

Ijtihad as a legislative function: Role of Ijtihad, Ifta and Taqleed in Legislative Process

Dr Shahzadi Pakeeza

Corresponding Author, Assistant Professor, Fatima Jinnah Women University,
Rawalpindi

Fariha Fatima

Mphil Scholar, Fatima Jinnah Women University, Rawalpindi

Abstract

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In Islamic legislation Ijtihad plays an important role and has central position in the whole process. Demands of life change day by day thus it become necessary to take on the structural review of Islamic laws keeping in mind the spirit and discipline of Islamic. Ijtihad thus play as a perfect tool for legislation. Regarding fatawas the jurists followed the methodologies of companions, tabieen, and taba Tabaeen. In cases in which they did not find any legal opinion of their teachers related to a specific problem they themselves tried to find out the solution for that problem from the relevant Texts and formulate their own fatawa. In Pakistan the Judiciary that performs the task of interpretation for law-making, Majlis-e-Shura and various Ulama are exercising the job of Ifta. The Council of Islamic Ideology is the official legislative body of fatawa. Taqleed is also an acceptable mode of legislation whose proofs are evident from Quran and Sunnah. It has been used as a source of legislation in Pakistan as well. In constitution of Pakistan article 189 and 201 are related to Taqlid. Article 189 and 201 makes the decisions of Supreme Court binding on all courts and the High court judgments binding on all subordinate courts. Thus the legislative process in Islam employs the methods of Ijtihad, Ifta and Taqlid as a perfect tool of legislation.

Keywords: Islamic Legislation, Ijtihad, Ifta, Taqleed

Ijtihad, Fatwa and Taqlid

Al Amidi defines Ijtihad as to spare no effort in the quest of discovering the supposed rules of the Shariah in the sense that the mujtahid leaves no stone unturned."¹ Similarly, Ibn al-Haj defines it as the exertion of the mujtahid's whole effort in his attempt to establish the anticipated rules of the Shariah."²

The term fatwa is "opinion" or "answer of a question". In Arabic language, some other synonyms for *fatwa* are *Ifta* "delivering an Islamic opinion" and *mastafti* "to seek for an opinion"³.

The relative terms, used in the Qur'an are *istefiti* "to make a request for an Islamic judgment", *mufti* "one who utters Islamic rulings" and *mufti* "he issues an Islamic verdict".⁴ In Arabic dictionary, al-Mawrid, the word *fatwa* or *futya* means "formal legal opinion", "advisory opinion".⁵

In oxford dictionary, it is stated that the origin of the term *fatwa* is *Ifta* (decide a point of law) which means "a legal ruling on a problem related to Islamic law delivered by some authentic and famous authority".⁶

In technical sense Taqlid means "to copy, reproduce".⁷ Taqlid is to follow the opinion of a scholar without having knowledge of their evidence. According to Abu Ma'ali al- Juwayni Taqleed is to follow someone without having proofs and doesn't trust upon knowledge. Taqlid is to rely on someone's saying without having knowledge of its evidence and arguments.⁸

Role of Ijtihad in Legislation

The word is derived from the root word. Allama Abu al Hasan Ali bin Ismail Ibn sayida said that means hardship and difficult. Ibn Manzur al- Misri says: *Jahd* and *juhd* mean power and strength. He adds that it is said that whereas *jahd* means hardship and difficulty, *juhd* gives the sense of power and strength. Later on he quotes al- Farra' to the effect that in the verse of the Qur'an *jahd* is used in the sense of power and strength. In the same وَالَّذِينَ لَا يَجِدُونَ إِلَّا جُهْدَهُمْ 9 work, he states that Ijtihad and *tajahud* mean exertion of power and strength. In the hadith narrated from Mu'adh the phrase in which he said that "I will exert to form my own judgment" showing that this judgment will be executed by putting in complete efforts and exertion to achieve the same purpose¹⁰.

