

Role of Ijtihad in the Development of Islamic Legal Theory

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Abstract

The Muslims, Islamic law, or atleast parts of it, will be applied. It is a legal system that transcends time and pervades all aspects of a Muslim's life, dealing with issues as small as how a Muslim must purify himself to large issues of commercial, criminal, and even international law. While new and complicated legal issues continuously come to the fore, Islamic sacred texts that deal with legal issues are finite. This has led Islamic jurists to develop mechanism by which Islamic law can be developed to continue to meet contemporary and evolve legal challenges. One of such mechanism is Ijtihad, an interpretive tool that applies legal reasoning based on sacred texts, using methods such as analogy, to derive new legal rules for emerging legal problems.

Keywords: Ijtihad, Development, Islamic and Legal Theory

Introduction

As long as there are Muslims, Islamic law, or atleast parts of it, will be applied. It is a legal system that transcends time and pervades all aspects of a Muslim's life, dealing with issues as small as how a Muslim must purify himself to large issues of commercial, criminal, and even international law. While new and complicated legal issues continuously come to the fore, Islamic sacred texts that deal with legal issues are finite. This has led Islamic jurists to develop mechanism by which Islamic law can be developed to continue to meet contemporary and evolve legal challenges. One of such mechanism is *Ijtihad*, an interpretive tool that applies legal reasoning based on sacred texts, using methods such as analogy, to derive new legal rules for emerging legal problems.

The Meaning of *Ijtihad*

Literally, *Ijtihad* means striving or self-exertion in any activity which entails a measure of hardship. It has also been defined as "the expanding of maximum effort in the performance of an act". Thus, the root verb of *Ijtihad* is the word '*dahd*' and it was mention several times in the Holy Qur'an. In the following verse, Allah said:

"Those who slander such of the believers as give themselves freely to (deeds of) charity, as well as such as can find to give except the fruits of 'their labour', and throw ridicule on them, . . ."

"Their labour' in the above-mentioned verse connotes the existence of exertion. Ibn Manzur Al-Misri says that word *Jahd* and *Juhd*, the word which *Ijtihad* is derived from, means power and strength. *Jahd* means hardship and difficulty, while *Juhd* on the other hand give sense of power and strength.

Technical Meaning

To make a comprehensive definition is an arduous task, as a definition must be brief yet encompassed every single element of the defined subject. Technically, *Ijtihad* has been defined as the effort made by the *Mujtahid* in seeking knowledge of the *ahkam* (rules) of the Shari'ah through interpretation. This definition implies the following:

- i. That the *Mujtahid* should expend the maximum effort, that is he should work to the limits of his ability so much so that he realises his inability to go any further.
- ii. That the person expending the effort should be a *Mujtahid*. And effort expended by a non-*Mujtahid* is of no consequence, because he is not qualified to do so.
- iii. The effort should be directed towards the discovery of the rules of the Shari'ah that pertain to conduct. All other types of rules are excluded. The method of discovery of the rules should be through interpretation of the texts with the help of the other sources. This excludes the memorization of such rules from the books of *Fiqh* or their identification by the *Mufti*. Thus, the activity of the *Faqih* and the *Mufti* cannot be *Ijtihad*.

Legality of *Ijtihad*

The legality of *Ijtihad* derived from the following verses and prophetic tradition. In the Holy Qur'an, Allah says:

"(O Muhammad), whenever We raised any messenger before you, they were no other than human beings; (except that) to them We sent revelation. So, ask those who possess knowledge if you do not know."

Also, in another verse, Allah says:

"Before that, also, the messengers We sent were but men, to whom we granted inspiration: if ye realize this not; ask of those who possess the messenger."

These verses are directed to those who do not possess knowledge, so they will seek guidance from others. In the context of seeking knowledge of the religion, they were to seek from *al-h-dhikr*, the people of message, which refers to *Ulama* or people of knowledge. It gives inference that, when *Ulama* are asked about religious ruling, they are obliged to convey what he knows of existing ruling. In event there is no ruling exists, he must then exercise his ability to deduce ruling from the legal text, and as *ahl-dhirk*, he must to the best of his ability give answer to the question posed to him. These verses might not be explicit, but their divergent meanings (Mafhum al Mukhalafah) impose duty upon the *al-h-dhirk* to provide answer to the question, or else it defeats the purpose of asking a question. Thus, these identical verses can be held as basis to legalise the practice of *Ijtihad*, though it comes in general form.

In an authentic hadith, narrated from Amru Bin Al-As, where the prophet (S.A.W) said;

"When a judge is making Ijtihad and he is correct, for him two rewards while if he does so and he is wrong, for him one reward."

