Imran Ahsan Khan Nyazee's Approach to Islamic Jurisprudence: A Study of his *Islamic Jurisprudence (Uṣūl al-Fiqh)*

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ABSTRACT

The foundation of *fiqh* was laid during the Prophet's (*S.A.A.W.S*) lifetime. Then, during the time of the *Ṣaḥābah* (Prophet's Companions), it began to develop and take shape. It flourished in the years that followed. When various subjects/branches of Islamic knowledge assumed independent identities and their subject matters were compiled, codified, and organized toward the end of the second century *hijrī*, fiqh and fiqh sciences also assumed their independent identity and area of concern, which covers all issues related to Islamic law (rituals, personal law, business law, civil law, criminal law, international relations, etc.). From that time until now, *mujtahids*, jurists (*fuqahā*'), and scholars have rendered countless services to this discipline, and books of high quality on every aspect of *fiqh* and jurisprudence have come into existence. This process is still going on and will be so in the future. The majority of books on the subject of *fiqh* and *uṣūl al-fiqh* were written exclusively in Arabic and a few books were available in Persian. It is only recently that many books have been translated from Arabic into English, Urdu, and other languages. Furthermore, in this modern era, various original research studies both in Urdu and English have been conducted in this area. In this regard, Prof. Imran Ahsan Khan Nyazee, a prominent author and specialist in both traditional and modern law has worked extremely effectively in the fields of *fiqh* and jurisprudence and produced a number of both original and translated books on the subject. In light of his book "*Islamic Jurisprudence (Uṣūl al-Fiqh)*", the current paper aims to discuss his contributions to *fiqh* and *fiqh* sciences.

Keywords: Fiqh, Jurisprudence, Principles of Jurisprudence, Fiqh Methodologies, *Ijtihād*, *Taqlīd*, *Mujtahid*, *Muqallid*.

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1. Introduction

Islamic Jurisprudence contains the laws that govern a Muslim's daily life. The Prophet Muḥammad ﷺ elucidated and practically demonstrated these laws. The jurists studied the Qur'ān and the Prophet's *sīrah* (life) and they adopted a refined methodology which they used to deduce legal rulings and verdicts. This methodology is known as the Principles of Jurisprudence. Development of Islamic Jurisprudence can be divided into the following seven stages.

The period of the Prophet Muḥammad ﷺ (610-632 CE): During the time of the Prophet ﷺ all judicial proceedings and rulings were based on the revelation which he received from Allah. During this time, the foundations of Islamic jurisprudence were solidly established. Every matter concerning *'aqā'id* (beliefs), *'āmāl* (actions), and *akhlāq* (ethics) was resolved using the Qur'ān and the *Sunnah* (traditions and practices of the Prophet) which was referred to as *Sharī'ah*[1]. 'There is no doubt that the Companions occasionally asked him questions relating to a certain serious problem, as we learn from the Qur'ān. The Prophet ﷺ gave suitable replies to them. From the Qur'ān, it appears that the companions generally asked the Prophet very few questions.'[2]

During the Prophetic period, Law was neither inflexible nor as rigidly applied as one finds it in the later days. Based on legal reasoning, different and even conflicting rulings pertaining to a variety of issues might be accepted. By issuing comprehensive directions or recognizing two different behaviors in the same scenario, it appears that the Prophet ﷺ offered a broad scope for legal interpretations. Following generations would have been deprived of exercising *ijtihād* and framing laws according to the exigencies of time if the Prophet ﷺ had laid down specific and rigid rules for each problem once and for all.[3]

It is certain that *ijtihād* existed throughout the Prophet's time and was also exercised by the Prophet's companions. The Prophet approved of what was in accordance with *Sharī'ah* principles. He also disassociated himself or expressed his disagreement when any of his companions made an inaccurate judgment. Imām Al-Tabarāni quotes Masrūq as saying that the companions who were permitted to exercise *ijtihād* and give legal judgments during the Prophet's time included: 'Umar,

ʻAbdullah ibn Masʻūd, Ubayy ibn Kaʻb, Zayd ibn Thābit, and Abū Mūsa Al-Ashʻarī.[4]

The period of the Rightly Guided Caliphs (632-661 CE): The era of the Righteous Caliphs and the senior *Ṣaḥābah* is represented by this stage. The companions of the Prophet had no trouble during his lifetime since they had the privilege of seeking direct counsel from him. Following the Prophet's demise, the companions were dispersed around the Muslim world. The majority of them rose to positions of intellectual and religious authority. People from different communities sought them for advice on a variety of issues. They made their decisions based on what they had learnt and remembered from the Prophet and on what they understood from the Qur'ān and the *Sunnah*. They frequently arrived at an opinion by examining the aims and purposes of the *Sharī'ah*, which led the Prophet to make a decision. The companions made every effort to base their decisions on the Qur'ān and the *Sunnah*, and tried to keep their decisions and personal judgments as close to those of the Prophet's as possible. Despite their differences, they did not, in any way, deviate from the spirit of the Qur'ān and the *Sunnah*.[5] They made it clear that their inferences were not always as Allah intended. For example, when Ibn Masʻūd was asked about the inheritance rights of a woman who had been married without a defined *Mahr* (dowry), he said, "I am giving my opinion about her. If it is correct, then it is from Allah, but if it is incorrect, then it is from me and Satan."[6] The four *Khulafā*' were all trained in jurisprudence and other matters of Islam by the best teacher, the Prophet Muḥammad ﷺ himself. They were exceptionally accomplished jurists, yet consultation (*shūrā*) was an integral component of their governance. In addition, this period had not yet witnessed many significant changes, due to which the number of new issues that required *Ijtihād* were considerably few.[7]

The period of the Umayyads (661-750 CE): During this period, three major geographical divisions in the Islamic world arose, each with its own legal activity. These were Iraq, Hejaz, and Syria. Iraq also had two schools, one in Baṣrah and the other in Kūfah. In comparison to Baṣrah, we know more about the evolution of legal thought in Kūfah. Hejaz, likewise, had two well-known centers of legal activity, notably Makkah and Madīnah. Madīnah was the more renowned of the two, taking the lead in the establishment of Hejaz's legal system. Although the Syrian school is

not referenced frequently in early literature, the legal trend of this school is authoritatively known to us through Imām Abū Yūsuf's works.[8]

The Successors (*tābi'ūn*) mostly took their stance on the views stated by the companions. They retained in their memories the *aḥādīth* of the Prophet ﷺ and the opinions of his companions. Furthermore, at this stage, efforts were made to reconcile differing opinions held by the companions on many issues. In addition to this the successors exercised *ijtihād* to solve the issues which they could not find in the Qur'ān and the Sunnah. Since many issues were solved through *ijtihād* some differences in legal opinion were inevitable. The local and regional factors were also responsible for these differences.[9]

The jurists of different areas based their judgments and legal verdicts on the opinions and decisions of the companions who lived in their respective places. The jurists of Madīnah derived their legal knowledge from the reports of the verdicts of 'Umar, 'Ā'ishah, and Ibn 'Umar. The Kūfī jurists derived their legal principles from the opinions and judgments of 'Alī and Ibn Mas'ūd. This was their general trend; otherwise, each of these schools would cite the statements of some other companions as well in support of its legal opinions.'[10]

The Period of the Abbasids (750 CE - 950 CE): The foundation of the fourth period had been laid down in the third period, when the formal codification of *fiqh* commenced. This period produced great Imāms and jurists whose followers spread all over the world. It is also in this period that several schools of law sprang up, outstanding among them being the four Sunni schools, named after Imām Abū Ḥanīfah, Imām Mālik ibn Anas, Imām Shāfi'ī, and Imām Ahmad bin Ḥanbal.[11]

As we know that the Imāms of the four major *madhāhib* (schools of legal thought) were all agreed on the primacy of the four fundamental sources of Islamic law (the Qur'ān, the *Sunnah*, *Ijmā'* and *Qiyā*s), certain differences occurred and still exist among the rulings of their *madhāhib*. These differences arose for various reasons, the primary ones being related to the following aspects: understanding of word meanings and grammatical constructions; Ḥadīth narrations (availability, validity, conditions for acceptance, and interpretation of textual reports); acceptability of certain principles (*Ijmā'*, customs of the Madinites, *Istiḥsān*, and opinions of the *Ṣaḥābah*), and methods of *Qiyās*.[12]

The period of stagnation and decline: During this stage, the *Mujtahids* interacted with one another, but *taqlīd* began to dominate. Various scholars were satisfied with the jurisprudence and reasoned rulings (*ijtihādāt*) of one of the four schools and at times their statements were even used as evidence. This explains why some scholars claim that during this period there were only scholars who were attached to a school and there were no independent *Mujtahids* like the ones mentioned earlier.[13] The political insecurity in the Muslim World in the early fifth century AH affected the growth and development of Islamic Jurisprudence because it resulted in less contact between the scholars of the different areas. Various empires ceased to exist after they were taken over by others.

Contributions to the Development of Fiqh in Modern Times: Fiqh and *uṣūl al-fiqh* have seen numerous new developments in modern times, including several new trends. The majority of them are highly significant, constructive, and deserving of appreciation. They include: (1) establishing a number of modern *fiqh* academies, institutions, and centres with all modern facilities; (2) holding collective *ijtihāds* where experts from various fields, such as law, economics, genetic engineering, medicine, and traditional scholarship, come together to discuss new problems and issue legal rulings about them; (3) producing abridgements and translations of the fundamental *fiqh* and *uṣūl al-fiqh* texts in various languages; (4) conducting research studies on the primary books of *fiqh*, their publication, and wide dissemination; (5) acquiring expertise in the modern sciences by the traditional *'ulamā'* (scholars from the *madāris*); and (6) combining traditional and modern, leading to the creation of new works that compare traditional to modern.

In this way, thousands of books in this field have been written in Arabic or translated into other languages, including Urdu and English. In the same way, thousands of studies have been conducted and problems have been solved. Following the same trend, Prof. Imran Ahsan Nyazee, one of the prominent writers in the field who possesses deep insight in both traditional and modern law and has a profound understanding of both, has authored original works and translated a number of key works of *fiqh* into English.

The present paper attempts to discuss the contributions of Prof. Imran Ahsan Nyazee to the field of *fiqh* and *fiqh* sciences in the context of his book "*Islamic Jurisprudence (Uṣūl al-Fiqh)*".

2. Brief Introduction to the Book *Islamic Jurisprudence (Uṣūl al-Fiqh)*

The title of this book is *Islamic Jurisprudence (Uṣūl al-Fiqh)*. The copy of this book which is under study is the publication of Adam Publishers and Distributors, New Delhi-2 (India), and its year of publication is 2012. The printed price of this book is 495 Indian rupees. It has a total of 405 pages, of which 50 pages, from page numbers 355 to 405, are devoted to the selected bibliography, detailed bibliography and glossary. In addition to these 405 pages, there are 15 pages presenting the contents of the book and the forward. Twenty chapters, divided into four parts, make up the bulk of the content of this book, along with a general introduction to the subject. In the beginning the author gives the introduction to the subject and the definition of the important terms related to the subject of fiqh (chapters 1 and 2), then comes the first part of the book which deals with the concept and structure of Islamic law (*Ḥukm Shar'ī*), the second part describes the sources of Islamic Law, while the third part shows how they are used by the *Mujtahid* (i.e., this part deals with *ijtihād* and its methodology), and the fourth part deals with the sources and methodology of the *faqīh*, who is a jurist in his own right, but is not a full *Mujtahid*.

3. Content Analysis of the Book *Islamic Jurisprudence (Uṣūl al-Fiqh)*

In the first chapter which is titled as "Introduction", the author, at the outset, tries to resolve some problems which the study of Islamic law and jurisprudence in English brings along. These problems pertain to terminology and are imported into the Islamic disciplines from western jurisprudence simply by the use of western terms. They are also caused because of some terms (like jurisprudence) of western jurisprudence not being clear in their meaning and scope in western law itself.

The author also provides some reasons for the diversity of the meaning of jurisprudence in the western context, as well as the ambiguity in determining its province and scope. He writes, "A possible reason, in our view, is that western jurisprudence has not been developed systematically within one legal system; it has been subject to diverse influences from various legal systems in the western world. While we use the terms western law and western legal system, there are different approaches to the law in different jurisdictions and even the word jurisprudence does not have the same meaning" (p. 2).

Then he writes that in the last few decades, this activity has increased and the study of jurisprudence has changed radically. The result of this activity has influenced

even the titles used to study the subject: "Jurisprudence", "Legal Theory", "Theories of Law", "Legal Philosophy" and "General Theory of Law" (p. 2). And finally he writes "Jurisprudence today is, therefore, viewed as a general theory of law" (p. 5). After that, he explains two uses (or meanings) of jurisprudence, as well as its province as propounded by Roscoe Pound: (i) analytical jurisprudence, and (ii) theories of law.

Then he discusses the modern format for the study of jurisprudence as provided by Ronald Dworkin entitled as the "general theory of law" and also explains briefly the elements of this "general theory of law" which consists of three parts; at the top is "the value system and rights (that need to be secured by society)", on the right side is "normative part (the law as it ought to be)", and on the left side is "conceptual part (law as it is)".

