

***Ijtihad* in Islam: an Analysis of Shah Wali-u Allah's Approach**

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Abstract

Ijtihad in fiqh means the effort of the *mujtahid* to his utmost in resolving an issue of *Shari'ah*. It facilitates the formulation of the rulings of Islam regarding the emerging problems which are not specifically addressed by the *nusûs* — the Qur'an and the Sunnah. Scholars and jurists of Islam have extensively dealt with the subject down the ages. During the early medieval ages, *fuqaha* and *mujtahids* particularly *aima-i-madhahib* developed *ijtihad* tremendously that made a great impact upon the later times. Shah Wali-u Allah, the outstanding Islamic scholar of the 18th century Indian subcontinent, also treats the subject in many of his works. The present paper is a humble attempt to approach critically his concept of *ijtihad* in the context of his *Iqd al-jid fi al-Ahkam al-ijtihad wa al-taqlid* and *Al-Insaf fi Bayan Sabab Ikhtilaf*, focussing on its classification and implications. He defines *ijtihad* as an effort to understand the derivative (*furu*) rulings of the *Shari'ah* by means of detailed arguments and the four basic sources— the Qur'an, the Sunnah, *ijma'* and *qiyas*. Shah Wali-u Allah's views about availability of *mujtahids*, their qualities and classification are also examined in this paper along with their implications.

1. Introduction

Ijtihad ordinarily means striving to ones utmost in settling any affair. In fiqh it means the effort of the *mujtahid* to his utmost in resolving an issue of *Shari'ah*. It facilitates the formulation of the rulings of Islam regarding the emerging problems which are not specifically addressed by the *nusûs* — the Qur'an and the Sunnah. Scholars and jurists of Islam have extensively dealt with the subject down the ages. During the early medieval ages, *fuqaha* and *mujtahids* particularly *aima-i-madhahib* developed *ijtihad* that made a great impact upon the later times. Shah Wali-u Allah, the outstanding Islamic scholar of the 18th century Indian subcontinent, also treats

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the subject in many of his works. The present paper is a humble effort to approach his concept of *ijtihad*, its classification and implications in the background of the earlier historical development of *ijtihad*. We rely here chiefly on Shah Wali-u Allah's *Iqd al-jid fi al-Ahkam al-ijtihad wa al-taqlid* and *Al-Insaf fi Bayan Sabab Ikhtilaf* and the treatment follows the method of descriptive analysis.

2. Meaning of *Ijtihad*

Ijtihad is from the root word 'Jahad' which means 'to strive, labour, toil or exert one's power or efforts or ability'. So *ijtihad* literally means striving or exerting to one's utmost power or efforts or ability in prosecuting the affair.¹ As a technical term of fiqh it means the faqih's (jurist's) exerting the faculties (of mind) to the utmost to form an opinion in a case of law. It attempts to work out a solution of any difficulty in the law by using reason and comparison. To Abu Ishaq Shatibi (d.790/1388) an eminent jurist of Islam, *ijtihad* is:

An extreme intellectual effort employed by expert interpreters to have a correct and definite perception of the original basic maxims of Islamic law with a view to derive operative orders from them to provide the necessary legal solution of the problems and issues faced by an Islamic society at any stage of its development. The whole purpose of interpretive efforts is the legal rules which a society needs to meet an unending stream of new controversies, conflicts and disputations arising out of the eternal problem of conflicting interests, human and material.²

While summarising the meaning of *ijtihad*, Amidi (d. 631 A.H.) says that *ijtihad* is that academic research of the *mujtahid* who exerts his utmost intellectual endeavour in it to legislate the laws of *Shari'ah* wherever the *nasûs* are silent.³ Therefore, *ijtihad* is an intellectual effort, which a *mujtahid* exercises to his utmost for deriving a solution to the issue in question. The effort implies also the interpreting the ruling of *nasus* to apply them in required situation of life. Because of the diverse nature of *ijtihad*, it is sometimes, classified into two categories – (1) *Ijtihad-i-Naqis* which is an interpretative effort of an average level, (2) *Ijtihad-i-Tam* which is

performed in the matters where the *nasûs* (textual rulings) are silent and the law is inferred from the foundational principles of the *nasûs*.⁴

3. The Proof of *Ijtihad*

Both the Qur'an and the Sunnah direct to exercise *ijtihad* and to formulate laws and settle the growing problems of their society under the new situations. In the Qur'an, the guidance is mentioned through highlighting the responsibility of Prophet Muhammed (SAAS), which is to decide the matters of the people according to Allah's guidance: and the mutual consultation of believers is instructed to settle their social issues. Both the Prophet and the Believers are allowed to resort to *ijtihad* in the interpretation and application of Allah's guidance under the changing conditions of the times.⁵

Prophet Muhammed (SAAS) sanctions the exercise of *ijtihad* in his discourse with Mu'az bin Jabal, the governor of Yemen (which is known as Hadith Mu'az) and quoted by the narrator as following:

The apostle of Allah, when he was sending Mu'az as the governor to Yemen, asked him when you will be called upon to decide a suit, then what will you do? Mu'az replied that whatever is in the Book of Allah, I will judge according to it. The Apostle observed, if it is not in the Book of Allah? Mu'az said, I will judge according to the traditions of Apostle of Allah. The Apostle observed, if it is not in the traditions? Mu'az replied, I will decide it according to my opinion. On hearing this Apostle of Allah was pleased, and as a gesture of his pleasure patted his chest and observed, thanks to Allah who gave the messenger of the Apostle of Allah divine guidance (God's graciousness) which is pleasing to Apostle of Allah.⁶

In another Hadith, the Prophet's (SAAS) appreciation of *ijtihad* reads as following:

Whenever a *fiqhi* decides, by means of interpretation, an issue presented to him correctly, and then he gets twice the reward, while when he decides incorrectly, even then he gets reward.⁷

Ijtihad has, therefore, attained a tremendous significance in the legal history of Islam, right from the times of the Prophet (SAAS).

