INSIGHT ISLAMICUS

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Submissions must conform to the following guidelines:
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Editorial

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Editorial

We are pleased to announce the publication of the twenty-first issue of *Insight Islamicus*, our annual journal. This journal is devoted to academic studies and research in Islam and it publishes scholarly papers on a variety of themes of Islamic Studies in an interdisciplinary manner.

This year's issue includes four papers. Prof. Manzoor Ahmad Bhat and Azad Hussain co-authored the first research paper in it, which is a comprehensive review of the challenges faced by the *madāris* of South Asia and Kashmir, with regard to their curricula, textbooks, role in society, *madāris* and social work, financial matters, administration, role in intellectual development, and education of women. The authors have gone into great detail about *madāris* curriculum and the reforms and modifications that must be made in light of the modern era, as well as the adoption of modern tools and technology in their educational system. The paper also discusses the relevance of the *madāris* in today's modern world for fostering a peaceful, amicable, and prosperous society.

The second paper is authored by Dr. Burhan Rashid. He discusses the contribution of Prof. Imran Ahsan Khan Nyazee in the fields of Fiqh and Jurisprudence, particularly in the context of the modern era, after providing a brief introduction to the evolution and development of Islamic Jurisprudence (*Fiqh*). The author provides a thorough content analysis of Prof. Nyazee's book "*Islamic Jurisprudence (Uṣūl al-Fiqh)*" which explores the latter's approach to the subject.

The third article belongs to Dr. Abid Mushtaq in which he briefly discusses the meaning of Philosophy and its branches as well as the Islamic approach to philosophy and sciences.

In the last paper of this volume, Prof. (Dr.) Abdul Majid Khan sheds some light on the purpose and role of education in Islamic worldview. The paper develops some critical measures that can assist modern man in overcoming the crisis and leading a life that is fulfilling in this world and can also bring God's grace, and thus salvation in the hereafter. Islamic education must marshal one's spiritual domain in order to dominate one's bestial self with full use of one's sensory, rational, and experiential capabilities. The same must be said for the treatment of society and humanity in general. Muslim communities must develop the intellectual capabilities required to persuade the modern man to moderate his worldview. Muslims can build bridges across authentic traditions by developing a universal model of balanced education in which man's self, society, state, and globe are relooked from divine perspectives, a legacy of religions.

We have included an index of all the published papers in this journal from the first issue up to the twentieth (i.e., from 2001-2020) at the end of this issue for ease of locating and referencing them, and benefiting from their contents.

Finally, we want to thank everyone who contributed research articles and papers that were published in this volume. We are also grateful to those who submitted their articles but we could not include them in this issue. We hope to publish their contributions in future issues. We are optimistic that this

humble academic endeavor will inspire scholars, researchers, and intellectuals to delve deeper into the various dimensions of religious sciences, social sciences, ethics, *taṣawwuf*, comparative study of religions, thinkers, trends, movements, and the history of various civilizations and regions. We would also like to express our gratitude to Dr. Burhan Rashid for designing and proofreading the contents of this volume.

<div align="right">Editors</div>

Prospects of Contemporary Religious Educational Institutions (*Madāris*) of Kashmir

Azad Hussain[*]

Prof. Manzoor Ahmad Bhat[*]

ABSTRACT

The *madāris* of South Asia and Kashmir face many challenges, particularly with regard to their curricula, textbooks, role in society, social work, financial matters, administration, intellectual development, and education of women. The curriculum of the *madāris*, despite being very extensive and sound, needs some reform and modification in the context of the present age. In fact, many academics from the Indo-Pak subcontinent, Africa, and the Arab world have worked hard in this direction. It is in this backdrop that the present paper makes an effort to highlight the main contribution of the *madāris*, particularly in terms of advancing a society that embodies spirituality and high moral and intellectual standards. The paper also covers a wide range of topics related to the relevance of the *madāris* in today's modern world in fostering a peaceful, amicable, and prosperous society. The paper goes into great detail about the curriculum of the *madāris* and the reforms and modifications that must be made in light of the modern era, as well as the adoption of contemporary tools and technology in their educational system.

Key Words: *Madāris*, Education System, Women Education, *Madāris* curriculum.

1.   Introduction

Irrespective of many issues and challenges, the *madāris* of South Asia and Kashmir thrive in producing men of rare caliber in the light of Islamic teachings. These virtuous and pious men have contributed much in the various aspects of religious

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sciences. This contribution in the Muslim world has made these seminaries the centres of learning and a tool for the reconstruction of an ideal society. These unique seminaries present the Islamic values in the changing narrative of human society in reconciliation with modern developments. The seminaries of this pattern and thought provide both modern and religious education instantly (though very few) in Kashmir.

To reform the curriculum of these seminaries according to the present demands is neither old nor undesirable. Subjects like English, computer education, history, social sciences and other auxiliary sciences are taught in the seminaries of Kashmir. This trend is rising in these seminaries positively, but the question remains that what will be the standard of *madrasah* curriculum wherein the religious sciences and religious values maintain their specification. These *madāris* may enable their graduates to efficiently contribute in present era. This needs the collective get together of the prominent stalwarts of all *madāris* (schools of thought), educationists, intellectuals, teachers/scholars, men with broader vision and knowledge in the form of committees. This work of re-structuring religious educational system demands modification with continuity, moderation and consciously in an expedient manner.

The challenges of educational, financial, social, political, moral or spiritual or training perspective may have different manifestations but for the endeavor of community (*Ummah*) it is mandatory to revive and strengthen the sacred purpose of these *madāris* in Kashmir. To explore and introspect the past, demands planning for the reconstruction of prospects like the flow of present age, the social issues of community, what sort of reforms are needed and which suitable model and pattern (*Manhaj*) may be employed for *madāris* to accomplish the mission of social reform by them. Considering these means, resources and demands call for further exertions, insights, forethought, universality, permissiveness, acceptance and aptness. To all these concerns, the *madāris*, their scholars and graduates despite their efforts, are still unable to respond precisely and professionally. This situation adds more responsibility to the people affiliated with *madāris* (scholars and graduates) to refresh their preparedness; realize modern challenges, acquaintance with new

questions and terminologies. To opt for the presentation of Islamic teachings in modern idiom and harmony ably, the scholars/graduates of these seminaries may perform social transformation that has been their historical distinctiveness.

In view of the challenges to the *madrasah* education across the globe and in particular to the *madāris* of Kashmir, it is mandatory to develop a comprehensive response. Reconstructing the entire educational system on the new and innovative lines will ensure a prospect to revive this sanctified system.

While planning curricular reform, the educational principles put forth by the educationists of different educational systems might be recognized. These acknowledged principles include: (a) Utilization of the experiences and the insights of experts of different domains of knowledge, (b) Curriculum must have work / research / skill type orientation, (d) It must be very precise (d) There should be a progression of constant pruning, gradation and the recognition of linguistic differences and tastes.

The prescribed texts (books) within the curriculum of *madāris* form the essential component of religious educational system. These books are to be necessitated in proportion to the intellectual, psychological and moral standard of the learners. These texts must be eye-catching, qualitative and should maintain the higher standards of publication. The use of diagrams, pictures, charts, colors may provide magnificent and positive results from such text books in the learners. There should be an emphatic approach, hard work and least negligence on the part of the teachers. So the teachers must make best use of standard texts of the specific pedagogy that will enrich the learners with their best ability. In order to create educational standard and quality among the learners, the teachers are needed to be of the higher mark itself. Rewards and scholarships for the toppers and meritorious students with books as the best rewards from the annual budget may be specified. We need a new *Ijtihād* especially in the *madāris* because whatever is produced in an age can't be the final word and this absoluteness only specifies to the revelation. So the present age needs capable men to change the course of history with much in-depth reflection to view and investigate the diverse, comprehensive and all-embracing perspectives of *madrasah* education.[1]

The teacher should have the knowledge about the different methods, principles and approaches in education (*Usūl al ta'līm*) particularly educational psychology. He must be well versed in the subject with profound knowledge especially in the themes or topics which he has to deliberate upon.[2]

2. Curricular Prospects: *'Ulum al-Qur'an* (Quranic Sciences)

2.1 Prospects in the Primary Quranic Education

Being the basis of higher levels of education, the primary education of Quran (*Hifz, Tajwid, Qirā't*) needs exclusive care to be in accordance with requirement.

- It has to be imparted collectively as the learners get acquainted and learn quickly in the group/congregation.
- It needs a virtuous and capable teacher, with best and an attractive script, continuous practice and repetition by the learners.
- It demands the use of modern electronic tools/aids like LCD projectors, microphones, colored electronic boards and other equipments.[3]
- This level of education requires proper time management to impart lessons within specified duration.
- To maintain a break for a day or more in a week so as to relax the mind, body and the soul of learners.[4]
- Memorization of Quran should be gradual with calmness as attested by the Quran itself as:

  Those who reject faith say: Why is not the Quran revealed to him all at once? Thus (is it revealed), that We may strengthen thy heart thereby, and We have rehearsed it to thee in slow, well-arranged stages, gradually.[5]

- There are many pragmatic ways to make the process of memorization much conducive, which may include: (a) use of the best script of Quran in size, print. (b) Best location, where the learners feel calm and attentive, at Mosque. (c) Psychological preparation. (d) Warm up (e) Focus (f) Recur (g) Fusion.

After observing all these steps the outcome will be Strong memorization. Scholars have manifested many other prerequisites for memorization of the Quran as:

(a) Age: Best age for the memorization of the Holy Quran is the age of Childhood. Famous Muslim educational Psychologist Dr 'Atiyah al Abrashi opines in the following words that "*The example of learning in childhood is like engraving on a stone and learning while being an adult is like writing on water.*"[6]

(b) Moderate Content. **(c)** Domestic environment. **(d)** Capability. **(e)** Boarding or Hostel environment. **(f)** System of the seminary. **(g)** Principle of graduality. **(h)** Time limit for the memorization (2-3 years). **(i)** Suitable time for the Hifz. **(j)** Non-compulsion in memorization.[7]

2.2 Prospects in *Tarjumah tul Quran* (ترجمة القرآن)

The science of Quranic translation is most prominent before the Arabs as well as non-Arabs in terms of its literal explanation. The translation of Quran (*tarjumah*) requires acquaintance with the Arabic language with profound ability. The Quran makes use of the syncretic idioms from daily life and every idiom has its specific usage, so subscribing this idiomatic essence requires reconciliatory approach. Thus the science of *Tarjuma tul Quran* needs following provisions for further endeavor.

- The science of *tarjumah* needs to be incorporated in the curriculum as a special pedagogy.
- The linguistic and literary tastes in *tarjumah* are to be considered.
- *Tarjumah* has to be imparted beyond specific mindsets and the sectarian approach to be eliminated.
- The use of modern and classical translations (*tarājim*) together will balance the pedagogy.
- The involvement of learners while having construction of words and literal meanings through exercises may give better results in this science.

