

Ijtihad and Mujtahid

Eminence Maulana Muhammad Abdul Aleem Siddiqi Al-Qadri

From Ch. VI, "The Codification of Islamic Law" published by Haji Mohammed Ibrahim, Trinidad, 1950

This island of Trinidad enjoys British administration and is governed by British Law. Those who wish to enter any such Government service here, which is concerned with the administration of law, are bound to qualify themselves with knowledge of British Law. For instance, if he wishes to hold the job of a Police Sergeant, he must study the sections of Criminal Law before he can be set up in his job. Thus, every police Sergeant throughout this colony can claim to possess the knowledge of Law. But can you ever conceive that because of that knowledge of Law (which, say a police Sergeant might possess) the Government would ever consider him to be eligible for the post of a Judge in the Supreme Court or even as an Attorney-General? If a Sergeant could equal a Barrister-at-Law or an LL.D., Lincoln's Inn and those Faculties of Law at the great Universities would not have existed.

No one can be given the right to interpret man-made laws, which continue to change and to be amended on day-to-day basis, unless he is a fully qualified Barrister-at-Law, nay, unless he has mastered the higher subjects, as, for instance, the Philosophy of Law, the History of Law, Social Psychology and Sociology, etc., and can stand up as in the true sense a Doctor of Law. But, what a pity, that people can afford to believe that the work of Ijtihad (i.e., of interpreting the revealed Law of God and of deducing new laws from it) can be done by X, Y, Z. Such a monstrous suggestion is staggering, and it can possibly come only from those who have but a scant regard for God and His Law!

Definition

The word 'Ijtihad' has been derived from the root JHD, and literally means "striving with full exertion." In Islamic legal terminology, it denotes an attempt to choose, in the light of the Qur'an and the Sunnah, between two or more differing legal interpretations and to deduce, from the Qur'an and the Sunnah, any new rulings in order to address new legal situations. One who performs "Ijtihad" is called "Mujtahid".

The Qualifications of a Mujtahid

The learned men of Islam have laid down certain qualifications, in the light of the Qur'an and the Sunnah, which a person must possess for acting and for being accepted as a Mujtahid. Allama Shah Waliullah of Delhi (on whom be God's Mercy!) has mentioned those qualifications in detail in his celebrated book: Hujjatullahil-baligha. I may summarise them here in their minimum form for the benefit, especially, of those simple-minded brothers and sisters of mine who have been misled into the belief that they can act as Mujtahids in their independent capacities. Let those whom the promptings of personal fancies lead them into posing as Mujtahids without right (and who condemn the great services rendered by the Imams simply because their hearts are gripped by un-Islamic things and they cannot bear the Islamic discipline systematised and codified by the latter) pause for a while momentarily and

consider the following, which are the minimum reasonable qualifications, in their Islamic side, which a Mujtahid should possess:

(1) He should be an expert in the Arabic language, literature, and philology, so that he may be able to decide properly between the different connotations of the same word.

(2) He should be a high caliber scholar of the Qur'an, and his study of it should be so intensive and extensive that whenever he must consider a given problem, he should be capable of keeping before his mind's eye the whole sweep of Quranic thought and all relevant verses.

(3) He should have the Traditions of the Holy Prophet [Hadith] memorized, so that whenever he must concentrate on any problem, he may have all the connected Traditions, even those indirect ones, before him, clearly and vividly, to guide his thinking both appropriately and comprehensively.

(4) Further he should be an expert in both the science of historical criticism (Riwayat) and logical criticism (Dirayat), so that he may be able to view the worth and connotation of various Traditions, under study in their proper perspective.

(5) Above all, he should possess piety and a true Islamic character, and his heart should be imbued with what the Qur'an calls 'fear of God'.

Now, my friends, if there is a person who claims to be a Mujtahid, but who doesn't even possess not one-tenth of these qualifications, what else can you say about him besides that he is groping in the dark. What else could be the result of his stumbling except misguidance.

Allama Shah Waliullah of Delhi, the celebrated philosopher, theologian, legislator [specialist of law], traditionist and commentator, before whose learning and piety bowed the Arab and non-Arab Ulema, found all the qualities of a Mujtahid in his person. Yet his sense of responsibility and fear of God withheld him from declaring his Imamate and Ijtihad, and in all humility, he continued to regard himself as a follower (Muqallid) of Imam Abu Hanifa's school of Law and continued to stress before the Muslims of India that they should stick to the Hanafi school, which had guided Muslim governments for centuries and had been developed into a perfect system.