With the change of times and the emergence of the new problems, *ijtihad* has been performed by the Sahabah, their Successors and the *a'ima* of the legal schools of Islam (*madhahib*). This early development of *ijtihad* is characteristic of various methods and modes which broaden its scope and adaptability.

The Prophet, as mentioned earlier, exercised *ijtihad* and allowed his Sahabah to perform it whenever they would find its need. Some groups of Muslims do not conform to the view that the Prophet exercised *ijtihad* or opinion as they think that the revelation from Allah alone used to guide him in all matters of life.⁸ The majority of the Muslims, however, admit that the Prophet (SAAS) performed *ijtihad* occasionally keeping the spirit of Revelation (*wahy matlu*) in consideration.⁹ The latter trace this exercise of *ijtihad* of the Prophet in the Qur'anic verses which invite the Muslim to use his thinking in order to understand the guidance of Allah, and in his practices of daily life. The Prophet's agreement to the opinion of Abu Bakr in the issue of treatment with the prisoners of Badr and at other occasions to the opinions of 'Umar is cited as the examples of his *ijtihad*.¹⁰ His resorting to opinion (*ra'i*) was on the occasion when no revelation had been received by him on the issue. The opinion becomes a *Sharī'ah* ruling when nothing adverse to it is revealed by Allah to His Prophet. In other words Allah does not let his Prophet act arbitrarily but checks his opinion.

4. Early Development of Ijtihad

However, it were the immediate followers of the Prophet (Sahabah) who made ample use of *ijtihad* during their time, because they had to face new problems with the change of times and the expansion of Khilafah. A huge number of their decisions (*fatawa*) have been collected which depict their various methods and modes. Among the great Sahabah the *ijtihad* of Abu Bakr, 'Umar ibn Khatab, 'Uthman, 'Ali ibn Abi Talib, Ibn Mas'ud is worth to note for their specific methods and wide social implications.¹¹ Maymun ibn Mahran sums up the method of Abu Bakr's *ijtihad* as following:

Whenever a dispute was referred to him. Abu Bakr used to look into the Qur'an: if he found something according to which he could pass a judgement, he did so. If he

could not find a solution in the Qur'an, but remembered some relevant aspect of the Prophet's Sunnah, he would judge according to that. If he could find nothing in the Sunnah, he would go and say to the Muslim:

'Such and such a dispute has been referred to me. Do any of you know anything in the Prophet's Sunnah according to which judgement may be passed? If someone was able to answer his question and provide relevant information, Abu Bakr would say: Praise be to Allah who has enabled some of us to remember what they had learnt from our Prophet. If he could not find any solution in the Sunnah, then he would gather the leaders and elite of the people and consult with them. If they agreed on a matter then he passed judgement on that basis.¹²

If the above mentioned process failed to produce any result to resolve the problem, Abu Bakr then resorted to his own opinion and interpreted the text (*nass*) in such a way as its legal implications become apparent or by exercising his own legal intelligence. The first method of *ijtihad* is found in his interpreting of the word 'kalalah' of the Qur'an by which he means one who has neither ascendants nor descendants. The other method of *ijtihad* – *istanbati* method – is applied by him in respect of the denial of the payment of Zakah by some tribes of Madinah. On this Abu Bakr told Umar that he would not hesitate to wage a war against such refusers of Zakah as, in his opinion, it amounted to the denial of Salah and Hajj, the two basic pillars of Islam.¹³

The same method of *ijtihad* is used by him in his decision that declares both mother's mother and the father's mother as heirs of the property of the deceased.¹⁴

'Umar's *ijtihadat* are also very important in the history of fiqh. His exercise of *ijtihad* is characteristic of paying serious consideration to the purpose of the *Shari'ah* and finding the reasoning behind a particular ruling. His method of *ijtihad* is explained in his following advice to Abu Musa Ash'ari, the *qadi* of Basra:

Judgement is to be passed on the basis of express Qur'anic imperatives or established Sunnah practices. Make sure that you understand clearly every case that is brought to you for which there is no applicable text of

the Qur'an or the Sunnah. Yours, then, is a role of comparison and analogy, so as to distinguish similarities, in order to reach a judgement that seems nearest to justice and best in the sight of Allah.¹⁵

In fact, analogy or (*qiyas*) owes much to its introduction in fiqh to 'Umar ibn Khattab. By this method *ra'i* (opinion) is systematised to form the *Shari'ah* ruling. Umar's use of it was to explain the adaptability of the legal ruling under the exigencies. It is clear from the pronouncements of suspending the share of Zakah given to reconcile the non-Muslims and disallowing the cutting of hand of a thief during the famine days and starting the distribution of conquered land among the army.¹⁶