2.3 Prospects in *Usūl al Tafsīr*

In response to the challenges posed to this science we must analyze the texts produced by the Muslim scholars from the early Islamic period till modern period.

In most of the cases there are only extensions of the classical texts and nothing more. But in the modern era scholars from Arabian and African countries have contributed profoundly in the domain of *Usūl al Tafsīr*, so in this regard we may have following provisions for observance:

1. The texts that converse upon the history and development of *usul al-tafsir* and evaluate its themes extensively are to be incorporated in the curriculum.
2. The provisions for contextualizing such principles to Quranic verses in the light of new developments ought to be corroborated.
3. Textual and pedagogical advancements in the other parts of the Muslim world must be put to cognizance and utility (both classical and modern).
4. The deviations and escapism from the methodology and principles under the blanket of Quranic studies in the contemporary times requires deliberation.
5. It is indispensable for *Usūl al-Tafsīr* as a separate realm to have its thematic perspective decided.

The books of the modern period like: *Al Tibiyān fi "Ulūm al Quran* (التبيان في علوم القرآن) by Sabūnī, *Qawā'id al Tadabbur al Amthāl* (قواعد التدبر الامثال) by 'Abdur Rahman Hasan al Maydani, *Qawā'id al Tafsīr* (قواعد التفسير) by Khalid bin 'Uthman al Sabṭ, *Usūl al Tafsīr wa Qawa'iduh* (أصول التفسير و قواعده) by Khalid bin 'Abdur Rahman al 'Akkah, *Fusūl fi Usūl al Tafsīr* (فصول في أصول التفسير) Musā'id bin Sulaiman al Tayyar and other prominent modern works may be incorporated.

2.4 Prospects in *Tafsīr*

Realizing the challenges to the science of Quranic exegesis (*Tafsīr al Quran*) in the religious seminaries (*madāris*) of Kashmir, the following recommendations in this regard be put forth prospectively.

- The teaching methodology of Quranic exegesis demands modification and has to be in reconciliation with the modern urgency.
- The inculcation of the Quranic attitude, its objective study, and focus on the key concerns among the teachers and learners will let this science to flourish.

- The curriculum demands addition of texts and commentaries beyond *Jalalayn* and *Baidhawi*, especially commentaries from modern era.
- The critical, unbiased and comparative study of different exegesis (*Tafasīr*) demands support with focus on different structural schools and approaches (*Manāhij*).
- The exegesis of Quran has to be accomplished in puritical essence, not making it *Fiqh*, *Hadīth* or *Kalam* or literal constructions of Arabic grammar.
- Stipulating much time for *Tafsīr* within curriculum from early phase of course in a gradual perspective with consistency needs anticipation.
- The concrete provisions for analyzing and responding to the misconceptions about Quranic text, interpretation and other aspects before modern mind and scholarship needs consideration.

2.5 Prospects in *Usūl al Hadīth*

Usūl al Hadīth is a key branch of knowledge in Islamic sciences, but there are many flaws within the curriculum that have led to the decline of its scholarship. So in order to develop this science the following insights are proposed:

- Introduction of comprehensive, lucid and basic texts (classical/modern) in the domain of *Usūl al Hadīth* might ensure progression.
- To have consideration of thematic diversity about the history, development and the compilation of *Hadīth* sciences in the new texts.
- This science has to be taught to the learners with the commencement of course (*Dars-i-Nizami*) as against concluding years which are prevalent currently.
- This science has to be integrated with the ample measures to respond to the suspicions created by orientalists, *Hadīth* rejecters and other conflicting narratives.
- Recognition of different standpoints in the terminological and interpretative dimensions among various structural schools of *Usul al Hadīth*.

2.6 Prospects in Science of *Hadīth*

Carving out experts in the field of *Hadīth* depends upon the teaching methodology, quantity of the content, in-depth study, the access to primary sources and the principle of gradation from primary level to the level of specialization. The approach as prevalent in our seminaries is akin that when a tradition pertaining to dogmatic and juristic variations come to pass, weeks are devoted and when the *Hadīth* concerning essence of Islam, morality, justice, economy or the civilization, a brief overview is attributed. So the science of *Hadīth* requires many appropriate guidelines in the contemporary era within the *madāris* of Kashmir as given below:

- There has to be consideration of the psychological or mental ability of the learners while instructing Hadīth, as directed in the statement of 'Ali:

قال علي:حدثوا الناس، بما يعرفون أتحبون أن يكذب، الله ورسوله

  'Ali (R.A) said; Conversate with the people with what they are aware of, do you want Allah and His Messenger to be rejected...[8]

  There is always a need for the cognition of the intellectual level before that will make science of Hadīth to increase their faith and trust, as against confusion.

- The literal/conflicting reflections among Traditions (*Ahadīth*) are to be replaced with reconciliation and harmony on priority in a proper context.[9]

- There is urgency for the utility from the modern research and contribution, their in-depth study to foster concord in the science of Hadīth.[10]

- There must be gradual consideration of the themes pertaining to social sciences like that of individual, state, rights, economy. This may facilitate the *madrasah* scholar/graduate to maintain efficacy in modern society.

- The system of *Dawrah Hadīth* has to be rectified from conventional textual execution to the collective study of Prophetic Traditions. The major part of these Traditions relate to the practical life, so ascertaining the reconciliation, may be attached and explained with this life.

2.7 Prospects in Jurisprudence (*Usul wa Qawā'id*)

The science of jurisprudence (*fiqh*) has always been key subject in the domain of religious knowledge to have clear-cut understanding and inferences. So the *fiqh* (its *Usūl*, *Qawā'id* and *Ahkām*) must be given due consideration as a living and relevant pedagogy within the ambit of religious sciences. Following prospective suggestions are provided with respect to the challenges in this science.

- The way of teaching *Usūl* and *Qawā'id al Fiqh* shall include: (a) Use of reconciliatory approach, (b) Practice of fundamentals and rules (c) The study of *Usūl al Fiqh* as a living and practical science. All this will foster competency and efficiency among students.[11]

- These principles (*Usūl* and *Qawā'id*) are to be studied in a simple language or in local/mother tongue/ Urdu, to enable the learner to embrace the vital themes in *Fiqh*.

- The curriculum for *Usūl al Fiqh wa Qawā'id* needs reorganization so as to enable the learner with most of themes (*Mabāhith*) to guide the community in new issues and share opinions competently.

- The literary contribution of the contemporary Muslim Scholars and academies of *Fiqh* across the globe may be considered, as much work has been done by them in this regard.

- In the higher classes we must introduce the books based on the combination of the both Shaf'ī and Hanafi methodology (*Jam'a Bayn al Tariqayn*). It may include most of the themes on *Usūl* and all the prominent principles of each school of thought of *Ahl al Sunnah*.

- The preparation of the text books in *Usūl al Fiqh* demand modern pattern in the light of previous scholarship (efforts/results) and may assist *madāris* in many ways.

- The taste for in-depth study in the memorization of *Qawā'id*, their practice, exercise and deduction must be inculcated in the learners by the teachers.

- There may be the introduction of the books of contemporary scholars like those of Abu Zuhrah (*Usul al fiqh*), Shaikh Khallāf (*'Ilm Usul al fiqh*), Shaikh Wahbah al Zuhailī, Dr 'Abdul Karīm Zaidān (*Al Wajīz fi Usūl al Fiqh*), Dr

Husain Hamid (*Usūl al Fiqh*), Khalid Saifullah Rahmani's (*Āsān Usūl Fiqh*), 'Ubaidullah Asadi's (*Tashīl Usūl al Fiqh*), and other good writings of this era.[12]

2.8 Prospects in Fiqh Studies

Fiqh has been the major subject of study in the *madāris* of South Asia in general and Kashmir in particular as it directly links the life with society profoundly. In the contemporary era, the study of general Fiqh has been debated by the jurists through different parameters to guide the *Ummah* in the modern trends and new challenges. In this regard the following suggestions may be observed to address the challenges that have crept into the science of jurisprudence.

- There should be balance in the study of the chapters (*Abwāb*), as some of them are repeated while other chapters are left unexplored. This type of disproportion must be tackled and amended.

- There is always the need for the comparative, unbiased and indepth study of jurisprudence. This will create broader vision in thought and action among the learners and graduates.

- The introduction of the social sciences or fundamentals of economy, polity, general science, geography, law in the curriculum of fiqh, will augment relevance and compatibility to their scholars in society.

- The study of objectives of Islamic law/*Shari'ah* in the curriculum especially in the higher education like of *takhassus*, *Iftā'* and *Qadā'* will foster objectivity, moderation and dynamism within the ambit of Islamic jurisprudence.[13]

- The preparation of novel texts in *fiqh* from the very beginning by dividing them into lessons, exercises, questions, notes, and explanations, will enable the learners to grasp *fiqh* and gather juristic efficiency.

- The learners should be encouraged to study juristic issues from the modern perspectives to have understanding of themes like bank interest, insurance, money and its value, currency notes and other financial issues. With this vigilant marrow and diligence, *madāris* might produce scholars capable in deciphering contemporary challenges.

- The science of *fiqh* should be taught by experienced and talented teachers to infuse in the learners the excellence in pedagogy.
- The valuable contribution of contemporary Fiqh academies of Muslim world and different Juristic encyclopedias compiled by the scholars must be given consideration by our *madāris.*
- There must be ample provisions for the study of contemporary modern law (State/International Laws) at par with Islamic law.[14]

2.9 Prospects in Arabic Sciences

In view of the fundamental nature of the *Quran, Hadīth, Fiqh* and other religious sciences, the importance of Arabic language and literature in the curricular framework of *madāris* seems foremost. It is complicated to have the cognition of these sources and the issues, if we lack competence over Arabic language and literature.

So in the backdrop of challenges to the Arabic language and literature within the seminaries, it is mandatory for the *madrasah* authorities that they should make proper provisions and attention in this regard. We make the following recommendations in the Arabic language and literature:

1. The whole arena and the environment of the *madāris* should be improved wherein Arabic is well ingrained and configured.
2. From the very primary level, rules (*Qawā'id*) must be learned/practised alongside with exercises and illustrations.[15]
3. The teachers shouldn't adhere only to the examples prescribed in texts but also from *Quran* and *Hadīth* with relevance and context.
4. The use of commentaries, translation guides and irrelevant discussions in Arabic language/literature during the lessons must be abandoned. This will create focus and more comprehension.
5. The use of teaching aids/tools in Arabic language may yield better outcome in writing, reading and the speaking of Arabic.

6. All the official announcements, examination papers, results in *madāris* ought to be done in Arabic language. This will promote the milieu of *madāris* gradually into the fold of Arabic.[16]
7. The conversation between the teachers, students, administration and among each other should be in Arabic.
8. There is need to organize the programmes and congregations where in the teachers/students may deliver speech and present papers in Arabic language.
9. There must be the prioritization of the Arabic language over the Arabic literature, as language comes first and then literature.
10. There is an urgent need that language has to be studied with focus, attention and without taking the help of translations.