Qalaadah and Taqleed

Qalaadah and Taqleed are two related Arabic words. The word Qalaadah means "a rope or a chain which is bound to the neck of someone to make him follow behind." Taqleed connotes the act of following. As a religious term, it has reference to the fact that "the servants of God, who are linked together by obedience to Him, receive God's Commandments through such and such a chain."

That is, when someone says that he is the Muqallid of Imam-e-Azam, it means that the chain through which he is receiving the Commands of God is that which passes through Imam-e-Azam to the Holy Prophet Muhammad (peace be with him!). It does not mean that he is following the commands of Abu Hanifa. Nay, the Command is that given by God, the manner of grasp is that taught by the Holy Prophet, the interpretation is that given by the Companions, the arrangement is that fixed by the Hanafi school.

The work of the Aalim and the Mufti is to follow this chain, to acquire his knowledge of Islamic Law in conformity with it and to guide the people in their legal affairs.

Suppose, today, someone makes an enquiry from me concerning some point of Islamic law. What shall I do? I have no right to give him some commandment on my own behalf or tell him something in the light of my own commonsense. My function is simply to deliver the law which God has given and to guide people on the basis of that revealed Guidance. This function is also based on certain authority and certain qualifications. For instance:

(1) If I am questioned about any particular problem which relates to Quranic text, I can answer authoritatively, because I possess a continuous authority reaching up to the Holy Prophet Muhammad (peace be with him!).

(2) If I am questioned about any particular problem which relates to Quranic exegesis or the sciences which relate to Hadith literature, I can answer authoritatively, because I possess a continuous link of authority reaching up to the Holy Prophet.

(3) Similarly, if I am questioned about any problems which relate to Islamic Law, in accordance with the Hanafi, Maliki, Shafi'i or Hanbali schools, I can answer authoritatively, because I possess the continuous chains of authority which passes through the four Imams and extends as far as the Holy Prophet (peace be with him!).

I am here before you. My mode of life and my character is before you. The evidence of history about the authoritative learning and piety of my teachers is before you. The commands which I am conveying to you and the teaching which I am elaborating is in reality not from me. It is the command and the teaching sent to humanity by God through the Holy Prophet Muhammad (peace be with him!). In the field of Law, I know that every section of law which is found in Hedaya, or Fath-ul-Qadeer, or Durre-e-Mukhtar, or Shami, or any other similar book has been inserted there after the utmost investigation, and I am ready at all times to prove it.

After all, what are these books of Islamic Law (Fiqh)? They are the handbooks detailing the Law which the Holy Prophet brought to humanity. They are the compendiums where each and every one of us can find a ready-made and clear-cut reply to his legal problem.

The argument so far . . .

Even though this may prolong the discussion, let me reiterate the argument that I have expounded so far:

(1) The Holy Qur'an is the basic book - the groundwork of Islamic Law. The explanation and exposition of its teachings, in the light of the Holy Prophet's Traditions, is called Ilm-ut-Tafsir (the Science of Commentary). There exist numerous books on this subject, among which the better known classics are: Tafsir Tabari, Tafsir Baidwi, Tafsir Kashshaf and Tafsir Ma'alim-ut-Tanzeel

(2) The explanation and detailed exposition of the Quranic teachings by the Holy Prophet, in his Sayings and Actions, forms the second basic source of Islamic knowledge. Now that science which deals with the collection of those Sayings and Actions of the Holy Prophet is called the Science of Hadith. There are numerous books on that subject, the most well-known classical works being: the Sihah of Bukhari, Muslim, Abu Da'ud, Tirmizi, Ibn Majah, Muwatta of Imam Malik, Musnad of Imam Azam, Musnad of Imam Ahmad, etc., etc. There are several compendiums where the Traditions have been arranged alphabetically, e.g. Kanz-ul-Ummal and Bihar-ul-Anwar. There are some compilations arranged in a third way, e.g., Ma'ani-ul-Athar.

