of half a millennium year old continuous social disintegration, administrative degeneration and economic deterioration as sharply diagnosed by Shah Wali Allah; and thirdly, on account of scientific and technological weakness of the Muslim *Ummah* as a whole, it is being confronted everywhere by hostile aggressive forces with increasing velocity by those possessed of advanced scientific knowledge and high technology and at the same time holding unlimited power and inhuman politico-economic prowess and also happened to be, in the main, the former imperialist rulers and colonial oppressors of the Muslim *Ummah* for last two hundred years, aimed at swallowing the natural resources of the Muslim countries by hook or by crook.

To face the three pronged highly critical situation, the *Ummah* must be up and doing to catch up with the march of the time. This brings us in the first place to take up the case of the *Shari'ah* and paying heed to the clarion call of our great reformers mentioned above, namely Shahrastani, Shatibi, Shah Wali Allah and Iqbal, we must remove the impediments from its body-politic by focussing more and more to dynamics of *Ijtihad* to cope with the changing social situation of our times, leaving behind slothness, lethargy and inaction as and when necessitated by contingent situation, in order to face the realities of life. To perform this difficult task the young and old of the *Ummah* must prove equal to the situation by going all the way to acquire modern scientific and technological knowledge and training, to make the advancement of the *Ummah* fruitful on the one hand, and to stall the hostile forces insinuating into the life vein of the *ummah* on the other.

## APPENDIX

# TRANSLATION OF 'IQD AL-JID FĪ AHKAM AL-IJTIHAD WA AL-TAQLID

*In the name of Allah, Most Gracious, Most Merciful.*

All gratitude and praise be to Allah Who sent our leader Muhammad (sm.) to the Arabs and the non-Arabs ('Ajam); so that, they may seek enlightenment with the help of him in the darkness (of ignorance); and whoever are of the people of high ambition may attain lofty ranks by dint of him. I bear witness that there is no lord but Allah the One, and that Muhammad (sm.) is His Servant and His Messenger, after whom there will be no Apostle, may Allah bless him and his family and his companions and grant them fortune and peace.

And after (expressing gratitude and praise towards Allah), the humble slave dependent on the mercy of his Lord, the Gracious, Wali Allah bin 'Abd al-Rahim, may Allah, the Exalted, preserve him from whatever might dishonour him and may ameliorate his mind, condition and affairs, says:

This treatise I captioned it, '*Iqd al-Jid fi Ahkam al-Ijtihad wa al-Taqlid* (the Necklace regarding the Rules of Ijtihad and *Taqlid*). The queries of some of my friends on this important subject urged me to write down this treatise.

## CHAPTER 1

### **Chapter on the Description of the Nature of Ijtihad and its Conditions and Classifications.**

The nature of *Ijtihad* as understood from the discourse of

the learned doctors ('*ulama'*) is to exhaust one's exertion in comprehending the derivative rules of the *Shari'ah* (the Holy Canon Law) by means of its detailed evidences (*adillah*) their '*genera*' being based on four categories (of primary sources), viz., (1) the Holy Book, (2) the *Sunnah* (the Example and Precept of the Prophet), (3) the *Ijma'* (the Consensus) and (4) the *Qiyas* (application of analogical deduction).<sup>1</sup>

And it is to be understood from this definition that *Ijtihad* is wider than (i.e. not confined to) the exhaustive endeavour to comprehend the ruling (*hukm*) worked out by the earlier scholars, no matter whether such an endeavour leads to agreement or disagreement with these earlier scholars. It is wider also than (i.e. not limited by) the consideration whether this endeavour is made with the aid received from some (of the earlier scholars) in being informed of the formulation of the categories of problems as well as in deriving the sources of the judgments (*ma'khadh al-ahkam*) from detailed arguments, or without the help from them.

Thus, what is to be thought in the matter of one who remains in agreement with his teacher (*shaykh*) in greater number of problem and at the same time, he knows the argument of every ruling (*hukm*). and he is satisfied with that argument and stands on the insight into the affairs, that he is not a *mujtahid*, is a wrong assumption. And in this way, the belief that a *mujtahid* is not to be found now-a-days, relying on the former supposition, is basing a corrupt belief upon another corrupt belief.

And the condition of a *mujtahid* is that he must know, that much of the Qur'an and the Sunnah which is relevant to the judgments involved and just know the occasions of the *Ijma'*(the consensus of opinion of Muslim Ummah) , the conditions of the *Qiyas* (analogy) and the method of arranging the premises properly in a case of analogy (*kayfiyat al-nazar*), the knowledge of Arabic language, the abrogating ordinances and the abrogated

ones and the integrity of the narrators. The knowledge of scholastic discourses (*al-kalam*) and *fiqh* (jurisprudence) is not necessary for it. According to al-Ghazali *Ijtihad* could only be achieved now-a-days with the pursuit of the knowledge of *fiqh* which is the way of acquiring critical understanding (*al-dirayah*) of issues in these days. But this was not the way (of acquiring knowledge) at times of the companions of the Prophet.

I say that, this (the opinion of al-Ghazali) points to the fact that the *Ijtihad* of the category of *mujtahid-i-muntasib*<sup>2</sup> (independent but affiliated) is not accomplished without the (analytical) knowledge of clear verdicts (*nusus*) of *al-muujtahid al-mustaqill* (independent *mujtahid*).<sup>3</sup> And likewise the independent *mujtahid* must know the discourses of the Companions, the successors of the Companions and the successors of the successors of the Companions of the past in matters of *fiqh* (Jurisprudence). And that which we have discussed it (i.e. condition of *Ijtihad*) is in details in the books of principles of jurisprudence (*usul al-fiqh*). There is no harm to quote here (as regards the conditions of *Ijtihad*) the discourse of al-Baghawi, who says :

A *mujtahid* is one who combines in himself five kinds of knowledge, (1) the knowledge of the Book of Allah, the Glorious, the Exalted, (2) the knowledge of the *Sunnah* (ideal example) of the Apostle of Allah, peace be on him and his family, (3) the knowledge of the verdicts of the '*ulama*' of the early generation (*al-salaf*)<sup>4</sup> as regards their consensus and their differences, (4) the knowledge of Arabic language (*al-lughah*) and (5) the knowledge of the *Qiyas* (the analogy) which is the method of eliciting (*istinbat*) the judgment from the Qur'an and the *Sunnah* when the judgment is not available in clear terms (*sarih*) in the Statute (*nass*) of the Qur'an or the *Sunnah* or the *Ijma'* (consensus of opinion). Then it becomes necessary to know in respect of the knowledge of the Qur'an the abrogating and abrogated verses, the summary expressions (*al-mujmal*),

and the detailed versions (*al-mufassar*), the particular (*al-khass*) and the general (*al-'amm*) contexts; the fundamental verses (*al-muhkam*) and the allegorical terms (*al-mutashabih*), disapprovals (*al-kirahiyah*), the prohibitions (*al-tahrim*), the *permissions* (*al-ibahat*), approvals (*al-nudub*) and obligations (*al-wujub*).

And of the *Sunnah*, he should know those things [as mentioned above relating to the *nasikh*, *mansukh*, *mujmal*, etc.]. (ii) And he should also know the classifications of the Prophetic traditions such as *sahih* (the sound traditions), *da'if* (the weak ones), *al-masnad* (supported by the complete chain of narrators going back to the Prophet) and *al-mursal* (in which the names of companions of the Prophet is omitted). (iii) And he should know the order of preference of the *Sunnah*, over the Qur'an and the Qur'an over the *Sunnah*, so much so that, if he finds a Prophetic tradition not tallying with the outward meanings of the Qur'an, he should be guided rightly to find out its bearing (*mahmal* i.e. the cause of discrepancy). Because the *Sunnah* is (in fact) the explanation of the Qur'an and does not contradict it. (iv) Of the *Sunnah* it is obligatory to know only whatever has come down there in the context of the rules of *Shari'ah* and not the rest which contain stories, informations (*akhbar*) and admonitions. (v) And similarly it is incumbent for a *mujtahid* to possess the knowledge of Arabic language which has come down in the Qur'an or in the *Sunnah* in matters of the ordinances of the *Shari'ah* not the encompassing knowledge of the entire vocabulary of Arabic language. It is necessary that he should exert himself to the utmost in acquiring linguistic knowledge in order to understand the real purport of Arabic phrases to an extent which may guide him to the intended meanings of the different contexts and circumstances. Because ordinances (of the *shari'ah*) have been revealed in Arabic language. So he who is not acquainted with Arabic language will not arrive at the (real) intention of the Law Giver (i.e. the Prophet). (vi) He should know the verdicts of the companions of the Prophet and the



companions of the companions related to the ordinances (Ahkam) of the the Shari'ah. (vii) And he should also know the greater portion of the *fatwa* (legal judgment) of the jurist-consults of the Muslims community, so that, his judgment (*hukm*) does not stand opposed to their opinions ; so not as to violate the consensus of the community (*Ijma'*).

When he knows the major poriton of each of these branches (of knowledge) he becomes a *mujtahid*. And the exhaustive knowledge to the extent of leaving no stone unturned, is not the condition. If he lacks the knowledge of any one of these (five) branches then his option is *taqlid* (i.e. not to indulge in *Ijtihad*), even though he happens to be a profoundly learned in the *madhhab* of any one of the Imams of the early generations of the Muslim (*salaf*). It is not permissible (for such a person) to entangle himself with the position of a judge or to be a candidate for the position of a *mufti* (i. e. he who gives legal verdict).

When all these branches of knowledge are combined in him and he shuns evil passion and innovations, clads himself with the robes of piety and abstains from the major sins (*kaba'ir*), not persisting in minor sins, then it is permissible for him to take up the responsibility of the office of a judge and may exercise his personal discretion in matters of *shari'ah* using *Ijtihad* and may pronounce the *fatwa* (legal opinion). And he who does not combine in himself these conditions he must imitate him who combines in himself these conditions in matter that occurs to him. Here ends the discourse of al-Baghawi.

Al-Rafi'i, al-Nawawi and innumerable other writers have made it clear that the absolute mujtahid (*al-mujtahid-mutlaq*), as has already been explained, is of two types, (i) independent or unaffiliated (*mustaqill*) and (ii) affiliated (*muntasib*). And it appears from their discourses that the independent (*mustaqill*) *mujtahid* is distinguished from others by three characteristics:- (a) His discretion or free disposal (*al-tasarruf*) over the

principles (*usul*) on which his *ijtihadat* (i.e. judgments by research) are based; (b) following up of the Qur'anic verses, the Prophetic Traditions and the usage of early generations for the sake of understanding the rulings (*ahkam*) which have afore been decided and for choosing of some of the confronting evidences (*al-adillah*) over others and explaining the preferable one of its (evidences) probabilities, and apprehending of the basis (source) of judgments out of those evidences (*adillah*). And so far as we see, Allah knows better, in this regard (second category of the knowledge) two-thirds of knowledge is possessed by Imam al-Shafi'i, may Allah bless him; (c) and the third; to make discourse (of the *mujtahid*) in the issues (*masa'il*) which have not since been decided, basing on those evidences on which the early doctors based.

And the affiliated *mujtahid* (*al-muntasib*) is he who admits (*taslim*) the principles of his teacher (*shaykh*) and takes aids profusely from his (*shaykh's*) discourse in following up of evidences and getting information on the source, and yet he remains fully confident of the judgments (*ahkam*) in respect of evidences and he is capable of eliciting issues from these evidences (*adillah*); whether he exercises much eliciting or less, does not matter.

These above mentioned conditions are the qualifications of the Absolute *Mujtahid* (the *mujtahid al-mutlaq*). [That is to say, in respect of both *al-mujtahid al-mutlaq al-mustaqill* (independent) and *al-mutlaq al-muntasib* (independent but affiliated)].

And he who is next in status (i.e. next to the *mujtahid muntasib*) is the *mujtahid* within "the School of Law" (*al-mujtahid fi al-madhab*). He is emulator (muqallid) of his Imam in matters wherein his (Imam's) clear rulings (*nass*) exist. But he knows the methods and basis of the *madhab* of his Imam. So, when such an incident occurs regarding which no clear ruling of his Imam is known, he exercises *Ijtihad*

(individual judgment) in it in accordance with the rules of his (Imam's) *madhhab*, and deduces its judgment form his verdicts in the same manner as his Imam did.

And he who is lower to his status is "the *mujtahid* of legal decisions (*mujtahid fi al-futya*)". And he is a versatile scholar in the *madhhab* of his Imam, and is capable of preferring one verdict to another, and one aspect of the Imam to others. And Allah knows best.

## CHAPTER II

### Description of the Differences of the Mujtahids

The learned doctors have differed as to the appropriateness of the two *mujtahids* (pronouncing differently) on the derivative issues where there is no conclusive (*qat'i*) evidence. Is each of these *mujtahids* correct or only one of them correct? The former view is held by Shaykh Abul Hasan al-Asha'ri, al-Qadi Abu Bakr, Abu Yusuf, Muhammad bin al-Hasan and Ibn Shurayh, and Abu Yusuf has transcribed it in his "*Kitab al-Kharaj*" (this opinion) from the majority of the *Mutakallimin* (scholastic theologians) belonging to the Ash'arite and Mu'tazilite schools, hinting at this in almost clear terms.

And the latter view is maintained by majority (*jumhur*) of the jurists and this has also been transcribed from the four Imams (Abu Hanifah, Malik, al-Shafi'i, and Ahmad b. Hanbal (R.). And Ibn al-Sam'ani has described in his book *al-Qawati'* that this is the apparent view of al-Shafi'i's school. Al-Baydawi said in his book *al-Minhaj* that the difference of opinion as to rightness of two *mujtahids* in the same issue is based on the diversity that for every given case there is a special verdict supported by a conclusive (*qat'i*) or hypothetical (*zanni*) evidence. And generally acceptable view is that which has been

authentically described from al-Shafi'i (R.), that in respect of every incident there is a fixed verdict upon which there is an indication (*imarah*), whoever steps upon it, hits the target, and whoever loses it misses the target and yet he does not become a sinner (on that ground). Because, *Ijtihad* is based upon (or preceded by) evidences which are its prerequisite, and the implication (*dalalat*) follows the verdict (*hukm*). If both the *Ijtihads* become valid then two opposites will come together (which is absurd). For this reason the Holy Prophet, blessing and peace be on him, said (in support of their not being sinful), "whosoever hits the target shall have two rewards, and whosoever misses it shall have only one reward."

It is said that, when one verdict becomes ascertained (in any issue) then its opposer does not judge according to what Allah has revealed, so he becomes a transgressor. For Allah, the Exalted says, "Whosoever judges not in accordance with what Allah has revealed, then they are the transgressor." We say (answering to this question) that he pronounced judgments in accordance with what he thought (right) even though he was mistaken in judging according to what Allah has revealed. (It occurs out of mistake, *khata'*) not willfully. The meaning of Allah's warning is knowing contradiction).

Again it is said that if all the *mujtahids* are not ratified as correct, then the appointment of an opposing *mujtahid* will not be permissible; and we know that Abu Bakr appointed Zayd (inspite of their disagreement in certain *Ijtihads*). We shall say as a retort that appointment of governor is not permissible to one whose judgment is malafide and a man who has mistaken (*mukhti*) is not like him whose judgment is malafide (*mubtil*). Here ends the discourse of al-Baydawi.

As regards Baydawi's saying that for every issue there is a specific verdict etc. (on which there is either a conclusive evidence or a hypothetical one)<sup>5</sup>. We say that this is (imposing) a judgment (*hukm*) upon the unseen without evidence. As

regards his (Baydawi's) saying, what has been rightly pointed out by al-Shafi'i, that in every incident etc. [as noted above] there is a specific verdict based on a sign or indication. We say that, its meaning is that in every incident there is a verdict which is the most in conformity with the fundamental principles (*usul*) and most fitting of the modes (*turuq*) of *Ijtihad* based on a clear indication from among the evidences of *Ijtihad*. Whoever finds it (clear indication) is correct and whoever fails to find it out misses the target but does not become a sinner. And (we adopt) this view because al-Shafi'i has stated clearly in the opening part of his '*Kitab al-Umm*' whenever a scholar says to another scholar : "You have mistaken" he means 'you have mistaken from the straight path which the scholars ought to pursue.'. And he (al-Shafi'i) has explained it in great length and has illustrated it with many examples.

Or his (Shafi'i's) meaning is that, when there is one single information (*khbr-i-wahid*) in a problem then whoever finds it, is correct and whosoever loses it falls into error. And this has also been explained in great length in his *Kitab al-Umm*.

As regards his (Baydawi's) saying (noted above, i.e. his argumentation in negation of sin of a mistaking *mujtahid*) that, "the *Ijtihad* is preceded by evidences etc". We say, "Allah, the Exalted, has called upon us to worship Him, by acting upon that to which we know summarily to comprehend it in details."<sup>6</sup>

And as regards his (Baydawi's) saying, "It [had the different *Ijtihads* been regarded as true] will bring together two opposites," we say, it is like (the alternative) characteristics of expiation (*kaffarah*) every one of them is obligatory and yet all of them are not binding.<sup>7</sup>

As regards his (Baydawi's) saying, "He who hits the target gets two rewards etc". We say that, this (saying of the Prophet) goes against you and not in favour of you, because the error calls for a reward does, not become disobedience (or sinning). So, surely both the judgments should be for Allah, the

Exalted, in which case one of them is better than the other just as a deliberate act of virtue (*'ajimat*)<sup>8</sup> is superior to an easier permission or relaxation, (*rukhsat*).<sup>9</sup>

Or this is [i.e. the verdict that one *Ijihad* is correct and the other not] like a law court-case, for, in fact, either of the two alternates will be established, either the claim of the plaintiff or that of the defendant.

And his (Baydawi's) contention, that "a *mujtahid* who pronounced a judgment according to his supposition etc." our reply is that, this is an acknowledgement of our objective. And as regards his (Baydawi's) verdict that, he who commits a mistake is not a *mubtil* (falsifier), we say that (when he is not falsifier) *he is not an opponent of truth, because, every opponent of truth is a falsifier (mubtil)* and what may there be besides the truth except delusion. And the truth lies with what has been ascribed to the four Imams (i.e. only one *mujtahid*, out of many, pronouncing on the same issue, is correct). The verdict is drawn out from some of their expositions and there is no clear verdict (*nass*) from them on this matter.

