Islamic Studies 41:4 (2002) pp. 617–634

Issues in the Understanding of *Jihād* and *Ijtihād*[*]

MOHAMMAD HASHIM KAMALI

The Sacred Struggle of *Jihād*.

Jihād and *ijtihād* both are derived from the same root *j-h-d*, which signifies striving, whether physical or intellectual, on the part of a Muslim or a group of Muslims to advance a cause they believe to be of merit and that would hopefully earn them the pleasure of God. In the broad sense of effort and self-exertion for a good cause, *jihād* does not necessarily mean fighting, simply because self-exertion in the path of God and for causes beneficial to humanity may be undertaken by peaceful as well as other means. Now a qualified scholar who strives in his intellectual capacity to address an issue that involves penetrating analysis and research is known as *mujtahid*, whereas a person who strives in his physical capacity to advance a worthy cause, is known as *mujāhid*. In its Qur'ānic usage, especially in the early Makkan revelations, the emphasis was mainly on the peaceful meaning of *jihād*, on the effort that an individual made for self-improvement or to persuade others for the promotion of the cause of Islam. The Prophet (peace be on him) was content, in the early years of his campaign in Makkah, with admonishing his people to give up idolatry and inviting them to embrace monotheism and accept the truth of Islam. *Jihād* in the sense of self-discipline and subjugation of the self to the moral and religious teachings of Islam occurs at many places in the Qur'ān, especially in the following verses that were revealed in Makkah: "And whoever strives (*jāhada*), he only strives (*yujāhidu*) for his own good, for God is independent of His creatures" (Qur'ān 29: 6). The *jihād* mentioned here is a striving that consists of moral and spiritual resistance to the temptations of sin and *fitnah*, a *jihād* waged with the weapons of patience and perseverance: "As for those who strive for Us (*jāhadū finā*), We surely guide them to Our paths" (Qur'ān 29: 69). Anyone who seeks enlightenment through self-purification is engaged in a sacred struggle that invokes divine assistance: "Listen not to the

[*] This is a modified version of a paper presented at the Kuala Lumpur Conference on "The Understanding of Islamic Issues among the Malay Muslims", 31 January, 2002.

unbelievers, but strive against them (*jāhidhum*) a great striving (*jihādan kabīran*) by means of the Qur'ān" (Qur'ān 25: 59).

It is evident that the pronoun '*bihi*' in the pharse '*wa jāhidhum bihi*' in the verse quoted above refers to the Qur'ān itself and the reference to *jihād* in these verses has obviously no military connotation. It is also significant that the greatest *jihād* mentioned in the Qur'ān, as in the last verse above, is the *jihād* of enlightenment and education that is guided by the Qur'ānic values. "The Qur'ānic discourse stands out", according to Muḥammad ibn 'Alī al-Shawkānī (d. 1250/1834), "for its strength, profundity, wisdom and comprehensive grounding in values", which is why *jihād* by means of the Qur'ān is "referred to as the great *jihād*".[1]

The idea of the "great *jihād*" is also read into another Qur'ānic verse which addresses the faithful: "And strive in (the cause of) God as you ought to strive — (*wa jāhidū fi 'llāh ḥaqqa jihādih*)" (Qur'ān 22: 78). The emphasis here is on the sincerity which should characterize the struggle waged for the sake of God. It could mean *jihād* in the sense of military struggle as well as *jihād* in the non-military sense of the term consisting of self-exertion for attainment of moral and spiritual refinement. This would be the correct meaning if the verse were to be read in the context of the immediately preceding passage which refers only to prayer, worship and dedication to beneficial work (*fi'l al-khayr*). Since this is waged for the sake of God alone, it is the 'great *jihād*'. Commentators have observed that the idea of 'great *jihād*' in this verse is due to its comprehensive language which includes all the three varieties of *jihād*, namely *jihād* against the enemy, *jihād* against evil, and *jihād* against the self. In their interpretation of this verse, the commentators of the Qur'ān have referred to a *ḥadīth* according to which the Prophet (peace be on him) said upon his return from the battle of Tabūk: "We returned from a minor *jihād* to a greater *jihād*" (*raja'nā min al-jihād al-aṣghar ilā'l-jihād al-akhbar*). This is the "greater *jihād* of striving against the capricious desires of the self".[2]

The non-military meaning of *jihād* is self-evident in another *ḥadīth* in which the Prophet (peace be on him) is reported to have said: "The *mujāhid* is he who wages a struggle against himself ("*al-mujāhidu man jāhada nafsahu*").[3]

---

[1] Cf. Muḥammad b. 'Alī al-Shawkānī, *Fatḥ al-Qadīr* (Beirut: Dār al-Fikr, 1973), 3: 469.

[2] Fakhr al-Dīn al-Rāzī, *Tafsīr al-Kabīr* (Cairo: Dār al-Fikr, n.d.), 13: 73; Jār Allah Maḥmūd al-Zamakhsharī, *al-Kashshāf 'an Ḥaqā'iq Ghawāmiḍ al-Tanzīl* (Beirut: Dār al-Kitāb al-'Arābī., n.d), 3: 173. See also As'ad al-Khaṭīb, *al-Buṭūlah wa al-Fidā' 'ind al-Ṣūfiyyah*, 2nd edn. (Damascus: Dār al-Fikr, 1995), 43. Some have considered this to be a weak (*da'īf*) *ḥadīth*.

[3] 'Abd al-Raḥmān al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī bi Sharḥ Jāmi' al-Tirmidhī*, ed., 'Abd al-Raḥmān 'Uthmān (Cairo : Matba'at al-Ma'rifah, n.d.), 250; *ḥadīth* no. 1671.