(3) The science which deals with the biographies of the reporters of Traditions for the assessment of their worth, is known as the Science of Asthma-ur-Rijal, and there are many classical books relating to it.

(4) The science which deals with the gradation of Traditions is known as the science of Usool-e-Hadith.

(5) The science which deals with the Principles of the Qur'an and the Hadith is known as Usool-e-Fiqh, and there are several classical works and numerous explanatory books on the subject.

(6) When the laws are fixed up and deduced from the Qur'an and the Hadith according to the rules of Usool-e-Fiqh, and they are arranged and systematized in the form of a Law-Code, this science is called Ilm-ul-Fiqh. There are several classics and numerous handbooks on that subject.

By mentioning this classification of Islamic science, my purpose is to give just an idea to my simple-minded brothers and sisters who are being thrown into confusion concerning the Islamic legal schools by certain unconscientious people, who wish to establish their own domination over others and leadership, and hence they propagates all sorts of confusion. Some of them have their own concealed sectarian ends to gain. Most of them are ignorant of Islamic science and the safest way they can adopt in order to gain leadership is to deny either the validity or the necessity of those sciences. Many of them are so unconscientious as to impute false motives to the Imams, to call them as "gods besides Allah", and to criminally impute Shirk (polytheism) to the overwhelming majority of the Islamic world which accepts the guidance of the Imams in the matter of understanding the Islamic Law. Even a blind man can see how far they have gone. Even the least intelligent person can grasp the element of blasphemy in their stance. Even the ordinary Muslim can understand that:

(1) When the Commentator of the Qur'an ponders over the verses of that Sacred Book, in accordance with the principles of language and grammar and in the light of the Traditions of the Holy Prophet (peace be with him!), he is doing none other than obeying the following command of the Qur'an itself: "Do they not then earnestly seek to understand the Qur'an." (47:24)

(2) The scholar of Hadis (Muhaddis) when he applies himself to the understanding of the Holy Prophet's Sayings and Actions, does so only in obedience to the Quranic teaching: "He who obeys the Apostle, obeys God." (4:80)

(3) The scholar of *Astma-ur-Rijal*, when he carries out the work of examining the veracity of the reporters of the Traditions, does so in conformity with the Quranic principle of not accepting any report without exhaustive investigation. (See 49:6)

(4) The scholar who applies the science of *Usool-e-Hadith* for grading the Traditions which are extant and for fixing up the categories of *Fard*, *Sunnah*, *Mustahab*, *Permissible*, *not-Permissible*, *partially-Permissible*, etc., in the domain of practical injunctions, is only elaborating on the Quranic command: "And whatsoever the Apostle giveth you, take it. And whatsoever he forbade, abstain (from it)." (59:7)

(5) The scholar of *Usool-e-Fiqh* establishes the Principles of Islamic Law in order to elaborate on the practical teachings of Islam for the Faithful, in obedience to the following Quranic injunction:

"If a party from every group remained behind, (they could devote themselves to the task of) gaining sound knowledge in religion." (9:122)

(6) The Imams of *Fiqh*, when they systematize the legal injunctions of Islam in the light of *Usool-e-Fiqh*, do so merely to carry out the Quranic injunction, which forms the remaining part of the verse just quoted, namely:

"and that they may warn their folk when they return to them, so that they may beware." (9:122)

Those Imams only further the mission of the Holy Prophet (peace be with him!) referred to in the following verse:

"O Messenger! Make known that which hath been revealed unto thee from thy Lord." (5:67)

When they teach Islamic guidance to the people, they do so in obedience to the Holy Prophet's command: "Lo! Verily, let him who is present deliver the Message to him who is absent."

When the Imams systematize Islamic law so as to save men from falling into error and to make the path of their understanding smooth, they only act in accordance with the following Quranic command:

" Call unto the way of thy Lord with wisdom and fair exhortation, and reason with them in the better way.