And there is no difference of opinion amongst the community (*ummah*) in pronouncing correctness of two *mujtahids* in an issue wherein the community is given choice either by clear verses of the holy Qur'an or the tradition (*nass*), or by the consensus of opinion (*Ijma'*), e.g. seven variant 'Reading of the Qur'an', the words of invocations and the number of *rakats* in *witr* prayers which may be seven, nine or eleven. Likewise the '*ulama*' should not differ (in saying both the *mujtahids* are correct) in matters wherein choice has been given by an indication (*dalalah*).

The truth is that there are four kinds of differences : First, in which the truth is decisively determined, and it is obligatory to contradict its opposite: because it is surely false, Secondly, in which the truth is determined by the preponderant opinion, the opposite of it is false by presumptive opinion. Thirdly, in which

choice has been definitely given to accept any one of the two alternative sides of difference. Fourthly, in which choice has been given for accepting any one of the alternatives by means of the preponderant opinion.

And its detailed explanation is that if the issue at hand is such that the judgment of the *Qadi* is infringed (by both the alternatives) on account of existing therein a sound and well-known unequivocal directive (*nass*) from the Prophet, blessing and peace of Allah be on him and his family, then any *Ijtihad* that goes against it will be null and void. But yes ! sometimes he (*mujtahid*) may be excused on account of his ignorance of the unequivocal directive (*nass*) of the Prophet, blessing and peace of Allah be on him and his family, till it (*nass*) reaches him, and the argument gets established. And if the *Ijtihad* is made in ascertaining an event which occurred already, but then the circumstances threw it into an event, which occurred already but then the circumstances threw it into confusion, such as the question of life and death of Zayd, undoubtedly the truth in such as the question of life and death of Zayd, undoubtedly the truth in such a case will be only one (of the two alternatives). Yes certainly ! the mistaking *mujtahid* will sometimes be excused in his *Ijtihad*.

And if the *Ijtihad* is in a matter which is entrusted to the investigation (*taharri*) of the *mujtahid*, and the sources of arguments of both the *mujtahids* are nearer to each other, and none of them so far from each other in understanding as to make them look remiss, and departed from the customs and usages of the people, then both the *mujtahids* are right. For example, two persons each of them was told, "give a dirham (name of a coin) from my wealth to a destitute you might find". One of them said, "How shall I know that he is a destitute (*faqir*)? And then it was told "when you exercise *Ijtihad* in the pursuit of circumstances, regarding destitute, and you become sure that he is a destitute then you may give him (the dirham)." Then the two men differed with regard to a man and one of them said that he was a destitute

and the other said no. And if the sources of their judgments are nearer to understanding that there is a scope of accepting the judgments of both the *mujtahids*, then they are both right. Because each of them judged one to be a destitute on the basis of his investigation. And this has come out of his investigation in this matter without apparent laxity, as opposed to when one of the two men give (the dirham) to a big merchant possessing servants and grandeur, because he who judged him to be a destitute will be reckoned remiss and his inclination towards this doubtful matter will not be accepted (i.e. he is wrong).

However, there are two aspects (of difference) here; one of them whether he is actually destitute or not. And undoubtedly the truth in the matter will be one (of the two) and the two contradictory propositions do not come together. Secondly, who gave (the dirham) to a non-destitute supposing his destitution whether is he obedient or not? There is no doubt that he is obedient. But yes! whose conjecture coincided with reality obtained full benefit of reward.

And if the (difference of) *Ijtihad* is in a matter wherein choice has already been given, like the (seven variant) Reading of the Qur'an and the formulae of invocations. This is just like as the Prophet, blessing and peace be upon him and his descendants, practised it in variant ways for making things easy for the people, yet each of the alternative decisions covers the basic welfare (*maslahah*). Then both the *mujtahids* are right. This is all-evident, none should hesitate in accepting this (view).

The important occasions of disagreement amongst the jurists are of various kinds:

One of them is that a person to whom reached a *Hadith* and the other to whom it did not reach. Herein the right one is definite (i.e. he who received *Hadith*).

Secondly, each of them (i.e. of two *mujtahids*) having the Prophetic traditions and the *athar* of the companions mutually contradictory and he exercises *Ijtihad* in bringing about



congruence amongst them or preferring some over others and his *Ijtihad* leads to a certain judgment (of his own) and then the deference arises from this aspect.

And thirdly, that they may differ in the explanation of the words applied and in their comprehensive definitions (*jami' wa mani'*), or in recognizing the foundations of a thing and its conditions regarding its commission (*dhikr*) and omission (*hadhaf*) and in deducing the *manat*,<sup>10</sup> or in respect of the truth what has been ascribed as general is applicable to the particular countenance, or in application of universal to its particulars and the like. Thus the *Ijtihad* of every one leads to a (new) *madhhab* (path).

Fourthly, they may differ in fundamental issues leading to difference in derivative principles. Then (in all the cases) both the *mujtahids* are right provided that the sources from which they get support are nearer to each other in respect of meaning, that we have described above.

And the truth is that, the problems mentioned in the books of fundamentals of *fiqh* are of two categories.

First, which belongs to the pursuit of the Arabic language, like (the questions of) *khass* (particular), *'amm* (general), *nass*<sup>11</sup> (unequivocal) and *zahir* (literal meaning) and the like, for example, the verdicts of the grammarian : "This is a indefinite noun (*al-ism al-nakirah*), and that is a definite noun (*ma'rifah*), this is a proper noun (*'alam*) and this is a collective noun (*ism-i-jins*) and that the nominative (*fa'il*) is *marfu'* and the objective (*maf'ul*) is *mansub*. In this kind of questions the difference is not much.

The second category is pertaining to the chapter (problems) of nearness of the intellect towards what an intellectual practises it by his instinct (*saliqah*). The detail is that, "When you put up an old book before an intelligent man some letters of which have been blurred and ask him to read it. Now in the case of a doubtful passage, he is bound to pursue the

circumstantial evidences (*qara'in*) and investigate to find out what is correct. Sometimes two intellectuals may differ in such a matter. And when two paths appear before an intellectual, then how he pursues evidences and scrutinizes the reasonable points and adopts the preponderant one and that which is the lesser evil. Similarly, when varying Traditions were presented before the earliest scholars, they made a thorough search into the matter and their *Ijtihad* led them to a judgment over some of them (Traditions) by dint of abrogating and by dint of congruence of some with others and preference of some over others. And similarly, when they (the *mujtahids*) face problems regarding which the earlier generations (*al-salaf*) had said nothing, they look similitude with similitude and deduce the causes (*'ilal*).

In a nutshell, they had such devices to which they were driven by their instinct (*saliqah*) created in them just as an intelligent person drives himself to the method in a matter which appears before him. Then some people intended to amplify their (early scholars) devices which were mentioned in their books in details or which they hinted to these devices in the course of their discourses or which were deduced from their issues, even though they did not described them. And the intellects of later generations met their most devices with acceptance because they were disposed by their instinct to the same methods. Then these matters become accepted affair amongst them (*al-khalaf*). And on the analogy of this when they ('*ulama'*) exhausted their endeavours in the transmission of the *Hadith* and in acquiring knowledge discriminating the genuine Traditions from the defective ones and the well-know (*al-mustafid*)<sup>12</sup> Tradition from the rare (*al-gharib*) ones, and in comprehending conditions of the narrators of *Hadith* disparaging integrity or establishing it and in writing the books of *Hadith* and correcting them, they stepped in these fields being urged by their instinct cropping up in their intellects. And then there come other people who made their devices codified as general principles.

And there is an important and useful point. That is one of the conditions of the practice with this kind of general principles is that, no particular instance at issue should belong to the category in which the early intellectuals gave decisions opposed to these general principles, since in every disputed case there are some special factors, which support a judgment other than the general principles.

And the basis of disputation is the pursuance of general principles and the establishment of a judgment which (in a given case) has been pronounced against it (the general principle) by the pure intellect on special grounds. As when you see a stone and you are sure that it is a stone then comes a disputationist and propounds the general principle that, a thing is known by its colour and propounds the general principle that, a thing is known by its colour and shape and the like, and in this instance things become confusing. Then the conviction breaks down by means of this general principle. The poor person does not know that the conviction attained in this particular case is greater than the pursuit of general principles.

Then beware of letting your self beguiled by their arguments from the clear *Sunnah*. Because the difference in such matters is to be referred to the investigation (*taharri*) and the peace of heart. In short, the difference in the most cases of the principles of jurisprudence is to be referred to investigation and the satisfaction of heart based on the observation of circumstantial evidences (*qara'in*). And the Prophet, blessing and peace be upon him and his descendants, has pointed out on different occasions that the responsibility of obligation (*taklif*) is to be referred towards what the investigation leads on.

One of the occasions of such discourse is the saying of the Prophet, peace and blessings of Allah be upon him, "The *'Id-al-Fitr* of you is on the day when you break fasting and your *'Idal-Duha* is on the day when you make sacrifice".<sup>13</sup>

Al-Khattabi said that the meaning of the (above) *Hadith* is that the mistake committed by man in such matter which depends on *Ijtihad* is excused. Therefore, if a people exercise their endeavour, they do not find the new moon but after thirty days. They did not break their fast till they fulfilled the number (of thirty days), then it was established to them that the month was of twenty nine days. Then their fast and the breaking of fast are effective and no burden of sin or any blame will be imposed on them. Similarly when they mistake in determining the day of 'Arafat yet the repetition of *Hajj* is not necessary for them and their earlier performances will hold good in this connection. And verily this is an alleviation and leniency from Allah, the Glorious, towards His slaves.

One of the occasions is the saying of the Prophet, "when the judge (al-hakim) exercises his utmost endeavour and hits the target, he gets two rewards and if he commits any mistake, he gets one reward".

Whoever makes a thorough examination of the clear dictates of the law giver (the Prophet) and his legal decision (*fatwa*) will get to the general principle, which is that, the law giver (*shari'*) has laid down variegated rules of good conduct comprising ablution, bathing, prayer, poortax, fasting pilgrimage etc. upon which various sects (of Muslims) are agreed upon. And he has laid down for these (practices) their constituents (*arkan*), conditions and manners, and has pointed out the disapprovable (*makruh*) and corruptible acts (that may happen in these matters) and the devices of making up the loss, and has amplified discourse in these matters as much as it should be. Then he (the *shari'*) abstained from working out every details of these pillars, etc, he would refer them (*arkan*) to what they (people) understood in their minds by the words used (in the injunction), and would guide them to refer the particular cases to the general principles (in resolving the problems), and would not add any thing more to it except in very few cases due to the attachment of accidental causes of persistent interrogation of the people.

And the example of this is that the washing of four limbs in ablution (is ordained by the *shari'*), but he did not give a comprehensive definition with which it could be realised whether the rubbing is included into the ablution or not, and also the pouring of water is included into the obligation of ablution or not. Nor did he classified water into *mutlaq*<sup>14</sup> (unconditional) and *muqayyid* (limited), nor did he explain rules regarding the wells and ponds and so on and so forth. This sort of problems frequently occur, their non-occurrence could not be imagined in the times of the Prophet, blessings and peace of Allah be upon him and his family.

And when a questioner asked the Prophet (sm.) with regard to the Bi'r-i- Buda'ah (well of *Bada'ah*)<sup>15</sup> and the *Hadith* of *qullatayn* (two jars),<sup>16</sup> he did not add anything in reply, with regard to their understanding of the meanings of the words and with which they were habituated among themselves. For this reason said Sufiyan Thauri : "We have had nothing in matters of water but roominess. (*wasaa'ah*)" And when a woman asked him (sm.) about the cloth that get stained with the blood of menses, he did not add more than saying; "Scratch it then rub it and then sprinkle water on it, then say prayer therewith."<sup>17</sup>

So he (the Prophet) did not bring any thing additional to what was with them. And he ordered people to turn their faces to the *Qiblah* (in *salah*) and did not teach us method of ascertaining the direction of the *Qiblah* and (at the same time) the companions of the Prophet were used to undertake journey and tried their utmost in matter of the *Qiblah*, and they have had burning need of knowing the method of *Ijtihad* (for finding out the *Qiblah*). All these affairs were meant for entrusting it to their judgment in the same way. So were the cases in the most of decisions of the Prophet, blessings and peace of Allah be upon him and his family, as it is not concealed to a wise judge.

And we have understood in pursuance of his (Prophet's) commands that in keeping off the track of deeper matters of

understanding and in avoiding the varieties of the ways of grasping, there is a great salutariness. And it is that, those issues, refer back to realities generally used in common convention, summarily, and whose comprehensive definition can not be known without difficulties. And sometimes the definition requires distinction between two difficult propositions by means of principles and methods, the establishment of which may lead them to griefs. Then even if these realities are defined and explained, their explanation will not be possible except by means of similar realities ( i.e. similarly summarized and subject to explanation) and so on and so forth. Then the matter will create a vicious circle, or the matter in certain cases will get concluded by entrusting it to the opinion of the person concerned (*mubtala bih*), whereas the other realities were not more deserving than the first ones in entrusting to these persons concerned. On account of this salutariness, he (the Prophet) entrusted the realities in the first instance to their (incumbents') opinion. And he did not apply any rigidity in which they differ, whenever the differences were in matter entrusted to the person concerned and there is a scope of controversy too in this matter. Hence he (the Prophet) did not rebuke 'Amr bin al-'As for his understanding of the saying of Allah, the Exalted, " Do not put your hands into destruction"; the permissibility of *Tayammum*<sup>18</sup> for the person incurred major pollution (due either to sexual intercourse or night pollution) when he is affraid of his life due to severity of coldness, nor he (sm.) gave any blame to 'Umar bin al-Khattab (R.) for his understanding the interpretation of the varse, " Or you touch your wives," that this verse was (applicable only) in case of touching of woman (wife) not for major pollution (*janabah*). So the problem of the person incurred major pollution should not perform *Tayammum* at all.

Al-Nasa'i narrated from Tariq that a man who got major pollution and did not perform *salah* (prayer), then he came to the Prophet and he said to him what he had said to the other (the first person), that is, "You are correct," Here ends the report of al-Nasa'i.

Nor did he (sm) blame any one of them who performed the 'Asr prayer late or performed it in due time, because when all of them were interpreting the saying of the Prophet; " Do not say prayer of 'Asr but in (the settlement of) Banu Qurayzah",<sup>19</sup> (according to their individual capacity of understanding).

In short, whosoever encompasses all aspects of discourse of the Prophet, will realize that the Prophet, may Allah bless him and grant him peace and his family, has entrusted the matter to their (*mubtala bih's*) understanding in those realities which were conventionally practised in general. Similarly (he entrusted the matter) in bringing about congruity of some with others to their understanding. Its example is the jurists entrustment (*tafwid*) of many judgments to the investigation (*taharri*) and convention of the person concerned, but there is no blame from them (jurists) to any one differing in such a matter.

Another example of this (entrustment) is the agreement of the community on the issue of exertion in finding out the direction of the Qublah in cloudy weather and dropping off the blame on any one for following up wherefore his investigation leads him.

An example of such a salutary principle is the terminology that has been mentioned by the debators regarding the convention as to dropping the scrutiny of the premises of arguments, while arguing lest the diffusion of discussion will be indispensable. So whoever understands the real nature of this problem will realize (the following matters) :

1. That, in most cases of *Ijtihad* the truth revolves in between the two sides of the difference.
2. That, in matter (of religion) there is roominess (and not narrowness).
3. That, to become diehard on a single matter and to become determined to deny the opponent, is not a good course.
4. That, deducing of definitions of the realities of it

pertains to such a category that brings intellect closer to the understanding of every one belonging to the mother tongue; then it helps him in getting the learning. But if it (deducing of definitions) is far from the intellects and distinguishes problems by means of innovated premises (*muqaddimah*), then it might soon lead to a new system of *Shari'ah* (an undesirable thing).

The correct thing is what Imam 'Izz al-Din bin 'Abd al-Salam said, "One attained salvation who stood firm on what is agreed upon (by the '*ulama*') on its obligations and refrained from what they had agreed upon on its prohibition and held permitted what they agreed upon to be permitted and acted upon what they agreed upon to be commendable (*mustahab*) and abstained from what they agreed upon to be heinous (*makruh*)."

And whoever takes what the '*ulama*' have differed therein then for him there are two conditions. One of them is that the controversial matter pertains to that issue which cancels the judgment of *Shari'ah*. In this situation there is no way to imitation (*taqlid*), because, it is a sheer mistake. The judgment of cancellation pronounced therein was nothing but for its being such a mistake which is far from the spirit of the *shari'ah*, its source as well as the procedure of its argument.

The second one is that which does not cancel the judgment of the *shari'ah*. Then there is no harm to pursue it or to give up provided that he imitates in it some of the scholars. Because, people never ceased to ask the '*ulama*' whom they came across, without limiting to any *madhhab* nor denying any one of them by the questioners till these schools of thought (*madhahib*) and their baised imitators became evident. Then one of them (imitators) follows his Imam in spite of being his *madhhab* far from evidences, yet he imitated his (Imam's) verdict as if he was a Prophet sent to him. This is besides the truth and far away from the righteousness, none is pleased with it from amongst the people of wisdom. Here ends (the discourse of 'Izz al Din bin "Abd al Salam).



And he (Izz al-Din) further said, whoever imitates any Imam from amongst the Imams then he wants to imitate another Imam: Is that permissible to him ? There is a difference of opinion. The choice is analytical. If the *madhhab* to which he (the *muqallid*) intends to translocate, pertains to such a nature in which the (existing) judgment (of *shari'ah*) stands cancelled, then it is not permissible for him to translocate to such a judgment which necessitates its cancelling; because, its cancelling does not become necessary except for its being invalid. And if the sources (*makhadh*) of both the *madhahib* are nearer, then both imitation and translocation (to other *madhhab*) are permissible. Because, people right from the times of the companions of the Prophet (*sahabah*) down to the appearance of the four schools of law (*madhahib arba'*) never ceased to imitate the ulama' whom they happened to meet without refusal of any one whose refusal is worth considering. If this were wrong they would surely have denied it. Allah knows the right one best. Here ends (the discourse of 'Izz al Din' Abd al Salam).