Here he also writes that it will be obvious to whoever compares the two systems (Western and Islamic legal systems) that the modern format for the study of jurisprudence is gradually heading towards the format that was developed by Muslim jurists for *uṣūl al-fiqh* more than a thousand years ago, though there are some differences and incorporation of some new elements in it as well.

In the same way, the author presents a model (format) for the study of general theory of Islamic law (or *Uṣūl al-Fiqh*) which would not only be suitable for a comparison of western jurisprudence with Islamic jurisprudence but would also help identifying a format for the study of *Uṣūl al-fiqh* in the modern age. This format can also facilitate the understanding of *Uṣūl al-fiqh* and can lead to its further development. In this format, the author places three parts: **(i)** the value system (*Maqāṣid al-Sharī'ah*: *Dīn*, *Nafs*, *Nasl*, *'Aql*, *Māl*)[14], **(ii)** the normative part (*ijtihād*, *takhrīj*, *qaḍā'*, and the conditions of *taklīf* and *siyāsah shar'iyyah*), and **(iii)** the conceptual part (a framework in which the *mujtahid* arranges or places his law after he has derived it from the sources).

Regarding the limitations of this structure or format the author says: "Yet, there cannot be one model or format for such a study. The needs of Muslims in an Islamic state are different from those living as minorities in non-Muslim countries or even for those living in states with a Muslim population, but which have a more or less secular ideological orientation. We, therefore, have to adopt a flexible model that

can be adjusted to the needs of Muslims wherever they are and whatever system they are living under (p. 10).

Then the author discusses briefly the subject-matter of *Uṣūl al-fiqh* and says that it covers three things viz., **(1)** 'the formal structure of Islamic law', this is studied by the Muslim jurists under the title "the *ḥukm shar'ī*". In this book this element is explained in the first part. **(2)** The sources of Islamic law and the methodology of the *mujtahid*. The *mujtahid* is an independent jurist who is qualified to derive the law directly from the sources of Islamic law, like the Qur'ān and the Sunnah. These topics are dealt with in parts 2 and 3 of this book. **(3)** The methodology of the *faqīh* and the sources employed by him. The *faqīh* is not an independent jurist, as he is dependent upon the work of the *mujtahid*. Under this heading the meaning of the term "sources" for the *faqīh* as distinguished from the "sources" for the *mujtahid* are discussed along with other important things. The "sources" and "methodology" of a *faqīh* are dealt with in part 4 of this book.

In the last two pages of this introductory chapter the author speaks briefly about the scope of this book: "This book seeks to provide a broad introduction to Islamic legal theory. It also seeks to impart some basic skills that can be developed by the reader through further study. Being an introduction to Islamic jurisprudence, the book also attempts to present an outline of the Islamic legal system as it existed in the past and as it is being developed today" (p. 14).

The author also tells some reasons for the purpose of writing this book which include: presenting a comprehensive treatment of the subject in English language, oversimplifying the subject, collecting the material catering to the needs of the students of Islamic law and jurisprudence, resolving some misconceptions which the statements of certain writers have created.

In chapter 2, the author explains the meaning of the term *Uṣūl al-Fiqh*. Besides this, he also defines some other important terms related to the subject, like: *uṣūl*, *fiqh*, *sharī'ah*, *ijtihād*, *mujtahid*, *faqīh*, *taqlīd*, *muqallid*, *'ilm*, *aṣl*, *dalīl*, *dalīl tafṣīlī*, and *dalīl ijmālī /kullī*, etc. This is done in light of their explanations made by the Islamic jurists. The author explains these terms first in their literal sense and then provides their technical meanings in detail.

He also explains the distinction between many pairs of terms, and gives the proper place to each term. His discussions, in this chapter, cover the explanation of the distinction between the following pairs of terms: *al-Fiqh al-Akbar* and *al-Fiqh al-Aṣghar*, *shar'ī aḥkām* (legal rules) and *ghayr shar'ī aḥkām* (rules that do not pertain to the law/ non-legal rules), *faqīh* and *muqallid*, *sharī'ah* and *fiqh*, *mujtahid* and *faqīh*, *ijtihād* and *taqlīd*, *'ilm* and *fiqh*, *dalīl kullī* /*ijmālī* and *dalīl tafṣīlī*, narrow definition of *fiqh* and wider definition of *fiqh*, *qawā'id fiqhiyyah* and *qawā'id uṣūliyyah*, *qiyās* and *maṣlaḥah*. While explaining the distinction between these pairs of terms, the author also cites a few examples of some of them, e.g., he has cited a few sample examples of *qawā'id fiqhiyyah* out of a large number of them (p. 36-37).

To make these definitions more precise and understandable, the author also explains the various constituent parts of the technical definitions of the terms covered in this chapter.

Before studying Islamic law, it is imperative to know the definition and meaning of *uṣūl al-Fiqh*, that is why the author in the beginning, explaining the meaning of *uṣūl al-fiqh*, briefly writes that the discipline which tells us how the Islamic law is derived from the primary sources/texts, i.e., the Qur'ān and the Sunnah, and how it is classified, understood and applied, is called *uṣūl al-Fiqh* (p. 18). After this brief introduction the author explains its meaning in a detailed manner.

The author also explains how a term narrowed down in its application from one stage to another during the process of its development, e.g., regarding the meaning of the term '*fiqh*', he writes, *fiqh* had a wider meaning till the time of al-Ma'mūn (d. 218 AH) which embraced both theological problems and legal issues. It is for this reason that Abū Ḥanīfah (d. 150 AH) defined fiqh as: *ma'rifah al-nafs ma laha wa ma alyhā* (a person's knowledge of his rights and duties). When the subject of *kalām* (scholastics) was introduced by the Mu'tazilah during the time of al-Ma'mūn, the term *fiqh* came to be restricted to the corpus of Islamic law alone. It is in this restricted sense that we use this term today (p. 20).

The scope /fold of the term *fiqh* was further narrowed down by the Shāfi'ī jurists. The Shāfi'īs define *fiqh* in its technical sense as: *al-'ilm bi al-aḥkām al-shar'iyyah al-'amaliyyah al-muktasabah min adillatihā al-tafṣīliyyah* (it is the knowledge of the *shar'ī*

aḥkām (legal rules), pertaining to conduct, that have been derived from their specific evidences).

Then, after explaining the various constituent parts of these technical definitions of *fiqh*, the author comments upon the limitations of the definition of *fiqh* as provided by the Shāfi'īs. In their definition (as quoted above) the term *adillah tafṣīliyyah* refers, according to them, to specific evidences and the general principle if it is mentioned explicitly in the text..... This definition, according to the author confines the activity of the jurist to a very strict method of interpretation. This definition is built around the Shāfi'ī methodology of interpretation and does not conform completely to the methodology of the other schools. The definition focuses on the specific evidences (*adillah tafṣīliyyah*) and, therefore, prevents the use of the *Maqāṣid al-Sharī'ah*, which are general evidences, but second-level principles. In this way, based on this definition of *fiqh*, the principles of *maṣlaḥah* (reasoning through general evidences or the purposes of law) and *Istiḥsān* (the preference of a wider form of analogy, using general principles, over strict analogy called *qiyās*) cannot be applied to derive the *aḥkām*. The definition excludes the use of the *qawā'id fiqhiyyah* (general principles of *fiqh*), unless these principles are explicitly mentioned in the texts of the Qur'ān and the Sunnah. Al-Ghazālī, who advocates the use of *maṣlaḥah*, does not accept this Shāfi'ī definition of *fiqh*, although he belonged to the Shāfi'ī School.

In the context of the modern era, the author claims that with many writers promoting the principle of *maṣlaḥah* as well as the use of general principles, the narrow or strict definition of *fiqh* provided by Shāfi'ī jurists is not very useful. In the opinion of the author the definitions of *fiqh* provided by two famous Shāfi'ī jurists, Al-Ghazālī and Al-Rāzī are much wider and useful.

Al-Ghazālī states the definition of *fiqh* as: "An expression for the knowledge of legal rules established specifically for human conduct", and Al-Rāzī states the definition of *fiqh* as follows: "the knowledge of the legal rules, pertaining to conduct with reference to their sources, when this knowledge is not obtained by way of necessity (in religion)".

Especially defining the term *aṣl*, the author gives its literal meaning and then gives four out of its several technical meanings (pp. 33-4). Then, considering the fourth

definition of *aṣl*, he explains the definitions of *qawā'id uṣūliyyah* and *uṣūl al-fiqh* in a border way and also gives some examples of each of them (pp. 36-7).

Defining *uṣūl al-fiqh* he writes that it a body of principles of interpretation by the help of which the *mujtahid* is able to derive the law from the detailed evidences in the Qur'ān, the Sunnah, Ijmā' and Qiyās (p. 37).

The author briefly discusses the five purposes of law here. He reproduces the five purposes of the *Sharī'ah* in the form of general principles, as follows:

1. The *Sharī'ah* requires the preservation and protection of *Dīn* under all circumstances.
2. The *Sharī'ah* requires the preservation and protection of Life under all circumstances.
3. The *Sharī'ah* requires the preservation and protection of the Family System under all circumstances.
4. The *Sharī'ah* requires the preservation and protection of the Intellect under all circumstances.
5. The *Sharī'ah* requires the preservation and protection of Property under all circumstances.

It is obvious that to each of these principles the words "except where the *Sharī'ah* has expressly stipulated otherwise" must be added to make room for the exceptions.

At the end, in light of the definitions of Al-Ghazālī and Al-Rāzī, the author provides a broader definition of *uṣūl al-fiqh* as follows: "the discipline imparting knowledge of 'the sources and principles of interpretation and of legal reasoning that helps the jurist arrive at the legal rules of conduct'".

Chapters 3 to 8 cover the part-I of this book, and this part is devoted to the discussions related to *Ḥukm Shar'ī*. In chapter 3, the author discusses the literal as well as the technical meanings of *Ḥukm Shar'ī*. He also writes about the translation of the term "*ḥukm*" in English as injunction, command, prescription, and *sharī'ah*-value. The author then says that none of these terms conveys completely the comprehensive meaning of the term, and it is, therefore, preferable to retain such terms in their untranslated forms.

The author says that the *ḥukm shar'ī* comes into being through the operation of its three elements (*arkān*): *Ḥākim* (the Lawgiver), *Maḥkūm fīh/ bih* (the act on which the *ḥukm* operates), and *Maḥkūm 'alayh* (the subject/ legal person). In the study of the first element, it is shown that Allah is the Ultimate and True Source of all laws in Islam, and the implication of this statement is also examined. The second element deals with the act on which the *ḥukm* operates and the legal rights that are affected. The third element deals with the types of subjects who are affected by a *ḥukm*, i.e., those who possess full legal capacity and those who do not.

Then, he gives the technical definition of *ḥukm shar'ī* as provided by Ṣadr al-Sharī'ah in *al-Tawḍīḥ* as: "*Khitabu Allah-i taala al-muta'iliq bi-afal al-mukallafina bi al-iqtida' aw al-takhyir aw al-wad'i* [A communication from Allah, the Exalted, related to the acts of the subjects through a demand or option or through a declaration] (P. 46). Then he explains the constituent parts of this definition in a systematic and detailed manner (pp. 47-50).

The author then explains two main categories of the *ḥukm*, i.e., *ḥukm taklīfī* (obligation-creating *ḥukm*) and *ḥukm waḍ'ī* (declaratory *ḥukm*) in light of two main perspectives, *uṣūlī*[15] perspective and *faqīh*[16] perspective, and also explains the various grades of the rules (*aḥkām*), because all the rules are not of one and the same level or force; some are *wājib*, some *mandūb*, some are *makrūh*, some *ḥarām*, and so on.

Explaining the distinction between the perspectives, methodologies and terminologies of the *uṣūlī* scholars and the *faqīh* scholars, the author says that the *uṣūlī* scholar is more concerned with the derivation of the *ḥukm* from the texts while on the other hand the *faqīh* is more concerned with the performance of the acts and he, therefore, looks at the duties that are created. The two perspectives are, thus, complimentary. The *uṣūlī* is looking at the obligations that are created by the *ḥukm shar'ī*, while the *faqīh* is looking at the corresponding duties that arise. A similar distinction is made with respect to the *ḥukm waḍ'ī* as well (p. 51).

Consequently, this distinction has influenced, though slightly, their terminology as well. The *uṣūlī*, who is emphasizing the obligations created by the *ḥukm*, uses the following terminology for the five categories: obligation (*ījāb*), recommendation (*nudub*), disapproval (*karāhah*), prohibition (*taḥrīm*), permissibility (*ibāḥah*). That

means the *uṣūlī* is saying that the ḥukm to be derived from the texts is creating an obligation, or a recommendation and so on.

The *faqīh*, who is emphasizing the performance of duties created by the *ḥukm*, states the five categories in the following terminology: obligatory (*wājib*), recommended (*mandūb*), disapproved (*makrūh*), prohibited (*ḥarām*), permissible (*mubāḥ*). That means the *faqīh* is saying that the act to which the derived *ḥukm* is related is obligatory, recommended and so on. He will be focusing on duties and their performance all the time.