3. Social Prospects

The challenges of varied aspects ensue in a globalized society which in turn is to be responded through attitude, concern, specialization, division of labor and other organized efforts. The world wherein Muslims reside, needs visualization of its sensitivities, ideas, necessities and its concerns. The Quran clearly directs it as:

<div dir="rtl">

إن الله لا يغير ما بقوم حتى يغيروا ما بأنفسهم

</div>

Verily never will Allah change the condition of a people until they change what is within themselves.[17]

And this principle of change in turn has been substantiated by another principle as:

<div dir="rtl">

خذ ما صفا ودع ما كدر

</div>

Take that which is clear and leave that which appears murky[18]

Prominent Muslim thinker, Maulana Taqi Amini advocated that the social reconstruction/orientation in the Muslim society has to be natural and according to the historical taste that shall suit to its body and soul. It must be superior in its virtues and ideals with apparatus from modern age. Its organization must be pious like of our predecessors, scholars and Ṣūfis, otherwise the alluring appeal towards it may derail our objective. So the social reconstruction must be directed by the men having vision and expertise in different fields.[19] With deep investigation, the

stalwarts of *madāris* have to re-think and act, so as to have the full reorganization of the vast needs and may proceed to train their disciples for the social necessities of the community. It is the dire need of the hour that our *madrasah* must think about the future by considering their standing in past and taking note of the present circumstances to remain relevant socially.[20]

Famous Muslim thinker and educationist, Dr. Mahmud Ahmad Ghazi (d. 2010) views that the time demands religion to relate with the matters of life to re-locate its position in the society. To attain this objective, the requirement is the scholarly expertise with ideal and critical knowledge about the world/society where they have to perform such role. So our *'Ulamā'* need to take keen note of this change as majority of the people enquire about the Islamic society and its distinctiveness.[21] The broader outlook and role of socio-religious institutions like the *madāris*, *masajid* and other centers of collective activism demands:

1. That resurgence of socio-religious character of *madāris* in the eastern society has primarily the religious orientation.
2. *Madāris* must neutralize the sectarian attitude towards other schools of thought that are based on the superficial denominations in the Muslim society.
3. There should be healthy discussions, seminars, workshops in the Muslim society between its different components in collaboration with the religious fraternity.
4. To have the affirmative and constructive use of all types of media and means of communication especially social media.
5. The *madrasah* stalwarts must have realization and flexibility in social milieu to create men of rational caliber who may respond to the contemporary socio-religious challenges in compatible idiom with *ijtihad* and freedom of thought. [22]

Besides the preceding insights, there can be two fold responses to such social concerns: **(a)** Long term programme, **(b)** Short term programme.

Long term programme may include: (a) Abolishing duality in education (in modern and religious education) (b) Broad based education upto 12 years has to be incorporated (c) Establishment of Institutions for higher education in religious sciences to foster religious professionalism (d) Consideration of public opinion from diverse intellectual and societal classes.

Short term programme may include: (a) Teaching of social sciences, humanities and linguistics like English language besides computer education to *madrasah* students/graduates (b) Connecting *madāris* (teachers, students) with the regional, national or international universities (also with the universities of Muslim world) (c) Benefiting from their socio-religious experiences to avoid confinement and isolation (d) Constructive use of media especially social media, ICT and civil society.[23]

3.1 *Madāris* and Social Work

In the present era the stand of *madāris* remains relevant with respect to different social issues in the context of globalization, pluralistic societies or Muslims as majority/minority. *Madāris* need to develop collective social conscience, broaden their sphere of activity beyond four walls and to work for social and collective welfare. This change in their outlook will let them focus at the following main areas:

- Identifying the contemporary social issues on priority like relations with non-Muslims, guidelines to have interaction in their festivals, ceremonies, exchange of gifts.

- Utilization of the jurisprudence of minorities (*Fiqh al 'Aqalliyat*) as we may have sound understanding of current social issues and possible solutions.[24]

- The spirit of human felicitation with respect to common masses may benefit them from such provisions. This may lend a helping hand in their missionary zeal and assignments even in non-Muslims and down-trodden sections of the society.

- The active participation of the *madrasah* scholars, graduates and students in social work during the natural calamities and disasters will provide them socio-religious relevance.[25]

3.2 *Madāris* and *Da'wah*

The present age discourse believes in dialogue, interaction and mutual understanding between the civilizations, world religions and among the inter-religious communities or schools of thought. So the narrative to maintain hegemony and supremacy over others in thought and idea holds least significance except to have recognition and consideration at par. With respect to the role of *madāris* in preaching the message of Islam in a better way, following observations may assist *madāris* to arrive at rational outcome:

- These *madāris*, their *'ulamā'* and graduates must fully recognize their obligations and responsibilities with respect to the *da'wah* in the community.
- In *da'wah* they should pursue the policy of broadmindedness, inclusiveness (*tawassu'*) and consider the standpoint of other schools of thought in an intellectual and studious way.
- To incorporate the well-matched books on *da'wah*, ethics of disagreement in madrasah curriculum and to start the courses of specialization in *da'wah* (*Takhassus fi da'wah*).
- To foster the courses on comparative jurisprudence to understand and address the exact nature of difference between juristic schools of thought.
- There must be institutions, organizations and research academies of joint venture including the scholars/graduates from various schools of thought with proper representation. This may lend a hand to curb sectarian/social escalations and replace them with unity and harmony.
- There should be adequate provisions for the study of comparative religion (*Taqabul al Adiyān*) as in our state there are different religious communities like Hindus, Christians, Sikhs and Buddhists.

4. **Economic Prospects**

The rising disgrace towards religious tradition and its organizers (of *madāris*) in economic perspective has pulled them out from their real mission and objectivity. It is the dire need of the hour to have the cognizance of the economic perspective in our religious educational seminaries. There are diverse perspectives of the problem

that require in-depth study and investigation. For the *madāris* of higher level imparting specialized education *takhassus* and *takmilah*, with much bigger budget, there may be the inculcation of vocational and skill development orientation to courses and the departments (*Dār us Sina'ah*) of calligraphy. In this regard the Prophetic Traditions guide us instantly as the Prophet (ﷺ) was a successful trader and businessman, so were many of his companions. Muslim tradition is filled with these examples. It is reported on the authority of Miqdām (RA), the Prophet (ﷺ) said: *"No food is better to man than that which he earns through his manual work. Dawūd, the Prophet of Allah, ate only out of his earnings from his manual work."*[26]

So the best earnings and livelihood for a person is that what he earns through his personal efforts without losing dignity and self-respect. There were many medieval and modern scholars titled as Tailor (*Khiyāt*), spiker (*Ziyāt*), blacksmith (*Haddād*), Baker (*Khabbāz*), joiner (*Najjār*) and sutor (*Khasāf*). All these labels to their surname infer us about their profession besides the repute and prestige of scholar and learned.

4.1 Financial Reforms

The foremost objectives of Islamic *Sharī'ah* (*Al-Maqāsid*) pertain to secure human honor and dignity. Based upon this objective, in our religious seminaries there must be concrete provisions, as the economic and financial challenges have put this vital human element at stake. So modern Muslim scholars especially those specialized in Islamic economy and finance have come up with following suggestions in this regard as:

- There must be a barrier in subscriptions between the donors/sponsors and the receivers, *madrasah* teachers and students, as the contributors always demean them under their obligation.
- There should be a consultative organizational pattern in financial matters (federal system of finances) for *madāris*, wherein all donations, funds, charities, state grants are collected.
- The financial system must be free from the percentage or commission for envoys except through an honorary settlement.[27]

- The establishment of consultancy/institutions based on *Shari'ah* guidance in financial affairs, marital issues and many other socio-legal perspectives will create better economic opportunities for the *madrasah* graduates and scholars.

- In changing circumstances the vibrant and intrinsic model for procuring financial resources other than public charity, foreign funding or official grants should be prepared.

- For fund raising, teachers and students must be exempted from collection at local level as it degrades their value and respect. There should be separate staff for this activity to secure the dignity of teachers and students.

- The *madāris* must have proper maintenance of register, receipts, records and strict audit for funds, financial transparency with utmost care in expenditures.

- The students from well off families must be obliged to pay fees as there are many institutions in Kashmir that receive full fee from the parents of their wards.[28]

- The *madrasah* teachers must be remunerated well to have the better outcome in teaching that may make the fraternity feel honored and dignified.

- There should be a system for the consultation of great minds, intellectuals and experienced educationists in financial concerns of these seminaries.[29]

5. Administrative Prospects

The appropriate management of *madāris* requires consideration of objectives within the ambit of administrative perspectives. So there are numerous objectives within the administration and management which include:

(a) Division of labor (b) Responsibility (c) Organization (d) Discipline (e) Unity and continuity in leadership (e) Centrality (f) Planning (g) Forecasting priorities (h) Identifying resources (i) Supervision (j) Evaluation and (k) Introspection.[30]

It is obligatory to elevate the administrative standard and organizational essence of *madāris*. To these challenges of administrative and management realm, there may be

diverse responses if they are recognized timely and properly. With consideration of the emotions and sensitivities. The Quran clearly attests this fact as:

> *It is part of the Mercy of Allah that thou dost deal gently with them Wert thou severe or harsh hearted, they would have broken away from about thee: so pass over (their faults), and ask for (Allah's) forgiveness for them; and consult them in affairs (of moment).*[31]

So the humble and gentle nature of the best administrator, teacher, organizer and the mercy must be reflected in the attitude and behavior of the *madrasah* administration. In this regard the following recommendations might serve the purpose.

- The administration must restrict their intervention in the personal affairs of the teaching learning fraternity.
- The selection of teaching faculty should prevail on the basis of merit, legal procedures, capability, efficiency and other qualities. Therefore, the malice of favoritism must be discarded.
- The spirit of consultation and association should be encouraged in these seminaries as against the nepotism and partiality in administrative affairs.
- To foster the spirit of team work and prepare them administratively demands vigorous participation of both teachers, administration, students and other staff in the collective affairs of *madāris.*
- The *madāris* administration must take serious note of the concerns related to the teaching-learning fraternity like better salaries, increments, promotions and other developmental strategies.
- The self-styled voluntarily rectors/administrators must be replaced with responsible, competent and permanent office bearers. They should be provided best facilities with predetermined remuneration.
- The rector/administrator should remain present within the *madrasah* most of his time beyond his staff with the sense of responsibility so that there is always a reflection of his ideal personality before the learners, staff and other faculty members.[32]

- The affiliation of these seminaries with the state/national universities and institutes has provided for the new hope to catch better options ahead in higher education for the graduates of these seminaries.
- There must be a complete scrutiny of the learners during admission through verifying documents, checking records, ability of the learners on the basis of merit with appraisal.

