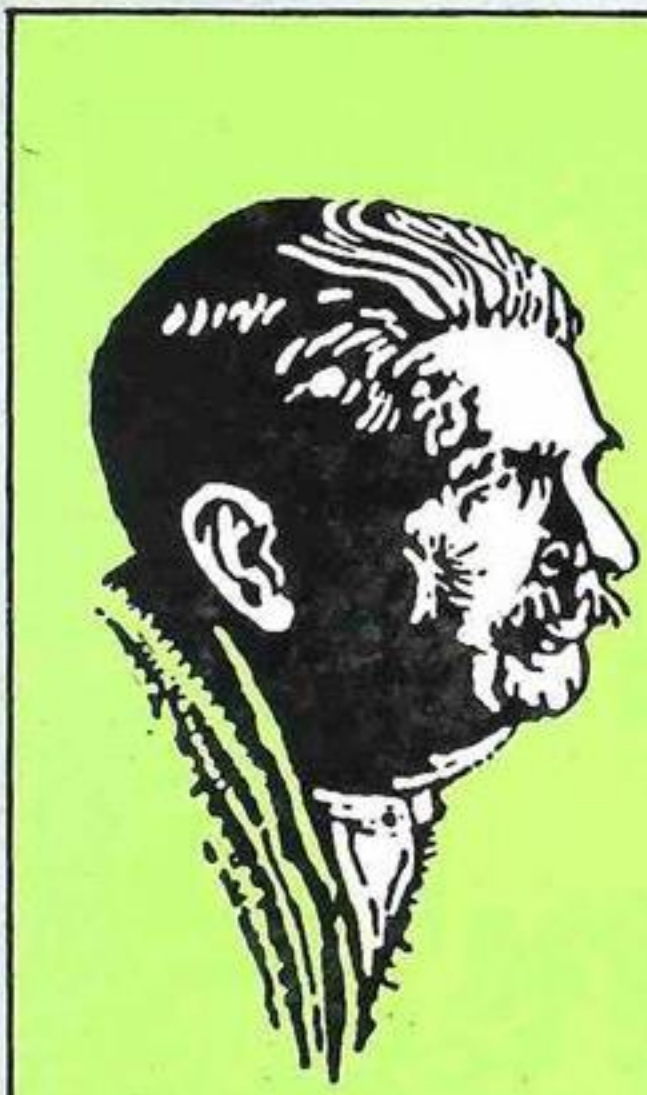
IQBAL'S RECONSTRUCTION OF IJTIHAD



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PREFACE

This study grew out of a research project assigned to me by the Islamic Research Institute on the occasion of the Iqbal Centenary Celebrations in 1977. In this connection,I visited several libraries in Lahore, Karachi and Islamabad, and consulted several scholars. In the meanwhile a Fulbright postdoctoral award provided me the opportunity to consult libraries in Philadelphia, New York, Yale and Princeton in the USA. In 1977 I presented a paper based on my research about the history of Iqbal's lecture on ijtihad, in an international symposium on Iqbal organised by the Department of Pakistan Studies at the Columbia University, New York. I published these researches in the journals of Pakistan, ("Iqbal and Ijtihad", *Iqbal Review*, vol.II (1978) 1-9; "Khutbat-i-Iqbal main Ijtihad ki Ta`rif", *Fikro Nazar*, xv (1978) 31-53).

Encouraged by the reception of these articles I decided to conduct a book length study of the issue. After completing the study, I prepared the script in 1980. For various reasons its printing was delayed. It was finally published in 1985 by Hurmat Publications, Rawalpindi, under the title *Iqbal Ka Tasawwur-i-Ijtihad*.

The book received several favourable reviews by experts in Iqbal studies. This appreciation by scholars has given me further incentive to publish the present study in the English language in order to reach a wider readership. Meanwhile, a great deal of new information on Iqbal's life and thought, particularly about his lectures, had appeared in print. I took the opportunity to revise my study.

The present study focuses on the sixth lecture in Muhammad Iqbal's *The Reconstruction of Religious Thought in Islam*, under the title, "The Principle of Movement in Islam". The study is divided into eight chapters. The first four chapters survey the context of Iqbal's lecture. Chapter one and two discuss the doctrine of ijtihad and its development in the Sub-Continent. The third analyses the semantic development of the concept of ijtihad. The fourth studies the circumstances under which Iqbal wrote and delivered that lecture.

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The fifth chapter gives a detailed analysis of the three

definitions of ijtihad discussed by Iqbal in the lecture. The sixth chapter studies Iqbal's reconstruction of ijma` and the seventh, that of qiyas. The study of ijma` leads to an analysis of the relationship between law and state and the role of `ulama', particularly in the legislative assembly.

The seventh chapter analyses the process of legal reasoning with particular reference to the problem of a woman's right of divorce, especially when analogical reasoning by qiyas is found failing to administer justice in society. The last chapter reviews the reception of this lecture in the subcontinent and analyses its criticism by notable scholars in India, Pakistan, the Arab world and in the West.

Between 1977 and 1991, in compiling this work, I find myself indebted to such a great number of scholars and colleagues that the limited space of the preface does not allow me to thank all of them by name. However, I must express my gratitude to the librarians who made the required materials accessible, to the scholars and reviewers whose comments, suggestions and criticisms clarified various ideas, and to the colleagues whose help made this study possible. I must, here, particularly thank Dr. Zafar Ishaq Ansari, who diligently read the entire script. His critical comments have indeed been very useful in the final revisions. I must also thank Mr. Alam Zeb, my long-time associate, who has been typing several drafts and revisions of this study all these years. While thanking them all I must finally emphasise that whatever shortcomings, errors or mistakes there are in the present study, they are my responsibility.

At the end I must express my gratitude to Iqbal Academy for accepting this study for publication, particularly Mr. Suheyl Umar whose personal interest has made this publication possible.

Muhammad Khalid Mas`ud

XATIVA (SPAIN)
15 November, 1991

INTRODUCTION

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"Our duty is carefully to watch the progress of human thought, and to maintain an independent critical attitude towards it".

Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore : Institute of Islamic Culture, 1986) p. xxii.

INTRODUCTION

At a time when Muslims in India suffered from a sense of decline, politically as well as psychologically, `Allamah Iqbal's poetry gave them self-confidence and emotional strength to face the twentieth century. His lectures, i.e. *The Reconstruction of Religious Thought in Islam*, provided intellectual foundation for the re-construction of religious thought.

Iqbal did not use the term reformation as Sir Sayyid Ahmad Khan did, but he rather called his lectures "re-construction". Even literally, this term denotes an action which aims at a new construction without changing the basis, in keeping with the requirements of the age. Consequently there emerged two themes in his lectures i.e. (i) re-interpretation of the self, and (ii) dynamism. Iqbal studied the whole spectrum of Islamic history and its religious dimension within this framework. This approach enabled him to impart a new life to the basic components of the Islamic culture such as religious experience and prayer that were the subjects of his lectures.

Unfortunately Iqbal's lectures were not received in the spirit that they deserved. Iqbal himself constantly complained that whereas the Hindus took interest in his lectures the Muslims never took much notice of them.[1]

How could we explain this phenomenon? This question could itself be the subject of an independent, separate, inquiry. Nevertheless, we must presently lay stress on two points. The first has to do with the complexity of the philosophical subjects and the second, most probably, emerges from the social milieu of the Sub-Continent.

The subjects of Iqbal's lectures were very complicated.

This complexity was further compounded by Iqbal's style of writing. Iqbal's study of the western thought was very extensive. He referred to the western thought quite frequently to the extent that, perhaps, sub-consciously, he believed that his addressees were fully conversant with the context of his references. Or, perhaps, even consciously he was addressing only those people who knew Western philosophy and thought very well. Most likely that was why he chose to write his lectures in English.

Unfortunately, however, most of his close associates could not understand him. Ghulam Jilani Barq has reported a very interesting incident in this connection. He says that the people of Lahore prevailed upon Iqbal to begin a series of lectures in the city. Among his audience were intellectuals like Sir `Abdul Qadir, Mawlana Zafar `Ali Khan, and Dr. Taseer. But the language that Iqbal used was so difficult, and his thought was so subtle, that hardly anyone could grasp what he was saying.[2]

Several scholars in the West have also noted that *ipso facto* it was not enough to read Iqbal's lectures only once.[3]

In our opinion it is not Iqbal's language that makes his lectures difficult to comprehend. The fact is that Iqbal refers to Western thought with as great an ease and as frequently as he provides new interpretations of the Islamic tradition. In this novel style of synthesis not only does he reinterpret Ghazali, Razi, Ash'ari and other Muslim thinkers but also simultaneously goes on producing new interpretations and exegesis in his citations of the Qur'anic verses. Those who are not familiar with his style, indeed find it very difficult to appreciate Iqbal's process of reasoning. It may also be noted that Iqbal developed his own style of reasoning, which was not based on Greek logic of syllogism but was rather derived from a combination of the Qur'anic mode of exposition and the dialectics of *Tasawwuf*. That method of reasoning is essentially emotive and intuitive rather than purely rational. It makes the reader participate in the process of reasoning rather than an impartial observer listening to the argument.

Instead of trying to grasp Iqbal's style of reasoning and to

make an effort to keep pace with him in his flight of thought, most of his readers in the sub-continent have been, at times, attempting to pull Iqbal down to their own level. Regrettably this attitude prevailed not only during Iqbal's lifetime but continues even today. The worst victim of this anomalistic attitude has been Iqbal's lecture on ijtihad.

Whereas other lectures were inaccessible to most of the Iqbal students due to their philosophical complexities, the lecture on ijtihad was comparatively easier to comprehend. This comprehensibility was not due to its being in a relatively plain language, but because its subject matter was familiar. This familiarity itself, however, proved to be the main impediment to its proper appreciation. Quite often it is seen that readers tend to study writings on familiar subjects in their own frameworks of ideas, rather than following the author. Consequently, the reader either fails to understand and appreciate the original contribution of the author or he reads the author's ideas within the general and familiar superficial contextual meaning. If ever he faces any difficulty, he immediately blames the author for ambiguity and for contradiction of thoughts. Iqbal's lecture on ijtihad has been subjected to such criticism of their thought

Prima facie, these approaches may not be objectionable, but in practice when these approaches are used as defence mechanism to diminish the progress of free thought in a society, they tend to become retrogressive. They become instruments of conservatism to defend the *status quo*; they are used to blunt the thrust of radical or revolutionary ideas. This attitude holds back the reins of intellectual freedom and guards public opinion from radicalism. Writers in the Sub-Continent who wish to convey new ideas fear opposition and often adopt styles and methods by which they can conceal the possible radicalism of their thought.

Although several scholars have been writing articles about Iqbal's lecture on ijtihad and some of them are indeed remarkable, yet it has not been made a subject of detailed study. In fact little attempt has been made to study Iqbal's thought in

its true historical perspective. The authors of those articles generally content themselves with summarising the main ideas in the lecture. Unfortunately it is done in a manner that fails to bring out the original contribution of Iqbal. These studies have been written generally in popular style but in the infrastructure of preconceived ideas. Hence they convey the impression that either Iqbal was not familiar with the actual problems of Islamic jurisprudence, or that he did not pay full attention to it in the lecture.

It is a pity that *per se*, despite such cursory analysis, this lecture was subjected to such treatment in Iqbal's lifetime.

Iqbal felt dismayed with the manner in which his lecture was received. Inter alia,the scholarly criticism of this lecture suffers from one basic defect; it fails to grasp and focus attention on Iqbal's characteristic approach to the problem of ijtihad. The most important intellectual contribution that Iqbal had thus made to Islamic jurisprudence was eventually lost.

It is not possible to do full justice to the more exacting demands of a thorough going research in this monograph. Nevertheless, we certainly hope to be able to impress upon our readers that in order to appreciate truly Iqbal's lecture on ijtihad, it is necessary to study the historical background of the problem in a much wider perspective. The questions raised in the lecture must be studied in their intrinsic historical as well as doctrinal context. Finally, the lecture should not be taken as an isolated entity but that it must be studied as an integral part of the whole superstructure of Iqbal's system of thought as presented in the *Reconstruction*. For this purpose it is essential that the historical events and circumstances that form the background of the lecture, are suitably envisioned and properly studied. In addition to studying it in the context of the history of the evolution of the concept of ijtihad in the history of Islam as a whole, it should also be seen in the context of the intellectual history of Muslims in the Sub-Continent and their views on ijtihad.

The doctrinal context of Iqbal's discussion of ijtihad refers to three contemporary issues on the subject. First, the necessity

of ijtihad in the perspective of the reform movement in the modern age. Second, debates about the literal and technical definitions of ijtihad. Third, the value and purpose of ijtihad which Iqbal presents as a "principle of movement." He refutes the prevalent view among the orientalists and the traditional scholars that Islamic Law was static and immutable. He also attempts to answer the question why Islamic Law came to be qualified as static and immutable and why the door of ijtihad was closed.

Iqbal welcomed liberal movements of his time, yet he clarified that liberalism must not be interpreted as unharnessed and indisciplined freedom. He referred to the harmful tendencies of such unrealistic interpretations.

Discussing the evolution of the concept of ijtihad in the modern age, Iqbal also deals with the basic question whether law in Islam has the capacity for reform and evolution. To answer this question Iqbal refers to the history of the development of Islamic Law and particularly to its dynamism and concludes that Islamic Law is not immutable.

In our view Iqbal's reconstruction of ijtihad was a symposium of great advancement in the modern scholarship on ijtihad. He discussed issues like the permissibility and validity of ijtihad or the qualifications required to exercise ijtihad, i.e. the issues frequently debated by modern writers on Islamic law. More significantly, he analysed the definitions and elucidated the virtues of ijtihad on issues of women's right of divorce and abolition of *Khilafat* that were matters of tremendous significance to the Muslim community.

For this study we have developed a particular methodological approach which studies the issue in its historical, semantic and doctrinal context. This approach is designed to forestall the shortcomings of the partial and pedestrian studies which are not suitable for the appreciation of thinkers like Iqbal who are themselves perpetually involved in the process of reform. Without such an integrated approach the ideas of such inane critics appear to be self-contradictory.

NOTES AND REFERENCES

1. Faqir Sayyid Wahid al-Din reports that once 'Allamah Iqbal asked a student of philosophy at the Government College, Lahore, if he had studied the *Reconstruction*. On his reply in the negative 'Allamah remarked:

> I have posed this question to my several Muslim friends. None of them has read the book....But it was quite surprising that the Hindu students at the Banaras University had not only read the book, but in a meeting they even asked me a number of questions and discussed several points in detail. *Ruzgar-i-Faqir*, vol.1 (Karachi, 1968), p.130.

2. See Rahim Bakhsh Shahin, *Awraq-i-Gum Gashtah* (Lahore : Islamic Publications, 1975), p.p. 191-93.

3. In complete antithesis to this, Annemarie Schimmel admits that "Re-reading and studying Iqbal, as I have continued doing during the time after *Gabriel's Wing* appeared first, constantly opens new insights." *Gabriel's Wing* (Lahore: Iqbal Academy, 1989), Foreword to the Reprint, p. xi.

THE DOCTRINE OF IJTIHAD

"The student of the history of Islam, however, is well aware that with the political expansion of Islam, systematic legal thought became an absolute necessity, and our earlier doctors of law, both of Arabian and non-Arabian descent, worked ceaselessly until all the accumulated wealth of legal thought had found a final expression in our recognized schools of law".

Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore:Institute of Islamic Culture, 1986), p. 118.

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ONE

THE DOCTRINE OF IJTIHAD

Even though the term ijtihad is quite familiar on account of its common use in daily language, yet this usage has rendered it rather ambiguous. It is, therefore, essential that before we proceed further to discuss Iqbal's reconstruction of ijtihad we first try to outline the doctrine of ijtihad.

DEFINITION OF IJTIHAD

We shall start with briefly analysing the literal meaning of this term and then present a brief survey of the traditional definitions. In the later part of the chapter we shall discuss other ideas and factors that affected the development of the doctrine in the Indian Sub-Continent.

LITERAL MEANING

Ijtihad is derived from the root *j.h.d.* Its verbal form is *Ifti`al*. *Jahd* means effort, hardship and to take trouble, but *Juhd* means might, capacity, capability. The term ijtihad combines both meanings in its essence.[1]

As to the characteristics of the verbal form *Ifti`al*, the following are its five salient characteristics.

1. Submission to the first verbal form, agreement and compliance with the meaning of the first verbal form *fa`ala*, for example: *Jama`tuhu fa-ijtama`a* (I gathered and it was gathered)

2. To derive verbs from nouns, for instance *Ikhtabaza* (He cooked bread.) has been derived from *Khubz* (bread).

3. To demand, for instance: *Iktadda* (he demanded hardship from some one.)

4. Exaggeration, for instance: *Iktasaba* (He exaggerated in earning his livelihood.)

5. Agreement with the meaning of sixth verbal form of *tafa`ul*. In this form the verb acquires the meaning of mutuality which is called *musharakah*. It means that two or more agents perform an action together. This form indicates a collectiveness and interaction.

Thus a person who excercises ijtihad is called a *mujtahid* and the problem which requires ijtihad is called *mujtahad fihi*.