The author, in very simple terms, explains all the five categories of the *ḥukm* (rule), i.e., obligatory (*wājib*), recommended (*mandūb*), reprehended /disapproved (*makrūh*), prohibited (*ḥarām*) and permissible (*mubāḥ*) along with the techniques to determine which type of text creates which grade / category of the rule (*ḥukm*). The author explains all five categories of the *ḥukm* (rule) in very simple terms, namely, obligatory (*wājib*), recommended (*mandūb*), reprehended /disapproved (*makrūh*), prohibited (*ḥarām*) and permissible (*mubāḥ*), as well as the techniques to determine which type of text creates which grade / category of the rule (*ḥukm*).

The author also explains that in the opinion of the Ḥanafī jurists there are seven categories of *ḥukm taklīfī* (obligations and duties) that emerge from the operation of the laws. These are: *Farḍ* (obligatory), *wājib* (obligatory; this duty is slightly weaker than the first in its demand for commission), *mandūb* (recommended), *makrūh karahat al-tanzīh* (disapproved), *makrūh karahat al-tahrīm* (reprehensible), *ḥarām* (prohibited), and *mubāḥ* (permissible).

In chapter 4, the author explains, in a detailed manner, the meaning of the various categories and sub-categories (and even the divisions within the sub-categories) of *ḥukm shar'ī* that emerge after the operation of Islamic law. He also explains the techniques which are employed to identify each of them. He also states the rule with respect to each of these categories of *ḥukm shar'ī*, e.g., regarding the rule for *wājib* he says that it must be brought about by the subject and for doing so there is reward (*thawāb*) for him, while omitting it, without a legal excuse, entails a penalty (p. 58).

The author, at first, discusses the categories and sub-categories along with all the necessary details of *ḥukm taklīfī* and then discusses the details of *ḥukm waḍ'ī*. The main categories of *ḥukm taklīfī* discussed by the author are: *wājib* (obligatory act), *mandūb* (recommended act), *ḥarām* (prohibited act), *makrūh* (disapproved act), and *mubāḥ* / *ḥalāl* (permitted act).

Sub-categories and the division within the sub-categories of *wājib* discussed by the author are: *wājib muṭlaq* (*wājib* which is absolute or unrestricted by time), *wājib muqayyad /muwaqqat* (*wājib* with a time limitation); *ta'jīl* (early performance), *adā* (timely performance), *i'ādah* (repetition), *qaḍā'* (delayed performance), *wājib muwassa'* (obligatory act with extra time), *wājib muḍayyaq* (obligatory act with time sufficient for a single performance), *wājib dhū shibhayn* (obligatory act with extra time from one aspect and sufficient time from another): *wājib muḥaddad* (determinate obligatory act), *wājib ghayr muḥaddad* (indeterminate obligatory act), *wājib 'aynī* (the universal obligatory act), *wājib kifā'ī* (the communal obligatory act), *wājib mu'ayyan* (the specified obligatory act), *wājib mukhayyar* (the unspecified obligatory act or obligatory act with an option as to its performance).

Sub-categories and the division within the sub-categories of *mandūb* (recommended act) discussed by the author are: *sunnah mu'akkadah* (the emphatic recommended act); (a) *sunnah mu'akkadah* that complements and completes a *wājib*, (b) *sunnah mu'akkadah* that does not complement or complete a *wājib*, *sunnah ghayr mu'akkadah* / *nafl* / *mustaḥabb* (the non-emphatic recommended act), *sunnah zawā'id* (the acts of the Prophet pertaining to ordinary daily tasks as a human being, like his dress, food and drink, as well as his dealings with his family members).

Sub-categories of *ḥarām* (prohibited act) discussed by the author are: *ḥarām li dhātihī* (prohibited for itself), *ḥarām li ghayrihī* (prohibited for an external factor).

Related to the sub-categories of *makrūh* (disapproved act), the author states that in the opinion of the Ḥanafīs *makrūh* is of two kinds: *makrūh taḥrīman* (reprehensible), and *makrūh tanzīhan* (disapproved) in which the first one is closer to the category of *ḥarām*, and is the opposite of *wājib* according to the Ḥanafīs (p. 72).

As the jurists (*fuqahā'*) have categorized *ḥukm taklīfī* and *ḥukm waḍ'ī* in so many categories and the author has reproduced them here, the reader may be perplexed as

to why so many classifications have been made. The author clarifies it beforehand, and then explains the distinction between the various terms so that each type is affirmed and required.

The author has also cited an interesting discussion regarding the rule (*ḥukm*) of *mubāḥ* acts. He says that there are some scholars who hold that the performance or non-performance of *mubāḥ* cannot be deemed an act of worship or required obedience while on the other hand; there are others, mostly Sufis, who hold that the omission of *mubāḥ* is required act. Relying on some verses of the Qur'ān and the traditions of the Prophet they argue that indulging in the permitted pleasures of this world leads to the commission of the disapproved and forbidden. The jurists, however, reject such opinions and maintain that omission of the *mubāḥ* is not a required act. The author also presents the opinion of another group of jurists who hold that as the commission of a *mubāḥ* act amounts to the non-performance of a prohibited act, the commission of *mubāḥ* becomes *wājib*. Then he quotes Al-Shatibi, the Mālikī jurist, who explains when the commission of *mubāḥ* becomes *wājib* (obligatory), when it becomes prohibited, and when a balance must be maintained.

While explaining the classification of *ḥukm waḍ'ī* (the declaratory rule), the author begins by defining it and its domain. Then he gives a general (*ijmali*) list of its various categories, as follows:

1. *Sabab* (causes of), *sharṭ* (conditions for) and *māni'* (obstacles to) the *ḥukm*.
2. *Ṣiḥḥah* (validity), *fasād* (vitiation), *buṭlān* (nullity).
3. *'Aẓīmah* (obligation imposed initially as a general rule), *rukhṣah* (an exemption from the general rule).

Following that, he briefly describes each of these categories. He explained some of the sub-categories of these broad classifications during his discussions on them. To make the discussions more understandable, the author contrasted them with other related terms and demonstrated the similarities and differences between them. He explains the difference between a *sabab* and an *'illah* and emphasizes the importance of understanding the distinction. He also explains some similarities and differences between a *sharṭ* (condition) and a *rukn* (element), a *sabab* and a *sharṭ* (p. 76). Moreover, in explaining the *'aẓīmah* and the *rukhṣah*, he writes that this division has important methodological consequences and helps the jurist achieve analytical

consistency. An important significance is that the analogy (*qiyās*) cannot proceed from an exemption; it must be based on a general rule (p. 78).

The author bases his discussions in this chapter mainly on the works of Ṣadr al-Sharī'ah (*al-Tawḍīḥ*), Imām al-Sarakhsī (*Kitāb al-Uṣūl*), and Imām al-Ghazālī (*al-Mustasfa min Ilm al-Uṣūl*).

Chapters 5, 6 and 7 are the elaboration of the statement mentioned by the author in chapter three where he wrote that the rule of Islamic law (*ḥukm shar'ī*) comes into being through the operation of its three elements (*arkān*), i.e., *Ḥākim* (the Lawgiver), *maḥkūm fīh /bih* (the act on which the *ḥukm* operates), and *maḥkūm alayh* (the subject / legal person).

The central theme of Chapter 5 is that the source of all laws in Islam is Allah and Allah alone. There are numerous verses (*āyāt*) in the Qur'ān that demonstrate this. The author cites one *āyah* here, *āyah* 57 of *sūrah al-An'ām*, the 6th chapter of the Qur'ān: إِنِ الْحُكْمُ إِلَّا لِلَّهِ (The *ḥukm* belongs to Allah alone). This fact provides us the fundamental rule or norm of the Islamic legal system. In this way, the character of the Islamic law is determined, and the direction to all interpretation and *ijtihād* is obtained. All the rules of the legal system are referred to, or checked, for their validity, against the fundamental norm that the ultimate source of all laws is Allah alone. Muslims accept the laws that are contained in the Qur'ān (*waḥy matluu*) and the *Aḥādīth* (*waḥy ghayr matluu*), and those which can be extracted through valid methodology and conform to the general principles laid down by the Qur'ān and the Sunnah.

Explaining the benefits of this fundamental norm (or rule), the author writes: This basic norm or rule does two things. First, it provides a standard or criterion with which we can judge whether or not a law is valid. Second, it creates for each Muslim an obligation or duty to obey the law.

The author explains that in the Islamic law importance is also given to the interests (*maṣāliḥ*) of Man. This is the area where the principle of *istiṣlāḥ* that seeks to secure the interests (*maṣāliḥ*) preserved and protected by the Islamic legal system is employed. Therefore, in the absence of direct and express evidence in the Qur'ān and the Sunnah the laws can be framed in the light of the interests (*maṣāliḥ*) of Man. This in no case means that the Muslims are free to make laws in accordance with

whatever they deem to be their interest. The interest (*maṣlaḥah*) of Man is determined by the Lawgiver Himself, and there is a determined methodology for identifying it. The jurists have taken great pains to lay down this methodology in a way that the laws determined through it may still be termed as the *aḥkām* of Allah.

Towards the end the author takes the discussion on the *Sharī'ah* vis-à-vis natural law in which he answers the question: 'Whether the *shar'ī aḥkām* can be discovered by human reason independent of the sources of Islamic law?' In other words, 'if something is not expressly prohibited or commanded by the Qur'ān and the Sunnah, can the law for such a thing be discovered through reason?' The author first mentions the viewpoints of various schools of Islamic theology and *fiqh*, like Mu'tazilah, Maturīdiyyah, Ḥanafiyyah, Ash'ariyyah on the subject of *ḥusn* (or good/ right) and *qubḥ* (or evil/ wrong), and then, concluding it in the light of the opinion of the majority, says: 'The answer of the majority appears to be a clear "No!" This, however, does not mean that reason has no part to play in the discovery of laws in Islam. The requirement is that all reason and reasoning must proceed from the principles in the Qur'ān and the Sunnah. Any rule which is not directly discoverable from the texts needs to be discovered directly or indirectly from the principles of Islamic law /*Sharī'ah*. Concluding the discussion on this topic the author writes: The conclusion we may draw is that a *ḥukm* or a rule of law in an Islamic state is only that injunction that has either been directly stated in the texts of the Qur'ān or the Sunnah or in which the intention of the Lawgiver has been ascertained and verified through methods accepted as valid in Islamic law (p. 87).

Chapter 6 revolves round the discussions related to the second element of the *ḥukm shar'ī* (the rule of law), i.e., *maḥkūm fīh /maḥkūm bih* (the act to which the *ḥukm* is related). The author, first, says that the Muslim jurists discuss the *maḥkūm fīh* from two aspects: the *sharā'iṭ al-taklīf* (the conditions for the creation/ existence of obligation), and the nature of the act. Then regarding the first aspect he says that the jurists mention a number of conditions for the existence of obligation (*taklīf*). But he discusses only two important conditions in this chapter: (i) The act to be performed or avoided must be known, and (ii) The subject should be able to perform the act (it should not be an impossible act).

Then he takes up the second aspect related to *maḥkūm fīh* and explains it extensively covering the discussions on the status and significance of the concept of rights and duties in Islamic law. He begins with saying that there are three basic rights in Islam: the right of Allah, the right of the individual, and the right of the individuals collectively [or the right of the state or *ḥaqq al-sultan* (the right of the ruler) or *ḥaqq al-saltanah* (the right of the state)]. The author analytically discusses these basic rights along with their sub-categories in the light of the traditional and modern interpretations. He highlights the importance and consequences of this classification. He explains how each type of law is linked with a right which is either a right of Allah, or the right of the individual, or the right of both. There is a link between the right violated and the legal procedure to be followed in the court. The author writes: 'the kind of right violated determines the procedure to be followed in courts. If the right of Allah is violated, the procedure followed is that of *ḥudūd* and *qiṣāṣ*. When the right of the individual is violated, the procedure followed is that prescribed for *ta'zīr*. When the right of the state is violated, the procedure followed is that of *siyāsah*.

In this way, the punishments for crimes in an Islamic state are of three types: *ḥudūd* (where the right of Allah is violated), *ta'zīr* (where the right of individual is violated), and *siyāsah* (where the right of the state is violated).

The author, in this chapter, repeatedly says that the classification of Islamic law in terms of rights and duties and their comprehension is of great importance in understanding the structure and operation of Islamic law especially in the criminal proceedings where requirements of evidence change according to the right involved. The author also discusses the areas where commutation of the sentence and/ or pardon is applicable and where it is not.

Towards the end of the chapter, the author tries to discuss the concept of rights and duties in Islamic law in the light of the modern interpretation and in comparison with the writings and thoughts of the western legal philosophers like Dias, Leon Duguit, Edgar Bodenheimer, J. W. Harris, and others. After discussing the various aspects of the subject the author alludes to the superiority and broadness of the Islamic concept of rights and duties and their linkage with the law.

This chapter contains a few lengthy footnotes in comparison to the previous chapters, and the subject discussed here is a little more technical.

Chapter 7; in this chapter we see the author discussing the topics related to third element of *ḥukm shar'ī*, i.e., the *maḥkūm alayh* or the *mukallaf* (subject). *Maḥkūm alyah* is the person whose act invokes a *ḥukm*, or a *ḥukm* requires him to act in a prescribed manner.

The author discusses the conditions which must be fulfilled before the law can operate against or for a person. These conditions are all related to legal capacity known as *ahliyyah* in juristic terminology. Thus, the author begins with explaining the meanings and scope of *ahliyyah* (legal capacity) in Islamic law.