Technically it means, deduce the hukm amid varying interpretations of legal injunctions of Quran ad Sunnah and construe hukm or any new ruling from the Qur'an and the Sunnah, in order to address new legal situations. Person who performs "Ijtihad" is titled "*Mujtahid*".¹¹ Shatibi defines Ijtihad as:

"A process in which one exerts one's efforts to one's full capacity in order to acquire exact or probable knowledge or reach judgment in a given case."¹²

In the complete procedure of Islamic legislation Ijtihad plays an important role and has central position in the whole process because Islamic law has two levels; essential and existential. The first level of Islamic law being the actual spirit is related to the progress and development of human life while the second level which is structural form of Islamic law's aims to give it discipline and structure. Demands of life is going to change day by day and human life also comes under the influence of the influence of these changes. In

this changeable phenomena it become necessary to take on the structural review of Islamic laws but it must be keep in mind that the spirit and discipline of Islamic law must be alive and does not clash with the aspects of evolution of human life. Their mutual clash and disagreement has to make possible to describe the vitality and development of life into nonproductive and inactivate state attain to organize and association become far from possible. In the process of law making the achievement of this responsibility is proved by Ijtihad. In the changing situation of every period, this process of Ijtihad is very effective in Islamic law.¹³

Validity of Ijtihad

Many Qur'ānic verses make insure to validate Ijtihad. It has been stated in 13:3-4; 4:105 about the importance and significance of Ijtihad. There are many verses which support the use of Ijtihad by qiyas. Verses which are given below to show its validity include 3:159; 42:38. The famous tradition of Muadh Ibn Jabal (d. 18/640) to legalize the validity of Ijtihad is quoted to ascertain the applicability of Ijtihad when there is no clear proof for the said matter. It is more important in the development of Islamic law and opens a gate to fiqh that will helpful for developing the law when coming across new situations.¹⁴

Role of Ijtihad in Federal Shariat Court

Federal Shariat court directly consults the Quran and Sunnah and gives the judgment according to the injunctions of the primary sources of Islam. In the case of the protection of women federal Shariat court also consult with the Muslim Family law Ordinance.

On the bases of Quran and Sunnah courts suggest that Islamic law can be interpreted in a more flexible way. In the cases of family law, gender equality, women's rights etc. Judges moves towards the flexible and easy interpretation of jurisprudence and Muslim law from outside the strict applications. Federal shariat court uses Ijtihad for the legislation of the present issues. By using the methodology of Ijtihad process Federal shariat court gives the answers of the contemporary issues which raises on Islamic law.¹⁵

The parliament of Pakistan (Majlis- e- Shoora) is supreme lawmaking body of Pakistan and all decisions which is given by it is has to be in accordance with the injunctions of Islam and Ijtihad is used as a legislative function in the process of lawmaking.

Scope of Ijtihad in Modern Age

Ijtihad is the transmission of the rules of Quran and Sunnah. Question arises that in this era Ijtihad can be performed or not? Sunni scholar have strong opinion that in the 10th century all the rules of Islamic law had been settled so according to these scholars gates of Ijtihad are close now. But scholars are not agreed with the concept of closing the gate of Ijtihad. Closing the gate of Ijtihad means that now new school of thought cannot came into an existence because there is no need for making a new school. By using the original sources (Quran and Sunnah) and the rules of Islam Ijtihad holds the contemporary problems and try to solve them according to the rulings of Shariah.

For the fulfillment of requirements of modern world Islamic law have adapted by the way of legislation. Contemporary jurists fully try to remain the significance of Islam in the modern world and able to solve the problems by seeing the necessity of the modern age. Islamic legislative principles are based on that views which are not for specific time, specific person or specific age but it is for every period and for human beings. Ijtihad is legal device which is applied by the jurist from the primary sources as a legislative function for any kind of new issue.¹⁶

Role of Ifta' in Legislative Process

Qur'ānic Injunctions and Prophetic Traditions about Ifta'

The words *Ifta'*, *futya'*, *istifta*, *yastafti* have been stated in the Holy Qur'an denoting interpretation, asking for opinion, delivering legal verdict:

يا أيها الملأ أفتوني في رؤياي

"O leading people! Explain to me about my dream".¹⁷

ولا تستفت فيهم منهم أحدا

"And do not ask about them to none of them".¹⁸

The Holy Prophet said:

وان العالم ليستغفر له من في السموات ومن في الأرض والحيتان في جوف الماء

"And knowledgeable people that requested pardon by all the creatures of God in the many heavens and the earth, including the fish that is in the depths of the oceans come ask forgiveness".¹⁹

The Prophet (Peace Be upon Him) also said: When Allah wishes good for a person, He makes him understand the religion."²⁰

Another Prophetic Saying is: "A single scholar of religion is more formidable against Satan than a thousand devout people".²¹

The principle of acquiring religious guidance (pertaining to some particular matter in form of *fatwa*) for the common people from those who are experts and specialists in the field of Shari'ah is mentioned in the Book of Allah:

يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولي الأمر منكم

"O believers! Obey Allah and obey His messenger and those entrusted with authority from amongst you".²²