The traditional definitions of ijtihad usually stress more on the fourth characteristic mentioned above; the fifth characteristic of collectiveness has been usually neglected. On the contrary, the characteristic of exaggeration has been over-emphasised at the cost of that of the collectiveness. However, in its literal meaning ijtihad consists of making the utmost effort in a certain affair, even to the extent of enduring pain and hardship. Every traditional definition of ijtihad can be divided into two parts: the first defines its literal meaning and the second gives the technical meaning. As has been explained above, *j-h-d* has two senses: effort and ability. The traditional definitions mention either one or both of these two senses in the first part. The characteristic of exaggeration has been mostly presumed to be inclusive in the definition. Jurists mention it in the first part of the definition where they explain literal meanings and extend it to the technical meaning.

Technical Definition

Ghazali defines ijtihad as follows:-

> "Ijtihad means to expend one's capacity in a certain matter and to use it to the utmost. This term is used particularly on such occasions where hardship and effort are involved... Scholars, however, have defined it to mean the expending of the fullest capacity by a *Mujtahid* in seeking the knowledge of shari'ah laws. The perfect ijtihad would

> mean that one has spent so much effort in the pursuit of the knowledge of shari`ah that further pursuit is humanly impossible." [2]

The above definition by Ghazali has three parts: the first gives the literal meaning of the term, the second gives the technical meaning, and the third further elaborates it. Other traditional definitions follow the same pattern and structure. They only differ in their choice of words. Nevertheless this choice of words very significantly reflects the differences of the schools of law in their fundamental doctrines.

As to the differences in the first part of the definition, where Ghazali has used the term *wus`* (capacity), and Amidi,[3] Shawkani,[4] Muhammad A`la Thanawi[5] have followed him, the other jurists have used the terms *taqah* (power, ability) and *juhd* (effort). Bukhari[6] uses both *wus`*, and *taqah*. Baydawi[7] has used the term *Jahd* and Ibn Hazm[8] *taqah*.

It may be concluded that majority of the definitions use *taqah* and stress capacity and effort rather than hardship in the literal definition of ijtihad.

The differences in the second part of the definition are particularly very significant. Ghazali defines the purpose of ijtihad as search for the knowledge of the laws of shari`ah. In Baydawi's definition the term knowledge does not appear and the search for a legal injunction by itself is the objective. Amidi aims at the search for a probable legal injunction rather than definite knowledge about it. Baydawi does not aim at the search but rather at the perception of legal injunction. Ibn Hazm abandons the whole discussion of knowledge, and of the probability of perception. He aims only at the injunction itself. Shawkani defines the purpose of this effort as arrival at a practical legal injunction by resorting to legal reasoning. It is not possible to go into the details of the background of these differences. It may, however, be said in brief that these differences had grown out of the theological debates and discussions going on at the time of these definitions.

The differences in theological doctrines became the basis of

different concepts of law. For some jurists the knowledge of law belonged to the realm of probabilities, without any basis of certainty. Ijtihad, therefore, became a search for probability rather than for definite knowledge or certitude. Most definitions of ijtihad are based on this understanding. Some refer to the notion of probability.

It must be noted here that Ghazali, who otherwise includes *Fiqh* among the sciences that are based on probabilities, uses the term knowledge in his definition. It appears that he uses here the term *`ilm* in a general, rather than in its technical meaning.

Some jurists define the objective of the effort of ijtihad as a pursuit or search and therefore by implication indicate that the results of the exercise of ijtihad are not definite or conclusive. Other jurists do not refer to this qualification. A few jurists qualify this effort by associating it with jurisprudence in order to distinguish it from its definitions by other theologians. Hence we may also notice a difference between the definitions offered by the jurists and those by the theologians. The following definition by Fakhr al-Din Razi is typical among theological definitions of ijtihad:

> To exert one's effort in *Nazar* (juristic reasoning by way of analogy) to the extent that no blame may be forthcoming in this respect.[9]

Razi's definition is not restricted to law. Whereas other jurists define the term ijtihad meaning "search", "achievement", "perception", and in such other general words to indicate the methodology of the effort of ijtihad and consequently create an ambiguity, Razi removes this imbroglio partially by using the term *Nazar*. Shawkani uses the term *Istinbat* (inference) for the same purpose. It may, however, be noted that *Nazar* having close association with qiyas (analogy) is certainly more specific and definite in comparison to the term *Istinbat*.

In brief, the traditional definitions, in general, may be seen as attempts to confine ijtihad within the scope of *Fiqh* by keeping it closer to its literal meaning. During the first phase of

the development of its definition, emphasis was on employing full capacity and e..p..nding best efforts in the process of ijtihad. During the later phases it was restricted to such qualifications as practical injunctions of *Fiqh*, and gradually the definitions began to refer to the juristic methodology, specifically to the various sources of *Fiqh*. One of the more recent definitions by Abu Zuhrah exemplifies this point. "Ijtihad means a jurist's utmost effort to infer practical legal injunctions from the sources of the shari`ah".[10]

The qualifications of "practical" and "sources" in this definition illustrate the jursits' attempt to confine the definition of ijtihad to matters and contexts relating to *Fiqh*. The traditional definitions never confined ijtihad to a certain school of law. This limitation was later imposed by way of classification of ijtihad and gradation of *Mujtahids*.

A modern scholar Zahid al-Kawthari states that Ibn Kamal al-Wazir (d. 940 H.) divided the jurists into the following seven grades/generations (*tabaqat*):[11]

1. Mujtahid in Law *(Mujtahid fi'l shar`)* is a mujtahid who draws his conclusion on the basis of direct reference to the original sources of Islamic law. (Later this level came to be reserved only for the founders of the schools of law).

2. Mujtahid in School *(Mujtahid fi`l-madhhab)* is a jurist who argues within the framework of one school of law. He has the same skill and expertise as the former but his exercise of ijtihad is limited within his school.

3. Mujtahid on Specific Questions: *(Mujtahid fi'l-masa'il)* is a jurist who has attained the same level of expertise as the *Mujtahid in School* but he specialises in one or more subjects.

4. Experts of Deduction *(Ashab al-Takhrij)* are jurists who are experts in the principles of their school and who have the capability to search for an authoritative opinion of their school in a given problem of law.

5. The Experts in Conflict of Laws: *(Ashab al-Tarjih)* are jurists

who have the capability to decide which is the more authoritative of the various conflicting opinions of the jurists of their school.

6. The Scholars of Distinguishing: *(Ashab al-Tamyiz)* are the jurists who are skilled to distinguish between the various opinions given by the jurists of one's school on the subject and to decide which one is applicable in a given case.

7. Imitators: *(Muqallidin)* are the jurists who have none of the above capacities and like laymen consult and quote other jurists.

Ibn al-Kamal has counted the first three among the mujtahids while the remaining four are muqallidin. The followers of Imam Abu Hanifah generally accept this division.

The followers of Imam Shafi`i, however, divide these classes differently. Ibn Hajar, for example, makes the following three divisions:

1. *Mujtahid mustaqill* (independent)

2. *Mujtahid muntasib* (affiliated)

3. *Mujtahid fi' l-madhhab.*[12] (specialist in a particular school of law).

The terms *Mujtahid fi al-Shar`* (Ibn al-Kamal), *Mujtahid Mustaqill* (Ibn Hajar) and *Mujtahid Mutlaq* are, on the whole, at the same level. Their referents are usually the founders of the schools of law. According to al-Kawthari, Ibn Hajar's *Mujtahid Muntasib* and Ibn al-Kamal's *Mujtahid fi al-madhhab* are defined almost in a similar manner:

> The one who abides by the opinions of his Imam in respect of principles but is free to exercise ijtihad in regard to specific questions. Similarly, Ibn al-Kamal's *Mujtahid fi l-masa'il* and *Ashab Takhrij* are equivalent to Ibn Hajar's *Mujtahid fi al-madhhab* and the rest of them are *Muqallidin.*[13]

The above discussion leads us to conclude that according to this classification the process of ijtihad is gradually reduced

to abiding by a juristic school and finally it ends in *taqlid*.

Secondly, in this classification, the process of ijtihad refers to two distinct levels of the use of *fiqh* sources of a particular school: (1) the doctrines of substantive law and (2) principles. Those jurists who refer to the doctrines as well as principles fall in the higher categories of *Mujtahid fi'l madhhab*, and *fi'l masa'il*. Those who refer only to the substantive doctrines of a school to deduce, distinguish and resolve conflicts between them fall in the lower categories. In fact they are called *ashab* ... not *mujtahid*.

When a jurist is not bound by the principles or by substantive doctrines of any school, his ijtihad is called absolute ijtihad.

From this analysis it may also be concluded that although in its simple and absolute meaning ijtihad signified the effort of a jurist to determine the legal value of a problem irrespective of the fact that he was bound by the opinions of the other jurists or by the other schools yet it came to be considered within the framework of juristic schools. As a matter of fact, apart from *mujtahid mutlaq* every category of *mujtahid* was bound by a juristic school. Consequently after the founders of the juristic schools no one was ever considered capable of absolute ijtihad.

Further, this divison of ijtihad which was primarily made probably to explain the hierarchy of authorities and the place of the opinions of various jurists within the school, was eventually given the temporal sense of generations (*tabaqat*). Consequently the level of a jurist and his ijtihad was determined chronologically and mechanically. The result of this way of thinking was that eventually, the jurists were not given even the right of limited ijtihad. Only a particular generation of jurists was associated with a particular level of ijtihad and the later generation had nothing to opt for but *taqlid*.

It was on the basis of the traditional doctrine of ijtihad, that a modern writer Nicholas. P. Aghnides remarked that Islamic law is mechanical in nature and the principle of this

mechanism is ijtihad. Since, as will be discussed later, Aghnides's remarks prompted Iqbal to reconstruct the definition of ijtihad, Aghnides's comments deserve to be quoted in full.

> A close examination of the Prophet Muhammad's (P.B.U.H) legal system, even if one should confine himself to what little of it may be learned from the preceding chapters, will at once reveal its *highly mechanical* nature. Like all systems which lack the evolutionary outlook on life, it works under the assumption that the social phenomena, complex as they are, may be reduced to hard and fast rules in which the intricate and nondescript situations of real life must fit in as best as they can. Under the plea that reality (*batin*) cannot be known but to God alone, and that for the purposes of law, the outward signs (*zahir*) of reality may be treated as reality itself, the latter is entirely lost sight of, and so the whole discussion is carried on in terms of the signs of reality instead of the reality itself. Of course, the signs correspond to reality only in what the statisticians would call the mode of the cases, hence the chances of this correspondence become fewer and fewer as one gets farther and farther away from the initial premises.[14]

To cite one instance, we saw that a matter so subtle as the exercise of independent thought (ijtihad) has been reduced to mechanical laws. For example, the doctors have ruled that one may not exercise independence of thought until he has met certain requirements. Of course, such a rule is all right in so far as it encourages thoroughness but it is fatal in at least two ways: (1) it shuts off contributions likely to come in from persons who have not as yet met all the requirements, and (2) it also excludes those that might come from outsiders who, being engaged in other studies, have likewise failed to fulfil the requirements. It is the familiar case of the conservative theologian who cries halt to the scientist when the latter steps over the line.[15]

THE DOCTRINE

Besides the theological controversies and jurisprudential exigencies that produced different definitions of ijtihad, the doctrine of ijtihad became more complicated and ambiguous in the Indian Sub-Continent by its association with several other related terms which had acquired new meanings in modern times. A thorough analysis of all such terms is not possible. Hence we shall discuss only a few very important terms commonly associated with the concept of ijtihad.

IJTIHAD AND RA'Y:

The most common meaning attributed to the term ijtihad is independent opinion, or *ra'y*. In this meaning ijtihad is taken as an arbitrary opinion without relying on the authority of sources and schools. This meaning can be traced back to the formative period of Islamic jurisprudence. *Ra'y* in those days was contrasted with *`Ilm* (exact knowledge). The term *`Ilm* was more commonly used to mean *Hadith*. In this context ijtihad meant expression of one's opinion without reference to a *Hadith*, or in case of the absence of the knowledge of such a *Hadith*. Those who exercised *ra'y* did not agree to this view. To them *ra'y* did not mean rejection of *Hadith*. A considered opinion given by a scholar in the absence of specific rulings of the Qur'an or Sunnah was called *ra'y* or ijtihad. This opinion was certainly considered to be in conformity with the Qur'an and the Sunnah although the holder of this opinion could not quote a specific verse or *Hadith* in his support. The following well-known *Hadith* narrated by Mu`adh Ibn Jabal supports this meaning of ijtihad:-

> `Amr bin Harith, the cousin of Mughirah bin Shu`bah, has narrated the following on the authority of certain people from Hims who were the companions of Mu`adh. They reported from the Prophet (P.B.U.H) on the authority of `Mu`adh that Prophet Muhammad (P.B.U.H)sent him to Yeman. The Prophet (P.B.U.H) asked him, "If you are presented a case how would you judge it"?
>
> He said, "I will judge it according to the Book of God".

> He was asked, "What if you do not find any thing in the Book of God ?"
>
> He said, "On the basis of Sunnah of the Prophet (P.B.U.H)".
>
> The Prophet (P.B.U.H) said, "If you do not find any thing in the Sunnah ?"
>
> He said, "I will then exercise my own opinion and shall do my best".
>
> He said when the Prophet (P.B.U.H) heard it, he patted Mu`adh's chest and said, "Glory be to God Who has bestowed the capacity upon the messenger of His Messenger (P.B.U.H) to do what the Messenger of God does.[16]

IJTIHAD AND QIYAS:

Imam Shafi`i was a bitter opponent of *Ra'y*.[17] According to him, one was bound to refer to the Qur'an and *Hadith* while deciding a case. Even if the Qur'an and Sunnah did not contain any specific ruling to cover a certain case, still the judge was bound to seek grounds in the substance and sources of his arguments. He suggested that as a rule one must look for a reason or a cause in the command of the Qur'an and Sunnah and determine common or analogous grounds between the command/precedent and the case in question. The judgement must be based on those grounds. He called this method of reasoning "qiyas". Thus the original broad meaning of ijtihad was restricted to a well-defined method of reasoning.

In Shafi`i's writings ijtihad and qiyas were used interchangeably. That was why all methods of reasoning which did not conform to qiyas were condemned by Shafi`i. He even condemened the Hanafi method of *Istihsan* (juristic preference between two equally valid analogies) and declared it to be sheer self indulgence.[18] He regarded *Istihsan* as an attempt to follow one's own desires in complete antithesis of the divine law. Shafi`i`s follower Ghazali, included the Maliki method of *Istislah* (argument on the basis of the common good) in this

category of condemned methods of legislation.[19]

In the formative period of Islamic jurisprudence, qiyas meant the rational process of reasoning. Its methodology was drawn from Greek logic where conclusion was derived from the minor and the major premises. Ghazali explained in detail in his book *Maqasid al-Falasifah* that in order to provide qiyas certainty, its premise must also be certain. Yet he clarified that in law and jurisprudence the premises were not certain, they were speculative. He concluded that qiyas used in Islamic law was in fact an argument formed on the basis of similarity (*tamthil*).[20]

Ibn Taymiyyah did not agree to this view. He was of the opinion that qiyas in jurisprudence was in no way different from the analogical reasoning.[21] Shatibi also discussed this point in greater detail and refuted the common view that the premises of Islamic laws were speculative. He rather established that they were certain and therefore the conclusions drawn from those premises were also certain.[22]

Close association of ijtihad with qiyas rendered its conclusion to be speculative to most of the jurists. The decisions reached by this method were prone to error and omission and therefore were subject to constant revision and change by other jurists, whereas the injunctions in the Qur'an and Sunnah were certain and immutable.

IJTIHAD AND RATIONALISM

During the nineteenth century India, *Ra'y* came to be understood as an absolute freedom of opinion. Ijtihad was defined at times as an exercise of freedom of opinion. Ijtihad in its second meaning came to be equated with pure rationalism. In this sense ijtihad was taken to mean the employment of reason and its opposite was regarded tantamount to irrationalism.

Deputy Nadhir Ahmad called one of his books Ijtihad[23] because in this book he had presented a rational interpretation of Islamic creeds and credentials, although the book was not concerned with ijtihad in the usual sense of Islamic

jurisprudence. This understanding of ijtihad appeared to be very progressive but in fact it entailed a very fundamental ambiguity which obscured the understanding of ijtihad. For further clarification, it is necessary to explain the evolution of the concept of rationalism in this context.

Ijtihad appeared in the sense of rationalism in the early days of Islam with reference to the Mu`tazilah movement but in the modern times it has appeared as an antithesis of conservatism. If we follow closely, the term `reason' has been used in different meanings in these two periods. In the Mu`tazili thought reason had been used in the sense of *Nazar* (reasoning).[24] By *Nazar*, the Mu`tazilis meant drawing conclusions by arranging premises in a certain order. In other words, the term reason, according to them, denoted the method of argument in accordance with Greek logic. Hence the context of rationalism in ijtihad in those days was related to the Greek logic.