Ahliyyah (legal capacity) is the ability or fitness or capacity to acquire rights and exercise them and to accept duties and perform them. In this way, there are two types of capacities; one is called *ahliyyah al-wujūb* [capacity for acquisition (of rights)], and the second is called *ahliyyah al-adā'* [capacity for execution (or performance of duties)].

The author then discusses the circumstances under which these legal capacities are assigned to a person, that is, who among the people is regarded to possess these capacities in order for rights and obligations, duties and performances to be attributable to him. These are primarily three: (i) *insāniyyah* (being a human or natural person), (ii) *'aql* (intellect), (iii) *rushd* (discretion).

The author also briefly discusses that the Ḥanafī jurists have divided "the capacity for execution" into three sub-types based on the type of liability associated with an act, as: (i) capacity for the *khitāb jinā'i* (or legal capacity for criminal liability), (ii) capacity for the *khitāb* of *'ibādāt* (or legal capacity for *'ibādāt* / acts of worship), and (iii) capacity for the *khitāb* of *mu'āmalāt* (or legal capacity for transactions). This division is made for the purpose that in a person who is sane and adult all the three kinds of capacity may be found, but one or more of these may be lacking in other persons.

According to the author, Muslim jurists divide Legal Capacity (*ahliyyah*) into three types based on the stages of completeness: *ahliyyah kāmilah* (complete capacity), *ahliyyah nāqiṣah* (deficient capacity)[17], and *ahliyyah qāṣirah* (imperfect capacity). Then he goes over each of these three types of capacities in detail with some examples/ cases of each type. He also discusses the differing interpretations of some related

terms such as *bulūgh*, *rushd*, etc., which determine the conditions under which property is delivered to a person /orphan, etc.

Concluding the discussion on the Complete Capacity the author writes: On attaining complete capacity, an individual comes within the purview of all the different kinds of *khitāb* (communication from the Lawgiver). He, therefore, becomes liable to punishments because of the *khitāb jinā'i* being directed towards him, just as he becomes liable because of the *khitāb* of transactions and *'ibādāt*. (p. 114).

The author explains the other two types of legal capacity, namely deficient (*nāqiṣah*) and imperfect (*qāṣirah*), in the context of some specific cases that fall under each type in order to make them easily understandable.

While explaining the imperfect capacity (*ahliyyah qāṣirah*) and citing some related cases, the author also clarifies some misunderstandings, misconceptions and misrepresentations, especially promulgated by some orientalists and feminists. For example, he writes: The approach to this issue (invalidity of the evidence of women in matters involving *ḥudūd* and *qiṣāṣ*) is that somehow women have been deprived of a right. That is incorrect. Evidence in these cases and in others too, is a duty and not a right. Women have been spared the burden of this duty. The purpose is to waive the penalty of *ḥadd*, which is usually a punishment of last resort, and to show mercy to the accused in an indirect way.

Chapter 8 is an extension of the previous chapter in that it discusses some other important issues related to *ahliyyah* (legal capacity) more comprehensively. While the author cited and explained some cases of each type of capacity in the previous chapter, in this chapter he explains the factors that prevent capacity for acquisition (*ahliyyah al-wujūb*) and capacity for execution /performance (*ahliyyah al-adā'*) from taking full effect. These factors cause the capacity to become defective, in the sense that in some case the result is the total absence of the capacity, while in others it may change to deficient or incomplete one.

The causes that affect the capacity in one way or the other have broadly been classified by the Muslim jurists into two types: Natural Causes (*asbāb samāwiyyah*) and Acquired Causes (*asbāb muktasabah*).

Explaining the meaning of the Natural Causes of Defective Capacity and giving their list as mentioned by Muslims jurists in their works, the author writes: These are causes that are beyond the control of the subject (*mukallaf*), and result from an act of the Lawgiver and Creator. Under this heading, the jurists list ten causes: *ṣighār* (minority), *junūn* (insanity), '*atah* (idiocy), *nisyān* (forgetfulness), *naum* (sleep), *ighmā*' (unconsciousness, fainting, epilepsy), *riqq* (slavery), *maraḍ* (illness), *ḥayḍ* (menstruation), *nifās* (puerperium, post-natal state of woman), and *maut* (death).

The author then explains these causes (except *riqq*, *ḥayḍ* and *nifās*) very briefly along with some examples falling under each cause showing how the two kinds of capacity (*ahliyyah al-wujūb* and *ahliyyah al-adā*') are affected by these causes and to what extent. However, the author deals with the cause 'death-illness (*maraḍ al-maut*)' with some more length as compared to other causes. Explaining the topics like 'which illness can be declared as death-illness', 'rights attached to the estate of the person suffering from *maraḍ al-maut*' and '*aḥkām* assigned to the transactions undertaken by the sick person', etc.

Explaining the meaning of Acquired Causes of Defective Capacity and enumerating them, the author writes: Acquired causes are those that are created by Man or in which human will and choice are the basic factors. Muslim jurists list seven such causes: *jahl* (ignorance), *sukr* (intoxication), *hazl* (jest), *safah* (indiscretion), *safar* (journey), *khaṭā*' /*shubhah* (mistake), and *ikrāh* (coercion, duress). The author then briefly explains these causes (except *safar*) along with some examples from each cause, demonstrating how and to what extent these causes affect the two types of capacity. However, the author goes into greater detail in explaining the cause '*ikrah* (coercion, duress)' than in explaining other acquired causes.

It is clear from the explanation of the author that in most cases the capacity for acquisition is least affected as its basis, that is the attribute of being human (*insāniyyah*), remains intact everywhere. It is the capacity for execution which is affected more or less by the presence of these causes, natural and/or acquired.

The first part of this book concludes here, and the second part begins with the next chapter (i.e., chapter 9), in which the author discusses the sources of Islamic law as well as the necessary details.

From chapter 9 begins the second part of this book, and this part ends in chapter 13. The broader theme and title of this part is "The Sources of Islamic Law".

The author begins by reiterating the fact that the true source of the *aḥkām* of Islamic law is Allah Almighty. Then he says that the *aḥkām* of Allah are discovered through evidences that lead to the *aḥkām*. And these evidences are the source of Islamic law. Then he says that there are some differences as well as similarities in the meaning of the term "source" as used in Islamic law and as used in positive law. The obvious difference between the two systems is that the material sources of Islamic law are divine in origin, whereas those of positive law are not.

For providing a clearer concept and enabling the readers to appreciate the difference in the use of the term 'source' in Islamic law and in positive law, the author begins to explain the meaning of "Source" in Islamic law. He says that the term used for it in Islamic context is *dalīl* (pl. *dalā'il*) which literally means 'guide'. Other terms used for the same concept are: *uṣūl al-aḥkām* (the roots of *aḥkām*), and *al-maṣādir al-shar'iyyah li al-aḥkām* (legal sources of the *aḥkām*).

The author enumerates the sources of Islamic law as stated by the jurists of Islam as follows: the *Qur'ān*, the *Sunnah*, *ijmā* (consensus of legal opinion), *qiyās* (analogy), *istiḥsān* (juristic preference), *qawl al-ṣaḥābī* (the opinion of a Companion), *maṣlaḥah mursalah* (jurisprudential interest), *sadd al-dharī'ah* (blocking lawful means to an unlawful end), *istiṣḥāb al-ḥāl* (presumption of continuity of a rule), *'urf* (custom), and earlier scriptural laws.

To facilitate the study the author classifies these sources from different perspectives under four headings:

(1) Agreed upon (*muttafaq alayhā*) and disputed (*mukhtalaf fihā*) sources: the author says some of these sources are agreed upon unanimously, and these are: the Qur'ān and the Sunnah. Then some of the other sources are agreed upon by the majority of the schools, and these are: *ijmā* and *qiyās*. And the remaining sources are accepted by some and rejected by some other jurists.

(2) Transmitted (*naqlī*) and rational (*'aqlī*)[18] sources: he says that the transmitted sources are the Qur'ān, the Sunnah, and *ijmā*. The other kind (i.e., rational (*'aqlī*)) includes analogy (*qiyās*), *maṣlaḥah*, *istiḥsān*, and *istiṣḥāb*. These sources pertain to the

mental processes of human beings and are not transmitted, though their validity as persuasive proofs is derived from the transmitted sources, Qur'ān and Sunnah. Then the author briefly explains three-fold role of the transmitted sources (p. 145-46).

(3) Definitive (*qaṭ'ī*) and probable (*ẓannī*) sources: the author explains the definitive and probable sources, and he also tries to make readers acquainted with at least three different shades of meaning and applicability of definitive and probable from different perspectives. In simplest terms, according to the modern scholars, a source can be said definitive or probable on the basis of its transmission and meaning. The terms related to this issue are: *qaṭ'ī al-thubūt* (definitive by way of transmission), *ẓannī al-thubūt* (probable by way of transmission), *qaṭ'ī al-dalālah* (definitive in meaning), *ẓannī al-dalālah* (probable in meaning). Based on the division into definitive and probable, with respect to meaning and with respect to transmission, there arises four combinations: (a) *qaṭ'ī al-thubūt* and *qaṭ'ī al-dalālah*, (b) *qaṭ'ī al-thubūt* and *ẓannī al-dalālah*, (c) *ẓannī al-thubūt* and *qaṭ'ī al-dalālah*, (d) *ẓannī al- thubūt* and *ẓannī al-dalālah*. Then the author, briefly, explains all these four combinations with some examples and explains the levels of their binding force/ strength.

(4) Primary and secondary sources: the author describes primary and secondary sources and explains their purport from different perspectives under four captions. Then summarizing his discussion he writes: "Primary sources, then, are at once agreed upon, transmitted, definitive on the whole, and those upon which further extension can be based. This would mean that the Qur'ān, the Sunnah, and *ijmā* are the primary sources, while the rest are secondary sources. Thus, secondary sources are mostly rational sources, or they are mostly disputed sources, or that they depend on the primary sources for their content" (p. 150).

Then, towards the end of this chapter, the author discusses the grades of the sources. By grades is meant the priority assigned to a source in the jurists' search for the *aḥkām*. The order of these sources for jurists' use in the search of the *aḥkām* is, according to the majority of the scholars: the Qur'ān, the Sunnah, *ijmā*, and *qiyās*.

After citing some Qur'ānic *āyāt*, Prophetic *aḥādīth* and *āthār* of the *Ṣaḥābah* in support of this sequence as advocated by the majority, the author writes: "All these evidences show, it is maintained, that there is a determined order for approaching

the sources and that the jurist should not move to the next source, unless the first source has been searched thoroughly for a solution."

Then he attempts to provide a slightly different interpretation and qualification of the issue. And, after a four-point discussion, he concludes: "The above discussion shows that the sources cannot be consulted in a simple order of priority advocated by some writers. The matter is much more complex, and it is one task of the subject of *uṣūl al-fiqh* to unravel these complexities for the student of Islamic law."

In chapter 10, the author explains the primary sources of Islamic law, i.e., the Qur'ān and the Sunnah. He begins by giving the definition of the Book (*al-Kitāb*), the holy Qur'ān, in the words of Imām Al-Bazdawī in his book *Uṣūl al-Bazdawī* as:

القرآن: هو الكتاب المنزل على رسول الله مُحَمَّد ﷺ المكتوب في المصاحف، المنقول إلينا عنه نقلا متواترا بلا شبهة.

> The Qur'ān is the Book revealed to the Messenger of Allah, Muḥammad (*S.A.A.*^{W}*.S*) written in the *maṣāḥif* and transmitted to us from him through an authentic continuous narration (*tawātur*) without doubt.

Then, he explains one by one the four attributes of the Qur'ān given in the definitions provided by the jurists to distinguish them from the things which are not included in it as the constituent parts of this definition. These four attributes are: **(1)** the Qur'ān is the speech of Allah revealed to Prophet Muḥammad (*S.A.A.*^{W}*.S*), **(2)** the Arabic words of the Qur'ān as well as their meanings are both revealed, **(3)** the Qur'ān is transmitted to us by way of *tawātur*, **(4)** *I'jāz* of the Qur'ān (it means the inability of human beings individually or collectively to imitate or bring about something similar to the Qur'ān).

Then the author briefly explains the justification of the Qur'ān to be the primary source of the Islamic law as this matter is most evident and obvious. And in this connection he also gives a description of the *jam' wa tadwīn* (collecting and recording) of the Qur'ān where he discusses how the Qur'ān was revealed in piecemeals and the wisdom behind it.

Then he discusses the kinds of *aḥkām* present in the Qur'ān. At first he gives a general count of the verses of the Qur'ān that indicate the *aḥkām* of the Islamic law

which come upto approximately six hundred. Then he broadly classifies the kinds of *aḥkām* contained in the six hundred (or more) verses of the Qur'ān into three main categories as: **(1)** *aḥkām* pertaining to *'aqā'id* (tents of faith), **(2)** *aḥkām* pertaining to the disciplining and strengthening of the self, **(3)** rules of conduct (pertaining to the words and acts of the subject). This last category is further divided into two sub-categories: **(a)** rules related to worship, **(b)** all those rules that relate to conduct other than worship (*mu'āmalāt*).

Concluding this discussion the author writes: "It is to be remembered that though the particular cases mentioned in the Qur'ān are few, there are many broad and general principles that facilitate the derivation of countless *aḥkām*.

