

Chapter Three

Ijtihad

1. Definition of *Ijtihad*

The word '*Ijtihad*' an arabic term, originates from '*Zahad*' which literally means 'striving', 'exerting' 'trying utmost' in any activity which involves a measure of hardship. It can be used in respect of a man who carries heavy load. But juridically, *Ijtihad* mainly consists not of physical, but of intellectual exertion on the part of the jurists (*Faqih*) or lawyers. So *Ijtihad* means the all-out efforts made by a jurist in order to infer with a degree of probability, the rules of Shariah from their detailed evidence in the sources. Further, it has been defined as the application by a jurist of all his faculties either in inferring the rules of shariah from other sources (Quran, Hadith and *Ijm'a*) or in implementing such rules and applying them to particular issues.³¹

In other words, "*Ijtihad* is the capacity for making deductions in matters of law in cases to which no express text or a rule already determined by *Ijma*".³² So *Ijtihad* signifies the finding out a solution of a new problem regarding which Quran and Hadith are silent and there was no ruling of *Ijma* on it. According to the opinion of some jurists, *Ijma* and *Qiyas* are the branches of *Ijtihad*.

2. Importance of *Ijtihad*

All the four Sunni schools impose much importance on *Ijtihad* as a mode of legislation. The shias also give much weight on *Ijtihad*. It is the most important source of Islamic law next to Quran and Hadith. It is a continuous process of development whereas divine delegation and *Sunnah/Hadith* discontinued on the demise of the prophet. *Ijtihad*, therefore, continues as the principal instrument of interpretation of the divine message and relating to the changing conditions of the Muslim Ummah in the fulfillment of its aspirations to attain Justice, salvation and truth.³³ This effort will continue upto the day of resurrection. That is why it is said that the door of *Ijtihad* is not closed. The importance of *Ijtihad*

³¹ Mohammad Hashim Kamali, Islamic Jurisprudence, P. 367.

³² Abdur Rahim, Mohammadan Jurisprudence, P. 169.

³³ Mohammad Hashim Kamali, Islamic Jurisprudence, P. 366.

is measured by its harmony with the Quran and the Sunnah and it is the principal instrument of maintaining this harmony. *Ijtihad*, next to Quran and Hadith, reflects the manifestations of all other Islamic sources. Thus consensus of opinion, analogy, juristic preference, *Istislah* (public good), *Istidlal* etc are interrelated under the main heading of *Ijtihad* via the Quran and the Sunnah. *Ijtihad* is concerted with the practical rules of Shariah and not related with any issue like the creation of the universe, the existence of the creator, sending of prophet, Paradise, Hell and so forth. Similarly, one is not allowed to exercise *Ijtihad* on I'man or the prohibitions of murder, theft, adultery, which are already determined explicitly in the text.

Ijtihad is a collective duty of all qualified *Mujtahids* in the event when and where an issue arises but no urgency is faced over its ruling. The duty is fulfilled if it is performed by one *Mujtahid*. But *Ijtihad* becomes a personal obligation of the qualified *Mujtahid* in urgent cases, where if it is feared that the cause of justice may be destroyed if *Ijtihad* is not immediately attempted. It is, therefore, understood that the need of exercising *Ijtihad* to meet the demand of the ever-changing society cannot be overlooked.

3. *Mujtahid*

Literally speaking, *Mujtahid* is one who can exercise *Ijtihad*. In other words, *Mujtahid* means a person who can make *Ijtihad*. But legally, a *Mujtahid* is one who strives hard to find out a solution of a new legal issue, which has not been solved directly in the Quran, Hadith or *Ijma*. So the lawyer or the jurist who is authorised or is competent to expound law of the Holy Quran, *Hadith* or *Ijma* by *Ijtihad* or the exercise of his judgement is called *Mujtahid*. The status of a *Mujtahid* in the Islamic legal system may be compared with the Juris-consult of the Roman Law.