Lo! thy Lord is Best Aware of him who strayed from his way, and He is Best Aware of those who go aright." (16:125)

Let us view this problem more closely. Suppose a Muslim goes to an Islamic scholar and questions him about Islamic law on some point of ceremony and worship or on some point of human activity, what do you think should be the procedure which that scholar should adopt? Do you think the following procedure can be adopted as the normal routine in all such cases? When a questioner comes to an Aalim, and asks a question, the Aalim concerned will take up the Holy Qur'an, study it thoroughly in order to discover the relevant verse or verses, shows the verse or verses to the questioner, and then explains the verse or verses in the light of linguistic, logical or historical principles. Then he studies the whole Hadith literature which comprises hundreds of thousands of Traditions, selects the relevant Traditions, examines their authenticity in the light of Historical and Logical Criticism, fixes up the

principles for preferring one Hadith to another. He then he establishes the accurate legal form of the question and applies the knowledge he has obtained from the Qur'an and the Hadith in accordance with certain valid principles, formulates the Islamic law on the point, and then explains the whole procedure to the questioner and so as to prove to him its validity from the point of view of the Qur'an and the Sunnah. Then the questioner might feel that he had escaped Taqleed and that he has received guidance direct from the Qur'an and the Sunnah. Even with such a procedure, the enquirer or questioner has actually slipped into Taqleed, for the knowledge he has obtained is through the medium of that scholar.

Even if you can consider such a procedure feasible in each case, do you think that every Maulvi is really capable of adopting and working according to that procedure? Does every Maulvi possess the vast learning and deep insight necessary to adopt that procedure? Does every Muslim possess that understanding whereby he can associate himself in the scholarly endeavor of the Maulvi to be able to claim, even formally, that he has received the guidance directly from the Qur'an and the Sunnah and has escaped Taqleed?

Can the verdict of the Qur'an be falsified when it says: "Can the learned and non-learned ever be equal?" Tell me, my friends, is it humanly possible for you to establish the above-mentioned procedure as a normal and necessary routine?

And, let me ask you, what do you do when you are confronted with any problem connected with the man-made Law which governs your colony. When you have a lawsuit, do you call upon your Barrister to explain to you all the background of the relevant sections of the law, their origin, their history, their different interpretations by legal authorities, the various rulings given by Judges from time to time, so on and so forth? Well, you only explain the case to the Barrister and discuss it with him and leave out all the above-mentioned questions as irrelevant. Again, it is the function of the Barrister to state the law and to employ it and interpret it for pleading his case. Do you think that the government can accuse him on that basis of acting as a legislator and a lawgiver? Or do you think that the authors of law books and commentators of law can be reasonably accused of taking the authority into their hands?

If the answer is in the negative (and it can only be in the negative) how can anyone accuse the Imams of usurping the authority of God or His Prophet (peace be with him!)? Let me declare, and declare most emphatically, that if the Imams took away the authority of anyone, it was only the authority of those mischief-makers who are always out to create confusion in the ranks of Muslims and of those less-educated people who, because of their self-conceit and other faults, like to pose as authorities to misguide people. The Imams only acted as the spokesmen of God and His Holy Prophet and whosoever follows their direction today actually follows nothing else but the guidance of the Qur'an and the Sunnah. The work of the Imams is a demonstration that "the religion (of Islam) is easy." Thanks to the great labours of the Imams of Tafsir and Hadith and Fiqh, today the knowledge relating to every department and every branch of the Islamic Way of Life is open to us, properly systematized and simplified, completely preserved and protected:

(1) The Quranic text is present, preserved to the very letter.

- (2) The commentary of the Qur'an is present in extensive volumes.
- (3) The Traditions of the Holy Prophet are present in books of Hadith
- (4) The literature on Asma-ur-Rijal is present to help us analyze the Traditions.
- (5) Comprehensive books on Principles of Tradition and Principles of Law are present to make us understand the method of deducing laws from the Qur'an and the Sunnah.
- (6) Voluminous books on theological problems are present to guide us on Beliefs (Aqaid).
- (7) Exhaustive books of Law are present to guide us in matters of ceremonial, civil and criminal laws.

It is now for us to either practice Islam, which is the purpose for which Islam came, or to continue to waste our time in meaningless and new-fangled controversies. There can be no doubt that the Holy Qur'an is "the storehouse which contains all the knowledge we need." Similarly, the Holy Prophet's Traditions are "the comprehensive Treasure of Guidance." If you want to find out the answer to any one of your problems from the Qur'an and the Hadith, you can certainly find it in them. There you have the Source and the Fountainhead. But to discover it in that vast and deep treasure demands all your ambition, exertion, courage and a thorough mastery of all those sciences which form the key to that unique treasure. Even if you can do that according to your perspective, you might not be still sure of your conclusions.