The hadith explicitly recognised the exercise of *Ijtihad*. The one who performs *Ijtihad* regardless he arrives at right conclusion or not, will be rewarded. This text also recognises susceptibility of an *Ijtihad* to be wrong, therefore it also means *Ijtihad* can be changed upon realizing it to be mistaken. In another hadith, it is narrated that:

Verily the prophet (S.A.W) had sent Mu'az to Yaman and He said, "How will you judge (among them)? He (Mu'az replied, "I will make judgment based on the Book of Allah"). The prophet (S.A.W) then asked, "if you don't find any in the book of Allah? "He replied, "then, I will look into Sunnah of the prophet (S.A.W)." The prophet (S.A.W) asked further, "if you don't find it in the Sunnah of the prophet (S.A.W)? "He replied, "I will make Ijtihad and form my opinion". The prophet (S.A.W) said "praise be upon Allah who guide the messenger of His prophet (Mu'az)."

There is an issue surrounding this hadith. A group of jurists held that this hadith is weak (da'if), while other group of *Ulama* were of the opinion that this hadith is good. Commenting on this issue, Kamali quoted the observation of one jurist, ". . . the claim that this hadith is *Mursal* (i.e. a hadith whose chain of narration is broken at the point when the name of the companion who heard it from the prophet (S.A.W) is not mentioned) is of no account. For the *Ummah* has accepted it and has consistently relied on it; no further dispute over its authenticity therefore warranted."

Thus, leaving dispute behind, the hadith shows an unequivocal form of approval by the prophet (S.A.W) for Mu'az to perform *Ijtihad* whenever he didn't find any explicit ruling from the Book of Allah, i.e. Qur'an and Sunnah of the prophet (S.A.W).

Role of Ijtihad in the Development of Islamic Legal Theory

Early Notion of Islamic Legal Theory and the Concept of Ijtihad

At the time of the Holy Prophet (S.A.W), the only source of the Shari'ah was revelation. That revelation had two types, one was the direct speech of Allah, namely the Holy Qur'an, and the other was indirect speech of Allah which the Holy prophet (S.A.W) expressed in his own words, that is termed as Sunnah of the Holy prophet (S.A.W).

The Holy Qur'an by nature is implicit. It does not provide details of each and every individual case, rather it describes general principles, examples, etc. The Holy prophet (S.A.W) used to explain and implement those principles and general rules in individual cases, that is Sunnah of the Holy prophet (S.A.W), in that sense the Sunnah is the explanation of the Holy Qur'an.

Although as it is mentioned earlier that the only source of law at that time was revelation, but sometime the Holy Prophet (S.A.W) practiced *Ijtihad* in its narrow sense in the absence of revealed rule as the Holy Prophet (S.A.W) said, 'when I do not receive a revelation, I adjudicate among you on the basis of my opinion'. However, the difference of that *Ijtihad* with ordinary *Ijtihad bil ray* is that, whenever He (S.A.W) mistook, a verse would be revealed in order to inform him the correct decision. Like in the case of *dhihar*, Allah revealed verses regarding the *hukum* of *Dhihar* which was not similar to divorce as how the Holy prophet (S.A.W) mistook the two. After that revelation the *hukum* of *dhihar* had been corrected.

The companion of the Holy Prophet (S.A.W) used to do *Ijtihad* at time also, when the

Holy Prophet (S.A.W) was not available or when the Prophet sent them to somewhere, they use to do *Ijtihad* in the absence of explicit Qur'anic verse or Sunnah of the Prophet (S.A.W). They use to interpret the verses of the Holy Qur'an and the Sunnah of the Prophet (S.A.W) as well as in cases of completely new issues they use to do *Ijtihad* on the basis of the principles of Shari'ah. The advantage of them was if they

mistook, they could correct themselves by asking the Holy Prophet (S.A.W) or Allah would reveal the correct rule. Therefore, Shari'ah was very much based on the revelation at that time. Hence, despite the fact that the principle of *Ijtihad* was started from that time, but it did not get the status of a source of Islamic legal theory then.

Development of Islamic Legal Theory and the Concept of Ijtihad

After the death of the Holy Prophet (S.A.W), the gate of revelation has been closed for ever. Therefore, in order to deal with new problems, the companions of the Prophet (S.A.W) used to depend on the *Ijtihad*. However, it did not substitute the Holy Qur'an and Sunnah at all, rather whenever they faced a new phenomenon regarding which they did not know any Qur'anic verse or Sunnah of the Prophet (S.A.W), they used to ask the other companions whether they knew any hadith of the Prophet (S.A.W) concerning that. They used to do *Ijtihad* in the absence of the revealed rule and whenever they found any hadith regarding that case, they use to abandon their *Ijtihad* and followed that Hadith.

Because of the quick expansion of the Muslim world in first century, a huge number of people embraced Islam. A number of the companions migrated to different places in order to teach the new Muslims the science of Islam, people gathered around them to learn Islam. Through their teaching, they created groups of scholars.