When it is confirmed to you what we have described above, you will realize that every principle in which the *mujtahid* speaks of his *Ijtihad* (individual judgment) is to be referred back to the author of *Shari'ah* (the Prophet), blessings and peace be upon him, either to his word (in verbatim) or to the '*illah* (cause) derived from his word. And when the affair is as such there will be two positions in every *Ijtihad*.

The first one is that, whether does the author of Shar' intend this meaning with his discourse or the other than it? or whether does, in his mind, he set up this cause ('*illah*) as the basis while discoursing of the stipulated judgement, or not? Then if the discussion about hitting the target (of two *mujtahids*) were in consideration of this (*first*) position, then either of the *mujtahid*, without specification must be correct, not the other.

The second position is that it is one of the general principles of the *shari'ah* that the Prophet, may Allah bless him

and grant him peace and his family, enjoined upon his community distinctly or implicitly that, when his versions (*nusus*) or the meaning of some of his versions become contradictory or variant to them, then they are ordained to have recourse to *Ijtihad* (individual judgement) and exhaust the ability in understanding what is the truth therein. Then when anything of this becomes specified to a *mujtahid* then it becomes obligatory to him to follow it. As the Prophet (sm.) enjoined on the community that; when the direction of the *Qiblah* stands confused before them in the darkness of night then it will be obligatory on them to investigate (*taharri*) and perform *salah* facing to an direction to which their investigation (*taharri*) directs.

So, this is the judgment which the author of the *Shari'ah* affixed to the existence of investigation, just as the obligation of *salah* (prayer) is affixed to (the existence of) the time (*waqt*). And as the responsibility (of *shari'ah*) of a boy (*sabiyy*) is affixed to his attaining of the majority (*bulugh*).

If the discussion (of hitting the target of the *mujtahids*) is in consideration of this (second) position (in which the method of *taharri* is considered), then it requires the observation that if the problem is of such a category in which the *Ijtihad* of the (early right) *mujtahid* becomes cancelled, then his (the new *mujtahid's*) *Ijtihad* will be null and void decisively. And if there is a genuine (*sahih*) tradition of the Prophet (regarding this issue) but he (the new *mujtahid*) gives verdict against it, then his *Ijtihad* will be null and void. If both the *mujtahids* follow a path which they were required to follow and do not contradict any genuine Hadith nor do they contradict any thing because of which the *Ijtihad* of the *Qadi* (judge) and *mufti* (jurist-consult) becomes cancelled, then both of them are on the truth. This should be remembered. Allah knows best.

## CHAPTER III

### Stressing on Adhering to these Four Schools of Law and Disapprobation upon Rejecting and Getting out of them.

Know that in the adherence to these four schools of law there lies a great salutariness and a great corruption in rejecting all of them. And we shall describe this in several ways:

(1) One of them is that the community (*Ummah*) agreed to rely upon the early generations (*al-salaf*) in understanding *Shari'ah* (Islamic Law). So, the followers of the companions of the Prophet (*al-Tabi'un*) relied in this matter upon the companions of the Prophet and the followers of the followers of the Companions. Thus, the '*ulama*' of every generation (*tabqah*) relied upon those who were before them. And the reason ('*aql*) points to its propriety. Because, the *Shari'ah* will not be understood but with the help of traditional evidence (*naql*) and deduction (*istinbat*). The traditional evidence does not become established without taking it by every generation from preceding generation without break of continuity.

For making (legal) deduction it is necessary for deducing (*istinbat*) to know the *madhahib* (legal schools) of the earlier jurists; so that, it does not become side-tracked from their verdicts, then (consequently) the consensus (*Ijma'*) gets broken. (The knowledge of the *madhhab* of the earlier jurists is also necessary) for basing it (the verdict) over theirs (*madhhab*) and for taking help in course of it (*istinbat*) from those preceded him. Because all arts and crafts like, *al-sarf* (etymology), *al-nahw* (syntax), medicine, poetry, blacksmithship, carpentry and goldsmithship do not become easy for any one except

through close attachment to their masters and its opposite is rare and far remote from reason that never happens though it is possible to the intellect.

When (the truth of) reliance upon the verdicts of the ancestors (*al-salaf*) has become determined, then it becomes necessary that their verdicts upon which reliance was made should either be narrated with a genuine chain (*isnad*) or be recorded in some well known books. And it is also necessary that these verdicts be well discussed, so as to be preferable one becomes defined from their probabilities. And that, its generality becomes specified in some places, and its abstractness becomes concrete in some places, and the contradictory verdicts become reconciled in it, and the cause (*'illah*) of their judgments becomes evident. Otherwise, reliance upon it (the doctrines of the earlier) will not be correct. In this later ages there is no *madhhab* of such quality except the four schools of law (*madhahib arba'ah*). May Allah approve it. Yes! the *madhhab* of *Imamiyyah* and *Zaydiyyah* who belong to the people of sinful innovations is existent, so it is not permissible to rely upon their doctrines.

(2) Secondly, (i.e. the reason for acceptability of these four *madhahib*) is that the Apostle of Allah, may Allah bless him and grant him peace and his family, said, "Follow the vast majority (*al-Sawad al-A'zam*)". Since the all other *madhahib* (schools Law) got eliminated, in fact, by dint of these four (schools of law), so the following of them has become the following of the vast majority and to get out of them implies getting out of the vast majority.

(3) The third reason is that, as a long time passed and the (ideal) age has become remote and trustworthiness was lost, then it is not permissible to rely upon the verdicts of pseudo '*ulama*' from amongst the oppressive judges and the passionate *muftis* even though they relate their verdicts, either directly or indirectly, to one of the early good generations (*al-salaf*) who was well known for truthfulness, faith and trustworthiness and

this verdict of him (*al-salaf*) becomes reproducing extempore from their memory. And nor (is it permissible to rely) upon the verdict of one whom we know not whether did he fulfil the conditions of *Ijtihad* or not?

So when we see the researchist '*ulama*' preserving the *madhahib* of the early generations when they may be as true in their deduction either according to the verdicts of the *salaf* or in their deduction directly from the Book (of Allah) and the *Sunnah* of His Apostle. And as for when we do not see these things in them, then they are far from being relied upon.

This was the meaning to which 'Umar bin al-Khattab, may Allah be pleased with him, hinted at, when he said : "The disputation of the hypocrites citing the Qur'an would destroy Islam". And Ibn Mas'ud also said : "Whoever becomes a follower (of a person), he ought to follow one who has passed."

Ibn Hazam went to the extent of saying: *Taqlid* (imitation) is prohibited (*haram*), and it is not permissible (*halal*) for any one to accept the verdict of any person other than the Apostle of Allah, peace and blessings be upon him, without demonstrative proof (*burhan*). As Allah, the Exalted says : "Follow what has been revealed to you from your Lord and do not follow any friends besides Him" And His saying : "And when it is said to them, follow what Allah has sent down, they reply, nay but we shall follow that upon which we have found our forefathers". And Allah, the Exalted said admiring one who does not imitate : "So convey the good tidings to my servants who listen to the discourse and follow the best of it. These are ones whom Allah has guided and those are the people of wisdom". And Allah, the Exalted said : "If you fall into dispute regarding any matter, then refer it back to Allah and His Apostle if you believe in Allah and the Last Day". So Allah did not allow to bring the issue of disputation before any one besides the Qur'an and the Sunnah. Verily consensus of opinion (*ijma'*) of all the companions of the Prophet from the beginning to the end, the consensus of the

followers of the followers of the Companions of the Prophet (*tab'tabi'un*) from the beginning to the end proved true on (remaining aloof and forbidding) others from persuing the verdict of any particular human being from amongst them or from amongst those preceding them, and take all his verdicts into acceptance. So you know that whosoever accepts all the verdicts of Abu Hanifah or all the verdicts of Imam Malik or all the verdicts of al-Shafi'i or all the verdicts of Ahmad bin Hanbal and does not leave off the verdict of one whom he follows amongst them (Imams) or the verdict of any one besides them against the verdicts of any others (whom he does not follow). And he does not rely upon what has come down in the Qur'an and the *Sunnah* without scrutinizing it in the light of the verdict of a particular person. He surely violated the consensus of the entire community from the beginning to the end with certainty beyond doubt. And that he would not find for himself any ancestors (*al-salaf*) nor any Imam from amongst the three praiseworthy generations, and he surely followed a path other than the path of the Muslims. We seek shelter with Allah from this position. And also that all these jurists prohibited from imitating them and imitating others. So he who imitated them he surely violated them (all the Imams).

And also (a proof of non-permissibility of *taqlid*) that what is the matter which made a person from amongst these (*'ulama'*) or from amongst other preferable to be imitated to 'Umar bin al-Khattab or 'Ali bin Abi Talib, or 'Abd Allah bin Ma'sud, or ('Abd Allah) Ibn 'Umar, or 'Abd Allah Ibn 'Abbas, or 'A'ishah, the mother of the faithful, marcy of Allah be upon them all. Then if *Taqlid* were allowed each of them would have been most deserving to be followed than the others. Ends (the discourse of Ibn Hazam).

(In consideration of the above discourse of Ibn Hazam, it may be said that) It is exclusively applicable to one who has a share in *Ijtihad* even though in a single issue (mas'alah) and to

him, to whom it has become clearly distinct that the Prophet, peace and blessing be upon him and his family, commanded or from what he prohibited, and that, it was not abrogated, either by dint of his search after the Prophetic Traditions and the contradictory and conformable verdicts on the problem; but he does not find it abrogated or else, he sees a great majority (*jamm ghafir*) of well versed '*ulama*' favouring it, and sees his opponent not arguing except by means of the analogy (*qiyas*) or deduction (*istnbat*) or in the like manner. Under such circumstances there is no reason for opposing the *Hadith* of the Prophet, blessing and peace be upon him and his family, but a secret hypocrisy or an evident foolishness. This is the matter to which Shaykh 'Izz al-Din bin 'Abd al-Salam hinted as he said, "One of the wonder of the wonders is that any one of the dependent (imitator) jurists realizes the weakness of the source of his Imam in such a manner that he does not find any repellent source (for his weakness), inspite of that, he imitates him therein and he leaves off the one in favour of whose *madhhab* the Book of Allah and the *Sunnah* of the Prophet and the correct analogy bear witness for the sake of imitating his Imam blindly, rather he adopts tricks for refuting the apparent meaning of the Holy Book and the *Sunnah*. And he interprets it (apparent meaning) with remote and false interpretation with biasness towards one whom he imitates (*muqallad*)."

He ('Izz al-Din) also said, "People never ceased to ask any one of the '*ulama*' they happend to come across without distinction of any *madhhab* or denial by any of the questioners till the appearance of these *madhhabs* and their biased partisans of imitators, so that, some (of the imitators) would follow his Imam even though his *madhhab* is far from proof, imitating his (the Imam's) verdicts as if he was a Prophet sent down to him. This is far from the truth and righteousness, none of the man of intellect is pleased with it".

Imam Abu Shamah said, "Whoever occupies himself with jurisprudence ought not to confine himself to the *madhhab* of a

single Imam, but he ought to believe in genuineness of every issue whatever is nearer to the proof of the Book of Allah and the established *Sunnah* of the Prophet. This is easy for him provided he would know with certainty the greater portion of the sciences of the predecessors, abstain from biasness and from casting his looks into the paths of opposition, because it leads to killing of the times and soiling of the purity".

1. It has been rightly narrated by Imam al-Shafi'i that he prohibited imitation of himself and blind imitation of others. His disciple al-Mujani said in the beginning of his book *Mukhtasar*, "I have abridged it with the knowledge of al-Shafi'i, mercy of Allah be on him, and the meaning of his verdict, that, I shall bring it (knowledge) nearer to one who wishes (to have it) over my information transmitted to him the prohibition of him (Shafi'i) from blind imitation of himself and blind imitation of others in order he may look into it (*Mukhtasar*) for the sake of his religion and for the caution of himself, that is, whoever intends to know my information he may know that Imam Shafi'i prohibited blind imitation of him and blind imitation of others." Ends (the discourse of Abu Shamah).

2. And in the case of one who happens to be an ordinary person and imitates a particular person from amongst the jurists blindly viewing that, as if it is impossible on his part to fall into an error; and that, his verdict is correct certainly; and that he perceives it in his heart that he will not dispense with imitating him even though it in his heart that he will not dispense with imitating him even though the argument has become evident against it. That is like what has been narrated by al-Tirmidhi from 'Adi bin Hatim who said, "I heard the Apostle of Allah, peace and blessing be on him and his family, reciting" They made their priests and monks (*Ahbar wa Ruhban*) lords besides Allah". The Prophet then commented that they had not been worshipping them; but when they rendered a thing lawful for them, they regarded it lawful and when they rendered a thing unlawful they treated it as unlawful.



3. And in the case of one who does not think it permissible for a Hanafi, for instance, to seek legal decision (*fatwa*) from a Shafi'i jurist and vice-versa, nor does he permit, for instance, a Hanafi to say prayer behind a Shafi'i Imam, because, this violates the consensus of the first generations,<sup>20</sup> and it also breaks (the usages) of the Companions and the followers of the Companions.

4. And it [the opinion of Ibn'Hazam] does not take place in the case of a person who does not owe allegiance except to the saying of the Prophet, peace and blessing of Allah be upon him and his family. And he does not believe in the lawfulness of a thing except what Allah and His Apostle have rendered it lawful nor does he believe in the unlawfulness of a thing except what Allah and His Apostle have rendered it unlawful. But he when does not have any knowledge about what the Prophet, peace and blessing of Allah be upon him and his family and the companions, said nor the knowledge of the method of reconciling between the different discourses of the Prophet, nor regarding the method of deducing (issue) from his (the Prophet's) discourse, so he follows a rightly guided learned person considering him to be right in his verdict and legal opinion evidently following the *Sunnah* of the Apostle of Allah, peace and blessing be upon him and his family. Then if any thing appears contradictory to his assumption he uproots it instantly without disputation and persistence.

When this is the position then how can one deny it, in spite of seeking and giving of *fatwa* which never ceased among the Muslim from the time of the Prophet, peace and blessings be upon him and his family, and there was no difference between seeking *fatwa* from one person permanently or seeking it some times from this person and some times from the other, remaining confirmed, however, what we have described above [i.e. on the appearance of violation to it one ought to desist]. Why not? Since we do not believe in any jurist whatsoever that Allah has revealed the *fiqh* to him and made it

obligatory upon us to obey him and that he is infallible (*ma'sum*).

If we follow any one of them (jurists) this is owing to our knowledge that he possesses (adequate) knowledge of the Book of Allah and the *Sunnah* of His Apostle. His verdict will not be devoid of one of the following (three conditions):-

(1) That either it will be from the unequivocal (*sarih*) version of the Qur'an and Sunnah.

(2) Or it will be deduced from them (the Qur'an and the Sunnah) in one form of deduction.

(3) Or he (the jurists) knows by co-relation that the judgment in such a case is related to such an '*illah* (cause) and he is satisfied at his heart by this knowledge, then he makes analogy of equivocal evidence on the unequivocal grounds; as if he says, "I assume that the Apostle of Allah, peace and blessing be on him, said, whenever you find this cause ('*illah*) the judgment will be like this thereto. And (analogously) the measured one (*al-maqis*) is included in this generality. Then this verdict will also be traced back to the Prophet, peace and blessing of Allah be upon him. But in this method there are (the scope of) many assumptions. Had it (the scope of assumption) not been, a believer would not have imitated a *mujtahid*. Then when any *Hadith* reaches us with a sound chain of narrators from the infallible Apostle, obedience to whom has been rendered obligatory by Allah upon us indicating opposite of his (jurist's) *madhhab* and (in this circumstances) if we let aside the *Hadith* and follow that hypothesis, then who would be more transgressor than us and what would be our plea on the Day the people would stand before the Lord of the Universe?

## CHAPTER IV

### **Concerning the Controversy of the People Regarding the Acceptance of the Four Madhahib (the school of Legal thought) And whatever Becomes Necessary By Dint of It**

Know that the people are divided among themselves into four groups regarding the acceptance of the (four) *Madhahib*. And every group has its own limitation which can not be crossed.

One of them is the position of the Independent *Mujtahid* related to any founder (Imam) of the *madhhab* out of these (four) *madhahib*.

Second is the position of the deducer (of problems). And he is the *Mujtahid fial-Madhhab* (i.e. the *mujtahid* in the school of law).

Thirdly, is the position of the versatile scholar (*al-Mutabahir*) of the *madhhab* who memorises (every thing of) the *madhhab* and makes it sure. And he gives *fatwa* (legal decision) with what he knows for certain and preserves the *madhhab* of his Imam.<sup>21</sup>

Fourthly, is the position of the crass imitator (*al-muqallid al-sarf*) who seeks *fatwa* from the 'ulama` of the *madhhab* and acts according to their *fatwa*.

The books of the community are filled up with the conditions of every postion and directives (*ahkam*) ; but there are some people who do not make any distinction between these positions; so they confound themselves in those directives and suppose them mutually conflicting. So, we wish to render for every position a separate section (*fasl*) and to point to the directives of every position separately.

## Section 1

### Concerning the Absolute But Related Mujtahid (al-Mujtahid al-Mutlaq al Muntasib):

Since we have already discussed above its conditions we shall not repeat it here. The gist of the above discussion is that, he who combines in himself the knowledge of Hadith, the *fiqh* (Islamic jurisprudence) narrated by his Imams and of the principles of jurisprudence (*usul al-fiqh*) as comparable to the position ascribed to the great '*ulama*' of the Shafi'i School of Law. And they (*al-muntasibs*) though happen to be numerous among themselves, yet they proved handful viewing at from the position of the others. The gist of their devices and action according to our investigation into their discourses is that, the problems ascribed by Imam Malik, al-Shafi'i, Abu Hanifah, Thawri and other *mujtahids* whose *madhahib* and *fatwa* are acceptable put up before the *Muwatta* of Malik, *al-Sahih al-Bukhari* and the *Sahih of Muslim* and then before the *Hadiths* of al-Tirmidhi, Abu Dawud and al-Nasa'i, then whichever issue conforms to the Sunnah either explicitly or implicitly, they accept it and rely upon it. And whichever issue conflicts with the *Sunnah* in clear terms they reject it and dispense with its practice. And whichever contradictory to *Ahadith* (pl of *Hadith*) and *Athar* (the version of the companions) are found therein, they apply *Ijtihad* (private judgment) for synthesizing one with the other, either by means of preferring the *mufassir* (self evident) over the *mubham* (ambiguous), or by reconciling all the Hadith in one form or other.

