

## QUALIFICATION OF *IJTIHĀD* IN PRESENT ERA

**DR. SAJILA KAUSAR**

Assistant Professor & Sub-Editor Research Journal *Uloom-e-Islamia*,  
Department of Islamic Studies,  
The Islamia University of Bahawalpur,  
Punjab, Pakistan.  
email: sajilakausar@yahoo.com

Allah al-Mighty sent the human beings in this universe with a complete code of guidance in the form of the Qur'ān and *Sunnah* of the Prophet (ﷺ). Both these sources guide different fields of life principally. The commandments of the Qur'ān and *Sunnah* are unchangeable. No one can ignore them, but the problems of life are endless. And solution of all these problems cannot be presented in a single book. So, the *Shar'iah* has introduced the principle of *ijtihād* to resolve all these issues. *Ijtihād* is not to create something new in religion rather it is to tell the point of view of religion about the newly born problems. But it should also be kept in mind that to perform *ijtihād* there are certain terms and conditions, which if not fulfilled will spoil the concept of *ijtihād*. These terms and conditions have been discussed and modified time to time. The former scholars of Islam have a detailed discussion on this topic. The scholars of present era also have focused on this topic and have presented its requirements in the current era which are going to be discussed in the coming lines.

**Keywords:** *Ijtihad*, *Mujtahid-i-mutlaq*, Present era.

### Introduction of *Ijtihād*

*Ijtihād* is an Arabic word. It is derived from the root word *jahd* which literally means: strain or great effort.<sup>1</sup> The verb *jahāda* or *ijtahāda* literally means: to exert oneself or do one's best, and is generally used in an activity which entails a measure of hardship. Thus, it would be in order to use it in respect of one who carries a heavy load, but not so if he carries only a trivial weight.<sup>2</sup> The word *ijtihād* is a noun, and literally

it means: exertion or putting in the greatest effort possible to achieve something.<sup>3</sup>

Technically, *ijtihād* is defined as: “The total expenditure of effort made by a jurist in order to infer, with a degree of probability the rules of *Sharī‘ah* from their detailed evidence in the sources”<sup>4</sup>

It is also defined as: “The application by a jurist of all his faculties either in inferring the rules of *Sharī‘ah* from their sources or in implementing such rules and applying them to particular issues”.<sup>5</sup>

The above definition of *ijtihād* in its technical sense is explicit on the point that only a jurist (*faqīh*) may practice *ijtihād*. Thus, the definition “precludes self-exertion by a layman in the inference of a ruling”.<sup>6</sup>

From all what has been said, we can see clearly that the word *ijtihād* literally means exertion, and that from this literal meaning of the word, the scholars of *uṣūl al-fiqh* borrowed that word and used it for the exertion by a jurist of the greatest intellectual effort possible to arrive at the correct conclusion in the light of judgment of Allah and His Apostle, Muḥammad (ﷺ) in any given problem. When a problem emerges, it requires much intellectual effort to gather all the relevant texts of the Qur’ān and *Ḥadīth* that may have direct or indirect bearing on the issue. And then, making a correct interpretation of these texts equally requires much effort. Equally demanding is the problem of considering other texts with negative implications. Therefore, arriving at the true judgment of Allah and His Prophet (ﷺ) on any given problem is actually *ijtihād*.

### **Qualification of *Ijtihād***

*Ijtihād* is a very sacred and mandatory responsibility of the intellectuals of the Muslim *ummah*. The qualification of these scholars must be clear and elaborated. In the coming lines the qualification and capability of a *mujtahid* is going to be discussed in the light of opinions of the jurists of present era. It will also be highlighted that who can be capable of this important duty today. But prior to it, it is necessary to discuss the proof of qualification of *ijtihād* from the Qur’ān and *Sunnah*.

### **Proof of Qualification of *Ijtihād* from the Qur’ān and *Sunnah***

There are a number of verses of the Qur’ān which prove the status and qualification of a *mujtahid* and highlight its need in each era for the

guidance of people. And this process of guidance will remain continued till the day of judgement. For example it is said by Allah al-Mighty: “Ask the followers of the Remembrance if ye know not!”<sup>7</sup>

This verse demands the continuation of *ijtihad* and presence of *mujtahid* in each era. It is actually the demand of the *Shar'iah*.

The Qur'an advises the knowledgeable people to strive to approach reality through *ijtihad*: “And if any tidings, whether of safety or fear, come unto them, they noise it abroad, whereas if they has referred it to the Messenger (ﷺ) and to such of them as are in authority, those among them who are able to think out the matter would have known it”<sup>8</sup>

In this verse warning is given that it is being the tactic of enemy to spread rumours about peace and war and then achieve his target. So masses should be careful enough not to participate in spreading these rumours rather be responsible and convey them to authorities. So that the people with an ability of derivation can judge the situation and react in an accurate direction. It is also a mode of *ijtihad* and the person having abilities of a *mujtahid* can perform it.