6. **Intellectual Prospects**

Realizing the moral, spiritual, physical and intellectual crisis within the Muslim community across the globe suggests the reformatory role of *madāris* in the contemporary world. In the past these seminaries were the centres for the all-round development (mind, body and soul) but unfortunately under the shade of modern developments, such mission has been abandoned. The following recommendations in this context might be suitable.

- The curriculum and the training system of *madrasah* must be assessed, evaluated and replaced by the comprehensive/inspiring system.
- The training of the teachers (*Tadrīb al-Muʿallimīn*) in different pedagogies pertaining to human development and excellence has to be ensured.
- There is a pressing need to inculcate in the learners the consciousness about knowledge objectivity.
- The *madāris* should ensure comparative study of the prevalent ideologies/philosophies with Islam.
- It must be realized that the books of ethics and spirituality are incorporated in *madrasah* curriculum.

7. **Prospects in Women's Education**

In the contemporary era there is an exigency to determine the role of women under the fabric of Islamic teachings. There has been no conscious development or the preparation on such model by the Muslim governments, or from the social, political or religious leadership within Muslim societies. Though the family system within the Muslim society is still secure compared to the West but due to the non-observance of Islamic regulations, the perversions are piercing continuously. Under

these circumstances it is binding upon the Muslims to ensure ample rejoinder to the disintegration of family system. The Muslim women continue to progress in the sphere of education and have established their specialized contribution in many modern fields. Even though their due participation in the socio-economic activities are not against Islam but still it is conditioned with the social norms of Islam.[33]

The foremost obligation that women have to perform, pertain to civilize the humanity in the building of virtuous and dignified human personality. Considering the real challenges to this folk in modern times, there might be diverse response to such concerns. The way out to such issues lies within the human intellect while transforming the attitude, as for this change the social institutions that shape the minds and form attitudes have primary role. These social institutions/structures include: (a) Media and communication (b) Educational system (c) *Masājid* (d) National laws (e) Organizations making public opinions (f) Social elite (role model or trend setters) (g) Family members. So considering all these socio-religious structures in view, the following submissions may follow.

- The inculcation of broad based education for the women folk in the contemporary (female) *madāris* of Kashmir should be objective and reasonable.
- The establishment of separate educational institutions (schools and colleges) that may offer religious, scientific and contemporary sciences to Muslim women instantly.
- Restructuring the educational curriculum (syllabus, standard and system) of female educational institutions that may consider their unique personality, psychology and behavior.
- The critical appraisal of slogan of women empowerment, gender equality, their role in domicile affairs with conscience and comprehension besides basic medical education.[34]
- These female seminaries require acquaintance of modern trends and sciences (social, material as well as religious sciences) so as to endeavor themselves within natural domain.[35]

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- The women education system deserves timely suggestions from the educational experts (on women education) and their experiences and observations to endeavor accordingly.
- The approach and methodology of teaching to female learners should be improved to offer learning activity interesting and comprehensible.
- The taste for pedagogy and sciences should be inculcated through better textual and thematic study with more focus on the sciences than on text books. This indepth and extensive reflection through lectures will enable the learners to get absorbed in sciences for study.[36]
- The teachers and students of these female seminaries should be provided better facilities to have better educational outcome.
- The Muslim society must modify its perception and attitude (collective as well individual) about the women education.
- The teachers in these female seminaries should be provided better salaries as per the legal norms.
- The teachers in these seminaries should be given training through the refresher/orientation courses, conferences and seminars.

8. **Prospects in Higher Education**

The courses and level of specialization in *madāris* across the globe and in Kashmir relate to the acquisition of sciences, pedagogy, research and investigation to cater the rising necessities and guide the Muslim community. These seminaries across the state perform their work with excellence and create a sense of endeavor in this regard. However, the main objectives of higher education should be producing experts in the respective branches of knowledge like *Quran, Hadīth, Fiqh*, theology, *da'wah* and other domains. To promote these specialized sciences and specific objectives, following deliberations might be kept in view.

- The preparation of capable experts (teachers and trainers) for the teaching of advanced sciences, to train the learners in *madāris* about the current challenges and critical situations.

- The creation of proficient teachers for these *madāris*, universities and other institutions of higher education to have best impetus and guidance in Islamic sciences.

- To promote specialists/scholars who may refute the propaganda, counter the allegations directed against religious sciences and may respond to them with convincing answers.

- To produce scholars of caliber in religious sciences whose expertise might critically look into the modern western concepts and thought in the light of Islamic *Shari'ah*.

- Re-structuring the curriculum of specialization (*takhassus*) via utilizing the experiences of Muslim world on modern lines might generate better outcome at this level.

- The selection should be restricted to the intelligent and capable learners for specialization (*takhassus*) who possess inquisitive taste and interest for it.

- To have the specialization of qualitative/objective nature demands the reform in primary and secondary education in religious sciences.

- The madrasah authorities should extend the scope of specialization from Fiqh to the other sciences like *takhassus fil Quran*, *takhassus fil Hadīth*, *takhassus fil iqtisad* (Economics and Finance), *takhassus fil Tibb* (Medical and Health), *takhassus fil Siyasah* (Polity), *takhassus fil Adiyān* (Comparative religion), *takhassus fi Adab al 'Arabi* (Arabic Language and Literature), and so on.

- There should be a balanced time schedule for the specialization minimum 2-3 years against one year.

- The learners at the stage of specialization must be obliged to write the dissertations or the thesis pertaining to their theme of specialization in a systematic and research oriented manner.[37]

9. **Conclusion**

So in the light of these observations, it is imperative that there should be more exertion in the specialization of religious sciences with seriousness, devotion and priority. As the communication gap shrinks because of globalization, the emerging

concerns are to be sorted in the light of Islamic sources. This key mission is to be performed by the men with talent, spirit and who qualify for such task in the age of dynamism and universalism.

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

Dr. Burhan Rashid[*]

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,

'Abdullah ibn Mas'ūd, Ubayy ibn Ka'b, Zayd ibn Thābit, and Abū Mūsa Al-Ash'arī.[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 Mas'ūd 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 *Qiyā*s.[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-Sharīʿah: Dīn, Nafs, Nasl, ʿAql, Māl*)[14], **(ii)** the normative part (*ijtihād, takhrīj, qaḍāʾ*, and the conditions of *taklīf* and *siyāsah sharʿiyyah*), 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 sharʿī*". 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 Qurʾān 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*, *sharīʿah*, *ijtihād*, *mujtahid*, *faqīh*, *taqlīd*, *muqallid*, *ʿilm*, *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*, *sharʿī aḥkām* (legal rules) and *ghayr sharʿī aḥkām* (rules that do not pertain to the law/ non-legal rules), *faqīh* and *muqallid*, *sharīʿah* and *fiqh*, *mujtahid* and *faqīh*, *ijtihād* and *taqlīd*, *ʿilm* and *fiqh*, *dalīl kullī /ijmālī* and *dalīl tafṣīlī*, narrow definition of *fiqh* and wider definition of *fiqh*, *qawāʾid fiqhiyyah* and *qawāʾid 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 *qawāʾid 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 Qurʾān 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-Maʾmūn (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: *maʿrifah 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 Muʿtazilah during the time of al-Maʾmūn, 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 Shāfiʿī jurists. The Shāfiʿīs define *fiqh* in its technical sense as: *al-ʿilm bi al-aḥkām al-sharʿiyyah al-ʿamaliyyah al-muktasabah min adillatihā al-tafṣīliyyah* (it is the knowledge of the *sharʿī*

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 Shāfiʻīs. 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 Shāfiʻī 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-Sharīʻah*, 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 *qawāʼid fiqhiyyah* (general principles of *fiqh*), unless these principles are explicitly mentioned in the texts of the Qurʼān and the Sunnah. Al-Ghazālī, who advocates the use of *maṣlaḥah*, does not accept this Shāfiʻī definition of *fiqh*, although he belonged to the Shāfiʻī 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 Shāfiʻī jurists is not very useful. In the opinion of the author the definitions of *fiqh* provided by two famous Shāfiʻī 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 *qawāʾid 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 Qurʾān, the Sunnah, Ijmāʾ and Qiyās (p. 37).

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

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

It is obvious that to each of these principles the words "except where the *Sharīʿah* 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 Sharʿī*. In chapter 3, the author discusses the literal as well as the technical meanings of *Ḥukm Sharʿī*. He also writes about the translation of the term "*ḥukm*" in English as injunction, command, prescription, and *sharīʿah*-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 sharʿī* 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 ʿalayh* (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 sharʿī* as provided by Ṣadr al-Sharīʿah in *al-Tawḍīḥ* as: "*Khitabu Allah-i taala al-mutaʾiliq bi-afal al-mukallafina bi al-iqtidaʾ 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 waḍʿī* (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 sharʿī*, while the *faqīh* is looking at the corresponding duties that arise. A similar distinction is made with respect to the *ḥukm waḍʿī* 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 waḍʿī*. 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); *taʿjīl* (early performance), *adā* (timely performance), *iʿādah* (repetition), *qaḍāʾ* (delayed performance), *wājib muwassaʿ* (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 ʿaynī* (the universal obligatory act), *wājib kifāʾī* (the communal obligatory act), *wājib muʿayyan* (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 muʾakkadah* (the emphatic recommended act); (a) *sunnah muʾakkadah* that complements and completes a *wājib*, (b) *sunnah muʾakkadah* that does not complement or complete a *wājib*, *sunnah ghayr muʾakkadah / nafl / mustaḥabb* (the non-emphatic recommended act), *sunnah zawāʾid* (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 (*fuqahāʾ*) have categorized *ḥukm taklīfī* and *ḥukm waḍʿī* 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. *'Azīmah* (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 *'azīmah* 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 *taʿzīr*. 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), *taʿzīr* (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 sharʿī*, 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-adāʾ* [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) *ʿaql* (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 jināʾi* (or legal capacity for criminal liability), (ii) capacity for the *khitāb* of *ʿibādāt* (or legal capacity for *ʿibādāt* / acts of worship), and (iii) capacity for the *khitāb* of *muʿāmalāt* (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 Qurʾān into three main categories as: **(1)** *aḥkām* pertaining to *ʿaqāʾid* (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 (*muʿāmalāt*).