According to yet another *ḥadīth:* "The best form of *jihād* is to tell a word of truth (*kalimatu ḥaqqin*) to an unjust ruler".[4]

"*Jihād* against the self" in the first *ḥadīth* is described as the struggle to subjugate the temptation to sin within oneself, the constant striving to obtain the pleasure of God. This is the foundation of all *jihād*, for fighting an external enemy would not be possible without a successful engagement in this inner *jihād*. The Ṣūfīs of Islam have taken this *ḥadīth* as the main authority for their doctrines.[5]

The best form of *jihād* in the second *ḥadīth* refers to an external manifestation of *jihād* in the cause of truth. This is carried out in verbal advice and sincere reminder that may be given to a ruler so as to avert him from oppression and injustice. Since this may require exceptional courage, even risking one's safety, and likely to serve the cause of justice, it is the best form of *jihād*. The jurists have advised that one should attempt this in courteous words and to remind others in a manner that reflects the true spirit of *naṣīḥah* (sincere advice) which does not seek to expose or humiliate the one to whom the advice is given. In a *ḥadīth* that al-Bukhārī has recorded, a young man asked the Prophet (peace be on him). "Should I join the *jihād*?" In response, the Prophet (peace be on him) then asked him: "Do you have parents?" and when the man said "Yes", the Prophet (peace be on him) told him: "Then strive by serving them".[6]

Jihād is defined as exertion of one's power in the path of God by means of speech, action, life, property and other than these. Muhammad Hamidullah, who quoted this definition from al-Kāsānī, observes that it represents the generally accepted version which appears in many juridical works.[7]

The Qur'ānic verses reviewed above are thus expressive of *jihād* in terms of the salvation of the soul, rejection of falsehood and unbelief and the intellectual effort it may involve to understand the Qur'ān and promote its teachings.

The fact that Muslims were not allowed to resort to fighting during the Makkan period of the Qur'ānic revelation is also a clear evidence that all

---

[4] Muḥammad ibn Yazīd al-Qazwīnī Ibn Mājah, *Sunan Ibn Mājah*, Kitāb al-Fitan, Bāb al-Amr bi al-Ma'rūf wa al-Nahy 'an al-Munkar (Beirut: Dār al-Kutub al-'Ilmiyyah, 1407/1987), *ḥadīth* no. 4011. Abū Dāwūd and al-Tirmidhī have recorded a slightly different version of this *ḥadīth* which mentions the word "*'adl*" (justice) instead of "*ḥaqq*" (truth).

[5] See Mubārākfūrī, *Tuḥfah*, 250.

[6] Muslim ibn al-Ḥajjāj, *Mukhtaṣar Ṣaḥīḥ Muslim*, ed., Nāṣir al-Dīn al-Albānī, 6th edn. (Beirut: al-Maktab al-Islāmī, 1407/1987), 469, *ḥadīth* 1756.

[7] 'Alā' al-Dīn al-Kāsānī, *Badā'i' al-Ṣanā'i' fi Tartīb al-Sharā'i'* (Cairo: Maṭaba'at al-Istiqāmah, 1956), 7: 97; Muhammad Hamidullah, *Muslim Conduct of State*, 3rd edn. (Lahore: Ashraf, 1953), 161.

references to *jihād* in that period carried its non-military meaning. The Prophetic authority was based strictly on religious sanctions rather than on coercive force. The Prophet (peace be on him) was certainly conducting a *jihād* in Makkah but only through the language of persuasion. Islam was a minority movement in Makkah and *jihād* in its military sense would not have been feasible.

The Prophet (peace be on him) and his followers were tormented and persecuted by the polytheists of Makkah which forced quite a few of them to migrate, initially to Abyssinia, and eventually to Madīnah. Nevertheless, the Prophet (peace be on him) advised his followers to be patient, and kept advising his Companions to conduct their campaign peacefully and avoid violence, as he had not been given permission to fight. Some of the Companions urged the Prophet (peace be on him) if he would allow reciprocal treatment, but this was also not granted and the Prophet (peace be on him) awaited divine instruction on this matter until this was conveyed to him in Madīnah that "permission is granted to those against whom war is waged because they have been wronged, and God is able to assist them (in defending themselves gainst oppression)"(Qur'ān 22: 39).[8]

In the Madīnan revelations of the Qur'ān *jihād* acquired a new dimension, and there is no doubt that in certain verses *jihād* is synonymously used with fighting and war (cf. Qur'ān 2: 215; 9: 41; 49: 15). It was in the second year after *hijrah* to Madīnah that the Muslims were pemitted to take up arms in defence of freedom of religion as the following verse indicates once again:

> And fight in the way of God those who wage war on you but do not transgress, for God loves not the transgressors (Qur'ān 2: 190).

Even in Madīnah the Prophet (peace be on him) resorted to *jihād* as a defensive measure, and the theory of *jihād* as a war of offensive character was a subsequent development in the works mainly of the jurists who probably indulged in legitimising the policies of expansion of the military strategists of the powerful 'Abbāsid state.[9] In the course of time, juristic writings on *jihād* became so pre-occupied with its military aspect that the term *jihād* was eventually restricted only to this meaning to the near-total exclusion of its wider connotations. It is noteworthy that the chapters on *jihād* in *fiqh* texts such as the sixth/twelveth century *Bidāyat al-Mujtahid* by Ibn al-Rushd

---

[8] For a discussion on this see 'Alī Ḥusnī al-Kharbuṭlī, *al-Rasūl fi'l-Madīnah* (Cairo: al-Majlis al-A'lā li al-Shu'ūn al-Islāmiyyah n.d.), 69.

[9] See for a discussion also Manzooruddinn Ahmad, *Islamic Political System in the Modern Age* (Karachi: Royal Book Company, 1983), 185.