In another verse it is ordered; “O ye who believe! Obey Allah, and obey the Messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the Messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more seemly in the end”<sup>9</sup> In this verse, Muslims are ordered to refer the disputed matter among them to Allah and his Apostle (ﷺ) i.e. consult the book of Allah and *Sunnah* of his Prophet (ﷺ) as these are the original and fundamental sources. A situation of conflict can emerge only when there is no any explicit text of the Qur'an or *Sunnah* in that matter. If it happens, it is the responsibility of the intellectuals to present the solution in the light of fundamental principles of the Qur'an and *Sunnah*. Precedents are also there in the Qur'an and *Sunnah* and rules and regulations as well. Think over them and solve the problems through *ijtihad*.

Another verse also stresses upon the use of mental faculties; “So learn a lesson, O ye who have eyes!”<sup>10</sup>

The background of this verse hints towards the disagreement of a group of Jews (Banū Naḍīr) with the Prophet (ﷺ) and were expelled from Madinah due to their disagreement. It is also the mode of derivation to take results from precedents. So the historical events and stories of ups and downs of nations should not be taken only as stories, but rather

as guidance from them, and prevent one to repeat those evils. Rather adopt those values which strengthened the nations. It is the duty of *mujtahids* and intellectuals to highlight the actual reasons and factors, evaluate them, and utilize the derivation and demonstration to accept the interpretations.

The following saying of the Prophet (ﷺ) explains the status of a *faqīh*; “If God favours one of His creatures, He bestows on him the understanding of *Dīn* (makes him a *faqīh*)”.<sup>11</sup> Some people among these with understanding of *Dīn* achieve the prominent status due to their extensive knowledge, wisdom and intellect. They have a good ability of derivation and demonstration. In the terminology of *Shar‘īah* they are called *mujtahidīn*. On the basis of their knowledge and abilities of derivation, they can resolve the problems of any era, in light of teachings of the Qur’ān and *Sunnah*. Although struggle for knowledge is obligatory for each individual, but it is compulsory for those who have to lead the *ummah* and beware them from the ignorance. The Qur’ān declares in the *Sūrah al-‘Ankabūt*; “As for those who strive in Us, We surely guide them to Our paths, and lo! Allah is with the good.”<sup>12</sup>

It is interesting that in this verse the word our paths is used in plural form, which can also mean that there are different paths to approach a truth, and they are open to all those who struggle and makes efforts.

In another *ḥadīth* the Prophet (ﷺ) said; “Do struggle and *ijtihād*, and everyone is bound to fulfill the purpose of his creation”.<sup>13</sup>

Two other narrations can also be quoted in this regard; one of them makes it compulsory to demand knowledge for every Muslim men and women. The Prophet (ﷺ) said; “To seek knowledge is obligatory for each Muslim man and woman” and in an other *ḥadīth*, scholars (*‘ulamā’*) are considered the heirs of the prophets (ﷺ)”.<sup>14</sup>

The link of *ijtihād* with later two narrations requires that *ijtihād* is the central tool of knowledge and creativity in Islam.

All the above quoted verses of the Qur’an and *Aḥadīth* of the Prophet (ﷺ) points towards the existence of knowledgeable people in each era for the guidance of *ummah*. They are duty bound to derive the rulings from Qur’ān and *Sunnah* as per requirements of the era. But who are those intellectuals? What is the criterion of their qualification? In the coming lines, we have discussed the criteria from the point of view of the scholars of present era.

## Capability of *Ijtihād* ... Opinion of the *Fuqahā'* (Jurists) of the Present Era

### *Opinion of Wahbah al-Zuhaili*

Among the jurists (*fuqahā'*) of the present era, Wahbah al-Zuhaili<sup>15</sup> is a prominent figure. He has a detailed discussion on the conditions of *mujtahid* in his book *Uṣūl al-Fiqh al-Islāmī*. He has described eight conditions for a *mujtahid*.

The first condition is that a *mujtahid* should have an understanding of verses of the *aḥkām* described in the Qur'ān, their literal and terminological meaning. It is not compulsory for him to memorize all the verses of the *aḥkām*, nor to memorize the whole Qur'ān, rather it is enough to have an understanding that which are the verses of the *aḥkām* and from which *sūrah* they are linked, so that he can consult them whenever needed.

Wahbah al-Zuhaili seems to agree with the opinion of Imām al-Shaukānī that the knowledge of a *mujtahid* should not be limited to the verses of *Aḥkām* only “which are five hundred in number according to Imām al-Ghazālī, Imām al-Rāzī and Ibn al-Arabī. The important thing for a *mujtahid* is to have a proper understanding of the Qur'ān and an ability of derivation of commands (along with a keen observation of verses) so that he can derive even from the verses containing *Qaṣaṣ* and *Amthāl*.