فاسألوا أهل الذكر إن كنتم لا تعلمون

"So ask from the people of knowledge, if you do not know".²³

Abu Hurairah reported that the Messenger of Allah (peace be upon him) said: "If anyone gives a ruling without knowledge then the sin for it will be on him who gives the ruling".²⁴ It is narrated by Ibn Asakir that the Apostle of Allah said: "Whoever gives fatwa without knowledge, the angels of the heaven and the earth curse him".²⁵

Fatwa as a Legislative Process in the Time of the Companions

Fatwa has a very **important role in Islamic judicial system**. *Fatwa* is an analytical view on a particular issue estimated by a legal scholar keeping in view the legal injunctions of Qur'an and Sunnah and previously made

decisions regarding that specific topic.

A Companion's legal verdict (*fatwa*) has grave significance and highest level because they learned and gained directly from the Holy Prophet (S.A.W) and received instructions in religious matters.

However, regarding the definition of Companion, there is difference of opinion, whether Companion is the person who just met the prophet in the state of *imaan* or this will be the person who remained very close to the Prophet in his company, acquired all kind of knowledge of Shari'ah and fully trained by him! Majority of the scholars hold the first view. But both views cannot be ignored anyway.

Different Views about the Binding Nature of *Fatawa* of Companions

There are three points of view regarding the level, authenticity and binding nature of the *fatwa* given by a Companion.

First view: Imam Malik, Imam Shafi' and Imam Ahmad Bin Hanbal) who are in favor of the unconditional binding nature of a Companion's *fatwa* to the succeeding generations.²⁶ They have given examples from the Qur'an and Hadith:

وَالسَّابِقُونَ الْأُولُونَ مِنَ الْمُهَاجِرِينَ وَالْأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ

"And the foremost to embrace Islam of the Muhajireen and the Ansar and also those who followed them exactly (in faith). Allah is well pleased with them as they are well-pleased with Him".²⁷

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ

"Let there arise out of you a group of people inviting to all that is good (Islam), enjoining Al-Ma'ruf (all that Islam orders) and forbidding Al-Munkar (all that Islam has forbidden). And it is they who are the successful."²⁸

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ

"You are the best of peoples ever raised up for mankind; you enjoin Al-Ma'ruf (all that Islam has ordained) and forbid Al-Munkar (all that Islam has forbidden), and you believe in Allah".²⁹

The Messenger of Allah (peace be upon him) said: "I urge you to follow my Sunnah and the way of the rightly-guided caliphs after me; adhere to it and cling to it firmly. Beware of newly-invented things, for every newly-invented thing is an innovation (bid'ah) and every innovation is a going-astray."³⁰

Second view has been given by those (including Hanafi jurist Abul Hasan al Karkhi, Asharite and Mutazilite scholars) who are not in favor of the binding nature of *fatwa* of a Companion.³¹ They gave the example of this verse:

فَاعْتَبِرُوا يَا أُولِيَ الْأَبْصَارِ

"Consider, O You who have vision".³²

However, it is commented against this view that this verse makes the *fatawa* of Companions compulsory to obey by differentiating between the Companions and others.

Third view also has been given by Imam Abu Hanifa himself that if the

verdict of a Companion is in accordance with *qiyas* then it is not binding but if it is contradictory to *qiyas*, then it is a proof, necessary for the next generations to follow.³³

The jurists disagree regarding the binding nature of a Companion's *fatwa* but there is an agreement among four founding jurists regarding its authoritative and authentic nature. For example:

Imam Abu Hanifa said: "When I am unable to find anything in the book of Allah or the Sunnah of the Prophet, I consult the fatawa of the Companions. I adopt the ruling which looks suitable to me and leave that which does not. However, neither I leave the fatawa of all of them, nor I prefer others' views over their fatawa."

Imam Shafi' said: "When I do not find anything in the Quran, Sunnah or consensus of opinion or anything derived out from these sources, I follow the fatwa of the Companion."

Imam Malik almost equated the *fatawa* of companions with the Sunnah. It is evidenced that in *Muwatta'* Imam Malik, he has recorded more than 1,700 traditions, from amongst them half are the *fatawa* of Companions.

Imam Ahmad bin Hanbal considered all the *fatawa* of the Sahabah equally approved and accurate because those *fatawa* are the symbol of that incomparable knowledge, Sahabah gained from the Prophet (peace be upon him).³⁴

The companions who issued a large number of *fatawa* are Ayesha, Umar bin Khattab, his son Abdullah, Ali Ibn Abu Talib, Abdullah Ibn Abbas and Zaid Ibn Thabit (may Allah be pleased with them).