The other great Sahabah like 'Uthman, 'Ali, Abdullah Ibn Mas'ud have also exercised *ijtihad* to settle the problems faced by them from time to time. Notwithstanding his calling the judgements or precedences of the first two Khulafa as valid *Shari'ah* rulings, Uthman performed his own *ijtihad* on the issue of recitation of the Qur'an¹⁷ and the shortening of the Salah in Mina when he performed Haj.¹⁸ 'Ali the fourth Caliph of Islam¹⁹ gave a number of *fatawa* (legal judgements) which are of great significance. Unlike 'Uthman he reconsidered some issues decided by 'Umar and gave his own decisions. For example with regard to *iddah*, 'Umar was of the opinion that if a woman marries before the expiry of *iddah*, the person to whom she married should be given a few strips and they should be separated. However, they could marry after the completion of period of *iddah*, provided that no consummation had taken place. If this had happened the marriage, in his opinion, was unlawful and they could have married after the completion of two *iddahas* (waiting periods). 'Ali ibn Talib, however, differs with 'Umar on the issue and calls the marriage as legitimate, provided the woman has completed her *iddah* after attaining the divorce from her first husband.²⁰ Again 'Ali's opinion is at variance with 'Umar who holds that the *iddah* of a pregnant woman is upto her delivery time while the former is of the opinion that it should be either four months and ten days or the delivery time whichever is later²¹ Unlike 'Umar, 'Ali and Abu Musa Ash'ari do not consider the three consecutive *talaqs* a single *talaq* but as three *talaqs* by which the marital relation between the couple

becomes unlawful.²² Ali Ibn Abu Talib held the opinion that three *talaqs* are required when a slave girl is to be divorced by a freed husband and Uthman ibn Affan and Zaid hold that only two *talaqs* are required for such a divorce.²³

Ijtihad under the Sahabah and the Tabi'în served as a source of *Sharî'ah*. Since both the generations have good understanding of the Qur'an and the Sunnah, they formed easily their *ra'i* on the issue faced by them. Their *ra'i* was in consonance with the spirit of the *Sharî'ah*. They exercised *ijtihad* both at the individual and the collective (*ijma'* which was prevalent under the Khulafa al-Rashidûn) levels. Their *ijtihad* was characteristic of *qiyas*, *istishab*, *istishan* and *istislah*.²⁴ Although most of these terms had not been used by them, yet their fiqh formulations were identical with them, bearing wide scope and expediency.

5. *Ijtihad* and the *A'ima-i-Madhahib*

Ijtihad, however, found a remarkable development during the later half of the second century and the third century Hijra. During this period the legal schools (*madhahib*) of the illustrious *mujtahidûn* developed and spread far and wide. All the four Sunni schools of law — the Hanafi, the Maliki, the Shafi'î, and the Hanbali — resorted to *ijtihad* in their fiqh. Their *ijtihad* is more systematic than their predecessor fuqaha.

In the fiqh of Abu Hanifah (d.150/767) an extensive use of *ijtihad* is found while settling the legal issues faced by him, Abu Hanifah used various methods of *ijtihad*. Wherever there was no definite directions (*nasus*) available, he exercised *qiyas* by discovering the common cause (*illah*) between the original and parallel cases or, sometimes on the basis of mere resemblances between *asl* (original) and *far 'a* (derivative). That is why the Iraqian fuqaha demanded “four-fold confession of the culprit before incurring of the *hadûd* punishment for adultery by an analogy with the four witnesses prescribed in the Qur'an”.²⁵ Abu Hanifah's another method of exercising *ijtihad* was his application of logic to it. For example he allowed one share of the booty to the rider for his mount in addition to man's own share because he was of the opinion that an animal is not superior to man. Whereas the other fuqaha were of the opinion

that the horse is entitled to the double share. Again when it becomes difficult to settle the socio-legal issue by *qiyas*, Abu Hanifah takes here the interest of the public into consideration and he calls this method *istishan*. It is the method that leaves *qiyas* aside and prefers the public interest and welfare.²⁶

Imam-Malik (d. 179/795) also resorts to *ijtihad* and considers it a source of fiqh. In his *al-Muwatta*, Malik, frequently uses the term *ijtihad* in the sense of discretionary judgement.²⁷ For example, when he is asked about a woman whose menstruation is complete but does not find water to take her bath, he pronounces that she should have *tayamum* to purify herself because she is like someone who is in a state of *janabah* and does not find water and performs *tayamum*. For the collection of Zakah on mineral products, he applies *qiyas* and places it into the category of crops from which one tenth is collected at the time of harvesting.²⁸ *Istihsan* that we come across in Abu Hanifah's *ijtihad* is also applied by Imam-Malik. His imposition of *kaffarah* (expiation) on a person who hits the belly of a pregnant woman and cause miscarriage, is within this principle of *istishan*. Combining *Magrib* and *Isha* prayers because of rain or travelling is decided by him through *istishan*.²⁹ Malik's doctrine called it *al-masalih al mursalah* (general good or interest) is more comprehensive than *qiyas* and it extends the scope of *ijtihad*. Like *istishan* it is the deduction on the basis of common good and social welfare.³⁰ In the fiqh of Imam-Shafi'i (d.204/819) and Imam-ibn-Hanbal (d.241/855) *ijtihad* is accepted as a source of law. Where there is no law available on any particular issue in the Qur'an, the Sunnah and the *ijma*, 'Shafi'i resorted to *ijtihad*. He attempts to confine it to *qiyas* which is to find the ruling through analogical reasoning. He criticises *ijtihad bil ra'i* (derivations of legal ruling through opinion) and established *ijtihad bil qiyas* (derivation through analogical reasoning).³¹ Shafi'i cites the Qur'anic verses and the Hadith in support of *ijtihad*. He and some fuqaha of his school (*madhab*) criticise the Hanafi principle of *istishan*.³² This is because that the Shafi'i fears that the principle may be misused for the fulfilment of one's desire instead of following the Qur'an and the Sunnah. The argument is refuted for having little weight as the same objection can be raised to the Maliki doctrine of

al-masalih al mursalah or Shafi‘i’s doctrine of *al-istishab*.³³ Both these doctrines are identical with the definition of *istishsan* — leaving *qiyas* aside in favour of the interest of the public — given by al-Sarakshi (d.432/1040). Al-Shafi‘i attempts to adopt more comprehensive and wider principle than *qiyas* is to ensure the flexibility and adaptability of law while confronting the new problems of the society.³⁴ This he works out by means of *istishab* which is presumption of continuity until there is a change established by evidence. His application of *istishab* to the *Shari‘ah* is evident in his famous work on fiqh, *al-Umm*. He applies the doctrine to the issue of the traveller whom he allows to perform ablution with the water taken by the latter in water-bag and which he suspects of being polluted with something impure.³⁵ In it the *qiyas* is set aside and *istishab* applied which is not practically different from Abu Hanifah’s *istishan*. Ahmad Ibn Hanbal (d.241/855) and the fuqaha of his school also perform *ijtihad* to resolve the legal questions of the society.

