

ISLAMIC JURISPRUDENCE -1

TOPIC: IJTIHAD AND TAQLID

1. INTRODUCTION

Ijtihad is one of the dependent sources of Islamic law. If a matter is not resolved expressly in a Quran, Sunnah and by way of Ijma the jurist must not leave the matter unresolved rather he should strive hard to find out the solution under the light of Quran and Sunnah.

2. MEANING AND DEFINITION OF IJTIHAD

(I) Meaning of Ijtihad

(i) Literal

Ijtihad literally means striving, expending of maximum effort in the performance of an act.

(ii) Technical

It is the effort made by Mujtahid in seeking knowledge of the Ahkam (rules) of the Shari'ah through Interpretation.

(II) Definition of Ijtihad

“Ijtihad means the application by a lawyer of all his faculties to the consideration of the authorities of the law, that is the Quran, Traditions and the Ijma, with a view to find out what in all probability is the law.

3. ARGUMENTS IN SUPPORT OF IJTIHAD

Following Quranic verses are in favour of Ijtihad.

“And we have revealed on you the book which describes everything.”

"We have omitted nothing from this Book."

“Then ask those who have knowledge , if you yourselves da not know.”

(II) Ahadith in support of Ijtihad

Following Ahadiths are also in support of Ijtihad.

“Exercise Ijtihad because God makes the work easy for the person for which he is born in this world.”

“When a ruler exercise Ijtihad properly in resolving an issue, he is to be rewarded by God in dual way and if he is wrong in his conclusion, he gets one reward.”

4. FUNCTION OF MUJTAHID

Following are the functions or takes of the Mujtahid.

- (i) To discover the law that is either stated explicitly in the primary sources or is implied by the texts, that is, literal interpretation.
- (ii) To extend the law to new cases which are similar to cases mentioned in textual sources.
- (iii) To extend the law to new cases which are not covered by the previous methods.

5. LIMITATIONS ON IJTIHAD

Ijtihad cannot be made in cases which are covered by the express words of Quran, Hadith or has been determined by Ijma. A jurist cannot exercise Ijtihad on the Basic pillars of Islam e.g. paying of Zakat, Prohibition of murder etc.

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“Ijtihad is permissible only in field where no rule of Injunction from Holy Quran or Sunnah is available.”

6. MODES OF PERFORMING IJTIHAD

A jurist may perform Ijtihad by following the following pattern-

(i) Literal construction

A jurist firstly concentrates on literal meaning of the texts and follow the plain meaning rule.

(ii) Qiyas

After the literal concentrates, the jurist may turn to Qiyas But he must confine to strict types of analogy.

(III)Collectively reliance on texts

After exhausting the first two methods or modes, the jurist may rely on all the texts considered collectively. This means that legal reasoning is undertaken more in line with the spirit of the law and its purposes rather than the confines of individual! texts.

7. SOURCES OF IJTIHAD

Sources are following:

- (i) Quran
- (ii) Sunnah
- (iii) Ijma

6. QUALIFICATIONS OF MUJTAHID

The word Mujtahid means a person who can make Ijtihad. Following are the qualifications of a mujtahid.

(I) According to author of Jam Ul Jawami

According to the author Jam ul Jawami following are the qualifications of a mujtahid.

(i) Major

A mujtahid must be a major i. e. has attained the age of majority so a miner cannot be a mujtahid.

(ii) Sound and rational mind

He must be of sound mind, possessing the understanding and of sufficient intellectual to grasp the subject.

(iii) Knowledge of grammar

He must have average knowledge of the Arabic language and recognize the principles of jurisprudence and sources of law i. e Quran, Sunnah etc.

(iv) Acquaintance with the principal of Shariah

He must have well versed with the main principles of Shariah or the legal code so as to be able to ascertain the true intention of the law-giver.

(v) Knowledge of Naskh

The mujtahid must understand abrogation (Naskh) and identifies the occasions on which rules have been repealed By law-giver.

(vi) Knowledge to circumstances of Quranic revelations

A Mujtahid must know the circumstances in which the texts of Holy Quran were revealed or repealed.

(II) According to Fakhural Islam

The great thinker Fakhural Islam enumerates the following conditions.

(i) Conversant with Islamic jurisprudence

A Mujtahid must be conversant with the science of Islamic jurisprudence and the rules of law applied in various departments.

(ii) Knowledge of the Quran

a Mujtahid should have knowledge of Quran together with its meaning both literal and dictionary and he must be able to interpret its verses.

(iii) Knowledge of the traditions

A Mujtahid should have knowledge of the traditions as well. He must be fully familiar with the traditions reported by from the Holy Prophet (Peace be Upon Him) and able to distinguish between authentic and un-authentic Matwatar and Mashhoor traditions. He must be familiar with the rules for authenticity leading to the genuineness of the traditions.

(iv) Acquaintance with the rules of analogical deduction

A Mujtahid must be aware of and full conversant with the rules and methods of analogical deduction.

(III) Other qualifications

Following are also considered as necessary qualifications of Mujtahid.