The Sahabah who did not issue a great number of *fatawa* are Abu Bakr Siddiq, Umm Salmah, Anas Ibn Malik, Abu Sa'id al Khudri, Abu Hurairah, Uthman Ibn Affan, Abdullah Ibn Amr Ibn al-As, Abdullah Ibn Zubayr, Abu Musa al Ash'ari, Sa'd Ibn Abu Waqas, Salman Farsi, Jabir Ibn Abdullah, Mu'adh Ibn Jabal, Talhah, Abd al Rahman Ibn Awf, Imran Ibn Husain, Abu Bakrah, Obadiah Ibn Samit and Mu'awiyah Ibn Abu Sofia (may Allah be pleased with them).

Rest of the Sahabah issued a very limited number of *fatawa*.³⁵

Sahabah left a great wealth of *fatawa*. They were the excellent muftis and resolved many difficult cases. Some examples are given here:

Concerning the treatment with the prisoners of the battle of Badr, Umar (may Allah be pleased with him) suggested:

"O Messenger of Allah! The prisoners are the prominent personalities of Makah. By killing them, we can make Kufr unable to face us again. So, every Muslims should kill his relative among the prisoners. Hand over to Ali his brother Aqil to kill, to Abu Bakr his son Abd al-Rahman and to me my relative".

The Prophet (peace be upon him) preferred the view of Abu Bakr (may Allah be pleased with him) of taking ransom from prisoners, however, verses of Surah Anfal (67-68) was revealed in favor of Umar's opinion³⁶

Fatwa of Ali about the people engaged in homosexual practices in some

parts of the Arabia (an advice given to Abu Bakr):

"Only one nation (Loot) committed this sin and you know what Allah did to them. So these people should be burnt to death".³⁷

3. The *fatwa* given by Abu Bakr (R.A) regarding the portion for a grandmother (paternal and maternal) in inheritance which is 1/6, has been accepted by all companions.

4. *Fatwa* of Abu Bakr (R.A) related to the inheritance for grandparents.

5. *Fatwa* of Abu Bakr (R.A) related to apostate (*murtad*).

6. *Fatwa* of Ali (R.A) on the issue of penalty for drinking wine, 80 lashes equal to the *qazaf* punishment (an advice given to Umar).

7. Anas bin Malik (R.A) gave a *fatwa* about the permissibility of the testimony of slaves.³⁸

Fatwa as a Legislative Process in the Time of the Tabi'een

After the Companions, Tabi'een had the responsibility to put their contribution in Islamic jurisprudence, issue *fatawa* and play role as legislators. As their teachers (Companions) belonged to different areas of Islamic state like Makah, Madinah, Kufa, Basra, Damascus so did Tabi'een; and that's why, each of Tabai' adopted and applied the methodology which he learnt and perceived by his teacher. There is a very slight difference between the methodologies of Tabi'een to give legal opinions (though they were much clearer) and that of the Companions because they seldom tried to change the *fatawa* of the Companions. For example:

Hasan Ibn Ubaidullah al Nakha'i said: "Once I asked Ibrahim al Nakha'i: "Did you hear all the Fatawa from the predecessors which you give?" He answered in the negative. I asked him: "Then you give fatawa without hearing them from anyone?" He replied: "I hear what I hear but when I face those issues about whom I did not hear anything before, I compared them with those issues about whom I heard fatawa and thus I give my own opinion".

Most of the Tabi'een who lived with the *Mufti among Sahabah* are:

Imam Nafi', Ikramah, Ata' Ibn Rabah, Tawus, Yahya Ibn Kathir, Ibrahim al Nakha'i, Hasan al Basri, Ibn Sirin, Ata' al Khurasani, Sa'id Ibn al Musayyab, Yazid Ibn Abu Habib, Abdullah Ibn Abu J'afar, Ja'far Ibn Rabi'ah and others.³⁹

Fatwa as a Legislative Process in the Time of Later Jurists

After Tabi'een, the duty of legislation and development of *fiqh* fell upon the shoulders of the Jurists who used to look thoroughly from the Qur'anic verses and Prophetic sayings, the decisions of the scholars from amongst of Sahabah, Tabi'een and Taba' Tabi'een and then utter their own legal opinions.⁴⁰