The second condition is to have a deep understanding of narrations of *aḥkām*. Not only the understanding of their literal meaning, rather he should have a proper concept of commands of the *Shari'ah* described in the text of a *ḥadīth*. It is also not compulsory, that a *mujtahid* should memorize all the narrations of *aḥkām*; rather it is enough to have the ability to consult them whenever required. According to Ibn al-'Arabī, the number of *aḥādīth* of *aḥkām* is three hundred and according to Imām Aḥmad Ibn Ḥanbal, the number of narrations containing fundamental principles of guidance and providing basis of the science of *Sunnah* are almost twelve hundred. According to Wahbah al-Zuhaili, this limitation is not appreciable; there is a large number of narrations of *aḥkām* which are dispersed in collections of *aḥādīth* (narrations). According to Imām al-Shaukānī, *mujtahid* should be familiar with the famous collections of

*aḥādīth* (narrations). He should be aware of the books being arranged and compiled by the experts on the science of *ḥadīth*, for example *Sihāḥ-e-Siṭṭah* (six most accurate books of *ḥadīth*) and their concerned books as, *Sunan al-Baihaqi*, *Dār Quṭnī*, *Sunan al-Darimi* etc. In the same way, the books of compilers who have maintained the authenticity of narrations (*Ṣiḥat-e-Riwāyat*) for example, *Ṣaḥīḥ Ibn al-Khuzaimah*, *Ṣaḥīḥ Ibn Ḥabbān*, *Ṣaḥīḥ Ḥakīm Neshāpuri* etc. It is necessary to be familiar with these usual collections of *aḥādīth*; otherwise it might be possible that a *mujtahid* will be performing *qiyās* in the presence of *ḥadīth*. About *ḥadīth*, it is also compulsory to be aware of its *sanad* (chain of narrators) along with its *matan* (text), so that the status of *ḥadīth* should also be known to the *mujtahid*.

The knowledge of *Nāsikh* and *Mansūkh* (abrogation) of the Qur'ān and *ḥadīth* is mentioned as a third condition. Any verse of the Qur'ān and *ḥadīth* (of proper status) which the *mujtahid* is being quoting as his argument, should be clear, whether its authority is continued or it has been abolished by any other verse or narration.

The fourth condition is to have an awareness of the matters, on which *ijmā'* (consensus of opinion) has been held. He also should be aware of the places of *ijmā'*, so that he should not present his opinion against it. It is not necessary that a *mujtahid* should consider all the issues on which *ijmā'* has been held, rather about specific issue on which he is going to present his opinion or *fatwā* (legal opinion). At least he should be aware that his opinion or *fatwā* is not against the *ijmā'*.

The fifth condition is that a *mujtahid* should be aware of the modes, methodologies and conditions of *qiyās*, has an understanding of reasons of Divine orders and the modes of derivation from the text. He also should have understanding of needs and convenience of people. The principles and rules of *Sharī'ah* should be known to him.

The sixth condition is that a *mujtahid* should have a full command over Arabic language and its concerned sciences. It is necessary, as the language of both Qur'ān and *Sunnah* is Arabic, which is very wide ranged in scope. For derivation of commands from the Qur'ān and *Sunnah*, it is necessary for *mujtahid* to have a grip over all the details, technical aspects and lingual complications of Arabic language. It is not necessary to have a complete mastery of each science; rather it is enough to have an understanding of these sciences and the ability to

consult their concerned books. In this regard the book of Imām al-Rāghib al-Asfahānī *Mufradāt al-Qur’ān* and the book of Ibn al-Athīr *Al-Nihāyah fī Gharīb al-Ḥadīth wa al-Āthār* are important.

The seventh condition is the understanding of jurisprudence, as *ijtihād* is based upon this science. In jurisprudence, discussion is performed on detailed arguments and arguments are supported by the order regarding a specific situation, so it is compulsory to understand that specific situation. For example; to know that whether the situation is of *amar* (order) or *nahī* (negation) is there *‘umoom* (generality) in it or *khusūṣ* (specification) etc. At the time of derivation, the understanding and the “order” (*ḥukm*) of each situation is necessary. To know these all, it is compulsory to have a complete command over the science of jurisprudence.

