PLAYING WITH IJTIHAD

By Shaqur Rehman

The Muslim Research and Development Foundation (MRDF) is a cooperative venture run by a number of leading Muslim scholars, Imams and professionals from a variety of backgrounds. With its two main fields identified as research and development, the foundation commenced its operation in 2002 and was awarded official charity status in 2007.

The foundation strives to articulate Islam in a modern context and address the unique situation and challenges faced by Muslims in the West. An integral focus as a means to this end is the study, analysis & presentation of classical Islamic scholarship and its contemporary application.

Shaqur Rehman has recently completed a PGCE along with an MA in Applied Linguistics with a dissertation on the clash of civilizations, a linguistic perspective – English in the Muslim world. He preceded his secular study with a traditional Islamic education beginning in Egypt in 1999-2001 which he further developed in Syria and Saudi Arabia while teaching English in various universities and institutions. During his Islamic learning he managed to memorise the Holy Quran and attain authorisation (Ijaza) in recitation and various Islamic sciences including theology and jurisprudence. Shaqur is a member of MRDF.

Formatted by www.islam21c.com for use by all.

CONTENTS

Ijtihad

Al-Ijtihad (الاجتهاد) is defined literally as 'striving, exerting' and, in the jurisprudential sense, 'the capacity for making deductions in matters of law in cases to which no express text or rule already determined by *ijma* (consensus) is applicable'[1]. However, it has also been described as 'rethinking'[2] and 'independent reasoning'[3]. Since the definition of the term dictates the bearing of the discourse it is imperative to investigate and analyse its origin and history.

During the life of the Prophet[4]

The most famous example of Ijtihad often noted from the lifetime of the Messenger of Allah is that of the event of Banu Quraizah. On the Prophet's return (saw) from the battle of Khandaq he ordered that 'no one should pray Asr except in Bani Quraizah'. 'Asr (late afternoon) time came upon the companions during their journey, whereby some said that they would not pray the 'asr prayer until they reached Bani Quraizah and others prayed it at its prescribed time stating that the other group had not understood the Prophet's intended meaning. The case was later related to the Prophet where he did not censure any of the two parties[5].

Both groups of companions in this case made Ijtihad within the confines of the revealed text and legislation. A party gave preference to the literal and specific command to the situation at hand which (to them) superseded other commands to pray the 'asr prayer on time. The other group gave preference to the command being in context of other various commandments concerning praying 'asr on time and thus preferred to take the view of what they believed was intended and more agreeable with analogy[6]. Both meanings were completely plausible and consistent with the particular textual reference and the general Islamic mandate of complete submission to Allah and His Messenger. At the time of the event there was also no way of giving precedence to one opinion over the other with complete certainty. Even after the event scholars continue to discuss which of the two groups were closest to the truth in the matter[7].

When the companions related their actions to the Prophet (saw) he did not censure any of the parties. Additionally, the fact that the matter was related back to the Messenger of Allah (saw) indicates that although such Ijtihad (or reasoning) was justified in the absence of any clarifying legislation, such reasoning would be either affirmed or negated by further legislation, a clear indication that the reference point was revelation and that the truth is singular and not a contradicting plurality[8]. In the minds of the companions who comprise the earliest Muslims, revelation was the criterion which governed and set the framework for reasoning and clearly stood as the judge over it.

Another example of the use of Ijtihad is the case of two sahabah (companions of the prophet) who were travelling when the time of prayer began. Wanting to offer their

prayers, they found that they had no water, and thus, they both prayed (without water for ablution). Later they came across water and realised that the prayer time had not come to an end so one of them repeated his prayer whereas the other didn't. on hearing what happened, the Prophet (saw) said to the one who did not repeat his prayer: '*You attained the Prophetic way and your prayer sufficed you*'. He said to the one who repeated: '*you will be rewarded twice*'[9].

Again, from this example it is seen how the companions used reasoning within the framework of revelation, where they used reasoning to come to a conclusion on an issue for which they knew of no explicit reference in revelation. Later when they had the opportunity, they returned to the complete revelation in the Prophet (saw) for a final ruling on the matter and for guidance on what had transpired. In the Prophet's response we observe that due to the companions approach, the Prophet (saw) did not censure anyone but rather indicated to the correct ruling in his saying: '*You attained the Prophetic way and your prayer sufficed you*'. He (saw) also made it clear that one who strives to reach the truth using the correct approach is always rewarded for his efforts whether he arrives at the correct answer or not, '*you will be rewarded twice*'.

Another reference to Ijtihad which may be taken from the *sirah* (life of the Prophet) is that of the Prophet's (saw) deputation of Muadh ibn Jabal (RA) to Yemen, a land with different customs and attitudes where he would inevitably encounter various challenges that were neither present in Makkah nor Madinah. The Prophet (saw) sent Muadh (RA) not merely as a messenger but rather a judge. As such he would be required to judge in all matters without being able to refer back to the Prophet (saw) or any further revelation that had descended after his departure from Madinah. When Muadh was departing the Prophet (saw) is reported to have said to him:

> '*How will you judge the cases brought before you?" Mu'adh answered that he would apply the Book of Allah (the Qur'an). The Prophet asked again: "And how will you judge if you do not find an applicable provision in the Book of Allah?" Mu'adh answered that he would apply the Sunnah of the Prophet. Then the Prophet further inquired: "And how will you judge if you do not find an applicable provision in the Sunnah of the Prophet?" Mu'adh answered that he would exert his best efforts to form an opinion (Ajtahidu ra'yan). The Prophet's confirming comment was: "All praise is for Allah, the emissary (Mu'adh) of Allah's Messenger found answers to the satisfaction of Allah's emissary*'[10].