Then if the issue pertains to the category of *Sunan* (the Prophetic Traditions) and *Adab* (etiquettes), then they are all *Sunnah*. And if the issue pertains to the category of lawfulness (*halal*) and prohibition (*haram*) or to the jurisdiction of justice (*qada'*), and the Companions, the followers of the Companions (*al-Tabi'un*) and the *mujtahidun* differ therein, they categorise the issue into two or more sets of opinions, so as to deny none

from them while accepting any of them. And they see roominess therein when the Hadith and *Athar* (practice) bear witness to every side. Then they exhausted their efforts in understanding the best and the preferable one either by dint of the strength of narration (the *Hadith*) or on account of the practice of the majority of the companions of the Prophet over it or for its being the *madhhab* of the majority of the *mujtahidin* or else for its conformity to the analogy (*qiyas*) according with its similitudes. Then they practised with this strongest decision without denying any one who accepted any other set of opinion. If, however, they do not find pertaining to this issue any *Hadith* from the first two levels, they cast their eagle eyes in searching the witnesses of their verdicts from the *athar* (practice) of the third stage of the books of the *Hadith* from their (*Sahabahs* and *Tabi'un's*) discourses. Then if their conscience is satisfied with whatsoever they accepted it and if the conscience is not satisfied with whatever they described, rather it is satisfied with other than it and the issue pertains to the category which falls into the domain of *Ijtihad* (individual judgment) of the *mujtahid*; and no prior consensus was formed in respect of it too, and any clear evidence lay with them (in favour of the other view) they judge with this view seeking the help of Allah and relying upon Him. Since this is a very rare occurrence to happen and hard nut to crack, they abstain from its slippery ground with firm determination. But if there does not stand with them a clear evidence they follow the great majority of the people (*al-Suwad al-A'zam*).

And the issue (*mas'alah*) in which there is no clear version nor any correct explanation (*ta'lil*) coming down from the early generations (*al-salaf*) they apply utmost exertion in search of the clear statute (*nass*) or any hint or indication from the Book of Allah and the Sunnah of the Prophet or from the *athar* (practice) of the Companions and the followers of the Companions (*Tabi'un*). Then if they found (any evidence in their favour) they give verdict according to it. But it was not

their wont or behaviour to imitate any one single learned person in all his verdicts whether their minds are satisfied with it or not. If you are in doubt about what we have described, then you may go through the book of al-Bayhaqi and the book *Mu'alim al-Sunan wa Sharh al-Sunnah* of al-Baghawi. This is the method of the researchists from amongst the jurists *muhaddithin* (*fuqaha' al-muhaddithin*). They (*fuqaha' al-muhaddithin*) are handful and different from the literalists (*al-Zahiriyah*) amongst the *Ahl al-Hadith* (people of *Hadith*) who do not accept analogy (*qiyas*) nor the consensus (*Ijma*). They are also different from those early generations of the people of *Hadith* who do not pay any heed to the opinions of the *mujtahidin* at all. Rather they resemble the people of *Hadith*, because they adopt the same methods regarding the verdicts of the *mujtahidin* as to what the *muhaddithun* did in the issues of the *Sahabah* and *Tabi'un* (the followers of the *Sahabah*).

## Section 2

**The Section Concerning al-Mujtahid fi al-Madhab (the Mujtahid within the School of Law).**

**It Comprises a Number of issues (masa'il):**

**The First Issue :**

Know that it is imperative on the *Mujtahid fi al-Madhab* to acquire as much of the Prophetic Traditions (*al-Sunan*) and the practices of the companions (*al-athar*) as may enable him to desist from contradicting the genuine Traditions and the agreement (*ittifaq*) of the early generations (*al-salaf*). And he should also acquire proofs (*dala'il*) of the jurisprudence (*fiqh*) which would enable him to understand the source of his Imams regarding their verdicts. This is the meaning of what is in *al-fatwa al-sirajiyah* that, "None should give *fatwa* (legal decision) without knowing the verdicts of the '*ulama'* and he ought to know also whence they have said. And he ought to

know the businesses (*mu'amilat*) of the people. Then if he knows the verdicts of the '*ulama*' but he does not know their madhahib then if he is asked of any issue and he knows that the '*ulama*' whose *madhhab* is acceptable, agreed upon it, then there is no harm to say, "This is permissible and this is not permissible". And his verdict will be by way of narration. If the issue is of such that the '*ulama*' have differed therein, then there is no harm to say, " This is permissible according to the opinion of so and so, this is not permissible according to the opinion of so and so. But he has no option to reply according to verdict of others, until and unless he knows their arguments.

It is narrated in the first section of *Fusul al-'Imadiyyah* that, if he (*mujtahid*) does not belong to the category of *mujtahid*, then it is not lawful for him to give *fatwa* except by way of narration, that is, he will narrate what he preserves from the verdicts of the jurists.

It is narrated by Abu Yusuf, Zufar and 'Afiyah bin Zayd that they said, "It is not lawful for any one to give *fatwa* with our verdicts until and unless he knows that from where we have said." It is also narrated by some of them (the scholars) in it (*al-Fusul al-'Imadiyyah*) that they said, although a man gets all the books of our Imams by heart, yet it is indispensable for him to become a disciple for giving *fatwa* till he is guided towards it. Because there are many issues (*masa'il*) which have been replied by our Imams in accordance with the customs, conventions and practices of the inhabitants of the country. So it is necessary for every *mufti* to look into the customs of the people of his land and times in those matters which does not contradict the *shari'ah*.

It is narrated in '*umdat al-ahkam* citing from *al-Muhit* that," In order to become a *mujtahid* one has to become a '*alim*' (learned) of the Book of Allah and the Tradition of the Prophet (*Sunnah*) and the usages of the Companions (*al-athar*) and the view points of the jurisprudence (*fiqh*). In *al-Khaniyah* it has

been narrated from some of the scholars that it is necessary for the purpose of *Ijtihad* to memorise *al-Mabsut* (of Imam Muhammad) and the knowledge of abrogating and abrogated verses of the Qur'an, *al-Muhkam* (self evident verses) and *al-Muawwal* (interpretable verses) and the knowledge of the usages of the people and their customs and conventions. And it is also in *Sirajiyyah* that, it is the opinion of some 'ulama' that minimum condition for undertaking *Ijtihad* is memorisation of *al-Mabsut*. These narrations have been mentioned in the *Khijanat al-Mufti'in*.

My opinion is to hold that, the meaning of these texts ('*ibarat*) lies in making distinction between the *mufti* who himself deduces (the issue from sources) and between the *mufti* who is well-versed in the school (*madhhab*) of his Imam, who gives *fatwa* in the manner of narration not in the manner of *Ijtihad*.

### **The Second Issue :**

Know that the rule with investigating jurists is that the problems of *fiqh* are of four kinds.

1. The first one is that which has been established by the *zahir-i-madhhab*<sup>22</sup> (the established doctrines of the school).

It is as a rule accepted by the jurists under all circumstances whether it becomes in conformity to the fundamental principles or contradicts them. For this reason why you see that the author of *Hidayah* and the others belabour these in differentiating the problems of genus (*tajnis*).

2. The second category is the 'Rare' (*shadh*) report narrated from Abu Hanifah and his two principal disciples (Abu Yusuf and Muhammad).

It is as a rule not accepted by them (jurists) except when it conforms to the fundamental principles. In some places of *al-Hidayah* and in similar other books several rare reports were corrected according to the circumstances of the proof.

3. The third category is the deduction (*takhrij*) and



derivation of the later scholars (*al-mutakhkhirin*) upon which the majority of the 'ulama' agreed.

The legal effect of it is that they (jurists) give fatwa on the basis of it under all circumstances.

4. The fourth kind is also the deduction from them (the later scholars) on which the majority of the 'ulama' did not agree.

And it is as a rule, the *mufti* will place it with fundamental principles and with the precedences of the discourses of the early generations (*al-Salaf*). Then if he finds it in conformity with them (the fundamentals), then he accepts it, otherwise he leaves it off.

And in the *Khijanat al-Riwayat* it is narrated from *Bustan al-Faqih* by Abu al-Layth in the chapter "*al-Akhdh 'an al-Thiqat*" (i.e. acceptance from the reliable persons), that if any person listens to a Hadith or listens to any saying, then if the reporter is not reliable person, then there is no scope for him to accept it from him except if when the report conforms to the fundamental principles, then it is permissible to practise it, otherwise not. Similarly if a person finds a written *Hadith* or an issue, if it is in conformity to the fundamental principles, then it is permissible to practise it, otherwise not.

And in *al-Bahr al-Ra'iq* it is reported from Abu al-Layth who said that Abu Nasr was asked regarding a problem placed before him, "what is your opinion may Allah, the Exalted bless you, regarding the four books placed before you, -- the book of Ibrahim bin Rustam, the *Adab al-Qadi*, of al-Khassaf, *Kitab al-Mujarrad*, *Kitab al-Nawadir*, from Hisham (the *khalifah*):. Is it permissible for us to give *fatwa* on the basis of them or not? These books are commendable to you. He (Abu Nasr) replied what proved sound from our Imams that knowledge is loveable, attractive and delightful. And as for the *fatwa*, I do not see any one ought to give *fatwa* with any thing which he does not understand, nor should he bear the burden of the people (by

giving *fatwa* without knowledge). But if the issues which have already become famous, explicit and evident from our 'ulama', I expect that there is a scope for putting reliance upon them in the times of calamity.

### **The Third Issue :**

Know that when an issue becomes controversial between Abu Hanifah and his two principal disciples, then its legal effect (*hukm*) is that, the *mujtahid* within the school of law ought to choose from their verdicts, the strongest one in respect of proof (*dalil*) and reasonable one in respect of causation (*ta'ilil*) and most beneficent to the people. This is why a group of Hanafi 'ulama' give *fatwa* according to the opinion of Imam Muhammad (R.) regarding the purity of used water (*al-ma' al-musta'mal*)<sup>23</sup> and they give *fatwa* according to verdict of the two principal disciples regarding the starting point (*awwal al-waqt*) of the 'Asr and 'Isha' prayers, and in the permissibility of *al-muzari'ah* (share cropping).<sup>24</sup> The books of the Hanafi jurists are full of such examples, which need no further citation. Similar is the case with the *madhhab* of Shafi'i, may Allah bless him.

It is in *al-Minhaj* and the other works on the issue of inheritance that the basis of the school of Shafi'i (in this regard) is the negation of the inheritance by the distant relatives (*dhawi al-arham*).<sup>25</sup> But the later scholars of the Shafi'i school have given *fatwa* in favour of their getting inheritance in view of the lack of arrangement of the *Bayt al Mal*, Public Treasury.

Ibn Ziyad, the jurist of al-Yaman, narrated in his *fatwa* some issues, in which the later jurists (of the Shafi'i school) have given *fatwa* in violation of the general rules of the *madhhab*. One of them is the payment of *zakat* in term of copper coins (*fulus*) in ordained *zakat* which was due in gold or silver standard or in the articles of trade. Al-Balqayni has given *fatwa* favouring its permissibility. And he said. "I believe in its permissibility. But it violates the general *rules* of the school of

Shafi'i, may Allah bless him. " Al Balqayni follows *al-Bukhari* in this issue.

2. One of them (the issues) is offering of *zakat* to the nobles of the '*Alids* (i.e. descendants of 'Ali not from the line of Fatimah, may Allah be pleased upon her). Fakhr al-Din Razi gave fatwa with its permissibility in those days when they were prevented from their share of public treasury and poverty stroke them.

3. One of them is the issue of selling bee in the honey-comb along with wax etc. Al-Balqayni viewed it with the permissibility. Ibn Ziyad narrated from Imam Ibn Ujayl who said": There are three issues in the *zakat* in which fatwas are given against the rules of the *madhhab* (of Shafi'i):

- (a). Transfer of *zakat* (to other town)
- (b). Offering the (whole amount of) *zakat* to one person,
- (c). and its payment to only one of the (eight) groups.

I (the Shah) would like to say that there is another view with me in this regard. And this is that the *mufti* within the *madhhab* of Shafi'i, may Allah bless him, it is all the same whether he is a *mujtahid* within the School of Law or well-versed in it, wherever in an issue he feels the necessity of looking at other schools besides his School, then he should depend on the *mudhhab* (school) of Imam Ahmad, may Allah bless him, because he was most honourable of the disciples of Imam Shafi'i in respect of knowledge and trustworthiness. In reality, his (Ahmad's) *madhhab* is a branch of Shafi'i's *madhhab* and one of the aspects of his *madhhab*. Allah knows best.

### Section 3

Section (*fasl*) Concerning the Versatile in the *Madhhab* (*al-Mutabahir fi'l-Madhhab*) who memories the books of his *madhhab*..

**And there are five issues (masa'il):**

**1. The First Issue :**

A requisite condition of such versatility is that he should possess a sound understanding having knowledge of Arabic language, styles of discourses, the degrees of preference and ability to understand the meaning of the discourses of the Arabs. Mostly it does not remain hidden to him to understand the limited meaning (*taqiyid*) of what apparently looks absolute (*mutlaq*) but its actual meaning is limited and to understand the absolute meaning of what apparently looks limited but its meaning is actually absolute. Ibn Nujaym informed about this (condition) in *al-Bahr al-Ra'iq*.

And it is obligatory on him (the versatile) not to give *fatwa* except on one of the two alternatives, dwelling either on (1) a reliable sound *sanad* (chain of narrators) tracing back to his Imam, or (2) referring the issue as written in a famous book circulated from hand to hand. It is also (narrated) in *al-Nahr al-Fa'iq* in the chapter "*al-Qada*" (dispensation of justice) that the method of transmitting of the emulating *mufti* from the *mujtahid* will be (confined in) one of the two cases. (1) Either there will be a *sanad* for him referred back to him (the *mujtahid*) or (2) he takes this (issue) from a well-known book circulated from hand to hand, as the books of Muhammad bin Hasan, and the similar famous works of the *mujtahidin*. Because it requires the status of *Khabr-i-Mutawatir*<sup>26</sup> or *Khabr-i-Mashhur*.<sup>27</sup> Similarly al-Razi has discussed on this (analogy), if any edition of *al-Nawadir*<sup>28</sup> is found in our days, it will not be lawful to trace its content back of Imam Muhammad nor to Abu Yusuf, because, these (*al-Nawadir*) are not famous in our times and climes, nor were well-circulated. But yes! when any report of *al-Nawadir* is found, for instance, in a famous book, like *Hidayah* and *al-Mabsut*, then it will be reliable on the basis of these books. Ends (the discourse *al-Nahr al-Faiq*).

It is in the *fatwa al-Qiniyyah* in the chapter "What is related to the *mufiti*" that, the discours of a man as well as his *madhhab* (school of law) which is found in any well-known book circulated from hand to hand, then it will be permissible for him who looks into it to say, "So or so has said this," though he did not hear it from any one, for example, the books of Muhammad bin al-Hasan, *Muwatta* of Imam Malik and like of these two books written in various disciplines of this science. Because their existence in this quality hold the rank of *al-Khabr al-Mutawati'r* and *Mustafid* which do not require the necessity of scrutiny of *sanad* (chain of transmission).

### **The Second Issue:**

When the versatile in the *madhhab (al-mutabahhir fi al-madhhab)* finds a sound *Hadith* contradictory to his *madhhab* then would he accept the *Hadith* and abandon his *madhhab* on that issue? Concerning this issue there is a long discussion (*bahath*). The author of *Khizanat al-Riwayat* has prolonged it further by quoting from the *Dastur al-Masakin*. We would cite his discourse from threïn in toto. If it is said, that the *muqallid* (emulator) is not a *mujtahid*, but is a learned person having command over evidence, knows the rules of fundamentals and the meaning of the Quranic Texts (*nusus*) and the Prophetic Traditions (*al-akhbar*), then is it permissible for him to act on that (*nass wa akhbar*); and how would it be permissible, whereas it has been said that it is not permissible for the *non-mujtahid* to act except in accordance with the narrations (*riwayat*) of his *madhhab* and the *fatawa* of his Imam; and he shall not occupy himself with the meanings of the Quranic Text and the Prophetic Traditions and shall act on them as the case with the illiterate (*'ammi*).

It is said (in reply) that this (to act according to this Imam) is applicable to such a crass illiterate commoner who knows the Quranic Text and the Prophetic Traditions and he is also a man of cognizance and to whom the soundness of the Tradition has

been established either by the muhaddithun or from their well-known authentic books circulated well, then. It is permissible for him (*non-mujtahid*) to act on even though it is contrary to their *madhhab*. It is supported by the verdicts of Imam Abu Hanifah, Marcy of Allah be on them, and the opinion of the author of *Hidayah*.

It is narrated in a chapter of *Rawdat al-'Ulama' al-Zanduwisiyyah*, regarding "*Fadl al-Sahabah*" that once Imam Abu Hanifah, Marcy of Allah be on him, was asked: when you pass an opinion and the Book of Allah contradicts it? He replied, "Abandon my opinion for the Book of Allah." Then he was asked: when the *Hadith* of the Apostle of Allah, peace and blessing of Allah be upon him and his family, contradicts it? He replied, "Abandon my opinion for the *Hadith* of the Apostle of Allah, peace and blessing of Allah be upon him." He was again asked: when the verdict of the Companions of the Apostle of Allah contradicts it? He said, "Abandon my opinion for the verdict of the Companions."

It is in *al-Iqna'* that al-Bayhaqi is quoted to have narrated in *al-Sunan* in the context of the discourse on '*qira'at*' (recitation) with his full *sanad*, reported that *al-Shafi'i* said, "When I pass an opinion and the Prophet, peace and blessing of Allah be upon him and his family, has said contradicting my opinion, then whatever of the *Hadith* of the Prophet, peace and blessing of Allah be upon him and his family, proves genuine is preferable. So do not emulate me."