The eighth condition is to have an understanding of *Maqāsid al-Sharī‘ah* (objectives of *Sharī‘ah*). Whenever, a *mujtahid* is going to perform *ijtihād*; he must consider the *Maqāsid al-Sharī‘ah* for the derivation of Divine orders. As the understanding of text and its implementation on issues and incidents depends upon *Maqāsid al-Sharī‘ah*. The understanding of secrets of *Sharī‘ah*, its philosophy and general aims is much necessary for law making and derivation of commandments. Because, sometimes the words of the text are containing more than one meaning. Out of these extensive options, the preferable is one which is more in accordance with the objectives of *Sharī‘ah*. In case of controversy of arguments, the argument nearest to *Sharī‘ah* is preferred.<sup>16</sup>

Wahbah al-Zuhaili has described the qualification of *mujtahid* in detail. Along with the thorough knowledge of Qur’ān, *ḥadīth* and Arabic language, he has special focus on the understanding of objectives of *Sharī‘ah*, principles of jurisprudence and methods of *qiyās*, as per the requirements of present era. Moreover, the knowledge of abrogation of Qur’ānic *Sūrah*s and *Sunnah* and a complete grip of *ijmā‘* and *qiyās* is given priority over Arabic language.

Among the scholars of present era, the opinion of Wahbah al-Zuhaili and Shāh Walī Allah about the qualification of a *mujtahid* has much resemblance except one major contradiction that Wahbah al-Zuhaili considers it compulsory for a *mujtahid* to know the jurisprudence, whereas, Shāh Walī Allah did regard it as necessary. I think the opinion of Wahbah al-Zuhaili has more weightage as it is the knowledge of jurisprudence

which beware different modes of *ijtihād* and their details which develop the true subject competency in a *mujtahid*.

### ***Opinion of Yūsuf Al-Qardāvi<sup>17</sup> and Abd al-Mājid Al-Susuah***

Some present jurists (*fuqahā'*) have especially considered the awareness of circumstances of society, taste and culture of people. for example, discussing the ability and capacity of *mujtahid*, Yūsuf al-Qardāvi has set this topic *Ma'rifat al-Nās wa al-Ḥayāt* i.e. *mujtahid* should have an understanding of the trends of people of his era, their nature and the way of life, their customs and usages and the collective circumstances, as well as the problems of life. Yūsuf al-Qardāvi has placed this condition at seventh number in the conditions of necessary for a *mujtahid*.<sup>18</sup>

Another jurist (*faqīh*) of present era, 'Abd al-Mājid Muḥammad al-Susuah also has considered compulsory the above mentioned condition. He has set this topic: *Ma'rifat Aḥwāl al-'Asr* i.e. circumstances of present era, the trends of people, their habits, customs and usages.<sup>19</sup>

The concept of both the above mentioned jurists about the consideration of circumstances and era is taken from Ibn al-Qayyim. He has described this condition for *muftīs* and rulers in *I'lām al-Muwaqqi'in*, because any legal order or *fatwā* (legal opinion) is being deeply concerned with the on going period, natures and habits of people, culture and civilization. Therefore, if any change occurs in the period, habits and circumstances, the legal order or *fatwā* will also be changed.<sup>20</sup>

If a *mujtahid* is unfamiliar with the circumstances and thoughts of his period, it will be difficult for him to form an accurate opinion about the under discussion matter. As a *mujtahid-fih* (addressable issue of *ijtihād*) is an important element of *ijtihād* and is strongly linked with the period, society and circumstances. Therefore, a *mujtahid* should know the thorough background of the under observation matter. He should also know the background factors and reasons which have created the problem. Actually a *mujtahid* is like a consultant physician. As an expert physician suggests the treatment after diagnosing the disease, in the same way a *mujtahid* presents the solution after a complete observation of the actual problem of the disputing individuals and society. And as an honest physician does not allow his deeds to hinder during treatment, rather treats taking

guidance from the principles of medical science, in the same way, the *mujtahid* presents the point of view of *Shari'ah*, very honestly. He presents the solution of problems with arguments taken from fundamental principles of *Shari'ah*. As that physician cannot be successful which is expert only of medical science, but has not any knowledge of the personality of patient, his temperament, psychology and family history. In the same way, the opinion of the *mujtahid* will not be applicable, which only has a command of the science of revelation but is unaware of the social circumstances of his period, culture and civilization, customs and traditions.

### **Opinion of Shāh Walī Allah**

According to Shāh Walī Allah,<sup>21</sup> it is conditional for a *mujtahid* that the matters in which he is intending to perform *ijtihad* should be fully aware of the rulings of the Qur'ān and *Sunnah* (about those issues). He should also know the issues in which *ijmā'* has been held. Well aware of the conditions of accurate *qiyās*, he also should not be ignorant of the principles and cases, by collaborating and arranging them then only *ijtihad* can be performed. He should also have a full command over Arabic language. Also have knowledge of *Nāsikh* and *Mansūkh* (Abrogation) of the Qur'ān. Beware of biographies of narrators as well. However, *Ilm-ul-Kalām* (philosophy) and jurisprudence (principles of law) are not required for an *ijtihad*.<sup>22</sup>

As it has been explained earlier that Shāh Walī Allah and Wahbah al-Zuhaili have described almost the same profile for a *mujtahid*. Along with the deep understanding of Qur'ān, *Sunnah* and Arabic language, the knowledge of *ijmā'*, *qiyās* and abrogation is also emphasized by both scholars. However, according to Shāh Walī Allah, the science of jurisprudence is not required for a *mujtahid*, whereas, Wahbah al-Zuhaili has set it as a necessary condition.