In his fiqh Imam-Ibn-Hanbal uses the method of *qiyas* and *masalah*. According to Ibn Qudamah’s report, Ibn Hanbal has said that no person can decide the cases without resorting to *qiyas*.³⁶ Ibn Hanbal and his fuqaha, however, have remained cautious about it that *qiyas* should not contradict with the *nasûs*, and the purpose of the *Shari‘ah* should be realised through this method. This application of *istishab* to the issues is more stringent as compared to that of the Hanafi’s *istishan* and the Maliki’s *istislah*.³⁷ Since the Hanbali fiqh concentrates more on the Hadith and the *athar*, the application of *qiyas* and *istislah* finds little place in it.³⁸ Nevertheless, their resorting to the methods of *qiyas* and *istislah* in exercising *ijtihad* is characteristic of its extensive scope to face the unexpected problems of the times and it is further developed by the famous Hanbali fuqaha, of the subsequent age, like Ibn Qudamah (d.620/1223) Ibn Taymiyyah (622-729/1328) and Ibn Qaym (b.692/1292).

6. Shah Wali-u Allah’s Concept of *Ijtihad*

Like the other classical scholars of Islam, Shah Wali-u Allah was seriously concerned with the issue of *ijtihad*. Due to the disintegrating process of the Muslim power, the process of *ijtihad* suffered much. Good of the community was sought more in taqlid

than in *ijtihad*. It led to the misunderstandings about this vital science of the *Shari'ah*. Differences and doubts began to be intensified at various levels of society. Some hold that *ijma'* is infallible and *madhahib* of *a'ima* form an absolute *ijtihad*; and adherence (*taqlid*) to *madhahib* is enough.³⁹ Others are of the opinion that *taqlid* is harmful and they supported *ijtihad* by which derivation of the precepts from the Qur'an and the Sunnah is made. To them only the Qur'an and the Sunnah matters. This view is of the scholars like Ibn Hazm (384-456/994-1064), Muhammad ibn 'Abd al Wahhab (1115-1206/1703-1792) and Muhammad ibn Ali al-Shawkani (1172-1250/1759-1834) who disqualified *taqlid* which made its own impact.⁴⁰ Wali-u Allah, no doubt, had his own expertise in the subject yet could not remain unaware of these controversial trends of Muslim thought and expressed his views on the various dimensions of *ijtihad* and *taqlid*. In case of *ijtihad* he dealt with its nature, requisites, classification and significance. This occurs in his many works particularly in his *Iqd al-jid fi al-Ahkam al-Ijtihad wa al-Taqlid* and *Al-Insaf fi Bayan Sabab Ikhtilaf*.

7. His Definition of *Ijtihad* and Its Requisites

Shah Wali-u Allah's definition of *ijtihad* is identical with those of the other classical scholars of Islam (*usulin*). He defines *ijtihad* as an effort to understand the derivative (*furu*) rulings of the *Shari'ah* by means of detailed arguments. It is, says the Shah, based on the four sources of Law—the Qur'an, the Sunnah, *ijma'* and *qiyas*.⁴¹ To him *ijtihad* is wider than the endeavour to perceive the principle worked out by the earlier scholars, no matter whether such an endeavour leads to disagreement or agreement with the early scholars. It is not limited by the consideration whether this effort is made with or without aid of the predecessor imam (*mujtahid*). He emphasizes that if it is done through the aid of latter's explaining the nature of questions and indicating the detailed evidence for extracting the solution of the question or on account of his knowledge of the principles that is in affinity with the predecessor imam. Both, the methods according to Wali-u Allah, can be called *ijtihad*.⁴² To him, it is futile to say that there is vacuity of *mujtahids*. In fact, *ijtihad* is a collective obligation in every age. Perfection of Din is illustrative

through the exercise of *ijtihad*. Wali-u Allah mentions five sciences ('*ulûm*) as essential for a *mujtahid*:

1. He must know that much of the Qur'an and Hadith which is relevant to the principles involved.
2. He must know Sunnah of the Prophet Muhammad (SAAS).
3. He must know the matters on which the consensus (*ijma'*) of the community took place.
4. He must have the knowledge of the conditions of analogy (*qiyas*).
5. He must have knowledge of Arabic.

These are elaborated by him in the light of the observations of al-Ghazzali and Abu Muhammad al-Baghawi. In case of the knowledge of the Qur'an he means knowledge of the verses relating to commands (*ahkam*), which text is general and which is specific, precise and detailed and abrogated and abrogating. Moreover the value of the commands is to be also identified by a *mujtahid*. To which category it falls—*wajib*, *mandub*, *haram*, *mabaha* etc. Knowledge of these features of the Quranic verses and words makes *ijtihad* easy.