The safest and the truest path for all is to seek help from those guidebooks which were produced by centuries of honest research-labour performed by the highest and the most pious intellects of Islam. Thus, if you have any problem relating to the meaning of the Quranic verses, refer to the Commentaries. If you wish to obtain information on any point relating to the Holy Prophet's life, refer to the authentic books of Hadith. If you want to be clear on any question of Belief, refer to the classics of Ashaerah and Maturediyyeh philosophers. If you want a reply to some problem relating to ceremonial or general law, then refer to the books of Law according to the Hanafi, Maliki, Shafi'i and Hanbali schools. You will find your problems solved, your questions answered, without much ado. You will discover the beauty of the Codified Islamic Law.

I would advise you not to follow the example of the rat who found a piece of tamarind and started claiming that he was a full-fledged grocer.

Remember! the Holy Prophet (peace be with him!) prophesied for the latter days in unambiguous terms that: "People will appoint ignorant persons as their (religious) leaders, who will give Fatwa (legal verdicts) without knowledge and will mislead themselves as well as others. Beware of those deceivers."

About those very people who do not even know the Arabic language properly but who pose to be, not only Muftis but, Mujtahids, the Holy Prophet prophesied that they will be "wolves in human dress" - hypocritical robbers of faith. They wear a crown of service to him "who whispers (evil) into the hearts of mankind - among Jinns and among men." (114: 5-6) They wear the mantle of hypocrisy. They utter the

name of Islam with their lips but instead invite people to all sorts of immorality, nay, sometimes, to Kufr itself.

Those evil geniuses are there, thanks to the ignorance of Muslims. But the true scholars of Islam are also present at all times, to tear the mask from the face of evil. Even as the true Prophet of God (peace be with him!) truly prophesied: "A party of my followers will continue to conclusively demonstrate the Truth."

In the fulfilment of this prophecy, numerous refulgent [brilliant] stars have appeared from time to time on the firmament of Islamic learning and have illumined the path for the followers of Islam. As for my humble self, I will consider it my good fortune if God Almighty counts me as among their true pupils. As such, I am always ready to render any service of which I may be capable.

Since my arrival on this island [Trinidad], I have found Muslims entangled in various controversies. The following are the questions which I have been asked to reply to time and again.

- (1) Whether Jesus (peace be with him) was born without a father or through the agency of a father?
- (2) Whether Jesus died a natural death or is still alive?
- (3) Whether the Mir'aj (Ascension) of the Holy Prophet Mohammed (peace be with him!) was of a spiritual character or physical?
- (4) Whether a Muslim should read twenty Rakats in Tarawih or eight?
- (5) Is it permissible to hold the Milad assemblies?
- (6) Is it permissible to send blessings to the dead with Quranic recitation?
- (7) Is it permissible for Muslim ladies to appear before strangers in the semi-naked Western style of dress?

I have been replying to individuals on these points. But I have been asked to state the verdict of Islam in these matters for the benefit of the general Muslim public. According to the argument, which I have fully elucidated during the discussion of "The Codification of the Islamic Law", my function is only to state the Fatwa as it is found in the authoritative books of Fiqh. That is the procedure, which the Islamic world has been following. Let me now state that during the past thirteen centuries, the overwhelming majority of the learned men of Islam have unanimously held in the light of the Qur'an and the Sunnah, that:

- (1) Jesus (peace be with him!) was born without a father.
- (2) Jesus was neither killed nor crucified, but Allah saved him from the clutches of his enemies and has preserved him alive under His protection at a place that He chose for him.
- (3) The Holy Prophet Mohammed (peace be with him!) performed the Mir'aj with his body which was Light personified. This problem will be explained rationally during my lectures on "Miracles."

(4) Keeping before him the Sayings of the Holy Prophet, which referred to the blessings to be obtained by increased amount of worship performed during the nights of Ramadan and considering thoroughly the Sunnah of the Holy Prophet, Amir-ul-Momineen Omar (God be pleased with him!) fixed up twenty Rakats of congregational Taraweeh prayers behind the Imam. Twenty Rakats of Taraweeh are the Sunnah of Omar, and it is followed in obedience to the Holy Prophet's command: "You should follow my Sunnah and the Sunnah of the righteous Caliphs."

