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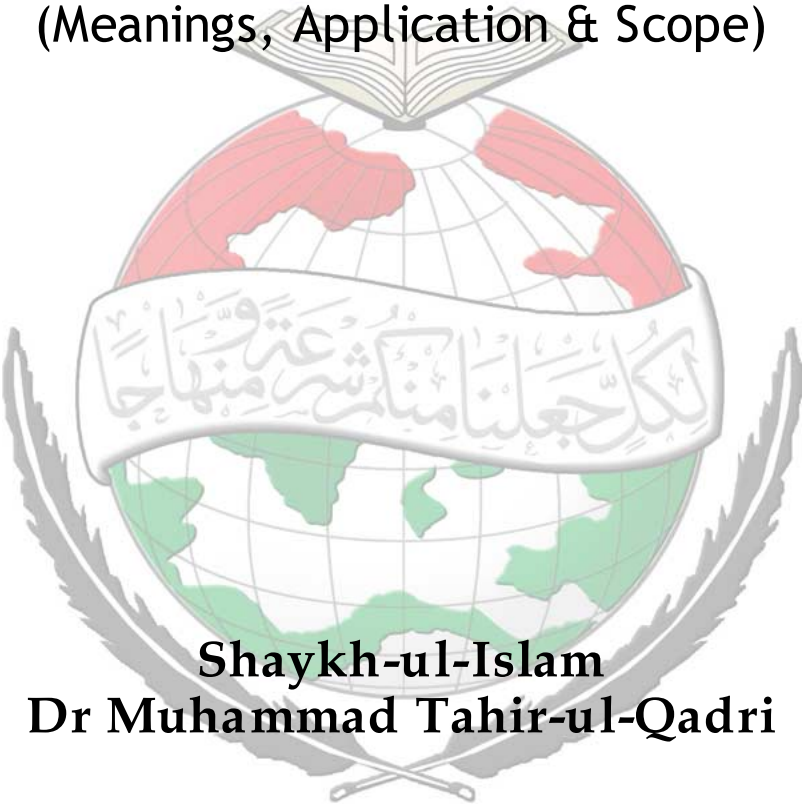
Ijtihad

(Meanings, Application & Scope)



Shaykh-ul-Islam
Dr Muhammad Tahir-ul-Qadri

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➔ The entire income of all of Dr Muhammad Tahir-ul-Qadri's books & recorded lectures is dedicated on his behalf to Minhaj-ul-Quran International.

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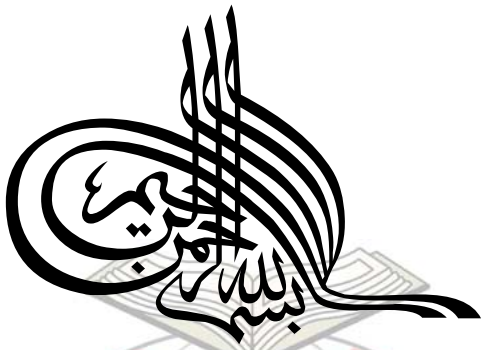

مَوْلَایَ صَلِّ وَسَلِّمْ دَآئِمًا اَبَدًا

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Preface

Seeing through the post 9/11 ordeal and the events taking shape in its backdrop, one can hear the loud whisper: 'where people are ignorant, uncritical and irrational, they are unjust, cruel, ready to perpetrate and to tolerate abuses of unscrupulous and unchecked power.' The Muslim Umma, instead of making the best of God-sent treasure of guidance, has consigned it to oblivion, sheer ignorant of the nihilist forces and their ruthless modus operandi.

It were Muslims who, once upon a time, illumined the world with the light of 'guidance' and gave birth to the present day Europe. In the words of the 20th century eminent scholar Dr. Robert Briffault in his famous book *The Making of Humanity*:

> "It was not science which brought Europe back to life. Other and manifold influences from the civilization of Islam communicated its first glow to European life … Down to the fifteenth century whatever scientific activity existed in Europe was engaged in assimilating Arab learning without greatly adding to it…The *Canons* of Avicenna (Ibn Sina) and the *Surgery* of Abu'l-Qasim, remained the text books of medical science throughout Europe until the seventeenth century."[1]

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According to him, the Arabs introduced three inventions into Europe, each of which was to bring about a world-transforming revolution:

---

1. Dr Robert Briffault, *The Making of Humanity*, pp. 202, 207.

1. The mariner's compass which was to expand Europe to the ends of the earth;
2. Gun-powder which was to bring to an end the supremacy of the armoured knight;
3. And paper which prepared the way for the printing press and opened numerous doors of knowledge and learning.

The Muslims were then a rational community, employing all their faculties of mind, doing a scientific errand on the globe. Open, refined, humanizing, creative, productive, promoting man's stature round the earth, they went everywhere and lit the lamps of reasoning, logic, scientific method and love and dignity of mankind. History pays them homage.

But then it so happened that the law of nature wrapped their day into the night and the lamp of reason was put out; they slipped into a dreadful slumber and lost their contact with reality. Now they were rigid misologists reposing in the idea of the bygone glory.

Allama Dr Muhammad Iqbal felt the misery and strived to enlighten them:

> "The ultimate spiritual basis of all life, as conceived by Islam, is eternal and reveals itself in variety and change. A society based on such a conception of Reality, must reconcile in its life, the categories of permanence and change. It must possess eternal principles to regulate its collective life; for the eternal gives us a foothold in the world of perpetual change. But eternal principles, when they are understood to exclude all possibilities of change which, according to the Qur'an, is one of the greatest signs of God, tend to immobilize what is essentially mobile in its nature."[2]

2. Dr M. Iqbal, *Reconstruction of Religious Thought in Islam*, p. 140.

But the things had taken a calamitous shape. They are not ready even today to reconcile the changed realities with the permanent divine law and have thus failed in regulating their life in the world of perpetual change in accordance with the revealed eternal principles – their main foothold. This process of reconciling the ever-changing realities with the intentions of the permanent laws is what is called *ijtihad*.

The Muslims have been exercising *ijtihad* in every age. They rose to the pinnacle of glory through this scientific method of reasoning. And they suffered when they stopped doing it. It is nothing but fulfilling the day-to-day requirements of life within the framework of permanent principles. Within this framework change is not only permissible but advisable. The conditions of life are always changing and the constitution of the state and machinery of the government have got to be revised and brought up-to-date from time to time. Without this sound legislative exercise we simply cannot cope up with the ever-growing and ever-changing demands of life. We must bear in mind that progress is a change that brings the system nearer to perfection. It is change which, while preserving the values achieved, adds to them and raises them to a higher level.