- (i) He must have faith and the courage of conviction.
- (ii) He must have competence and advanced proficiency in Arabic language and literature.
- (ii) A comprehensive understanding of Fiqh, the basic principles and other relevant matters.
- (iv) He must understand the different forms of Bayan or elaboration of the texts, which is usually provided by the law-giver himself, and also identifies the occasions on which such Bayan is invoked.
- (v) A proper understanding of modern development and a reasonable appraisal of contemporary Exigencies.

9. KINDS OF MUJTAHID

- (I) Mujtahidum fish-shari

These are the jurists who have an absolute and independent power of expounding the law e. g. Abu Hanifa, Maliki, Shafi etc.

(II) Mujtahidum fil madhhab

The jurists having authority to expound the law according to a particular school comes into this category. They were the disciples of jurists of first rank like Abu Yusuf belong to Hanafi school. These mujtahids followed the fundamental principles laid down by their respective masters but not consider themselves bound to follow the general principals or arguments in particular cases, and they often profounder view opposed to those of their masters.

(III) Mujtahidum fal masal'l

They are the jurists who are competent to expound the law on a particular question which had not been settled by the jurist of first and the second class. The jurist of this rank is at liberty to lay down the law in conformity to the principles of his school e. g. Khassaf, Qadi Khan.

(IV) Mujtahidum Muqallid

They are also called Mujtahid Muqayyid. They have not any right to deduct the law but their function was

To explain the law and draw inferences. Theses Mujtahids are divided into four groups.

- (i) Ashabu I Takhrij
- (ii) Ashabu I Tarjih
- (iii) Ashabu 'l Tashih

(iv) Ashabu 'l Shariah

10. LEGAL EFFECT OF IJTIHAD

The legal effort of Ijtihad is the probability of the conclusion so arrived at being correct but the possibility of such conclusion being erroneous is not excluded, that is why juristic deductions are classed as discretionary or presumptive law.

11. IJTIHAD AND TAQLID

Ijtihad was performed by the jurists from about the ninth to 12th centuries A.D. It then ceased to develop further owing to the doctrine of Taqlid. It was declared that the doors of the Ijtihad are closed and therefore further interpretation of the Quran Sunnah was not permissible. This view is aver ruled by the modern jurists.

(I) Meaning of Taqlid

(i) General meaning

Taqlid means following the opinion of another person without knowledge of the authority for such pinion.

(ii) Meaning in Islamic jurisprudence

“Taqlid means following the opinion of jurist in matters which have not been dealt with By an express Quranic or traditionary text or by Ijma”.

(II) Duty of layman

Layman is a person who has not made a study of law and religion is concerned, and the doctrine of Taqlid applies only to those persons who do not possess the qualifications of a Mujtahid.

(III) Taqlid in Pakistan

The constitution of Pakistan, 1973 permits Taqlid in articles 189 and 201. These articles make the judgments of the supreme court Binding on all courts and the judgments of the High court's binding on courts subordinate to them. When the lower courts follow the opinions of the higher courts they are performing Taqlid.

(IV) Two schools of Mujtahideen

There are two school of Mujtahadeen viz traditionalist and modernists the traditionalist school denies the right of Ijtihad to later generations But the modernists asserts that the doors of Ijtihad are open and Innovations in the Islamic law are Possible, provided one remains with the injunctions and Ahkam of the Quran and Sunnah they criticize the view that Taqlid had taken over the place of Ijtihad on the following grounds.

(i) Quranic reference

They very Quranic text which is the principle of Sunni jurisprudence that all juristic deductions are uncertain and Ijtihad are closed, that will be in conflict with that fundamental.

(V) Difference Between Taqlid and Ijtihad

(i) In taqlid a person in need of opinion has to follow the opinion of another person while in Ijtihad a person does not follow the opinion of another person but derives the rule of conduct for himself directly from the sources of Islamic law,

(ii) In Ijtihad a person must possess some necessary qualifications while in Taqlid a person not possess such qualifications.

(ii) Ijtihad is a source of law, creating new law but Taqlid is not a source of law.

12. IMPORTANCE OF IJTIHAD IN MODERN WORLD

Ijtihad is a living source of law. It has Become important in the modern times due to the needs of the present time, such as economic , social and political changes, so that the Muslim society and people may become a powerful force in the modern times.

Shah Wali ullah was the first Muslim thinker ta propound a theory of cautious exercise of Ijtihad. Then it was followed by Sir Syed Ahmad Khan and Allama Mohammad Iqbal. According to Allama Iqbal, Ijtihad can be undertaken not only by an individual jurist but also by a legislative assembly recognizing the importance of Ijtihad in the modern times, the Shariah ordinance of 1988, in Pakistan had entrusted the task of making the laws in the country to conforms to the Quran and Sunnah to the judiciary.

13. CONCLUSION

Ta conclude, I can say, that the importance of Ijtihad lies in the dynamic and flexible spirit of Islam, which is a complete code of life for all times. Within the limits imposed By the Quran and Sunnah, Islamic law can be interpreted by a mujtahid who may be either an individual or a legislative assembly. This development will Bring about a accommodation between the prescriptions and Injunctions of Islam, on the one hand, and the imperatives of modern life on the other.