Two distinctive trends of thought emerged at that time, namely Ahl al-Ray and Ahl al-Hadith. The trend of Ahl-al-ray can be traced back to the second caliph Hazrat Umar (R.A) and a renowned companion Hazrat Abdullah Ibn Mas'ud (R.A), whereas the trend of Ahl-al-Hadith can be traced back from two renowned companions and scholars Hazrat Zaid Bin Thabit (R.A) and Hazrat Abdullah Bin Umar (R.A). Ahl al-ray are those who depend on personal opinion (*Ijtihad bil ray*) in order to solve the problems and analyze the *Ahkam* of Shari'ah and extract the major causes of those in order to draw out those to new phenomena. Ahl al-Hadith are those who depend on only authentic evidences. Their strategy is to express exactly what is in the authentic narrations. They do not involve in causation of the *Ahkam* of Shari'ah and extend those to new phenomena. Nevertheless, the more the Muslims faced new problems the more the former trend became prominent because of their wide practice of *Ijtihad* they could solve the new phenomena's better than Ahl al-Hadith school of thought. However, Ahl-al-Hadith school of thought did not completely deny or overlook the concept of *Ijtihad*. *Ijtihad* also played a big role in the development of that school of thought. Hence, it could be said that by the end of first century, *Ijtihad* became an important source of Islamic jurisprudence through the practice of it by the companions of the Holy Prophet (S.A.W) and their followers.

The Hukm of Ijtihad and Its Types

Ijtihad is obligatory (*Wajib*) for the person who possesses the necessary qualifications for it and is equipped with the skills to perform it. The *Mujtahid* is required to arrive at the *hukm Shar'i* through an examination of all the relevant evidences. Whatever rule he derives after such examination and investigation is the *hukm Shar'i* as far as he is concerned, and it is binding on him to follow it. He should not give up such a rule in favour of *taqlid* to another *Mujtahid*.

If a *Mujtahid* is also the *qadi*, his opinion cannot be set aside by the *Ijtihad* of another *Mujtahid*. Even his own *Ijtihad* on the same issue, arriving at a contrary opinion, will not upset his decision in the earlier case. The only way an opinion arrived at through *Ijtihad* can be declared ineffective is when it is in clear conflict with a definitive text.

A *Mujtahid* is not required to render opinions in all areas of the law, and he may specialize in one particular area if he so chooses. For example, a *Mujtahid* may specialise in personal law alone, and even in this he may choose on area like inheritance. Some jurists have opposed the idea of specialisation in *Ijtihad* and they do not permit it. The apparent reason is that Islamic law, like any other legal system, is a body of general principles that are interrelated and are internally consistent with each other. A *Mujtahid* specialising in one particular area may not be able to maintain the internal consistent required by a legal system and thus his *Ijtihad* may be prone to errors. The opinion of these jurists, who do not permit specialisation, appears to be based on a stronger reasoning.

The Qualifications of the *Mujtahid*

The qualifications for a *Mujtahid* appear to be a later development in the history of Islamic Law. No such qualifications were prescribed during the first two centuries of the *Hijrah*. The followings are some of the conditions that are deemed necessary for a *Mujtahid* to possess:

- i. Knowledge of the Arabic Language: The texts are in Arabic and cannot be understood without a thorough understanding of the Arabic. In fact, the Qur'an, and even the texts of the Sunnah, are the standards that often determine the rules of Arabic grammar. Interpreting the texts of the Qur'an and Sunnah, especially for purpose of deriving the law is no easy job. The *Mujtahid* has to have good command of the Arabic language to be able to undertake such interpretation.
- ii. Knowledge of Al-Kitab: The Qur'an is the primary source of Islamic law. This means that it is a source for the law as well as the general principles of this law. Further, it is the source that validates all the other sources of the law. Though the legal texts are considered to be about 600, the jurists have often relied on the other verses as well for strengthening their opinions. The memorisation of the Qur'an, or even the legal texts, is not considered necessary. It is for this reason that some jurists have devoted their lives to the writing of legal commentaries on the Qur'an, often called *Ahkam al-Qur'an*. A condition within these conditions is that the *Mujtahid* must know and understand all the occasions of abrogation, that is, the repealing and repealed laws. In addition, the jurist must have a knowledge of the *asbab al-nuzul*, because this helps in the understanding of the intention of the Lawgiver; it provides the legislation history of the law.
- iii. Knowledge of the Sunnah: Knowledge of Sunnah means knowing the grade of hadith whether it is authentic (*Sahih*) or weak (*dhaif*), knowing the background of the narrator in term of his standing in society, ability to memorize, piety and understanding of the *hukm*, knowing how the hadith was narrated, whether it was by huge group (*Mutawatir*) or just by few persons, knowing the methods to make preference between conflicting narrators (*tarjih*) and abrogations that had taken place (*nakish* and *Mansukh*). A *Mujtahid* must atleast have read all six major books of hadith. The underlying reason is that the *Mujtahid* must not make *Ijtihad* on issue when there is an explicit legal text.
- iv. Knowledge of *Ijma*: Some jurists have laid down that the first source to be consulted, before a *Mujtahid* begins his task of interpretation, is *Ijma*. If there is *Ijma* on an issue, the *Mujtahid* cannot reopen such issue. In addition to this, knowledge of the principles upheld by *Ijma* will guide the *Mujtahid* on other issues.
- v. Knowledge of the *Maqasid al-Shari'ah*: This condition has been laid by later jurists. The reason being that knowing objectives of Shari'ah (*Maqasid al-Shari'ah*) is another great deal, as Shari'ah aims at protecting the sanctity of religion, soul, honour, intellectual and property. The prescribed punishments or *hudud* are ordained by Allah