But we are so heavily fettered in shackles of rigidity and misology (hatred for reason, logic and enlightenment) that even butchery has failed to bring us to our senses although the idea is so easy to grasp. Take up the concept of *tauba* (repentance). One commits a sin and then feels guilty conscious. Where does this sense of guilt come from? There is a permanent principle which he departed from and then compared his action against it. He could only return to it to attain to the feeling of contentment. That is what we call *tauba*. It generates from reasoning. The sinner introspects and finds his error. If his heart is imbued with a firm faith in the Commands of Allah, he will fall back upon it and through

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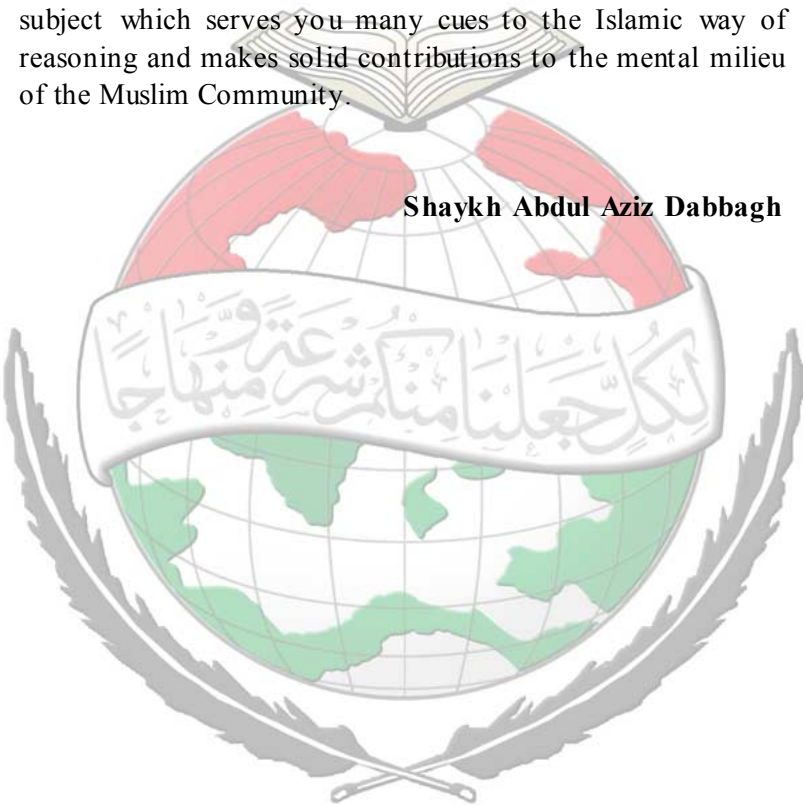
reasoning and private meditations will seek forgiveness from Allah which He will award him mercifully for his come-back. Likewise, there is hardly any aspect of *din* in which devoid of the process of reasoning. The misology, therefore, is unintelligible.

Shaikh-ul-Islam Dr Muhammad Tahir-ul-Qadri is blessed with the vision that pierces through the mysteries of age and discerns the hidden realities of time. He is born with the pang to bring to the Umma the awareness of these realities and unveil to them the secret of their survival. He has devoted his entire life to make us see the Holy footsteps of the Beloved Messenger of Allah and kindle in our heart the flame of love for the Holy Prophet (Allah bless him and give him peace). He is doing it for the sole reason that this way the Umma will wake up soon and start seeking the same legislative reasoning - *ijtihad* afresh which will open to them the doors of logic, wisdom and intellect which the Holy Prophet was sent to disseminate to mankind. Dr Tahir-ul-Qadri wants the Muslim community to behave moderate, flexible and stable and shun rigidity, irrationality and extremism and all its forms so that they once again regain the glory which is their due. The path of *ijtihad* will take them to that because what seems apparently an individual behaviour is in fact the collective behaviour as it is designed by the culture and designs the culture as well. *Ijtihad* has its roots in the teachings of the Qur'an and Sunna and in the Qur'anic society shaped by the Holy Prophet 1400 years ago. And our thoughts are not our thoughts; the remotest past has gone to the building of them. Read any of the books written by Shaikh-ul-Islam Dr Muhammad Tahir-ul-Qadri, or listen to any of his recorded lectures, you will find him making an all-out endeavour to make us believe that it is only the love of the Holy Prophet and following his *sirah* that can open our eyes and minds, equip us with the revitalizing reasoning called *ijtihad* and

elevate us to that exalted station which Allah has promised to bestow upon those who make use of all the faculties of their mind in complying with the Prophetic teachings.

This treatise is one of his most scholarly discourses on the subject which serves you many cues to the Islamic way of reasoning and makes solid contributions to the mental milieu of the Muslim Community.

Shaykh Abdul Aziz Dabbagh



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Beyond Description

His Eminence Shaykh-ul-Islam Dr Muhammad Tahir-ul-Qadri is a theologian, theosophist, scientist and spiritualist of modern times. A preacher, reformer and philosopher, he is also a political thinker of world renown. He is the animating heartbeat of hundreds of thousands of Muslims around the globe. It has layers of meanings whatever he writes and speaks about, addressing simultaneously the whole mankind in general, the whole Muslim Umma in particular as the immediate focus of his magical rhetoric and fascinating pen. He talks about and proves the relevance of Islam to the modern age. Diagnosing the maladies that have afflicted mankind he prescribes Islam as the sole remedy to the entire syndrome. He has authored some 450 published works in Arabic, English and Urdu and delivered over 5,500 lectures in various languages all over the world. His capabilities, God-gifted qualities, achievements and high ideals beggar description.

Leading the Umma out of its ordeal

His teachings are deep, definite and sublime leading one's soul to the divine chambers. Galvanizing and inspiring, his oratory leaves us spell-bound, enlightening vividly as to what we are doing on earth and what, in fact, we are supposed to do; what troubles we are suffering from and how in a scientific fashion can we cure and convalesce. Speaking in terms of modern logic, he pricks one's inner core and clears one's vision on the compatibility of Islam with the scientific realities of the universe which have so far been discovered

and which the scientists may explore in the times to come. He is really an embodiment of all knowledge and wisdom that is required to lead the Umma out of its current ordeal.

Restoring man's status in the universe

Falling prey to stray ideologies and burdened by the stresses and strains of modern life, the modern man has become thoroughly materialistic, consigning all moral, spiritual and human values to oblivion. It seems as if the Hereafter, the Last Day and the Final Accountability during life after death have no more been his concerns. This has added enormous miseries to his daily chores leaving little chances of his survival from the quagmire of material pursuits and base nature. In this context, Shaikh-ul-Islam Dr Qadri has emerged as a saviour to salvage and rescue the human society from the evils of the earthly existence and lead them to man's real status Allah Almighty has blessed him with. This restoration of real spiritual as well as worldly status of man in this world is, in nutshell, all what Dr Qadri is up to.

Minhaj-ul-Quran International – a message of global peace

To achieve his objectives Dr Tahir-ul-Qadri launched his struggle in 1977 with the establishment of "Mahaz-e-Hurriyyat", an intellectual forum for the ideological training of the youth. He advanced dynamically in the right direction and established Minhaj-ul-Quran International in 1981. His voice received warm welcome; people would sit around their TV sets and wait for his *Fahm-ul-Qur'an* programme impatiently. The MQI soon became the heartbeat of the masses. Shaikh-ul-Islam then planned to take his message to the entire globe. It was in 1982 that he visited Iran, met the Iranian leadership and put forth his message which was given a hearty welcome. He then visited Europe in 1984 to extend

the range of his missionary services and to introduce the Europeans to the true essence of Islam. The tour was a great success. The Muslims of Denmark were highly impressed and invited Dr Qadri to establish an institute in Denmark under his supervision. Consequently, an Islamic Centre was established in Copenhagen, Denmark on 25 January 1986. Dr Qadri himself performed its inauguration.