The modernists on the other hand contrast `reason' with `authority' in religious contexts to distinguish between the old and the new i.e. traditionalism and modernism.[25] In modern usage a traditionalist argues by citing an authority of a tradition or a precedent, whereas a modernist advances his arguments on pure rational grounds. What do rational grounds constitute of? It usually refers to a scientific method of observation and verification. In other words, it is based on observation which could be verified and the conclusion drawn by induction. The traditional method derived conclusions on the basis of deduction from an authoritative text and did not care whether it was verifiable by observation and induction.

It is evident from the above analysis that reason has been used in the sense of a scientific method of argumentation. This usage is, however, conducive to ambiguity. The ambiguity sets in when reason is described in itself as a source or basis of reasoning. In fact, in this context reason is not a source in itself but it is a method to postulate the premise from which the conclusion is drawn logically. The premise, or grounds as principles, cannot be called source.

In Islamic law, a considerable part of its legal injunctions were originally based on Arab customs, some of them going back to the tradition of the Prophet Ibrahim. Divine revelation and Sunnah of the Prophet (P.B.U.H) confirmed, reformed and restated them in accordance with the tenets of Islam. Thus, in a sense, the source material of Islamic law was essentially the customs of the people.[26] A Muslim was brought up on social and ethical values which had their bases in divine revelation and the Prophet's (P.B.U.H) Sunnah. His social experience is based on the customs of his society. He, therefore, develops a social consciousness which generally guides his intellect. He judges the day to day problems according to this social consciousness. If a Muslim does not cite any textual authority it does not necessarily mean that it is a whimsical and arbitrary judgment.

The usage of `rationalism' in the context of ijtihad brought another dimension to light. The two terms ijtihad and *taqlid* appeared as mutually contradictory terms. Consequently ijtihad meant whatever *taqlid* did not. *Taqlid* was termed blind because it meant to follow another person by accepting his statement without requiring justification. In contrast, ijtihad came to mean to accept another person's statement or argument only if it was found justified. Justification in this context meant rational explanation. Ijtihad thus became associated with rationalism.

IJTIHAD VERSUS TAQLID

The three meanings that we have discussed above were concerned with the sources of law or legal reasoning. As we have mentioned, ijtihad was also defined in parallel contrast to *taqlid*. We should, therefore, analyse the meaning of *taqlid*. Fortunately, a recent monograph on *taqlid* has very ably and adequately analysed the various meanings of *taqlid*.[27] The following meanings discussed by the author are significant for our discussion:

(i) "*Taqlid* is an enquiry by a person who does not know from a person who knows"[28]

(ii) "A lay person enquires of an expert on legal matters and abides by his opinion."[29]

(iii) "To turn to scholars in order to understand the true meaning of the Qur'an and Sunnah".[30]

(iv) Instead of relying on one's own understanding, to adopt an interpretation of an injunction in the Qur'an and in Sunnah as given by ancient scholars.[31]

(v) To rely on a scholar's opinion which is based on his ijtihad or qiyas, and not to ask for his sources simply because one believes the scholar to be more knowledgeable than himself.[32]

(vi) To act upon an opinion which is not known to be derived from the divine sources of law and not to ask for grounds of reasoning.[33]

Among the above six definitions of *taqlid*, the first three are not relevant to our subject of discussion. They rather employ the term in its ordinary meaning, not in the technical sense. In its ordinary usage, *taqlid* simply means to ask something about which one does not know from someone who knows and then to act upon it.

The next three are technical definitions. Among them the latter two do not refer to the temporal dimension of *taqlid*. The fourth one, however, adds a temporal component: "ancients" (*aslaf*). Who are the ancients? Does it refer to the Companions of the Prophet (P.B.U.H), to the founders of the school of law, or to the founders of recent institutions of learning such as Deoband? Generally, the term covers all of them simultaneously, but, were we to analyse it further we would come to the conclusion that it refers to the founders of the schools of law. The opinions expressed by the Companions of the Prophet (P.B.U.H) were adopted by the founders of the schools and were incorporated into their juristic systems.

The question, however, arises whether *taqlid* means abiding by such opinions only and whether the rest of the opinions should be considered weak or unauthorised. In short,

taqlid, means only to abide by the juristic school of thought to which one belongs. Chronologically "*aslaf* " might mean Companions in some contexts but after the establishment of law-schools it usually refers to their founders. In other words, the *taqlid* of the ancients in the context of the injunction of the Qur'an and Sunnah would mean that instead of seeking opinions of the Companions, or going directly back to the sources, one should accept the interpretations of these latter authorities. If such meanings are not assigned to the term *taqlid* then the term becomes meaningless. We shall as such discuss this point at some length in the subsequent chapter. At the moment we will confine ourselves to discussing the fifth and sixth meanings of the term only.

In the fifth and sixth defintions of the term *taqlid* there is no refernce to time. However, from a purely technical point of view, these two definitions qualify *taqlid* from the point of view of the enquirer and not from the view point of the respondent. Contrary to the first, these two definitions assume the enquirer to be a knowledgeable person. He is supposed to be aware that the respondent is expressing his opinion on the basis of his own qiyas and ijtihad, and that it is not based directly on the primary sources of Islamic Law, i.e. Qur'an and Sunnah. In one of them he is making an analogy from the sources, but in the second form even this analogy is absent.

It is also possible that his opinion is derived from the qiyas and ijtihad of some other scholar. These last definitions pay no attention to the elements which are central to the technical definition of *taqlid*, viz. to act upon the opinion of some authoritative scholar without asking for the grounds on which that opinion was based.

We may say that in these definitions *taqlid* has been outlined as abiding by some one's opinion while knowing well that the opinion given by the scholar does not have its direct derivation from the Qur'an and Sunnah. If such an act is attributed to a non-scholar then, as we have explained above, it is not included in the technical definition of *taqlid*. But if it is done by a scholar then it may result in two situations: Either

the scholar is expressing that opinion on the basis of ijtihad or his opinion is merely in *taqlid* of a school of law. In the first case it is again possible that this ijtihad may not be original; it may simply amount to abandoning the doctrine of one's own school of law in favour of another.

We may note that in the above definitions of *taqlid*, ijtihad has been used in narrower meanings. It may also be concluded that according to the above definitions *taqlid* can only be understood with reference to abiding by the doctrines of one's juristic school. Such an understanding of *taqlid* yields logically to the following definitions of ijtihad: (a) to abandon adhering to the doctrine of one's juristic schools, (b) to express legal opinions wihout reference to juristic schools, (c) not to follow any juristic school at all, and (d) to derive conclusions directly from the Qur'an and Sunnah without referring to the juristic schools. Besides, since the term *taqlid* includes the above understanding of abandoning one of the schools of law in favour of the other, it was also condemned. Consequently, as we shall see later, such a method was also called ijtihad.

With the development of legal literature by the juristic schools, for a variety of reasons, it was considered inevitable to abide by those schools. Largely because elaborate opinions were available on most of the legal matters in written form, it was easier for a *qadi* to utilise this readily available material rather than to search for the relevant material in the original sources of law. We are not concerned for the moment with the causes which accelerated the tendency to abide by only one of these schools. We only want to explain the phenomenon of *taqlid* which evolved in the history of Islamic Law.

As we have argued above, in the first phase ijtihad evolved from its general meaning to be limited to the specific meaning of qiyas and thus it was reduced to be a part of the theory of the four sources of Islamic Law. In the second phase, it became further restricted to the specific schools of law. Finally, and consequent upon these developments, the activity of ijtihad came to be defined in terms of the association of a *mujtahid* with these schools.

In modern times the Muslim communities were confronted with a vast number of new problems for which there were no clear injunctions available i.e. neither in the Qur'an and Sunnah, nor in the books of jurisprudence. They were the problems which demanded either modification of the legal doctrines required on account of social change or in order that the objectives of the Islamic Law are protected. Or, they were problems which were, by their nature, *Mujtahad fihi* i.e. problems which demanded new solutions. The conservative scholars, however, resisted any effort towards ijtihad. They resisted the need for ijtihad and insisted on *taqlid*. Even when they were forced to formulate their opinions regarding these new problems and when they were compelled to resort to qiyas, they did not generally seek the basis of qiyas in the Qur'an and Sunnah directly. Most often they sought the basis of qiyas in the statements and opinions of the jurists of their respective schools. Thus they became more persistent in their *taqlid* of the juristic schools. In reaction to these attitudes there also emerged an opposition against the *taqlid*. This context informed the dialectical development of the concept of *taqlid* and ijtihad. Those who favoured *taqlid* opposed ijtihad and vice versa.

Opposition to *taqlid* grew in two phases. The first phase began during the seventh century of Hijrah when the Muslim world was invaded by the Mongols. In that period, leading Muslim thinkers felt that the institution of *taqlid* was responsible for their moral and intellectual decline. Some scholars argued that *taqlid* was driving Muslims away from the original teachings of the Qur'an and Sunnah. In the seventh century, movement against *taqlid* was eventually led by Ibn Taymiyyah (d. 652 H.) and his followers.

In the eighteenth century Muhammad bin `Abdul Wahhab in Najd and Shah Waliullah and Shah Isma`il Shahid in the South Asian Sub-Continent led opposition to *taqlid*. Since opposition to *taqlid* did not necessarily mean emphasis on ijtihad, it referred to adopting diverse methods of legal reasoning, thus eventually leading to adherence to a certain school of law.

For instance the method to argue directly on the basis of *Hadith* without necessarily adhering to the doctrines of the juristic schools led to the promotion of Hanbali school of law which relied on *Hadith* more than other schools. The movement of opposition to *taqlid* led by Muhammad b. `Abd al-Wahhab, *Salafiyyah* and *Ahl al-Hadith* very easily turned into movements of *taqlid* of the Hanbali school.

Similarly, another method of legal reasoning that opposed *taqlid* of only one particular juristic school, offered the option to choose from the opinions of any of the schools. This method was known by such terms as *takhyir* (to opt one from the diverse statements in various schools of law), *talfiq* (to re-arrange the statements and opinions of two or more schools of law to reconstruct a new doctrine), or *Rukhsat* (opting the lenient view). Nevertheless, in all these methods, the principle to abide by the juristic schools did exist in one form or the other. Ijtihad, when used in this context, came naturally to mean freedom from adherence to a particular juristic school. Although in its essential meaning this attitude could be termed as the opposite of *taqlid*, it was always excluded from the conventional definitions of ijtihad.

The second phase to opposition of *taqlid* began with the advent of modernism in the Islamic World. Whereas during the first phase, the opponents of *taqlid* such as Salafis were well versed in the traditional sciences including *fiqh*, it was not so in the second phase. The modernists did not have the required expertise in the traditional sciences. Consequently, their opposition to *taqlid* differed on several counts. No doubt, some of them presented themselves as a continuation of Ibn Taymiyyah and they also utilised his arguments and opinions against *taqlid* yet their frame of reference was definitely different. To Ibn Taymiyyah, *taqlid* was deviation from the Qur'an and Sunnah and was therefore innovative (or an innovation), even polytheistic. The modernists, however, looked upon *taqlid* mainly as an impediment to rationalism. *Taqlid* was conceived as a major obstacle in the path of advancement towards modernity. In short, the Salafi opposition to *taqlid* stressed on going back to the past, while

the modernists were looking toward the future

Taqlid in the modern age was associated with such terms as immobility, irrationalism, conservatism, reactionaryism etc. Thus inversely the meaning of ijtihad came to be related in this context to dynamism, rationalism, progressivism, reformation of religion and modernism. At a later stage, all these meanings were connected with the question of opening or closing the door of ijtihad.

Closing the door of ijtihad generally meant that there was no possibility of the establishment of a new school of law and the opening of the door of ijtihad meant to found a new school of law. In fact the door of ijtihad was never closed, so far as working within the limits of a certain school of law was concerned. Historically, this term developed only as a statement to express the historical fact that after a particular period no new schools of law were established.

From the above discussion it becomes clear that the essential meaning of ijtihad was to make an effort to search for the right legal doctrine on a particular problem. Later, however, a number of secondary meanings and connotations came to be associated with the term. Among them two became more prominent. The first was the association of the term with the sources of Islamic law i.e. Qur'an, Sunnah, qiyas, and ijma`. This association limited the scope of the sources of ijtihad. Consequently all such sources which have been in greater consonance with the objectives of Islamic Law were excluded from its scope. Among such excluded sources were *Istihsan*, *Maslahah*, *`Urf*, etc. Although the edifice of *Fiqh*, was largely based on such excluded sources and they were gradually incorporated into *Fiqh*, by means of ijma`, nevertheless the schools of law did not recognise their validity theoratically. The theory of four sources advocated by the followers of Shafi`i was gradually accepted by all the schools. The affiliation of the concept of ijtihad with the theory of sources, however, became progressively prominent with the passage of time. Hence the process of ijtihad lost its dynamism and came to be reduced to a mere mechanical act of deduction.

Secondly, ijtihad came to be defined with reference to the schools of law. As we have mentioned, even such a definition also limited the scope of ijtihad. Results of these limitations have since become immensely clear in recent times.

The jurists failed to solve new problems by adhering to the principle of *taqlid* alone, and they could not resort to the method of ijtihad because it was heavily restricted in their conceptions. Their failure may also be attributed to their general lack of knowledge about things in modern life. Mawlana Sulayman Nadvi writes:

> Only a couple of months ago, certain *mawlawis* (Muslim religious scholars) from Bombay issued a *fatwa* declaring the spirit used in paints for polishing furniture or painting houses, as unclean and prohibited its use in mosques. They did not content themselves with this declaration, they also sent an Arabic translation of this *fatwa* to Sayyid Rashid Rida, the Editor of *Al-Manar*, perhaps to invite congratulations. Rashid Rida ridiculed this *fatwa* mercilessly and pointed this out as a specimen of the intellectual level of the Indian `Ulama'. The purport of his criticism was that the `Ulama' in India were incredibly shallow in matters of comprehension, and ijtihad in shari`ah. Despite the fact that the present writer (Sayyid Sulayman Nadwi) had written a small note on alcohol not being unclean, spirit was not even alcohol, i.e. it was not inebriating.[34]

Despite the note of dissent by Sulayman Nadwi in the above editorial, the *fatawa* literature of this period does contain pronouncements against methylated spirit. If we analyse these *fatawa*, we observe that the issue whether spirit is clean or unclean was new in the sense that no judgement about it existed in the *Fiqh* literature. The *fiqhi* method to pass judgements was restricted to the method of analogical reasoning. The only analogy readily available to the *fuqaha'* was that of `*Khamr*'.

This incident illustrates quite sufficiently the inadequacy of the method of qiyas in respect of a number of new problems. It also throws into relief the fact that a *mujtahid* in the modern

age cannot properly function on the basis of the knowledge of *fiqh* alone, he must also have a proper knowledge of numerous other things, events and sciences.

Even in their academic training, the modern `ulama' were not well-equipped to solve new problems. They were, in fact, not even sure that the Muslim society was undergoing certain fundamental changes. They believed that if certain social changes did take place and that raised problems which could not be solved in the light of the doctrines of their school, such problems should be overlooked and no attempt made to solve them. These changes were appreciated only by those scholars who had to face them in their practical life.

With reference to ijtihad one of the most fundamental changes was brought about by the concept of modern state. According to this concept, the right of making and enforcing the law vested with the state and its institutions alone. Individuals were entitled to express their opinions, but opinions became law only after they had been enacted by the legislature. This situation posed the following questions: what would be the position of Islamic *Fiqh* and the opinions of the jurists? Who would have the right to legislate? What would the procedure of law making be? What would the role of the judiciary be? These and such other questions demanded serious reconsideration of the Islamic legal theory.

The new system of government also required the laws to be codified and systematically arranged so as to conform to the constitutional and legal moulds of the modern times. The situation demanded, first of all, that Islamic *Fiqh* be codified according to new styles and patterns in order that the judge, the lawyer, the plaintiff and the defendent, all may know what laws were applicable to them. Secondly, it necessitated that whatever lacuna existed in the Islamic law should be removed . In short, it required that the corpus of Islamic law be reformulated wherever the social changes so demanded. These requirements also affected the concept and meaning of ijtihad. Under this impact ijtihad automatically reverted back to its original meanings and even the two limitations which we have

discussed above became increasingly less relevant. However, it was felt that these limitations grew because a mechanical framework was assigned to ijtihad in Islamic legal theory. The new understanding freed the concept of ijtihad from these limitations.

At this point we feel that it is essential to note that it is wrong to explain the legal reasoning in ijtihad, as a problem of arithmetics or algebra in which one proceeds from known to the unknown. It is not true that solutions to new problems are not already given and that they are to be discovered on the basis of a certain rational calculus.

Law operates in a society. In questions of law one does not proceed from the known to the unknown, but it is often a question of known social practices. In many cases the known practices are several. The question to be considered by law is to decide which one, or which ones, of these practices is lawful. Sometimes, the question is asked about a particular event or an issue. In either case the point at issue is the interpretation of law with reference to a particular social event. In other words, the question demands justification in favour of one of the several possible forms of this event.