and in the case of theft, the punishment is to severe part of the hand of the offender. This punishment aimed at protecting property. Nonetheless, during the days of draught, it is narrated that Umar Ibn Al-Khattab suspended the punishment unto thief, for the situation had pushed people to the edge as they commit theft in order to survive. Though some argued that the situation had created an exception to *hudud* which is dubiousity (*Shabhab*) yet it still serves as a good example of practical application by government in upholding the goals of Shari'ah (*Maqasid al-Shari'ah*).

iv. Aptitude for *Ijtihad*: Another condition that some writers lay down is a natural aptitude for law and *Ijtihad*. This is more like a God given gift than something that can be acquired. Just like a good knowledge of Arabic does not make a person a poet, the fulfilment of the above conditions will not make a person a *Mujtahid*. As one jurist argued that a *Mujtahid* must possess the basic ability to perform *Ijtihad*, in the sense that he must be able to identify the issue correctly, and make deduction of ruling. He must have ability to look into the crux of the problem and determine what is the real issue.

Changing *Ijtihad* and Conflicting of *Ijtihad*

There is possibility that a *Mujtahid* might change his opinion, e.g. the old opinion (*qaulqadim*) and the new opinion (*qauljadid*). An *Ijtihad* is incapable of invalidating another *Ijtihad*, which is manifest in a legal maxim which formulates that “one *Ijtihad* cannot be invalidated by another *Ijtihad*.”

The Concept of *Ijtihad* according to the Four *Madhhabs*

i. Hanafi School of Thought: Hanafi school of thought is based on the jurisprudence of Imam Abu Hanifa. The *usul* of Imam Abu Hanifa as he describes is as follows:

If I find any hukum in the Holy Qur'an, I confined myself with. If I do not find that there, I accept Sunnah of the Holy Prophet (S.A.W) which has come to me through authentic narrators. When I do not find that in the Holy Qur'an and in the Sunnah, I follow the opinion of the companions meaning their general consensus. In case of their disagreement with each other I accept or abandon which ever I want, but I do not prefer other's opinion over theirs. In case of the opinion of others, I have the right of Ijtihad as well as they have.

ii. The Maliki School of Thought: The Maliki *Madhhab* is based on the jurisprudence of Imam Malik. The method of his jurisprudence which is the method of Maliki *Madhhab* as well is that, in order to find out the *hukm* of a certain issue he first used to look in the Holy Qur'an, if it is not available, he used to look it in the Sunnah of the Holy Prophet (S.A.W). Similarly, if the Qur'an describes the principle or indirect *hukm* of the issue he also used to search the Sunnah in order to find out the details of that. He used to consider the practice of *Ahl-Madina* as *Mutawatir* Hadith. If he did not find the solution in the Holy Qur'an or in Hadith, he would refer to the general consensus regarding that matter then he would follow the individual opinions of the companions or would do *Qiyas*. If it was an abstract matter where there is no room for *Ijtihad* bil ray, then he would follow the opinion of a companion, else he would prefer *Ijtihad* bil ray.

iii. Al-Shafi School of Thought: Imam Al-Shafi emerged during the period or the compilation of the above mentioned two school of thought's jurisprudence. Imam Shafi authored book regarding the principles and rules of jurisprudence. The motivations

which prompted Al-Shafi to introduce the *usul al-fiqh* are some inconsistencies which he observed in the discourses of his predecessors.

It's appeared from the reform activity of Al-Shafi that the objective of that was to make the *Ijtihad* systematic and to demolish the tendency of unconditional imitation of the predecessors *Fatwa* and hence to reopen and widen the scope of *Ijtihad*. Although, he excluded Ray from the category of *Ijtihad*, especially he was critical about *Istihsan*, and emphasised more on *Qiyas* but he made the point clear that he is against the following of one's personal whim and amounts to unjustified legislation.

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