Similarly, about the knowledge of Hadith, Shah Wali-u-Allah means those Hadith which are relevant to the rules (*ahkam*) of *Shari'ah* and not the rest which contain stories (*qasas*) information (*akhbar*) and admonitions (*mawa'iz*).⁴³ Knowledge of the various kinds of Hadith is also essential for a *mujtahid*. Their falling into the categories like *mutawatir*, *ahad*,⁴⁴ *muttasil*,⁴⁵ *mursal*,⁴⁶ *za'if*⁴⁷ should be known to him. The integrity of the narrators is also to be seen to establish the authenticity of the Hadith. Knowledge of the applicability of the Qur'an upon the Hadith and vice versa is also must for a *mujtahid*. If he finds any apparent contradiction between Hadith and the Qur'an, he should try to reconcile it as the former is the explanation of the latter and not contrary to it.⁴⁸ In his discourses on these requisites Wali-u Allah seems unlike other scholars, little concerned to confine the *ahkam* verses of the Qur'an or Hadith into the fixed number yet in the attainment of the specific sciences relating to them he substantiates to their stand.

Ijma', which Shah Wali-u Allah describes as the third requisite, is the consensus of opinion of Muslim community on a question of

Shari'ah. By consensus he particularly means those of the Sahabah and their successors (*Taba'in*).⁴⁹ The opinion of their majority does matter. This can, says the Shah, safeguard the Mujtahid's judgements from standing against the verdicts of the Sahabah and those of their followers relating to *Shari'ah* matters. He subscribes to al-Baghawi (whom the Shah quotes while narrating the conditions of a *mujtahid*) when the latter says that both the knowledge of differences and the agreements on the issues is required for a *mujtahid*.⁵⁰

While referring to al-Baghawi and the author of *al-Anwar*, the Shah wants to express that the existence of *ijma* practically got closed after the Sahaba though theoretically it was allowed. So if there is *ijma'* and it is *ijma'* of that period. To him knowledge of *ijma'* is only a part of the knowledge of *aqwal al-salf* (verdicts of the earlier generation) or '*aqwal al-Sahabah*' and '*tabi'in*'. In this regard, Shah Wali-u Allah seems to follow Imam Shafi'i and the jurists of his school, as he hardly mentions words '*ilm al-ijma'*' but says *mawaqi al-ijma'* and *aqwal al-Salaf* and *aqwal al-Sahabah* and *Tabi'i*.

Next requisite is the knowledge of *qiyas* (analogy) and its kinds. It makes the *mujtahid* to extend the *Shari'ah* rule from the original case (*asl*) to the subsidiary (*far'*) by finding the *illah* (effective cause) common in both the cases. It is also described as measuring a derivative matter (*far'*) with the original, finding a similarity between the two and extending the original ruling to the new one. Similarly, a *mujtahid* must know its various kinds- *qiyas-i jali* and *qiyas-i khafi* and distinguish the sound *qiyas* from that of a pervaded (*fasid*) one.⁵¹

As for the knowledge of Arabic language is concerned, it is within this purview that Arabic has become the means of transmitting the ordinances of *Shari'ah* contained in the Qur'an and Sunnah. So one who is not acquainted with Arabic language will not, according to Shah, access to the real intention of the Law-giver (*Sharah*). However, by it the Shah does not mean the entire vocabulary of Arabic language but exerting to one's utmost in acquiring linguistic knowledge in order to understand the intended meaning of the *Shari'ah* commands. Wali-u Allah says that knowledge of Arabic in respect of philology and grammar is, however, necessary for a *mujtahid*. Al-Shatibi also makes an interesting observation over this

requisite of the *mujtahid* when he says that Arabic language has three stages, (1) beginner's knowledge, (2) mediocre's knowledge, and (3) perfect man's knowledge. He who is beginner in Arabic he is beginner in the knowledge of *Sharī'ah*. He who is mediocre in Arabic he is mediocre in the knowledge of *Sharī'ah* too. And he who is perfect in Arabic is also mature in the *Sharia'h* knowledge, he will be a negligent and the verdict of remiss will not be an argument (*hujjah*) of *Sharia'h*. Al-Shatibi further says that a person will not be called a *mujtahid* until the vocabulary of the Arabs and their phrases become a spontaneous attribute for him.

8. Classification of *Ijtihad*

Generally there are two classifications of *ijtihad*. One is from the Hanafī school and the other from the Shafī'ī school of legal thought. In the former the *mujtahidin* are of five kinds- (1) *mujtahid fil Shar'a*, (2) *mujtahid fil madhhab*, (3) *mujtahid fil masa'il*, (4) *ashab-i takhrij* among *muqalidin*, (5) *ashab-i tarji* (preference) among *muqalidin*. The Shafī'ī, on the other hand, classifies *mujtahidūn* into four categories- (1) *mujtahid-i mustaqil*, (2) *mujtahid mutlaq muntasib*, (3) *mujtahid fil madhhab* (4) *mujtahid fi al fatwa* or *muhtabih-i madhhab*. However, Shah Wali-u Allah follows the line of Shafī'ī school and discusses the various categories of *mujtahidin* within this classification.⁵² It can be briefly analyzed as following:

- i. ***Mujtahid-i Mutlaq***- According to Shah Wali-u Allah *mujtahid-i mutlaq* is one who possesses the three qualities with excellence which distinguishes him from the other *mujtahidūn* and these are:
 - a. That he uses the fundamental principles of fiqh independently. He looks into the principles adopted by his predecessors consciously and critically. The Shah finds this quality adequately in Imam-Shafī'ī and quotes the latter's following observations on the subject:

The real sources of the Sharī'ah are the Qur'an and the Sunnah. If there is no clear-cut answer to the given question or problem then the principles of these sources are to be kept in view to solve it through *qiyas* (analogy). So far the Sunnah is concerned it amounts the narrations of Traditions with continuity and authenticity. As against the *khahir-i wahid*, *ijma* has more weight. The hadith is to

be interpreted in terms of its external meaning. If it connotes many meanings then it is better to take the meaning that is closer to its external aspects. If there are many ahadith available on the matter the one having the chain of continuity should be given preference and the one whose chain of narration is broken has no weight...⁵³