Then he discusses the Sunnah as the second part of the primary source of Islamic law. The author first writes the literal meaning of Sunnah and then discusses its technical meanings with respect to various perspectives. After quoting a few definitions of the Sunnah, he writes its definition as the source of Islamic law in these words: "what was transmitted from the Messenger of Allah of his words, acts, and tacit approval" (p. 163).

Then he discusses the types of Sunnah in view of two different aspects as:

(1) With respect to the channels of *aḥkām*, i.e., channels through which the *aḥkām* are established. These are three: *Sunnah Qawliyyah* (the sayings of the Prophet), *Sunnah Fi'liyyah* (the acts of the Prophet), and *Sunnah Taqrīriyyah* (tacit approval given by the Prophet); and
(2) With respect to the channels of transmission, i.e., channels through which it the Sunnah (/Ḥadīth) is transmitted to us. These are of three types: *mutawātir* (recurrent), *mashhūr* (well-known), *āḥād* (solitary).

Then he explains all of these kinds one by one. Some important things that the author discusses here can be summarized as under:

He discusses briefly a sub-type of Sunnah which is called *Sunnah al-Tark* (intentional omissions) as some jurists hold it as a sub-type of *Sunnah Fi'liyyah* along with other three types of Sunnah.

In a discussion of four points (p. 166-67) the author tries to explain that only such acts of the Prophet which have legal content become the source of law while those acts which do not have a legal content do not become a source of law.

First, he classifies *aḥādīth* into two broad categories: *muttaṣil* and *mursal /munqaṭi'*. In which *muttaṣil* is that having complete chain of narrators where no narrator is missing in the whole chain, and *mursal /munqaṭi'* is that in which the chain of narrators is broken where one or more narrators are missing. Then *muttaṣil* has three categories: *mutawātir*, *mashhūr*, and *āḥād*. The author explains each of them separately taking into consideration some subtypes of them as well.

The author then discusses the legitimacy of Sunnah as a source of law. He provides transmitted as well as rational arguments as provided by Islamic jurists to justify Sunnah as a primary source of Islamic law, and concludes that the Sunnah is universally accepted as a primary source of law.

He also discusses the strength of the chains of transmission of *aḥādīth* vis-à-vis their usage for the derivation of *aḥkām*. He says that the *mutawātir ḥadīth* is considered certain proof for the *aḥkām* according to all jurists, and also the *mashhūr ḥadīth* according to the Ḥanafī jurists – though the strength of this kind is a little less than that of the *mutawātir*. And with respect to the *khabar wāḥid*, each *mujtahid* has laid down specific conditions when it is relied upon for the derivation of the law. He also discusses some of these conditions as stipulated by Ḥanafī jurists, Imām Mālik, Imām Shāfi'ī, and Imām Ahmad bin Ḥanbal for their acceptance of *khabar wāḥid* for the derivation of *aḥkām*.

The author then delves into the perspectives of earlier and modern scholars on the relationship between the Qur'ān and the Sunnah. He also explains how the Sunnah is used by jurists to derive *aḥkām* and what its functions as a source of law are. The author suggests the reading of some important books like, *al-sunnah al-nabawiyyah bayna ahl al-fiqh wa ahl al-hadith* (Muḥammad Al-Ghazālī) and *kayfa nataʿāmal maʿa al-sunnah al-nabawiyyah* (Allamah Yusuf al-Qardawi), which discuss this issue in detail and from a modern perspective.

He says that all these modern views can broadly be classified into three trends: (i) one view is of the people who say that only such type of *Sunnah* is to be accepted as

authentic that is compatible with the Qur'ān, **(ii)** second view is of the people who maintain that the acceptance of *Sunnah* should be based merely on its chain of transmission, and **(iii)** the third group consists of those who give importance to the *isnād* (chain of narrators) and also to the *matan* (text). The author says that the views of the first two groups seem very extreme while the third one appears to represent a kind of a middle path, - and thus reasonable and acceptable – but still within this third group there are some who are inclined to one side getting them closer to the first group, and some others who are inclined to the other side getting them closer to the second group.

Toward the end of this chapter, the author also explains *ijmā* (consensus of legal opinion). Although this doesn't come under the category of primary source, it is discussed here because it is related to primary sources in at least four ways, as discussed in section 9.2.4 of this book.

The author writes two literal meanings of the term *ijmā*: (i) determination (and resolution), (ii) and agreement upon a matter among two or more persons. Then he writes its technical meaning as provided by the jurists in most of the classical works[19]. After that he discusses the conditions for the validity of *ijmā*. He discusses seven conditions as imposed by the majority of the jurists, and adds two more which are imposed by some of the jurists while the majority does not accept them.

Then he discusses the two types of *ijmā*, namely *ijmā ṣarīḥ /qawlī* (explicit *ijmā*) and *ijmā sukūtī* (tacit *ijmā*), as well as the conditions that must be met for tacit *ijmā* to occur. The author also discusses the binding strength of both types of *ijmā* as a source of law. He discusses the arguments advanced by proponents of *ijmā ṣarīḥ* as a binding source, as well as those advanced by others who oppose them on this issue. At the end of this discussion he writes: "The reasoning and arguments of the majority, who accept *ijmā* and act upon it as a source of law, are considered stronger than those of the opponents." (p. 189).

Regarding the binding strength of tacit *ijmā*, he writes that some of the jurists, who upheld the binding strength of explicit *ijmā*, objected to tacit *ijmā* as a source of law, like Imām Shāfi'ī and Mālikī jurists. And those who maintained that tacit *ijmā* is a legally binding source also differ with respect to its strength. Some said that it is a definitive source like explicit *ijmā*, and these are Ḥanafī jurists and Imām Ahmad bin

Ḥanbal. Some of the jurists said tacit *ijmā* is a probable (*ẓannī*) source. Among these is al-Karkhi, the well-known Ḥanafī jurist and al-Amidi, a later Shāfi'ī scholar.

At the end of this discussion he writes: "It is, therefore, felt that those who maintain that *ijmā sukūtī* is equally binding as *ijmā qawlī* are making a sound argument, and it appears better to consider both types of *ijmā* as having equal strength (p. 190).

Then the author explains the meaning and role of the "*sanad of ijmā*", and closing this chapter he discusses the role of *ijmā* in the modern times. Here he also responds to some objections that are raised against the principle of *ijmā*, its conditions, occurrence, validity, and so on in general terms. Explaining the role and significance of the principle of *ijmā* the author also compares the doctrine of stare decisis of English common law with it.

In chapter 11, the author discusses the principle of *maṣlaḥah* and the *maqāṣid al-sharī'ah* (the purposes of Islamic law). He gives three or four reasons for discussing these two topics before discussing the rational sources. One of the reasons he gives is that 'the principle of *maṣlaḥah* has grown to envelope all the rational sources. Each rational source is today considered part of the larger doctrine of *maṣlaḥah*.'

The author begins with explaining the meaning of *maṣlaḥah* (interest). In its literal meaning, the author writes, *maṣlaḥah* is defined as "جلب المنفعة ودفع المضرّة" or "seeking of benefit and the repelling of harm". And regarding its technical meaning he writes: 'What Muslim jurists mean by *maṣlaḥah* is the seeking of benefit and repelling of harm as directed by the Lawgiver. The seeking of utility in Islamic law is not dependent on human reason and pleasure.' Further elaborating the technical meaning of *maṣlaḥah* the author quotes its definition as given by Imām Al-Ghazālī in his book '*al-mustaṣfā min 'ilm al-uṣūl*' and then explains its constituent points one by one.

The author then discusses four of the most important classifications of *maṣlaḥah*: (1) first classification: *maṣlaḥah* acknowledged or rejected by the *sharī'ah*: it is of four types; (2) second classification: *maṣlaḥah* according to its inner strength, it has three levels; (3) third classification: definitive and probable *maṣlaḥah*, and (4) fourth classification: public and private interests.

Then the author discusses the principle of *maṣlaḥah mursalah* in relation to the *maṣlaḥah*. He says that this term was first used by Imām Mālik, the founder of the Mālikī School. It was elaborated and developed in the works of Imām Al-Ghazālī. Out of this discussion there emerged a larger doctrine of *maṣlaḥah*, which is much wider than the principle or source of Islamic law called *maṣlaḥah mursalah*. The author also discusses the role, requirements, demand and capacity of this broader principle, *maṣlaḥah*, and also its relationship with the purposes of Islamic law (or *maqāṣid al-sharī'ah*).

He discusses *maqāṣid al-sharī'ah* (or purposes of Islamic law) at some length. He begins by saying that these *maqāṣid* (purposes of Islamic law) are considered definitive (*qaṭ'ī*), and can be relied upon without a doubt, as they have been determined from the texts (Qur'ān and ḥadīth) through a process of induction (*istiqrā'*) rather than through deduction (*istidlāl*). These *maqāṣid* are classified into two types, i.e., *dīnī* (purposes of the Hereafter) and *dunyawī* (purposes pertaining to this world) which comprises of five ultimate purposes of law, i.e., preservation and protection of *dīn* (Islam), preservation and protection of *nafs* (life), preservation and protection of *nasl* (progeny), preservation and protection of *'aql* (intellect), preservation and protection of *māl* (wealth). The author then discusses other important things related to *maqāṣid al-sharī'ah*, like, the source and proof of these purposes, their nature and structure, their various levels and priorities within these purposes.

From a broader perspective *maqāṣid* are broken up into three levels. The first level is that of the necessities (*ḍarūrāt*), these are the primary purposes of the law, the five purposes mentioned above come under this level. These are followed by the needs (*ḥājāt*), which are additional purposes required by the primary purposes, even though the primary purposes would not be lost without them. The third level is that of purposes that seek to establish ease and facility (*tawassu'* and *taysīr*) in the law; these are called complementary values (*taḥsīnāt*) (p. 203).

In this entire subject the author based most of his discussions on the works of Imām Al-Ghazālī and Imām Al-Shaṭibī and quotes them frequently.[20]

In chapters 12 and 13, the author discusses the secondary sources of Islamic law. In the first part he takes up the rational sources and in the second part discusses the

secondary sources that depend upon transmission (*naql*) rather than methods of reasoning.

He begins by explaining the nature of the rational sources and then explains their role and scope in the area of Islamic legal system. He writes: "The rational sources are techniques of legal reasoning that the *mujtahid* employs during his *ijtihād*. The material sources used during this legal reasoning are the Qur'ān, Sunnah and Ijmā, and the rational secondary sources provide the means of extension for the law stated in these primary sources" (p. 213).

The author discusses in these two chapters the following secondary sources: (1) *qiyās* (analogy), (2) *istiḥsān* (juristic preference of the stronger principle), (3) *istiṣḥāb al-ḥāl* (presumption of continuity), (4) *maṣlaḥah mursalah* (extended analogy), (5) *sadd al-dharī'ah* (blocking the lawful means to an unlawful end), (6) *qawl al-ṣaḥābī* (opinion of a Companion), (7) *shar' man qablanā* (earlier scriptures), and (8) *'urf* (custom and usage).

Related to *qiyās* (analogy) the discussions taken up by the author are: definition of *qiyās*[21], its elements[22], examples, conditions pertaining to the elements, types of analogy, and justification of *qiyās* as a source of law. The author describes one condition of *aṣl*, six conditions of *ḥukm al-aṣl*, two conditions of the *fara'*, and four conditions of the *'illah* along with some important discussions related to the subject. He also discusses some classifications of *qiyās* from various aspects: (1) The first type: *qat'ī* (definitive) and *ẓannī* (probable) *qiyās*; (2) The second type: classification according to the strength of the *ḥukm* established in the *fara'*. Its sub-types are: *qiyās awlā*, *qiyās al-'illah*, and *qiyās adwan*. (3) According to the third type of classification, *qiyās* has two types: *qiyās jalī* (manifest analogy) and *qiyās khafī* (concealed analogy).

Regarding *istiḥsān* the author takes up these discussions: the literal and technical meanings of *istiḥsān*[23], examples of *istiḥsān*, types of *istiḥsān*[24], justification of *istiḥsān*. Closing the discussions on *istiḥsān*, the author writes: "*istiḥsān* is an efficient method of legal reasoning that ensures analytical consistency in the system and helps the jurist identify general principles and exceptions besides giving importance to the consequences of the decision" (p. 236).

Regarding *istiṣḥāb* the author gives the following discussions: (i) literal and technical meaning of *istiṣḥāb* (presumption of continuity)[25]; (ii) the principles that form the basis of *istiṣḥāb*[26]; (iii) types of *istiṣḥāb* and their legal validity. At the end of this discussion the author writes: "The above discussion shows that *istiṣḥāb* is a procedural rule that creates a presumption for denying something, but not for establishing a claim. As a source of law, the principle has little value as it cannot be used to establish a new rule" (p. 239).

The discussions related to *maṣlaḥah mursalah* (extended analogy)[27] which the author has taken up here include: literal and technical meanings of *maṣlaḥah*, its four types, the meaning of *maṣlaḥah mursalah* and the conditions for its validity, illustrations of *maṣlaḥah mursalah*[28], the process of using *maṣlaḥah mursalah*, identifying *maṣlaḥah* which is *gharīb* (strange), identifying *maṣlaḥah* which is rejected, and justification of *maṣlaḥah mursalah*.