After the Messenger's lifetime and in the view of his (saw) companions
Let us now turn to some examples that took place after the Messenger of Allah (saw) had passed away.

Umar, the second caliph, wrote in a letter to his minister Shuraih:

> '*If you find something in the Book of Allah judge by it and don't look elsewhere. If a matter comes to you that is not in the Book of Allah then judge by what the Messenger prescribed. If a matter comes to you which is not mentioned in the Book*

of Allah and there is no tradition in it from the Messenger of Allah, then rule in it by the consensus of the people. If a matter comes to you which is not in the Book of Allah, there is no tradition in it from the Messenger of Allah and none has spoken about it before you, if you wish to make Ijtihad then do so and if you want to refrain then do so, and I see refraining something good for you'[11].

Umar also wrote in a letter to Abu Musa Al-Ash'ari:

'*Recognise the comparable and the equivalent and draw analogical conclusions in matters*'[12].

Ibn Masud, may Allah be pleased with him, said:

'*One who is presented with a case to judge then let him judge with the Book of Allah, if it is not in the Book of Allah then let him judge with what the Prophet (saw) judged in it. If a matter comes to him which is neither in the Book of Allah nor did the Prophet judge in it then let him judge with what the pious judged in it. If an issue comes to him which is not in the Book of Allah, the Prophet did not judge in it nor did the pious give a ruling for it, then let him exercise analogical reasoning, if he is not competent then let him leave it and not be embarrassed*'[13].

When investigating the attitude of early Muslims towards Ijtihad it is important to note their negative attitude towards independent reasoning void of the framework and restrictions of Ijtihad and revelation. In this respect there is a narration from Umar in which he says:

'*Beware of opinion (Ra'y) for verily the people of opinion are the enemies of Prophetic traditions. The narrations have defied them and it is beyond them to memorise them, thus they speak about the religion based on their opinions*'[14].

We also find the saying of 'Ali (RA):

'*If the religion was based on opinion then the underside of the leather sock (khuff) would be more appropriate to wipe over than the upper*'[15].

The narrations to this affect are many such that Ibn al-Qayyim devotes a section of his famous work *I'lam al-Muwaqqi'een* in listing them[16]. He also mentions that the opinion or reasoning that the early Muslims denounced and branded as falsehood was that which contradicted the revelation, that is to say, reasoning which emanated from speculation without a comprehensive reading and investigation of the revelation[17].

The fathers of Jurisprudence

Turning to the next chapter in jurisprudence, we enter an era referred to as the 'era of Ijtihad', a time in which the four main schools of jurisprudence were developed and wherein the fathers of these schools resided[18]. Coulson (1969) describes this era as being '*characterized by an almost untrammeled freedom of juristic reasoning in the solution of problems not specifically regulated by divine revelation*'[19]. Ijtihad, independent reasoning or juristic reason, was unanimously accepted until this point for the founders of the various schools of jurisprudence. Thus it is prudent to investigate how those who were unanimously qualified to exercise independent reasoning used this skill and whether they restricted it to the confines of a framework or whether they used independent reasoning in an absolute sense.

Imam Abu Hanifah said:

> '*I take from the Book of Allah if I find in it the ruling, otherwise I look in the Sunnah of the Messenger. If I do not find it in either the Book of Allah nor the Sunnah of the Messenger of Allah, then I take from the sayings of his companions, I take the statement of who I wish and leave the saying of whom I wish from them, and I do not go beyond their statements to a saying from other than them*'[20]. *He also said: 'If it comes from the Prophet then we submit to it, if it comes from the companions we choose from amongst their sayings and if it comes from the third generation then we contest with them*'[21].

Imam Malik realised that the sunnah was to be found in what the Companions possessed, to the extent that he noted that when 'Umar ibn 'Abdu'l-'Aziz wanted to spread knowledge of the Sunnah, he commanded that the decisions and verdicts of the Companions in Madinah be collected. Malik used to relate and teach what this upright khalifah said on this subject[22]:

> '*The Messenger of Allah laid down a Sunnah and those in command after him laid down Sunan. Accepting and acting on that is tantamount to following the Book of Allah, the completion of obedience to Allah, and firmness in the deen of Allah. No one after them can change the Sunnah or is permitted to take on anything which opposes them. Whoever is guided by them is guided. Whoever seeks help by them is helped. If anyone leaves them to follow a way other than that of the believers, Allah will assign him what he has turned to and Hellfire will roast him. What an evil destination!*'

Malik admired those words and clung to them, holding that they embodied the perfect definition of the Sunnah. The Muwatta', Imam Malik's famous collection '*intended to create a system of law based on the hadith*'[23], contains the verdicts of the Companions alongside hadith of the Messenger of Allah, may Allah bless him and grant him peace. He recorded the edicts and decisions of the Companions as he recorded the statements of the Prophet, considering them to be part of the Sunnah. Due to Imam Malik's strict adherence to the guidance of the Companions, Allah made him an example for others to follow. As al-Shatibi states:

> '*The contemporaries of Malik used to follow his narrations and actions due to the blessing of his imitation of those whom Allah and His Messenger praised and made an example ...*'[24]

Al-Shafi'i stated:

> '*In that in which the Book and the Sunnah are present then the one who hears them has no excuse except to follow. If that is not the case, we proceed to the statement of the companions or one of them. If we proceed to Taqlid then the sayings of the Imams; Abu Bakr, Umar and Uthman, may Allah be pleased with them, are most beloved to us, that is if we do not find proof regarding the difference which points to the closest in the difference to the Book and the Sunnah, such that the saying that is supported by the proof is followed ...* '[25], and '*We do not go beyond their sayings, all of them*'[26].

When discussing the statements of the companions when they differ, Al-Shafi'i states in al-Risalah, '*we proceed to that which agrees with the Book and the Sunnah, the consensus, or to which is more appropriate according to analogy from their sayings*'. He goes on to say: '*I (proceed) to following one (companion) if I do not find in the Book, the Sunnah, the consensus, or anything with its meaning such that it is given the same ruling, or (when) an analogy is found with it*'[27]. He also states, preceding the above citations, regarding the inheritance of the grandfather and the brother: '*I could not go against them, in my opinion, nor proceed to an analogy that went beyond their statements*'[28].

When looking at the method Imam Ahmad employed to arrive at a ruling we find, as Ibn al-Qayyim expounds in detail, the Book, the Prophetic traditions, the verdicts of the companions and then analogy which were the basis for all of his religious judgments[29]. His firm adherence to the scripture and the statements of the companions is well known and is made unequivocally clear in the beginning of his famous *Usul al-Sunnah*. Describing the fundamental principles of the Sunnah, the first thing that he mentions is: '*Holding fast to what the Companions of the Messenger of Allah were upon*'. As Susan Spectorsky (1982) observes, '*If he cannot answer a question satisfactorily within the framework of traditions, he prefers not to answer at all*'[30].

Discussion

Joseph Schacht (1964) often quoted as the authority on this subject (within western circles) states that from the third to the eighth centuries '*the idea began to gain ground that only the great scholars of the past who could not be equaled, and not the epigones, had the right to independent reasoning*'. Schacht believes that around the year 900 C.E., '*... the point had been reached when the scholars of all schools felt that all essential questions had been thoroughly discussed and finally settled, and a consensus gradually established itself to the effect that from that time onwards no one might be deemed to have the necessary qualifications for independent reasoning in law .. . This "closing of the door of ijtihad, as it was called, amounted to the demand for taqlid, a term which had originally denoted the kind of reference to Companions of the Prophet that had been customary in the ancient schools of law, and which now came to mean the unquestioning acceptance of the doctrines of established schools and authorities*'[31].

The above statement of Schacht is not intended to delve into the discussion regarding the permissibility of Ijtihad, but instead, that Ijtihad was unanimously accepted until this point for the founders of the various schools of jurisprudence. Additionally, Schacht noted that *taqlid* of the Companions was customary in the schools of law. As such, *taqlid* of the Companions was the position held by the founders of the various schools of jurisprudence who were qualified and eligible to exercise independent reasoning[32], rather not only were they qualified to exercise juristic reasoning but they were practitioners of it. After looking at the historical evidence and statements from the masters of jurisprudence such as those mentioned above, Schacht was led to this view. Thus, the exercise of independent reasoning since the beginning of Islam was limited to those cases not referred to by the scripture, tradition or the Companions.

In contrast, describing the first hundred and fifty years of Islam, the time when Abu Hanifah, one of the juristic masters who relied heavily on reasoning, was exercising Ijtihad, Watt (1971) describes medieval Muslim scholars as finding the idea of development '*abhorrent*'[33]. Watt goes on to blame this disposition on a deeply rooted culture which involved blindly adhering to the clan. Watt conveniently overlooks the fact that the Islamic constitution itself has the principle of rejecting that which is innovated and contradictory, to the extent that we find in the prophetic traditions: '*He who innovates in this affair of ours that which is not from it will have it rejected*'[34]. It seems Watt was following the early trend in Orientalist thinking in which they were content in dismissing Islam and the Shari'ah (Islamic law) with false accusations of being extremely rigid such that it could not cope with the progress of modern times, and accusations that centered around the narrowing, and finally closing, door of reasoning causing fossilisation of Islam and thus its inferior and backward status[35].

Schacht (1964), a proponent of the door of Ijtihad being closed after around the third Islamic century, states: '*whatever the theory might say on ijtihad and taqlid, the activity of later scholars, after the closing of the door of ijtihad, was no less creative than that of their predecessors*'[36]. Working within the boundaries of a framework does not equate to discarding reason and creativity according to Schacht. When defining taqlid, Schacht (1964) mentioned that it was previously used in '*reference to Companions of the Prophet that had been customary in the ancient schools of law*'. Yet when we reflect on the statements mentioned above from the four major jurists of Islam, we see that their conviction in *taqlid* of the companions was much more a religious mandate than a customary gesture. When we look to the sources of Islam itself there are many proofs upon which the masters of jurisprudence must have based their stance, these include the following:

The Messenger (saw) said:

'*The best of people are my generation, then those that come after them, then those that come after them*'[37]

Ibn Masood (ra) said:

'*Allah looked in to the hearts of His servants and found the heart of Muhammad to be the best of them so He sent him with His message. Then He looked at the hearts of His servants other than Muhammad and found the hearts of his companions to be the best hearts of His servants so He chose them to accompany His Prophet and to support His religion. Whatever the Muslims view to be good then it is good in the sight of Allah and whatever the Muslims view to be evil then it is evil in the sight of Allah*'[38].