(d. 595/1199) and, in our own time, *al-Fiqh al-Islāmī wa Adillatuh* by the Syrian jurist, Wahbah al-Zuḥaylī, are completely focused on the military aspects of *jihād*, virtually equating *jihād* with war. This has lent support to the common misconception about *jihād*. For violence and war have no place in the essence of Islam which, as a faith, is a state of mind and belief which in the first place cannot be realised through violent means. This misunderstanding of *jihād* has almost suppressed to obscurity the other meanings of *jihād* in the sense of an inner struggle for self-discipline and a sincere striving for the acquisition of knowledge.

Muḥammad Abū Zahrah, one of the most prolific Muslim writers on Islamic *Fiqh* in our time, has quoted Ibn Taymiyyah (d. 728/1328) in support of his own conclusion that war in Islam is permitted for one purpose alone, viz. defence against aggression. This is why the permission that the Qur'ān granted for Muslims to fight in the verse just quoted is immediately qualified by the phrase "*lā ta'tadū*" (do not transgress).[10] The ultimate goal of war in Islam is to extirpate) *fitnah* (disorder; persecution) as the Qur'ān has proclaimed in another verse: "And fight them (the unbelievers) until *fitnah* is exterminated" (8: 39).

The correct meaning of *fitnah* in the above mentioned verse is "oppressing people on account of their faith by trying to force them out of it". This is the *fitnah* which is to be prevented, if necessary by means of armed struggle".[11] This message is further endorsed in the categorical declaration of the Qur'ān that "there shall be no compulsion in religion" (2: 256), which clearly means that force of any kind may not be used in the propagation of religion. The only role that *jihād* can play here is a defensive one, which is to prevent *fitnah*.[12] This should not, on the other hand, preclude the military meaning and role of *jihād* in the prevention of *fitnah*. For a campaign against *fitnah* may necessitate the use of force. Khalifa Abdul Hakim (d. 1957) wrote that "Islamic *jihād* is directed to the securing of essential human liberties". *Jihād* does not mean necessarily a defensive war in the sense that "you should wait until you are actually attacked. For this would be a misinterpretation of the essential principles of Islam". Fighting in the way of the Lord means fighting for social justice. It does not mean fighting to spread the dogma". In countless places the Qur'ān ordains fighting against tyranny and suppression

---

[10] Muḥammad Abū Zahrah, *Naẓariyyat al-Ḥarb fi 'l-Islām* (Cairo : Dār al-Qāhirah li al-Tibā'ah, 1380/1961), 24–25.

[11] Muḥammad Rashīd Riḍā, *Tafsīr al-Qur'ān al-Ḥakīm*, 2nd edn. (Cairo: Matba'at al-Manār, 1367 AH), 11: 255. See also 'Abd al-Ḥakīm Ḥasan al-'Īlī, *al-Ḥurriyyah al-'Āmmah* (Cairo: Dār al-Fikr, 1403/1983), 338.

[12] Muḥammad Rashīd Riḍā, *Tafsīr al-Qur'ān al-Ḥakīm*, 3: 36.

of liberties until persecution stops and people are free to believe and act in accordance with their concisence.[13] Muḥammad Ḥusayn Haykal has characterised the wars fought by the early Muslims in the days of the Prophet and his successors and those who came afterwards did not fight for the sake of conquest or expansion. These wars were fought in defence of the creed of Islam when this creed was threatened first by the Quraysh, then by the Arabs in general, and finally by Persia and Byzantium.[14]

Many jurists have discussed uprising (*khurūj*) against an unlawful government as a theme and meaning of *jihād*. According to Abū Ḥanīfah (d. 150/767), it is an inherent right of the community to resist tyranny and despotism. Shāh Walī Allāh Dihlawī (d. 1176/1762) considered this as the highest form of *jihād*. The opposite of this, Abū Ḥanīfah added, is rebellion (*baghy*) which is staged by "those who rise in revolt against a lawful government without any just cause". *Jihād* thus aims at the overthrow of despotism and installing in its place a just order that grants the people the freedom of conscience, and also preserves and promotes the Islamic values within the community.[15]

'Ubayd Allāh Sindhī (d. 1944) observed that *jihād,* when rightly conceived and pursued, is a holy war that is aimed at the extermination of evil. To fight against evil — the evil of poverty and disease — should be the focus of contemporary *jihād*.[16] To ascertain the true meaning of *jihād* and strip it of unwarranted militarism that has almost dominated the whole idea of *jihād* would make it an eminently suitable instrument of service to humanity. *Jihād* in this sense can be waged against the negative currents that have challenged modern societies especially in the developing countries of the Muslim world. To fight for social justice and to wage a resolute campaign against illiteracy and corruption would capture the best meaning of *jihād* in our times.

"Work in Islam", according to Yūsuf al-Qaraḍāwī, "is a form of *'ibādah* and a *jihād*", when it is carried out with the intention of gaining the pleasure of God and rendering service to humanity. To excel in one's occupational work through self-application to the best of one's ability is the theme of many reliable *ḥadīth*s. It also forms an integral part of the ethos of Islam. "When a

---

[13] Khalifa Abdul Hakim, *Islamic Ideology*, 2nd edn. (Lahore: The Institute of Islamic Culture, 1953), 187–188.

[14] See Muḥammad Ḥusayn Haykal, *Ḥayāt Muḥammad*, 7th edn. (Cairo: n.a. n.d.), 579, quoted in Mazheruddin Siddiqi, *Modern Reformist Thought in the Muslim World* (Islamabad: Islamic Research Institute, 1402/1982), 90.

[15] Sayyid Quṭb, *Fī Ẓilāl al-Qur'ān* (Beirut: Dār al-Shurūq, 1399/1979), 1: 60; Ahmad, *Islamic Political System*, 228.

[16] See, Muḥammad Sarwar, *Maulānā 'Ubayd Allāh Sindhī: Ḥālāt-i Zindagī, Ta'līmāt aur Siyāsī Afkār* (Lahore: Sindh Sāgar Akādimī, 1967), 60–61.