The jurists, like their predecessors, learnt and followed the methodologies of their teachers (Tabi'een) belonged to different parts of the Islamic world. However, their methodologies are also contradictory in those cases, in which they did not find any legal opinion of their teachers related to a specific problem. Then they themselves tried to find out the solution for that problem from the relevant Texts and formulate their own *fatawa*. That's why,

the opinions of the jurists not only consulted the *fatawa* of the *Tabi'een* but issued new ones too, where it was necessary. They said: "Tabi'een were people (of knowledge) and so are we".⁴¹

Fatwa as a Legislative Process in Pakistan

There is judiciary of Pakistan (including Supreme Court, High Court, Federal Shariah Court and Civil Courts) which is one of the sources of legislation and performs the task of interpretation for law-making. Secondly, the federal and supreme legislative body of [Pakistan](#) is the Parliament of Pakistan, also known as *Majlis-e-Shura* (which has the task of formulating laws, organizing discussions, promulgating ordinance and passing bills etc.). Thirdly, there are various religious sects in our country Pakistan with a large number of Muftis exercising the job of *Ifta* according to the teachings of their particular sects.

The Council of Islamic Ideology is one of the official legislative body of *fatawa* founded by the Muslim Government of Pakistan as Advisory Council of the Constitution of Pakistan 1962. It is a council of highly-specialized *muftis* accomplishing the job of providing responses to their current problems.⁴²

All Pakistan Ulema Council is another Islamic institution including religious leaders and scholars of Islamic law belonged to different schools of thought. This council perform the job of issuance of *fatawa* to resolve the contemporary problems of the people of Pakistan.⁴³

Role of Taqlid in Legislative Process

The word Taqlid comes from the Arabic root word "q-l-d" which means "fixing of an animal". In technical sense Taqlid means "to copy, reproduce".⁴⁴

Proof of Taqlid from Quran

Taqlid is mentioned in Holy Quran. Verses in which Taqlid is stated are mentioned here. Allah Almighty stated in Holy Quran:

Believers! Obey Allah and obey the Messenger (blessings and peace be upon him) and those (men of Truth) who hold command among you.⁴⁵

In this verse the meaning of "men of truth" is the Ulema and Imams. This verse shows the obligatory nature of taqlid. The meaning of 'men of truth' is the men of judgment, understanding and accepting for example Ulema.

So if you yourselves do not know (anything), then ask the People of Remembrance.⁴⁶

In the above mentioned verse it is stated that if anyone don't have knowledge about any *ahkam* than he should concern with those people who possess the knowledge of Quran and Shariah.

Had they referred it to the Messenger (blessing and peace be upon him) or those of them who are in command (instead of making it public), then those among them who can draw conclusion from some matter would have found it (i.e. the truth of the news).⁴⁷

"Whoever Allah wishes well for, He grants him deep understanding of the Religion."

In this verse Allah has clearly stated that when we have any difficulty in Din than we should ask to the people of deep understanding of religion. This is obvious that the people those who don't have knowledge than they concern with the people who possess knowledge of religion.⁴⁸

Following are the other verses of Quran in which commandment of Taqlid subsist.

...party from within every group (or tribe) not goes forth in order that they may acquire deeper knowledge (i.e. thorough understanding and insight) of Din (Religion).⁴⁹

...follow someone who adopts the path of turning to me in repentance and submitting to my injunctions.⁵⁰

...and those who follow them in the grade of spiritual excellence – Allah is well pleased with them (all) and they (all) are well pleased with Him.⁵¹

Proof of Taqlid from Hadith

At many places Holy Prophet (S.A.W) mentions the importance of Taqleed. Some of them are mentions here. In Sahih Bukhari following Hadith is mentioned:

You follow me and the later ones will follow you.⁵²

Hafiz Ibn Hajar 'Asqalani interpret it by writing this that it means the companions should learn the rules of the Shariah from Holy Prophet (S.A.W), then those who will come after companions they learn from them and same like those who come after them and so on till the end of the world.

*"Verily the cure to not knowing is asking."*⁵³

Background of this Hadith related to the time when companions of Prophet (S.A.W) were in a journey and they spend night there and at the time of Fajr prayer among them one Companion needs ritual bath but he was having a wound and there was cold water he wish for Tayamum but Companions forbid him to do this. When he perform bath then he harmed with water and died. Companions told whole matter to Prophet (S.A.W) then he the above mentioned hadith was stated.