Concluding this discussion the author writes: "It is to be remembered that though the particular cases mentioned in the Qurʾān 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 Fiʿliyyah* (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 Fiʿliyyah* 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 nata'āmal ma'a 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 Shāfiʿī 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 Shāfiʿī 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-sharīʿah* (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 ʿilm 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 *sharīʿah*: 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 Shāfiʿī jurists for establishing the *aḥkām*, the author, quoting Imām Al-Ghazālī, writes: "The Shāfiʿīs 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 *ʿibārat 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 Shāfiʿīs have six methods to prove the *aḥkām* from the texts. These are: *iqtiḍāʾ* (implicit meaning), *ishārah* (indication), *īmāʾ* (indication of compatibility), *mafhūm al-muwāfaq* (compatible higher-order meanings), *mafhūm al-mukhalaf* (opposite meaning), *maʿqūl* (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 Shāfiʿī jurists consider the higher-order meaning as *qiyās al-maʿnā* (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 Shāfiʿīs alone, but the others reject it and call it *qiyās maʿa 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-ʿillah*. 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 Shāfiʿīs 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 (*ʿillah*). He says that it is the first task of a jurist while applying analogy to find the *ʿillal* (pl. of *ʿillah*) of the *aḥkām* so that the *ḥukm* can be extended to the new case. Thus, without having known the *ʿillah* analogy is not possible. For the identification of the *ʿilal* of the *aḥkām* in the texts, the jurists have identified detailed methods. They are called *masālik al-ʿillah* (or the methods for discovering the underlying cause). The *masālik al-ʿillah* include: (i) the text (*naṣṣ*) itself,[36] (ii) *ijmāʿ* (consensus), (iii) derivation of the *ʿillah*, i.e., *takhrīj al-manāṭ*; when the underlying cause is not indicated directly by the text or by *ijmāʿ*, the jurist derives the cause through *ijtihād*. This is called the derivation of the *ʿillah* (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 (*ʿillah*) in the new case is verified so as to extend the *ḥukm* of *aṣl* (original case) to the *farʿ* (new case). This process is technically called *taḥqīq al-manāṭ* (or the verification of the *ʿillah* in the *farʿ*).

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 ʿilm al-uṣūl*), and some Ḥanafī jurists, he writes: The word *ḥujjah* in the definition of *taqlīd* means permission given by the *Sharīʿah. Taqlīd*, therefore, means following the opinion of another when the *sharīʿah* 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 *ijmāʿ* is not prohibited *taqlīd*.
(3) Acceptance of the word of an upright (*ʿādil*) 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 *Sharīʿah* 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-sharʿ*), (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

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[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, *Majma' 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-sharī'ah*. 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 shar'ī*)].

[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 *'illah* 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 'alayh* (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-far'*), [3] *'illah* (the underlying cause of the *ḥukm*), [4] *far'* (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 *sharī'ah*. *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 *ijmā'* 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 *ijmā'*; (3) *istiḥsān* on the basis of what is good (*ma'rūf*); (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 *sharī'ah*); (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-sharī'ah* (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-dharī'ah*), 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 *'urf* into two broad categories: *'urf qawlī* (usage) and *'urf fi'lī* (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 *ijmāʿ*, knowledge of the *maqāṣid al-sharīʿah*, 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 ʿaṭf* 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 (*īmāʾ*) or other hint. This would be the strongest type of *ʿillah*.

[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 (*ʿillah*) 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 *ijmāʿ*; 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 *qawāʿid 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-Naẓāʾir*".

Philosophy and the Philosophy of Science: An Islamic Perspective

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ABSTRACT

Philosophy is an endeavor of the pursuit of truth peculiar to human beings due to our sophisticated consciousness and the enduring soul bestowed on us by the Creator. Academically, Philosophy is called the mother of all sciences as most disciplines were taught /studied under this discipline. Philosophy of Science is a recent subject that helps us to determine what the basics of today's modern empirical science and its methodology entail. It also elaborates the difference between factual experimental natural sciences and pseudoscience. Islam has always encouraged believers to pursue science with a lofty purpose. God is the center of everything Islamic which includes the study of natural phenomena as signposts toward the Absolute Being. In the Paper we are going to discuss the meaning of Philosophy, its branches, Islamic approach to philosophy and sciences.

Key words: *Philosophy, Science, Epistemology, Metaphysics, Empiricism*

1. Introduction

The intellectual discussions among the early Arabs began with the Revelation of the Qur'an which gave utmost importance to rational thought, introspection, and contemplation. God prompted human beings to realize the Truth through the faculties of reason, empirical observation, and innate potentiality of intuition. In this regard, we are going to discuss various aspects of academic philosophy and explore how Islam presented its own Divine Philosophy. Moreover, we are going to thoroughly discuss the definition and methodology of modern science and the Islamic way of doing and pursuing science. Many Qur'anic verses have given much importance to discovering the various phenomena of Nature and it considers them as signposts towards the Absolute Being – God Almighty. Reason and intuition, if used soundly and properly will always lead us to acknowledge the Majesty and Power of the One and only True God – Allah the Glorious.

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First of all the paper will elaborate on the academic discipline of Philosophy and how the Qur'an proposed its own unique, infallible and Divine Metaphysics, Ontology, Epistemology, Ethics and Reasoning or Logic. Secondly, the definition, methodology and theories of science have been described in the proper manner of the Philosophy of Science. Finally, we will explore the Islamic Philosophy of Science and how it is different from the conventional way of doing Science.

2.   Philosophy

The Word 'Philosophy' is a combination of two Greek Words – 'Philo' meaning 'love of' and 'Sophia' meaning 'wisdom'. Etymologically it's 'Love of Wisdom'. Cambridge Dictionary defines Wisdom as "The Ability to use one's knowledge and experience to make good decisions and judgments".

1. It means to discern and acknowledge the facts and reaching to sound conclusions after acquiring the knowledge without any bias. The equivalent term in the Quran used for philosophical introspection is 'Wisdom' (*al-Ḥikmah*) which means understanding and sound reasoning. When one understands the Divine Guidance in the form of a Holy Book *al-Kitab* he is applying his God-given potential of *Ḥikmah*. Quran at various places states that God has sent the messengers with the task of teaching the sacred books and *Ḥikmah* to people. Quran is itself called the Book of Wisdom.

Furthermore, the technical meaning of the word Philosophy is 'the human pursuit of the Truth through reasoning, understanding, introspection and thinking'. There is a major technical difference between philosophy and religion. Most philosophers have relied on pure reason and logic in their pursuit of finding out the true nature of reality while most religions claim to be of Divine origin. In Islamic epistemology revelation is the infallible and supreme source of knowledge while philosophers start with reason. Another major difference is the believer will defend his already accepted beliefs through philosophical and logical arguments as classical Muslim Scholars used philosophical reasoning and logic which became a special religious science in the form of 'Islamic scholasticism' or *'Ilm ul kalām*. On the other hand, most philosophers, especially the secular ones start without any preconceived notions or definite beliefs and try to conclude at the end through a vigorous process of thinking.

As per the terminological and literal meaning of the word 'Philosophy', Islam can be considered as having its own philosophy. This will be further discussed in the coming sections. Let us first know the four important branches of today's academic philosophy.

i.   **Metaphysics:** Metaphysics is the study of those aspects of reality that are beyond the scope of purely physical or natural sciences. It asks lofty questions such as: What is the nature of Reality? Why is there something rather than nothing? What is the purpose of the Universe? What is the meaning of life? Is there a God? Are we merely mortal or do we have an immortal spark of the Divine called the Soul or Spirit? Metaphysics is a worldview of any person regarding what actually exists and what are the contents of reality. Aristotle called it the first Philosophy and said it is the discipline dealing with 'first causes and the principles of things'.

ii. **Epistemology:** Epistemology is the theory of knowledge. The topics discussed and thought about in this branch are related to the validity and the methods of acquiring knowledge. The questions raised in this subject are what is Knowledge? Is knowledge possible? If it is possible, does acquiring knowledge have any limitation? What are the different ways and means to acquire knowledge? Philosopher and scholar Noah Lemons articulates epistemology in these words, "Epistemology or the theory of knowledge is concerned with a variety of questions about knowledge and related topics. Certainly one of the most important questions is "What is the content of our Knowledge?"[1] There are various methods elaborated by the philosophers through which we can acquire knowledge. Rationalism or the use of Reason and Logic, Empiricism or the observation through our senses and intuition or a mystical way of extra sensory perception are some of the important means in this regard. There is no denying the fact that Rationalism and Empiricism are generally accepted and pragmatically applied by all and sundry. But intuition or prophetic revelation is believed by the religious or spiritually inclined humans.

iii. **Ethics:** Ethics also is a main branch of Philosophy and peculiar to humans. Since time immemorial we humans have been setting ethical and moral standards for ourselves and others to live in harmony with

ourselves and each other. Philosophers throughout the ages have extensively talked and written about morality and ethical theories. Most religions and many other philosophical systems consider morality and moral values as objective and universal grounded in the Will and commands of the Absolute Being. But secular philosophers mostly believe in the relative nature of ethics which could change due to changing times and throughout different cultural frameworks. All the great religious and philosophical thinkers have deeply professed and promulgated the basis and contents of ethics and the discussions are still going on.

iv.   **Logic:** We all use logic and reasoning in our thoughts, discussions and conversations. But some philosophers compiled and devised systematic techniques for coming closer to truth through sound reasoning and valid argumentation. Aristotle is commonly called the 'Father of Logic' because he meticulously devised its principles. But there were philosophers from other civilizations who wrote and expounded the rules of logic. "Logic is the theory of good reasoning. Studying logic not only helps you to reason well, but it also helps you understand how reasoning works"[2]

3. **Science and Scientific Methodology**

The Word 'Science' is derived from the Latin word '*Scientia*' meaning knowledge and knowing. It also means expertise and skill in Latin. A simple way of defining the term Science could be that it is a process by which the knowledge of facts is acquired. After the modern scientific revolution, it was generally defined as a systematic study of nature and natural phenomena through observation and repeated experimentation.

The epistemological basis of science is empiricism, which we already discussed in the previous section of philosophy. To add further, observation of the physical events, things and phenomena leads to a hypothesis by a scientist. A hypothesis is a tentative theory that goes through vigorous experimentation. If it does not pass the test of experimentation, it is out rightly rejected by the scientific community. But if it passes the initial test of experimentation, it is tested several times to acquire the same results. In the end, a Hypothesis becomes an established scientific theory.

Another major addition for maintaining the accuracy in the scientific methodology is the theory of 'falsifiability' popularized and stated by the philosopher of science, Karl Popper in his famous Book' The Logic of Scientific Discovery.[3]

This theory of falsifiability is supposed to be a demarcating line between actual science and pseudo science. A hypothesis can be scientific only if it can be refuted experimentally. Take the example of the Theory of Gravitation by Sir Isaac Newton. Commonly understood, objects fall on the ground due to gravity. This theory has the potential to be refuted or falsified. How? If someone drops a ball or a stone, and instead of falling it flies back upwards, the theory is nullified. But repeated experiments and observations have not gained any evidence contrary to the theory of gravity and it has passed all the empirical tests.

Another example of a falsifiable theory or report can be given as follows. If one claims that behind a hill is a village where many people live, it is a falsifiable report which can either be proven conclusively or refuted categorically. One has only to climb the hill and reach to the other side, if everything is empty, theory will be falsified and if people are living there, the theory will be established.