Muslim seeks to learn, to excel and acquire insight into the sciences for the sake of God, he is actually performing *'ibādah* and *jihād*". This is truly an important aspect of *jihād*, which must, nevertheless, be tempered with moderation. What is recommended here is a balanced approach toward work, one which does not sacrifice spirituality and material comfort one at the expense of the other.[17] Qaraḍāwī is critical of the trend current among the present day Muslim youth who, that in their zeal for *jihād*, have often focused on trivialities at the expense of "fight against injustice, perversion and corruption".[18]

In a comment on Muhammad Iqbal's critique of Western rationalism and its materialist overtones, Khalifa Abdul Hakim wrote that Iqbal's critique was possibly more applicable to the Easterners. The West, more than the East, has worked for the overthrow of the tyranny of the ruling classes. Consequently, in the West the workers have more rights than in the East. Filth has disappeared in the cities and "poverty which is the normal feature of Eastern life, has disappeared from the West". Western materialism therefore did not deserve Iqbal's critical remarks.[19] His words of praise for the West notwithstanding, Khalifa Abdul Hakim and later Muhammad Asad have both observed that the Muslims shall have to instead of imitating the West, the Muslims should rethink their understanding of the fundamentals of Islam. A total imitation of the West by Muslims, of course, is impossible, according to Muhammad Asad, without compromising the basic values of Islam.

Independent Reasoning (*Ijtihād*)

Ijtihād literally means striving or self-exertion; it may be defined as a creative but disciplined and comprehensive intellectual effort to derive juridical rulings on given issues from the sources of the *Sharī'ah* in the context of the prevailing circumstances of the Muslim society.[20]

This, as would be noted, is a slightly different definition of *ijtihād* from what is given in the textbooks of *uṣūl al-fiqh*. The definition I have essayed here incorporates the conventional definition of *ijtihād* but adds emphasis on two points: creative thinking, and the prevailing conditions of society. *Ijtihād*

---

[17] Yūsuf al-Qaraḍāwī, *Islamic Awakening Between Rejection and Extremisim* (*al-Ṣaḥwah al-Islāmiyyah Bayn al-Juḥūd wa al-Taṭarruf*), Eng. tr., Anas al-Shaikh Ali and Mohamed Wasfy, 2nd edn. (Riyadh: International Islamic Publishing House, 1412/1991), 24, 153.

[18] Ibid., 92.

[19] Khalifah 'Abd al-Hakīm, *Fikr-i-Iqbāl* (Lahore: 1964), 354–356, quoted in Mazheruddin Siddiqi, *Modern Reformist Thought in the Muslim World*, 98.

[20] Cf. Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Kuala Lumpur : Ilmiah Publishers, 1998), 367; Taha Jabir al-'Alwani, *Ijtihād*, Occasional Paper 4 (Herndon, VA: The International Institute of Islamic Thought, 1993), 4.

is basically designed to address new and unprecedented issues and often seeks to provide a fresh interpretation of the source materials of the *Sharī'ah* relating to the new issues. Creative intellectual exertion also means that existing ideas and teachings of others are not taken at face value nor imitated, but scrutinsed and their relevance to new issues is independently ascertained.

Ijtihād is the most important source of the *Sharī'ah* next to the Qur'ān and *Sunnah*. The main difference between *ijtihād* and the revealed sources of the *Sharī'ah* lies in the fact that *ijtihād* is a continuous process of development whereas the revelation of the Qur'ān and the Prophetic legislation discontinued with the demise of the Prophet (peace be on him). *Ijtihād* as such continues to be the main instrument of relating the messages of the Qu'ān and the *Sunnah* to the changing conditions of the Muslim community in its quest for justice, salvation and truth.

The *Sharī'ah* has historically been essentially characterised as dynamic, one that is capable of accommodating the changing needs of society. The Muslim jurists of the early period clearly understood this just in the same way as that they were convinced that the society as a living organism was subject to ceaseless change. The *Sharī'ah*, which regulated the affairs of society, could not, therefore, remain static.[21] *Ijtihād* operated within the framework of the given fundamentals of Islam, its basic principles and moral precepts. As a vehicle of renewal and reform, *ijtihād* was always dominated by its dual concern: on the one hand by the continuity of the given fundamentals of Islam, and on the other, by attempting to keep pace with the realities of social change. The two concerns of continuity and keeping pace with change thus characterise the history of *ijtihād* and the role it has played in the development of Islamic law.

In their effort to find solutions to new issues, the Companions would in the first place resort to the Qur'ān. But if they did not find what they were looking for, they would resort to the *Sunnah*, failing which they would exercise their own judgment and *ijtihād* in accordance with their understanding of the basic principles of Islam. This was a sound method and an adequate approach which had received the blessing and approval of the Prophet (peace be on him) himself in the renowned *ḥadīth* of Mu'ādh ibn Jabal. Upon his departure to the Yemen to take up his judicial post, the Prophet (peace be on him) asked Mu'ādh as to the sources on which he would rely in making decisions. In reply Mu'ādh referred first to the Qur'ān, and

---

[21] Cf. 'Abd al-Malik al-Sayed, *Social Ethics of Islam: Classical Islamic Arabic Political Theory and Practice* (New York: Vintage Press, 1982), 8.

then to the *Sunnah* of the Prophet, but if he did not find the necessary guidance, he would then carry out his own *ijtihād*.[22]