The Prophet (saw) also said:

'*The stars are the guardians of the sky, when the stars disappear what has been promised to the sky will occur. I am the custodian of my companions, when I leave what my companions have been promised will come to pass. My companions are the custodians of my nation, when they pass on what has been promised to my nation will happen*'[39]

The very fact the religion was declared complete and perfect in the time of the companions and according to their interpretation and implementation is also explicit and powerful evidence, as Allah states:

'*This day, I have perfected your religion for you, completed My Favour upon you, and have chosen for you Islâm as your religion*'.[40]

'*So if they believe in the like of that which you (Muhammad (saw) and your companions) believe, then they are rightly guided*'.[41]

Hence it can be argued that Islamic scholars, thinkers and jurists of all times after the companions are thus obliged to abide by this interpretation logically and more importantly as a requisite of faith since Allah says:

> '*And whoever contradicts and opposes the Messenger after the right path has been shown clearly to him, and follows other than the believers' way, We shall keep him in the path he has chosen, and burn him in Hell - what an evil destination*'.[42]

> '*And the first to embrace Islâm of the Muhâjirûn and the Ansâr and also those who followed them exactly, Allâh is well-pleased with them as they are well-pleased with Him. He has prepared for them Gardens under which rivers flow, to dwell therein forever. That is the supreme success.*'[43]

Thus, scholars believe that it is inconceivable for the companions to have failed to ascertain the ruling of Allah; being incorrect on a matter and for other than them from a later generation to arrive at the truth on that issue. Based upon this, it may be argued that even if the companions were to have differed on an issue then the truth must exist among their opinions and could never exist outside of their conclusions[44] since such a case would negate the perfection of the religion and its preservation. If it was allowed for them to be mistaken on an issue that they spoke about and for other than them, from a later generation, to be correct in it, then those in the later generation would be the custodians of the Companions and the case would not be as the Prophet (saw) stated:

> '*My Companions are the custodians of my nation*'[45].

Returning to Scacht's (1964) characterisation of the era of *taqlid* (the time after the founders of jurisprudence) as no less creative than that which preceded it, if this is the case when the framework is secondary to the sources and a narrowing of the Islamic constitution yet firmly rooted therein, how can the paradigm of the constitution itself be seen as rejecting reason and creativity due to extreme rigidity? The fact of the matter is that Islam is submission to Allah in all that He has revealed, the Islamic constitution, whether in the form of the Qur'an, the Prophetic Tradition or in the statements of the companions. As such, the constitution is not subject to change nor does man have any right to alter or manipulate it. Any change in this constitution renders the end product a contradiction to the basis of the constitution itself, submission to Allah. Each individual has the right to chose whether they wish to submit to their Lord, or whether they desire a path dictated by other than Him, since they alone will face the consequences of their choices and actions. Islam from its very essence demands the conformance of ones actions and beliefs to the command of Allah, if however, one proceeds to the contrary and embarks on reforming Islam so that it conforms to any other law, ideology or system, then he has negated Islam from its very core, whether he is aware of this fact or not. '*Thus law, as the revealed will of God, is not tied in with the evolution of society and culture*'[46].

Imam Shafi states: '*Every clear text by which Allah has established the proof (upon the creation) by way of his book, or upon the tongue of his messenger, then it is*

impermissible for the one who has knowledge of it to hold an opposing view in it'[47]. Al-Jassas goes further and states while commenting upon the verse:

'*But no, by your Lord, they can have no Faith, until they make you (O Muhammad) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission*'[48]

says:

'*In this verse is a proof that the one who rejects any of the commands of Allah or the commands of the Prophet (SAW), whether he does so due to doubt or due to not accepting them and refusing to submit to them, then he has left the fold of Islam*'[49].

Ibn Taymiyyah further clarifies the situation:

'*During these times the word 'al-Shari'ah' encompasses three categories. Firstly, it is the revealed law, which is the Book and the Sunnah. Obedience to it is obligatory, hence the one who opposes it, it becomes incumbent to fight him. Also (i.e. secondly), the word covers the foundations of the religion and its branches. (thirdly, it has included) the policies of the rulers, the ruling of the scholars……Hence, it is not for anyone, neither from the predecessors nor the successors, to leave obedience to Allah and his Messenger*'[50].

Furthermore, to allege that a manipulated product which contradicts and causes inconsistency in the Islamic constitution is the genuine and authentic article is merely an added insult to Islam and Muslims.