What is an example of an unfalsifiable, non-scientific hypothesis? It is a hypothesis or an opinion that has no way to be proven wrong. It can neither be proven nor disproven. Here is an example. If some people are sitting in a room and one of them claims or asserts that there is an invisible demon among them. How can this claim be falsified? It is a claim which can neither be proven nor disproven. It can neither be tested nor denied. No scientific experiment can be conducted on this claim and hence it is out of the domain of the scientific verification. This is an example of an unfalsifiable hypothesis and cannot be even considered as far as empirical observation and experimentation are concerned.

Modern science only confines itself to the discoveries in the field of natural and physical domains and distances itself from the pursuit of the Supernatural or the Absolute Truth, God. It is becoming more and more inclined toward the belief in philosophical materialism, and paranormal anecdotes, prophetic revelations, and mystical intuitions have been altogether taken out of the domain of science.

4. **Scientific Methodology**

Epistemologically scientific discoveries and technologies are based on empiricism. It is the direct or indirect observation of the physical, natural, and material

phenomena through sense perception and sophisticated tools. The journey from mere observation to becoming a scientific fact can be illustrated in the following steps:

1. Observation: In this first step a scientist observes any natural event thoroughly and uses sophisticated machinery to conduct vigorous research in any particular area. The ideal way of doing this is to observe experience, perceive and analyze things without any preconceived notions and bias.

2. Hypothesis: After thorough observation, a scientist develops his viewpoint and builds an opinion. The Hypothesis is not an established scientific fact or theory but an initial step to be looked into the nature of the research. But it's not an ordinary opinion based on wishful thinking and imagination. As previously stated it must fulfill the criteria of falsifiability.

3. Experimentation: A Hypothesis must go through tests and experiments to prove its worth. Either it will pass the vigorous tests again and again or fail to become a theory. Experimentation is a very important part of scientific research and methodology without which there could be no progress. Moreover, when the predictions made by any scientist come true it adds to the accuracy of the hypothesis. For example, when Albert Einstein devised the theories of General and Special Relativity, they were proven repeatedly by fulfilled predictions and experiments even decades after Einstein's death.

4. Theory: Lastly when a hypothesis fulfills all the criteria for being accepted by the scientific community, it becomes an established theory. Like the Theory of Gravitation, Relativity, Quantum Mechanics, Big Bang Theory, etc.

   5. **Philosophy of Science**

The Philosophy of Science discusses the basics and ground on which science is established. It simply elaborates the meaning, methods and importance of the scientific endeavor. The Philosophy of science is concerned with all the assumptions, foundations, and implications of science, and with the use and merit of Science.

The Metaphysics of Science is that the physical reality is knowable and orderly. Epistemologically human brain has the capacity to grasp, observe and discover the intricacies of nature and the Universe. So it has its own philosophical basis. To

begin with, the first question raised and discussed in the 'Philosophy of Science" is 'what Science is'? A major branch of philosophy, logic is highly used in science which is both deductive and inductive. But the general way of Science is based on induction.

"Induction is the method of (logical) reasoning in which a generalization is argued to be true based on individual examples that seem to fit with that generalization. For example, after observing that (living things like) trees, bacteria fish, animals and human have cells, one might inductively infer that all organisms have cells".[4]

A common example of induction is given by philosophers that after repeatedly observing that swans are white, it is concluded that all swans must be white. We reach a conclusion based on a generalization. So induction is going from particular to the general.

Another method of logic, also used in science is deduction. It is going from a generally accepted fact to a particular conclusion.

An example of deduction used in science is as follows: "Deduction is the method of reasoning in which a conclusion is logically reached from premises. For example, if we know the current relative positions of the moon, sun, and Earth, as well as exactly how these move with respect to one another, we can deduce the date and location of the next solar eclipse".

A famous example of deductive logic is as follows:

All Humans are mortal

Socrates is a Human

Socrates is mortal.

There are two premises or general facts and a final conclusion based on those facts.

We saw that Science has its own metaphysics, epistemology and logic which is nothing but the Philosophy of Science.

6. Islamic Philosophy and the Philosophy of Science

Before and during the time of the Prophet, Arabs were devoid of any philosophical thought. They were the masters of poetry and the religious tradition was of paganism and idolatry. There was almost zero literacy among Arabs and a tiny

minority had access to reading and writing. So, most of the prose and specifically poetry was transmitted generation after generation through oral transmission. On the other hand, there were many civilizations that were rich in philosophical traditions. For example, India had six systems of in-depth philosophical schools– Sankhya, Yoga, Nyaya, Vaisheshika, Mimamsa and Vedanta. Similarly, Chinese and other cultures were highly philosophically inclined.

It was the Qur'anic Infallible and Divine Philosophy that started the sophisticated intellectual discussions and thoughts among the early Muslims. As has been stated earlier that Philosophy has four main branches, the Qur'an elaborated and talked about all of them thoroughly and with Divine Authority. Qur'an led a great emphasis on using reason as a tool to discern the difference between truth and falsehood. For those who do not use their sound reasoning Qur'an addresses them in these words, "Surely the worst of the beasts in God's sight are those that are deaf and dumb and do not use their reason" (8:22). Here being deaf and dumb are used as metaphors for following traditions blindly and not using the God-gifted reason to reach to truth.

For believers, it is not only easy but incumbent to believe everything which the Qur'an states and commands. But for Non-Muslims, especially those who are rationally inclined, there must be a systematic way of preaching and sharing Islam with them. Qur'an states, "Invite all to the Way of your Lord with wisdom and kind advice, and only debate with them in the best manner. Surely your Lord alone knows best who has strayed from His Way and who is rightly guided"[5]

In this verse, Qur'an commands us to engage people who do not adhere to Islamic Faith with wisdom and reasonable argument. Being polite and using kind words is incumbent upon a preacher of Islam. As it is evident that there are different kinds of non-Muslims, some are outrightly atheists, others belong to one or the other religion. We have to be articulate enough to make our statement attractive and interesting and to grab the attention of the other. The preconditions for this are using wisdom, reason and kind language. Now it's obvious that a non-Muslim does not believe in the Muslim Holy Scriptures and our arguments should be based on philosophy, logic and sound reasoning. Especially for those who are highly rationally inclined like the followers of the school of Philosophical Materialism (*Dahriyyoon*). Now the question is what kind of philosophical help can Qur'an provide us and how it can be called a Divine Philosophy?

7. Qur'an – A Divine Philosophy

The basic question can be raised how can a religion be called a philosophy? Not always. But when we consider the literal and the terminological meaning of the word philosophy and discard the academic pursuit of this subject, we can say that Qur'an promulgated God's own Philosophy which is not based on man-made thought, introspection, reasoning and thinking processes. Let us consider the conventional branches of the academic discipline of the subject of Philosophy – Metaphysics, Epistemology, Ethics and Logic. Qur'an talks and gives detailed accounts of all these branches but with Godly authority.

As we stated earlier, Metaphysics raises lofty questions such as; why is there something rather than nothing? What is the actual reality? What is the purpose of the Universe or Existence as a whole? What is the meaning of life? Is there a Creator, God, or the Absolute Being? Are we mortal or immortal?

Qur'an answers all these questions. The existence of God is the default position of Being. God cannot, not exist as He is the Absolute, Eternal and Ultimate Being on whom everything is dependent and He is Self-Existing and is not dependent on anything or anybody. The Actual Immutable Reality is the Essence of God and His Unity. The primal purpose of the Creation of the Universe is God's Absolute Will, as He says, "Indeed your Lord is the Doer of What He Wills".[6]

Another main purpose of the Creation of the Universe is to manifest the Glory and Majesty of and to test the epitome of the Creation – Human Beings.

"Blessed is the One in Whose Hands rests all authority. And He is Most Capable of everything. He is the One Who created death and life in order to test which of you is best in deeds. And He is the Almighty, All-Forgiving."[7]

This is the metaphysical crux of the Creation, to create human beings for developing an intimate relationship with God and to pass the test of this world to attain salvation in the hereafter. The meaning of Human Life is to love, adore, respect and worship God in every sphere of our lives.[8]

Epistemology of the Quran is also simply comprehensible. Divine Revelation is the highest source of knowledge Islamically and 'Aql or Reason is an important tool to recognize and accept the Truth. The Qur'an also affirms the validity of the sense perception or empirical observation in the pursuit of knowledge as we perceive and

observe the creation minutely we realize the Might and Power of God in every blade of grass, from atoms to galaxies.

Ethics, another important branch of Philosophy is widely discussed in the Qur'an and Sunnah and the basis of morality in Islam is objective and grounded in God. Qur'an mentions a detailed account of ethical codes of conduct and their worldly and other worldly utility.

Qur'an sometimes uses the methods of rationalism, reasoning and logic to convince non-believers of its Truth. By and large, most of the people during the time of the Prophet believed in the Supreme Being, Allah. But they associated false gods and idols with God. There was a group among the Makkans who denied the concept of afterlife and resurrection after death saying how can they be resurrected when they will rot, Qur'an answered in a reasonable and logical manner. It responded by saying that if God is able to create them from the state of nothingness, it's also pretty easy for God to make them again.

Similarly, God uses the teleological logical argument for convincing materialists that God is the Designer. Qur'an says, "Do they not then **look** at the camels, how they are **created?**"[9] A camel is perfectly adapted to the desert environment and is of immense help to humans. The sophisticated design, especially in the living beings could not be a product of chance; hence a Supreme and Infinitely Intelligent Designer must exist to engineer, mould and create them. These are examples of the logical arguments used in the Qur'an.

Till now we saw the Qur'an, not as an academic discipline of Philosophy but as a Divine Philosophy. Now we turn toward the Islamic Philosophy of Science.

8.   **Islamic Philosophy of Science**
i.   **Development of Science by Medieval Muslims**

Natural Philosophy or the Natural Sciences are an essential part of human endeavour. It is the discovery of the natural and physical phenomena through observation and experimentation, eventually, some of the discoveries led to utilitarian technology and inventions which made human life easy and facile. Various branches of natural sciences have been worked upon from ancient times but it gained momentum primarily in the golden age of Islam when Greek Philosophy and Scientific books were extensively translated into Arabic and disseminated throughout the Muslim World. Starting from the 12th Century C.E. many European

scholars started to translate these Arabic philosophical and scientific books into Latin and various other European languages. Muslim corpus of science became a vehicle for the transmission of knowledge from the Muslim world to the West and eventually to the whole world.