What would be the criteria of this interpretation or justification? If we analyse it in detail we find that this process is rather a subjective one. It not only requires employment of logic but also refers to the social conscience and psychology of the interpreter. The one who expresses an opinion about a certain event does so in the first instance as an individual, the justification of that opinion comes later. Naturally, these opinions are conditioned by the individual's preferences and attitudes. The arbitrariness derived from this attitude prompted the earlier jurists to restrict ijtihad by the use of qiyas. This method, however, could not fully eliminate arbitrariness from the method of reasoning. Perhaps the only solution to prevent arbitrariness is first to employ the method of inductive reasoning as far as the Qur'an and Hadith are concerned, and secondly, together with individual efforts, ijtihad should be exercised as a collective duty.

It may thus be concluded from the above analysis that ijtihad constitutes an effort to opt for one of the two or more possible solutions in a given situation, and to provide the legal justification for that solution. From this point of view it seems obvious that while one might discuss such theoretical issues as the necessity of ijtihad, the aptness of its definition(s), qualifications of a *mujtahid* etc., one must also view the problem from two additional angles: (i) with reference to the *mujtahid*, and (ii) with reference to the problem itself.

Mujtahid, obviously, is the one who exercises ijtihad. From this angle a number of questions are be studied. Who is authorised to exercise ijtihad? What are the requirements of a *mujtahid*? Can the *mujtahids* be classified and categorised? Should the *mujtahid* be an individual only or could ijtihad be entrusted to an institution?

The second angle concerns the nature of the problem. From the point of view of Islamic legal theory the problems which require ijtihad are technically called *mujtahad fihi*. The question is how to define *mujtahad fihi* problems? Can the term be extended to the problems already decided by the earlier jurists? Can it include the opinions on which the jurists of the past had arrived at some consensus? Can the problems on which there exists a difference of opinion among the jurists be called *mujtahad fihi*? Can we apply the term to the jurists' opinions which were justified on the grounds of custom and social practice? And should we look for new interpretations for the latter problems. If the above categories do not belong to the *mujtahad fihi*, then does the definition include only those problems which have arisen recently? These and similar questions would help define the meaning and scope of ijtihad.

Iqbal invited the attention of scholars to most of these questions. He also made an effort to answer some of them, but obviously his main purpose was to invite the scholars to contemplate on these problems. He did not aim at offering any final and conclusive opinion. Nevertheless, he broke new grounds by offering a definition of ijtihad from a new angle. His definition was not only in consonance with the modern

needs but was also in conformity with the original meanings of ijtihad.

However, before we proceed to analyse Iqbal's reconstruction of ijtihad, a study of the semantic and historical context in which Iqbal developed his doctrine is essential. The following chapter studies the development of the terms and concepts of ijtihad and *taqlid* in the subcontinent.

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15. *Ibid.* p. 143.

16. *Sunan al-Darimi* (Damascus: I`tidal, 1349 H.), vol.I, p. 60. eds. Mawlana Yusuf Bannuri has commented on the chain of narrators of this *hadith* in detail. (Unpublished article "Al-Ijtihad" for Mu'tamar al-Fiqh al-Islami, 1976). His arguments may be summarised as follows:

> This *hadith* has been reported by *Darimi*, *Abu Da'ud* and *Tirmidhi* through several chains. Harith b.`Amr al-Thaqafi has reported it on the authority of some of Mu`adh's companions. He has not given the names of these companions. Harith is a well known Hadith reporter among the notable successors of the Companions. Critics of *Hadith* have not disqualified him as *majhul al-`ayn* (an unidentified anonymous person), nor as *majhul al-wasf* (a person whose character is not established). He is, on the contrary, among the teachers of Abu`Awn al-Thaqafi.
>
> No detailed criticism (*al-jarh al-mufassar*) exists about Al-Thaqafi. Ibn Hibban has counted him among the trustworthy *Hadith*-reporters. It has also been noted that Abu`Awn al-Thaqafi alone has reported from Harith. However, this solitary reporting cannot weaken the report, because from Abu`Awn onwards the *Hadith* has been reported by persons like Abu Ishaq, Shu`bah, Thawri and Abu Hanifah, persons whose reliability has been unanimously verified by the critics of *Hadith*.
>
> The *hadith* has been reported by Abu Ishaq al-Shaybani and Shu`bah b. al-Hajjaj both from Abu`Awn. From Abu Ishaq it is reported by Abu Mu`awiyah al-Darir; and from Shu`bah by Yahya b. Sa`id al-Qattan, `Uthman b. `Umar al-`Abdi, `Ali b. Muhammad, Muhammad b. Ja`far, `Abd al-Rahman b. Mahdi and Abu Da`ud al-Tayalisi. The next chain reported from the above consists of numerous names, to the extent that the jurists of the third generation (*tabi`in*) have declared the *hadith* as "accepted" (*maqbul*).

A few critics of this *hadith* have raised questions about the companions of Mu`adh from whom this *hadith* has been reported, but their names are not mentioned. Apparently this anonymity

weakens the report of the *hadith*. Mawlana Bannuri has refuted the objections on the following four grounds:

i. Mu`adh's companions are very well known for their reliability and piety. None of them has been subjected to criticism. Contrary to this objection, Khatib al-Baghdadi has argued that the very fact that Harith b. `Amr has reported the *hadith* from Mu`adh's companions without naming them, proves that the *hadith* is well-known (*mashhur*) and that its narrators are numerous. Mu`adh's knowledge and piety needs no proof. Therefore, his companions must also possess same qualities.

ii. Technically as well, a *hadith* reported from a group without naming its individuals is by itself an indication of its being well-known. Qadi Abu Bakr ibn al-`Arabi has supported this view. Bukhari also reported in his *Sahih* a *hadith* from `Arwah al-Bariqi in the following words: "I heard this *hadith* from a group who reported it from `Arwah. The anonymity of the group has not in any way detracted from the soundness of this *hadith*.

iii. Under the entry "Shu`bah", Ibn Abi Khaythumah in his *Tarikh* writes: "I heard from Harith b. `Amr, the nephew of Mughirah b. Shu`bah, who used to report from the Companions of the Prophet (P.B.U.H) who narrated it from Mu`adh b. Jabal". Ibn `Abd al-Barr has also supported this point. Besides, the companions of Mu`adh are none but the companions of the Prophet (P.B.U.H) who are naturally reliable.

iv. Khatib al-Baghdadi has reported the *hadith* through another channel. According to it the *hadith* is reported by `Ibadah b. Nasi from `Abd-a-Rahman b. Ghanam, and both of them report it from Mu`adh. This chain is continued (*muttasil*) and all of its narrators are trustworthy.

17. Al-Shafi`i, *Kitab al-Umm*, vol.VI (Cairo: Amiriyah, 1327 H.), p. 203.

> Shafi'i expresses the same point a little differently. He says: "Ijtihad does not operate independently. It occurs in the mind of a *mujtahid*. Thus, the Book of God, Sunnah and ijma` have definite priority over the opinion of a person ... Whoever claims superiority of ijtihad opposes *Kitab* and

Sunnah by his personal opinion". (p. 203).

Further, "whoever based his ijtihad on grounds other than *Kitab* and Sunnah committed an error" (p. 204). The point is elaborated by Shafi'i in his *al-Risalah* (Ed. Ahmad Muhammad Shakir, Cairo: Mustafa, 1940, p. 40). He refutes the validity of personal opinion (p. 40). On pp. 503-505, he stresses the need for qiyas and limits the scope of ijtihad by confining it to qiyas. He says: "ijtihad is only a search for a thing. The search for a thing cannot be pursued without a guide. And the guidance is provided by qiyas.

18. Al-Shafi`i, *Al-Risalah*, op. cit. p. 507. "*Istihsan* is the pursuit of pleasure".

19. Ghazali, *Al-Mustasfa*, vol.I (Baghdad: Muthanna, 1970), p. 315. Ghazali says, "Whoever argues on the basis of *maslahah*, indulges in the (divine function of) making of shari`ah. It is similar to the fact that whoever employed *Istihsan* committed the crime of assuming himself to be the authority of making shari`ah.

20. Ghazali, *Maqasid al-Falasifah* (Ed. Sulayman Dunya, Cario: Dar al-Ma`arif, 1961), p. 102. Ghazali divides the premises into thirteen types. Among them those based on pure reason are called "primary premises". On p. 111, he explains that qiyas employed in Rhetorics and Jurisprudence does not necessarily require certainty. The premesis employed in these fields are called conjectural and popular (because they are accepted generally). On p. 90, analysing the term *tamthil*, he elaborates, "*Tamthil* is called qiyas by the jurists and theologians. It is in fact transference of judgement from one particular to another person on the basis of the similarity which exists between those two particulars."

21. Ibn Taymiyyah, *Al-Qiyas fi'al-Shar` al-Islami* (Cairo: Salafiyyah, 1375 H.), p. 6. He says, "The true qiyas (analogy) is that which is found in shari`ah. That is combining the two similars and separating the two dissimilars. The former is called *qiyas al-tard* and the latter is qiyas *al-`aks* (inverse analogy).

He further says, "The proper analogy is like the following. The reason (`*illah*) on which the judgement is based in the original Permise, is found in a far` (detail), provided no other

impediment against the judgement exists in that far`".

22. Shatibi, *Al-Muwafaqat*, Vol.I (Tunis: Dawlatiyah, 1302 H.), p. 11. He says, "The premises employed in this science (Jurisprudence).... are certainly definitive".

23. Nadhir Ahmad, *Ijtihad* (Dehli: Afdal al-Matabi`, 1325 H.)

24. Abu'l Husayn al-Basri, *Al-Mu`tamad fi Usul al-Fiqh*, Vol. I (Damascus, 1964), p. 10. He says, "As to *al-nazar al-sahih* (sound reasoning), it means to arrange the known or conjectural data according to reason in such a fashion that it leads to a known or conjectural fact". He also explains, "*Al-Nazar* is deliberation (*fikr*) or you may say it is reasoning or agreement." Further, "If you ask me what I mean here by the term method of reasoning, I would say: qualification, premises and their arrangement".

25. For further details, see Mazheruddin Siddiqi, "General Characteristics of Muslim Modernism", *Islamic Studies*, vol.IX (1970), pp. 33-68.

26. Al-Shatibi, *Al-Muwafaqat*, Vol.II (Tunis, 1302 H.) p. 190

27. Muhammad Taqi `Uthmani, *Taqlid Ki Shar`i Haythiyyat*, Karachi: Dar al-`Ulum, n.d.).

28. *Ibid*. p. 25.

29. *Ibid*. p. 28.

30. *Ibid*. p. 30.

31. *Ibid*. p. 10.

32. *Ibid*. p.p. 35-36.

33. *Ibid*. p. 14.

34. Editorial note in the *Ma`arif* (Azamgarh, vol. XI, March, 1923), p. 168.

DEVELOPMENT OF THE DOCTRINE OF IJTIHAD IN THE SUB-CONTINENT

"The tendency to over-organization by a false reverence of the past, as manifested in the legists of Islam in the thirteenth century and later, was contrary to the inner impulse of Islam."

Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Institute of Islamic Culture, 1986), p. 120.

Two

Development of the Doctrine of Ijtihad in the Sub-Continent

In the twentieth century when Iqbal wrote his lecture on ijtihad, *taqlid*, or adherence to one of the schools of Islamic Law, had become a prevailing feature of the Muslim community in British India. It would be, however, incorrect to conclude that debates about ijtihad and *taqlid* began only in the twentieth century or the need for ijtihad was never felt earlier.

In fact *taqlid* appears to have emerged as a consequence of several historical factors. The following factors could have contributed toward establishing firmly the hold of *taqlid*. Firstly, the *Hanafi Fiqh* presented a fully developed legal system with several comprehensive legal compendia and a vast *fatawa* literature. This situation led to a belief that no further research in Islamic law was needed. Moreover, the fear of external invasion, during the Sultanate period, especially the Mongol invasion, contributed to a sense of insecurity that discouraged any new ideas. The realisation of Muslims being a minority in the Sub-Continent, and being threatened by assimilation into the Hindu cultural entity, may be another factor that favoured conservatism.

It may be argued that these factors compelled Muslims to virtually go into a shell and close doors against movements of free thought and diversity of opinion. Conserving their tradition and maintaining *status quo* under the banner of *taqlid* could have been considered the only possible way out to preserve their unity as well as identity.

It must, nevertheless, be kept in mind that such characterisation of Muslim culture in the Sub-Continent belies its dynamic and perpetually progressive nature. True, it had its ups and downs. However, the social needs and ever changing circumstances perennially demanded that the corpus of Muslim law should be continuously reviewed and the process of research and re-interpretation should continue unabated. It is evident from the fact that in the Sub-Continent there existed a large number of collection of *fatawa* which usually aimed at updating the compendia of the *Hanafi Fiqh* which consisted of the better views of the ancient and modern jurists on various subjects of law. These opinions were authoritative as well as topically significant.

Muhammad Ishaq Bhatti in his recent book *Barri-i-Saghir Pak-o-Hind men `Ilm-i-Fiqh* (The development of the science of jurisprudence in the Indo-Pakistan Sub-Continent) has analysed eleven of these *fatawa* collections.[1] Obviously, this does not embrace in totality the *fatawa* collections. But the very fact that in approximately five hundred years eleven collections were prepared, indicates that the Muslim society of the Sub-Continent was never static. It also shows that the Muslim jurists were never negligent of their duty to respond to the ever-new requirements of the society, never oblivious to the need of re-interpretating the corpus of *Hanafi Fiqh*. Here it seems apt to point out that among the eleven, the following four collections were made at the behest of, or for presentation to, the ruling Sultans:

1. *Fatawa Karakhani* (during the period of Jalal al-Din Khilji, 1290-1294)
2. *Fatawa Tatarkhaniah* (during the reign of Muhammad Shah Tughlaq (1325-1351) and Feroze Shah Tughlaq, 1351-1388).
3. *Fatawa Babari* (on the orders of Zahir al-Din Babur, 1483-1530).
4. *Fatawa Alamgiri* (on the orders of `Awrangzeb `Alamgir, 1618-1707).

The argument that the *taqlid* was an answer to the threat

posed to the Muslim entity in the Sub-Continent, is also not tenable. It might have created an urge to protect their cultural entity by strictly following the Hanafi School. Nevertheless, it would be incorrect to conclude that the Muslims had excessively fortified themselves by resorting to *taqlid*, and had as such made themselves intellectually immune to the external influences of all kinds. On the contrary, we know it from history that after the destruction of Baghdad by the Mongols the need for the reconstruction of Islamic thought, especially of law and jurisprudence, was felt very strongly all over the Muslim world.

Among the very forceful attempts made in this connection the most notable was that by Ibn Taymiyyah. The impact of his ideas was also felt in the Sub-Continent during the reign of Muhammad bin Tughlaq.[2] Later, during the Mughal period we find scholars like Muhammad Hayat Sindhi (d. 1750) and others from Sindh stressing the need to study *Hadith* i.e. the original source of *fiqh*.[3] These scholars taught *Hadith* in Mecca and influenced a number of students in the Muslim world including Muhammad b. `Abd al-Wahhab (d. 1787). This influence was revived by Shah Waliullah and his disciples in the eighteenth century in the Sub-Continent.

In the eighteenth century, Muslim societies were passing through the most critical period of political and social decline. In such circumstances Muslim thinkers could not help but conclude that the only way out of the impasse was to get rid of *taqlid* and go back to the original teachings of the Qur'an and Sunnah. This attitude on the one hand indicated a realisation of the need for a comprehensive change in the social structure and the other, it evinced a recognition of the fact that the existing corpus of *fiqh* was not sufficient to cope with new problems. Thus it was felt that the Muslims should turn directly to the Qur'an and Sunnah for proper guidance.

It must be noted that by this time *taqlid* had been transformed into a social attitude. *Taqlid* was no longer only a legal or religious doctrine, it had also become a symbol of social identity. Originally, freedom from *taqlid* meant to be free from

adhering to any school of law, but it gradually acquired the sense that one who declines to be a *Muqallid* (adherent)to a particular school of law was necessarily forming his own school of law. This alternative was never admired and it was taken to mean to be claiming for himself the status of a *Mujtahid*. Consequently, any one who opposed *taqlid* was labelled as a rival to the founders of the four well-known legal schools. The following extract from Mawlana Qasim Nanawtawi's book supports our observation. Explaining the obligatory nature of *taqlid* he says:

> Like a person who sometimes abandons the treatment by a physician or a doctor in favour of another one and obeys the latter in the same manner as he did the former. Our ancestors in the early period did, sometime, give up one school of law in favour of the other for certain reasons but after adopting the new school they adhered to it completely. They did not adopt the policy of choosing one thing from one school and the other from the other and thus developing a fifth school of religion.[4]

In the above statement the expression "fifth school" deserves particular attention in the context of the four prevailing schools of law. This attitude transformed the terms of *taqlid* and ijtihad into two opposite terms, originally the opposition of *taqlid* did not necessarily mean the affirmation of ijtihad.

This eighteenth century movement of the opposition to *taqlid* proved advantageous to the Muslims. It prepared them intellectually to face the new shocking impact of the colonial powers which was to come upon them in the next few decades. The Muslims had become conscious of their political and social weaknesses long before the advent of the modern era. They had long since concluded that the main cause of their decline was *taqlid* and the consequent distance from the original sources of Islamic teachings. This is the reason why Muslims could be dominated only politically by the European powers. They succeeded, nevertheless, in maintaining their identities on the levels of religion and culture. But for this it was quite possible

that like other communities and cultures the European civilization would have effaced their identity. The protection of their religious and cultural identity made it possible for them to subsequently seek political independence. Muslim religious and cultural continuity was definitely connected with their strong belief that the Islamic law was fully capable of coping with the challenges of the changed times and, consequence, it prepared the Muslims to meet these challenges.