Imam al-Haramayn has narrated in his book *Nihayah* from *al-Shafi'i* that he said, "When a genuine *Hadith* reaches you contradicting my *madhhab* then follow that, and know that, that is my *madhhab*". It has been evidently proved sound that he (*Shafi'i*) has said, "When any *madhhab* reaches you from me and you get a sound *Hadith* against it, then you know that my *madhhab* is requisite of that very *Hadith*". Al-Khatib has

narrated with his chain of narrators that people used to ask *fatwa* from al-Daraki, a Shafi'i scholar and he sometimes would give *fatwa* conforming neither to the *madhhab* of al-Shafi'i nor to that of Imam Abu Hanifah, may Allah grant them mercy." When he was asked, "This contradicts the verdicts of both of them." He would reply, "Woe unto you! so and so narrated from so and so, who narrated from the Prophet, peace and blessing of Allah be upon him and his family, like this and the acceptance of *Hadith* is preferable to the acceptance of the verdicts of both of them when they contradict it." Similarly it (to act on *Hadith*) is supported by what has been mentioned in *al-Hidayah* about the issue of fasting of him who gets cupped, that is, if a man gets cupped and he assumes that it breaks his fast (sawm) and thereafter he eats willingly, then both *qada'* (fulfilment) and *Kaffarah* (legal expiation) devolve on him. Because here the assumption was not supported by the evidence of *Shari'ah*. But when a jurist (*faqih*) gives him *fatwa* of breaking of *fast*, then he will not be liable to pay *kaffarah*, because the *fatwa* is the evidence of *Shari'ah* in his case. And if a *hadith* reaches him (in this regard) and he relies upon it,<sup>29</sup> then it is, as above, in the opinion of Muhammad (R.) [i.e. he will not be liable to pay *kaffarah*], because the saying of the apostle of Allah, peace and blessings of Allah be on him and his family, will not be less in status than the verdict of the *mufti*. That is, as in *al-Kafi* and *al-Humaydi*, the saying of the Prophet will not be less in status than the verdict of *mufti*. Since the verdict of the *mufti* is appropriate to become an evidence of *Shari'ah*, so the saying of the Apostle of Allah, peace and blessing of Allah be on him and his family, is more deserving to be so. But a contradiction to this has been reported from Abu Yusuf, because it is the duty of the illiterate (*al-'ammi*) to emulate the jurists due to lack of the guidance on his part towards understanding the Prophetic Traditions (*ahadith*). And if he (*'ammi*) understand the interpretation (*ta'wil*) of the *Hadith*<sup>30</sup> then the *Kaffarah* will be necessary for him.

In *al-Manadi*, it is the unanimous opinion (e.g. preference of *Hadith* to the *madhhab*). And as for the reply to the opinion of Abu Yusuf to the effect that, "It is necessary for the commoner to emulate the jurists," is applicable to such a crass illiterate commoner who does not understand the meaning of the *Hadith* and its interpretation, because he (Abu Yusuf) has pointed out to such a (illiterate) person by his saying, "due to lack of guidance on his part towards understanding the *ahadith*." Similarly his saying, "If the '*ammi* knows the interpretation (*ta'wil*) of the *Hadith*, the *Kaffarah* becomes necessary," indicates that al-'*ammi* (the commoner) implies '*non-'alim*'.

And in *al-Humaydi* al-'*ammi*' refers to al-'*ammah* (ordinary people). And they are ignorant. So it has become known from these hints that Abu Yusuf's implication also by the word al-'*ammi* is al-'*jahil*, ignorant commoner who does not understand the meaning of *nass* (clear textual evidence of *Shari'ah*) and its interpretation (*ta'wil*). And whatever has been narrated from the verdicts of Abu Hanifah, al-Shafi'i and Muhammad, mercy of Allah be on them, dismisses the opinion of one who says, "Action becomes necessary according to the report of the *madhhab* as against the *nass* (clear textual evidence of *shariah*). Here ends what we have quoted from the *Khajinat al-Riwayat*.

There is another opinion on this issue and it is that, when he (the versatile in the *madhhab*) does not combine in himself the requisite instruments of *Ijtihad*, then his practice on *Hadith* against his *madhhab* will not be permissible, because he does not know whether it (*Hadith*) is abrogated or interpreted or else an unequivocal borne by literal meaning. Ibn al-Hajib has inclined towards this opinion in his *Mukhtasar* and his followers also pursue the same.

And it has been refuted. Because if he (Ibn Hajib) means lack of certainty with the negation of these probabilities (i.e. being a *Hadith* abrogated, etc.) then the *mujtahid* also does not



attain certainty by means of it, verily he bases most of (*ijtihadi*) affairs on the preponderant supposition. But if he intends (to say) that he (the versatile) does not know that by means of preponderant assumption, then we shall deny it is the context of disputation, because the versatile in the *madhhab* who ponders over the books of the community, preserves a sound portion of the *Hadith* and *fiqh* that enables him, in most cases, to attain to the preponderant opinion to the effect that the *Hadith* is not abrogated nor is it interpreted by an interpretation that necessitates its acceptance. And verity the discussion here is about him who has already attained to that (i.e. the knowledge of *zann-i-ghalib*).

And the acceptable herein is the third verdict which has been chosen by Ibn al- Salah and followed by al-Nawawi who judged it sound. Ibn al-Salah has said that whoever amongst the followers of al-Sharfi'i finds a *Hadith* contradicting his *madhhab*, then it should be observed whether the instruments (*alah*) of *Ijtihad* are fulfilled by him absolutely or whether these are fulfilled in the particular chapter or problem, then it will be permissible for him to act proportionately on the *Hadith* independently. But if he does not fulfil and the contradiction of *Hadith* troubles him after he has discussed it, and does not find any satisfactory answer for opposing it (*hadith*), then it is permissible for him to practise on it provided any independent Imam other than al-Nawawi has judged it good and confirmed it.

### **The Third Issue**

When this versatile in the *madhhab* intends to act in a particular problem (*mas'alah*) against the *madhhab* of his Imam emulating the *madhhab* of the another Imam therein Is it permissible for him to do so? They (the '*ulama*') differ therein. Al Ghazali and a small group of '*ulama*' denied it. But it is a weak opinion to the general '*ulama*' (*al-Jumhur*). Because it is based on the assumption that it is incumbent on the human being to accept the '*madhhab*' with evidence. So when this condition is

absent owing to his ignorance of evidence, then we set up the faith in the superiority of his Imam to the status of evidence. So it is not permissible for him to go out of his *madhhab* as it is not permissible for him to go against the evidence of *Shari'ah*. This is refuted (in its turn), because the faith in the superiority of his Imam over all Imams is not generally indispensable for the soundness of *taqlid* (emulation) in the light of the consensus of the jurists. Because the Companions (*sahabah*) and the followers of the Companions (*tabi'in*) used to believe that the best one of this *Ummah* is Abu Bakr, may Allah be pleased with him, then 'Umar (R.). They used to emulate, in most issues, other than both of them as against their verdicts and none denied this. So this became consensus, as we have said (about the *taqlid* of other Imams). •

And as for the superiority of the verdict of the Imam in this problem, there is no way of discerning it for a crass emulator. So it is not permissible to make it (discernment of the superiority) a condition for *taqlid* which might entail unsoundness of *taqlid* of the general *muqallidin* (emulators). If it is admitted, then, in this issue of ours, this goes against you and not in favour of you. Because, many a *Hadith* of which the (the versatile) becomes apprised, goes against the *madhhab* of his Imam or he finds a strong *Qiyas* (analogy) contradicting his *madhhab*, then he puts his faith in the superiority of the verdict of other Imam in that issue. Most of them (the '*ulama*') have gone towards its permissibility (i.e. to act against the *madhhab* of his Imam). Amongst them are al-Amidi, Ibn al-Hajib, Ibn al-Hammam, al-Nawawi and his followers, like Ibn Hajr, al-Ramali and a group of Hanabilah and Malikiyah, an attempt to mention their names will make a long list.

And it is such a matter on which the unanimity of the *muftis* of the four *madhhabs* of the later times has been held and they (*al-muta'khhirin*) deduced it (the permissibility of deviation) from the discourse of their predecessors and they have independent treatises written on this issue. Though they differ regarding the condition of its permissibility.

Some of them say, it is agreed upon that he (the versatile) should not turn back from the issue which he followed by way of imitation. Ibn Hummam explains it by saying that it means, which he practised upon by way of imitation. But the commentators held different opinion in the meaning of this terminology (of Ibn Hummam). It is said that he should not turn back from that issue which he has already practised upon (by way of imitation) in particular, for instance, repeating those *salat* which were performed on the basis of the prior *madhhab*. This is a sound opinion as the research does not bring out other opinion equivalent to it.

And some others say that (he should not turn back) from that which he performed categoriwise (*jins*). This (last one) has been refuted; because this is not a case held by the unanimity, rather the greater portion of the reports narrated from the early good generations (*al-salaf*) point to the contrary, in favour of practising against particular *madhhab* as they themselves practised unfetteredly.

Some others say (the condition of translocation is) that he (the versatile) should not pick out concessions (*al-rukhsah*) merely. It is said that concession means choosing that which is easier for him. This view is rejected. Because when the Prophet, peace and blessing of Allah be upon him and his family, was given option he used to choose easier of the two alternatives until it would fall into sinfulness. It is also said that, the meaning of *rukhsah* is that which is not strengthened by the evidence, rather the sound evidence goes against it. For instance, (the permissibility of) the temporary marriage (*al-mut'ah*) and *al-bay' al-sarf*.<sup>31</sup>

This (the above instance) is an important aspect of the issue I have found it in the book of *al-Talkhis fi Takhrij-i-Ahadith al-Rafi'i*, in the chapter "*al-Nikah*," by Ibn Hajr al-Asqalani who quoted it from the *Kitab 'Ulum al-Hadith* by al-Hakim along with the *sanad* traced back to al-Awza'i who

said, "One should refrain from or leave off the five verdicts of the people of al-Hijaz and from the five verdicts of the people of al-'Iraq. The five verdicts of the people of al-Hijaz are [regarding permissibility of] (1) listening musics (2) *al-mut'ah* (temporary marriage) (3) sexual intercourse with women by the backside, (4) *al-bay' al-sarf*, and (5) performing of two *salats* together without excuse. As regards the five verdicts of the people of al-'Iraq, they are as follows:

(1) drinking of *Nabidh* (a kind of drink prepared from grapes and dates). (2) Late performance of 'Asr till the shadow of a thing extends to its four times (*amthal*), (3) no Friday conragation (is permissible) but in the seven cites (4) deserting from the marching army (*zahf*) and (5) taking meals after appearance of dawn (*fair*) in the Ramadan.

Then Ibn Hajar said that 'Abd al-Razzaq narrated from Ma'mar that if a man accepts the opinion of the people of al-Madinah in listening songs and having sexual intercourse with women by their backside and accepting the opinion of the people of Makkah regarding muta'ah and *al-bay' al-sarf*, and acceptance of the opinion of the people of Kufa in taking spirituous liquor (*al-muskhir*), will be the worse of the servants of Allah.

Some of them say (the condition of deviation from the previous *madhhab* is) that one should not concoct (*yulaffiqu*) an issue in such a manner that it may constitute an unacceptable situation to both the Imams. It is also said that the prohibited concoction is that which will constitute unacceptable situation in a single issue, for instance performing of ablution without seriality (*bila tartib*) and then coming out fluid blood, in the same issue not in two issues taking separately; for instance, when any one purifies his cloth according to the *madhhab* of Shafi'i and performs *salah* according to the madhhab of Abu Hanifah (to them it is not *talfiq* or concoction). And it wil be reasonable to say that, it needs further discussion (about *talfiq*), because if the object of this stipulation (i.e. he should not concoct), the sum

total of activities ('*amil*) ascribed to the incumbent does not fall out side of the agreement of the two Imams, then it will as well lie in both of the issues taken separately. And if the objective of the stipulation is that, this particular issue alone must not get out side of the agreement (of the two Imams), then it will suffice him to ascribe in its stead the condition that it is such on issue in which *Ijtihad* is permissible, as it will soon be described.

Some of them say (the condition of practice against the *madhhab* is) that the *madhhab* which he ('*amil*) intends to follow will not belong to that category in which the judgment of the *Qadi* becomes null and void. This is a good condition. Caution against such situation will be achieved when however, he (the '*amil*) will imitate one of the four famous accepted *madhahibs*.

Some of them say (regarding the condition of deviation) that his (the versatile's) heart will be broadened (i.e. he must have a clear understanding) to the issue in which he imitates other than his Imam. The broadening of heart can not be imagined except in the case of the versatile in the *madhhab*.

It is said in this regard that when he follows the majority of the 'ulama' and the well known verdict, then his deviation from the *madhhab* of his Imam will be good and when it becomes to the contrary then it will be bad. This is the sum and substance of their ('ulama's) treatises (presented) with revision, checking and editing.

(As regard the permissibility of the deviation from the previous *madhhab*) I shall choose that condition which will not dissolve the judgment of the judge (*qada' al-qadi*), all the same whether the dissolution will take place due to the conjunction of such two meanings (in the issues) every one of which is correct when taken separately, for instance, marriage without the presence of two (full) witnesses and publicity; or due to other than this (i.e. other than the conjunction of the two meanings). In respect of preferring (the *madhhab* of other Imam) there lies the condition of the broadening of heart, which might be on account

of or due to great frequency of action in it amongst the early generations or else its being more cautious, or even owing to its being a means of deliverance from a bottlenecked situation that makes it impossible to obey the direction of the Prophet (sm.) that: "When I command you with an affair you should do it according to your ability". And other self-same ways acceptable in the eye of the *Shari'ah* and not for mere passion of pursuing the worldly affairs.

And as regards obligatoriness of choosing against one's own *madhhab*, there lies the condition of involvement of the right of another over him; so that, the Qadi (judge) gives judgment against his *madhhab* (i.e. in this situation, practice against *madhhab* becomes obligatory).

It has been noted in *Khizanat al-Riwayat* citing from *Kashf al-Qina'* that, when a person imitates a jurist in an issue: is it permissible for him to turn back from him, to another jurist? The issue has two aspects. One is that, the *muqallid* might not adhere to any particular *madhhab*, such as the *madhhab* of Abu Hanifah or al-Shafi'i, or other than those. And the other is that, he adheres to a particular *madhhab* and says "I am a committed follower". In the first case Ibn Hajib says, "It is agreed upon that once he has imitated (an Imam) he (the *muqallid*) will not turn back upon that issue in which he imitated". And in other issues the general acceptance lies with permissibility (of turning back) on account of the saying of Allah the Exalted, "Ask the men of learning if you do not know."<sup>32</sup>

So the opinion regarding the obligation of turning back upon the jurist whom he (*muqallid*) has imitated first in an issue, involves restricting of the general import of the above clear verdict which stands in the stead of abrogating of the Quranic verse as it is established in the principles of jurisprudence. And on account of the saying of the Prophet, peace and blessing of Allah be upon him and on his family, that, " My Companions are like the stars whomsoever of them you follow you would get

right guidance".<sup>33</sup> Moreover, the common people (*'awamm*) of the early generations used to seek *fatwa* from jurists regardless of turning to any particular person facing no denial from any quarters. So it got into the place of the consensus (*Ijma'*) on permissibility. Such is the verdict of the *Sharh Ibn Hajib*.

As for the reply of the second view-point, and it is that when the *muqallid* is committed to adhere to a particular *madhhab*, like the *madhhab* of Abu Hanifah or al-Shafi'i, Ibn Hajib has hinted to the controversy in this regard due to the controversy of his (*muqallid's*) *madhhab*, and he has hinted that, there are three different verdicts of '*ulama'* in this respect: (1) some say that, it is not permissible in general, (2) some others say that, it is permissible in general, and (3) the third verdict is that judgment (*hukm*) in this respect is like the first aspect, i.e. it is not permissible to return back from the *taqlid* of the first Imam whom he has already imitated in the issue in which he has imitated him, i.e. acted upon, and it is permissible in other issues.

It has been noted in the '*Umdat al-Ahkam* quoting from *al-Fatwa al-Sufiyyah* that, some one (Ibn Hajib) was asked on the day of '*Id al-Fitr* that, " Verily we see some people performing *nafl* (voluntary) prayers in the *jami'* mosque by noon (just after the time when the sun crosses the meridian) then we prohibit them from doing so and we inform them of the promulgation of the prohibition from performing prayers at three times of the day. Then he (Ibn Hajib) replied," As for the prohibition, let the prohibition not fall under the jurisdiction of the saying of Allah the Exalted, "Do you see him who prevent a slave of Allah as he says prayer (*salah*)," nor are you confident about the time of the noon (*zawal*), rather it may be that it was before or after it (the *zawal*). If it were at the time of the *zawal* (noon) then it is reported from Abu Yusuf (R.) that he does not disapprove of performing this supererogatory (*tatawu'*) prayer at *zawal* (noon) on the Friday. And al-Shafi'i (R.) also does not

disapprove of it for all days. If you raise an objection against this *musalli* (performer of prayer), then he may reply to you that he has imitated in this issue one who sees in favour of the permissibility in the issue or he may argue against you with the argument of one who regards it as permissible. So it does not behove you to deny him who imitates a *mujtahid* or argues from an evidence (of *shari' ah*). It is also in '*al-'Umdat al-Ahkam*, cited from *al-Tajnis* and *al-Majid* that sometimes he (this *musalli*) imitates him who regards saying prayer at the noon permissible.

So there would be no denial against him who does an act deserving *Ijtihad* (independent judgment) or imitates a *mujtahid*.

It is narrated in *al-Zahiriyyah* that he who does an act deserving *Ijtihad* in it or imitates a *mujtahid* in an issue deserving *Ijtihad* therein, then there will be no shame, no ignominy nor any denial against him.

It is in *al-Minhaj* of al-Baydawi that if a husband regards a word as kinayah (metonymy) but the wife takes it as *sarih* (unequivocal) then the husband may call her to cohabit and she may resist him from it, so they will turn to some one else (i.e. to a third person for resolving the problem).