He toured Abu Dhabi, Dubai, Sharja and other Gulf States in 1984 and 1985 where people accorded him rousing receptions. As a result of his energizing tours, a huge branch of the Institute of Minhaj-ul-Quran was established in the United Emirates.

Dr Qadri visited England to further widen the scope of his missionary campaign: He visited the country first in May 1985 and then in January 1986. During his tour of England he addressed huge gatherings in London, Manchester, Birmingham and Boston etc. He visited United States in April, 1986 in order to extend and promote his mission. He delivered lectures in many seminars and symposia on various Islamic topics specifically pertaining to Islamic revival in the West, at New York, Washington, Chicago and others states. This visit laid the foundation of the MQI in the United States. The late 80s and the early 90s then saw a wave spreading through entire Europe, the US, Canada and the Middle East, and in only a decade's time the MQI Centres were established in more than 80 countries of the world. That is how the magic of true Islam works. Shaikh-ul-Islam Dr Qadri worked sleeplessly to spread his mission and it is now a globally welcome mission to spread Islam as the most moderate, tolerant, realistic, scientific and practicable way of life and religion for the entire mankind.

The quest for knowledge

The modern scientific thought has undergone metamorphic changes over ages. Its spirit, however, has constantly

remained to justify the existing fact on rational grounds. Eventually, the twentieth century has witnessed an unimaginable scientific advancement that has assigned a vital role to man on the globe in conquest of universe. In the quest for knowledge, the modern man has also discovered that the centuries old concepts about religion are contrary to the scientific thought and, therefore, need to be either discarded or made compatible with the scientific method. This is the challenge that the religious scholars and theologians have failed to face. Instead of analyzing the problem on scientific basis, they have adhered to their timeworn ideologies with a practical surrender to the materialistic values in vogue. Even the torchbearers, the so-called intellectuals and modern scholars of Islam who pretend to be abreast with the modern scientific thought have given in to the onslaught of modern sciences and in secret depths of their hearts feel nervous how to defend their position. They are doing more harms than good by defending their post with archaic weapons.

However, at the dawn of new millennium, Shaikh-ul-Islam Dr Muhammad Tahir-ul-Qadri has risen like a guiding star on the intellectual horizon and has showered rays of his effulgent wisdom on the modern mind. Equipped adequately with the scientific and religious knowledge, he has given the call to modern man that Islam is the religion that, ever since its revelation, has the scientific bases which the modern scientific thought is now claiming to discover and further needs to explore in its totality.

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On Islam

The contributions made by Shaikh-ul-Islam to the modern Islamic thought and its reconstruction are colossal rather incredible. Nor can we measure his achievements in clearing and purifying Islamic ideology from muddling of various 'isms' wrought over centuries. A huge reservoir of literature,

for instance, exists on Mysticism, Islamic Mysticism, Pantheism and Transcendentalism, nature of Mystic Experience, its variety, allied philosophies and schools of thought. The antagonists too have generated colossal works proving it contrary to the 'true Islam' and labeling it as an impious innovation in the approved Islamic code of life. This controversy has inflicted serious damage to the modern Muslim mind leading the young educated Muslims all over the world to desperation and abhorrence from Islam. They are confused and blatantly question the intellectual validity and logical well-being of Islamic thought. The Muslim scholars engaged in this unfortunate controversy, however, ill afford any attempt to recover from the 'spin'. They drastically lack in advanced knowledge and are unaware of the 'phenomena' of modern scientific mind. Being the odd ones, they now stay out of this war of wits, which has spread over East and West. How to satisfy the modern scientific mind on the question of Islamic Spiritualism, its nature and significance? Shaikh-ul-Islam Dr Qadri has performed this uphill task with absolute facility, authority and command.

Knowledge of modern logic

Simultaneously, endowed with a vividly historic insight, he educates the modern Muslim mind how, centuries ago, the Muslim scholars defeated their rival thinkers employing the then contemporary logic against them. He emphatically exhorts all educated Muslims of the world to acquire perfect knowledge of modern logic and defeat the antagonists of Islam who have joined hands against the Umma with an intention to shake the solid spiritual realities which are the bases of Islamic thought and ideology. Shaikh-ul-Islam Dr Muhammad Tahir-ul-Qadri has a sagacious eye on the rise and fall of the Muslim and non-Muslim empires. He possesses a vision that penetrates into future and clearly discerns the

impending dangers and their remedies. He bases his arguments on the Holy Qur'an, attracts and convinces the modern reader and deletes his disbelief in permanent human values revealed by the Qur'an

The primary mission of his life is to drag the Muslims out of the mire and to elevate them to heights of unprecedented glory. His creative interpretation of Islam has pulled it out of its strait-jacket in which its strait-laced critics have robed it. He has broadened the area of its meaning and application to make it conform to the rapidly changing imperatives of the contemporary world and assert its universality, which has been muffled by centuries of narrow and conservative attitudes. Shaikh-ul-Islam Dr Qadri is the most auspicious star on the murky and cloud-capped galaxy of the Islamic world whom God has blessed with knowledge, guidance and eloquence to steer the rocking world of Islam through the tempestuous billows of strife and dissension and to put it back on the rollers to make it self-reliant and self-sustaining.

He has dedicated all his energies and sources to promote and spread the message of peace, moderation, and tolerance not only in South Asia but also round the globe. Universally, he has earned reputation as ambassador of peace. His dynamic and galvanizing endeavours for ecumenism and inter-faith harmony in particular, have produced inspiring and concrete results.

As such Shaikh-ul-Islam emerges as a person of destiny with his learned instruction and creative interpretation of Islam providing refreshing perspectives of the role of Islam in the contemporary World. Unfortunately, in the past several decades, the universality of Islam has been obscured by stereotyped conservatism and Shaikh-ul-Islam with his progressive ideas and better contemporary world vision is performing an important role in the renaissance of Islam.

A glimpse of his intellectual works

We find a vivid manifestation of his depth of learning, all-embracing insight and far-reaching vision in his intellectual works of historic import. This short introduction simply cannot encompass his works. Some of the most significant of them include *Irfan al-Qur'an*, a scientific, exegetic, modern, lucid and comprehensive translation of the Holy Qur'an; *Jami' as-Sunna*, a compendium (in 25 volumes) of 30,000 fair, fine and sound traditions of the Holy Prophet (Allah bless him and give him peace) that validate the mainstream Islamic doctrine; *al-Minhaj as-Sawi*, a collection of 1100 fair, fine and sound traditions; *Sirat ar-Rasul*, (in 12 volumes) a detailed account of all the phases of the Holy Prophet's life which the Qur'an has called *Uswa Hasana* — the best pattern; *Kitab at-Tawhid*, *Kitab al-Bid'ah* and dozens of books on the true Islamic doctrines which dispel the existing disagreement among Muslims on various doctrinal issues and present to the non-Muslim world Islam in its right, true and scientific form and spirit, precisely delineating what Islam is and what it is not. His books particularly on the subject of beliefs are numerous and voluminous. A list of these books has been produced in the end of this treatise for the benefit of our readers. His works have received global appreciation from the leading authorities, traditionists, jurists and scholars of the Muslim world. Shaikh al-Islam has already been awarded numerous international titles in this regard.