Abu Saeed al Khudri stated that some Companions come late for prayer and they make the habit of it. For this reason Prophet (S.A.W) advise them to come early and in prayer takes the front rows. Prophet (S.A.W) asked the companions to observe and follow him and so the coming generations will observe and follow you.⁵⁴ Meaning of this Hadith is to come early for prayer but those who come late and stands at the back rows than they should have to follow the people of the front rows.

In Fath al Bari Ibn Hajar states that the meaning of this Hadith interpreted by some people is that Companions learn the commandments of Shariah from Prophet (S.A.W) then successors acquire knowledge from Companions and this procedure will continue so forth.

Following Hadith is reported in Muslim and Bukhari. This is reported by Abdullah Ibn Amr that the Holy Prophet (S.A.W) said that Knowledge will be raised from the world when people ask ignorant Ulema about the matters

and they will issue *fatawas*, thus misguiding others.⁵⁵ This Hadith makes it evident that Ulema have duty to give fatwa not the layman.⁵⁶

Proofs of Taqlid from Tradition of Companions

It is mentioned in Sahih Bukhari that an issue comes in front of Abu Moosa Ash'ari. He replied and said that ask from Abdullah Bin Mas'ud. When people consulted Abdullah bin Mas'ud on the matter and reported him the incident of asking it from Abu Moosa Ash'ari, he told them that asking Abdullah Ibne Masud was enough and it was not needed to ask anything when he is present. This means that he taught them to follow Abdullah bin Mas'ud in every matter.

Once Abu Ayub al-Ansari lost his camel in way while he was going to perform Hajj. He needed camel to sacrifice in order to come out of ihram. When that day come in which he need to sacrifice camel, he inquired from Umar, "what to do." Umar said, you should have to do same thing which peoples do while performing umra that is to cut your shave or hairs. You will stay out from ihram. In next year, you have to perform hajj and do sacrifice. Abu Ayub did not ask to give proof in this matter. Also it was not given to him. This is an example of taqlid.

Matters in which Taqlid is allowed

In Quran there are two types of injunctions one are clear and other are not clear. Clear verses can be understood by a layman and there is no need of Taqlid. In verses which are not clear and contrary evidences prevail than there is the need of Taqlid because one cannot derive rulings.

In the matters of creed which are essential part of religion like prayer, fasting, zakat, and hajj, there is no need of Taqleed because they are obvious. Taqlid should be made in the affairs which are debatable like legal injunctions. Legal injunctions and issues of worship which are not clear than there is the need of Taqlid for understanding the exact rulings. Allah Almighty states in Quran (16:43) to consult with knowledgeable people in matters where you need guidance.⁵⁷

The Permissible Forms of Taqlid

About acceptability, if there is any difficulty in a matter one should consult with *Ahl I Ilm* else they can go astray. Allah Almighty reiterated the believers to consult the people of knowledge if they are unaware of anything.⁵⁸

Taqlid should not for anyone it must be for the person who is qualified with knowledge and he should poses piousness. Ibn Taymiyah said that when a Muslim face any difficulty than he should seek a ruling from one who possess knowledge and give decisions according to Quran and Hadith. This is not obligatory on Muslims to follow blindly, it is allowed in cases where option of Ijtihad not found.⁵⁹

The Prohibited Forms of Taqlid

Ibn al-Qayyim divides the prohibited taqlid in following types:

Just satisfied with the Taqlid of forefathers and turning away from the clear commandments of Allah.

Taqlid of the person with whom we are not assured that his sayings can be taken or not.

When it became apparent that the person whose opinions as followed as taqlid has views that contradict with the evidences or with the rulings of Shariah.⁶⁰

As it comes in the Holy Quran (Al Quran 24:63) Allah Almighty will inflict painful punishments on those who oppose the clear commandments of the messenger. In the mentioned verse *fitnah* means shirk. It is clear that rejection of Allah's commandments leads us towards Hell and distortion.⁶¹

Significance of Taqlid in modern time (Pakistan)

In constitution of Pakistan article 189 and 201 are related to Taqlid. Article 189 and 201 makes the decisions of Supreme Court binding on all courts and the High court judgments binding on all subordinate courts. The institutionalized forms of Taqlid are doctrine of precedent. The opinions of High court are followed by lower courts this is considered as Taqlid. Common people accept the decisions of judges in their legal problems. Similarly the statements of witnesses accept by court unless their truth is challenged. Likewise opinions of experts in routine matters are followed by people. It can be concluded that Taqlid is an essential principle of our daily lives based upon the division of labor where some people specialize in specific field and become experts. Likewise the Mufti or the Faqih are the persons who are experts in their areas and there is no need to hesitate in accepting their opinions by the people who are common people in their field of specialization.⁶²