### **A Benefit (fa'idah).**

A follower of Imam Shafi'i found it difficult to understand the distinction between two versions (*'ibarat*) of *al-Anwar*.<sup>34</sup> Then I (the Shah) replied to him by which the difference in the "*Kitab al-Qada*," of the book *al-Anwar* would be resolved. The sum and substance of which is that when these four *madhahib* have been codified then it is permissible for a *muqallid* to translocate from the *madhhab* of one *mujtahid* in some issues and imitate another in some other issues till if he chose the easiest course from every *madhhab* such as, a Hanafi when puts off his socks and intends to follow the *madhhab* of al-Shafi'i so that ablution anew would not be required of him. Or a follower of al-Shafi'i touches his sex organ (*farj*) or a woman and wants to adhere to the Hanafi *madhhab*, so that, ablution anew would not be



required of him and so on so forth, it is permissible. This is the sum and substance of the author of *al-Anwar* narrated in the "*Kitab al-Qada*". And in the "*Bab al-Ihtisab*," the same author said that if a Shafi'i sees another Shafi'i drinking *Nabidh* (a kind of non-alcoholic drink prepared from grapes and date fruits) or gets wedded without sanction of *wali* (guardian) of the girl and cohabits with her, then he (the first Shafi'i) is entitled to condemn him (the second Shafi'i), because it is obligatory on every *muqallid* to follow his Imam and he will sin by opposing him. And if a Shafi'i sees a Hanafi eating lizard (*al-dabb*) or taking the meat of a beast slaughtered without uttering the name of Allah willingly, then he (the Shafi'i) is entitled to say, "Either you are to believe that al-Shafi'i is more deserving to be followed or you are to give them up." This is the discourse of the author of *al-Anwar* narrated in *al-Ihtisab*.

And there is a difference between the two verdicts. I (the Shah) say that, resolving of the difference to me, Allah knows best, is that, the meaning of his verdict, "He will sin by opposing," is that when he resolves to imitate his Imam in all issues or in this particular issue, then he advances on opposition. Then undoubtedly it leads to sin. As for when he imitates another Imam on this (particular) issue (without resolving), then that other person would be his Imam (*muqallad*), and it would not amount to opposing him. Or we may say that, the second issue is based on the opinion of al-Ghazali and a small group, and the first issue is based on the verdict of the majority of '*ulama*'. So understand it well, because the solution of this controversy (between the two versions of *al-Anwar*) has proved difficult to some authors.

### **The Fourth Issue (on taqlid)**

Know that imitation (*taqlid*) of a *mujtahid* has two aspects: (1) *wajib* (obligatory) and (2) *haram* (prohibited). The first of them is that which pertains to the pursuance of the Prophetic tradition

impliedly. Its details is that, a person ignorant of the Book of Allah and the *Sunnah* (practice) of the Prophet, and is unable by himself to pursue or to deduce [the right course of action]. Then his duty is to ask a jurist what verdict has the Apostle of Allah, peace and blessing of Allah be upon him and his family, has given in such and such issue. Then if he (the *faqih*) informs about the issue he should follow him, all the same whether it has been taken from the clear evidence (*sarih nass*) or deduced from it (*nass*) or else drawn by analogical deduction based on the clear evidence. So all of them will be referred to the narration from the Prophet, peace and blessing be upon him and his family, even though impliedly. This is agreed upon by the Muslim community regarding its soundness century after century, nay the community as a whole agreed upon this kind (of *taqlid*) in their system of *shari'ah*. The trait of this *taqlid* is that, his (*muqallid's*) practice on the verdict of the mujtahid is like the condition that would accord to the *Sunnah*. So he would not cease to pursue the *Sunnah* as far as possible. But whenever a Hadith appears contradicting his (jurist's) verdict, then he (the *muqallid*) will throw it away and catch hold of the Hadith. All the Imams have pointed to it. Imam Shafi'i (R.) said, "whenever a *Hadith*, proves sound that is my *madhhab*. And whenever you see my discourse contradicting the *Hadith*, then act upon the Hadith and throw my discourse against the wall". Imam Malik said, "There will be none who would not be taken into account for his discourse and it would not be turned back upon him with the exception of the Apostle of Allah, peace and blessing of Allah be upon him and his family. "Abu Hanifah said," None ought to give *fatwa* (formal legal opinion of an expert jurist) with my discourse who does not know my argument." And Ahmad b. Hanbal said," Do not emulate me nor should you emulate Malik or any other besides him, and take to the rules of *shari'ah* from where they have taken, i.e. from the Book of Allah and the *Sunnah* of the Prophet (sm.).

## The Second Aspect [i.e. the Prohibition of Taqlid].

To suppose, a jurist has reached the summit of knowledge; so that, it is impossible for him to commit any mistake; then if there reached him an unequivocal genuine *Hadith* contradicting the verdict of the jurist, and the muqallid does not give it up or while emulating him he assumes that Allah has obliged him to follow his verdict, and behaves like a foolhardy who is restrained from expending his own property, whenever a *Hadith* reaches him and he firmly believes in its correctness but does not accept it on account of his obligation being concerned with the *taqlid* (i. e. he. as if, is obliged to emulate him) that amounts to a corrupt faith and a dull and incorrigible opinion. There is no support for it either in the traditions (*naql*) or in reasons (*'aql*). And no one belonging to earlier centuries practised it, and he has lied in his assumption that whoever is not preserved from doing wrong is infallible (*ma'sum*) in reality or infallible in respect of the practice on his verdict. And [Secondly] he has lied in his assumption that Allah has obliged him to obey his [*maqallad's*] verdict, and that his responsibility (*dhimmah*) concerns him with his (jurists) *taqlid*. The following saying of Allah, the Exalted, revealed in connection of his example. "Verily we are imitating their foot prints." Had the alterations [of the texts] by earlier peoples been different<sup>37</sup> from this direction?

## The Fifth Issue

The '*ulama*' differ in giving *fatwa* (formal legal opinion of a *mufti*) with forsaken rare narrations (*riwayat*). The author of the *Khizanat al Riwayat* quoting from *al-Sirajiyah* writes, "Then the *fatwa* would generally be acceptable according to the verdict of Abu Hanifah (R.) then on the verdict of Abu Yusuf, then on the verdict of Muhammad Ibn al-Hasan al-Shaybani (R.), then on the verdict of Zufar bin Huzayl and al-Hasan bin Ziyad (R.)" It is said that when (in an issue) Imam Abu Hanifah is on the one side and his two great disciples (Abu Yusuf and Muhammad) are on the other side, then the *mufti* has his discretion (to choose

any side). But the first opinion is regarded as more correct, provided that the *mufti* (who gives formal legal instruction) is not a *mujtahid*, because Imam Abu Hanifah was the greatest learned man of the time, even al-Shafi'i said that all the people are a great family (*'iyal*) of Abu Hanifah is in matters of *fiqh*. It is (written) in *al-Mumirat* "And it said when Abu Hanifah is.... on the one side and Abu Yusuf and Muhammad are on the other side, then the *mufti* has the discretion, if he wishes he can take to the verdict of him (Abu Hanifah) and if he wishes can take to the verdict of the two great disciples. And if one of them is with Abu Hanifah, then he (the *mufti*) must take to the verdict of the two. But when the 'ulama', regard it salutary to take to the verdict of that single one, then the *mufti* would follow their salutariness just as the jurist, Abu al-Layth has accepted the verdict of Zufar in the case of sitting of the sick for *salah* (prayer) that the sick man will sit just like the sitting of the *musalli* (sayer of prayer) in *tashahhud* (sitting for reading *al-tahiyyatu*). Because it is easier for the sick, eventhough the verdict of our other Imams is that the sick will sit, in lieu of *qiyam* (standing), cross lege or guttering cloths behind the hips (*muhtabiyān*) in order to keeping the distinction between sitting for *tashahhud* and the sitting in lieu of *qiam* (standing position in prayer). But it is more troublesome for the sick, because he is not accustomed to sitting like that. And similarly our 'ulama' prefer to exacting fine from the defamer when he calumniates to the Sultan without permission. This is the verdict of Zufar (R.) for shutting the door of defamation even though the verdict of our other Imams is that the exaction of fine is not obligatory, here, because he (the defamer) did not destroy his (Sultans) wealth. So the 'ulama' regard it as permissible to accept the verdict of a single scholar from amongst our Imams acting in accordance with the common weal of the time.

It is (written) in *al-Qunayyah*<sup>38</sup> under the chapter "*Ma yata'allaqu fi al-mufti min al-Nawadir*," (the chapter concerning the *mufti* in respect of rare report), the author says' in cases

relating to the dispensation of justice the *fatwa* would be according to the verdict of Abu Yusuf on account of his greater experience [in this respect]. It is in *al-Mudmirat* that it is not permissible for the *mufti* to give *fatwa* with some foresaken verdicts with a view to drawing benefit (from them), because of its being more comprehensive and more widespread harm in this world and the Hereafter, rather he should choose the selected verdicts of the '*ulama*' and follow the ways of the early good generations (*al-salaf*), and he should be content with the acquisition of their merits and nobility.

There is an issue (*mas'alah*) in *al-Qunayyah* under the section "Miscellaneous Issues", of the chapter "Adab al-Qadi" (the *fatwa*) in those cases will be given according to the verdict of Abu Yusuf, because he acquired greater knowledge through experience. Referring to Kashf al-Bazdawi (the author of) '*Umdat al-Ahkam* states that it is commendable (*mustahab*) for the *mufti* to choose concession (*al-rukhsah*) in order to make the matter easy for the common people (*al-'awamm*); for instance, (the permissibility of) performing *salah* in the clean places without *musalla* (the mat on which prayer is performed) and non-avoidance of the soil of the public roads (for the performance of prayer or making *tayammum*) in such places which they (*the 'ulama'*) have given verdict about its cleanliness (for the purpose of performing prayer). And this (*rukhsah*) is not befitting the seclusionist darvishes, rather taking to cautiousness and practising on '*azimah* is preferable for them. And it is (narrated) in *al-Qunayyah*, "Then it is incumbent on the mufti to give to the people such a *fatwa* that would be easier for them, as al-Bazdawi narrated it in the *Sharh al-Jami' al-Saghir* that, it is incumbent on the *mufti* to take the easiest course in respect of other than him, especially with respect to the weak, for the saying of the Prophet, peace and blessing of Allah be upon him, to Abu Musa al-Ash'ari and Mu'adh bin Jabal when he (sm.) sent them to al-yaman, "Be easy and do not be troublesome".

And it is (narrated) in "*Umdat al-Ahkam* under the chapter, "*al-Karahiyyah*," that the left-over (*sur*) of the dog and the hog is defiled (*najis*) as opposed to Malik and others. And if a *mufti* gives *fatwa* according to the verdict of Malik, it is permissible. And in *al-Qunayyah* that, if a jurist gives *fatwa* according to the *madhhab* of Sa'id bin al-Musayyib and gives a woman (getting three *talaqs*) in marriage<sup>39</sup> to her first husband then she will remain divorced with three divorces as she was (before this marriage) and the jurist will be censured. And if a jurist uses stratagem in the case of a woman got divorced with three *talaqs* and he takes bribes for this (stratagem) and gives her in marriage to the first husband without consummation with her second husband, would that marriage be valid? And what will be the punishment of him who does that? They (the '*ulama*') say that, his face will be blackened and driven him away. It is in *al-Fatwa al-I'timadiyah* quoting from *al-Fatwa al-Samarqandi* that Sa'id bin Musayyib returned back from his prior opinion to the effect that the consummation of the second husband was not a condition for legalization of the marriage (with first husband). And if a Qadi (judge) gives judgment on this (i.e. on the old opinion of Sa'id bin al-Musayyib that the consummation is not condition) his judgment will not be executed and even if a jurist gives verdict on it will not be valid and he (the jurist) will be censured (*ta'zir*). It is (narrated) in *al-Tuhfah Sharh al-Minhaj* that al-'Iraqi has cited *Ijma'* (the consensus) concerning the choice of the *muqallid* between the two verdicts of his Imam, that is choosing between the alternatives not both sides together provided the preferability of either of them is not apparent to him. As if he (al-'Iraqi) means by *Ijma'* the *Ijma'* of the Imams of the *madhhab*. Since the exigency of our *madhhab*, as it is stated by al-Subki, demands its prohibition in dispensing judicial judgment (*qada'*) and giving *fatwa* rather than acting by himself, with this (interpretation) a conformity would be made between the verdicts of the Imam and that of al-Mawardi who says, "It is not permissible to us," (to accept two verdicts of the Imam). Al

Ghazali supports it (the verdict of al-Mawardi). Just as it is permissible for one whose *Ijtihad* (independent analysis) leads him to the decision of the equality of the two directions (of the *qiblah*), so that he may perform prayer turning to either of the directions he wants as it is agreed upon by the jurists.

The verdict of the Imam (to choose either of the verdicts) prohibits, if they pertain to two contradictory rulings such as *wajib* (obligatoriness) and *haram* (prohibition) as opposed to the characteristics of such cases as in the matter of expiation (*kaffarah*) [in which either of the verdicts as manumitting of a slave or two months continuous fasting is permissible for an individual]. Al-Subki upholds the permissibility of it (i.e. of the two verdicts) for one whose *taqlid* (imitation) is permissible and who possesses all the conditions of *Ijtihad*. The people follow him (al-Subki) in practising as opposed to the four schools of law (*madhhab*), that is what has been practised according to the *Sunnah*. And devolves upon it the verdict of Ibn Salah that, it is not permissible to imitate any one other than the four Imams that is, in case of dispensing judgment and in giving legal decision. The occasions of this and other forms of *taqlid* will exist so long as he (the *muqallid*) will not seek concession (*rukhsah*) in a way that the noose of *taqlid* will be loosen from his neck, otherwise he will fall into sinning for it; rather it is said that, he will turn sinful. And it is significant. It is also said that, the occasion of its weakness is that, he must pursue it (the *rukhsah*) from the four established schools of law, otherwise he will be sinner decisively. Here ends (the discourse of *Tuhfah*).

#### **Section (four) on Commoner (al-'ammi)**

Know that the crass commoner has no specified *madhhab*. His *madhhab* is the *fatwa* (formal legal opinion) of the *mufti*. According to *al-Bahr al-Ra'iq* that, if a (fasting) person gets cupped or slanders and thinks that it has broken his fast, then he eats: If he does not seek *fatwa* from a jurist (*faqih*) nor any *Hadith* reaches him (conforming his view) the expiation

(*kaffarah*) will be obligatory on him, because it is a sheer ignorance, and because ignorance is not plea in a land of Islam. And if he seeks *fatwa* from a jurist and he gives him *fatwa*, then no *kaffarah* will devolve on him, because on the commoner it is obligatory to imitate a '*alim*. When he relies upon the *fatwa* of his *mufti* then he will be excused from whatever he has done even though the *mufti* was in error in his *fatwa*. And if he does not seek *fatwa* (from the jurist) but the *Hadith* reaches him, it is the saying of the Prophet, peace and blessing of Allah be upon him and his family," The cupper and the cupped have broken their fast (*sawm*)". And also the saying of the Prophet, peace and blessing of Allah be upon him, "Backbiting breaks the fast of the fasting person," And he (*al-'ammi*) did not know about the abrogation nor about its interpretation; so there will be no expiation (*kaffarah*) according to the two Imams (Abu Hanifah and Muhammad); because the apparent meaning of the *Hadith* obligates action accordingly, as opposes to Imam Abu Yusuf, for in his view the commoner is not bound to act on the *Hadith* on account of his ignorance about the abrogating and abrogated (*nass*). And if he (the fasting commoner) touches a woman or kisses her out of sexual passion or takes collyrium then thinks that it has broken his fast then he breaks the fast (intentionally), *kaffarah* will devolve on him. But when he seeks *fatwa* from a jurist and he gives him *fatwa* of breaking of the fast or a *Hadith* reaches him in this matter (*kaffarah* will not be obligatory). And if he (*al-'ammi*) intends before noon to keep fast then he breaks the fast, no *kaffarah* will be obligatory on him in the view of Abu Hanifah as opposed to the two disciples (Abu Yusuf and Muhammad). The same is also recorded in *al-Muhit*. So it has become known from the above that the *madhhab* of the '*ammi* (the commoner) is the *fatwa* of his *mufti*. It is also (narrated) in this book (*bahr al-Ra'iq*) under the chapter "*Qada' al-Fawait*" by the side of his verdict that the serial order of prayer gets cancelled due to shortage of time and for forgetting' (the prior



prayer); that if the *muqallid* is a commoner who has no specified *maddhab*, his *madhhab* is the *fatwa* of his *mufti*, as it is clarified by the '*ulama*'. So if a Hanafi alim gives *fatwa* (for repeating prayer) he will have to repeat both the '*Asr* and Maghrib prayers, but if a Shafi'i gives *fatwa* he will not repeat them and his ('*ammi*'s) own opinion will not be taken into consideration. And if he does not seek *fatwa* from any one and the *salah* (prayer) happens to be correct according to the *madhhab* of a *mujtahid* it will suffice him and repetition of *salah* is not obligatory for him. (Ends the discourse of *Bahr al-Ra'iq*).

According to *Sharh Minhaj al-Baydawi* by Ibn Imam al-Kamiliah that when an incident occurs before a commoner then he seeks *fatwa* from a *mujtahid* therein and acts according to the *fatwa* of that *mujtahid* then he seeks *fatwa* from a *mujtahid* therein and acts according to the *fatwa* of that *mujtahid* then he is not permitted to turn back upon it nor to turn towards the *fatwa* of another person in respect of that selfsame incident as per the consensus, as Ibn al-Hajib and the others have narrated it. And in the *Jam'il- Jawami'* there is a difference of opinion about it. And if it (turning back) occurs before acting, then al-Nawawi says that the accepted course is what al-Khatib and the others have narrated that, if there is no another *mufti* there (other than the first one) then it will be incumbent on him ('*ammi*) to act upon it with that very *fatwa* even though his self is not satisfied. And if there is another *mufti* (besides the first one) then *fatwa* would not become by itself incumbent upon him on the basis of his sheer *fatwa*, as he can ask the other person. And if then the latter contradicts the former then there would arise therein the difference of opinion of the two *muftis*. As for, when an incident other than that occurs to him then the soundest course is that it is permissible for him to seek *fatwa* in this incident from another *mufti* who is other than one from whom he sought *fatwa* in the former incident.