Conclusion

In the war of ideas in our current post-industrial and post-modern era, Islam is the faith that presents itself as an absolute truth in a world of uncertainty and defends that claim with evidence and the absence of inconsistency. In the race for world domination where success relies on the eradication of any possible threat, it is not surprising that such a contender in the battle of hearts and minds is under extreme attack. The attempt to contaminate the sources has proved to be in vain since Allah Himself has vowed to preserve the sources and constitution of His religion:

> '*It is We Who have sent down the Dhikr and surely, We will guard it (from corruption).*'[51]

Thus, the only recourse in crushing this formidable enemy is to wage a war from within Islam itself. A reformist camp must employ Islamic principles to justify anti-Islamic concepts and Muslim conformance to foreign supremacy. This is the very point Hanifi (1974) indicates when he says:

> '*According to the classical tradition, law is imposed from above and postulates the eternally valid standards to which the structure of state and society must conform. In the modernist or reformed approach, law is shaped by society; its function is to answer constantly arising social problems. . . . The clash, therefore, between the allegedly rigid dictates of the traditional law and the demands of modern society poses for Islam a fundamental problem of principle. If the law is to retain its form as the expression of the divine command, if indeed it is to remain Islamic law, reforms cannot be justified on the ground of cultural necessity per se; they must find their juristic basis and support in principles which are Islamic in the sense that they are endorsed, expressed or implied, by the divine will . . . . Here it is, then, that the connection between modern legal activities and the results of the researches of Western orientalists becomes readily apparent...*'[52]

Reform, independent interpretation, absolute Ijtihad, free thinking, reason and rationalism, and the rejection of the fetters of classical authority are all appealing slogans loaded with hidden agendas which have always been the clothing of those seeking to reject Islam from within. Such a case becomes clear when we turn to the likes of Maulavi Sayyid Amir Ali, who wrote in *The Spirit of Islam*:

> '*The blight that has fallen on the Moslem nations is due to the patristic doctrine which has prohibited the exercise of individual judgment (Ijtihad) . . .. When once the freedom from the enthralment of old ideas is achieved, it will be easy for the jurists of each particular Moslem State to abolish, by an authoritative dictum, polygamy within that state.*'[53]

His motive was to abolish polygamy since he saw it as something wrong and evil due to the Western benchmark he had adopted over and above the Islamic one. Rather than an unpalatable frankness in stating Islam is wrong in allowing polygamy, or even an honest rejection of Islam, he chose to justify his erroneous notion seeking assistance in the abuse of an Islamic tool by ignoring its framework and regulations.

K.A. Fariq in 1957 suggested that the '*brakes were applied to Ijtihad after the third century of Islam as a reaction to the Mihna (the Inquisition), during which the people of Baghdad saw the disastrous effects of "independent reason" in the guise of Mu'tazila*'[54]. The Mu'tazilite were heretics who promoted the statement that the Qur'an was created, which displayed their clear and unanimous disbelief and violation of the Islamic constitution and creed. It is not surprising that Western institutions such as the 'United States Institute of Peace' and the 'Center for the Study of Islam and Democracy' are hell bent on forcing Muslims back to a discussion that was concluded centuries ago and dictating their discourse to them, '*the challenge for Muslims going forward is to determine whether this creative reasoning should be complementary and therefore parallel to divine text, or whether it should remain as it has been in the past, subordinate to the text*'[55]. It seems they are not aware of what Von Grunebaum had to say in 1962, '*to the Mu'tazilite, the identity of reason is the principle tying together the realm of God and the world of man; to the orthodox, divine and human reason are not necessarily of the same order and what safeguards the interaction of God and man is the Command with human reason confined to explication and application*'[56], or perhaps even more explicitly in this regard is the research of George Makdisi, '*The traditionalists made use of reason in order to understand what they considered as the legitimate sources of theology: scripture and tradition. What they could not understand they left as it stood in the sources; they did not make use of reason to interpret the sources metaphorically. On the other hand, the rationalists advocated the use of reason on scripture and tradition; and all that they deemed to contradict the dictates of reason they interpreted metaphorically in order to bring it into harmony with reason*'[57]. The supremacy of reason was the notion that prompted orthodox Islam to denounce the Mutazilites as heretics and caused the Mutazilites to invent the statement of disbelief for which one would be expelled from Islam: the Quran is created. Commenting on the method employed by the master jurisprudent, al-Shafi'i, Barbara J. Metzger (1994-1995) observes that he believed '*that reason could not be applied independently of the divine will. Indeed, he held that the role of human reason must be subordinate to the Qur'an and hadith*'[58].

Khuwa Bukhash (1929) makes an interesting point, '*Could the numerous sects have arisen in Islam if Islam had strangled thought, crushed free thinking? . . . Basing themselves on an independent interpretation of the Quran, eminent Muslim scholars are making strenuous efforts to liberate Islam from the fetters of authority*'[59]. What she failed to realise, however, was that that the Prophet (saw) foretold the heresy of these sects and therefore the heretical nature of their basis and inception, unregulated reasoning and interpretation. The Prophet (saw) said:

'The Jews split in to 71 sects; one is in Paradise and 70 in the Fire. The Christians split in to 72 sects, 71 are in the Fire and one is in Paradise. By the One who has the soul of Muhammad in His Hand, my nation will split in to 73 sects, one of them will be in Paradise and 72 in the Fire'. It was said: who are they O Messenger of Allah, he replied: 'They are the Jama'ah'[60].