One important thing to be noted is that Arab scientists were not the copycats of Greek sciences; instead, they rectified and fixed many loopholes and errors in the theories of the previous scientists. Though it is usually believed that the theory of Empiricism was given and popularized by John Locke in the 17th Century C.E., but many Muslim scientists had already devised the strict empirical scientific methodology based on which they discovered and invented many tools and medicines. Let us take the example of Ibn Haytham (965-1040 CE), he was one of those practical scientists who has given a detailed account of the empirical methodology which should be the ground and backbone of natural sciences. " In his writing, one sees a clear development of the scientific methods as developed and applied by the Muslims and comprising the systematic observation of physical phenomena and their linking together into a scientific theory (Empiricism). This was a major breakthrough in scientific methodology, as distinct from guess and gesture, and placed scientific pursuits on a sound foundation comprising systematic relationship between observation, hypothesis and verification".[10]

Similarly, other prominent Muslim scientists put forward many theories after clear observation and experimentation, one example is of Ibn Nafis (1213-1288) who is considered 'The Father of blood Circulation' even by many Westerners because he gave a detailed account of the pulmonary and coronary blood circulation centuries before William Harvey (1578-1657).

ii. Science and Religion are in Harmony

It is thought by many non-religious thinkers that Religion and Science are inimical to each other. This bitter experience is mainly because of the suppression of philosophical and scientific thought by the Catholic Church in the medieval era. The killing of a great Unitarian Christian and a Scientist, Giordano Bruno (1548-1600) and the persecution of Galileo Galilei (1564-1642) are clear examples of the clash between clergy and scientists. Galileo observed that earth is not the centre of the Solar System but all the planets including earth revolve around the sun. This was not against the teachings of the Bible but the interpretative tradition of the

Catholic Church had accepted the ancient theory of Ptolemy that Earth is the centre and the sun, moon and planets revolve around it. A basic reason was the peculiarity and sacredness of earth as Jesus came to this world. But eventually, Galileo won when later on Catholic Church publicly apologized for the Inquisition and today all the Catholics believe what Galileo observed.

This was not the case with the Medieval Muslim scientists. Religious scholars perceived no contradiction between Islamic beliefs and scientific discoveries. Ibn Nafis was not only a scientist but he belonged to the class of clergy himself. He was a Scholastic and a Jurist. In modern times almost no religious tradition is against the scientific endeavor or technological progress. Take the example of Francis Collins, Former Director of the National Genome Research Institute of the Federal Government of the United States. "Collins made a name for himself by discovering the location of three important disease genes –those responsible for cystic fibrosis, Duchenne muscular dystrophy, and Huntington's disease"[11] He had a great role to play in the sequence of the human genome. Besides being a great scientist, he is also a devoutly religious person. He has also written a best-selling book on the topic of the Existence and Majesty of God, 'The Language of God'. There are several examples but the above-mentioned examples conclusively prove that a scientist can be a devoutly religious and spiritual person as well and there is no dichotomy in this regard, whether in the medieval era or the modern.

iii.   Qur'an Promotes the Pursuit of Natural Sciences

Many verses of the Holy Qur'an prompt and instigate us to ponder, introspect and think about the natural phenomena. God has bestowed us with the faculty of senses and reason through which we grasp the physical aspects of reality. But there is a major difference between the conventional scientific method and the Islamic one. Modern science completely ignores the Divine aspect of Existence and assumes physicalism and materialism as true. They exclude God and Spirituality from their search for facts. But the pivotal point of the Islamic way of science is the search for the Absolute. Qur'an gives importance to that sound reasoning which will lead us to God and acknowledge His Might and Creative Power. Seeing and observing the balance and fine-tuning of nature and the universe, one concludes that it all can't be a product of chance and blind forces. Intelligent design and sophisticated creation necessarily require a Creator. But for that very purpose, it becomes a necessity for us humans to discover the intricate mechanism of the physical and biological things

which leads to scientific discoveries and inventions. Holy Qur'an says, "Verily! In the creation of the heavens and the earth, and in the alternation of night and day, there are indeed signs for men of understanding. Those who remember God (always, and in prayers) standing, sitting, and lying down on their sides, and think deeply about the creation of the heavens and the earth, (saying): 'Our Lord! You have not created (all) this without purpose, glory to You! (Exalted be You above all that they associate with You as partners). Give us salvation from the torment of the Fire.'"[12]

The above verse, like many others, encourages us to deeply ponder over the creation of God, the Universe and all it contains. Seeing the symmetry and beauty of the creation of Allah, one always remembers Him in every situation. This verse also refutes the assumption of the philosophical materialism that there is no inherent or objective purpose to the Universe, life and the whole physical reality. God has made everything with a specific purpose and plan. Ultimate salvation is for those who recognize and accept this Truth. Today's New Atheists give the impression that Science and Religion are poles apart and in clear contradiction. Let us see what prominent scientists have to say about this. Sir Isaac Newton was one of the most remarkable physicists of his time and his discoveries and inventions are still acknowledged and used. He says, "This most beautiful system of sun, planets and comets, could only proceed from the counsel and dominion of an intelligent and powerful Being... Blind metaphysical necessity, which is certainly the same always and everywhere could produce no variety of things. All that diversity of natural things which we find suited to different times and places could arise from nothing but the ideas and will of a Being necessarily existing".[13]

Max Planck, the world-famous scientist of the twentieth century, who did fundamental work in understanding the atom, and who was awarded the Nobel Prize in Physics in 1920 regarded both Religion and Science to be mutual helpers in leading us to Almighty God. He says: "Religion and Natural Science are fighting a joint battle in an incessant, never relaxing crusade against skepticism, dogmatism against superstition, and rallying cry in this crusade has always been, and always will be: On to God."[14]

It means both Religion and authentic science must be in harmony to discern the facts and eliminate falsehood. They must be in harmony and the Divine aspect of reality should be included in the pursuit of natural sciences. Both Qur'anic verses and natural phenomena are called 'Āyah' in the Qur'an, that is, both are the signs of

God. Natural events and the contents of the whole physical universe are signposts toward the Absolute Truth, which is God. Maulana Wahiduddin Khan articulates this message in these words, "The greatest evidence of God before us is His creation. Nature itself and our study of nature, both proclaim the fact that there is one God who, in the infinity of His Wisdom, has created and continues to sustain this universe".[15]

9. Conclusion

Modern conventional science is devoid of any spiritual element and there is no mention of God and the Divine in the science textbooks and highly sophisticated books written by eminent physicists, biologists and chemists. The main reason for excluding Godly contents from the scientific literature is over emphasis on empirical nature of natural sciences. The belief is that which can't be empirically proven and tested cannot and should not be the domain of physical sciences. God, Soul, and other supernatural entities can't be observed through sense perception and observation directly and they are excluded. This epistemological framework lacks the aspect of Rationalism. Qur'an in many places has given stress on using one's reasoning through serious thought, pondering and introspection. The logical conclusions of the origin of the Universe and the teleological fine-tuning of the physical reality necessarily demand and require a Supreme Creator but there's almost no emphasis on Reason as a source of knowledge in scientific circles and over-emphasis on the only empirical way of knowing.

The Pivotal Point and the kernel of the Islamic way of doing and pursuing science are to keep God in consideration primarily and regard the Signs of God in Nature as the stepping stones towards the Absolute Truth – God. This is what the Muslim theorists and philosophers of science are writing and talking about these days. There is a dire need among the Muslim circles to devise a Divine Methodology of doing science far aloof and opposite to the materialistic assumptions.

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Islamic Education and Educational Development: Challenges and Prospects

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ABSTRACT

The paper attempts at deciphering the purpose and role of education in Islamic world-view. Relating the developments in the field to the modern times has thrown up serious challenges to the survival and development of its brilliant legacy. Modernism developed in the course of post-Renaissance philosophy led the whole civilizational development of man on the basis of positivist philosophy. Development of science and technology, though inherited by the West from the Islamic world, took a different turn and created the so-called scientific temper and man's insistence on knowing the Truth from the empirical method only. His senses, ratio and reason are sufficient to guide him, not only know the reality but to manage himself and the world to the development of the best after best. Materialism, capitalism, communism, socialism, hedonism, colonialism, neo-colonialism, globalization are some of the fruits of this thinking. Ecological Crisis, Economic Recession, Big gaps between rich and poor, continued existence of conflict spots, wars, terrorism, disinformation campaigns, too should be owned up by the upholders of this civilization. Energy crisis, pollution, loss of meaning, Postmodernism has only added to the frustrations of the modern man. That crisis is overwhelming and no solutions are in sight for the modern man has put up serious challenge and opportunity for the Ummah of Islam to delve deep into their ethos and come up with authentic and moderate solutions to the crisis. The paper shall elaborate some critical measures, which can help the modern man overcome the crisis and lead a life which is fulfilling not only in this world but brings God's grace, hence salvation in the hereafter. Islamic education shall marshal the spiritual domain of one's personality to dominate his bestial self with full utilization of his sensory, rational and experiential capabilities. Same has to be the treatment to the society and the humanity in general. Muslim communities have to develop necessary intellectual capabilities to convince the modern man to moderate his worldview. By developing a transcendental world-

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view, Muslims can build up bridges across authentic traditions for developing a universal model of balanced education where man's self, society, state and globe is relooked from the divine perspectives, a legacy of religions, last of all authentically nurtured and continued by the Islamic Ummah.

Key words: Transcendental world-view, Spiritual domain, Islamic education, Global crisis.

1. Introduction

Islamic education is integrally linked to its world-view. *Tauheed* (Monotheism) is the bedrock of Islamic civilization. Knowledge of One True God leads one to believing in Him and striving in His path to actualize the belief. Purpose of life, Purpose of the creation, relationship of man to God, to His creation and the end result of true belief, right thoughts and right actions are some dimensions of Islamic world-view. There are a set of answers for these questions which are derived from *Tauheed* and there are many other possible answers to these questions which are not entertainable by the *Tauheedic* world-view. One True God is the source of all, besides God, everything else is creation. The universe or the universes, man, angels, jinn are all created by Him only. Man and Jinn have been created for His worship only. Islamic education is to actualize the inherent tendencies of man to accept and actualize his real status i.e., being a servant (*'Abd*) of God only. Islamic legacy of learning has made man positively inclined to know his Creator and Sustainer, develop attitude and behavioral patterns which suit his true status. It introduces to man a set of achievable targets in his personal, family and social life. It guides him with the moral, spiritual and legal frameworks in all spheres of his life, worship, economic intellectual and political domains. While Islam's legacy is securely based on divine scripture and the blessed role model of the Prophet Muhammad (ﷺ), it allows the profound scholars to seek the authentic guidance and solutions to the temperament and needs of man in the dynamics of time and place. Islamic scholarship has successfully been at the vanguard of exerting their best efforts towards this goal (*Ijtihād*). Islam terms the Muslim community (*Ummah*) as the median *Ummah*, which treads the middle path. Historically speaking Prophet Muhammad (ﷺ) is a link between the antiquity and the Modern world. While

antiquity possessed and was dominated by the divine legacies and innumerable prophets and messengers of God, the modern man seems to be too obsessed with his mundane and material concerns only. Hence Islam is a link between spirituality and material concerns of man. A happy blend of the spirit and matter. The modern man can be rescued by Islamic education not only by moderating this materially obsessed life but offering salvation to him by connecting him to God as higher ethical values.