- b. The second quality is that the *mujtahid* has to collect in a good deal a large number of Hadith and *athar* and identify properly their precepts (*ahkam*). He must be acquainted with the Hadith which form the source of fiqh and must have the knowledge of preference (*tarjih*) and reconciliation (*tatbiq*) of Hadith. If there are many meanings of a Hadith, he should be capable to determine the single meaning of it. From the academic point of view, the Shah calls this talent important and higher one in the *mujtahid* and in Imam- i-Shafi'î this constitutes two thirds of his knowledge.⁵⁴
 - c. The third quality is that the *mujtahid* must solve the questions, brought to him, through *ijtihad* if they had not been dealt with by the earlier generations. He formulates his answers on the evidences which the earlier generation had followed. One more quality which Shah Wali-u Allah mentions about *mujtahid-i-mutlaq* is that he should be scholar of such a stature whom *mufasirûn*, *muhidithûn* as well as the other *fuqaha* of the age turn for seeking his guidance. It means that they get attracted by his wide knowledge and thus is recognised by all. However, the Shah does not consider it an essential quality of the *mujtahid*.⁵⁵
- ii. **Mujtahid-i-Muntasib**-According to Wali-u Allah a *mujtahid-i-muntasib* is one who is affiliated with his master *mujtahid* in following the principles of fiqh. Among the three distinguished qualities of the *mujtahid-i-mutlaq*, mentioned above, the *mujtahid-i-muntasib* is a *muqalid* (follower) in the first one of his master. So he follows the principles of fiqh methodology of his master (*shaykh*).The other two qualities are found in him independently. It means that in arranging the evidences, rules of deriving laws and the methods by which the two diverse

evidences can be reconciled, are taken by the *mujtahid-i-muntasib* from his master with whom he is affiliated. The special objective of this *ijtihad* is to get acquainted with the issues which have already been replied by the master *mujtahid* from the detailed *Sharī'ah* evidences and making scrutiny (*tahqīq*) of their sources and giving the preference to the one over the other. There is obviously possibility that the *mujtahid-i-muntasib* may differ or modify some things already decided by his master. If such things are less than his conformities with the master he will be regarded as *sahib-i-wajah* (man of rank and reason) in the *madhab*. If they are more than his conformities he will be counted among *ashab-al-wajūh*. By and large he remains the follower of the *madhab* of his imam.

Sometimes when many questions remain unreplied by the early *mujtahid*, they are answered by the *mujtahid muntasib*. He takes up these issues and deduces his judgements direct from the Qur'an, the Sunnah of the Prophet (SAAS) and the *athar-i-salaf* (sayings of the Sahabah and the Taba'in) without depending on his master. Such problems are, however, very meagre as compared to those which have been already decided by his master. Shah Wali-u Allah mentions the specific method of *mujtahid-i-muntasib* as following:

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

issue is evident to him, he either depends on the verdict of the *mustaqil*, or keeps himself silent⁵⁶.

- iii. **Mujtahid fil Madhab-** It is a kind of affiliated *ijtihad*. However, unlike the *ijtihad-i-muntasib* here the *mujtahid* follows both the two qualities of his master or imam — the principles of fiqh and the judgements (*fatawa*). He also knows the methods of the imam and when a matter comes to him regarding which he does not find an unequivocal judgement by the imam, he exercises *ijtihad* in accordance with the school of the imam and elicits the judgements by proceeding parallel with the speeches of the imam and in the same manner. Unlike *mujtahid-i- muntasib*, *mujtahid fil madhab* is more dependent upon his imam's principles and methods which the latter had expanded over the various aspects of fiqh. The Shah calls *mujtahid fil madhhab*, also *mujtahid al-muqayyad* (confined *mujtahid*).⁵⁷
- iv. **Mujtahid fi al Futiya or Mutabahirr fi'l Madhab-** According to the Shah, it is the lower degree of *ijtihad*. Here a *mujtahid* has a profound knowledge of his *madhab* and is capable to prefer one verdict to the other and one approach of the pupils of the imam to that of the other. According to Shah Wali-u Allah such a *mujtahid* must have the right understanding of things, knowledge of Arabic language and its various styles, use of *tarji* (preference) and the nature of *mutlaq* (definite) and *muqayd* (confined) expressions of the Qur'an. Hence they are the *mujtahids* who settle the issues, argument for their judgements and decide cases which have not been settled by previous *mujtahids*. In both the cases the *mujtahid* is here always in accordance with the opinion of the *mujtahids* of the first and the second category. The Shah also mentions that the *mujtahid* of this rank must be well versed in transmitting the verdicts of his imam or must have acquaintance with the book in the concerned *madhhab* that might have been popularly circulated like Imam Muhammad's *Al-Mabsut* and Imam Malik's *Al-Mawatta*.⁵⁸

9. Some Implications

On the subject of the classification of *ijtihad*, Shah Wali-u Allah's views bear more affinity with Imam-i-Shafi'î. According to