Although Shāh Walī Allah does not consider it necessary for a *mujtahid* to know the jurisprudence, but his insistence on a thorough analysis of qualification of a *mujtahid* shows that besides *ijmā'* and *qiyās*, he also considers it necessary to know those principles and incidents, collaborating which, the process of *ijtihad* is accomplished. Indirectly, these are the things which are discussed in jurisprudence.

Along with jurisprudence, Shāh Walī Allah has mentioned another science not required for a *mujtahid*, which is *‘Ilm al-Kalām*, as the basic topics of *ijtihād* are the issues of practical life, so Shāh Walī Allah wishes to keep the *mujtahid* in touch with the practical life and away from the philosophical complications.

### **Opinion of ‘Allāmah Subhī Mahmaṣānī**

According to ‘Allāmah Subhī Mahmaṣānī,<sup>23</sup> everyone is not capable to perform *ijtihād*; rather it is compulsory to have a specific ability which enables a *mujtahid* to perform the duty of derivation of commandments properly. Therefore it is the condition for a *mujtahid* that he should develop and had an accurate opinion. He also should be an intellectual, justice loving, with a pious conduct, having a perfect wisdom to understand commandments i.e. a complete awareness of the modes of derivation and legal arguments, along with, a thorough grip over language (Arabic Language). He should possess a complete know how of the commentaries of the Qur’ān, factors of revelation (*Asbāb al-Nuzūl*), biographies of narrators, methods of *Jarah wa al-Ta’dīl* (criticism) and the reality of *Nāsikh wa al-Mansūkh* (abrogation). He further said that Shaṭībī has added one more condition that a *mujtahid* should have complete ability to understand the objectives of *Shari‘ah*.

He also explained that all the above mentioned conditions are compulsory for a *mujtahid-i muṭlaq* (unrestricted *mujtahid*), whose goal is to perform *ijtihād* in all the matters of *fiqh*. These are not compulsory for *mujtahidin* of other types. So it is enough for a *mujtahid* who has to perform *ijtihād* in any specific matter, that he should be properly aware of the arguments and results of that focused matter.<sup>24</sup>

The opinion of ‘Allāmah Subhī Mahmaṣānī about qualification of a *mujtahid* is very important as per the requirements of present era, as generally the conditions and qualifications described for *ijtihād* seems impossible to be gathered in an individual in this era of specialization. Every field of life has developed its numerous sub branches, and it has become impossible for a person to grasp all these sciences. So, the concept of *Tajazi-e ijtihād* (division of *ijtihād*) can be the only practical

form of *ijtihad* today, which ‘Allamah Subhī has given in the later part of his opinion.

This concept of *ijtihad* was initiated by Imām Ghazālī (505 A.H.) and later on was favored by various scholars like Ibn Qudāmah, Imām Shaṭībī, Ibn al-Humām etc. through this method, the opinion of any scholar about his field of specialization will be regarded as his *ijtihad* in that specific matter. This is the only practical and acceptable method of *ijtihad* in the present era.

### ***Opinion of ‘Allama Muḥammad Iqbāl***

‘Allama Iqbāl in his sixth lecture “The Principle of Movement in the Structure of Islam” amongst his seven very important lectures entitled *The Re-construction of Religious thought in Islam* published in 1930, highlights various aspects of *ijtihad*. He has not discussed the conditions of *ijtihad* but has hinted towards this issue in these words “Although this category of *ijtihad* (i.e. *Ijtihad-e Muṭlaq*)” is accepted theoretically by Ahl-e-Sunnah, but practically it has been rejected forever after the establishment of *Madhāhib al-Fiqh* (Schools of thought) by raising the barriers of conditions around the concept of *Ijtihad-e Muṭlaq* (unconditional *ijtihad*), which are almost impossible to attain by an individual.<sup>25</sup>

Iqbal has not analyzed the conditions of *ijtihad*, otherwise he may not have considered them impossible, however as according to him, it is not possible to have all the conditions in an individual, it is necessary that *ijtihad* should be collective instead of individualistic and one of its form can be a law of the legislative assembly. So it was his suggestion that;

“Ulama (Scholars) must be a part of the Muslim legislative assemblies, so that they can help and guide the open discussion regarding the questions of law”.<sup>26</sup>

But considering the political and social circumstances of that era and practical complications of this method, ‘Allamah favored that method, which he considered much dangerous for Islam and recommends it to be adopted temporarily. He said;