The situation started to change during the times of the Umayyads and 'Abbāsids with the expansion of the territorial domain of Islam and the resultant encounters with other cultures and traditions. New and complex problems, which had not arisen in Madīnah, had to be addressed. A degree of confusion also arose in the process. Speculative *ijtihād* proliferated without there being a sound methodology that would regulate its exercise in encountering new issues. The methodology of legal reasoning, the *uṣūl al-fiqh*, that was developed by Imām al-Shāfi'ī and others in order to encourage *ijtihād* did not fully succeed in achieving that purpose as it was followed, in the course of time, by what is commonly known as the "closure of the door of *ijtihād*". This was due largely to the literalist orientation of *uṣūl al-fiqh* and the excessive technicality it imposed on the natural flow of ideas. The technicalities of *qiyās* and *istiḥsān* and the restrictions they imposed on the use of *ra'y* and *ijtihād* had the effect of narrowing down rather than widening the scope and prospects of *ijtihād*. The idea that the Muslim mind should only be allowed to function through the rigours of *qiyās* and *istiḥsān* and the borrowed ideas of Greek logic constrained what was often perceived as an unfettered application of reason through the Islamic worldview, one that favoured pragmatism, albeit a pragmatism informed by moral considerations, in addressing the practical issues of daily life. This restrictive trend in the methodology of *ijtihād* was, in turn, symptomatic of a conflict between the *'ulamā'* and the rulers. The *'ulamā'*s disenchament with the Ummayyad rulers began with the change of *khilāfah* to *mulk* (worldly kingdom) and the *'ulamā'*s efforts to protect the *Sharī'ah* against the excesses of the rulers who were prone to use *ijtihād* for partisan political ends.[23]

Islamic scholarship of the subsequent periods was dominated by imitation (*taqlīd*) and a strict conformity to the heritage of the past. The renewed demand for the revival of *ijtihād* that was articulated by Jamāl al-Dīn al-Afghānī (d. 1316/1898), Muhammad 'Abduh (d. 1323/1905), and Muḥammad Rashīd Riḍā (d. 1354/1935) in the late 19th and early 20th century won an increasing number of supporters and became more emphatic in the succeeding decades of the 20th century. This was a response to the continued dominance of imitative scholarship in which the *'ulamā'* occupied themselves mainly with commentaries, compendia and marginal notes on the books already written by eminent jurists. Erudite as these scholars were, they added little new to the

---

[22] See for the text of this *ḥadīth*, Abū Dāwūd, *Sunan Abī Dāwūd*, Kitāb al-Aqḍiyah, Bāb Ijtihād al-Ra'y fī 'l-Qaḍā'.

knowledge of their ancestors. Instead, they served the negative purpose of giving an aura of sanctity to the earlier works. When the *'ulamā'* occupied themselves with reproductive tasks, their disciples also became intellectually static.

This was a very different scenario from the prevailing one during the first three centuries of Islam when open enquiry and direct recourse to the sources of the *Sharī'ah* constituted the norm of scholarship. The four *madhhab*s that eventually crystallised were initially designed to curb factionalism, excessive diversity and conflict that had become causes for concern, but they too eventually worked as instruments of *taqlīd*, a new kind of scholastic *taqlīd* that was in reality *taqlīd* within *taqlīd*.

The colonial domination of the Muslim lands also lowered the self-image of Muslim intellectuals and further encouraged imitation and conservative thinking. The net result of all this was that Muslim leaders and intellectuals became increasingly withdrawn unto themselves and the flexibility and pragmatism characteristic of the Islamic culture of the early period gradually gave way to rigidity of attitude and outlook. Then followed the pattern of low-calibre thinking that became almost typical of the *'ulamā'*s response to modern issues even in the post-colonial period. What took place was an increased polarisation of two classes of intellectuals: the Western educated elite who now dominated the government hierarchy, and the religious leaders who found themselves increasingly uninvolved in the practicalities of law and government. Overly conservative approaches to the *Sharī'ah* were adopted as the *'ulamā'* grew increasingly suspicious of modernisation *per se*. There were those who almost totally closed the door to the idea of renewal, beneficial or otherwise, and went so far in this direction that they "issued *fatwā* on the prohibition of coffee, and declared photography and television prohibited. Even the use of knives and forks [in eating] was declared as an innovation (*bid'ah*), simply because the Prophet (peace be on him) and his Companions and the Imāms of *fiqh* had not used them".[24]

Ijtihād suffered yet another setback when statutory legislation became dominant and the *'ulamā'* were left with little visible role to play. The era of constitutionalism in the newly-independent Muslim countries marked, in effect, a renewed phase of imitation characterised by borrowing constitutions and wholesale importation of Western doctrines and institutions, a trend that was encouraged both by the local elites and their foreign mentors. This was basically the scenario that eventually gave rise to the Islamic revivalist movement of the post-1960s. Clearly, westernisation and modernity had not

[24] Fahmī Huwaydī, *Hattā lā Tahūna Fitrah* [illegible]

borne the same fruits in their new habitat which they had produced in their original homegrounds in the West.

Ṭāhā Jābir Al-'Alwānī, himself one of the contemporary *'ulamā'*, speaking critically of the present conditions writes: "If the ulama prove incapable of pioneering a comprehensive and realistic understanding of Islam and society, then the least they can do is to refrain from imposing narrow interpretations of the texts... on the present generation who might assume that what they are presented with is the real Islam, which they have to follow".[25]

Ijtihād in modern times differs both in respect of complexity and scope from what it used to be in the medieval times. *Mujtahids* (person carrying out *ijtihād*) in the earlier times were preoccupied with issues of marriage and divorce, property, inheritance, *zakāh* and *ribā*, etc. Social reality was not prone to rapid change and a *mujtahid* familiar with it could attempt to engage in *ijtihād* with a degree of predicatability that is no longer the case. The much accelerated pace of social change and the complexities it generates has meant that *ijtihād* ought now to be multi-disciplinary and should not be inhibited by fear of departing from the earlier formulations of Islamic law. How is it possible now for a jurist, one might wonder, to address *ribā*-related issues and matters pertaining to banking transactions without at least some knowledge of modern economics and finance? Technical issues in medicine and science, in labour relations and so on, generate different demands on the skills of a modern *mujtahid*.[26] This has prompted some to suggest that *ijtihād* must now be a collective endeavour that relies on the expertise of specialists in various fields. It would be inconvenient, even impractical, for a *mujtahid* to ask an Islamic banker as to the difference between *wadī'ah* and *qarḍ* and whether the bank deposits could rightly be subsumed under one or the other. It would be more reasonable, therefore, for the experts of various fields to sit together in a council and share each other's expertise in the conduct of *ijtihād*.[27]