Amanat Ali Chaudhry

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Ijtihad and its need

Life is a dynamic process and forces of life keep changing under its influence. The objective of law is that all demands of life are met in such an amicable manner that its movement continues in the right direction without any let or hindrance. All decrees of Islamic law have two layers of meaning in general:

1. Actual spirit or Essential aspect
2. Structural form or Existential aspect

The essential aspect guarantees dynamism and evolution of human life, whereas the purpose of its structure or form is to give it discipline and balance. When human life undergoes changes dictated by the forces of life, it becomes necessary to review the structure of law to keep it intact, commensurate with its objective. The idea is to disallow away clash between aspects of discipline and evolution of life because their mutual conflict renders the movement of human life into stagnant phenomenon, which in turn drifts the achievement of the required purpose far from possible.

This situation is against the collective ideal of Islam. Collective objectives of Islam cannot be attained without fulfillment of all the demands of life. Keeping this objective in view, undertaking a structural review of law in accordance with Islamic teachings on matters not discussed by the Holy Qur'an or Sunna and exploring new sources of legal framework to maintain life as a progressive and dynamic process is called *ijtihad*. This is through the institution of *ijtihad* that attainment of aims of Islam is not only possible but is also actualized.

There is no denying the fact that under the change in forces of life, previous laws framed in accordance with objectives and priorities of its own time fail to address the newly emerging problems of life. The old laws give way and render the system into a sterile process, incapable to cope with the new realities. Their violation instead of implementation proves productive which signifies deriving a new legal framework. Its reconstruction becomes, therefore, urgent and inevitable to keep life moving in the right direction. If such a course of reforming law is not undertaken, rule of law loses its importance in life resulting into violation, violence, disobedience and lawlessness.

We have been unable to give *ijtihad* its due importance that it naturally occupies in the Islamic system of jurisprudence in spite of the vast changes in the realms of society, politics and economy. As a result, demands of law and life come into clash with each other. Life demands the fulfillment of its needs, while law proposes punishment for any violation committed in the process of fulfillment of needs. Both are poised at different levels. This concept can further be explained with this analogy that life does not afford deadlock in the struggle of economic advancement, whereas law insists on the absolute forbiddance of interest-based economy. According to Islamic point of view, if a religious mind insists on the total forbiddance of interest-based economy without the provision of ultimate and absolute resources to break the deadlock over the creative economic struggle, , it will certainly result into the diversion from Islamic dos and don'ts. The legal responsibility of such a mind will rest on the idea, which he does not want to ponder over, that the Holy Qur'an had forbidden interest at a time when interest was practically replaced with *qarz hasana* in accordance with

وَأَقْرِضُواْ ٱللَّهَ قَرْضًا حَسَنًا.

"And lend Allah a goodly loan."[1]

The difficulty in understanding this fact is that we think in terms of providing for the poor, the disabled and the destitute rather than overcoming this deadlock of creative struggle with regard to the Qur'anic concept:

لَن تَنَالُواْ ٱلْبِرَّ حَتَّىٰ تُنفِقُواْ مِمَّا تُحِبُّونَ.

"You can never attain virtue unless you spend (in the cause of Allah) out of that which you cherish the most."[2]

That is why the religious leadership has deprived itself of the mantle of leadership of economic revolution because it neglected this reality that without eliminating fear of poverty, people cannot be saved from religious or moral destruction. Those mired in economic quagmires cannot be expected to understand and care for moral intricacies. The Holy Prophet (ﷺ) described this reality in the following words:

كَادَ الْفَقْرُ أن يَّكُونَ كُفْرًا.

"That perhaps poverty and destitution may lead to *kufr* (infidelity)."[3]

The basic purpose of law in Islam is to provide the people with a life free from fear and anxiety. This condition cannot be met without fulfilling all material and spiritual demands of life. The Holy Qur'an has described the basic demands of human life in this manner:

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1. Qur'an (*al-Muzzammil*), 73:20.
2. Qur'an (*Al 'Imran*), 3:92.
3. Set forth by •Baihaqi in *Shu'ab al-iman*, vol. 5, p. 267 # 6612. •Abu Nu'aim in *Hilyat al-awliya' wa tabaqat al-asfiya'*, vol. 3, pp. 53, 109 & vol. 8, p. 253.

بَعْضُكُمْ لِبَعْضٍ عَدُوٌّ ۖ وَلَكُمْ فِي الْأَرْضِ مُسْتَقَرٌّ وَمَتَاعٌ إِلَىٰ حِينٍ ﴿٣٦﴾

"You will remain enemies to each other, and now in the earth has been destined a dwelling place and sustenance for you for a fixed time."[1]

Here human life has been said to be dependent on two things for its survival and continuity:

1. *Mata'* (goods or utilities)
2. *Mustaqar* (dwelling place)

The term *mata'* covers human economy and its resources whereas *mustaqar* denotes all forms and resources of settlement and strength of human life. If we minutely analyze both these terms, it becomes clear that all economic, political and social demands of human life have been stated under these two subjects. According to the Holy Qur'an, it is these interests, which become bone of contention among people causing to human societies pain and suffering and making life full of fear, grief and miseries. Now what is the way out of the factors that cause all the anguish and anxiety? The Holy Qur'an says:

فَإِمَّا يَأْتِيَنَّكُم مِّنِّي هُدًى فَمَن تَبِعَ هُدَايَ فَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ ﴿٣٨﴾

"Then if there comes to you Guidance from Me, whoever will follow My Guidance, neither shall any fear (obsess) them nor shall they grieve."[2]

This stands established from this Qur'anic injunction that Divine Revelation or law of Shari'a ensures a life free from

1. Qur'an (*al-Baqarah*), 2:36.
2 Qur'an (*al-Baqarah*), 2:38.

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pain and fear. Therefore utilization of different ways, means and resources will be considered exactly in accordance with Shari'a in every age for this purpose. The details of law and demands of social life consist in the fact that the need of law is felt in a civilized society because it serves as an instrument for protection of moral and social values. There are three preconditions for establishment, survival, solidarity and evolution of such a society

1. Growth of human personality
2. Completion of social structure/order
3. Environment control

There are several aspects of human personality of which biological aspect is one with three demands namely food, clothes and shelter. If these demands are not met, personality cannot develop biologically. The ambition, greed and miserliness in a society are a stumbling block in the fulfillment of these demands. Islam necessitates their removal to ensure the fulfillment of biological needs of human personality. Another aspect of human personality is the socio-biological aspect, which involves matrimony and procreation.