4. Qualifications of a *Mujtahid*

Every individual is not competent to deduce laws by *Ijtihad*. He should have qualifications, which are as follows:-

(i) sound mind and who has attained a level of intellectual competence enabling him to form an independent judgment.

(ii) He must have knowledge of the Arabic language, grammar and rhetoric. Knowledge of Arabic language is necessary for correct understanding of the Quran and Hadith which are written in Arabic language. Comprehensive knowledge of Arabic is a must in order to be a *Mujtahid*.

(iii) He must be a knowledgeable person in the Quran. He should have clear idea about *Makki* and *Madani* verse of the Quran. He should have knowledge about the occasions of its revelation (*Shane-Nazul*). He must have knowledge about the legal contents of the Quran. The number of verses relating to law, according to some jurists including Imam Al-Giazzali, is about five hundred.¹ He should be acquainted with the books on Tafsir written by eminent *Mufasssir* having the capacity to understand and elaborate them.

(iv) He must know the repealing (*Nasek*) and repealed (*Mansuk*) verses of the Quran. He must have the capacity to distinguish between them so that he can deduce law properly.

(v) He must be an expert on Hadith (*Muhaddith*) so that he can distinguish between different types of Hadith-fiz Mutawatir, *Mashrur*, *Ahad*, *Daif* etc.

(vi) He should have capacity to verify the *Ijma* of the companions, their successors and the leading Imams and *Mujtahids* of the past. It is necessary to take precaution against the possibility of forming any new opinion contrary to such *Ijma*. He must be aware of opposing voices expressed by the earlier *Mujtahids* and able to form his own opinion.

(vii) He should have studied the books and commentaries of the great doctors of different schools.

(viii) He should have knowledge of Qiyas. An adequate knowledge of the rules and procedure of Qiyas is essential for a *Mujtahid* to form a proper and suitable solution of a new problem.

(ix) And finally, the *Mujtahid* must be an upright (*adil*) person who refrains from the commission of known sins and the

¹ Mohammad Hashim Kamali, Islamic Jurisprudence. P. 375.

people can trust on his judgement. His sincerity shall not be called in question and he is to be free from any taint.²

An individual possessing the above qualifications can be a *Mujtahid* even though she is a woman.

5. Gradations of *Mujtahids*

The *Mujtahids* can be classified and graded according to their knowledge and ability to deduce laws through *Ijtihad*. Jurists have classified them according to their status, which are as follows:³

(i) First Grade

Mujtahid-Fil-Shara or Supreme Jurisconsult of Islamic Law. In this grade are the founders of the four schools of thought, viz., Imam Abu Hanifa, Imam Malik, Imam Shafei and Imam Hanbal. They had the absolute right to deduce law from the original sources and their discretion was not fettered by the decision of any other *Mujtahid*.

(ii) Second Grade

Mujtahid-fil-Mazhab or Jurisconsult of a School of Muslim Law. In this grade are the famous disciples of the founders of the four schools. Imam Abu Yusuf, Imam Muhammad, Imam Zafar are among the most prominent jurists of this class in the Hanafi School;

Nawawi, Ibne's Salah, Suyuti in the Shafei School, Ibn Abdul Bar and Abu Bakar Ibnul-Arabic in the Malki School. The discretion of these jurists is also unfettered. They had the absolute right to differ with their own masters. For instance, Imam Yusuf could differ with Imam Abu Hanifa and his opinion might be considered to be more sound and correct as compared with that of the master. He is placed in the second grade not because his authority is in any way inferior to that of Imam Abu Hanifa but simply because in *Usul* or Jurisprudence, he follows in the footsteps of the great master and adopts his system of reasoning.

(iii) Third Grade

Mujtahid-fil Mas'ail or juris competent to deduce law by his own *Ijtihad* on a subject about which the text is silent and the *Mujtahids* to the

² Mohammad Hashim Kamali, Islamic Jurisprudence. P. 377.