Basic Reasons of Accepting Taqlid by Majority of Muslims

According to the view of reformists, Taqlid acceptance by the community of Muslims is just due to the misunderstanding of their perception of Fiqh and Shariah. People impressed by the Classical jurist's work of Fiqh, they maintained that the early jurists examined and interpreted the true patterns, compiled their details guidance that does not need any alteration. Consequently people follow the transmitted work of jurists as the basic mandatory provision, in the light of Quran and Sunnah deprived of any perception or examination. Moreover, the teachings of the jurists of classical period formed the religious knowledge and that was the faith matter and the work of early jurist doesn't need any scrutiny. With the passage of time the arguments and the truth did not change. The works of early jurists is as valid in the present time as it was in the time of its formulation. There is no need of rechecking to the work of jurists because it is unnecessary and dangerous if anyone do this then it will be just error and misinterpretation.

Al-Shawkani mentions that Taqlid is the common practice and prevailing norm and it was not to be violated. Consequently claim to the right of Ijtihad indeed met with resistance, criticism and public libel. Bur according to Al- Suyuti Ijtihad is the backbone of Shariah and legal decisions cannot be reached without Ijtihad.⁶³

Conclusion

Islam stress the believers to follow the way of knowledge. As it comes in surah al-Isra verse 36 Allah Almighty accentuate to pursue knowledge in all matters as every act of hearing sight and heart will be accounted for. The legislative process in Islam needs to employ the Ijtihad, Ifta and Taqlid according to the situation as all of them are different means of attaining knowledge and different aspects of knowledge are explored pondering on every likely possibility. Allah Knows Best..



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Refrences and Bibliography

¹ Sayf al-Din al-Amidi, *Al-Ihkam fi Usul al-Ahkam*, 1st ed. (n.p.: Tab'at Rabitah al-'Alam al-Islami, 1387), 4:141.

² Ibn Amir al-Haj, *Al-Taqrir wa al-Tahbir*, 1st ed. (Cairo: al-Matba'at al Amiriyah, 1316 AH), 3:291.

³ Retrieved from <http://www.questionsaboutislam.com/shariah-islamic-law/what-is-a-fatwa.php>, taken on 10th December, 2015.

⁴ Muhammad Afzal Mehmood. (2015). *Fatwa in Islamic Law, Institutional Comparison of Fatwa in Malaysia and Pakistan: The Relevance of Malaysian Fatwa Model for Legal System of Pakistan*. Department of Law, Faculty of Shariah and Law, International Islamic University, Islamabad, Pakistan, p.1.

Retrieved from <http://www.readcube.com/articles/10.4172%2F2151-6200.1000118>, taken on 10th December, 2015.

⁵ Baalbaki, Rohi (Dr) (2010). *Al-Mawrid A Modern Arabic English Dictionary*. Beirut, Lebanon: Dar el-Ilm lil Malayans, ed., 19th, p.815.

⁶ Retrieved from <http://www.oxforddictionaries.com/definition/english/fatwa>, taken on 12th December, 2015.

⁷ Mustafa, Abdul Rahman (2013). *On Taqlid: Ibn Al Qayyim's Critique of Authority in Islamic Law*. USA, p. 06.

⁸ <http://www.fatwaislam.com/fis/index.cfm?scn=fd&ID=24>

⁹ Al Quran, 9:79

¹⁰ Zubair, hafiz Muhammad. (2010) *Asar I hazir me Ijtimai Ijtihad (P.75-77)*. Punjab University: Lahore.

¹¹ <http://muslimcanada.org/ijtahadmujtahid.pdf>

¹² <http://catchyworld.com/download/Islamiat/Ijtihad.pdf>

¹³ <http://www.minhajbooks.com/english/btext/cid/17/bid/315/btid/838/read/txt/Ijtihad-and-its-need-Ijtihad-meanings-application-and-scope.html>

¹⁴ Qasmi, A. H. (2006). *International encyclopedia of Islam*. Published by Isha books. India: p. 9

¹⁵ Yalmaz, I. (2014). *Islam and Christian Muslim Relation*, online publication Vol. 25, p. 185-188

¹⁶ <http://muslimarealm.blogspot.com/2012/02/Ijtihad-and-its-scope-in-21st-centaury.html>