No healthy society can remain absolved of the fulfillment of these demands as long as it does not lose sight of moral excellence of the concept of the chastity. Another aspect known as the socio-cultural aspect demands that society undertakes the responsibility of education of society and its economic development. No civilized society can abstain itself from fulfilling this demand nor can it be saved from the decline by such an abdication of responsibility. Psychological aspect of human life emphasizes the proportional and harmonious growth of emotion, determination and perception. The psychical aspect warrants complete harmony among consciousness, sub-consciousness and unconsciousness. Without this harmony, neither can mental balance of man be maintained nor can his character be developed on the right

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lines. All psychopathology generates from negligence of this aspect.

The demands of another aspect of human life known as transcendental aspect can be met through a struggle waged for the establishment of an ideal society, religion, art, morality and knowledge. What guarantees the growth of all aspects of human life is the positive response to the sociological structure. The establishment of societal institutions, their organization and disciplined persistence depends upon a system of lawful injunctions and negative imperatives, which serves as a shield for the protection of human values. This serves the purpose of reconstruction, reformation and modernization of law.

The third precondition relates to environment control. Environment is of two types i.e. natural and human. Science and technology are the means to conquer the natural environment. Human environment has two sides namely hostile side and favourable side. The favourable human environment is brought under control through profitable policies and practices while hostile human environment is conquered through profitability and benevolence after gaining its control by coercive ventures. When these preconditions are met in a society, environment is geared for a culture to develop and grow.

Culture has three patterns namely ideational culture, sensate culture and idealistic culture. According to P. A. Sarvokin, "Islamic culture is the ideal culture". Every pattern of culture is three-layered.

Firstly the philosophical aspect deals with questions like what is knowledge and how can it be acquired? What is the status of knowledge and what is its highest ideal? The second aspect of culture is orientational aspect based upon mechanism to achieve the ideal identified by the philosophical facet. It paves the way for the establishment of the societal

institutions, which are an instrument to achieve the ideal. The completion of sociological structure is the precondition to organize its action under which culture develops itself.

The code of conduct established to organize the action of societal institutions can protect the societal benefits accruing from them as long as forces of life do not register any change. Since life is a dynamic entity, therefore, the forces are bound to undergo change. If changes occur, the code of conduct that was put in place previously to organize and control functions of societal institutions fails to protect the values of life. This necessitates that the means and resources adopted to achieve the national ideal or orientational aspect be reviewed to determine as to how much they can be effective in obtaining the required results. This critical assessment is called evaluational aspect and in the language of Islamic law, it is known as *ijtihad*, whose precedents can be found from the times of the rightly guided Caliphs to later periods of Muslim empire.

It dawns upon our consciousness in the light of the Holy Book and the Sunna that the ideal which initiates and fosters growth of higher values of life in human personality and societal structures is determined by the Holy Book and Sunna. The Holy Qur'an and Sunna not only set the ideal but also work out strategy to achieve it. As long as the sanction of power of enforcement backs the strategy, worthwhile results are produced. But when law is deprived of the ruling power, neither can the system of law fulfill the demands of life nor can it protect the values of life.

This is the stage where reconstruction of law is required and need of *ijtihad* becomes essential so that values of life can be protected again through the employment of effective law and the function of societal institutions may be controlled and organized. Because it is in this way that the evolutionary dynamism could continue towards collective ideal of life. It

should be kept in view here that at the time of *Ijtihad*, the determination of ideal and its strategy should be worked out in the light of teachings of the Holy Qur'an and Sunna. As Allah Almighty says in the Holy Qur'an:

لِكُلٍّ جَعَلْنَا مِنكُمْ شِرْعَةً وَمِنْهَاجًا.

"We have designed for all of you a discrete law (ideal) and all-embracing way of life (strategy)."[1]

Reference to the Holy Qur'an and Sunna is imperative since due to change in the forces of life and mantle of leadership of political and economic revolution having abandoned Muslims, a demand may arise to conduct *ijtihad* to create harmony with the changed circumstances. Such a viewpoint may frustrate the collective objectives and interests of Islam but can not visualize any betterment. We should not lose sight of the fact in this respect that revival and reconstruction of later period of the Muslim Umma can be accomplished in the same manner as it was perpetrated in the early days. I feel no hesitation in saying that instead of letting ourselves be dictated by circumstances, we should conduct *ijtihad* to make our ideal shape circumstances. This feat can not be accomplished without a spiritualizing and revolutionary ideal.

At a time when the values of human life stand degraded and blessings are turned into curses, no imposition of any legal order can reverse the circumstances because the function of law is not to revive the dying values of life but to protect the present set of living values.

So in order to protect the traditions and values, the precondition is their antecedence in the society. So with a view to reviving the dying values and to achieve the ultimate ideal, we will have to bring about a comprehensive revolution

1. Qur'an (*al-Ma'idah*), 5:48.

in our social life through employment of *ijtihad*. It is after this stage that the implementation of Islamic law could guarantee the protection of these values and their growth. Guidance can be sought from the Holy Qur'an, the Sunna, practices and customs of the holy companions and consensus of the Umma etc.

This principle, which enjoys the consensus of jurists of the Umma, comprehensively represents the need of *ijtihad* that "the change in the circumstances and time warrants change in Jurisprudence". To us, this principle of Islamic jurisprudence is the basis of establishing the institution of *ijtihad* and it is by invoking this precept that the leading pioneer jurists and their successors have been doing legislation in view of the new problems and issues of their respective eras. That is *ijtihad*, a vital legislative instrument of Islamic laws that guarantees the revival of Islamic culture and civilization till the end of time.

After having discussed the need and significance of *ijtihad* in the light of present-day ground realities, we now move onto the more specific issues related to *ijtihad* including its definition, structure, scope and see as to how *ijtihad* can be done and what are the practical problems in its way.

The scope of law-making in Islam

In Islam, the Holy Qur'an and Sunna hold permanent, abiding, unconditional and immutable position as a source of law. Therefore whenever the process of law-making is undertaken at any level at any time and in any age, it would surely be subservient to the Holy Qur'an and Sunna. Having settled this basic principle, we will now present an abridged outline of the scope of legislation. There can be two types of legislation in Islam:

1. Formulative Legislation
2. Interpretative Legislation

The whole process of legislation in an Islamic state is based on the principle of *ijma'* (consensus).

Formulative Legislation

1. Formulation of constitution and statutes

Irrespective of the fact whether the constitution is written or unwritten, the first step towards legislation in any state is the formulation of constitution in the context of social, political and economic conditions tailored to its local needs.

2. Rules of implementation

This denotes the formulation of such laws that help in the enforcement of Shariah commandments and are instrumental for the development and promotion of Islamic values. They are linked largely to the regulatory laws.

3. Formulation of procedural laws

By 'formulation of procedural laws' is meant settling petty details and making sub-sections and sub-sub-sections of those commandments of Shari'a, which are subjected to *ijtihad* in accordance with the demands of the ever-changing circumstances. They are related to penal, civil, transactional, contractual, commercial and many other spheres of Islamic legal science.