Related to the principle of *sadd al-dharī'ah* (blocking the lawful means to an unlawful end), the author takes up these discussions: literal and technical meaning of *sadd al-dharī'ah* along with some examples of how the principle of *sadd al-dharī'ah* is used to declare some lawful acts as prohibited if they are misused to lead to unlawful results, types of lawful acts[29], disagreement of jurists about the legality of this principle.

Related to the discussion on the source "opinion of a Companion (*qawl al-ṣaḥābī*)", the author explains the role of the Companions (*Ṣaḥābah*) in the interpretation and development of Islamic law. He writes: "They undertook *ijtihād*, issued rulings, settled cases and became a source of guidance for later generations" (p. 253).

Then he reproduces the views of those who accept *qawl al-ṣaḥābī* as a source, as well as evaluates briefly the views of those who do not consider it binding.

In the discussion of the source "earlier scriptures (*shar' man qablanā*)" the author begins by explaining the meaning of it along with its relationship to the Islamic *Sharī'ah*, as well as the difference of the Muslim jurists about its binding force as a source of Islamic law. The "earlier laws" are classified into four types. After explaining all these types along with some examples, the author writes: "This shows that the real source for all such rules are the Qur'ān and the Sunnah, and they

become binding on the Muslims when these primary sources grant the authority". Then, he reproduces the statement of Imām Al-Sarakhsi from his book *Kitāb al-Uṣūl* to explain the basis for not accepting the rules in the earlier scriptures as binding upon this *Ummah* (p. 256).

In the discussion related to the source "*'urf* (custom)" he says that the earlier jurists make only a passing reference to it. It has been a source of law, but in a limited sense. He says that *'urf* (custom) is associated with the word *ma'rūf* (good), and only those practices which are approved by the *Sharī'ah* are acceptable to the law. The process of approval, prior to acceptance, is necessary.

Then he explains some types and sub-types of the *'urf* (custom) to bring out its nature[30]. The outcome of his discussion in terms of acceptance or rejection of the validity of *'urf* (custom) as a source of law can be seen in his words: "Each practice was subjected to the norms of the *Sharī'ah* by the Prophet himself, and was either accepted or rejected … No practice could automatically be approved just because it was a long standing custom (but is justified or rejected in the light of the principles of Islamic law) .....It is not sufficient to say that there is nothing in the Qur'ān and the Sunnah that clashes with a certain law (prevalent in certain places or their customs and usages), that is, the law has passed the repugnancy test. This way the law will not develop further on Islamic lines. Each law must be shown to be valid according to a principle of Islamic law" (p. 258-59).

The author begins discussing *ijtihād* (interpretation) **in chapter 14,** and this discussion continues until chapter 18. Part III of this book is covered in these five chapters.

In chapter 14, the author discusses the meaning of *ijtihād* and its various modes. Here, the author first gives the literal meaning of *ijtihād*, and then discusses its technical meaning. The author, then, explains the various constituent parts of this technical definition in five points. In this connection the author also discusses the tasks of a *mujtahid*; how he uses the texts of the primary sources to discover the *aḥkām*, extends the law to new cases that may be similar to cases mentioned in the textual sources, extends the law to new cases which are neither found explicitly or impliedly in the texts nor are they exactly similar to cases found in the texts (p. 264).

The author proves the need of *ijtihād* through transmitted as well as rational arguments. He writes that since the number of verses in the Qur'ān dealing with legal issues is limited, even the texts of the Sunnah dealing with legal issues do not go beyond two thousand traditions. This means that there has to be some method or methods of extending the general principles in the Qur'ān and the Sunnah to cover all legal issues. This method /methods can be called as the modes / types of *ijtihād*. The author also explains, in about a paragraph, the texts which are not subject to *ijtihād*. Concluding it, the author writes: "In short, *ijtihād* is relevant wherever there is a possibility of a text having more than one meaning. ... Sometimes, a meaning that may be probable (*ẓannī*) is made definitive (*qaṭ'ī*) through consensus of opinion of the jurists. In such cases too, the jurists maintain that there is no possibility of *ijtihād*, and the meaning settled by *ijmā'* is to be followed by the *mujtahid*. .... *Ijtihād* also takes place in cases where no evidence, direct or indirect, can be found for an issue faced by the *mujtahid*" (p. 267).

Then, he takes up the discussion on the three modes /types of *ijtihād*. First, he clarifies that *ijtihād* is a single seamless process and in reality cannot be split up into separate modes / types, but for simplification and ease of understanding this activity is divided into three types / modes. **(i)** In the first mode, the jurist stays as close as he can to the texts; their plain and literal meanings, i.e., here he follows the plain meaning rule to determine the meanings of words or constructions. The jurist uses other reliable sources as well as other techniques called *dalālāt*. When the first mode of literal construction is exhausted by the jurist, he turns to the second mode. **(ii)** The second mode of *ijtihād* is confined to the use of *qiyās* (strict type of analogy). While the second mode of *ijtihād* is confined to the extension of the law from individual texts, **(iii)** the third mode relies on all the texts considered collectively. This means that the legal reasoning is undertaken more in line with the spirit of the law and its purposes rather than the confines of individual texts (p. 268).

The author lists some other processes as well for understanding the whole activity /process of *ijtihād* as merely understanding the above three modes is not enough for visualizing the total activity of *ijtihād*.

Then he discusses some crucial points like, the *ḥukm* of *ijtihād*[31], the binding strength of the *ijtihād* of a *mujtahid*, permissibility or non-permissibility of *ijtihād*,

specialization of *mujtahids* in particular areas, etc. and the qualification of the *mujtahid*[32].

Chapter 15 is devoted to the elaboration and explanation of the first mode of *ijtihād*, which consists of the techniques of interpreting the texts.

The author begins, here, by explaining the meaning and importance of the concept of *bayān* (elaboration) especially in the context of *uṣūl al-fiqh*. The elaboration or explanation of the terms in the texts by the texts is called *bayān*. It is to be noted that *bayān* is not confined to the elaboration of technical terms; it works in various ways to reveal the rules of law.

The importance of *bayān* in *uṣūl al-fiqh* can be realized by the fact that the first task of the interpreter (or the *mujtahid*) when determining the meanings of words and texts, especially technical terms is to look for the meaning within the legal texts. The reason is that a term may have one or more literal meanings but the texts may have used this term in a special way. This special way is called the *'urf shar'ī* (technical legal usage). It is only when the interpreter has failed to find an explanation of a term in the texts that he is to turn to other sources in literature, history or another discipline.

The author writes: "*Bayān* means to elaborate the meaning and make it evident, i.e., making the meaning of the text obvious." Substantiating it the author quotes some *Qur'ānic āyāt* and Prophetic *aḥādīth*, and then concludes: "*Bayān* may, therefore, be defined as the distinctive manner or mode of expression and the style of elaboration employed by the Qur'ān or by the texts" (p. 276). Regarding the types of *bayān*, the author says: "The generally accepted types of *bayān* are five: *bayān taqrīr* (complementary expression or elaboration); *bayān tafsīr* (enabling expression); *bayān taghyīr* (elaboration by exception); *bayān tabdīl* (conditional expression); and *bayān ḍarūrah* (elaboration by necessity)" (p. 277).[33] Then he briefly explains each of these five types of *bayān* from page no. 277 to 280.

Expressing the need and importance of sound Arabic knowledge in connection with the science of principles of fiqh, the author says: "A complete knowledge of this mode of *ijtihād* is not possible without a good knowledge of the Arabic language".

The author says that there are two methodologies of the first mode of *ijtihād*[34] (or the 'interpretation of the texts'). The first methodology is practiced by the Ḥanafī School, and is called the method of the Ḥanafīs. The second method is followed by the majority schools, and is known as the method of the *Mutakallimūn*. The author further writes: It is, however, difficult to practice both methodologies at the same time. In fact, it may be an error to do so.

The author has based his explanations of this first mode of *ijtihād* on the works of Imām al-Sarakhsi, for the Ḥanafī method, and on the works of Imām al-Ghazālī for the method of the Mutakallimūn.

The *aḥkām* are derived /discovered from the texts, and the jurist adopts several methods through which the *aḥkām* are established. These broad methods, which are four in number, according to al-Sarakhsi are called *dalālāt* (or the implications of the text). These are: *'Ibārat al-naṣṣ* (or the obvious meanings revealed through a plain reading of the text); *Ishārat al-naṣṣ* (or the connotation of the texts); *Dalālat al-naṣṣ* (or the meanings implied by the texts); and *Iqtiḍā' al-naṣṣ* (or the meanings required by the texts of necessity).[35]

The author also tries to clarify the distinction between *iqtiḍā' al-naṣṣ* and the *maḥdhūf* (missing text), and uses an example from al-Sarakhsi's work to elaborate it.

Then, he discusses the strength of the *aḥkām* proved through these four methods, and the rule of preference where the conflict is found between any two or more of these four methods of interpretation (p. 288).

In this regard, he also takes up the explanation and function of many other terms and concepts related to the understanding of texts and deriving/establishing *aḥkām* from them; some of these concepts are unanimously used by all jurists, while others are used differently by different jurists. These terms, principles, and concepts are as follows: *ṣīghah al-amr* (command /imperative), *ṣīghah al-nahy* (prohibition /proscription), *akhbār* (reports /informative sentences) in the text conveying commands or proscriptions, *'ām* (general), *khāṣ* (specific), *muṭlaq* (indeterminate /absolute word), *muqayyad* (determined), *mushtarak* (equivocal), *mafhūm al-mukhālafah* (the opposite meaning of the *ḥukm* proved by a text), *ẓāhir* (manifest), *naṣṣ* (explicit), *mufassar* (elaborated), *muḥkam* (unalterably fixed), *khafī* (obscure), *mushkil*

(difficult), *mujmal* (unelaborated), and *mutashābih* (unintelligible), *ḥaqīqah* (actual application of the word), *majāz* (figurative sense), *ṣarīḥ* (explicit), *kināyah* (allusive), etc.

Discussing the literal methods applied by the Shāfi'ī jurists for establishing the *aḥkām*, the author, quoting Imām Al-Ghazālī, writes: "The Shāfi'īs divide the methods for proving the *aḥkām* into two types: **(i)** Through the syntax and grammatical form of the text also referred to as *manṭūq* or explicit meaning; **(ii)** Through implications other than the syntactical meaning also referred to as *ghayr manṭūq* or the implied meaning."

The first method, i.e., *dalālāt al-ṣīghah* (or the *manṭūq* or the explicit meaning) is the same method /concept as that of *'ibārat al-naṣṣ* (or the plain meaning rule) of the Ḥanafīs. The second method can be put under one broad heading, i.e., *dalālāt al-lafẓ bi ghayr al-ṣīghah*. In this type Shāfi'īs have six methods to prove the *aḥkām* from the texts. These are: *iqtiḍā'* (implicit meaning), *ishārah* (indication), *īmā'* (indication of compatibility), *mafhūm al-muwāfaq* (compatible higher-order meanings), *mafhūm al-mukhalaf* (opposite meaning), *ma'qūl* (rationalized meaning).

The author also discusses the nature and type of *ḥukm* established on the basis of the various expressions used in the texts, i.e., how and when we can determine a specific *ḥukm* to be obligatory (*farḍ /wājib*), recommended (*mandūb*), or permissible (*mubāḥ*), and so on.

In chapter 16, the second mode of *ijtihād*, i.e., reasoning by analogy, and its various aspects is discussed briefly. The second mode of *ijtihād* is employed by the jurist when the first mode, i.e., the literal interpretation, does not cover the case at hand. Therefore, the author, in this chapter, at first discusses the relationship of the first mode of *ijtihād* with the second mode. Here, he attempts to explain when and under what conditions a jurist moves from the first to the second mode of *ijtihād* in light Ibn Rushd's discussions of in his book *Bidāyat al-Mujtahid*.

The author discusses the three types of meanings that a text may imply. These are: higher-order meaning, lower-order meaning and the equivalent meaning. He then explains each type in the light of some examples. He says that Shāfi'ī jurists consider the higher-order meaning as *qiyās al-ma'nā* (or the strongest type of

analogy), but this is not *qiyās*, according to the Ḥanafīs. They say that it is the *dalālah al-naṣṣ* because such meanings are implied by the literal meaning of the text. The lower-order meaning is considered analogy by the Shāfi'īs alone, but the others reject it and call it *qiyās ma'a al-fāriq*, that is, analogy in which a distinctive attribute is missing. The third one, i.e., the equivalent meaning is the real *qiyās* and is sometimes called *qiyās al-'illah*. Analogy is undertaken in this form by discovering an underlying cause for the *ḥukm* in the text and an identical cause in the case faced by the jurist. Qiyās, then, is the transference of the *ḥukm* not to higher-order meanings or lower-order meanings, but to equivalent meanings (p. 304). Summarizing the discussion, the author says: "The second mode of *ijtihād*, according to the Shāfi'īs would include all three (types of meanings or methods), but according to the Ḥanafīs, it is confined to the equivalent methods alone" (p. 305).