³ It is basically taken from Aziz Ahamad. PP. 67-68.

first two grades have laid down no rule. If the *Mujtahid* of a higher grade has laid down a rule, the *Mujtahid* of this grade is bound to follow it and cannot overrule or even ignore it. Among this category are such eminent and world renowned jurists as Imam Hazaf, Imam Abi Jaffar Tahhawi, Abi al-Hassan Kerkhy, As-Sarakhsi, Fakhr ul-Islam, Bazdawi, Fakhar-ud-Din, Qadi Khan and others of the same rank.

(iv) Fourth Grade

Ashab al-Takhrij or Masters who can draw out the real law. They are thoroughly well versed in all branches of the law and have profound knowledge of jurisprudence, so if there is any ambiguity in the law they can remove it, and can say with authority what the real meaning of the rules laid down by the jurists of the higher grades is. Among them is placed such a famous *Mujtahid* as Imam Abu Bakar Razi.

(v) Fifth Grade

Ashab al-Tarjih or Masters who have the authority to show preference. These *Mujtahids* are bound by the rulings of the higher grade jurists, but in case of difference of opinion between the higher grade *Mujtahids* of their own school, they can decide as to which opinion is better or which is correct or which is more suitable for the people. Usually after quoting opinion of the different Imams they declare that *Fatwa* is with so and so. This is accepted as final and binding on the courts. Among these *Mujtahids* are counted such great jurists as Abi Hassan Quduri and Sheikh Burhan-ud-Din (A. H. 1152-1213) the author of the world famous "Hedaya".

(vi) Sixth Grade

Ashab al-Tashih or those Jurists who have the authority to say whether a particular version of the Law is strong or weak. Among this grade are placed the jurists like the authors of *Al-Mukhtar*, and *Sharha Waqaya*. These jurists only quote the correct law and ignore the law for which there is no reliable authority.

(vii) Seventh Grade

Muqaladoon.—These jurists are learned men who know the law and do not claim to deduce new rules. These are jurists of the latter ages who became famous for their learning, such as Abu al-Ilyas, Abu al-Qasim and others including the author of the "Durr al-Mukhtar."

Chapter Four

Schools of Islamic Jurisprudence

During the lifetime of the prophet Muhammad (peace be on him), there was no division among the Muslims. They would follow the instructions of the prophet without any question. All the problems were solved according to Quran and Sunnah of the prophet and hence there was no sect or sub-sect or any grouping, political or religious, among the Muslims. The origin of division among the Muslims was started after the demise of the prophet and during the last part of the reign of the *Khilafate-e Rashidin*.

According to the legal point of view, Muslims became divided into two main schools— the Sunni and the *Shiya*. Those who acknowledge Abu Bakar (R), Umar (R), Osman (R) and Ali (R) as the Caliphs are known as *Ahl-e Sunnah wal Jamat*. But those who recognise Hazrat Ali as the only Caliph after the demise of the prophet are known as *Shiyas*. They differ from each other in many respects. Both the Schools are again divided into different sub-sects.

1. Sunni Schools

There are four sunni schools—Hanafi, Maliki, Shafei and Hanbali. The sunni schools of Muslim law originated during Abbasid period. Though there are no fundamental difference among them, but still they differ from each other in minor and unimportant matters. Discussions on them are made in chronological order.

(i) The Hanafi School

The founder of this first distinctive juridical school among the sunnis is Abu Hanifa. His full name is Abu Hanifa An Numan Ibn Thabit. He is popularly known as *Imami-Azam*. He was born at kufa in Bagdad in 80 A.H. (699A.D.) The vast majority of the Muslims in all parts of the world are Hanafi. It is the dominant school in India, Pakistan, Bangladesh Asia Minor, Palestine and Cyprus. Abu Hanifa spent some years of his early life under the care of Imam Jafor Sadiq and received