“I recommend constituting a committee of ‘*Ulamā* and Muslim jurists

(law makers) should also be a part of it, which has studied the modern principles of law. Its purpose is the safety and extension of the Islamic law and if needed, its reconstruction in the light of modern circumstances. That spirit will be attained, which is present in the fundamental principles of Islamic law. It is compulsory that this committee has a constitutional safety, so that no bill can be presented in the assembly regarding Muslim personal laws until it has not gone through this committee.<sup>27</sup>

‘Allama has also raised questions about the expected activity of *ijtihad* of this assembly. The first question is that surely in the assembly, there will be members who don’t have proper knowledge of Islamic law, and then what will be its solution? He recommends this solution that the members of the assembly should be properly trained and necessary amendments should be done in the present system of law education.\*<sup>28</sup>

The second question is that surely there will be non-muslim members in this assembly. Whether the membership of assembly will be restricted to only Muslim members or those non-muslims can also be included in the activity of *ijtihad*? ‘Allamah has not any proper answer of this question. He said; however, in India there is a chance of problems, as it is suspected whether the non-Muslim members can be given the authority of *ijtihad* or not?<sup>29</sup>

Obviously all the *fuqahā* have considered “Islam” as a basic condition for *ijtihad*, however Allama Shaṭibi raised a point over here. As considering the situation of the issues, he has considered unnecessary the conditions of Arabic language in some matters, in the same way; he has accepted the participation of non-Muslims in *ijtihad* in some matters. He said: *Usuliyeen* has approved the *ijtihad* of such *Kāfir* (non-believer) who denies the presence of the creator of the universe, prophethood and *Sharī‘ah*. As *ijtihad* is based upon such principles that are necessary to be accepted, ignoring it whether actually they are as such or not.<sup>30</sup>

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\*Another problem about the legislative assemblies is the position of non-Muslims in a country as well as members of the legislative assembly. The other significant problem is the minority of Muslims in a country like India where the the Supreme Court has banned triple *Talāq* by the Indian Muslims – *Ed*.

Although the point of view of Iqbal has been a topic of discussion and criticism in the religious circles, but actually he has hinted towards such aspects of *ijtihād*, which have great weightage in the perspective of current era.

Discussing the conditions of *ijtihād*, a very important point he has touched is that, today the *mujtahid-i muṭlaq* can be seen only theoretically, practically no one is fulfilling this criteria. This is a great reality.

The second point, which is to some extent relevant to this first one is that, in present era *ijtihād-e muṭlaq* seems entirely impossible, so the practical form of *ijtihād* can only be adopted in collective mode. But how and by whom can that be performed? Iqbal has various doubts in this regard. Giving the responsibility of collective *ijtihād* to the legislative assembly, he has expressed some reservation. One of them is the status of non-Muslim members of the assembly. Whereas, it is a reality that the form of collective *ijtihād* adopted in present era, must be having a space for the opinions of the non-Muslims also. As when we are talking about the opinion of the experts of different fields, then might possible a non-Muslim medical doctor will be the best expert of a medical issue and without his opinion, it will be impossible to understand the issue, or any economist, politician or expert of modern technology will be a non-Muslim, and his opinion will be essential to properly understand the matter. Therefore, in the present era, the collective mode of *ijtihād* which will be adopted by acting upon the theory of *Tajāzi-e Ijtihād* can be the best solution to face the issues of practical life. In this regard, the opinion of Imām Shaṭībī is supporting his theory of *Maqāsid al-Sharī'ah* (objectives of *Sharī'ah*) in true sense.

### ***Opinion of Maulānā Abū al-A'lū Maudūdī***

According to Maulānā Maudūdī,<sup>31</sup> the aim of *ijtihād* is not to alter the Divine law with human law, rather to properly understand it and with its guidance which enables the legal system of Islam to be dynamic with the flow of era; therefore no any healthy *ijtihād* can be done unless our jurists have the following features:

- i) Believe in the Divine *Sharī'ah*, firm faith of it being revealed, sincere intention of its pursuance, do not have any wish to get away

- from it and to take the objectives, principles and values only from the Divine *Sharī'ah* instead of any other source.
- ii) A good understanding of Arabic language its rules, regulations and literature, as the Qur'ān is revealed in this language and the sources to find the *Sunnah* are also in this language.
  - iii) Knowledge of the Qur'ān and *Sunnah*, through which a person not only should be aware of partial commandments and their places, rather properly understand the entire *Sharī'ah* and its objectives. On one side he should know that what is the accumulative scheme of *Sharī'ah* to reform the human life and on the other side he should know that what is the status of each faculty of life in this scheme, what are the angles upon which the *Sharī'ah* wants to format it and what benefits are hidden in this formation. In other words, that knowledge of the Qur'ān and *Sunnah* is required for *ijtihād* which touches the true spirit of *Sharī'ah*.
  - iv) Awareness of the contribution of former *mujtahideen* of the *ummah*, which is not only required for the training of *ijtihād*, rather for the continuity of legal progress as well. In any situation, neither it is the purpose of *ijtihād*, nor it should be that each coming generation will destroy or set aside the interlinked building of former generations and start a new one.
  - v) A know how of the circumstances and issues of practical life, as it is actually the requirement to implement the commandments of *Sharī'ah* and its rules and regulations upon them.
  - vi) Strong moral character is required for the jurist.