The conventional discourse on *ijtihād* looks in the direction of a number of doctrines and ideas such as *qiyās* (analogy), *istiḥsān* (juristic preference), *sadd al-dharā'i'* (obstructing the means that lead to evil), *istiṣḥāb* (presumption of continuity) and so forth, all of which are studied under *uṣūl al-fiqh*. There is now a need to pay considerably greater attention to the goals and objectives of the *Sharī'ah* (*maqāṣid al-sharī'ah*) which have strong roots in the Islamic legal tradition and also provide flexibility and relevance to modern realities away

[25] Taha Jabir al-'Alwani, *Ijtihād*, 30.
[26] Cf. Jamāl al-Bannā, *Naḥw Fiqh Jadīd* (Cairo: Dār al-Fikr al-Islāmī, 1996), 73.

from the over-burdened technicalities of *qiyās* and other *uṣūl* doctrines.[28]

Muḥammad 'Abduh emphasised consideration for the custom (*'urf*) and the actual condition of people in the conduct of *ijtihād* and opposed the *fuqahā'* who wanted to enforce Islamic law in Egypt without any regard for the conditions under which the Egyptians lived. The general welfare of the people also demanded a greater role for considerations of public interest (*maṣlaḥah*) in contemporary *ijtihād*.[29]

'Abduh's disciple, Muḥammad Rashīd Riḍā, emphasised the need to inform legislation and *ijtihād* with the spirit of the *Sharī'ah* and its goals and purposes: Many people know what is lawful and what is unlawful but they do not know why a particular act was presumably declared lawful and why another was declared unlawful. To act on laws it is necessary to understand their underlying reasons and purposes and the interests that they serve. People often know the *aḥkām* (injunctions) without knowing their *ḥikmah* or underlying philosophy. It was the knowledge of the *ḥikmah* and the purposes of the *Sharī'ah* and the insight they conveyed that enabled the Companions of the Prophet (peace be on him) to rule over remote territories and alien cultural settings and still have the ability to respond to the needs of the people.[30]

'Ubayd Allāh Sindhī added to Riḍā's analysis that while the law is not eternal the goal and wisdom embodied therein create in man the ability to think and to change himself in accordance with his inner motivation and insight. It is due to *ḥikmah* that man seeks new ways of doing things, keeping in view the actual conditions of his time. Life needs for its purposes that there both be a code of law and an awareness of the goals and purposes enshrined in it. If the code of law and the goal it enshrines go hand in hand, man can advance and progress as well as maintain his links with the past. Thus *ḥikmah* and *maqāṣid* pave the ground for a progressive *fiqh*. But if the rules of *fiqh* are isolated from their goals, the human mind becomes atrophied and there remains little potential for progress.[31]

Abū'l Kalām Āzād (d. 1378/1958), a contemporary of 'Ubayd Allāh Sindhī, observed that unlike the French Napoleonic Code, which laid down a mass of detailed rules, the *Sharī'ah* as embodied in the Qur'ān and the *Sunnah*, have laid down the fundamental principles from which detailed laws can be

---

[28] See for details on adjustments toward a *maqāṣid*-oriented *ijtihād*, M.H. Kamali, "Issues in the Legal Theory of *Uṣūl* and Prospects for Reform" in *Islamic Studies* 40 (2000), 5–23.

[29] Quoted in Albert Hourani, *Arabic Thought in the Liberal Age* (Cambridge: Cambridge University Press,1983), 151.

[30] Muḥammad Rashīd Riḍā, *Tafsīr al-Qur'ān al-Ḥakīm*, 3: 30.

[31] Muḥammad Sarwar, *Maulānā 'Ubayd Allāh Sindhī: Ḥālāt-i Zindagī, Ta'līmāt aur Siyāsī Afkār*, 277–279; also quoted in Mazheruddin Siddiqi, *Modern Reformist Thought in the Muslim World*, 78–79

derived as and when needed. The Muslim jurists deduced the detailed rules of *fiqh* from these fundamental principles. All these detailed rules and regulations do not, therefore, inhere in the direct injunctions of Islam. A distinction should, therefore, be made between the direct injunctions and the subsidiary rules derived from them by the jurists.[32] If Islam is an eternal religion, it cannot lend support to the details that support only a particular culture and civilization; it stands to reason that it should only lay down the fundamental principles that can relate to a variety of cultural settings. On this note, Muhammad Iqbal wrote:

> The spirit of Islam is so broad that it is practically boundless. With the exception of atheistic ideas alone it has assimilated all the attainable ideas of surrounding peoples, and given them its own peculiar direction of development.[33]

A brief perusal of some of the legal verses (*āyāt al-aḥkām*) of the Qur'ān would serve to show the wide scope that they leave for interpretation and *ijtihād*. When we read in the Qur'ān we find the statement that "God does not intend to impose hardship upon people" (Qur'ān 5: 6), or that "God permitted sale and prohibited usury" (Qur'ān 2: 275), or the command addressing the faithful to "fulfil your contracts"(Qur'ān 5: 1). Likewise, we encounter the command to "devour not each other's property in vain unless it be through lawful trade by your mutual consent" (Qur'ān 4: 29), or the statement that everyone is responsible for his own conduct and "no one shall bear the burden of another" (Qur'ān 6: 164). Or we come across the instruction to "render the trusts (*al-amānāt*) to whom they belong, and when you judge among people, you judge with justice" (Qur'ān 4: 58). Likewise, we also find the ruling which requires that the community affairs must be conducted through consultation" (Qur'ān 3: 159), and the directive to "cooperate in good and righteous work but cooperate not in hostility and sin" (Qur'ān 5: 2), and so forth. We will note that the text in each case is concerned with laying down a broad principle rather than specific, rigidly formulated details. Thanks to this characteristic of the Qur'ānic legal injunctions, it is possible to easily relate them to the constantly changing conditions and ceaseless developments in the life of the community.