In another transmission of the same narration the Messenger of Allah (saw) is reported to have described the saved sect as *'That which I and my Companions are upon.'*[61]

Ijtihad is one of the tools being misused in the current propaganda arsenal to deceive people with the use of false labels. Since Ijtihad is the bridge between the revelation and the evolving new challenges in life, it holds a noble and lofty position in Islam[62]. However, Ijtihad without regulations and boundaries would not preserve the revelation in the slightest. Such a scenario would be very similar to changing the word of god or perhaps more precisely dictating to god what He intends. Unregulated Ijtihad would produce contradiction, confusion and chaos rather than the clarity, consistency and regularity of shari'ah. Thus, Ijtihad and its framework are inseparable just as cause and effect are. This framework must apply to all types of Ijtihad and its boundaries and pillars must always be upheld so that the religion remains in its pristine condition as it was conveyed by the Messenger[63].

Al-Gazhali states in his monumental book *Al-Mustasfa* while discussing the place of Ijtihad: *'Ijtihad is applied in every ruling in which there does not exist a definitive evidence (Qat'i). What is meant by an issue in which Ijtihad is applied is an issue in which the one who errs, then he is not sinful for his error. In contrast, the obligatory nature of the prayers, the Zakat and that on which the ummah has agreed from the well known Shari'ah matters, then they all are based upon definitive proofs, hence the one who opposes them is sinful. Rather these matters are not the place of Ijtihad'*. He also states: *'If there is a text from the revelation which is definitive (Qat'i) on an issue; it only has one meaning and is not open to interpretation nor abrogation, then in such a case it is not permissible to make Ijtihad in opposition to the textual ruling'*[64]. Examples of such are the pillars of Islam and the prohibition of crimes such as fornication, stealing, drinking and killing. It would also include all the prescribed punishments and atonements[65]. Thus, Ijtihad does not apply to that in which a firm conviction is mandatory[66]. This also means that whether an issue is related to what is termed as the 'fundamentals' or practical jurisprudence (furu'), it can have a definitive text from the revelation and thus not allow Ijtihad concerning its ruling.

Al-Shatibi further elaborates stating that,

'The Ijtihad which exists in the Shari'ah is of two types: Firstly, an Islamically acceptable Ijtihad which comes from its people who are qualified in the knowledge of its regulations. This is the Ijtihad which has already been mentioned. Secondly, unacceptable; Ijtihad which comes from those who do not have knowledge of its regulations because such a person formulated his opinions based upon pure desires

and worldly goals.....hence there is no doubt in the unacceptable nature of such an Ijtihad as it is in open violation of the truth which Allah has revealed.

And so judge (you O Muhammad) between them by what Allâh has revealed and follow not their vain desires, but beware of them lest they turn you (O Muhammad) far away from some of that which Allâh has sent down to you. And if they turn away, then know that Allâh's Will is to punish them for some sins of theirs. And truly, most of men are Fâsiqûn (rebellious and disobedient to Allâh).

O Dâwûd (David)! Verily! We have placed you as a successor on earth, so judge you between men in truth (and justice) and follow not your desire for it will mislead you from the Path of Allâh. Verily! Those who wander astray from the Path of Allâh (shall) have a severe torment, because they forgot the Day of Reckoning.' [67]

For Ijtihad to be valid there can exist no definitive textual reference for the issue at hand. If there is a definitive text on the matter then the remaining types of Ijtihad are in understanding the underpinning cause of, and reasoning behind, the text. Ijtihad can also be used to determine how the ruling is applied in the current reality i.e. the best way to implement the ruling and to which new scenarios the text applies. At no time are the boundaries of the text ever breached, rather the text is the basis for all types of Ijtihad. The text together with the perspective of the companions as obligated by revelation is the framework, the regulations and the backbone of all valid Ijtihad. It was the framework that was adhered to during the era of Ijtihad and progress in the Muslim world and it is the framework that must be revitalised if the Muslims truly desire progress which Allah is pleased with in the future.

In the current climate of agendas and propaganda, Muslims need to be weary of new and innovative rulings based on 'modern and progressive' Ijtihad. Ascertaining the truth is an obligation for each and every person, in accordance to their ability and capacity, before proceeding to act. The least one should do when they find verdicts being promoted in an open forum is to investigate and evaluate the approach being used to arrive at them. Additionally, such an investigation should inquire as to what the classical and orthodox positions on such issues are. Prudence demands that one looks at what is in harmony and consistent with the whole of the Islamic constitution, letter and spirit, rather than taking an uninformed approach in a pathetic attempt to generate approval and gratification from those who wage an ideological crusade on the truth.

Citations and Sources

[1] Abdul Rahim, The Principles of Muhammadan Jurispncdence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools, Madras, (1911), p.168-9, 173.

[2] Rahman, Fulur, 'Post-Formative Developments in Islam' in Islamic Studies, Karachi, 1, 4 (1962), "Post-Formative Developments"), p.12. See, e.g., Schacht, Joseph, An Introduction to Islamic Law (1964), p.69.

[3] Iqbal, Mohammad, The Reconstruction of Religious Thought in Islam (Lahore, 1930), p.208, Fariq, K.A., "Evolution of Law in Islam", Iqbal 6i (1957), p.55, 65, Bukhash, Khuwa, "Islam and the Modern World" in Muslim World, 1929, p.65.

