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CAN GATES OF IJTIHAD BE CLOSED?

Asghar Ali Engineer

After the fatwa from Deoband (some of the Deobandis deny that fatwa was ever issued) that Muslim women cannot work with strangers from amongst the men and that in that case her earnings will be haram (prohibited) to her family, a debate is raging on the need for ijtihad (creative reinterpretation of law) and it is often suggested that gates of ijtihad were closed after sack of Baghdad in 1258 and that these gates be reopened.

First of all we would like to point out that there is no church in Islam and no single authority and hence no one can issue a dictat to close the gates of ijtihad. Or re-open it. When Ibn Taymiyyah issued the fatwa on jihad after sack of Baghdad he went against the authority of his own Hanbali School and gave fatwa on his own authority. Hanbali school requires submission to the ruling authority.

Before we proceed further we would like to point out that ijtihad has been the very part of process of law making in Islam. The root meaning of ijtihad (derived from jahada) is to strive, to make efforts and it is called ijtihad when one makes utmost intellectual assertion to understand a phenomenon and find a solution to it. Technically it was used by Ma'adh bin Jabal who was appointed 'Amil (Governor) of Yemen and when the Prophet (PBUH) asked him how will you govern if you do not find any ruling in the Qur'an and my sunnah, he said *ana ajtahidu* i.e. I will strive to understand the problem myself and find the way out. The Holy Prophet approved of it.

All great imams and founders of different schools of law (called *mazahib*) resorted to ijtihad in arriving at the solution of various problems they confronted. The word fiqh which is often used for Islamic jurisprudence also means to know, understand and comprehend and hence the word fiqh became integral part of Islamic jurisprudence and experts of Islamic law are also referred to as faqih.

The whole process of law making in Islam has been most dynamic and spread over few centuries and represents one of the greatest law making ventures in human history. When Islam spread to non-Arab cultures in Asia and Africa, the Ulama were faced with new problems and often baffling challenges. They exerted themselves intellectually and tried to find solution in the light of Qur'anic pronouncements and values and sunnah of the Prophet (PBUH). They also invented useful tools like qiyas (analogical reasoning) and ijma' i.e. consensus among experts.

Why were these tools necessary? Because often they could not find solutions dire3ctly in Qur'an and sunnah. The process of law making had begun right in the beginning when conquests brought Muslims face to face with new problems. Thus dynamic spirit of Islamic law was suffused in the very process. It never ignored objective conditions and new situations arising from time to time. The stagnation in the process was not because of sack of Baghdad but was result of stagnation in the society.

A new process of change began again during the period of colonization when Islamic thinkers came once again, face to face with modernity. Modernity posed new challenges before them and

many great Islamic thinkers rose to the occasion and began to reformulate. There are shining examples of brilliant thinkers like Muhammad Abduh of Egypt who rose to be Grand Mufti of Egypt. He issued series of fatwas on postal saving interests, Transvaal fatwa for South African Muslims to eat animals slaughtered by Christians, necessity for modern education and so on. He was one of the most dynamic thinkers Egypt produced in 19^{th}-20^{th} century Egypt. Rashid Raza, his disciple, though not as bold, continued his work.

Sir Syed and his team also did commendable work during nineteenth century India. Sir Syed's tafsir (commentary on Qur'an) is a seminal contribution and represents the dynamic spirit of ijtihad and fresh thinking but unfortunately he had to discontinue writing due to stiff opposition from conservative Ulama. This tafsir which was not available has been published by Khudabakhsh Oriental Library, in two volumes.

Sir Syed's work was continued by great scholars like Maulavi Mumtz Ali Khan, Maulavi Chiragh Ali and several others who once again infused dynamic spirit in Islamic law. So what is needed is profound scholarship and intellectual courage to break stagnation instead of lamentations about doors of ijtihad being closed. Let us flung them open and break the stagnation.

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