Modern Islamic scholarship has generally recognized that the existing legacy of *fiqh* is largely a product of the *ijtihād* of the earlier jurists. Just as the early jurists made their own *ijtihād*, Muslims of the subsequent ages are also

---

[32] Quoted in ibid., 80.

[33] Sir Mohammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Ashraf, 1962), 64

entitled to interpret the fundamental principles of Islam in the light of their own experiences and the altered conditions of life. According to Muhammad Iqbal: "The teaching of the Qur'ān that life is a process of progressive creation necessitates that each generation, guided but unhampered by the work of its predecessors, should be permitted to solve its own problems".[34]

It is also recognised that the rulings derived by the *fuqahā'* as distinguished from the principles laid down in the Qur'ān and the *Sunnah*, change with the change of time and for that reason *ijtihād* in modern times should draw inspiration and guidance directly from the Qur'ān and the *Sunnah*. The jurists should also proceed with the assumption that God's purpose in making His revelation known to mankind was to promote human welfare. They should, therefore, lean to those interpretations which, in their opinion, are best conducive to this purpose. It cannot be denied that *fiqh* embodies an important aspect of Muslim legacy and provides valuable material to carry on *ijtihād*, but it often needs to be re-evaluated and its relevance to modern conditions require to be carefully ascertained.[35]

Instances where, in my view, the *fiqh* provisions need to be reviewed include the following:

- The disability of non-Muslims in the matter of evidence in the courts of justice. There is no categorical evidence in the sources to disqualify non-Muslims from becoming witnesses in the courts. However, the majority of *fiqh* scholars have relied on inferential evidence to make the testimony of a non-Muslim inadmissible.
- The generally accepted *fiqhī* rulings on the subjects of polygamy and divorce have been influenced by the prevailing conditions of the earlier times. Many of these rulings have consequently been modified in the reformist legislation of the *Sharī'ah* in the later part of the 20th century.
- It is now also recognised that death punishment for apostasy in the *ḥadīth* which sanctioned such punishment was meant to be put into effect specifically in the context of the hostile and subversive attacks on Islam, on the Muslim community and its leadership. This seems to be indicated in the *ḥadīth* itself, confirmed also by the fact that the Qur'ān does not explicitly provide for that kind of punishment for apostasy.

  Muhammad Iqbal spoke critically of this when he noted that there were cases in India wherein Muslim women wishing to get rid of undesirable husbands were driven to apostasy. Iqbal then commented that nothing could be more distant from the aims and purposes of Islam and the rules of apostasy as recorded "in the Hedaya do not protect the interests of the faith". Iqbal added that "in view of the intense conservatism of the Muslims of India, Indian Judges cannot but stick to

[34] Ibid., 168.

[35] Cf. Muhammad Siddiqi, *Modern Reformist Thought in the Muslim World*, 73.

what are called standard works. The result is that while the people are moving, the law remains stationary".[36]

Having said this, Iqbal also added that he was in no doubt that a deeper study of the enormous legal literature of Islam was sure to rid "the modern critic of the superficial opinion that the law of Islam is stationary and incapable of development".[37]

- Some of the *fiqhī* positions relating to women's rights of participation in the affairs of government and society also call for fresh *ijtihād* that should adequately reflect the higher objectives of Islam on equality and justice as well as greater sensitivity to the altered socio-eonomic conditions of women in the present-day world.

Some aspects of the theory of *ijtihād* that imposed undue restrictions on creative thinking also need to be re-considered. These may be summarised as follows:

(1) According to one of the maxims of *ijtihād* there should be no *ijtihād* in the presence of a clear text (*lā ijtihād ma' al-naṣṣ*). This may now need to be revised. For the full implications of a clear text may be less than self-evident and the impact it might have on other related principles may also need to be ascertained. A text may also be clear in its wording and import but may leave room for *ijtihād* in respect of new and more efficient ways of implementation.

Instances of *ijtihād* in the presence of a clear text also has a support in some of the decisions made by the second Caliph, 'Umar b. al-Khaṭṭāb (d. 23/644). On at least two occasions he made decisions which were different from what the text had dictated. One of these was the Caliph's well-known decision to discontinue the share in *zakāh* of the *mu'allafat al-qulūb*, and the other was not to distribute the fertile lands of Iraq as part of the spoils of war (*ghanā'im*) to the Muslim warriors. Both of these were clearly determined in the text of the Qur'ān (9: 60, and 8: 41) respectively. *'Ulamā'* and jurists throughout the centuries have recognized both of these as legitimate *ijtihādī* decisions of the Caliph 'Umar but they have declined to grant the same option to other *mujtahid*s or indeed to provide for such an eventuality in the general theory of *ijtihād*.[38]

A question tends to arise: in the event where *ijtihād* can advance the spirit and purpose of the *Sharī'ah* beyond the confines of a given text, should this not be seen as a valid form of *ijtihād*? One would obviously not wish to advocate arbitrary expatiation in the face of a text, yet one need not in

---

[36] Sir Mohammad Iqbal, *Reconstruction of Religious Thought in Islam*, 169.

[37] Ibid., 164.