The capacity to meet the new challenges was created by the continuous activity of ijtihad which in fact never ceased at any time in the history of Islam. Hence despite the general feeling about the closure of the gate of ijtihad, the fact is that the books of *fiqh* never proscribed it. On the contrary, ijtihad was prescribed for an *Imam*, a *Qadi* and a *Mufti* as a mandatory qualification for his office. *Fatawa `Alamgiri*, on the authority of the *Hanafi Fiqh* texts such as *Hidayah*, *Al-Multaqat* and *Zahiriyyah*, postulates ijtihad as a requirement for becoming a *mufti* or a *qadi*.

> The jurists agree that a *mufti* must be a *Mujtahid*. A person who can refer to the opinions of a *Mujtahid* but is not himself a *Mujtahid* cannot become a *mufti*. For such a person it is obligatory that whenever he expresses his opinion on a certain legal point he should only quote the opinion with reference to that specific *mujtahid*, and not as his own opinion. *Zahiriyyah* mentions consensus of the jurists on the fact that ijtihad is prescribed as a prerequisite for a qadi.[5]

SHAH WALIULLAH

The decline of religious intellectual thought in India began with the weakening of the Mughal dynasty in the Sub-Continent. In this turmoil the role of Shah Waliullah is very prominent. He undertook the task of the re-construction of religious thought which is epitomised in his work *Hujjat Allah al-Baligbah*. However, his most important contribution was the re-definition of the concept of the law. On the one hand he raised his voice against innovations and paganish practices, in order to protect the true spirit of religion, and on the other, he

provided more effective and more ethical grounds for the implementation of the Islamic law by analysing its historical and sociological context by extracting it from the strict formalistic mould.

Shah Waliullah explained the revelation of Divine laws and their process of reform stating that a prophet examines the laws prevailing in his time. He retains those laws which either pertain to the pure Divine rites or to the religious and social practices commensurate with the laws of religion. He amends only those laws which though originally based on the understanding of common good, do no longer hold good or have a *locus standi* in his time. "The reason is that the real objective of laws is the common good (*masalih*)"[6]

Studying Islamic law in this perspective, Shah Waliullah suggested that in this respect one must first examine the social conditions of the pre-Islamic Arabia, as they are the material source of Divine laws. Secondly one should study the process of reform.[7]

The shari`ah of Prophet Muhammad (P.B.U.H) had its material source the religious and social customs of the People of Banu Isma`il "as the objective of Divine law is to reform what people have and not to confound them with new things with which they are not familiar".[8]

Shah Waliullah explains the development of law and society with reference to four stages of social evolution. Firstly, there are primitive societies which are not yet civil and live in forests or mountains. The second level is when they build cities and begin to form a civil society. The third level evolves when conflicts appear and they feel the need for an authority to settle their disputes. The fourth level emerges when conflicts between the interests of these various cities create a need for a ruler (*khalifah*) to regulate the affairs between the cities.[9]

The laws begin to develop "on an agreed custom in a society to settle their disputes, to punish the unjust and also to defend against the external threat".[10]

Customs begin to evolve at the first level on the basis of

mutual needs and in order to safeguard the common good. "The custom plays the same role in the social system as the heart plays in a human body. The customs are, therefore, the prime target of all religions and the Divine laws deal with them directly as well as implicitly".[11]

Shah Waliullah explains the principle on which customs are universally accepted as follows:

> The knowledge which has been given to all humans, whether they are Arabs or non-Arabs, settled in cities or not, even though their learning differs, pertains to the prohibition of certain habits and customs which disrupt the social system.[12]

In legislation, importance must be given to the fact that laws must be based on universally accepted principles and people must not be bound by the customs of others. This principle has been illustrated by Shah Waliullah in his examination of the criterion for the rich and the poor.

> When the need arises to assess luxury, for instance, one must look at what is considered luxury per prevalent customs. One must study the customary laws of the luxury. This assessment must conform to the custom of the majority of the people, whether living in the East or West, whether they are Arabs or non Arabs. It must be acceptable to them like a natural law, provided there is no other impediment.
>
> If the assessment is not based on the general custom on account of immense diversity, it may be based on the Arab custom at the advent of Islam, because the Qur'an was revealed in their language and the law was fixed on the basis of their customs.[13]

If the Islamic injunctions based on Arab social customs bring hardships to non Arab nations and cultures they can be modified in the light of the universal principles and be adapted to the customs of a particular nation. Shah Waliullah explains:

> There is no method of legislation regarding injunctions

> and penalties better and easier than that taking into consideration the customs of the peoples in which the Prophet (P.B.U.H) has been sent. It must also be taken into consideration that these laws are not so rigid as to create hardship for future generations.[14]

From the above exposition of Islamic law, one may conclude that since Islamic law is meant for the whole mankind and for all times, the process of its interpretation and implementation must continue among various nations and at various times. It should constantly refer to the customs and practices prevailing among those peoples. It is equally valid to conclude that the legal injunctions developed for a certain people and period will not be binding for other peoples and generations if they bring hardship or cause harm. There would, therefore, be a perennial need to continue the process of the interpretation of Islamic law at all times. This process is called ijtihad.

Stressing the eternal necessity of this process Shah Waliullah says:

> Ijtihad is a collective responsibility at all times. By ijtihad here we do not mean the absolute ijtihad as that of Shafi`i ---- what we are saying is that the problems arising at various times are infinite and unlimited and all of them per force majeure require application of divine law. What is extant and written in codified form is not enough. It is replete with numerous differences of opinion to the extent that unless one refers to the original sources, the solution of these differences is not possible.[15]

In order to clarify Shah's view further on this point, we summarise his discussion of the history of the development of Islamic law. He remarks that the *fiqh* (Islamic law) was not written in the days of the Prophet (P.B.U.H), nor were the problems of law discussed in the manner later jurists did.[16] Every companion of the Prophet (P.B.U.H) witnessed, as much as possible, the matters relating to the Prophet's (P.B.U.H) actions of devotion (*`ibadat*), his opinions (*fatawa*) and his judgements. They memorised and understood them and

searched for their reasons and causes. They categorised some matters permissible and others not permissible. The companions were more interested in personal satisfaction and conviction, rather thean in methods of reasoning.[17]

In the third generation of successors to the companions, a group of people emerged who collected this information about laws and *Hadith*. They collected the *fatawa* and judgements from various cities and eventually they attained religious authority among the Muslims. They raised questions and exercised ijtihad, their disciples followed them.[18]

After discussing the immense juristic activities in the following period when various schools of law appeared in the major cities, Shah Waliullah concludes his discourse with this observation:

> It must be noted that before the fourth century (*Hijrah*) the people in general were not in agreement with adhering (*taqlid*) to a specific religion. Abu Talib Makki writes in *Qut al-Qulub* that 'writing of books and compendia is something new. To quote other persons' opinion as authority, and to give opinion (*futya*) according to the views of one person among the people, and abide by that person's opinion in each and every matter, and to construct laws according to his views, the people did not practice such things earlier in the first and second centuries.[19]

Analysing the causes of *taqlid*, Shah Waliullah observes that until the fourth century people consulted scholars without specification of schools.[20]

The position of a judge and a *mufti* was given only to a *mujtahid*, and only a *mujtahid* was called a jurist. After these centuries there came other people who dispersed right and left and there arose new issues and differences on the law and jurisprudence among them.

This turned out to be the main cause of *taqlid*. Among other causes, the Shah enumerates the corruption of judges, "literacy of the administrators, and lack of specialisation in

sciences. Eventually chaos and *taqlid* increased more and more with the passage of time "until the people began to feel content with refraining from discussing matters of religion and were satisfied claiming that they had found their forefathers adhering to that group and they were following them."[21]

As we shall see, Shah Waliullah's views on ijtihad, *taqlid* and development of Islamic law contributed a great deal to the formation of Iqbal's views on the subject. However, during the period between Shah Waliullah and Iqbal the ideas of ijtihad and *taqlid* remained a subject of discussions among the scholars and leaders of opinion in the Sub-Continent. As the various intellectual and historical contexts compelled reassesment of ijtihad from different angles, the discussions presented a significant semantic dimension. The following chapter studies this semantic development of the concept of ijtihad.

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13. *Ibid*. p. 217.

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15. Shah Waliullah, *Musaffa*: Commentary on Malik, *Muwatta* (Dehli: Faruqi, 1293 H.), p. 12.

16. *Hujjat* ..., op. cit.,p. 316.

17. *Ibid*. p. 319.

18. *Ibid*. p. 329

19. *Ibid*. p. 355.

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21. *Ibid*. p. 360.

SEMANTIC DEVELOPMENT OF THE CONCEPT OF IJTIHAD

"I want rather to fix your gaze on some of the ruling concepts of the culture of Islam in order to gain an insight into the process of ideation that underlies them, and thus to catch a glimpse of the soul that found expression through them."

Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Institute of Islamic Culture, 1986), pp. 99-100.

THREE

SEMANTIC DEVELOPMENT OF THE CONCEPT OF IJTIHAD

In the preceding chapter we discussed how the idea of ijtihad continued to exist in the Sub-Continent and finally how Shah Waliullah re-stated it in his teachings. This chapter looks at the semantic development of the concept.

The various movements that arose in response to social, economic and political changes in the Sub-Continent employed the idea of ijtihad with reference to their programmes and teachings. Consequently the term was used in different contexts and with new meanings. Among these various semantic contexts were the debates about adherence to or independence from the traditional schools of law, (*ijtihad* and *taqlid*), reformation of religion, rationalism, pan-Islamism, nation state etc. We shall discuss prominent semantic developments and their contexts.

IJTIHAD AND TAQLID

Shah Waliullah's teachings generated several trends in the Sub-Continent. One of them emerged as a theological movement under the leadership of Shah Isma`il Shahid who stood for absolute opposition to *taqlid* and *Bid`at* (innovations in religion). A second trend stirred a progressive trend but emerged as a movement after several years in the form of `Ubayd Allah Sindhi's reformist and revolutionary group. The third trend stood between these two trends. They did not accept Shah Waliullah's rejection of *taqlid*. They continued their adherence to the Hanafi school. They appeared in the

form of the Deoband school and Barelawi schools. Both favoured *taqlid*. Their differences in other details are not relevant here. What follows is an attempt to briefly analyse the first and the third trends.

Shah Isma`il Shahid

Mawlana `Abdul Hayy al-Hasani has enumerated about thirty eight books written on the problem of *taqlid* and ijtihad. Shah Waliullah's work *Al-`Iqd al-Jid fi ahkam al-ijtihad wa`al-taqlid* tops this list.[1] This aspect in Shah Waliullah's teaching turned into a movement under the leadership of Shah Isma`il Shahid. Shah Isma`il Shahid criticised *taqlid* in his work *Taqwiyat al-Iman* within a theological framework and declared adherence to *taqlid* as tantamount to polytheism.

There is one full chapter in *Taqwiyat al-Iman* against the `innovation' of *taqlid*. In this chapter he has argued:

> Sovereignty belongs to God alone. No one else has the authority to command obedience ... Prophet (P.B.U.H) himself is not the sovereign. How could a *Mujtahid* or *faqih* be so? They are far below in rank.[2]

Explaning the meaning of *taqlid* he says:

> *Taqlid* means to obey some one's orders without asking for justification or authority. One cannot enquire about the reason on which that command is based. Largely the common people take the unauthorised practices and sayings of Mawlawis and Darweshes as authority and do not inquire about its evidence. They apparently consider these Mawlawis and Darweshes as law givers. Such a *taqlid* is an innovation and hence prohibited.[3]

Nevertheless, Shah Isma`il was not entirely opposed to *taqlid*. He condemned only such forms of *taqlid* where a *Muqallid* (the follower) blindly regarded his *Imam* as the law-giver. On the other hand to ask something about which one did not know was not called *taqlid*. It was clear that Shah Isma`il's distinction between *taqlid* and ijtihad was not based on the absence or existence of knowledge but it was rather a

question of attitude and expertise. He says:

> A *Mujtahid* is not distinguished from a *Muqallid* on the basis that he is more knowledgeable about the problems of Islamic law or that he devotes more time to worship of God. There are numerous *Muqallidin* who have more knowledge than the *Mujtahid* and who devote more time to worship. This distinction is, in fact, based on a still higher consideration, i.e. the skill and ability to infer rules of law.[4]

The term ijtihad has thus been used by Shah Isma`il Shahid in a much broader sense. It encompasses all aspects of human thought rather than mere *Fiqh*. In his own words:

> To us ijtihad is not restricted to the field technically known as jurisprudence. It has a wide spectrum to include all fields. However, every science (*fann*) has its own methods to connect the given with the not given.[5]

According to the statements mentioned above, the basis of ijtihad is the ability of a jurist to interpret legal rules. The inference from the rules has been described as a method and it has been further defined as a method of connecting the given with the not given.

This definition of ijtihad not only lays stress on the continuity and constant need of this process but it is rather the name of an intellectual process whose necessity is perennially felt in all walks of life.

This movement against *taqlid* which emanated under the leadership of Shah Isma`il Shahid initiated a long chain of debates and discussions on the problem of *taqlid* and ijtihad in the Sub-Continent. Several books and articles were written on this subject and continue even today. Among those who participated in these debates was a group of people who vehemently denied the need of *taqlid* and did not agree to the idea of belonging to, or following, any school of law. Since these people insisted on following *Hadith* rather than *Fiqh* they were called "*Ahl Hadith*."

Nadhir Husayn Muhaddith Dihlawi was very prominent among the "*Ahl Hadith*." He wrote profusely expounding the stand of this school. Refuting the argument of those who adhered to *taqlid*, and based their conviction on certain Qur'anic verses and *Hadith*, Nadhir Husayn wrote that the mainstay of the arguments in favour of *taqlid* are the following two verses of the Qur'an:

(1) Ask the people of the (*abl al-dhikr*) if you know not. (16:43)

(2) If you have a dispute concerning any matter, refer it to Allah and the Messenger (P.B.U.H) if you are (in Truth) believers in Allah and in the Last day". (4:59)

Nadhir Husayn explained that the expression "*ahl al-dhikr*" in these verses refers to the people of the Book whereas the verses are addressed to the polytheists in Mecca. To translate "*ahl al-dhikr*" as the founders of legal schools, and to argue about the obligation of *taqlid* from those verses is, therefore, unacceptable. "The authority of *taqlid* is not proven by any Qur'anic verse or *Hadith* nor has any *Imam* permitted adherence to his opinions."[6]

Therefore: "Since personal adherence (*taqlid*) is not prescribed by the Law of God or His commands either expressly or otherwise, it is a condemnable innovation"[7]

There was yet another group which favoured *taqlid*, but did not consider it necessary to follow any particular school of law. Mawlana `Abd al-Ali Bahr al-`Ulum Farangi Mahalli, in Lucknow, explained on the authority of Ibn al-Humam that it was not obligatory in Islamic law to adhere to one specified school of law. Further, every school of law permitted recourse to the more convenient and lenient view in case of conflict of laws.[8]

The Deoband and Barelawi schools of thought both subscribed to *taqlid*, adherence specifically to the school of Abu Hanifah. Mawlana Qasim Nanawtawi of Deoband, justifying the necessity of adherence to one specific school of law, draws this interesting analogy:

> Now coming to the question of *taqlid*, no doubt Islam is one religion and all the four schools of law are on the right path. Nevertheless, as the art of medicine in Greek tradition or in modern allopathic medicine is one and all the doctors have the capability and authority to treat, yet at times when there is a difference of opinion among the doctors in diagnosis, one follows only one doctor who is treating the patient at that time. Only his advice is followed and no attention is paid to other doctors. Similarly in case of differences of opinion among the various jurists or *Mujtahids* it is necessary that only one *Imam* or *Mujtahid* be followed in all cases.[9]

Sir Sayyid Ahmad Khan

The above exposition of *taqlid* by Mawlana Nanawtawi must be understood with reference to Sir Sayyid Ahmad Khan's rejection of *taqlid* and his stress on ijtihad. He severely criticised the `ulama who had become symbols of stagnation and *taqlid*.