[4] For a more extensive list refer to al-Shanqiti, Adhwa al-Bayan, vol 4. p. 194-200

[5] al-Bukhari and Muslim

[6] Ibn Hajar, fath al-Bari, vol. 7, p.410; al-Nawawi, Sharh Sahih Muslim, vol. 12, p. 98

[7] Ibn Kathir believed it to be those who gave precedence to the literal command [Ibn Kathir 1/548] whereas Ibn Taymiyah [al-Fatawa 20/253] and Ibn al-Qayim [cited by Ibn Hajar in Fath al-Bari 7/410] believed it to be the party that gave preference to what they believed to be the intended meaning and analogy. The different approaches being based on a principle difference famous among jurists; can a general statement be made specific due to analogy [al-Fatawa 20/253].

[8] Ibn Hajar, fath al-Bari, citing first al-Suhayli and then the majority and al-Shafi'I, vol. 7, p.409

[9] Abu Daud, al-Nasai and al-Hakim. Abu Da'wud said that the preserved one is the loose ended version and al-Hakim authenticated the raised version based on the criteria of al-Bukhari and Muslim. Al-Albani authenticated it in Sunan Abu Daud 1/93, Nasai 1/213 and Mishkat al-Masabih 533.

[10] Ahmad, Abu Daud, at-Tirmidhi and others. Ibn Hajar in talkhees states that al-Bukhari said that the raised (Marfu') version was not connected (Muttasil) and that Al-Daraquni in his 'Ilal and that the loose ended (Mursal) version is more authentic.

[11] an-Nasaee in al-Mujtaba 8/231; al-Darimi in his sunan: 1/60; Ibn Abi Shaibah 7/241; Ibn Abi Asim: 2/548; al-Bayhaqi in al-Kubra 10/110; al-Bayhaqi: 10/115; declared authentic by Ibn Hajar in Muwafaqah al-Khubr al-Khabar 1/120

[12] al-Daraqutni: 4/206-207; al-Bayhaqi al-Sunan al-Kubra: 10/150

[13] al-Darimi: 1/59; Ibn Abd al-Barr in Jami' Bayan al-Ilm: 2/848-849 #1599; authenticated by Ibn Hajar in Muwafaqah al-Khubr al-Khabar 1/119

[14] Reported by Ibn Abdul-Barr in al-Jami' (2005), Ibn Hazm in al-Ahkam (6/1019).

[15] Abu Daud 162 and 164. Ibn Hajar authenticated it in al-Talkhees 1/160.

[16] I'lam al-Muwaqqieen 2/99-114, ed. 1, Mashhoor Hasan, Dar Ibn al-Jawziy Dar Ibn al-Jawziy

[17] I'lam al-Muwaqqieen 2/125-126, ed. 1, Mashhoor Hasan, Dar Ibn al-Jawziy Dar Ibn al-Jawziy

[18] Reference is being made to the four main schools due to their familiarity. The opinions of the other jurists of the time and of the same level as that of the well known four are equally valid.

[19] Noel J. Coulson, Conflicts and Tensions in Islamic Jurisprudence (University of Chicago Press, 1969)

[20] Tarikh Baghdad: 13/368; Ibn Abd al-Barr, al-Intiqa: 143.

[21] Ibn Abd al-Barr, al-Intiqa: 144; al-Dhahabi, Siyar: 6/401, Abu Abdillah Shams al-Din Muhammad ibn Abi Bakr ibn Ayoub ibn Sa'd al-Zari'y, Hidayah al-Hayariy al-Dimishqi 126

[22] al-Shatibi, al-Muwafaqat 4/79, Al-Ashqar, Umar Sulaiman Abdullah, al-Madkhal Ila Dirasah al-Madhahib wa al-Madaris al-Fiqhiyyah, p. 138.

[23] Barbara J. Metzger, Revelation and Reason: A Dynamic Tension in Islamic Arbitrament, Journal of Law and Religion, Vol. 11, No. 2. (1994 - 1995), pp. 705

[24] al-Shatibi, al-Muwafaqat vol 4, p. 80

[25] Ash-Shafi'I, al-Umm, 7/280

[26] Al-Zarkashi, al-Bahr al-Muheet, 2/57, al-Bayhaqi in Manaqib al-Shafi'I 1/442, Ibn al-Qayyim, I'lam al-Muwaqqieen, ed. 1, Mashhoor Hasan, Dar Ibn al-Jawziy, vol. 5, pp. 553

[27] ash-Shafi'I, ar-Risalah, 597-598.

[28] ash-Shafi'I, ar-Risalah, 596.

[29] Ibn al-Qayyim, I'lam al-Muwaqqieen, ed. 1, Mashhoor Hasan, Dar Ibn al-Jawziy, vol. 2, pp. 50-59; Ibn Badran in al-Madkhal, p. 41, al-Futuhi in Mukhtasar al-Tahrir 382-389.

[30] Susan Spectorsky, Ahmad ibn Hanbal's Fiqh, Journal of the American Oriental Society, cii (1982), 461-65, at 461.

[31] Schacht, Joseph, An Introduction to Islamic Law (1964) p. 69.