4. Consensus and its abrogation

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In an Islamic state, consensus of opinions can be obtained on any legal or jurisprudential matter by way of legislation. Likewise any such 'local consensus' can also be abrogated in any later period in compliance with the requisite preconditions. The consensus of opinions of the Companions of the Holy Prophet (PBUH) and the conclusive consensus of

the Umma are an exception to it. The above-mentioned four conditions are the types with formulative legislation.

Interpretative legislation

1. Legal preferences

1. Preferring one jurisprudential opinion to another.
2. Giving preference one to the other in the enforcement of Shari‘a laws.

2. Legal adoptions from other schools of thought

Despite adhering to one jurisprudential school of thought, it is to adopt the research and opinions of other jurisprudential school of thought for the solution of some pressing problems with certain conditions.

i. New legal interpretations

The interpretative *ijtihad* refers to reinterpretation of the Qur’anic text and Sunna, which not only meets the demands and requirements of modern life but also does not contravene the basic teachings of the Holy Qur’an and Sunna.

ii. Gradational change in the degree of legal values

It relates to changing grades of certain commandments within the confine of dos and don'ts and permissibility and impermissibility under the laws of the Shari‘a. This can be done with a corrective or conciliatory objective for example declaring an undesirable act as temporarily forbidden or commendable act as obligatory to fulfill the basic needs of a society. This legislation is based on the following jurisprudential concepts:

1. *Ijma‘* (consensus)
2. *Ijtihad bayani* (interpretative reasoning)
3. *Ijtihad qayasi* (analogical reasoning)

4. *Istihsan* (appreciative reasoning)
5. *Istislah (masalih mursalah)* (conciliatory reasoning)
6. *Istidlal* (deductive reasoning)
7. *Istishab* (coalitional reasoning)
8. *Zarurat Shar'i* (legal necessity)
9. *Urf wa 'adah* (usage)
10. *Naza'i Shari'a* (legal analogies)
11. *Qaza'i Hukkam* (rulers' judgments)
12. *Aqwa al-fuqaha'* (saying of jurists)
13. The principle of changing laws in changing times
14. *Iztirar* (exigency)

Significance of *Ijtihad* in legislation

Ijtihad holds basic and central position in the whole process of Islamic legislation because there are normally two levels of Islamic law.

1. Actual spirit or essential aspect
2. Structural form or existential aspect

The essential or actual aspect of Islamic laws guarantees the dynamism and evolution of human life while the structural aspect aims at giving it discipline and framework. With change in the demands and forces of life, the human life also undergoes changes. In ever-changing circumstances it becomes necessary to undertake structural review of Islamic laws not only to keep its spirit and purpose alive but also to keep its effectiveness intact so that the aspect of discipline of law does not clash with the aspect of dynamism and evolution of life. Their mutual conflict and clash has the potential of rendering the dynamism and evolution of life into stagnant and non-productive state and attaining to control and organization becomes far from possible. The accomplishment of this obligation is carried out through *ijtihad* in the process of law-making. This guarantees effective enforcement of Islamic laws in the changing circumstances of every period;

makes them truly result-oriented and ensures their universality and perpetuity.

Definition of *ijtihad*

Ijtihad is an expert reasoning endeavour conducted in accordance with inferential and deductive method to formulate, reconstruct, elaborate, expand and enforce Islamic laws in the light of the Holy Qur'an, Sunna and *ijma'* (consensus).

Reinterpretation of commandments of the Qur'an and Sunna is also *ijtihad*

Apart from analogical and inferential reasoning, the reinterpretation of the injunctions of the Holy Qur'an and Sunna not based on other Qur'anic texts will also be called *ijtihad* because as a matter of fact reinterpretation denotes determining the meaning of an injunction. It is also called 'exegesis'. If determination and identification of a Qur'anic injunction is found in the Holy Book itself, it will also be considered as the Qur'anic text, and not *Ijtihad*. That is the style adopted while interpreting the Qur'an through other texts of the Qur'an or the texts of Sunna.

But if interpretation of any injunction of the Holy Qur'an and Sunna is not available in the Holy Book and Sunna itself, the effort at reinterpretation by the jurists in accordance with the spirit of Islamic laws based on ground realities and its application is *ijtihad*. There are three kinds of *ijtihad*.

1. *Ijtihad qayasi* (analogical reasoning known as legal analogies)
2. *Ijtihad istislahi* (conciliatory reasoning based on peace-making acts such as appreciation and reconciliation)
3. *Ijtihad bayani* (interpretative reasoning)

An interpretation of Islamic law undertaken in accordance with the rules as described in Islamic laws in order to meet the

modern scientific and intellectual needs is called *ijtihad bayani* or interpretative reasoning.

The reality is that treating or not treating the reinterpretation of the Holy Qur'an and Sunna as *ijtihad* as some jurists and learned scholars have disagreed upon it, is merely a verbal contradiction because all of them favour the need and justification of interpretation of the Holy Qur'an and Sunna. Whether or not this act is called *ijtihad* but its spirit and effectiveness somehow stays intact and this is the true objective of *ijtihad*.

Mutual relationship between the Holy Qur'an and Sunna as source of law

As the Holy Prophet (ﷺ) enjoys the position of being a law-making and law-interpreting authority, his Sunna also holds both these positions. On the basis of both these positions, Sunna is associated with the Holy Qur'an as a source of law.

The Law-making and law-interpreting aspects

1. From the point of view of law-making, the matters where the Holy Qur'an does not decree explicitly, the Sunna of the Holy Prophet (ﷺ) provides basic law-making for example atonement for not fasting.
2. From the point of view of interpretation, the nature of relationship of Sunna with the Holy Book falls in the following categories:

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i. Specification of the general

For example, specified meaning of the adulterer and the adulteress as described in the verse on whipping, the specification of 1/3 portion of wealth on the Qur'anic command of writing a will.

ii. Qualification of the absolute

The determination of minimum amount/quantity for fixation of *hadd* on stealing or theft.

iii. Explanation of the implicit

The meaning of prayers, number of 'cycles' and determination of its timings, etc.

iv. Exemption

Exemption of fish in the order dealing with forbiddance of the dead sea animals; exemption of locust; exemption of wiping over he stockings in the command to wash feet.

v. Addition

The addition of one year in imprisonment or exile along with the *hadd* on adultery.

Some scholars accept the principle of abrogation of the Qur'anic verse with the Prophetic traditions and consider it within the purview of interpretative reach of the Sunna. But we do not subscribe to this concept and hold that the Qur'anic verse can only be cancelled by the Qur'anic verse and not by the Sunna.