The purpose to explain these characteristics is not that anyone who is going to perform *ijtihād* has to present a prior certificate that he has these features, rather it is to tell that the growth of Islamic law on accurate direction through *ijtihād* is possible only when the system of legal teaching and training is prepared by the intellectuals with these characteristics. The legislation done by ignoring these values will not be able to absorb in the system of Islamic law, nor can the Muslim society digest it as a pleasant meal.<sup>32</sup>

Maulānā Maudūdi as himself was the founder of a reforming group “Jama‘at-i Islami” and was with the passion to educate the members of the society, for *ijtihād* too, he wished to have the legal system on such

track which can produce such individuals enabled to perform it. He also considered these conditions as the criteria for the acceptance of any *ijtihād*.

### ***Opinion of Abū al-Ḥasan ‘Alī Nadvī***

According to Maulānā Abū al-Ḥasan ‘Alī Nadvī,<sup>33</sup> it is necessary for the revivalism and renaissance of *Dīn*, that Muslim *ummah* especially its scholars and intellectuals utilize their capabilities of *ijtihād*. What is meant by *ijtihād* or capability of *ijtihād*, he explained: By *ijtihād* we mean the people leading and governing Muslims should be capable to have a right decision individually and collectively in the newly faced issues of life. They should be familiar with the spirit of Islam and Islamic legislation and have enough ability of derivation to search out the solution of problems of *ummah* and can guide it in case of doubt.

Furthermore the ruling and leading class should have enough wisdom, knowledge and capacity, be ready for hard work to utilize the natural forces activated in the universe and hidden assets of wealth and power in the earth and can use them for the purpose of Islam in a very beneficial way.<sup>34</sup>

As Abu al-Ḥasan ‘Alī Nadvī feels the decline of Muslim *ummah* very seriously, the center of his intention was also the scholars and the ruling class, which, if will be reformed, the reformation of the entire *ummah* can be possible. He, therefore, considers it necessary for the scholars to be well acquainted with the spirit of Islam individually and collectively, and solve the newly faced problems of life in the light of true teachings of Islam. For the ruling class, he makes it compulsory to spend their knowledge, wisdom and abilities to search out the explicit and hidden assets created by Allah Almighty and to spend them for the welfare of Muslim *ummah*.

### **The Conditions of *Mujtahid* in Present Era**

The above mentioned conditions were generally discussed by former jurists in the field of *ijtihād*. In jurisprudence, discussing the conditions of a *mujtahid*, many scholars have suggested some amendments according to the requirements of their periods. Their examples have been presented while discussing the opinions of the jurists of present era.

This question can be raised today that what conditions can be considered compulsory for a *mujtahid* in the current era? Whether the above mentioned all conditions will be compulsory or amendments and alterations can be suggested as per our current circumstances?

Following are some conditions, compulsory for the process of *ijtihad* in present era.

### ***The Science of Qur'ān and Sunnah***

So far as the sciences of Qur'ān and *Sunnah* are concerned, their knowledge and understanding is very compulsory. The condition is proved even by the Qur'ān and *Sunnah* itself.

O ye who believe! Obey Allah, and obey the Messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the Messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more seemly in the end.<sup>35</sup>

In this verse the word *fī sha'in* (in any matter) is used as a common noun. It means that the matter can be of any type (or structure) whether, it is concerned to religious matters or worldly matters, the first consultation will be of the book of Allah and the *Sunnah* of the Prophet (ﷺ). This topic is proved by a number of narrations as well, so it is mandatory for a *mujtahid* to have the knowledge of Qur'ān and *Sunnah* as first priority.

### ***Grip Over Arabic Language***

As Arabic is the language of the Qur'ān and *Sunnah*, it is therefore, a logical requirement to have a grip over it. It is compulsory for a *mujtahid* to have full command over Arabic language with all its grammatical details, so that the meanings of Qur'ān and *Sunnah* can be clear to him with all its background.

However, it is not compulsory for a *mujtahid* to memorize all the narrations, it is enough for him to have a deep understanding of the Qur'ān and *Sunnah* and the ability to observe, locate and study them minutely after searching the concerned verses and narrations.