In a speech in Lahore in 1884, Sir Sayyid argued:

> Whoever considers the opinions and commands of a person other than the Prophet (P.B.U.H) equally obligatory in matters of religion and regards it sinful to disobey Him and believes in His obedience as a means of reward or salvation, commits a kind of polytheism which I call polytheism in prophethood.[10]

This statement reminds one of Shah Isma`il's views. Sir Sayyid believed very strongly in this doctrine. In a letter to Mahdi `Ali Khan he wrote:

> Listen, my brother! It is no longer the time that I should keep my conscience burdened and my inherent thoughts to myself. I say it very clearly that if people do not abandon *taqlid*, do not follow the only light in the Qur'an and Sunnah, and do not face the challenge of modern sciences to religion, Islam will disappear from the Sub-Continent. It is as a well-wisher (of the nation) that I am compelled to undertake all sorts of new researches and it

> is because of them that I reject *taqlid*, ------ The harm that *taqlid* has caused to Islam is not comparable to any other evil --- It is no wonder that like Jews and Christians, we have come to look up to our 'ulama' as authorities besides God.[11]

In his biography of Sayyid Ahmad Khan, Altaf Husayn Hali wrote that Sir Sayyid rejected *taqlid* in all Islamic legal matters, whether they were rules and regulations or basic principles.[12] He was always in disagreement with his contemporary scholars. Hali has summed up these disagreements in his book, *Hayat-i-Javed*. Among them, the following three are specifically related to our subject:

1. *Ijma`* has no legal authority.
2. *Qiyas* has no legal authority.
3. *Taqlid* is not obligatory.[13]

Discussing the religious doctrines of Sir Sayyid, Bashir Ahmad Dar explains that Sir Sayyid agreed to a doctrine which he considered as a *Shi`i* doctrine, that the existence of a *Mujtahid* is essential in every period. This *Mujtahid* will be responsible for interpreting the Qur'an and will adopt Islamic law to the needs of his time by drawing inferences from original sources. He used to ridicule the belief of the *Ahl al-Sunnah* that the gates of ijtihad were closed. He quoted Shah Waliullah's statements to support his view-point.[14]

State and Legal Reform

In 1798 the British administrators started introducing changes in the local legal structure. Although they replaced the local laws by the British laws gradually, yet so far as personal laws were concerned, they decided that the personal laws of both Hindus and Muslims would continue. For this purpose they appointed scholars of the concerned religions as consultants to British Judges in the Courts.

Later, however, they got the most important and basic books of religious laws translated into English and thus the positions of the Muslim jurisconsults were eventually

abolished. These changes were not partial or superficial. They were brought about by the concept of law followed by modern states according to which the law, in order to be implemented, must first acquire the regular sanction of the state. This sanction was accorded through legislative institutions.

Secondly, the courts were given the authority to explain and interpret laws. Other courts and judges were also subsequently bound by those judgements since they served as precedents. Such an authority for the decision of the court was not enjoyed by the courts of Islamic law in the Sub-Continent before this period. Nor was it necessary for Islamic law to be sanctioned by the state. All these developments called for modernization of Islamic law. The first step towards this goal was to codify and re-write Islamic legal materials in a modern style. The law was not to be left to the discretion of the judge but it was to be codified and made available so that it could be consulted by the litigants.

The attempt to codify Islamic law began in the Ottoman state even before the British did anything in that connection in the Sub-Continent. This attempt, called the *Tanzimat*, resulted in the codification of Islamic laws under the title *Majallat al-Ahkam al-'Adliyyah*. Later, similar attempts were made in Egypt, Algeria and other Muslim countries.

In this attempt for codification and compilation of Islamic law, Muslim lawyers trained in modern system were involved. Since most of them were not well-versed in the nature and concepts of Islamic law they treated it as a common law material which could be repealed or modified by the state or by legislative bodies at will. Such attempts however failed because they were vehemently opposed by traditional Muslim scholars. Consequently, the intellectuals and scholars in the colonial administration declared Islamic law as static. In consequence, when they were frustrated about legal reform, they declared Islam and Islamic culture dead.

As we have said earlier, Sir Sayyid understood ijtihad as the process of making laws according to the needs of the time on the basis of the interpretation of, and inferences from, the

Qur'an. Not only on the theoretical level but even in actual practice, Sir Sayyid shouldered this responsibility personally. He actively participated in the process of law-making. Among such enactments, the following two were notable: the 1880 Act about the appointment of the *Qadis*, and the 1864 enactment about the family trust.

Towards the middle of the nineteenth century the British abolished the posts of *qadis*. Through Sir Sayyid's efforts an act was passed in 1880 which provided that *qadis* will be appointed only by the Government. Nevertheless as regards the laws of family trust, however, Sir Sayyid could not succeed. The reason was that there he was opposed by the `ulama' who were against the family trust laws. The English jurists also did not agree with Sir Sayyid's proposals. According to them, the trust was a temporary arrangement.[15] In both the attempts of legislation, Sir Sayyid was not striving for the general interest of the Muslim community on the whole, but was rather acting to protect the interests of Muslim feudal families who had fallen into poverty under the new circumstances. However, to prove his point he studied the texts of Islamic law very thoroughly. He had to consult the Qur'an and Sunnah to support his views. Thus, he was actually involved in the process of ijtihad.

Reformation

With the arrival of the British in the Sub-Continent and their control over political, judicial and other institutions, Muslims became frustrated, discouraged and depressed. This attitude was preventing Muslims from taking an active part in the political and intellectual activities. Furthermore, the defeatist attitude of the Muslims led them to interpret victory of the British as the victory of the Christian religion over their own. This feeling was largely responsible for all the problems and challenges which precipitated with the advent of modern era vis-a-vis conflict between the two religions. In short, the true perspective of the modern change was lost. Sir Sayyid Ahmad Khan made a valiant effort to bring Muslims out of the mire of dejection and to inspire them to face the changed

circumstances with courage and clarity of vision.

On the other hand, as we have said earlier, the intellectuals among the colonial nations were thinking of Islam and Muslim civilization as a thing of the past.

Earnest Renan in France and W. Blunt in Britain exemplified the feeling of their compatriots when they wrote about Islam as a dying civilization. Renan himself believed that Islamic culture was synonymous with immobility and enmity to knowledge. However, Blunt did not agree with such generalizations. In 1882 he wrote a book entitled *The Future of Islam* in which he proposed that although Islam had spread by the sword, it could not survive by the sword. He believed:

> Islam, if she relies only on the sword, must in the end perish by it, for her forces, vast as they are, are without physical cohesion, being scattered widely over the surface of three continents and divided by insuperable accidents of seas and deserts; and the enemy she would have to face is intelligent as well as strong, and would not let her rest. Already what is called the progress of the world envelops her with its ships and its commerce, and above all, with its printed thought, which she is beginning to read...If she would not be strangled by these influences she must use other arms than those of the flesh, and meet the intellectual invasions of her frontiers with a corresponding intelligence. Otherwise, she has nothing to look forward to but a gradual decay, spiritual as well as political. Her law must become little by little a dead letter, her caliphate an obsolete survival, and her creed a mere opinion. Islam as a living and controlling moral force in the world would then gradually cease.[16]

At this point Blunt stresses the need for the reformation of two fundamental institutions: law and *Khilafat*. Blunt was a strong advocate of Islam as a religion of progress[17] and he believed that it had the capacity to carry out the reformation of the law and *Khilafat* drawing on extraneous resources. Unfortunately, Blunt was looking at the Muslim problem from the perspective of European history, and hence spoke in terms

of "reformation" which is part of a peculiarly Western historical experience. In other words, he was advocating that since Europe could start its era of progress and modernism only after the reformation of religion, the same was essentially required by the Islamic world.

Blunt's book was translated into Urdu in 1884[18] and soon its impact could be seen in the academic circles in the Sub-Continent. There appeared a series of articles on the problem of *Khilafat* in *Ma'arif* of Azamgarh which drew heavily on Blunt's views.[19] These views were refuted later by Mawlana Sulayman Nadwi and other Muslim scholars. It is, however, interesting to note that Blunt's views on ijtihad did not become a subject of discussion until Iqbal's lecture on ijtihad in the early 20th century.

Jamal al-Din Afghani

Jamal al-Din Afghani came into contact with both Renan and Blunt and offered a detailed criticism of their views. Refuting the European thinkers with great vigour, he argued that Islam promoted knowledge and favoured the study of sciences. It never supported static attitude. Abu Rayyah narrated that Jamal al-Din Afghani was known for his extreme hatred for *taqlid* and stagnation:

> Once someone narrated Qadi 'Iyad's statement as an authority during discussion and insisted so much on his authority as if it was a revealed text. Jamal al-Din Afghani said, "Glory be to God. Whatever Qadi 'Iyad said was based on his limited wisdom and its relevance was confined to his time. Had no one other than Qadi 'Iyad the right to convey a clearer and more correct opinion which was closer to truth than his opinion or that of the other jurists? Why was it necessary to confine to the statements of humans and to fall into a static attitude whereas these people never felt restricted by the statements of their ancestors? They used their own intellect, they drew inferences from the original sources and made statements on that authority. They dived deep into the ocean of knowledge and brought forth pearls

befitting the needs of their time, familiar to the intellects of their generation. The rules did change with the change of time.[20]

Afghani used to say:

> The gate of ijtihad is not closed at all — It is not only a duty but also a right to implement the principles of the Qur'an on the problems of our time continuously. Its refutation is tantamount to *taqlid* and stagnation. Both these attitudes are as inimical to true Islam as materialism is to it.[21]

Afghani had in mind Sir Sayyid's naturalism when he made reference about materialism being an enemy of Islam. We will have occasion to discuss this point later. Presently, to explain why Afghani equated *taqlid* with materialism was that both, in his opinion, led Muslims to political and religious decline. Afghani explained this point as follows:

> We have learnt from experience, and there are several events in history which bear testimony to this fact, that in every nation intellectuals and minds of the *Muqallidin* become the abode of schisms and the devils workshops of intrigues. Their hearts are so full of respect for the dignity of those whom they follow and with disdain and hatred for those who are not like them that they tend to consider the peoples of their own nation as lowly and wretched. They look down upon them and they treat each and every opinion of theirs as trivial and they consider their actions and achievements, however noble they would be, meaningless.
>
> These *Muqallidin* play the role of vanguard for the invader from the outside. They pave the way for their enemies' victory. They open their doors to them. They help them in establishing their influence and to strengthen their stranglehold. All this is done because they know only one act and attitude i.e. servitude and sub-servience.[22]

Defining *taqlid* as stagnation, Jamal al-Din Afghani developed the concept of ijtihad as a principle of dynamism.

However, his involvement with contemporary politics led him to think in the European framework in such a way that in his thought, ijtihad became equivalent to the European notion of the "reformation of religion". Thus, he ended very close to Blunt's views. In the early period of the reformation of religion in Europe two fundamental trends had emerged, viz. those of regionalism and rationalism. According to Aziz Ahmad, Afghani recommended that `Ulama' should establish regional centres in various countries where ijtihad could be exercised for the guidance of the common man. These regional centres should then be connected with a global centre which may be established in any one of the holy places. The representatives of various centres may foregather to exercise ijtihad for the whole of the Ummah. This will reinvigorate the Ummah and will prepare it to withstand foreign challenges.[23]

It may be noted that the above statement of Afghani emphasises regional autonomy under a federated system for the process of ijtihad. However, on the pattern of religious councils among the Christians, Afghani had also proposed the establishment of an international centre for Islam. These proposals for the reformation of religion were a counter balance to Afghani's programme for the political integration of all Muslims into one block. He emphasised regionalism and rationalism as well as international unity of Muslims. It appears that political unity was one of the essential aspects of Afghani's proposal for the reformation of religion. What is important in this respect is the fact that in his intellectual and religious discussions Afghani was broaching rationalism and to break away from authority and tradition as Christians had done during the reformation.

Afghani made it very clear that during the Reformation in the Christian world man had broken all shackles that had tied down the human intellect. Islam was many centuries younger than Christianity, its reformation was, therefore, still to come.[24] Afghani used to say that Islam was in need of a Luther. This was his favourite theme and he used to see himself as the Luther of Islam.[25]

> Once reformed, Islam would be able to play the fundamental role of a moral guide for the mankind like other religions. The past history of Islam has proven this fact sufficiently. Renan was totally wrong when he defined Islamic history as a blind victory of conservatism on reason.[26]

Jamal al-Din Afghani's circle of influence was very large. His ideas were received warmly and were supported with great zeal in Turkey, Iran and the Sub-Continent, besides the Arab world. Afghani had actually lived in all these countries and he was familiar with the various movements among the people there. He reacted most strongly against Sir Sayyid's movement. He described it as a movement of secularism, irreligion, atheism and materialism. In short, a movement which aimed at destroying Islam. He also wrote, as we know, a treatise to refute Sir Sayyid's scientism.[27]

We are not concerned here with the reasons which prompted Afghani's reaction to Sir Sayyid, and whether they were political or religious, or both. Nevertheless, we may briefly comment that mainly in order to defend Islam against hostile European criticism, Sir Sayyid made an attempt to define it as a rational and natural religion. Pejoratively, the followers of this doctrine were called '*nechari*'. The main focus of this doctrine, however, was not on materialism or secularism, but was rather on a rational interpretation of Islam as a religon, on its being natural i.e. in conformity with nature and suitable for human nature. It was not '*natural*' even in the sense the medieval European scholars spoke about a type of reason or understanding differnt or opposed to divine reason. However, Sir Sayyid exaggerated his inclination towards rationalism and declared even those metaphysical concepts and beliefs which were considered fundamentals of faith as a creation of human imagination which needed to be explained rationally. Consequently, his thought was denounced as materialistic, aetheistic and opposed to the spirit of religion.

For the purpose of the uplift of Muslims in the Sub-Continent, Sir Sayyid, stressed actual participation in the

British colonial government system and distancing themselves from political activities against the government. Simultaneously, he invited them towards rationalism and acquisition of modern sciences. According to him, *taqlid* was the greatest impediment to rationalism as it led to intellectual fossilization. He made an attempt to developing a new theology for Islam in which abandoning the prevalant Ash`ari theology, he considered it essential to make use of Mu`tazili doctrines.

Like Jamal al-Din Afghani, Sir Sayyid also used the term ijtihad in a broad sense. He regarded it essentially equivalent to reformation. Analysing Sir Sayyid's achievements on this point, Hali concludes:

> Sir Syed can be described as a political, social, and literary reformer of this nation. However, by reformation here we mean reformation of religious beliefs of our community.[28]

> Although there have appeared in all classes and at all times in Islam persons who had a free mind and enlightened the conscience to enable them to break away from the chains of *taqlid* in order to enter the field of inquiry and research, they had exposed the errors in the mass religious beliefs on the very fundamental question of religion—.Even among the ancient scholars, no individual has ever wished to introduce general reforms in religion.[29]

Since these movements of reform of law or religion appeared during the hegemony of European rulers and were viewed as a response to the need of reforms recommended by European scholars like Blunt and Renan, Muslim reaction expressed itself in two forms of extreme trends. One of these consisted of *taqlid* of the Europeans. Instead of arguing on the basis of actual needs of their own society, they reasoned that the progress in modern time demanded those reforms. As the developed countries had achieved progress we should also strive for the same. The other extreme was that of conservatism. Conservatism was hardened also because the attempt at the reformation of law or religion could not strike deep roots in the Sub-Continent and the need for such reforms was not felt at the grass-root level.

Persons like Abul Kalam Azad, though never doubting Sir Sayyid's sincerity, criticised the need of his efforts:

> The problems of doubt are in fact introduced by those who try to remove these doubts. In the early period of Islam very few people knew the doctrines of Greek philosophy. Muslim community outside the circles of the royal court was safe from this philosophy. However, the Mu`tazilah who were wounded by this philosophy thought that the whole Ummah had been hurt and came out to cure it. The result was that the beliefs of thousands of people was shaken.[30]

> When Sir Sayyid Ahmad Khan started voicing these thoughts in the early periods of his journal *Tahdhib al-Akhlaq* there were hardly few Muslims who had become atheists by studying English language and literature. How many were there whose apostasy had compelled Sir Syed to begin this process of ijtihad.[31]

Azad's criticism agrees with the school of legal philosophy which maintains that change in law must be gradual and that this change must come as a result of social evolution and not as a cause for them. The other school of thought considers this trend as a means to protect conservatism. According to them, it is also the responsibility of the institution of law to foresee social changes anticipated in future and to guide society accordingly. Nevertheless in the Muslim world the thinkers looked back either to the past or to the present in the Europe rather than to their own future. Consequently, participating in the race for progress, Muslim countries only adopted the constitutions and laws prevailing in Europe, either exactly or with some modifications.

Shari'ah and Natural Law

The attempts to reform laws were made with great zeal in Turkey. Earlier we have alluded to *Tanzimat*. There were also efforts to adopt the European codes of law. Sa`id Halim Pasha stood against such movements and opposed them severely.[32]

Sa`id Halim Pasha

According to Saeed [Sa`id] Pasha, shari`ah was a collection of natural, moral and social truths which were given to us by God through His Prophet (P.B.U.H). Human happiness and success depended entirely on these truths. He stressed that in modern legislation sovereignty of the shari`ah must be maintained; no laws against the shari`ah should however be accepted. Explaining the concept of the sovereignty of the shari`ah Sa`id Pasha argued that the shari`ah was in conformity with the laws of nature and hence it was based on definite grounds and was eternal.[33]

He explained that the principle of the supremacy of the shari`ah was essentially an admission of the fact that every being was bound by some laws. The social being of man was bound by social and moral laws in the same sense as his physical being was bound by the laws of nature.