his classification *mujtahid-i-mustaqil mutlaq* (independent *mujtahid*) are the imams of the four fiqh schools- Abu Hanifah, Malik Ibn Anas, Muhammad Idris Shafi'î and Ahmad Ibn Hanbal. He views their *ijtihad* of high distinction, the height of which is impossible to attain by the subsequent scholars because the imams of the *madhahib* lived in an age when access to the Hadith and *athar*, in a critical manner, was easier. In the second category of *ijtihad-mujtahid-i- muntasib* (affiliated *mujtahid*) the Shah includes Imam-i-Muhammad, Abu Yusuf, Abu Umar ibn Abdul Bar, Imam-i-Ghazzali, Jalal ud-Din Sayuti and Ibn Taymiyah. Each of them is affiliated to any of the four schools of fiqh. On the methodology of their masters, they formulated their opinions and judgements, whereas *mujtahid-i-muqayd* followed his master in both the method and the judgements and had expertise in making *takhrij* and *tarjih*. In his explication of these four categories of *ijtihad*, Shah Wali-u Allah calls the first one- *ijtihad-i-mutlaq* of high rank. To him it has been closed after third century hijrah.⁵⁹ Many medieval scholars of Islam like Ibn Hijr, Imam Nuwwi and Imam Sayuti hold the same view. Yet Islamic scholars of the modern times are at variance in accepting this view totally. Maulana Abdul Hay Luknowi's interpretation suggests that it is not good to say that men of the caliber of *ijtihad-i-mustaqil* cannot come to being now. To him Abu Thawur Bagdadi, Dawud Zahiri, Muhammad Ismail Bukhari etc are of the stature of the *mujtahid-i-mustaqil* though the Muslim community did not accept them as it did in case of the *a'ima'-i-madhahib*.⁶⁰ Bahrul Ulum also holds the similar view in one of his writings. It is also held that the claim is not valid for having no justification of a *nass* (text) of the Qur'an and Sunnah. Allama Iqbal⁶¹ and Taha Jabir Alwani⁶² also subscribe to this view of the possibility of *ijtihad*. Allama Iqbal has devoted a full chapter in his famous work, *The Reconstruction Thought in Islam* to this kind of *ijtihad*. He is in favour of promoting this *ijtihad* in the present Muslim predicament in a good deal to reassert the Islamic social and political dynamism. Maulana Ashraf Ali Thanwi, a renowned Indian scholar of traditional line provides a moderate view about the issue. He says:

Mujtahids fil usul can even emerge in this time but they have not emerged. 'Isa (AS) got his birth without father

but after him nobody had such kind of birth. Though Allah has the power to make me born without father, yet he has not done so with me. It does not, however, mean that not doing so is closure of this power. Allah's wisdom and habit is this that He brings a thing into existence whenever he finds its necessity.⁶³

In case of the differences in *ijtihad*, Bawdawi and others held that one *mujtahid* is true and others are wrong. Shah Wali-u Allah refutes this view and characterizes the act of all such *mujtahidûn* true. According to him, 'Allah orders us to do wherever our *ijtihad* reaches'. So whatever we know in precision (*mujmallan*) we search for that with this intention that we shall know it in a detailed way.'⁶⁴ He further elaborates that reward for exercising *ijtihad* from Allah also characterizes its being a worship of God rather than a futile act. The Shah, however, recognizes the superiority of one verdict over the other as *azimah* has edge over *rakhsah*. Shah Wali-u Allah substantiates his view through Hadith as well as common sense examples which illustrate wide and flexible nature in the religion of Islam.

Shah Wali-u Allah is also in favour of *tajazi ijtihad* — *ijtihad* in piece meals. In fact, there is a difference of opinion among the scholars of Islam about the validity of such type of *ijtihad* yet a good number of them allow it including Imam Ghazali, al-Baidawi and Ibn Taymiyyah. Shah Wali- u Allah subscribes to the majority of the opinion by saying that a *mujtahid* has to solve the issues, in his field of expertise and not one in which he hasn't knowledge. He should leave it for others who are masters of the field. In the present age when sciences at macro and micro level develop with the emergence of diverse and complex issues in human society, the method of *tajjazi ijtihad*, propounded by Shah Wali-u Allah, becomes of special relevance in knowing things in an analytical and specific manner to bring out the proper results without ignoring the broader principles and directions of the *Shari'ah*.

Conclusion

From the above discussion, it can be concluded that Shah Wali-u Allah was deeply concerned with the problem of *ijtihad* in Islam.

While making an analytical and critical review of the earlier scholars, he highlights its specific nature, foundational methodology devised by the *a'ima'-i- madhahab* and its further elaboration by their disciples called affiliated *mujtahids*. His theory of classification of *ijtihad* (*mutlaq*, *muntasib* and *fil- madhhab*) explicates its various levels and clarifies many doubts and misunderstanding about the subject particularly regarding its closure, general nature of *mujtahids* attempt — *ijtihad*. Furthermore it underscores the Shah's deep insight into the early development of the *ijtihad* vis-à-vis his fore-sight about the future of ummah that has to shun away the path of decadence for the path of intellectual dynamism and social and political development.