The issue of disagreement with the *ijtihad* of four Imams

We agree with the opinions of Shah Wali Allah and other eminent scholars that no such *ijtihad* should be undertaken against the opinion of the four Imams, which may promote the possibility of emergence of a new jurisprudential school of thought. The reason being that, such a new *ijtihad* will pave the way for more intellectual rifts, chaos and dissension within the Muslim Umma. Therefore what guarantees the safety and security of the Muslims in the field of knowledge, thought and productive reasoning is the followership of

ijtihad accomplished by any one of the four Imams and adherence to any one of the four religions. This will make the legal *ijtihad* and jurisprudential research of a scholar of modern times stick to one well-set jurisprudential discipline instead of becoming "arbitrary opinion-making". This demonstration of moderation can only bear the fruitfulness and guarantee the continuity and longevity of thoughts of the jurists in the way of modern reconstructive research. This is what we call *taqlid* or conformation. Following the principles worked out by the four Imams, *taqlid* does not shut the doors for new *ijtihad* (jurisprudential reasoning) in consonance with demands of times. This is intellectual stagnation and deadlock, which can resultantly cause intellectual paralysis of the Muslim Umma. The following explanatory points should be kept in view in this regard:

The Ijtihad undertaken by the four Imams is of two types.

i. Basic or fundamental *ijtihad*
ii. Secondary or auxiliary *ijtihad*

i. Basic *ijtihad* signifies that *ijtihad*, which mapped out the basic format for jurisprudential research for example determination of origin and sources of Islamic law, their order and the principles of preference of one to the other; their definitions and details; principles and style of jurisprudential exposition of the Qur'anic verses; the standard procedures accepting and rejecting the traditions and narrations; the conditions and rules that govern change of commands so on and so forth. All basic *ijtihad*s by which every jurisprudential school of thought came into being, are identified as fundamental type.
ii. An auxiliary *ijtihad* relates to the detailed application and implementation of the laws devised through fundamental *ijtihad* — the laws that relate to interpretation, revival and

research of the responsibility and their details and they correspond to the same given circumstances and demands of time. It is more practical than theoretical and is more concerned with deriving consequences of an act rather than with formulating principles that govern the evolution of an act. Besides, the area of an application of this form of *ijtihad* is more limited as it springs from the rather circumscribed priorities and interests of a particular historical period and is bound by the pressures that characterize the period or it only interprets and infers. Since this form of *ijtihad* is not necessarily related to the formulation of fundamental matters and projects only incremental issues, it is called secondary or auxiliary *ijtihad*. Thus there is a convergence of opinion on the fundamental *ijtihad* which does not affect the essential structure of the fundamentals.

2. In the light of the above-mentioned meaning, while following the basic *ijtihad* of the four Imams if some sort of difference occurs in the secondary or auxiliary *ijtihad* in the process, there is no harm in maintaining this difference.

3. In accordance with needs of the present times, the difference with certain types of *ijtihad* undertaken by the four Imams, which were based upon demands, objectives and priorities of their age, is in fact not any matter of deviation or difference at all. If new *ijtihad* is accomplished by complying with the manner and style of *ijtihad* followed by the four Imams, which may apparently look different but in actuality will not be against or opposed to them. It will rather be considered as the extension of the same basic *ijtihad* and will not be regarded as contrary to the spirit of *taqlid*.

4. There are issues, which were not present during the times of four Imams or were not perceived for various reasons. For example many political, economic, social, constitutional and international matters are the product of the complexities of

modern times. Therefore they were not brought within the ambit of *ijtihad* as they were not present at that time. If at all some kind of *ijtihad* was undertaken on similar issues it could not definitely resemble the present one. Therefore reasoning out these issues for juristic purposes is not forbidden at all nor can it be considered as being opposed to the four Imams.

5. If jurisprudential guidance from any Imam, one is adherent to, is not found on any particular matter, the interpretation of other Imam may also be consulted as needed. The application of this principle in the present-day jurisprudential life may pave the way for the enforcement of Islamic law and promotion of unity in the collective life. Many such examples can be found in the research work by many leading jurists and thinkers. This vastness of vision lies in the very concept of *taqlid*' and should not be considered as being opposed to the *ijtihad* of the jurisprudential school of thought. Ibn 'Abidin Shami and Shah 'Abd-ul-'Aziz Dihlawi have explained this phenomenon in great detail. Following on the heels of the basic *ijtihad* of the four Imams, as far as the arguments behind justification of reinterpretation in accordance with needs are concerned, there could be many but we will contend only with presentation of one argument here.

All leading authorities and jurists have accepted the justification and need of reinterpretation with consensus on matters not discussed by the Holy Qur'an and traditions of the Holy Prophet (ﷺ). This acceptance is based on those orders of the Holy Prophet (ﷺ), which he passed onto 'Abdullah ibn Mas'ud (رضي الله عنه) and Muadh ibn Jabal (رضي الله عنه). Moreover the conduct of the Holy Prophet (ﷺ), that of his holy companions and their successors establishes this pattern of knowledge as accepted fact and the learned authorities of the jurisprudence have done *ijtihad* in the light of this principle. Therefore, it is also incumbent upon the jurists of every age that they keep this tradition of *ijtihad* alive by following

which *ijtihad* should be able to establish jurisprudential injunction and not absolute or authoritarian opinion. Moreover, the four Imams particularly Imam al-A'zam Abu Hanifah have not prohibited fresh reinterpretation or new *ijtihad*. They have rather declared it as their own scientific way.

Causes of stagnation characterizing Islamic law

In our view, three reasons explain the phenomenon of stagnation that has engulfed Islamic law since long time.

1. Conservative religious mind
2. Ultra-modernistic mind
3. So-called Muslim governments

1. Conservative religious mind

Our conservative religious mind has rendered the concept of *taqlid* into intellectual deadlock and has reduced *ijtihad* to a forbidden thing. It is in this way that the jurisprudential work, done a hundred years ago under the demands of its own time, is considered sufficient to cater to the needs of the modern times with all its major and minor details. A general religious mindset considers it as final and absolute as the Holy Qur'an and Sunna forbidding even minor difference with it or even its reinterpretation. It has totally neglected the difference between the Holy Qur'an and Sunna on the one hand and jurisprudential opinions or reinterpretations on the other. That is why the book of jurisprudence has come to be considered as alternative to the Divine revelation and any reinterpretative effort has been branded as conspiracy against Islam in the presence of the above.

Such thoughts have led the religious scholars to be indifferent to the realization of getting modern education. They think that it is a worldly act considered contrary to piety to equip oneself with modern art and education. Their

understanding of getting Islamic education is deeply rooted in the ancient or primitive seminaries the syllabi of which were designed years back to address the demand of those times. Having been equipped with such knowledge today, they cannot develop the critical faculty to comprehend the modern multi-faceted realities and their importance. As a result, their scholarly capabilities practically lose their significance and usefulness in the face of solutions to the contemporary complexities. On this basis, Islamic thought cannot move towards the goal of evolution. Today the aggregate result is that Islamic laws and other branches of knowledge have fallen victim to stagnation.