Al-Kaba al-Harasi'i (or Karabsi) expresses a firm opinion that it is obligatory on the commoner to stick to a specified *madhhab*. It is chosen in the *Jami al-Jawami* 'that this (adhering to a specified *madhhab*) is obligatory, and it (adhering) will not be acted upon simply for possession; rather he must choose a *madhhab* which he will imitate in all matters believing in it as preferable or (at least) equal to other (*madhhab*) not less preferable (to any). Al-Nawawi said what the argument urged upon is that, it is not necessary for him (the commoner) to adhere to a particular *madhhab*; rather he will seek *fatwa* from any one he wishes in order not to picking up concession (*rukhsah*). And probably whoever prohibits it (seeking *fatwa* from any '*alim*) he does not rely upon the absence of his (*ammi's*) intention for picking up concession (*rukhsah*). And when he adheres to a particular *madhhab*, then according to the soundest opinion, it is permissible for him to get out from it (the *madhhab*).

There are two verses in the book of Zayd bin Raslan that:

Al-Shafi'i, Malik and Abu Hanifah Nu'man,

Ahmad bin Hanbad and Sufiyan.

And the others all the Imams were.

On the right path.

And their differences is mercy. It is in the *Sharh Ghayat al-Bayan* that if two *mujtahids* of equal standing give different replies then the soundest course is that the *muqallid* may choose the verdict of any one of them he wishes. The discourse of this issue is mentioned in the book *al-Tuhfah*.<sup>40</sup>

## CHAPTER V

### Regarding Taking Middle Course in *Taqlid*

And this is what we have discussed (before) that the affairs of *taqlid* (imitation) lie between the two courses (i.e. between two extremes) on which the majority of 'ulama' have transversed who took to the four schools of law, and upon it the Imams of these schools of law have directed their disciples. Shaykh 'Abd al Wahhab al-Sha'rani has stated in *al-Yuwaqit wa'l Jawahir* that it has been narrated from Abu Hanifah that he (A. Hanifah) used to say, "It does not behove him who does not know my argument to give *fatwa* with my discourse." And when he (A. Hanifah) would give *fatwa* he used to say, "This is the judgment (*ra'y*) of Nu'man bin Thabit, that is on his ownself, and this is the best of what we have evaluated upon, if any one comes with a course better than this then that will be more correct." Imam Malik used to say, there is none who would not be taken into account for his discourse or it would not be turned upon him except the Messenger of Allah, may Allah bless him and grant him peace.

Al-Hakim and al-Bayhaqi narrated from al-Shafi'i that, he (al-Shafi'i) used to say, "When a *Hadith* proves sound then that is my *madhhab*." In another report (he said), "When you find my discourse contradicting the Tradition of the Prophet then act on the Tradition of the Prophet and cast my discourse against the wall." And once he (al-Shafi'i) said to al Mazani, "Ibrahim do not imitate me in every thing that I say but think over it for your ownself, for verily it is religion (*din*). "And he, mercy of Allah be upon him, also used to say, There is no (competent) proof (*hujjah*) in the verdict of any one other than that of the Messenger of Allah, may Allah bless him and his family and grant them peace, even though they are great in number. Nor in matter of *Qiyas* (analogy) or in any matter whatsoever. And it is incumbent on you to obey Allah and His Messenger with complete subdimmion. And Imam Ahmad bin Hanbal used to

say, "No one has any scope of discoursing with Allah and His Messenger (i.e. against their Judgment). He also said to a person. "Do not imitate me nor ought you to imitate Imam Malik, nor al-Awza'i, nor al-Nakh'i nor any other besides them, rather take the rules from the same sources as they took from the Book of Allah and the Sunnah of the Prophet." Here ends (the discourse of 'Abd al-Wahhab al-Sha'rani).

Then he (al-Sha'rani) narrated from a grand group of the '*ulama*' of the (different) schools of law that they (the '*ulama*') used to act upon and give *fatwa* according to the *madhabib* (pl. of *madhhab*) without sticking to any specified *madhhab*, right from the times of the (founding) Imams down to his (sha'rari's) time. (This was) in a way that his (Sha'ran's) discourse would demand that this matter would not cease upon the, '*ulama*' of the early generations as well as the modern time, till it turns into a position agreed upon by all, so it has become a path of the Muslims the contradiction of which will not be correct.

After this what he (al-Sha'rani) has described and extended it (the verdicts), we have no need to narrate the verdicts (of the '*ulama*'), but there is no harm to mention herein some of what we have remembered at this moment. Al-Bagthawi has said in the beginning of *Sharh al-Sunnah*, "And verily most of what I have presented herein (in the above book) it is, rather in generality, I follow the others except a little of what has become apparent to me by means of a species of evidence in the interpretation of probable discourse or in explaining a difficulty or giving preference of one verdict over another." And he (al-Bagthawi) said in the chapter of invocation (*du'a*) with which *salah* (prayer) is started, after mentioning "*al-tawjih*,<sup>41</sup> and *thana*,<sup>42</sup>" And it is reported that there are many invocations other than these regarding the opening of *salah*. So it is a controversy relating to *mubah* (allowability) in *Shari'ah*. So by whichever you start it is permissible. And he said in a chapter (of the same book) entitled, "Woman will not go out (to pilgrimage) except

with a *mahram* (unmarriageable relation)." This *Hadith* indicates that the pilgrimage does not become obligatory on a woman who does not get a male *mahram* person who would accompany her. This is the opinion of al-Nakh'i, al-Hasan al-Brsri, and this is also the opinion of al-Thawri, Ahmad, Ishaq and the people of ra'y.<sup>43</sup> And a group of ('*ulama'*) went to the extent that it is obligatory on her to go out with a party of women, It is the verdict of Malik (R.) and al-Shafi'i (R.). But the first one (Hajj with *mahram*) is preferable in the apparent light of the *Hadith*.

Al-Baghawi said regarding the *Hadith* of Birwa,<sup>44</sup> the daughter of Washiq that al-Shafi'i (R.) said, "If the *Hadith* of Birwa 'bint Washiq were established, then there would be no (scope of) argument in the verdict of any one besides that of the Prophet, peace and blessing of Allah be upon him and his family." Then he says once narrating from Ma'qal bin Yasar and again from Ma'qal bin Sinan and once again from certain Ashjar (so the *Hadith* is *Mudtarab*, confused in the chain of narrators). But if the *Hadith*, (of Birwa) were not established then she (woman) would get no *mahr* (dower), she would get inheritance (from her husband)." Here ends (the discourse of al-Baghawi). After narrating the verdict of al-Shafi'i, al-Hakim said : "If the *Hadith* of Birwa' bint Washiq were proved genuine, I would say accordingly. "Some of his teachers said,: "If I were present before al-Shafi'i, I would have surely been stood up before the gathering of his disciples and would say that the *Hadith* has surely been proved sound, so uphold it." Here ends the verdict of al-Hakim.

And similarly al-Shafi'i has hasitated in the *Hadith* of Burayadah al-Aslami<sup>45</sup> regarding the times of *salah* (prayer). The *Hadith* proved sound to Muslim. So a group of *Muhaddithun* return back from hesitation (*tawaqqu*). And likewise al-Bayhaqi redressed a mistake against al-Shafi'i with the *Hadith* of 'Abd Allah bin 'Amr regarding yellow coloured cloth.<sup>46</sup>

Al-Ghazali also redressed against al-Shafi'i the problem of pollution of water when it is less than two Qullah<sup>47</sup> in his many discourses described in his book, *Yahya al-Ulum*. And al-Nawawi has advanced the argument that *bay'al-mu'atat* is permissible as opposed to the clear version advanced by al-Shafi'; [*mu'atat* is a system of transaction in which price is handed over to the seller and article is taken over from him without verbal transaction of proposal and acceptance. It is lawful to al-Shafi'i but al Nawawi objects to it.]

Al Zamakhshari (Jar Allah) has brought some rectifications against Abu Hanifah on certain issues. One of them is what he said in the *tafsir* of the verse of tayammum of the *surah al-Ma'idah*.<sup>48</sup> Zujaj said that : "*sa'id* (high land) means surface of the earth whether it is soil or other than it, even though it were stone, no soil having been thereupon. Then if the performer of *tayammum* strikes his hand upon it and rubs (his face and hands) that will do for his purification. It is the *madhhab* of Abu Hanifah. Then if you say, "What would you do with the saying of Allah, the Exalted, in the Surah al-Ma'idah : "Then rub therewith your faces and your hands that is with some of it (earth or dust)", [Here the preposition 'min' is meant for *ba'diyah* not for *kulliyah*]. This (the sense of *ba'diyah*) does not come up in the case of stone that bears no soil on it. I shall reply that the 'ulama' said that the *min* (من) is used for expressing the meaning of '*ibtida' al-ghayat*,' (begining of intention) (not to express the meaning of *ba'diyah*, pertaining to a portion). Then if again you say that their ('ulama's) verdict that, it (*min*) is meant for '*ibtida'al-ghayah*' (begining of intention), is an arbitrary opinion and is not understood from the speech of the Arabs, such as:

مسحت براسي من الدهن ومن التراب ومن الماء (I rubbed my head with oil, and with soil, and with water, i. e. with a portion of it), but to mean the 'ba'd', a portion. Then I shall say," It is as you say. And compliance to the truth is more deserving than

quarreling." Here ends (the discourse of al Zamakhshari).<sup>49</sup> The *muhaddithun* are more than what can be counted. My (the *Shah's*) teacher Abu Tahir al-Shafi'i narrated to me from his Shaykh Hasan al-'Ujaymi al-Hanafi that he (Hasan) used to command us not to become much stern to our women in the case of minor impurity, for it is very troublesome for them. And he also would command us to take in that to the *madhhab* of Abu Hanifah in forgoing, what is less than a dirham (in respect of area). And our teacher Abu Tahir felt satisfied with those verdicts (of Hasan) and he used to uphold it.

According to *al-Anwar* the fitness of *Ijtihad* (independent judgment) is achieved through acquiring the knowledge of certain affairs.

The first, is the knowledge of the Book of Allah, the Exalted. But it is not conditional to acquire the knowledge of the entire Book, rather what related to the rules of *Shari'ah* nor is it conditional to get the Book by heart.

Secondly, the knowledge of the *Sunnah* of the Messenger of Allah, may Allah bless him and grant him peace and his family, that relates to the rules of *Shari'ah*, nor is it conditional to get the Book by heart.

Secondly, the knowledge of the *Sunnah* of the Messenger of Allah, may Allah bless him and grant him peace and his family, that relates to the rules of *Shari'ah*, not the whole of it, but it is conditional for one to know from both of them (i.e. the Book and the *Sunnah*) the *khass* (specific), *'amm* (general), *mutlaq* (absolute), *muqayyid* (limited), *mujmal* (summary), *muayyin* (evident), *nasikh* (abrogating) and *mansukh* (abrogated).

And of the *Sunnah* one should know the *mutawatir*,<sup>50</sup> *ahad. mursal, masnad, muttasil* and *munqata'*, and the condition of the narrators (*ruwat*) disparaging their integrity or establishing it (*jarh wa ta'dil*).

Thirdly, (one should have the knowledge of) the verdict of the '*ulama*' amongst the Companions and of those who came after them in respect of their agreement and difference.

Fourthly, (one should have the knowledge of) the *qiyas* (analogy) *jali*<sup>51</sup> and *al-qiyas khafi*<sup>52</sup> and the knowledge of distinguishing the sound *qiyas* from the perverted ones.

Fifthly, the knowledge of Arabic language, lexicographically and structurally. Deep penetration into these (above) sciences is not conditional, rather a summary knowledge of the sciences is sufficient. And it is not necessary pursuing the *ahadith* of different categories, rather it will suffice him to have with him some basic collections of the genuine Hadith comprising the *ahadith* of the rules of *shariah*, as the *sunan of al-Tirumidhi, Nasa'i, Abu Dawud*, etc.

It is not conditional to grasp all occasions of agreement and divergence, rather it suffices him to know in respect of the issue whose judgment he would give that, his verdict does not contradict the consensus (*ijma'*) to the extent that he would have a predominant opinion to the effect that the early jurists did not have any say about it, rather it has cropped up at his time. And similarly (the case of) the knowledge of abrogating and abrogated verses (i.e. grasping of all such verses is not necessary). And in respect of each *Hadith* whose acceptability has been agreed upon by the early generations (*al-salaf*) or integrity of whose narrators has reached the position of *tawatur*,<sup>53</sup> then it is not necessary for him (*al-mujtahid*) to go into discussion regarding the integrity of the narrators besides that category, their integrity must be discussed. The knowledge of all the (five) sciences together is conditional for the *mujtahid-i-mutlaq* (absolute *mujtahid*) who gives *fatwa* in every section of *Shari'ah*. And it is permissible for him to become a *mujtahid* in one section though not in another section.

And one of the conditions of *Ijtihad* is the knowledge of the principles of the creed (*itiqad*). Al-Ghazali said that it is not



conditional for him (*mujtahid*) to know it (principles of the creed) in the selfsame ways as the mutakallimin (scholastic theologians) do, that is the arguments as they write them down. One whose witness is not acceptable on account of his sinful innovation, his appointment to the post of a *Qadi* is not admissible. And likewise the appointment of him who does not uphold *Ijma'* (the consensus). as the Kharijites, or him who does not uphold *Khabr al Ahad*,<sup>54</sup> as the case of the Qadariyyah,<sup>55</sup> or else him who deny the *Qiyas* (analogy), as the Shi'tes.

It is also (narrated) in *al-Anwar* that, it is not conditional that the researches of a *mujtahid* be a written *madhhab*. But when it is written down then it becomes permissible for the *muqallid* to translocate from one *madhhab* to another *maddhab*. And according to the doctors of the principles of jurisprudence (*usuliyin*) if he (the *muqallid*) acts upon it in an incident then translocation from it is not permissible, but it is permissible in the other incidents. And if he did not act (according to the first *madhhab*) then translocation is permissible in it as well as in the other incidents. And if he imitates a *mujtahid* in some issues and another one in the other issues, it is permissible, but according to the *usuliyin* it is not permissible. And if he (the *muqallid*) chooses the easiest course of every *madhhab*, according to Abu Ishaq, he is *fasiq* (corrupt). But Ibn Abi Hurayrah said, " it is not," (he is not a *fasiq*), and it has been preferred in some commenteries.<sup>56</sup>

And according to *al-Anwar*, those who are affiliated to the *madhhab* of al Shafi'i, or of Abu Hanifah, or of Malik or else of Ahmad bin Hanbal are of several categories, One of them is *al-'awamm* (the commoners). Their *taqlid* of al-Shafi'i, branches from imitating an affiliated *mujtahid*, (*mujtahid-i-muntasib*) of Shafi'i *madhhab*. Secondly, those who reached the position of exercising *Ijtihad*, and the *mujtahid* does not imitate another *mujtahid* but becomes related to him (al-Shafi'i) for his advancing on his way in forming *Ijtihad* and exercising arguments and grading some of them with others.

Thirdly, the men of the middle course and they are those who have not reached the position of *Ijtihad*, but they have acquired the understanding of the principles of the Imam and they acquired ability to form analogy (*qiyas*) on such cases in which they do not find any clear evidence on the basis of the clear verdict of the Imam. And those are the imitators of their Imam. Similar is the position of those commoners who accept their verdicts. [These commoners are also the *muqallid* of the first Imam and not of the men of the third category]. And it is well-known that they (the man of the third category) will not be imitated in themselves, because they themselves are *muqallid* (of their Imam).

Abu 'l-Fath al-Harawi who was the pupil of Abu Hanifah, said that the *madhhab*, in general, of our Imams in respect of fundamental principles is that, the commoner ('*ammi*) has no *madhhab*. So if he gets a *mujtahid*, he should imitate him, and if he does not get one but gets a versatile scholar in the *madhhab*, he should imitate him, because he (the versatile) would give him (*al-ammi*) *fatwa* according to his own *madhhab*. It is the explanation that, the versatile scholar is to be imitated for his own sake.

And the preferable opinion of the jurists is that the commoner when affiliated to a (particular) *madhhab*, it is his *madhhab*. It is not permissible for him to oppose it. If he is not affiliated to a *madhhab* (school of law), then whether is it permissible for him to exercise a choice to imitate whichever *madhhab* he likes? There is a difference of opinion based on the question that whether the imitation of a specific *madhhab* is obligatory for him, or not. There are two aspects in it:

[1] *al-Nawawi* said that the argument that urges that, he (*al-ammi*) is not bound (to imitate a specific *madhhab*), rather he will seek *fatwa* from whom he wishes or with whom he comes across, but without plucking up the concession (*rukhsah*).

[2] It is narrated in the chapter "*Adab al-Qadi*" (rules of conduct of the judge), of *Fath al-Qadir*.<sup>57</sup>

And know that, what the author has described about the (conduct of) *qadi*, he described (the same thing) in respect of the *mufti*. So none should give *fatwa* except the *mujtahid*. The established opinion of the doctors of principles of jurisprudence is that the *mufti* is the *mujtahid*. As for the non-*mujtahid* who memorises the verdicts of the *mujtahid* is not a *mufti*. It is incumbent on him (the non *mujtahid*), when he is asked, to relate the verdict of the *mujtahid* by way of narration (*hikayah*), for instance, that of Abu Hanifah, by way of narration. So it is known from this that, the *fatwa* of the present day '*ulama*' is not a *fatwa*, rather it is the transcription of the discourse of the *mufti* (early *mujtahid*), so that the seeker of *fatwa* may act according to it. The method of his transcription in this way, from the *mujtahid* falls under either of two affairs, (1) either there would be a *sanad* (chain of scholars) therein towards him (the *mujtahid*), (2) or he (the *mufti*) will take it from a well known book circulated from hand to hand, as the book of Muhammad bin 'Hasan and like the famous works of the *mujtahidin*, because those books of them hold the position of *khabr al-mutawatir* or *mashhur*. Al-Razi mentioned it in this way. On this basis, if some copies of *al-Nawadir* are found in our time, it will not be lawful to relate whatever is therein, to Muhammad or to Abu Yusuf, because it did not get publicity in our time and in our lands and in our edition. But when any narration is found from al-Nawadir for instance, in a famous and well-known book such as *al-Hidayah* or *al-Mabsut* (of Muhammad) that will be the support for this book. Then if he (the *mufti*) gets by heart the different verdicts of the *mujtahid* but he does not know any proof (*hujjah*), nor is he able to perform *Ijtihad* for giving preference (to any verdict), then he will not assert any verdict from it nor will he (the *mufti*) give *fatwa* with it, rather he will narrate it for the seeker of *fatwa*. Then the seeker of *fatwa* will choose whatever will appear to be more correct from his

memory. This has been described in some books called *al-Jawami*'. And to me (The author of *Fath al-Qadir*) it is not imperative on him to narrate all of them (the verdicts), rather it will suffice him to narrate one verdict from them, because the *muqallid* (the seeker of *fatwa*) has liberty to imitate whichever *mujtahid* he wishes. So when he (the *mufti*) mentions one of them (the *mujtahids*) and (the *muqallid*) imitates him, then the goal is achieved. Yes, he would not impose decisively one verdict upon him, so that, he would say : 'The reply to your question is such and such, rather he would say, for instance, Abu Hanifah said that the rules for this (issue) is such and such.'" Yes, if he (the *mufti*) narrates all the verdicts, then his (seeker's) choosing whichever occurs to be more correct to his heart is preferable. But a commoner (*al-'Ammi*) will not be taken into consideration of what occurs in his mind of the correctness of the rule or its error.