¹⁷ Yusuf: 43

¹⁸ Al-Kahf: 22

¹⁹ Sahih Muslim

²⁰ Al-Bukhari

- ²¹ Tirmidhi and Ibn Majah
- ²² Al-Nisa: 59
- ²³ Nahl : 43
- ²⁴ Abu Dawood
- ²⁵ Al-Suyuti, *Haba'ik* p. 187
- ²⁶ Hannan, Shah Abdul. (1999). USUL AL FIQH (Islamic Jurisprudence), p.24.
- ²⁷ At-Tawbah: 100
- ²⁸ Al-e-Imran: 104
- ²⁹ Al-e-Imran: 110
- ³⁰ Narrated by Ahmad, 4/126; at-Tirmidhi no. 2676
- ³¹ Hannan, Shah Abdul. (1999). Usul Al Fiqh (Islamic Jurisprudence), p.24.
- ³² Al-Hashr: 2
- ³³ Hannan, Shah Abdul. (1999). Usul Al Fiqh (Islamic Jurisprudence), p.24.
- ³⁴ Kamali, M. H. (1991.). Principles of Islamic Jurisprudence. The Faculty of Law, International Islamic University, Malaysia, pp. 214-216.
- ³⁵ Al 'Alwani, Taha Jabir (1990). Source Methodology in Islamic Jurisprudence. Herndon, Virginia USA, The International Institute of Islamic Thought, p.8.
- ³⁶ Retrieved from <http://www.shiachat.com/forum/topic/234950455-contribution-of-shaikhain-in-battle-of-badr/>, taken on 30th December, 2015.
- ³⁷ Al 'Alwani, Taha Jabir (1990). Source Methodology in *Islamic Jurisprudence*. Herndon, Virginia USA, The International Institute of Islamic Thought, p.10.
- ³⁸ Retrieved from <http://www.slideshare.net/HabibJoelAlMukhlis/fatwa-sahabi-34370222>, 30th December, 2015.
- ³⁹ Al 'Alwani, Taha Jabir (1990). Source Methodology in *Islamic Jurisprudence*. Herndon, Virginia USA, The International Institute of Islamic Thought, pp. 16-17.
- ⁴⁰ Ibid, p.18.
- ⁴¹ Ibid, pp.20-21.
- ⁴² Mahmood, Muhammad Afzal (2015). Fatwa in Islamic Law, Institutional Comparison of Fatwa in Malaysia and Pakistan: The Relevance of Malaysian Fatwa Model for Legal System of Pakistan, Islamabad, Pakistan: Department of Law, Faculty of Shariah and Law, International Islamic University, pp.1-2.
- ⁴³ Retrieved from https://en.wikipedia.org/wiki/All_Pakistan_Ulema_Council, taken on 3rd January, 2016.
- ⁴⁴ Mustafa, Abdul Rahman (2013). On Taqlid: Ibn Al Qayyim's Critique of Authority in Islamic Law. USA, p. 06.
- ⁴⁵ Al Quran 4:59
- ⁴⁶ Al Quran 16:43
- ⁴⁷ Al Quran 4:83
- ⁴⁸ Sajaad, Mufti Muhammad. Understanding Taqlid: following one of the four great Imams, 2nd Edition, p. 16-17.
- ⁴⁹ Al Quran 9:122
- ⁵⁰ Al Quran 31:15
- ⁵¹ Al Quran 9:100
- ⁵² Sahih Bukhari, Vol. 1, Pg. # 99
- ⁵³ Balooq ul Maram min Adilat il Ahkam (Attainment of the Objective according to the Evidences of the Ordinances) Hadith 321, Darussalam.
- ⁵⁴ Sahih Muslim, Kitab Al-Salat '4' Hadith 878
- ⁵⁵ Sahih Muslim Book 34 Hadith 6465

⁵⁶http://www.peopleofsunnah.com/index.php?option=com_content&view=article&id=78&Itemid=80

⁵⁷ Al Quran 16:43

⁵⁸ Ibid

⁵⁹ Majmoo' al-Fataawa, 23/382; 20/208-209.

⁶⁰ *I'laam al-Mawqa'een* 2/188

⁶¹<http://www.sahihmuslim.com/sps/sp.cfm?subsecID=MNJ06&articleID=MNJ060005&articlePages=1>

⁶² Nyazee, Imran Ahsan Khan. Nyazee on the Secrets of Usul Al- Fiqh: Following a Madhhab and Rules for Issuing Fatwas. *Advanced Legal Studies (ALS)*, p. 27.

⁶³ Abd Rahim, Rahimin Afandi. The concept of taqlid in the reformist's point of view, p. 10-12.