The explanation of shari`ah as an expression of laws and nature reminds us again of Sir Sayyid's "*nechariyyah*" (naturalism). However, there is a great difference between the arguments of Sa`id Pasha and Sir Sayyid. According to Sir Sayyid, "natural" meant what could be rationally acceptable. But according to Pasha, "natural" meant to be in conformity with the laws of nature in the meaning of science and physics.[34] Naturally in Sa`id Halim Pasha's doctrine the question arose: If shari`ah was in conformity with the laws of nature and had originated in nature, why was it necessary that it should be revealed through a Prophet. Sa`id Pasha answered that the laws of science were objective in their nature and they could be observed and analysed. The social and moral laws on the other hand, were mostly subjective and man-made. They were related to the moral and social nature of man. Man was free to derive laws from the phenomena which occured mechanically, without human will. Yet, since they were subjective they might be arbitrary and inexact. It was, therefore, necessary that in order to be exact, they should also come from the same source from which the laws of nature had originated. In other words, since the laws of nature were made by God, moral laws should

also be revealed by Him.

One might note an obvious ambiguity in the use of the terms "law" and "nature", in this argument. The term "law" has been used equivocably for "natural laws", laws of physics, etc.[42], and "moral laws". However, to understand it fully it must be made clear that as in the "laws" of exact sciences such as physics and chemistry, human will had no part to play, similarly moral and social laws once they became norms of a society also transcended individual human will. The supremacy of these laws meant that no one could make or change them. This was what Pasha meant by the supremacy of shari`ah. According to Pasha, the fact that the laws of nature were observable did not mean that man could make or change them. In this context Pasha used the term "mechanical" which was quite significant. We will have occasion to discuss the relevance of this term in relation to Iqbal's definition of ijtihad. For Pasha, however, since physical laws were mechanical, moral and social laws should also be considered mechanical so that their eternity and supremacy could be maintained.

Pasha's views were published widely. They appeared in 1936 in *Islam*, a weekly published from Lahore. Several scholars wrote in his favour and against. Among them, Zia Gokalp's attempt at the sociological interpretation of Islamic law was very significant. He studied Pasha's justifications and explained the evolution and structure of law on scientific grounds. Gokalp developed the doctrine that social customs and mores were the source of law. We find in these views an echo of the views expressed earlier by Abu Ishaq Shatibi (d. 1390) and Waliullah. Zia Gokalp had, however, developed these ideas with reference to the sociology of law in Islam. The *`Urf* of the *fiqh* was called by Zia Gokalp "mores", a sociological term which connoted primitive form of law. At later stages these primitive forms developed into the institution of law in the same manner as the development of other social and political institutions took place. Referring to this interpretation of `mores' and customs, Zia Gokalp invited Turkish Muslims to reform the family laws in Turkey. He particularly stressed on reforms for the protection of the rights

of women. Zia Gokalp's influence reached the Sub-Continent through Dr. Iqbal. Iqbal had no access to the complete works of Zia. He had studied only the few poems in which Zia had called for the emancipation of women. These poems became available to Iqbal as they had been translated into the German language.

The concept of the mechanical nature of Islamic law as described by Sa`id Halim Pasha appeared again in the writings of another Turkish author, Aghnides, to whom we have referred earlier. Aghnides was originally a Greek national who had settled in Turkey.[35] He presented his doctoral thesis at Columbia University in the United States on the subject of Islamic financial doctrines. In this book Aghnides discussed the system of *Zakat* and *Kharaj* in great detail.[36] As an introduction to these discussions he presented an analysis of the theory and history of Islamic Jurisprudence. Concluding his discussion about the nature of Islamic law, he said that it was its inflexibility that it could not face the challenge of modern times. The main reason, according to him, for this weakness was that ijtihad, the method of research in Islamic jurisprudence, was in fact a mechanical principle that led Islamic society to fossilization and prevented it from progress.

Aghnides's thesis was published in 1916. Within a few years of its publication it fell into the hands of Dr. Iqbal. Iqbal who had been deliberating on this problem for quite some time was provoked by Aghnides to write on the subject. He particularly felt the urge to refute the concept of mechanism as given by the author. This, as we shall see subsequently, seemed to have prompted Dr. Iqbal to publish his own treatise on the problem of ijtihad.

To sum up this chapter, we have seen that the term ijtihad was used with reference to the history of the development of schools of law in Islam, authority of the `ulama', rationalism and progress, state and legal reforms, reformation of religion, and science. The usage of ijtihad in all these various contexts added different shades of meaning to the term. Consequently ijithad was no longer used in the

traditional sense only.

Iqbal studied all these trends and felt a need to clarify this concept. As we shall see in subsequent chapters, he dealt with three definitions of ijtihad, which had reference to the contexts of debates of ijtihad and *taqlid*, reformation, and religion and science. His analysis led him to focus more sharply on the dynamism of ijtihad which not only meant to correct the perception of Islamic law presented by Sa`id Pasha and Aghnides, but it also clarified the misconceptions about ijtihad that gave rise to other debates that we have discussed.

The next chapter deals with the particular circumstances under which Iqbal wrote his lecture on ijtihad.

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23. `Aziz Ahmad, "Sayyid Ahmad Khan, Jamal-al-Din Afghani and Muslim India", *Studia Islamica*, XIII (1960), pp. 55-78.

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27. The original was written in Persian. See the Arabic translation by Muhammad `Abduh, *Al-Radd `ala al-Dahriyyin* (Baghdad, 1955).

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29. *Ibid.* p. 491.

30. Abul Kalam Azad, *Tadhkirah* (Comp. Fadluddin Ahmad Lahore: Anarkali Kitab Ghar, n.d.), p. 240.

31. *Ibid.* p. 241.

32. Sa`id Halim Pasha, "Sovereignty of *Shari`at*", Weekly *Islam* (Lahore) March 22, 1936), p. 6.

33. *Ibid.* p. 8.

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35. I am grateful to Prof. Saeed Sheikh for this point.

36. N.P. Aghnides, *Muhammadan Theories of Finance* (New York, 1916). We have referred to him earlier in chapter one.

IQBAL'S LECTURE ON IJTIHAD

"The only course open to us is to approach modern knowledge with a respectful but independent attitude and to appreciate the teachings of Islam in the light of that knowledge, even though we may be led to differ from those who have gone before us."

Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Institute of Islamic Culture, 1986), p. 78

FOUR

IQBAL'S LECTURE ON IJTIHAD

`Allamah Iqbal was quite familiar with the various developments that we have discussed in the preceding chapters. He was also well acquainted with the various movements in the Islamic World. He had studied Shah Waliullah, Shah Isma`il Shahid, Sayyid Ahmad Khan, Jamal al-Din Afghani, `Ali `Abd al-Raziq, Sa`id Halim Pasha, Zia Gokalp and Aghnides.

He had started taking part in these discussions in his early youth. He was 24 years old when he published his first book on economics, entitled *`Ilm al-Iqtisad*, the first book on the subject in Urdu.[1] Iqbal's analysis of the economic problems, particularly of Muslims of the Sub-Continent made a notable contribution in the field. Besides this, he also frequently contributed essays and research articles in national journals in which he analysed the political and social problems of the Muslim community in the Sub-Continent. In this period he had reached the conclusion that on the one hand Muslims needed a new theology to face the challenge of intellectual chaos, and on the other, they were in need of fresh interpretation of Islamic jurisprudence to deal with the social probelms. He had also come to believe that *taqlid* was synonmous with suicide for national life.

In a poem written before 1904, Iqbal says:

Taqlid is worse than suicide

Find your own path, quit looking for Khidr.[2]

In October 1904 he published an essay entitled "*Qawmi Zindagi*" in the journal *Makhzan* in which he stressed the need for ijtihad. The following two extracts from the essay eloquently portray his views:

> Most of the opinions offered by the jurists from time to time on the basis of the vast sources of the Qur'an and *Hadith* were indeed suitable and practicable for particular periods, but they did not respond to the needs of modern times.
>
> If we ponderover the present life conditions, we find that similar to the need for a new theology to support the principles of religion, we require a great jurist for a modern interpretation of Islamic law. This jurist must possess rational and imaginative faculties to such a vast extent that he may be capable not only to organise and arrange Islamic law anew but also broaden, with ingenuity and imagination, the principles so as to encompass all possible situations of the social necessities of the modern times. As far as I know, no jurist with such extraordinary intellectual calibre exists in the Muslim world. If we realise the importance of such a task we may see that it is the task for more than one mind...[3]

We will present an analysis of Iqbal's concept of ijtihad in the succeeding chapters. However, the above extract yields a few interesting conclusions which are worth taking into account at this point. Firstly, while admitting the significance of the tradition of Islamic jurisprudence, Iqbal concludes that they are inadequate for modern times and hence in need of ijtihad. Secondly, he defines ijtihad in terms of "interpretations". Thirdly, he recognises the significance of collective ijtihad instead of individual ijtihad.

Although Iqbal never took any radical stand in this essay yet he was apprehensive that the intellectual atmosphere in the Sub-Continent would not allow expression of such views. Consequently he ended the essay abruptly saying: That is a

very interesting discussion, but since our people are not accustomed to listening to such views, regrettably I have to abandon it."[4]

Iqbal's concern for the problems of the Muslim community led him to study Islamic law and jurisprudence. He began regular and systematic studies of law at the Lahore Law College. Yet, since he failed in the subject of jurisprudence he was not allowed to appear for the final law exams.[5] In 1905 he went to Europe where he developed interest in legal philosophy while studying Western philosophy. He registered himself also as a student of jurisprudence. On his return from England in 1908 he completed his education and started legal practice at Lahore.[6]

One may very well imagine that during the period after his return from Europe when Iqbal set up his legal practice, he must have had ample opportunity to know at first hand the social contradictions in, and the limitation of, the prevailing personal laws, and the ensuing hardships faced by Muslims. He must have seen the hardships resulting from the inadequate personal laws in matters of divorce, maintenance, inheritance etc. His concern with these issues is evident in his lecture on ijtihad. His contemplation on these problems must have led him to realise the necessity of the reconstruction of Islamic law. It is probably due to these deliberations that he paid special attention to the problems of jurisprudence and particularly to ijtihad as a method of this reconstruction. His lecture on ijtihad was an outcome of these contemplations.

LECTURE ON IJTIHAD

Iqbal's lecture on ijtihad "The Principle of Movement in the Structure of Islam" appears as the sixth lecture in his *The Reconstruction of Religious Thought in Islam*, a collection of Iqbal's lectures delivered during 1928 and 1930 at Madras, Hyderabad and Aligadh.

In this lecture Iqbal discusses various aspects of the problem of ijtihad. He begins by analysing the social and intellectual structure of Islam and concludes that ijtihad in this

structure operates as a dynamic principle. He then proceeds to survey the various religious movements in the modern period and discusses the role of ijtihad in this context. He analyses the literal meaning and technical definition of the term ijtihad in order to explain that Islamic law is not a static and unchangeable system, but is rather a living and dynamic institution. Then the question arises: From where did the present stagnation enter the system, and when? When was the door of ijtihad closed and how?

Explaining the causes of the cessation of ijtihad, Iqbal enumerates the following reasons:

The irresponsible behaviour of the rationalist movement in the history of Islam made rationalism condemnable. Consequently, all the principles and doctrines which could open the doors to rationalism were closed as a preventive measure. Ijtihad was one of those principles. Secondly, the ascetic trend in *tasawwuf* encouraged escapism and arbitrary interpretations of reality. This could lead to intellectual anarchy. The third, and the foremost reason, according to Iqbal, was the destruction of Baghdad by the Mongols. This incident disrupted the unity of the Muslim ummah. The well meaning `ulama and *fuqaha'* closed the gate of ijtihad in order to keep the ummah united.

After discussing these causes of the cessation of ijtihad, Iqbal mentions the renaissance of the world of Islam in recent years. He refers to the *Wahhabi* movement emerging under the influence of Ibn Taymiyyah. Then he discusses in detail a more recent movement of religious reform and ijtihad among the Turks. He stresses again ijtihad as a dynamic principle of Islam. He particularly mentions the distinction between religious and political sovereignty that existed in Europe but never in Islam. He cites as an example the act of Turkish assembly by which they changed *Khilafat* from an individual and personal institution into a collective one by delegating the power of *Khilafat* to the Assembly. He calls this reform an ijtihad. He quotes other Muslim thinkers, particularly Ibn Khaldun, to support his views.

At this point he refers to Zia Gokalp's poems to illustrate the new trends in social and political thought of the Turks. Zia Gokalp emphasised that for the renaissance of Muslim ummah it was essential that presently the Muslims should concentrate on becoming stronger as individual nations in their own regions and countries and then they should gradually proceed towards global unity. It was a rational and scientific approach to realities of life.

Analysing this new religious trend in Zia'a thought, Iqbal found it similar to Comte's social evolution. According to Comte, the evolution of human thought passes through three stages: first, theological, in which man interprets the realities in terms of dogma and creed, second, metaphysical, when man begins to interpret realities of the universe in metaphysical and rational terms. Third is the scientific stage when man tries to understand the universe on the basis of facts and objective studies rather than by imaginary postulates.

On the whole Iqbal admired the Turks. He considered it a great achievement of the Turks that among the Muslim nations they were the first to abandon *taqlid*. Iqbal welcomed liberal and progressive movements, yet he forewarned of the dangerous consequences of these trends if they led to absolute freedom.

Having analysed the history of ijtihad, particularly in the modern period, Iqbal attends to the other question: Has Islamic law the capability of evolution and progress?

Referring to the growth of Islamic law, Iqbal concludes .that Islamic law was not static and thus incapable of development. However, unfortunately, the conservatives in India were not ready for a critical discussion of *fiqh*, It was likely to displease most people.

Nevertheless, Iqbal very boldly invited attention to the following three points regarding the evolution of Islamic law.

1. There was no written law of Islam apart from the Qur'an, practically upto the rise of the `Abbasids.

2. From about the middle of the first century until the beginning of the fourth, not less than nineteen schools of law and legal opinions appeared in Islam.

3. When we study the four accepted sources of Islamic law and the controversies which they invoked, the alleged rigidity of our recognised schools evaporates.

In the light of the above observations, Iqbal proceeds with a detailed analysis of the sources of Islamic law: Qur'an, *Hadith*, ijma` and qiyas. He concludes that each one of these demonstrates the dynamic nature of Islamic law.

With reference to ijma`, Iqbal describes it as a form of collective ijtihad. Calling the present-day national assemblies as a modern form of ijma`, he urges the `ulama' to participate in them fully.

We have briefly summed up the main points of Iqbal's lecture on ijtihad. We shall deal with these points in the subsequent chapters. At the moment we are concerned with a few questions about the history of this lecture, particularly the following:

1. When was the lecture written?

2. When was the lecture delivered at Lahore and at Aligarh?

3. Why did Iqbal take such a long time in the preparation of this lecture?

In the following lines we have tried to piece together the information about the date of the lecture from various statements and letters in order to arrive at a clearer view.

Sayyid `Abdul Wahid Mu`ini has mentioned that this article was written in 1920[7], and has added that this was the article which Iqbal had sent to Mawlana `Abdul Majid Daryabadi for comments. As we know from Iqbal's letter, this article was sent on March 22, 1925.[8] If we accept the date proposed by Mu`ini it would mean that the article was sent to Daryabadi about five years after it had been written. More probably Iqbal should have sent the article soon after its

completion.

We believe that in order to determine a certain date we should look at the internal evidence in the lecture.

The first clue could be found in the dates on which the letters were written to various scholars about the problems which arose during the preparation of this lecture. The second clue would be the dates of publication and availability of the books to which Iqbal refers in this lecture. The third clue could be found in the dates of Iqbal's meetings and consultations with the `ulama' about this problem. The following pages investigate such clues.

In his letter written to Sa`id al-Din Ja`fari in 1922, Iqbal stated that he was writing an article on ijtihad. "Courts are closed now a days. I am writing a comprehensive article in English entitled "The Idea of ijtihad in the law of Islam." I hope you will be glad to read it".[9]

Contrary to Mu`ini, Rashid Ahmad Siddiqi states that the article was still under preparation in June, 1925.[10] He mentions his meeting with Iqbal in 1925 and describes:

> In this sitting Iqbal spoke almost all day about the status of women in Islam, superman, the time and place of the Prophethood of Muhammad (P.B.U.H) and about the problems of ijtihad in Islamic jurisprudence. He had written at length in English on the problem of ijtihad in Islamic jurisprudence. The manuscript had been typed. He said that he wanted to exchange his views with some expert scholars and he asked if I could suggest a few names whom he could consult. I suggested that I believed that the nature of the problem with which he was dealing was such that it was better to consult Mawlana Sayyid Sulayman Nadvi. I cannot remember very well if the late Dr. Iqbal said that he was already in correspondence with these two scholars or that he would do so. I can, however, recall this much that he had expressed his true confidence in these two.[11]

Iqbal had written about these problems to Sulayman

Nadvi on August 18, 1924. In this letter he also mentioned "I have also written a letter to Maulvi, Abu`l Kalam". This sentence confirms Siddiqi's statement but then the year of this meeting must be placed in 1924 rather than 1925.

On the question of books that Iqbal consulted at the time of writing this article, Dr. `Abdullah Chughta'i's article, "The Background of Allamah Iqbal's Lectures in Madras",[12] is quite useful. We summarise this article in the following lines.

Dr. Chughta'i wrote that in New York Chaudhry Rahmat Ali Khan took active interest in Islamic subjects. He was the founder of a National Movement. He had invited persons like Lala Lajpat Rai and Tagore to the United States and sponsored their visits.