It is also compulsory for him to have the ability to determine the status of narrations by evaluating them on the principles of *al-Jarraḥ wa al-Ta'dīl* (science of criticism). Then, in the light of concerned texts, can sort-out the solution of under discussion issue, and present it to the *Ummah* (people) and scholars. The modern sources of knowledge, CDs and internet etc. have made it very easy to approach ancient books and latest researches. These sources should also be utilized in this era.

### ***The Taste of Ijtihād***

Allah al-Mighty has created humans with different natures and tastes. Each competent scholar may not be a successful *mujtahid*. It is therefore, compulsory to have a God gifted ability and natural tendency to perform *ijtihād*, along with intellectual requirements.

### ***Awareness of Current Affairs***

It is compulsory for a *mujtahid* of present era, to have a keen observation of circumstances and problems of his period. Not only to have an awareness of the social, political and economical circumstances, rather (to have an understanding of) the international affairs, theoretical and political trends of different nations of the world as well. He should have the ability to implement the principals of *Sharī'ah* on the real problems of his period. In the present era, there are many economic, political, administrative and medical issues, which require to be highlighted legally and present the point of view of *Sharī'ah* about them in the light of the sources of *Sharī'ah*. It is also among the responsibilities of a *mujtahid*.

### ***Conduct and Character***

A very important condition for *mujtahids*, which cannot be ignored in present era, is a strong moral character. In case of both, the *ijtihād* and *fatwā*, majority of *umamah* has always been relying upon the opinion of those intellectuals, which were prominent with their good moral character and pious practical life. The condition of *'Adl* of former jurists

was also to ensure that *mujtahid* should be a person with good conduct and strong moral character,<sup>36</sup>

### Conclusion

The above discussion of opinions of scholars of present era about the profile of a *mujtahid* proves that they have considered *ijtihad* a very sensitive and responsible activity in the Islamic *Shari'ah*. The basic requirements of this prestigious activity seems almost same by all scholars but their way of demonstration has a very beautiful variation which represents their background of reasoning and requirements of the eras. It can be concluded that the basic requirements to perform *ijtihad* are understood as the knowledge of Qur'an and *Sunnah* of the Prophet (ﷺ) but all the other requirements are to achieve the perfection of the knowledge of above mentioned two fundamental sources and to gain the confidence of the *ummah* upon the performed *ijtihad*.

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15. Shaykh Wahba al-Zuhaili (born 1932) born in Dair Atiah, Syria is a prominent yet somewhat controversial Syrian professor and Islamic scholar specializing in Islamic law and legal philosophy. He is also currently a preacher at Badr Mosque in Dair Atiah. He is the author of scores of books on Islamic and secular law, many of which have been translated to English. He is chairman of Islamic jurisprudence in the College of Shariah at Damascus University. He is also a signatory to the Amman Message and A Common Word documents.
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17. Yusuf al-Qardhavi (born 9 September, 1926) is an Egyptian Islamic theologian, and chairman of the International Union of Muslim Scholars. He is best known for his programme *Al-Sharī'ah wa al-Ḥayāt* (*Sharī'ah* and Life), broadcast on Al-Jazeera, which has an estimated audience of 60 million worldwide. He is also well known for *Islam Online*, a popular website he helped found in 1997 and for which he now serves as chief religious scholar. Al-Qardhavi has published more than 120 books, including *Al-Ḥalāl wa al-Ḥarām fi al-Islam* (The Lawful and the Prohibited in Islam) and *Islam: The Future Civilization*. He has also received eight international prizes for his contributions to Islamic scholarship, and is considered one of the most influential such scholars living today.
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21. Shāh Walī Allah (1703-1762 A.D.) was one of the most original and constructive thinkers of sub-continent with a clear appreciation of political realities. He tried to create a new ideological basis for the reconstruction of the Muslim State. During 1737-38 he translated the Qur'ān into Persian much to the disgust of the orthodox ulema. He set himself the task of removing the differences and bridging the gulf that separated the *Shī'ahs* from the *Sunnīs* and the ulema from the *Ṣūfiyah*. He recommended the application of *ijtihād* as against blind *taqlīd*.
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23. Subḥī Mahmasani born in Beirut, Lebanon, on January 29, 1909 was a Lebanese legal scholar, practicing lawyer, judge, and political figure who contributed substantially to building the legal and civic foundations of the then-nascent country of Lebanon, and whose writings on Islamic jurisprudence remain authoritative works on this topic for legal scholars and researchers.
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31. Sayyad Abū al-A'la Maudūdī (25 September 1903-22 September 1979), was an Indian-Pakistani scholar, philosopher, jurist, journalist, islamist and *imām*. His numerous works were written in Urdu, but then translated into English, Arabic, Hindi, Bengali, Tamil, Burmese and many other languages. He was the founder of Jama'at i-Islami, the largest Islamic organisation in Asia.
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