References and Notes

- ¹ Edward William Lane, *Arabic English Lexicon*, New Delhi, 1985, part 2, p. 60.
- ² Abu Ishaq Shatibi, *Al-Muwafaqat* chapter 'Kitab-ul Ijtihad', see Maulana Taqi Amini, *Fundamentalists of Ijtihad*, Idarah-i-Adabat-I Delhi, 1986, p. 1.
- ³ Amidi, *Al-Ahkam fi Usul al-Ahkam*, vol.4, p-162, see M. Gauhar Rehman, *Ijtihad aur Ausaf-i-Mujtahid*, Madina Publishing Centre, New Delhi 1990, pp 17-18.
- ⁴ See Maulana Taqi Amini, *op. cit.*, p. 2.
- ⁵ Following verses from Qur'an reflect this guidance: "We have sent down to you the Book in truth, so that you might judge between men as guided by Allah (al-Qur 'an, Nahal, 89). "Those who strive in Our (cause) We will certainly guide them to Our paths", (al-Qur 'an, al- Ankabut, 69). "And (the believers) conduct their affairs by mutual consultation", (al-Qur 'an, al-Shura, 38).
- ⁶ Abu Dawud (*Babi ijtiḥad wa ray fil Qada*) see M. Taqi Amini *op. cit.*, p. 5.
- ⁷ *Ibid.*, p. 6.
- ⁸ Maulana Hasan al-Khatib, *Fiqh al-Islam*, Nafis Academy Karachy, 1982, pp. 494-495.
- ⁹ *Ibid.*, p. 495.
- ¹⁰ *Ibid.*, pp 495-496.
- ¹¹ Cf. Taha Jabir al Alwani , *Usu al Fiqh al-Islami*, Herdon, Virginia U.S.A.,1990,p.5.
- ¹² *Ibid.*, pp. 12-13.
- ¹³ M. Taqi Amini, *op. cit.*, p. 30.
- ¹⁴ Taha Jabir Alwani, *op. cit.*, p. 14.
- ¹⁵ *Ibid.*, p. 9.
- ¹⁶ Cf. Taqi Amini, *op. cit.*, p. 28.
- ¹⁷ On his *Ijtihad*, Uthman held that all people should read the Qur 'an according to Zayd's way of recitation which he thought as the most sound way.
- ¹⁸ Cf. Taha Jabir Al Alwani, *op. cit.*, p. 17.
- ¹⁹ Earlier he had been appointed as the judge of Yemen by the Prophet (SAAS).
- ²⁰ Muhammad al-Khudri, *Tarikh al-Tashri al-Islami* (Urdu Translation), Azamgarh, 1960, pp. 173-174.
- ²¹ *Ibid.*, pp. 175-176.
- ²² *Ibid.*, p.174.
- ²³ *Talaq* is the legal means of dissolving the contract of marriage. It is permitted by the *Shari'ah* when the couple is not satisfied to continue their tie and their living together becomes totally intolerable. After uttering one or two *Talaqs* a person can have recourse to his wife but on the third *talaq* she becomes unlawful to him until she gets married to other person and is

- divorced by the latter. See M. Hassan Khatib, *Fiqh al Islam* (Urdu Trans.), Nafis Academy, Karachi, pp. 80-88.
- 24 For the detailed discussion on these terms see the infra pages of the present chapter.
- 25 Muhammad Yusuf Faruqi, “ Early Fuqha on the Development of *Ijtihad*”, *Hamdard Islamic*, Vol. XV, Autumn, 1992, No.3: p.7
- 26 Sheikh Muhammad Abu Zahrah, *Hayat-i Imam-i Abu Hanifah* (Urdu), Muslim Academy, Sahran, U.P, pp. 460-460.
- 27 Muhammad Yusuf Faruqi, *op. cit.*, p.
- 28 *Ibid.*, pp. 9-10.
- 29 *Ibid.*
- 30 Muhammad Yousuf Faruqi, *op. cit.*, pp. 14-15.
- 31 Cf. Mujahid al Islam Qasimi, *Bahath Wa Nazar*, Vol. 4, No. 14, 1991, pp. 63-67.
- 32 Muhammad Yousuf Faruqi, *op. cit.*, p. 15.
- 33 *Ibid.*
- 34 *Ibid.*
- 35 Abu Zahra Misri, *Hayat-i Imam Ahmad ibn Hanbal*, Darul Kitab, New Delhi-2, 1986, p. 405.
- 36 *Ibid.*, p. 425.3
- 37 *Ibid.*, p. 432.
- 38 Cf. Fazlur Rehman, *Islam*, London, pp. 115-116.
- 39 *Ibid.*, pp 196-197.
- 40 Shah Wali-U-Allah, *Iqd al-Jid fi Bayan al Ijtihad wa'l Taqlid*, Karachi, p. 8.
- 41 *Ibid.*
- 42 *Ibid.*, pp. 9–10.
- 43 It is an authentic narration in which continuity of the chain is preserved and is not an isolated one. It has not even any hidden defect.
- 44 Which does not fulfil the conditions of *sahih* or *hasan* Hadith and as such is not acceptable in matters of *aqa'id* and *ahkam*.
- 45 That is *isnad* of the Hadith uninterrupted and goes back to the Prophet (SAAS).
- 46 Transmission of the Successor (*Tab'i*) from the Prophet directly dropping the companion (*Sahabah*) from the *isnad*.
- 47 Shah Wali-u-Allah, *op. cit.*, p. 12.
- 48 *Ibid.*
- 49 *Ibid.*
- 50 *Ibid.*, pp. 13-14.
- 51 Cf. *Bath-u Nazar*, (quarterly ed. Mujahid ul Islam Qasimi), No. 14, Vol. 4, 1991, Patna, p. 50.
- 52 Cf. *Bath-u Nazar*, (quarterly ed. Mujahid ul Islam Qasimi), No. 14, Vol. 4, 1991, Patna, p. 50.
- 53 Shah Wali-u-Allah, *Al-Insaf fi Bayan Asbab al-Ikhtilaf*, Delhi, pp. 107–108.

- 54 *Ibid.*, pp. 108-109.
55 *Ibid.*, p. 109.
56 *Ibid.*, pp. 89-90
57 *Ibid.*, pp. 110-111.
58 Supra n.42, p. 17.
59 Shah Wali-u-Allah, *Maqadamah Musafa*, Delhi, p. 12. Cf. Sayyid Akbar Abadi, "Hazrat Shah Wali-u-Allah ka Nazrayah ijtehad", *Fikr-i Islami Ki Tashkil-i-Jadid*, Zakir Hussain Institute, New Delhi.
60 Cf. Rehman, *Islamic Methodology in History*, Islamic Research Institute, Islamabad, Pakistan, 1984, p. 169
61 Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, Institute of Islamic Culture, Lahore, p.19
62 Taha Jabir Alwani, *Ijtehad*, Institute of Objective Studies, New Delhi, p.11.
63 *Ijtehad aur Masa'il-I Ijtehad*, Institute of Objective Studies, New Delhi, 1998, p.35.
64 Supra, No.41.