2. Prophet Muhammad (ﷺ) and Islamic Educational Legacy

Holy Quran is the word of God, sent by God through archangel Gabriel to Muhammad (ﷺ) for transmission and guidance of mankind across regions till doomsday. The Prophet (ﷺ) exemplified the commands and objectives of God in time-space framework and demonstrated how humans, on individual, family and social level can harness the noble qualities and noble goals and eschew the wicked tendencies within and without. Knowledge, learning, teaching, inculcating practices in accordance with knowledge, acquired not only deeper meanings but sanctity as well. Spiritual and high ethical considerations overwhelmed even the tasks which seem to be otherwise mundane. Here, divine knowledge as obtained through the divine scripture, Al-Quran and the Prophetic Sunnah (utterances and practices of the blessed Prophet which are the second most important sources of authentic knowledge and practice), guides man's thoughts and experiences as obtained through his sensory, rational and intellectual faculties. Here, transcendental truths accommodate the terrestrial truth and the man secured on the slippery planet of phenomenon. Godliness permeates human thought and action. The Prophet declares that he has been sent as a teacher (par excellence).

It is not surprising that the blessed Prophet led the educational movement of mankind, with widespread and profound individual and societal implications. Literacy, learning, teaching, reforming, moralizing, spending on weak and orphan, earning through rightful means only, living dignified life of piety, purity, worship, grace, courage, truthfulness, virtue, patience became all integrated into the teaching-learning milieu of the community.

'Scholar's ink is holier than the martyr's blood', thus spoke the Prophet and nurtured a responsible legacy of learning and teaching, sanctified, objectives, motivations and processes involved so much as the fruits of knowledge and learning didn't confine to any class, society, region, ethnicity and country of the world, but became a universal phenomenon a privilege accessible and achievable for all for ennobling one self. Spread of Islam across Arabia, beyond Arabia into Iran, Iraq and Syria, then Egypt and whole of North Africa, across Gibraltar into Spain, South Asia, Central Asia, South East Asia, carried with it the noblest culture of transmission of knowledge and Teaching-learning legacy. This legacy led to the development of oral traditions, transfer of oral transmission to writing ones, checking, rechecking the written forms, investigating the chain of transmitters, their beliefs, memory, honesty, dealings etc. to ascertain their reliability. Emergence of multiple Islamic *'ulūm* (sciences) around Quran and Sunnah like *Ilm al- Qirat* and *Ilm al-Tajweed* (Recitation), *Ilm Asma al-Rijal* (sciences related to investigation of persons transmitting *Hadith* literature) have generated unprecedented systems of knowledge acquisition and transmission. Despite wide differences among the people in diverse regions, Islamic sciences have succeeded in overcoming the hazards of time and secured the authenticity of not only Quran and Sunnah but even the *'ulūm* (sciences) related to them, so much so that a living Islamic tradition thrived across the globe testifying to the superior system of preservation of sacred knowledge.

Islamic world-view generated a quest for knowledge and within short span of time splendid knowledge hubs were established; *Bait al-Hikmah* (House of Wisdom) established by the Abbasids in 9th century attracted scholars from the most civilized nations of the world across regional, religious and cultural divides. Philosophy, Astronomy, Mathematics, Optics, Physics, Chemistry, Geography, Medicine and other branches of sciences got a boost. Human contributions in Greece, China, India, Iran, Syria, Iraq and other places were synthesized and developed by the veterans over the centuries across the Islamic world from Spain to China. Centers of Excellences in the Islamic world continued to develop for centuries and prove a beacon for the world. Free exchange of ideas, skills and techniques was the order of

the day. No part of the then world was left unaffected by the knowledge and civilizational march of Islam. Even the Tatar invasion and destruction of the most important parts of the most civilized world from Central Asia to West Asia in 13th century could not extinguish the torch of enlightenment of Islam. Even political and economic upheavals in the heartland of Islam could not prevent the emergence and development of Islamic learning in the periphery – Ottomans and South East Asia testify the veracity of Islam's inner strength to touch the inner most chords of man and affecting it positively in the absence of a political and military superiority of the upholders of faith.

3.   **Modernism and Educational Crisis**

Emergence of positivist philosophies in the West and Western man; rebellious attitude to religion snapped a living link of man with God. Man's world view changed. His self identity and his purpose of life, his relationship with others was informed not of religious data but of his animalistic speculations, wants, wishes and fantasies. Most of his presumptions were speculative, his senses and rationality were employed to his assertion that he is self-sufficient and does not need any superior sources for his guidance. He is the be all and end all of life. He is rebellious of God. He ignores rather rejects divine guidance. He does not accept the life after death and that this life is only a testing place. West's anti-religious attitude led to the development of a science which is not a sign of God's grace and power as was the case during medieval period. While the West benefitted profusely from the development made by the Muslims during their heydays spanning many centuries in all the fields of science, it, however, mischievously ignored the spiritual and ethical underpinnings of that legacy. Now the purpose, motivation for acquisition of knowledge was changed. Man assumed the position of God and this worldly life for creating a utopian paradise. Development of materialism, capitalism, industrialization leads to colonialism, neo-colonialism wars, Nuclearization, militarization and big gaps between rich and poor. Discriminations, commercialization of knowledge, consumerism are some of the offshoots of modernism. Knowledge for power, more knowledge for more power, power for more power became the mantra of modern man living across the globe. East and West are reverberating with the same mantra as globalization has seriously

influenced all the cultures of the world. Post modernism is simply an admission of the falsity of modernistic presumption without any clue for solutions. Global Crisis spanning all the spheres of human thought and action is no more an intellectual problem. It is an existential one. Human race is on the brink of extinction, mostly outcome of its thought and action.

Like other cultures, Islamic culture too has not been spared of the influence of the modernistic ideas. Hence, the question of self-introspection is called for. If the doctors get infected, they need to take care of themselves, then only they can treat the patients. Modernism has evoked varied types of response from different individuals and groups in the recent centuries. However, well intentioned they have been, they seem to be now inadequate for the enormity and complexity of the crises faced by the humanity. Highly specialized institutions of learning have been almost made exclusive to those who possess enormous material resources. Globalization and commercialization of education has only reinforced the supremacy of white man and increasing of gulf between have's and have not's. Consumerism has made the overwhelming majority of the population just as the consumerists for the benefit of the few. General humanity, weak, wronged and those falsely hoping to catch up with the West need to relook if they are chasing a mirage; how their concept of education and their educational institutions help them prose men of correct vision, character and determination to seek solutions to their problems. Following blindly the west, is only to repeat the blunders committed by them and land at the brink of cultural suicide and intellectual bankruptcy. Out of box solutions are often talked about, less thought about. The west's insistence and forcible imposition of its vision and interests on the globe has resulted in accentuating the crisis.

4. Development of Islamic Education: A Panacea for the World

The world of Islam needs educational leaders and institutions that value the highly balanced and moderate civilization the most, produced by its divinely inspired legacy, which spiritual and ethical framework overwhelms man's physical, material and mundane interests. Man's position on earth is to be reiterated as vicegerent of One True God, who develops a paradigm for thought and action, where due concern is taken for varied human needs and wishes as per divine scheme. Man's spiritual

dimension is more important than the physical one. Hence, educational philosophy of a God-centric man strikes the median path with everything. Human soul, spirit and material self is harmonized, the peace returns to man. This harmony is sought in family and state by subordinating the bestial tendencies of individual, society and the state to the spiritual and ethical imperatives. Safety and security of traditional knowledge and its institutions become more important because authentic divine knowledge with all piety and purity attached to it can be called upon to help build up an intellectual and cultural landscape where humanity can seek the redressal of their problems. Further, Muslim intellectuals and institutions need to shun the Oriental frameworks which have kept them captives for long to go beyond it and to seek the foundational principles of building a truer and purer intellectual ethos for appropriating Islamic civilizational goals in the contemporary period. They need to understand and realize that their problem is not lagging behind the West in material possession but making enough efforts to develop intellectual tools to connect to the modern mind and soul for making him realize the criticality of divine message for the mankind. A lot of intellectuals in the most industrially advanced countries have been expressing their anguish over the state of affairs and declaring the inadequacy of their methods and tools for redressing the crisis, but Muslim intellectuals are probably not well updated about this aspect. High intellectual caliber with commitment, a noble soul with pious intentions, groomed in the profound legacy of Islamic culture could help formulate the narrative which has a universal appeal, and addresses the connection between current global crises and the deficiencies of the contemporary educational system. That way it is not a Muslim problem but a global human problem. Islam enjoins its followers to guide the humanity to the truth. Intellectual field is the one which deserves the best of input. Necessarily, a global human narrative has a global human appeal. It can have its regional and local derivatives which could address regional and local issues in the light of the global narrative. Hence, educational development in the Islamic perspective would mean primarily developing a correct perspective on education in tune with the purpose of man on earth on the basis of divine commands. Secondarily, it would mean fulfilling the basic needs of the common people without institutionalizing discrimination and exploitation of the common people,

development of appropriate institution and strategies for the correction and replacement of the existing structures and institutions to ensure equality and justice among the people. Enjoining good and forbidding evil is the duty of this *Ummah* hence identification of good objectives and policies is imperative and making them as propelling forces of society is called for. Similarly, identifying the negative targets, convincing humans of destructiveness of such thoughts, institutions and practices is a challenging task but worth pursuing.

5. Conclusion

A reappraisal of Islamic world view shall re-enforce the faith of the *Ummah* to rejuvenate their intellectual commitments to the *Tauheedic* (Monotheistic) paradigms. Treating all mankind as his family and developing appropriate intellectual tools to develop a universal human narrative is the duty of the faithful community, *Ummah*. Post Renaissance man has developed positivist philosophy that led man's neglect and rebellion to God. Hence, capitalism, colonialism, neo-colonialism have damaged mankind enormously. Modernism and post modernism has only demonstrated the inadequacies of human thought in the absence of divine guidance, which the positivist man debunked, led to the debasement of human, who forgot his true own self (spirit) and became just another animal – to pursue only animalistic aspirations. Enormous global crises from environment to man's individual life are permeated by this ethos of forgetfulness (forgetting his origin, purpose and end). Educational systems of the western /materialistic world views have failed to restrain the fall of the modern man which has pushed the civilization to the brink of animalization. Islamic education and its development in the contemporary scene demands an appraisal of the current global crisis, its dimensions and complexities involved. Certainly, its educational institutions follow only the world view it approves, thus producing those who are not part of solution but of problem. Appropriate intellectual apparatus need to be devised and developed to address the global human crises in Islamic perspective and development of appropriable solution sought. This is possible provided well meaning intellectuals, well versed and the rich legacy of Islam do the needful. New

and bright future for Islamic education awaits those who have vision and courage to take up the cudgels.

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