And on the basis of this, if he (*al-'ammi*) seeks *fatwa* from two jurists, that is from two *mujtahids*, then they differ therein, then it is preferable (for the seeker of *fatwa*) to choose the verdict of one of them to which his heart inclines. And to me (the author of *Fath al-Qadir*), if he chooses the verdicts of one to which his heart does not incline, it is also permissible, because his inclination and the lack of it are equal. And what is obligatory on him (*al-ammi*) is to imitate a *mujtahid* and surely he did it, whether or not the *mujtahid* was correct or in error. They (the jurists) said that he who translocates from one *madhhab* to another *madhhab* by means of *Ijtihad* or evidence, he becomes a sinner, and liable to be censured, so prior to *Ijtihad* and evidence, is more liable to be punished. And it is necessary to intend by this *Ijtihad* the meaning of investigative choice and arbitration of conscience because the commoner (*al-ammi*) is not entitled to *Ijtihad*. Then the reality of the translocation (from one *madhhab* to another *madhhab*) herein would, of course, devolve upon the judgment of that particular issue in which he imitated and acted upon. Otherwise his

(*muqallid's*) saying, "I imitated, for instance, Abu Hanifah in which he gave *fatwa* and I obliged myself to act upon it on the whole," while he (the *muqallid*) does not know any aspect of the issue, so in fact, it is not reality of imitation, rather this, in reality, is conditioning of *taqlid* or promising of it. As if, he imposed on him to act on the verdict of Abu Hanifah (R.) in those issues which get specified to him by dint of actual occurrence. Then if they (the jurists) intend this imposition (i.e. obligatoriness of specific *madhhab*), there is no evidence for the obligatoriness of following a particular *mujtahid* by dint of his imposition on himself whether it is by pronouncement or by legal intention, rather the evidence and exigency of action with the verdict of the *mujtahid* to which one has become obliged is the saying of Allah, the Exalted, "So you ask the people of learning if you do not know."<sup>54</sup> The question (of the obligation) would arise, in fact, at the time of seeking ruling of a specific incident and at that time when a verdict of the *mujtahid* is established to him (the *muqallid*), then it becomes obligatory on the *muqallid* to act upon it.

The preponderance in this matter is that this sort of imposition of obligation by the jurists is meant for restraining people from seeking concession (*rukhsah*), otherwise it is very easy for the commoner (*al-ammi*) to act according to the verdict of the *mujtahid* in every issue. And I do not know whatever evidence of tradition and reason is there that desists it [seeking the easiest thing]. If a man seeks the easiest course for himself of the verdict of a *mujtahid* having access to *Ijtihad* then I do not know that the *Shari'ah* ever blamed him for this. And the Messenger of Allah, may Allah bless him and grant him peace, used to love what became light upon his community (Ummah). And Allah, glory be to Him, knows best the correctness of affairs. here ends (the discourse of *Fath al-Qadir*). This is the last (of this subject) what we have intended to present in this epistle (*al-risalah*). All praises be to Allah in the beginning and the end (of everything).

## Notes and References

1. In short, *Ijtihad* is the method of deducing derivative principles of Shari'ah with one's utmost exertion from the four Fundamentals, the Qur'an, the *Sunnah*, the *Ijma'* and the *Qiyas*.

2 It is the 2nd category of *Ijtihad*.

3. This is the first category of *Ijtihad*.

4. These include three generations after the Prophet (sm.).

5. Here al-Baydawi tries to say that only one *mujtahid* is correct from among the two contradicting ones, but the author does not agree with him in general. He refutes his (Baydawi's) opinion and says that in some cases both are correct, and in some only one.

6. Reason is that *Ijtihad* in itself is an act of pious obedience and an error made unwillingly in such an act cannot be called a sin.

7 The items of *kaffarah* (expiation) are (a) to free a slave, (b) to keep fast and (c) to feed the needy. They are obligatory alternatively and not binding collectively. The idea is that just as there can be two or more alternative prescriptions for *kaffarah* without being the bar of a concurrence of two contradictions there can be alternative verdicts of *Ijtihad* to settle a matter.

8. '*Azimah* is the original decree of *shari'at* without attaching any accident to it as, *fard*, *wajib*, *sunnah* and *nafl*, i.e. ideal.

9. *Rukhsah* is the relaxed decree of *shari'ah* permitted due to attachment of any accident, as the permission of breaking the fast of Ramadan due to undertaking journey, suffering from illness, etc. It is called practical or actual.

10. *Manat* (lit.) place where some thing is suspended. Technically means the common factor which justifies the application of a rule (*hukm*) deduced from the original source, i.e. the Qur'an or Hadith, to a derivative matter (*far'*).

11 It means an unequivocal statement of the Texts for which it is revealed.

12. A *Hadith* is *mustafid* when there will be one or two narrators in the first stage and then the number increased in the later stages, and yet it is below the status of *al-mutawatir*. *Al gharib*, when the number of narrator in every or any stage is only one the Hadith is called *al-gharib*.

13. The Muslim festivals are held subject to the appearance of the moon. The two '*Ids* are also decided by the appearance of the new moon, which makes the exact dates unpredictable, the tradition indicates that the controversy and bustle is meaningless in such matters.

14 *Mutlaq* means free form any stipulation, and *muqayyid* means restricted with stipulation, e.g. the water of well.

15 It is narrated by Abu Sa'id al-Khudri that the Prophet (sm.) was asked about the water of the well of Buda'ah that they (the companions) performed ablution with the water of that well. And it was a well in which the cloth stained with the blood of menses, flesh of dogs and garbage were left therein. Then the Prophet said, "Water is pure (*tuhur*) nothing makes it impure". *Tirmidhi*.

16 It is narrated from Ibn 'Umar (R) that the Prophet (sm.) was asked about the water found in the jungle, and the four footed beasts and the ferocious animals drink water therefrom and make water and pass stools therein. The Prophet replied that when the water amounted to two *Qulla* nothing can make it impure. *Tirmidhi*. *Qullah* is a jar with bulging belly. It contains usually two and a half *mashaqs* (about 2 & 1/2 maunds) of water. Two *Qullah* contain five *mashaqs* (about 5 maunds) of water.

17 It is narrated by Asma' bint Abu Bakr in *the Nasa'i*.

18 *Tayammum* is the emergency substitute for ablution (*wadu*) and bath (*ghusl*) performed with dust or earth when water is not available or the incumbent is unable to use it due to serious illness. For details see any book of *fiqh*.

19 Banu Qurayzah was one of the three Jewish tribes of al-Madinah. The others were Banu Nadir and Banu Qaynuqa'. A campaign was sent against them due to their treachery against the Muslims. As the situation was very grave, so an expedition was ordered to run promptly. Some of the companions interpreted the words of the Prophet and they meant it a sudden attack without making any delay and they performed 'Asr in the way, while some others took it literally and said 'Asr prayer on reaching the habitation of Banu Qurayzah, Al Bukhari narrated this *Hadith* elaborately in his *Sahih*.

20. The first three generations after the death of the Prophet (Sm.) i.e. *al-qur'un al-'ula*.

21. He is called *al-Mujtahid fi al-Futya*, i.e. The Mujtahid in the legal decision.

22 It is also called *Zahir-i-Riwayat*, recorded in the six books of Imam Muhammad called *Kutub Zahir al-Riwayat*, viz., *al-Mabsut*, *Siyar-i-Saghir*, *Siyar-i-Kabir*, *Jami' Saghir*, *Jami' Kabir* and *Ziyadat*. They are also called *usul* (bases). These contain the views and opinions of Abu Hanifah and his disciples.

23 The water utilized for removing impurity and achieving purification for religious performances is called *al-ma' al-musta'mal*.

24 The system of share cropping between the tiller and the owner of the land. It is wrong according to Abu Hanifah.

25 According to the Shafi'i school the *Dhawi-al-Arham* are not entitled to get inheritance of the deceased. It goes to the Public Treasury.

26 The *Mutawatir* is the report of a people numerically uncountable (*la-yuhsa adaduhum*) whose agreement upon a lie is inconceivable, in view of their large number, reliability (*'adalah*) and diversity of residence. This number remains uncountable from first to last, and textually it is related to the sense perception (hiss) not to reason (*'aql*). *'Adalah* is not a condition herein. *Tawdih*, P. 358; *Shawkani*, P. 44; *Minhaj*, vol. 11, p.77 N. P. Aghnides, op. cit., P. 40; 'Amim al-Ihsan, *Mizan al-Akhbar*, Dhaka: Quran Munzil, n. d. P. 3.

27 The *Mashhur* (widespread) is a report originally supported by a few individuals (*ahad*) i.e. more than two transmitters in every stage (*tabqah*), but later it spread and transmitted by a numerically uncountable people whose agreement upon a lie is inconceivable, but the number falls short of required for *Mutawatir*. Some call the *Mashhur Mustafid* if there were at least three individuals in any stage (*tabqah*). N. P. Aghnides, op. cit., P. 44; 'Amim al-Ihsan, op. cit., p. 3.

28 *Al-Nawadir*. These are the views and opinions of the Hanafi doctors recorded in *al-Kaisaniyyat*, *al-Hauniyyat*, *al-Jurjaniyyat*, and *al-Ruqayyat* of Muhammad bin Hasan, the Amali of Abu Yusuf, the books written by Hasan bin Ziyad, Zufar, etc.

29 The *Hadith* in this regard is that what has been reported by Shaddad bin Aws that the Apostle of Allah (sm.) said, "The fast of both the cupper and the cupped gets spoiled." Narrated by Abu Dawud and Ibn Majah.

30 The acceptable interpretation of the *Hadith* is that the fast of both the persons who get cupped and the cupper, become nearer to be broken due to getting weak and possibility of entering blood into throat respectively. Apparent meaning of the *Hadith* is not applicable here, according to Abu Yusuf, but precautionary measure is meant.

31 *Al-bay'ul-sarf* is the system of exchanging of gold and silver (*naqdayn*) against similar price-standard hand to hand (*yadan bi yadin*). It has four forms:-



(1) The articles of exchange are of different species but their weight is equal, for instance, selling of one tola of silver in exchange of one tola of gold, (2) the articles are of different species and their weights are also different, as selling of one tola of gold in exchange of two tolas of silver, (3) the articles are of the same species (*natw'*) and their weight is also the same, as exchanging of silver coin against the silver bullion of the equal weight, and (4) the articles are of the same species but their weights are different, as exchange of one tola of gold against one and one fourth tolas of gold. This fourth form is unlawful to the majority (*junhur*) of the *muhaddithun*. But some ones regard this exchange also as valid. Their basis of argument is the *Hadith* of Usamah narrated in the *Sahihayn* as well as in the other collections that the Prophet (sm.) said, "The sale (exchange) that takes place hand to hand there is no usury. Credit involves usury." This Hadith is rejected by the majority of the *Muhaddithun*. Here this rejected form is under discussion.

32. 21 :7

33. The Hadith is in the *Mishkat* narrated by 'Umar (R.).

34. Shaykh Jamal al-Din Yusuf (d. 799), *Al-Anwar bi 'Amal al Abrar fi Fiqh al Shafi'i*.

35 The first version of *al-Anwar* indicates the lawfulness of imitation of another Imam for a *muqallid* in some issues, but it is sinful according to the second version of the same work.

36 The Complete verse runs: "*Inna wajadna aba'na 'ala ummatin wa inna 'ala athari him muqtadun,*"

37 Najm al-Din Mukhtar al-Zahidi (d.658 A. H.), *Qunayat al-Munayah*.

38 The gist is that, the woman who gets definitely divorced (i.e. three talaqs) and then she was married again to her husband without marrying her to a second person as per the rule of Hanafi *madhhab*, the rule is that this woman must be given in marriage to another man then if he (the second husband) divorces her after consummation and waits upto the completion of 'Iddah (the waiting period) then she may be married to the first husband again, otherwise the marriage will not be valid.

40 *Supra*, p. ....

41. انى وجهت وجهى الخ.

42. سبحانك اللهم وبحمدك الخ.

43. *Ra'y*, opinion. in Islamic Law subjective opinion or decision based on one's individual rational judgment (not on the Qur'an and Sunnah), as opposed to the people of *Hadith* (*Ashab al-Hadith*).

44. Birwa' bint Washiq was married without mentioning dower. Accidentally her husband died before consummation (*wati*). The legal consequence of such a case is that, according to Hanafi *madhab* the woman concerned will get *mahr-i-mithl* (equal-dower of the other ladies of her family) as well as inheritance of her husband's property and she will also have to fulfil *'iddah* (waiting period of four months), depending on the apparent meaning of the *Hadith* of Birwa' bint-Washiq which was narrated by Ma'qal before 'Abd Allah bin Mas'ud. Al-Nasa'i narrated this *Hadith* from Alqamah. But according to al-Shafi'i she will not get dower at all but she will get inheritance. According to him the *Hadith* of Birwa is not sound. There is confusion (*idtirab*) in the chain of narrators (*sanad*) as it is stated in the text. Here the inclination of Shah Wali Allah is to the opinion of al-Hakim as it is understood from the above expression.

45. Al-Nasa'i narrated this *Hadith* of Buraydah that she said that a man came to the Prophet (sm.) and asked him of the times of *salah*. Then the prophet said to him to stay with him for two days. The man did so. One day the Prophet performed all the prayers in starting of the times and next day the Prophet performed them in the late limit of time. Then the Prophet said, "The times of your *salah* are in between these two times as you have observed." We see here that Shah Wali Allah inclines to the opinion of Muslim regarding the soundness of the *Hadith* of Buraydah.

46. Al-Nasa'i narrated this *Hadith* from 'Abd Allah bin 'Amr who said that one day he went to the Prophet (sm.) wearing two pieces of deep yellow coloured cloths. Then the Prophet said to me that this was the dress of infidels (*kafir*), he should not put it on. Imam Shafi'i regards the yellow colour permissible for the male. But Bayhaqi in spite of being a shafi'i does not recognise his view..

47 *Qullah* is the big pitcher which contains two hundred fifty Baghdadi *ratl* (a weight, in Egypt=449. 28 gm., in Syria=3.202 kg., Beirut=2.566 kg). So two *Qullah* is equal to five hundred *ratl* of water. *Ta'liq* al-Mahmud on the *Sunan Abu Dawud* (cawnpore, N.D.), p.9. This *Hadith* has been also narrated by al-Nasai, Tirmidhi and Ibn Majah. The gist of the discourse is that, when water reaches the quantity of two *Qullah* nothing makes it impure (*najis*) but when the quantity becomes less than this and some impure things fall therein the water still remains pure to Imam Shafi'i. For the details of the issue consult any book of fiqh.

48 5:7, "If you are in a state of ceremonial impurity, bathe your whole body. But if you are ill or on a journey or one of you comes from offices (calls) of nature, or you have been in contact with woman and you find no water, then take for yourselves clean sand or earth (*sa'id*), and rub therewith your face and hands. cf. A. Yusuf 'Ali, *The Holy Qur'an*. It should be remembered that the ceremonial impurity (*janabah*) arises from sex pollution. When water for ablution is not easily obtainable, then rubbing with dry sand or clean earth (*sa'id*) is recommended. Four such circumstances are mentioned, as stated in the above verse, the two last i.e. coming from the office (call) of nature and having been in contact with women, when washing is specially required, the two first, i.e. in a state of illness and when travelling on the road, when washing may be necessary, but it may not be easy to get water. For a man, when he is ill can not walk out far to get water, and a man on a journey has no full control over his supplies. In all four cases, when water can not be got, cleaning with dry sand or dry earth is recommended. This is called *tayammum*.

49 Vide, *Sharh Wiqayah*, vol. 1, (Delhi: al-Maktabah al-Rashidiyah, 1949/1368), P. 98, f.n. 9.

50 Al-mutawatir, supra. p. .... f.n.

51 *Qiyas al-Jali*, the effective cause ('Ilah) of which is evident.

52 *Al-Qiyas al-Khafi*, the effective cause of which is not evident but implicit or implied.

53 When the number of narrators in every stage (*taqbah*), from first to last are so profuse that it became rationally impossible to assume them liars in general and they are beyond disparagement.

54 *Khabr al-Ahad* in which there will be a single reporter (*rawi*) in any stage of the chain of narrators.

55 *Qadariyyah* the upholders of the free will of man as opposed to the *Jabriyyah*.

56 The Shah's inclination is to this last view, for it has been inserted in the last of his discourse, as it is his nature.

57 Kamal al-Din Muhammad Ibn Humam (d.861 H.) *Fath al-Qadir*.

58 21:7



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## **Bangladesh Institute of Islamic Thought (BIIT)**

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- To carry on in-depth studies on different dimensions of knowledge and identify the factors responsible for the prevailing crisis of present civilization.
- To work for revival of the intellectual, educational, cultural and civilizational identity of the Ummah.
- To develop a comprehensive Islamic approach for addressing the problems which have been threatening the progress of human civilization.
- To work for developing an integrated progressive system of education which is essential for an ideal society.

To achieve the above objectives the Institute has undertaken the following programs :

- ◆ Preparation of study materials on different disciplines with the help of scholars.
- ◆ Holding seminar, symposium, workshop, discussion meeting etc. on issues related to education, culture, religion, human rights, poverty alleviation, socioeconomic development etc.
- ◆ Exchange of information and views with other organisations at home and abroad and distribution of publications/reading materials for dissemination of knowledge.

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