(5) To hold Milad assemblies and to recite the life of the Holy Prophet, in conformity with the Holy Qur'an and the Hadith, is Mustahab and Mustahsan (i.e., a religiously good action.)

(6) To send blessings to the dead with Quranic recitation is permissible and is an act based on the teaching of the Qur'an and the Hadis.

(7) It is forbidden for Muslim ladies to appear before strangers dressed half-naked in the Western style. This bare statement of Islamic guidance should not, however, mislead anyone to think that I am not prepared to argue out the Fatwas which I might thus state. In fact, I am always ready to discuss any issue on the basis of the original sources found in the Holy Qur'an and the Hadith, provided the person who wishes to discuss it with me has proper access to the technical knowledge necessary and comes to me as an honest student on the subject. Otherwise to discuss the 'ins' and 'outs' of technical points with those who possess no technical knowledge of the Qur'an and the Sunnah would be as absurd an act as discussing Atomic Physics with a schoolboy.

Unfortunately, certain sections of Muslims today have lost all sense of proportion. They may not even know the ABCD of the various Islamic sciences, but they have the courage to indulge in discussions of Islamic things with such a tone of authority as to make even the worse form of lunacy look grave. And not only can they pose as authorities, but they can also fight with fellow Muslims on the basis of their unwarranted and unauthorized views and can extend the fight to a limit where the community gets smashed up into pieces and becomes the laughingstock of the enemies of Islam. What is still more pathetic is that all this bickering of those ignorant and petty "Mujtahids" revolves mostly around problems and issues which have no relation to the mission of Islam or the progress and stabilization of the Muslim community.

Here I might call to your attention an incident in history which depicted very well the condition of these so-called "friends" of Islam.

Before the Islamic conquest, Constantinople was the seat of the Byzantine Church and a great center for Christian controversies. Fighting amongst themselves on petty issues relating to ceremonials and the like, had become the pastime of the Christian clergy. They were engaged in it during that night also when the armies of Mohammed the Conqueror were crossing the Bosphorus. The most eminent among them were present in the beautiful church of St. Sophia, and a heated discussion was in progress. The issue was whether the bread to be used in the feast of Eucharist should be leavened or unleavened. The fury of the debaters rose ultimately to such a pitch that they tore off the robes of each other. Everyone had in mind to vanquish his opponent, not only in argument, but also physically. In the meantime, the armies

of Islam broke through the fortification of the town. The Byzantine Empire came to an end. The Byzantine Church also disappeared in due course. The church of St. Sophia, where the bishops fought on that petty issue so ferociously, became the house of Islamic Worship. Not only this petty controversy, but Christianity itself was wiped out there.

I must make this admission, though I must do so with a very sad heart, that I find the Muslims in the same unenviable position today, which characterized the Byzantine Christians of those days. Muslims have lost all their past glory. They are virtually existing on a ticking time bomb. The antagonistic forces are altogether busy in decimating their spiritual and moral heritage. The very fundamentals of Islam are under fire. The organized movements of irreligion and immorality, which set out to destroy and wipe out religion as such, are also attacking Muslim religious life with a vengeance. Vast Muslim populations in Central Asia, Transcaucasia, Eastern Europe and China have been engulfed by atheistic Communism. Other Muslim populations are also suffering under the stress of the materialist-driven modernity.

Such an overall catastrophe requires that Muslims should stand solidly united like a rock and should concentrate on the fundamental spiritual and moral issues which confront them. And not only this, but they should also invite the whole world's religions to join with them to fight the organized menace of irreligiousness.

But, in spite of this, there are certain persons who are never tired of raising petty issues for the purpose of dividing Muslims and of wasting their energy. Of course, such persons have their own axe to grind. They don't care what their actions mean to Islam. Nonetheless, it is for all sincere Muslims to see to it that they do not fall into the snare and to not allow themselves to be misled into wasteful pursuits.

Before I conclude, I pray that Almighty Allah may bless Muslims with the right understanding so that they may be able to distinguish right from wrong and to save themselves from pernicious influences. Amen!