[32] The issue, 'if the companions differ over an issue and hold one of two opinions, is it allowed to invent a third' is a debated one among the scholars of Usul who came after the founding fathers of jurisprudents. The majority hold that in such a case the jurist making Ijtihad must confine himself to the two opinions presented by the companions since the absence of them arriving at a third opinion indicates that there is no evidence for such, thus it is not allowed to invent such an opinion. Also, it is not thought that there would be an evidence yet they would not be aware of it. Those who held the opinion that it was absolutely allowed to invent a third opinion claimed that it was an issue of difference therefore such an act was allowed. Others held the view that a third opinion could be invented as long as it did not negate the other two opinions together. [Kashf al-Asrar 3/234-235; Taysir al-Tahrir 2/250; al-Aamidi, al-Ihkam 1/198; Sharh Jama' al-Jawami' ma Hashiyah al-Bunani 2/197; Mukhtasar Ibn al-Hajib 2/40-41; Irshad al-Fuhul 86]

[33] W. Montgomery Watt, The Great Community and the Sects in G. E. Von Grunebaum, ed, Theology and Law in Islam 25 (Otto Harrassowitz, 1971).

[34] Al-Bukhari and Muslim from Aishah (RA)

[35] Shaista P. Ali-Karamali; Fiona Dunne, The Ijtihad Controversy, Arab Law Quarterly, Vol. 9, No. 3. (1994), p. 256

[36] Schacht, Joseph An Introduction to Islamic Law (1964), p.71

[37] Agreed Upon

[38] Ahmad and al-Tayalisi, declared authentic by al-Hakim and al-Dhahabi. Albani declared it to be Hasan.

[39] Muslim 2531.

[40] [5: 3]

[41] [2: 137]

[42] [4: 115]

[43] [9: 100]

[44] Ibn al-Qayyim, I'lam al-Muwaqqieen, ed. 1, Mashhoor Hasan, Dar Ibn al-Jawziy, vol. 5, pp. 572-573

[45] Ibn al-Qayyim, I'lam al-Muwaqqieen, ed. 1, Mashhoor Hasan, Dar Ibn al-Jawziy, vol. 5, pp. 576

[46] Barbara J. Metzger, Revelation and Reason: A Dynamic Tension in Islamic Arbitrament, Journal of Law and Religion, Vol. 11, No. 2. (1994 - 1995), pp. 699.

[47] Ar-Risalah p.560

[48] [3:65]

[49] Ahkam al-Quran 3/18

[50] Al-Fatawa 35/395

[51] [15: 9]

[52] M. Jamil Hanifi, Islam and the Transformation of Culture 42 (Asia Publishing House, Inc, 1974) p 44-45.

[53] Arnir Ali, Maulavi Saiyid, The Spirit of Islam (London, 1922), pp.230-31.

[54] Fariq, K.A., Evolution of Law in Islam, Iqbal 6i (1957), p.55, 65.

[55] Smock D., Special Report: "*Ijtihad:* Reinterpreting Islamic Principles for the Twenty First Century", the United States Institute of Peace and the Center for the Study of Islam and Democracy, August 2004.

[56] von Grunebaum G. E., Concept and Function of Reason in Islamic Ethics 15 Oriens 1, 13 (1962).

[57] G. Makdisi, Ash'ari and the Ash'arites in Islamic Religious History, 18 Studia Islamica 19, 22 (1963).

[58] Barbara J. Metzger, Revelation and Reason: A Dynamic Tension in Islamic Arbitrament, Journal of Law and Religion, Vol. 11, No. 2. (1994 - 1995), pp. 708

[59] Bukhash, Khuwa, "Islam and the Modern World" in Muslim World, 1929, p.65.

[60] Sunan Ibn Majah, authenticated by al-Albani, vol 2, p. 1322 #3992.

[61] Reported by at-Tirmidhee, no. 2792, al-Haakim, 1/128-129, al-Laalikaa'ee, no. 147, ash-Shaatihee in his Al-I'tisaam, 1/189 and 2/186, Ibn Hajr in Takhreej Ahaadeeth al-Kashaaf, no. 63 and others

[62] al-Qardaawi, Yusuf, Shariah al-Islam Khuluduha wa Salahuha li at-Tatbiq fi kuli zamaan wa makaan, Beirut: al-Maktab al-Islamiy, Ed. 3, 1983-1403, pp. 161

[63] al-Khadimi, al-Ijtihaad al-Maqasidi, 2/19-20

[64] al-Ghazali, al-Mustasfa, pp. 345; al-Razi, al-Mahsul, 6/27, al-Shatibi, al-Muwafaqaat, mj2 4/113, Haashiyah al-Bunaniy 'ala jam' al-jawami' 2/52; al-Baaji, Ihkam al-Fusul fi ahkam al-Usul, pp. 189; ad-Dariyni, al-Manhaj al-Usuliyah, pp 19

[65] al-Zuhayli, Usul al-Fiqh, 2/105

[66] at-Taftazaani, Sa'd ad-din, Sharh at-Talwih 'ala at-Tawdih li matn at-Tanqih, Beirut: Dar al-Kutub al-'Ilmiyah, 2/118

[67] Al-Muwafaqat 4/167