[38] Cf. Jamāl al-Bannā, *Nahw Fiqh Jadīd*, 79.

principle be always bound by the hallowed maxim that precludes *ijtihād* altogether in the presence of a text. One can think of some of the *ḥadd* punishments in this connection that call for fresh *ijtihād* that may find new ways of advancing the spirit, if not the letter, of the texts.

(2) According to another legal maxim "there is to be no *ijtihād* in the presence of *ijmā'* — *lā ijtihād ma' ijmā'*". This evidently means that once an issue is determined by a conclusive ruling of *ijmā'*, that issue is no longer open to fresh *ijtihād*. This maxim too seems to stand on a shakey foundation simply because it is often very difficult to prove the existence of a conclusive *ijmā'*. Then to say that *ijtihād* does not operate in the presence of *ijmā'* naturally raises the question regarding the factual occurrence and accuracy of that *ijmā'*. Since the criterion over which the maxim under review proceeds is doubtful, the maxim itself is also affected and cannot be helpful in any real sense.

(3) The theory of *ijtihād* is almost totally oblivious of the Qur'ānic mandate on consultation (*shūrā*). The Qur'ān declared consultation as a normative principle and procedure of decision-making for the Muslim *ummah* (Qur'ān 3: 110 and 42: 38). It is also reported in a *ḥadīth* that when 'Alī ibn Abī Ṭālib (d. 40/661) asked the Prophet (peace be on him) as to how people should decide regarding matters on which the Qur'ān and the *Sunnah* did not provide a ruling, 'Alī was instructed that they should "convene the learned and upright among themselves and make decisions on the basis of consultation, not by the opinion of any one person".[39]

The two principles that are contained in this *ḥadīth*, according to both Shaykh Jād al-Ḥaqq and Jamāl al-Bannā, are: first that *ijtihād* in juridical matters must be conducted through consultation, and second that a ruling of *ijtihād* is not to be imposed on people without a degree of their participation in it.[40] With reference to the *ḥadīth* of Mu'ādh b. Jabal, a critic might say that when Mu'ādh announced that "he would exercise his own *ijtihād*" in the event he did not find guidance in the Qur'ān and the *Sunnah*, he made no reference to *shūrā*. It would, however, be perhaps pertinent to remember that Mu'ādh was being sent as a teacher and judge to Yemen, and to a people who had basically no background in Islam. Consulting with them on matters of *ijtihād*, therefore, might not have been all that advisable. Be that as it may, the point here is not to close the door to individual *ijtihād* altogether, but to underscore the importance of consultation and *shūrā* for *ijtihād*. The theory and practice of *ijtihād* need, in my opinion, to be revised on this point.

---

[39] Abū 'Abd Allāh Muḥammad b. Abī Bakr Ayyūb Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn* (Beriut: Dār al-Jil, 1973), 1: 65.

[40] Jamāl al-Bannā, *Naḥw Fiqh Jadīd*, 85–86 also quoting 'Alī Jād al-Ḥaqq in support of his own view.

The juristic legacy of *fiqh* is marked by a remarkable diversity and disagreement (*ikhtilāf*) so much so that the more important objectives of unanimity and consensus have been adversely affected, if not overshadowed. One would imagine that if consultation had been an integral part of *ijtihād* from the outset the scope of juristic disagreement would have been narrowed down. This might have helped keep *ijtihād* closer to the middle ground which prevented such extremist positions as the one manifested in the so-called "closure of the door of *ijtihād*".

Conclusion

Among the various references to *jihād* in the Qur'ān, there is only one to a "great *jihād*" which occurs in the context of education and advancing the knowledge of the Qur'ān (25: 59). This is a clear indication of the great merit that the Qur'ān attaches to knowledge and a timely reminder of the crucial importance of exertion and *jihād* for the advancement, perhaps, of a knowledge-based society. To excel in this context is now only possible for some Muslim countries, in particular those who are better equipped with material equipment and facilities to be effective in advancing the cause of knowledge and education. These countries would have a special role in advancing this dimension of *jihād*. The military aspect of *jihād* may now be reserved for the national armies which are now found in almost all Muslim countries and can take care of this task. One of the reasons why the military aspect of *jihād* was given such a great deal of prominence in earlier times was clearly the absence of organised armies to undertake the defence of the Muslim homeland. Now that this task is assigned to professional soldiers, the most meaningful *jihād* that remains for Muslims to consider is a concerted effort to upgrade the state of education at all levels, from fighting basic illiteracy to upgrading educational facilities and programmes as well as promoting the knowledge of the Qur'ān and integration of its values in schools and universities. Anyone who exerts himself in this cause with sincerity to serve God and the *ummah* would have advanced the cause of the greater *jihād* of our times.

The intellectual contents of Islamic revivalism of recent decades is, to a large extent, a question of engagement in a meaningful *ijtihād* addressing the issues of modern society. Yet the Islamic revivalism we have known has been driven more by euphoria than rational thought, more by politically explosive action than patient effort to develop workable ideas and solutions to problems. It may still be too early to say that Islamic resurgence is bringing its base from street procession and popular agitation to the reflective environment of rationalist planning and debate. This, however, seems inevitable if a

constructive engagement of the various strata of Muslim society in such a process were to be desired. Whether the religious leaders, the *'ulamā'*, the intelligentsia and the government leaders can engage themselves in proactive roles of planning a more participatory future of receptiveness toward each other, to a healthy modernity, and to Islam cannot yet be clearly visualised. Politicisation of Islam has also meant politicisation of issues, a pattern of development that has undermined the prospects of reflective *ijtihād*. The religious leaders, the governments and Muslim intellectuals are, on the whole, scarcely engaged in consultation and exchange of views over issues of common concern, and the challenge of making *ijtihād* an engaging process of concern to the mainstream society has yet to be adequately responded.