Then, the author explains the methods of discovering the underlying cause (*'illah*). He says that it is the first task of a jurist while applying analogy to find the *'illal* (pl. of *'illah*) of the *aḥkām* so that the *ḥukm* can be extended to the new case. Thus, without having known the *'illah* analogy is not possible. For the identification of the *'ilal* of the *aḥkām* in the texts, the jurists have identified detailed methods. They are called *masālik al-'illah* (or the methods for discovering the underlying cause). The *masālik al-'illah* include: (i) the text (*naṣṣ*) itself,[36] (ii) *ijmā'* (consensus), (iii) derivation of the *'illah*, i.e., *takhrīj al-manāṭ*; when the underlying cause is not indicated directly by the text or by *ijmā'*, the jurist derives the cause through *ijtihād*. This is called the derivation of the *'illah* (or *takhrīj al-manāṭ*). The author explains three methods of *takhrīj al-manāṭ*: (1) *munāsabah* [suitability][37], (2) *dawrān* [the co-existence of the *ḥukm* and an attribute], (3) *sabr wa taqsīm* [testing and division].[38]

Then, the author describes briefly how the underlying cause (*'illah*) in the new case is verified so as to extend the *ḥukm* of *aṣl* (original case) to the *fara'* (new case). This process is technically called *taḥqīq al-manāṭ* (or the verification of the *'illah* in the *fara'*).

The author finishes this chapter with a paragraph on "analogy and the modern jurist". In it, after praising the lofty contributions of the earlier jurists, especially, with respect to having discovered and determined the underlying causes of the *aḥkām*, he says: "The modern jurist, who plans to reinterpret the texts for his times,

will find a tremendous task facing him in his search for new underlying causes. In many if not most cases, he will have to choose between the various underlying causes determined by the jurists. While we are not implying that the discovery of new underlying causes is impossible, we are definitely implying that this will not be an easy task" (p. 308).

In chapter 17, the author discusses the third mode of *ijtihād* 'a value-oriented jurisprudence'. Since, not all cases can be solved using the first two modes of *ijtihād*, the jurist has to move to more flexible and broader methods to meet his needs. These methods come under the third mode of *ijtihād*.

In this chapter, the author begins with explaining when and how the jurist moves from the second to the third mode of *ijtihād*. He explains it through a hypothetical dialogue between the jurists of two different schools on the extension of the meaning of *khamr* and brings other things in the purview of its *ḥukm*. The outcome of this dialogue he writes as: "The dialogue shows that the *qiyās* (or the second mode of *ijtihād*) is based upon reasoning from a determined stable cause that is suitable for becoming an *'illah*. The stable cause is used to extend the rule to an exact parallel. The third mode of *ijtihād*, on the other hand, is based on reasoning from general principles, based on the *ḥikmah* or wisdom of the underlying rule" (p. 311).

In the next paragraph, the author tries to explain the meaning of these general principles which are applied in the third mode of *ijtihād* and how they are formed in Islamic law. After explaining, through the example of journey, how general principles are formed, the author writes: "Using general principles makes the extension of the law very flexible and easy. An uncontrolled use of general principles, on the other hand, might mean that we are no longer sure whether the intention of the lawgiver is being followed .... The jurists have, therefore, devised a methodology or methodologies for the use of general principles in settling the law. These methodologies, for the sake of convenience, have been collectively called the third mode of *ijtihād*" (p. 313).

In this mode, a number of new principles are discovered by the jurist that opens an area of discretion for him. Therefore, to control the absolute discretion of the jurist there is a particular methodology which can be called as 'a theory of values or a

theory of interests' in which the jurist verifies these newly discovered principles against the purposes of Islamic law and its established general principles.

After giving a comparison between the western jurisprudence and the third mode of *ijtihād*, he says: "A comparison of the judicial method in western law with the methodology of the Muslim jurists based on the third mode of *ijtihād* shows that there are quite a few similarities in the two methods. Yet, there are several vital differences too and it is important to identify these differences" (p.314). Then, he explains these differences through three points: (1) In Islamic legal system, the guide for right and wrong is the *sharī'ah* and reason alone is not a reliable guide. (2) The values upheld by western legal systems are based on human reason, while the values upheld by Islamic law have been determined by the Lawgiver, Allah. (3) The values determined by the *sharī'ah* are definitive (*qaṭ'ī*) while the values upheld by western legal systems do not possess this type of strength as their source is human reason (p. 315).

Here the author wants to make clear that the general principles used in the third mode of *ijtihād* are linked with the *ḥikmah* of the *aḥkām* (or the wisdom underlying the rules), the *maṣlaḥah* (interests), and the purposes of the *sharī'ah*, and are not completely independent in their function.

At the end of this chapter the author discusses '*maṣlaḥah* and the modern jurist' where he repeats again that if a jurist cannot find an existing principle suitable for settling the case at hand, then he may formulate a principle that he thinks is applicable and which he believes to be compatible with the remaining principles of the law. Once he has done this, he is under a duty to justify this principle in the light of the *maqāṣid* showing which interest or value is preferred over others by this principle (p. 316). Thus he emphasizes that newly formulated principle(s) is to be verified against the purposes of the *sharī'ah* (*maqāṣid al-sharī'ah*) and its established principles before applying it to solve the issues at hand.

In chapter 18, the author devotes his discussions to explaining the doctrine of *naskh* (abrogation) and the rules of *tarjīḥ* (preference) and *jama'* (reconciliation). Here, the author says that without the knowledge of these things, the subject of *ijtihād* remains incomplete.

The author describes the literal and technical meaning of *naskh*, *nāsikh* and *mansūkh*. Regarding the acceptability and applicability of the doctrine of *naskh* he writes: "All the four Sunni schools unanimously accept the doctrine of abrogation, though they may disagree on the details. Most of the independent jurists also accepted this doctrine. It may, therefore, be assumed to be a kind of consensus" (p. 318). The author himself seems to be inclined towards its acceptance. He also explains, here, the wisdom of this doctrine. Then, he explains the distinction between *naskh* (abrogation) and *takhṣīṣ* (restriction). He explains the types of abrogation, the attributes of the abrogating and abrogated evidences, and the justification for its validity.

In the justification of the doctrine of abrogation, he considers *naskh kullī* (abrogation) and *takhṣīṣ /naskh juz'ī* (restriction /partial abrogation) and proves that there is no difference between the two processes when looked in a non-technical and objective way. On the basis of this reasoning the jurists would say that those who do not accept abrogation will also have to give up the principle of *takhṣīṣ* or restriction of one text by another, because there is no fundamental difference between the two (p. 322).

Then he takes up the discussion on the rules of *tarjīḥ* (preference) and *jama'* (reconciliation). He says that where the dates of the conflicting evidences are known, the jurist follows the doctrine of abrogation to remove the apparent conflict. But in case he does not know the dates he adopts the methods of preference (*tarjīḥ*) and reconciliation (*jama'*).

Then, he states six main rules and four sub-rules for the process of preference (*tarjīḥ*). And regarding the rule of reconciliation (*jama'*) he says: "Before preferring one evidence over another, the jurist tries his best to reconcile the conflicting evidences when the two texts are of the same strength" (p. 323). Many conflicting texts are interpreted through the method of *jama'* (reconciliation) in such a way that there remains no conflict among them and all become applicable simultaneously or for separate occasions.

From chapter 19 begins the fourth and final part of this book. The main title of this section is "the faqih and his methodology". In the beginning of this chapter, the author raises some questions regarding the viewpoints of some modern scholars

about taqlīd and their unjustified condemnation of it. Then he says: "Our purpose in this chapter will be to answer most of these questions and to determine the exact scope of *taqlīd* as well as its utility in the present times, if any. In doing so, we will determine the function of the jurist whom we have called the *faqīh*, as distinguished from the *mujtahid*." In this connection he also writes: "There is also a need to understand this doctrine (of *taqlīd*) in depth because it has been unjustly condemned by many modern scholars and blamed for the stagnation that is faced by the Islamic legal system" (p. 329).

Then he begins explaining both the literal and technical meanings of *taqlīd*. He explains the technical meaning of *taqlīd* in some detail because he says that some of its meanings (or the understanding of them by some people) have led to some confusion about the meaning and role of *taqlīd* in modern times. Quoting the definition of *taqlīd*, he says that it is "following the word /opinion of another without *ḥujjah* (proof or lawful authority)". This basic definition of *taqlīd* is meant to say 'the following of the opinion of another without knowledge or authority for such opinion'. In this sense the *taqlīd* is prohibited but there are other forms of it which are permitted rather recommended. Quoting Al-Shawqanī (*irshād al-fuḥūl*), Al-Ghazālī (*al-mustaṣfa min 'ilm al-uṣūl*), and some Ḥanafī jurists, he writes: The word *ḥujjah* in the definition of *taqlīd* means permission given by the *Sharī'ah*. *Taqlīd*, therefore, means following the opinion of another when the *sharī'ah* has not given permission to do so. In this way the following types of activities from the meaning of prohibited *taqlīd* are excluded:

(1) Acting upon the words of the Prophet (*S.A.A.W.S*) is not prohibited *taqlīd*.
(2) Acting upon *ijmā'* is not prohibited *taqlīd*.
(3) Acceptance of the word of an upright (*'ādil*) witness by the *qāḍī* (judge) is not prohibited *taqlīd*.
(4) The layman acting upon the word of a jurist is not performing prohibited *taqlīd*.
(5) Acting upon the opinion of a Companion of the Prophet is not prohibited *taqlīd*.

These cases do not fall under condemned or prohibited *taqlīd*, because the *Sharī'ah* has permitted all these forms; a *ḥujjah* (proof) exists for such permission.

After presenting some statements of Imām Mālik, and some principles of the modern legal system, the author concludes as: "The conclusion we may draw from this is that *taqlīd* is an essential principle of our daily lives and is based upon division of labour where some persons specialize in certain areas and become experts. The muftī or the faqīh is an expert in his area and there should be no hesitation in accepting his opinion by those who are laymen in his field of specialization" (p. 332).

Following that, he writes a note on "*taqlīd* and the Islamic legal system" in which he discusses the highest grades of jurists such as the founder of a school (*mujtahid muṭlaq*), *mujtahid fi al-madhhab* and *mujtahid fi al-masā'il*, as well as briefly explaining their functions.

The author then moves to describe the various types of jurists and their grades. On the authority of Ibn 'Ābidīn, the author lists six grades of jurists in the Ḥanafī School along with their functions and activities. These grades are:

(1) *mujtahid muṭlaq* (or *mujtahid fī al-shar'*), (ii) *mujtahid fī al-madhhab* (or the *mujtahid* within the school), (iii) *mujtahid fi al-masā'il* (or the *mujtahid* for new issues), (iv) *aṣḥāb al-takhrīj* (or those jurists who clarify the law of all the existing cases),[39] (v) *aṣḥāb al-tarjīḥ* (or those who preferred the stronger opinions in the school so as to bring uniformity into the law), (vi) those who recognize the stronger opinions preferred by the jurists of the previous grades.[40]

In the end, he tries to categorize all these grades of jurists into two broad types. He says that after focusing on the methodology used by each grade of jurists they can easily be classified into two broad grades:

(i) Those who may be classified as full *mujtahids* performing the legislative function and settling the law. In this category jurists of the first two grades, that is, the *mujtahid muṭlaq* and the *mujtahid fī al-madhhab* can be placed (p. 336);

(ii) Those who can be classified as full *faqīhs* performing the judicial function. In this category jurists of the last four grades can be placed (p. 337).

Finally, in the last chapter (i.e., chapter 20) of this book, the sources of law for the second grade of jurists (*aṣḥāb al-takhrīj* and *aṣḥāb al-tarjīḥ*), performing the judicial

function, are discussed. Thus, chapter twenty is devoted to the explanation of the tasks of the *faqīh* which in turn help us identify the sources that he uses.

Here, the author begins to state the role and value of both the *mujtahid* and the *faqīh*. He says that while the *mujtahid* built the legal system by going directly to the primary sources of Islamic law, and identifying its basic general principles, besides laying down the law itself, the *faqīh*, on the other hand, implements the general principles and ensures that the system runs smoothly and in an analytically consistent manner. Therefore, the task of the *faqīh* is more critical and important in many ways.

Concerning the main task of the *faqīh*, the author states and briefly explains three of his tasks: (1) to settle disputes in the light of the existing case law, (2) to extend the law, if necessary, from the existing general principles of Islamic law, (3) if the new case faced by the *faqīh* cannot be settled on the basis of the two previous methods, to formulate a new principle provided that this new principle meets the conditions laid down by the jurists (p. 341).

After that, he proceeds towards identification and explanation of the sources for the *faqīh*. He says that *ijtihād* is a process, an effort expended by the *mujtahid* for the derivation of the law. The output or the result of *ijtihād* of the mujtahid(s) is the record of the decisions given by him. And this output or the result of the *mujtahid's ijtihād* becomes the source for the *faqīh*. Then, he enumerates such sources in the Ḥanafī School. He says: the first such source are the books called the *ẓāhir al-riwāyāt* (also known as *masā'il al-uṣūl*) written and compiled by Imām Muḥammad al-Shaybani. They are: *Kitāb al-Aṣl* (or *al-Mabsūṭ*), *al-Ziyādāt*, *al-Jāmi' al-Ṣaghīr*, *al-Jāmi' al-Kabīr*, *al-Siyar al-Kabīr*, and *al-Siyar al-Ṣaghīr*. The second category is *Masā'il al-Nawādir* (these are cases narrated in books other than *ẓāhir al-riwāyāt*), and the third category is the *fatāwā* and *al-wāqi'āt* (these are opinions of later jurists or the *faqīhs* or cases not contained in the books of first and second categories).