2. Ultra-modernistic mindset

As a way of reaction to the above-mentioned behaviour of the religious scholars, our modernist mind wants to do *ijtihad* on the contemporary issues. But importance of this *ijtihad* is not more than 'an independent opinion-making'. Neither does it comply with the practical and scholarly preconditions of *ijtihad* nor does it admit the need to fulfill them. This mindset wants to superimpose its personal opinion over *ijtihad* while being indifferent to the need of studying Islamic law and Shari'a sciences as a comprehensive discipline in terms of language, research and religious subject etc. Such efforts can not produce any thing productive but intellectual ambiguity and ideological confusion because such kind of so-called *ijtihad* done by modernists of narrow-vision is not acceptable to the Muslims. Thus this clash between the modern and conservative perspectives is making the Islamic law stagnant.

As the orthodox religious community does not generally realize the importance of modern education, likewise, the modern 'educated' community also looks down upon the need to get education of religious sciences. This mutual clash of and alienation between both communities has placed the

Muslim Umma in a difficult situation. This fact explains the prevalence of stagnation in the area of jurisprudential research and creativity in the Islamic world.

3. So-called Muslim governments

The third reason pertains to the so-called Islamic governments and their functionaries who do not take any effective revolutionary steps in the realm of education to bridge this gap between orthodox religious elements and modern community owing to their vested interests. If at all any revolutionary and reinterpretative effort is undertaken to break this intellectual morass, they create hurdles in the implementation and success of such efforts. If society is plagued by such deadlock and stagnation at any level, it is the sincere and statesman-like revolutionary efforts of the rulers, which have the potential of breaking this intellectual and ideological logjam. The personal efforts of the ruled have little chances of succeeding. Therefore it is also the responsibility of the rulers to keep this process of *ijtihad* alive.

The issue of 'modification' in the principle of *ijtihad* of four Imams

After the foundation of different jurisprudential schools of thought, the consensus of Muslim Umma in the form of act and word, on the principle of *ijtihad* of four Imams has already taken place. Any change and alteration in it will practically be a step opposed to the consensus of the Umma and will create the possibilities of emergence of new jurisprudential schools of thought, which will no doubt create more intellectual rifts and clashes within the Umma.

On this basis, such modification does not serve the purpose of religious objectives and priorities. But if at some time, the Muslim Umma is faced with such intellectual and

jurisprudential issues which can be solved in consonance with the principle of *ijtihad* of four Imams in any way and the scholars and *mujtahids* (those who conduct *ijtihad*) propose modification in any of the principles with consensus of the Umma, there will be no harm in doing so from the point of view of Islamic law. The reason is that according to Islamic law, except the consensus of the Holy Companions, any consensus can be cancelled with the consensus of the later period provided it fulfills all the conditions described for the cancellation of consensus.

But in our view, neither can such a 'powerful and complete consensus of the Umma' be achieved to cancel the consensus reached on principle of *ijtihad* of the four Imams nor is there any such need because their principles of *ijtihad* are so vast, comprehensive, inclusive and universal that they do not need any amendment. When there is a lot of room for difference in *ijtihad* according to their principles, no justification is left to amend the principle of *ijtihad*.

Essential attributes of a *mujtahid* (One who does *ijtihad*)

A *mujtahid* should possess the following qualities:

1. Faithful and firm in belief and action
2. Justice, piety and God wariness
3. Knowledge of the Holy Qur'an and other necessary matters connected with it.
4. Knowledge of Hadith, principles of Hadith and other related issues
5. Knowledge of Jurisprudence, principles of jurisprudence and other relevant matters
6. Complete grasp of Arabic language and literature
7. Deep understanding of the Islamic laws, commandments, their secrets and mysteries

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8. Inference of commandments, interpretation of texts of the holy Qur'an and Sunna, perfect rules of gnosis of analogical and interpretative reasoning
9. Perfect understanding of modern problems and their complications
10. Complete familiarity with the contemporary developments and reasonable appraisal of modern exigencies

Appropriate method of *Ijtihad*

Ijtihad is basically of three types:

1. *Ijtihad bayani* (interpretative reasoning)
2. *Ijtihad qayasi* (analogical reasoning()
3. *Ijtihad istislahi* (concilatory reasoning)

Each of these types of *ijtihad* should be undertaken in accordance with certain rules designed for each category. For example:

1. The Interpretative *ijtihad* is related to interpretation of the texts containing definite meanings. The method employed to conduct this *ijtihad* while interpreting commandments need to be considered: particular and general, infinite and finite, realistic and figurative, overt and covert, elaborate and abridged and definite and indefinite etc. Consideration should also be given for inference of commands to the expression, implication, direction and necessity contained in the text. The interpretative *ijtihad* should this way be conducted keeping in view other technical methods of exegesis and interpretation of the Qur'an and Sunna.
2. The Analogical *ijtihad* is derived from legal analogies. Here the origin or root, sub-section or branch, command and its cause require to be determined. Proper method of interpretation, review and research of the legal responsibility needs to be employed to determine the cause and application of command. Moreover, to identify

effectiveness of command and nature of reasoning, discrimination is required between the appropriate, unusual, derived and transmitted reasons. And in case of oneness of the cause and command, oneness in kind and sex needs also to be kept in view while perpetuating juristic reasoning (*ijtihad*).

3. The Conciliatory *ijtihad* is derived from necessity and expedience. To accomplish this kind of *ijtihad*, the established jurisprudential principles and rules are required to be kept in view including the principles of appreciative, conciliatory, coalitional and deductive reasoning in addition to usage, law of necessity, exigency and changing times. The *ijtihad* done in accordance with these principles, conditions and rules will be considered appropriate otherwise it will remain an individual opinion.

How will *ijtihad* get status of law in an Islamic society?

After deep meditation and thorough reflection over the matter, my conclusion is that only the collective *ijtihad* should be acceptable as law for Islamic state in the modern times. Because of the existing divisive sectarian, class-based and ethnic rifts in the body politic of the Muslim Umma, 'individual *ijtihad*' cannot play its effective role at the state level. The variety and complexities of the problems in the collective life also represent the fact that this *ijtihad* should have 'state consensus'. Its method should be such that each Islamic state adopts the 'collective way' of *ijtihad* separately in keeping with its peculiar conditions.

Every state should establish such a national institution which has two houses:

1. General House or the House of Commons
2. Special House or the House of the Privileged

The Special House should comprise eminent religious scholars, leading jurists, specialized authors and experts of the contemporary modern sciences etc. Such a selection can be quota- and population-based, whereas the General House should consist of the elected representatives of the whole country. Minimum standard of education and morality should be laid down for these representatives so that they are able to fulfill demands of justice in the society and discriminate between the fair and the foul.

Both of these Houses should do *ijtihad* for framing laws and constitution of the state. Their 'collective *ijtihad*' should be:

i. subservient to the Holy Qur'an and Sunna and should follow the traditions of previously held consensus.
ii. in accordance with the basic structure of the mainstream jurisprudential school of thought but should also have room for accommodation of other schools of thought when needed.
iii. If two-house parliament feels, they should be in position to get advice from the Islamic Ideology Council composed of experts and technocrats on related matters.

On the pattern mentioned above, whatever 'collective *ijtihad*' will emerge from this process will have the status of law in an Islamic state and this advisory body will be called parliament or national assembly or senate of Islamic state. This mode of collective *ijtihad* was the most prevalent during the Orthodox caliphate.

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