Regarding the rule of preference for using these sources, the author states that in the case of a contradiction, the issues in the first category are to be preferred over those in the second and third categories (p. 342).

Books in the Mālikī and Shāfi'ī Schools that can be compared to the *ẓāhir al-riwāyāt* are *al-mudawwanah al-kubrā* by Saḥnūn for the Mālikī School, and the *kitāb al-umm* written by al- Shāfi'ī himself. The *ẓāhir al-riwāyāt*, however, are much more extensive.[41]

Then he says that the other sources for the *faqīh* are the established principles of Islamic law. These established principles are of two types: (1) those which are explicitly stated in the texts of the Qur'ān and the Sunnah or are discoverable by the implication of these texts, and (2) those which have been derived from a large number of existing cases in the law by the jurists.[42] Then, he gives some examples of the textual principles followed by some examples of the principles derived by the jurists. The author presents the examples of the second type of principles[43] from the work of Qadi Abu Zayd Ubaydullah ibn Umar ibn Isa al-Dabusi.

The author concludes this chapter, and thus the book, by emphasizing that a jurist may develop a new principle if the prescribed conditions are met. Therefore, after the formation of a new principle he has to check it for compatibility with the purposes of Islamic law and the primary general principles. If the principle is compatible he can construct his reasoning on the basis of this new principle. Then, regarding the benefit and utility of this method, he says: This is the only way that the law will be extended. In fact, this type of legal reasoning is the essence of the methodology of *takhrīj*. It yields a legal structure in which the automatic generation of new principles takes place.

4. Comments and Observations

The language used in this book is simple and easy to understand. Except for a few points that have not been fully clarified, the contents have been explained in great detail. At times, somewhat technical language and typical terminology have been used, making the contents difficult to understand for the average reader. In some places, simple topics have been considered, while the stage of their explanation and comprehension appears to be discussed at an advanced level. Sometimes he discusses issues very briefly, mentioning only the terms without proper explanation and elucidation. If available, the author cites some interesting discussions related to specific topics that are very beneficial and informative for the readers. For example, he refers to an interesting discussion in *uṣūl al-fiqh* concerning the *ḥukm* of *mubāḥ* (p. 73).

The author's use of diagrams and charts to illustrate his points is admirable. It simplifies the subject matter of the discussions, making it comprehensible even to readers with average reading levels, while also conforming to the demands of modern methodology.

He always points to the similarities between Islamic law and Western law wherever he finds them, and where there is any difference between the two systems he points to it as well (see, e.g., p. 77, 196, 201, 313, 345, etc.). He also tries to compare the Islamic legal system and its procedure with those of other legal systems, particularly modern Western legal theory. And, where Western legal philosophers seem to be influenced by the thought of Muslim philosophers or to have benefitted from their works, the author mentions it, sometimes briefly, sometimes in detail. For example at page number 84 he writes: "Even in the West, the real developments in natural law came through the writings of Thomas Aquinas. Some of his views, it is acknowledged in the West, were based on the works of Ibn Sina and the Spanish jurist-philosopher Ibn Rushd, especially his commentaries on Aristotle." (See other examples at p. 87, 90, 116, 127, 133, 138, 196, 201, 313, 345). Where there is anything which Muslims could borrow from the western scholars and their works, the author, following the dictum "الحكمة ضالة المؤمن (wisdom is the lost property of Muslims)" points to it and wholeheartedly accepts it [see, e.g., p. 105].

Wherever there is any apprehension of misunderstanding, the author promptly clarifies it by discussing the various aspects of the matter, as well as its uses and benefits. At many points where doubts and confusions may arise in the minds of the readers, the author brilliantly provides a discussion, either in the main text or in the marginal notes, to make everything clear from the start and to remove doubts and confusions from the minds (p.165).

In numerous places, the author openly praises the researches (*taḥqīqāt*) and the works of Ḥanafī jurists. He also admires the Ḥanafī jurists and their work at a number of places in this book (p. 92, 93, 114).

The author also refers to the law, sections and articles of Pakistani law which are in use there at various places. The author makes important recommendations to modern Muslim scholars at a number of places. (See, for example, p. 127, 340, etc.).

The author uses many *aḥādīth* in his discussions, but he does not provide any references to the *ḥadīth* books where these *aḥādīth* are originally recorded.

Some parts of the text of this book are ambiguous, and the expressions should be refined to make them more comprehensible and easily understandable. (See, e.g., pages 162, 163, and 164).

Moreover, typographical errors are found at a number of places in the text of this book (See, e.g.,: p. 146, 149, 157, 160, 162, 166, 172, 173, 189, 193, 198, 200, 204, 208, 212, 215, 217, 219, 223, 234, 269, 273,285, 299, 300, 317, 321, 344).

References and Endnotes

[1] Bilal Philips, Abu Ameenah, *The Evolution of Fiqh: Islamic Law and the Madhabs*, Islamic Book Service, Darya Ganj, New Delhi, India, 2003, p.5.
[2] Hassan Ahmad, *The Early Development of Islamic Jurisprudence*, Adam Publishers & Distributors, Darya Ganj, New Delhi, India, 2013, p.13.
[3] Ibid. p. 14.
[4] Al-Haytamī, Ibn Hajr, *Majmaʿ Al-Zawā'id*, Beirut, vol. 9, p.313.
[5] Hasan Ahmad, op.cit, p.15.
[6] Al-Albani, *Sahih Sunan Abi Daawood*, vol. 2, pp. 397-8, no. 1858.
[7] Ahmed Shoayb, *The development of Islamic Jurisprudence (fiqh) and reasons for juristic disagreements among schools of law,* Doctoral Thesis, p.38.
[8] Hasan Ahmad, Op.cit, p.19.
[9] Ibid.
[10] Ghazi, Mehmood Ahmad*, Muḥāḍarāt-e-Fiqh*, Al-Faisal Nashran, Lahore, 2005, p.240.
[11] Bilal Philips, Op.cit, p. 15.
[12] Ahmed Shoayb, Op.cit, p. 48.
[13] Philips Bilal, Op.cit, p.17.
[14] Which is placed at the top of the structure to show that Islamic legal system is trying to achieve or secure certain goals or values. These are known as the *maqāṣid al-sharīʿah*. These purposes are vital for the methodology called *takhrīj* and equally important for *ijtihād* (p. 12).
[15] The *uṣūlī* is he who is a specialist in *uṣūl al-fiqh*.
[16] The *faqīh* is he who is a specialist in *fiqh* (or the substantive law).
[17] Deficient capacity, e.g., implies that only some rights are established and no obligations are imposed.
[18] That is, those that relate to legal reasoning.
[19] إتفاق المجتهدين من أمة مُحَمَّد ﷺ بعد وفاته في عصر من العصور على حكم شرعي . [The consensus of *mujtahids* (independent jurists) from the *Ummah* of Muḥammad (*S.A.A.W.S*), after his death, in a determined period upon a rule of Islamic law (*ḥukm sharʿī*)].
[20] Here he quotes very interesting point from Al- Shāṭibī's *al-Muwāfaqāt*. He writes: "The most important point he (Al-Shāṭibī) makes in this context is that the identification of the interests of Man has not been left to the whims and fancies of human beings, that is, to human reason, because all the purposes seek to establish and maintain life in this world to serve the interests of the Hereafter."
[21] After giving the literal meaning of *qiyās* he explains its technical meaning as: "In the technical sense, as defined by the jurists, it applies to 'the assignment of the *ḥukm* of an existing case found in the texts of the Qur'ān, the Sunnah, or Ijmā' to a new case whose

ḥukm is not found in these sources on the basis of a common underlying attribute called the *ʻillah* of the *ḥukm*.'"

[22] The above definition shows that the *qiyās* has four elements: [1] *Aṣl* (the root case, base), it is also called the *maqīs ʻalayh* (the case upon which analogy has been constructed), [2] *ḥukm al-aṣl* (the rule of the original case, and the rule which is established for the offshoot on its basis is called *ḥukm al-farʻ*), [3] *ʻillah* (the underlying cause of the *ḥukm*), [4] *farʻ* (the offshoot), it is also called *maqīs* (the case for which analogy is constructed).

[23] The author writes, quoting from *Kitāb al-Uṣūl* of Imām al-Sarakhsi: The reader should note that analogy is given up by the jurist only when he has a stronger evidence to rely on and this stronger evidence is one that is valid according to the *sharīʻah*. *Istiḥsān*, he says, is merely the comparison of two valid evidences (sources) and the preference of the stronger over the relatively weaker. It may also mean the restriction of one with the other. He concludes that "giving up of *qiyās* is sometimes due to the text, and at other times due to *ijmāʻ* or due to the principle of necessity" [Al-Sarakhsi, *Kitāb al-Uṣūl*, vol. 2, p. 202].

[24] The author lists the following six methods through which *istiḥsān* is employed in legal reasoning: (1) *istiḥsān* through the text (*naṣs*); (2) *istiḥsān* on the basis of *ijmāʻ*; (3) *istiḥsān* on the basis of what is good (*maʻrūf*); (4) *istiḥsān* on the basis of necessity (*ḍarūrah*); (5) *istiḥsān* on the basis of *maṣlaḥah*; (6) *istiḥsān* on the basis of *qiyās khafī*.

[25] The word *istiṣḥāb*, literally, means 'the continuance of companionship'. Technically it means the presumption of continuance of an earlier rule or its continued absence. In this sense it means the maintenance of a status quo with respect to the rule. The previous rule is accepted, unless a new rule is found that goes against it.

[26] The author discusses three principles that form the basis of *istiṣḥāb*: (1) الأصل في الأشياء الإباحة (the original rule for all things is permissibility, that is, the presumption is that all things are permitted, unless prohibited by the *sharīʻah*); (2) الأصل براءة الذمة (this principle means that there is no presumption of liability against anyone, and all liability has to be proved); (3) اليقين لا يزول بالشك (certainty does not give way to doubt: this means that once a thing is established beyond doubt, it can be set aside through an equally certain evidence).

[27] If the case at hand is such that which cannot be settled through literal interpretation nor through strict analogy (*qiyās*) then it is settled by 'looking at all the texts collectively'. This is achieved by referring to the purposes of Islamic law or the *maqāṣid al-sharīʻah* (p. 241).

[28] The author provides five examples and then explains how the principle of *maṣlaḥah mursalah* is used in them to establish the rule.

[29] The author writes: For purposes of this principle (i.e., the principle of *sadd al-dharīʻah*), the jurists divide acts into three kinds: (1) those that rarely lead to harmful results, (2) those that usually lead to harmful results, (3) those in which there is an equal probability of harm and benefit.

[30] The author divides *ʻurf* into two broad categories: *ʻurf qawlī* (usage) and *ʻurf fiʻlī* (practice). The first one is explained in three points, and the second one in two points.

[31] *Ijtihād* is obligatory (*wājib*) for the one who possesses the necessary qualifications for it and is equipped with the skills to perform it.
[32] According to the author, the qualifications of a *mujtahid* are: "knowledge of the Arabic language, knowledge of the Qur'ān, knowledge of the Sunnah, knowledge of the *ijmā'*, knowledge of the *maqāṣid al-sharī'ah*, and natural aptitude for *ijtihād*."
[33] The author says that two more types have been added by other jurists, bringing the total to seven. They add *bayān ḥāl* and *bayān 'aṭf* to the five previously mentioned types.
[34] In this mode the jurist stays very close to the texts in the effort to discover the true intention of the Lawgiver.
[35] Then from page no. 283 to 288, the author explains these four methods in some detail along with some relevant examples.
[36] The text itself may indicate the underlying cause of the *ḥukm* it contains, through some pointer (*īmā'*) or other hint. This would be the strongest type of *'illah*.
[37] In it, a number of attributes can possibly be designated as the cause of the *ḥukm*. Then they are checked against *ḥikmah* of the *ḥukm* and also against the purposes of the law. If there is no clash between the cause and the *ḥikmah* and purposes of law, or is complementary to them, then it is selected as the underlying cause of the *ḥukm*.
[38] In this process many attributes are eliminated through the process of splitting up and testing until one stable cause remains there that does not alter with circumstances and can be extended, and that cause is designated as the underlying cause (*'illah*) of the *ḥukm*.
[39] Regarding the third and fourth grades of jurists and the methodology they adopt, the author says that they both follow same methodology which is called *takhrīj*. Therefore, they can be combined in one grade and can be called "*asbāb al-takhrīj*".
[40] The author says: an examination of their method and their works reveals again that they were no less than the jurists in the previous (i.e., fifth grade) category.
[41] The author also gives very brief introduction of these books their summaries and commentaries.
[42] Here, the author clarifies that the derived principle may or may not have the approval of *ijmā'*; what makes it an established principle is the recognition that it receives from the jurists of a school.
[43] Principles derived by the jurists are called *qawā'id fiqhiyyah*. The first jurists who determined such principles were the Ḥanafīs. The leading works in this area are those of Al-Karkhi and Al-Dabusi, Al-Sarakhsi, Ibn al-Nujaym, [from Ḥanafīs]; Al-Qarafi, Al-Wanshirisi [from Malikis]; Al-Subki, Al-Suyuti [from Shafiis], Ibn Rajab [from Hanbalis]. The books that contain such principles are mostly entitled "*Al-Ashbāh wa Al-Naẓā'ir*".