He came across a book on Financial Thoughts in Islam written by Aghnides. He sent this book to Dr. `Abdullah Chughta`i in Lahore in 1923 requesting him to seek Allama Iqbal's opinion about in. Chughta`i presented this book to Iqbal. Going through the book Iqbal found that Aghnides had passed certain startling remarks on ijma`. During this period Iqbal visited Ludhiyanah, where he consulted the `ulama' on these issues He also consulted several other `ulama' and corresponded with a number of them. Meanwhile he also came to study the book *Al-Muwafaqat* by Shatibi. Having studied the problem extensively he started writing an article on ijtihad in English keeping Aghnides' book before him. These were summer vacations when the manuscript was being typed.

On its completion, he read this paper on December 13, 1924 in the Habibiyah Hall of Islamia College, Lahore. The meeting was presided over by Shaykh `Abdul Qadir. Most of the notable persons of the city were present. Mawlana Zafar `Ali Khan sought permission to translate the article into Urdu. Iqbal disallowed the translation saying: "The essay is still incomplete. The purpose of this essay is only to invite the attention of the people to this subject. Therefore, it should not be subjected to any criticism or review at the moment."[13]

However, the report of this lecture was published in the

newspapers. When this report reached the Muslims in Madras, Seth Jamal, the patron and founder of Madrasa Jamaliyah in Madras, sent an invitation to Iqbal to deliver lectures on Islam. Iqbal consented and agreed to deliver six lectures. But by the time of his departure for Madras he could prepare only three lectures.[14] In a letter to Ghulam Bhik Nayrang written on December 5, 1928, Iqbal explained that he had completed three lectures. The other three lectures would be written next year. They were to be delivered in Madras on December 29 or January 30. He would also visit Hyderabad because Usmania University had also invited him to deliver a lecture there.[15]

The above summary of Chughta'i's article confirms a number of points. This report mentions that Aghnides' book was presented to Iqbal in 1923. In Iqbal's letters we find Aghnides's book mentioned along with Amidi's *Al-Ihkam*, Shatibi's *Al-Muwafaqat* and Shawkani's *Irshad*. These letters date between 1923-4.

We know from *Ma`arif* that *Al-Ihkam*, and *Al-Muwafaqat* had arrived only in 1923,[16] and quite probably, Iqbal might have been one of the few scholars in India to have access to them.

These are the books that have been referred to in this lecture. That would confirm that the article was in the process of composition during this period.

Regarding the dates of Iqbal's consultations with the `ulama', we know from different sources that he sought advice or visited the following `ulama': Mawlana Habibur Rahman Ludhiyanawi, Mufti Muhammad Na`im, Mian `Abdul Hayy, Mawlana Muhammad Amin and others in Ludhiyanah;[17] Mawlana Ghulam Murshid and Mawlana Asghar `Ali Ruhi in Lahore[18], and Syed Sulayman Nadwi and Abu'l Kalam Azad through correspondence.

According to Ghulam Jilani Barq, Iqbal used to take help from Barq's elder brother Mawlana Nur al-Haqq. Dr. Iqbal's practice was that whenever he was faced with a problem he would ask Mawlana Nur al-Haqq to read the relevant text in

the various books of *Fiqh*, translate them for him from Arabic and explain them to him. Then he would pose questions in order to fully understand the problem. Barq has described this practice to pertain to the months of November and December in the year 1924.[19]

Sufi Tabassum had suggested Iqbal to meet Mawlawi Ahmad Din Amritsari, Editor *Balagh*, Amritsar, to discuss the problem of ijtihad. Iqbal declined this offer but still he wished that Mawlawi Ahmad Din would continue the work Iqbal had begun. Excusing himself from further discussion on the subject of ijtihad, Iqbal wrote: "Keeping in view the facts mentioned above, I am certain that the said Mawlawi Sahib (Mawlawi Ahmad Din) would gain nothing by discussing the subject with me"[20]

Still it appears that the appointment was made for 5th September, 1925 with Mawlawi Ahmad Din. Iqbal explained that although he still believed that nothing could be gained by a discussion on ijtihad, nevertheless he could consult him in other matters.[21] Probably the meeting never took place. Yet Iqbal invited the Mawlawi Sahib through Sufi Tabassum to work on this subject. He wrote to Sufi Tabassum:

> I am acquainted with his views to some extent. I wish he could compile a comprehensive book on *Shari`at Muhammadiah* in which matters of *`Ibadat* and *Mu`amalat* be discussed and reasoning should be given only from the Qur'an.
>
> It may take a long time to gain acceptance in India, however, this need is being felt with growing interest every day in other Islamic countries. Mawlawi Sahib must be acquainted with controversies of Shaykh `Ali Raziq with other scholars in Egypt. Similarly, the same problems are being debated in Turkey. A couple of books have also been written on these issues. In such books discussions on Islamic jurisprudence are undertaken largely on the basis of principles evolved in the Western jurisprudence, at present.[22]

> My belief is that a person who critically reviews the present system of jurisprudence from the Quranic point of view and would thus prove the eternity of the laws of Qur'an will be the *Mujaddid* of Islam.[23]

The dates of the above letters confirm that the article was written during 1920-24, and was completed before 1925. It took Iqbal almost two years to complete the article. He delivered this article as a lecture on the evening of December 13, 1924 in the Habibiyah Hall of Islamia College, Lahore.

Scholars disagree about the date of the Lahore meeting in which Dr. Iqbal read this article. Sayyid Wahiduddin in his *Rozgar-e-Faqir* mentions the year 1925. Writing about Mumtaz Hasan he says:

> First time when Mumtaz Hasan met Dr. Iqbal in 1925, Iqbal had come to the Habibiyah Hall, Islamia College, Lahore to deliver his lecture on Islam and ijtihad.... When during his speech Iqbal recited the poem of the Turkish poet Zia one could feel enthusiasm in his voice.[24]

Rahim Bakhsh Shahin, citing a report from Ghulam Jilani Barq has given a different date. According to Barq, when the story of Allamah Iqbal's Madras lectures reached the academic circles in the Punjab, Sir `Abdul Qadir, Dr. Tasir and Mawlana Ghulam Rasul Mehr requested the Allamah to deliver the same lecture in Lahore. Consequently, a series of lectures were given in the hall of Islamia College, Railway Road, Lahore. Barq recalls that the language of these lectures was so complicated and the thought presented was so subtle that no one among the audience could understand these lectures.[25]

Certainly, both of these reports have confused the date. As mentioned earlier, these lectures were given under the auspices of the Anjuman Himayat-i-Islam before Dr. Iqbal's journey to Madras. Hanif Shahid has confirmed that these lectures were delivered in the annual meetings of the Anjuman in the months of April of 1927 and 1928. However, Hanif Shahid does not mention the lecture on ijtihad. For this we have found an evidence in the daily *Zamindar* of Lahore. In its December 15,

1924 issue, *Zamindar*, Lahore, at page 3, has an announcement which reads as follows:-

علامہ اقبال کا خطبہ

الاجتھاد فی الاسلام

آج شنبہ مورخہ ۱۳ دسمبر کی شام ساڑھے چھ بجے اسلامیہ کالج کے حبیبیہ ہال میں علامہ سر شیخ محمد اقبال مدظلہ العالی ایک نہایت اہم مضمون پڑھ کر سنائیں گے ۔ مضمون کا موضوع ہو گا "الاجتھاد فی الاسلام"۔ جلسہ کی صدارت کے لیے شیخ عبدالقادر نائب صدر مجلس وضع قوانین پنجاب کا نام تجویز کیا گیا ہے ۔ مضمون انگریزی زبان میں سنایا جائے گا ۔

Translation: Allama Iqbal's Lecture:[26]

Al-Ijtihad fi'l Islam

> Today (Monday) on December 13, Allamah Shaykh Muhammad Iqbal will read his paper on a very important topic at 6:30 p.m. in the Habibiyah Hall of the Islamia College. The topic of this important article is ijtihad in Islam. Shaykh `Abd al-Qadir, the Vice President, Panjab Legislative Assembly's name has been suggested for presiding over the meeting. The lecture will be delivered in English.

This announcement confirms that the lecture on ijtihad was announced to be delivered on December 13, 1924. Nevertheless, there are a few points which need further analysis. Firstly, this announcement is found in the issue of 15 December, whereas the lecture is announced for the 13th. It is difficult to explain whether the *Zamindar*, in those days, printed advance dates of publication, or that the newspaper was published bi-weekly.

Secondly, it is surprising to note that in the issues after this announcement there is no news, report or story about the lecture. The present writer has gone through the files of

Zamindar as well as *Civil & Military Gazette* but has not been able to find anything. *Per se* it is not possible to conclude that the meeting was never held because there are many reports elsewhere about it. Nevertheless, we cannot give any conclusive opinion on the basis of our research. It is quite possible that these reports might have appeared in other papers not known to us or that since Iqbal did not wish publicity about this article, the newspapers did not carry any reports.

We may conclude as follows from the above discussion:

1. Iqbal's lecture on ijtihad was prompted by Aghnides' book as Iqbal wanted to refute his remarks about ijma` and ijtihad.

2. Iqbal started writing the lecture in 1920. It was completed in the summer of 1924.

3. Iqbal consulted a large number of scholars during the preparation of this article, and studied a great number of books on Islamic jurisprudence.

4. The paper was read in Lahore in 1924.

5. There appeared no criticism, translation or review of this paper in the Press, perhaps because Iqbal did not allow it.

The first conclusion is quite significant as we shall know in the following chapter. At the moment, however, it may be noted that whereas a number of questions raised by Aghnides prompted Iqbal to develop his views on ijtihad, Aghnides' questions about ijma` and about the mechanical nature of Islamic law were particularly the focus of Iqbal's article.

Although the lecture was ready when Iqbal was invited to Madras, he did not deliver it there because he was still not satisfied with it. He continued improving upon it until he delivered it in Aligarh in 1930. Although no final opinion can be given in this regard, yet it may be added that the sixth lecture had originated from the article presented in Lahore in 1924. An evidence that corroborates this opinion is that before going to Madras, Iqbal had delivered these lectures in Islamia College, Lahore. Among them "The Spirit of Islamic Culture'

was presented in the 42nd meeting of Anjuman-i-Himayat-i-Islam,[27] "Knowledge and Religious Experience" was read in the 43rd session held on April, 6, 1928.[28] It goes without saying that the same lectures were later delivered in Madras and Aligarh. Secondly, it may perhaps also be concluded that the lecture on ijtihad was first delivered in Lahore in 1924 and later in Aligarh in 1929-30.[29]

Now we turn to the question whether this lecture, which is the sixth in the series of lectures included in *Reconstruction*, is the same article which Iqbal had been writing since 1920 and which he first delivered in Lahore in 1924 and then in Aligarh in 1929-30. No clear evidence is available to this effect that would satisfactorily answer this question. If the original manuscript of the article were available one could find out by comparing it with the published article whether it was the same article or not. A number of times scholars have searched for this manuscript but in vain. Sayyid `Abd al-Wahid Mu'ini has also mentioned that he could not find the manuscript.[30] Recently, in an interview, Dr. Javid Iqbal has also admitted that the original manuscript of this lecture was not available.

To conclude this chapter, we may reiterate that Iqbal had begun contemplating the problem of ijtihad in 1904. What prompted him to reconstruct its concepts were his training, studies and practice in law. He began writing the lecture in 1920, completed its first draft in 1924 when it was read in Lahore. He delivered this lecture at Aligarh in 1929-30.

The fact that this lecture took so many years to complete highlights the complexity of the problem as well as Iqbal's utmost care in writing about the problem. We have mentioned the names of the scholars whom Iqbal had consulted while writing this lecture. The names of jurists mentioned in these lectures, and the books referred to also indicate Iqbal's keen interest in the subject. He refers to the following jurists and their books in the lecture:

Ibn Taymiyyah (d.1328), Ibn Hazm (d.1063), Ibn Tumart (d.1130) Ibn Khaldun (d.1406), Qadi Abu Bakr Baqillani (d.1013), Marghinani (d.1197) (*Al-Hidayah*), Abu Ishaq Shatibi

(d.1390) (*Al-Muwafaqat*), Shah Waliullah (1763) (*Hujjatullah al-Baligbah*), Badr al-Din Zarkashi (d.1329), Sayf al-Din Amidi (*Al-Ihkam fi usul al-ahkam*), Muhammad `Ali Shawkani, (d.1834) *(Irshad al-Fuhul*), Karkhi and Shafi`i (820).

In short, Iqbal gave more time and thought to this lecture. He studied the problem very seriously and extremely carefully as compared to his other lectures. One may say that to Iqbal this lecture was most vitally significant as it elaborated the principle of dynamism in Islam which was the focal point of his other lectures on reconstruction of religious thought.

The following chapters elucidate Iqbal's contribution to the concept of ijtihad with reference to his reconstruction of its definition and of ijma` and qiyas.

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3. Sayyid `Abdul Wahid Mu`ini, *Maqalat-i-Iqbal* (Lahore: Sheikh Ashraf, 1963), pp. 54-55.

4. *Ibid.*, p. 55.

5. Annemarie Schimmel, *Gabriel's Wing* (Brill, 1963), p. 37; Sayyid Wahiduddin, *Rozgar-i-Faqir* (Karachi, Line Art Press, 1968), Vol.I, pp. 244-45.

6. B.A. Dar, *Letters and Writings of Iqbal* (Karachi, 1967), p. 36.

7. S.A. Wahid, *Thoughts and Reflections of Iqbal* (Lahore:Ashraf, 1964), p. XIV

8. Sh. Ataullah, (Compil), *Iqbalnamah*, pt. I (Lahore: Ashraf, n.d.). p. 238

9. B.A Dar (Compil), *Anwar-i-Iqbal*, (Karachi, Iqbal Academy, 1967), p. 285

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14. *Ibid.*

15. *Iqbalnamah*, op. *cit*, p. 211.

16. Editorial, *Ma`arif*, Vol. II (1923, April),p. 246

17. Vide Dr. Chughta'i, op. cit.

18. *Ibid.*

19. Rahim Bakhsh Shahin, *Awraq-i-Gum Gashtah* (`Allamah Iqbal Ke bare men ghayr mudawwan tahriren), (Lahore: Islamic Publications, 1975), pp. 190.

20. *Ibid.* pp. 46-47.

21. *Anwar-i-Iqbal*, op. cit. p. 199

22. *Iqbalnamah*, vol. I, p. 48

23. *Ibid.* p. 56.

24. *Rozgar-i-Faqir*, Vol. II, p. 87. Mumtaz Hasan, however, has said that he met Iqbal in 1926. See Dr. Mumtaz Hasan (Compil) *Iqbal awr `Abd al-Haqq* (Lahore: Majlis Taraqqi-i-Adab, 1973), p. 6.

25. Vide Shahin, op. cit. p. 193

26. *Zamindar*, Lahore, Dec. 15, 1924, p. 3.

27. M. Hanif Shahid, *Iqbal awr Anjuman-i-Himayat-i-Islam*, (Lahore: Anjuman Himayat-i-Islam, 1976), p. 110.

28. *Ibid.*, p. 113.

29. I am grateful to Shaykh Muhammad Sa'id, former Director, Institute of Islamic Culture, Lahore on this point.

30. Wahid, *op. cit.*

DYNAMISM VS MECHANISM IN ISLAM: IQBAL'S RECONSTRUCTION OF THE DEFINITION OF IJTIHAD

"It (society) must possess eternal principles to regulate its collective life, for the eternal gives us a foothold in the world of perpetual change. But eternal principles, when they are understood to exclude all possibilities of change, which, according to the Qur'an, is one of the greatest `signs' of God, tend to immobilize what is essentially mobile in its nature. The failure of Europe in political and social sciences illustrates the former principle, the immobility of Islam during the last five hundred years illustrates the latter. What then is the principle of movement in the structure of Islam? This is known as ijtihad."

Iqbal, *The Reconstruction of Religious Thought in Islam*. (Lahore: Institute of Islamic Culture, 1986), p. 117.

FIVE

DYNAMISM vs MECHANISM IN ISLAM: IQBAL'S RECONSTRUCTION OF THE DEFINITION OF IJTIHAD

As stated in the preceding chapter, Iqbal gives three definitions of ijtihad in the sixth lecture. These definitions which are given below are the subject of the present chapter.

1. **Ijtihad is a principle of dynamism.**
"What then is the principle of movement in the nature of Islam? This is known as ijtihad".[1]

2. **Ijtihad means independent opinion and decision.**
"The word literally means to exert. In the terminology of Islamic law it means to exert with a view to forming an independent judgement on a legal question".[2]

3. **Ijtihad means complete authority in law making.**
"These schools of law recognise three degrees of ijtihad: (i) Complete authority in legislation which is practically confined to the founders of schools, (ii) relative authority which is to be exercised within the limits of a particular school, and (iii) special authority which relates to the determining of the law applicable to a particular case left undetermined by the founders.

In this paper I am concerned with the first degree of ijtihad only, i.e. complete authority in legislation."[3].

The first definition deals with Iqbal's philosophy of law and ijtihad. The second defines ijtihad from the viewpoint of methodology, i.e. with reference to sources, authority and method of reasoning. The third attempts to define the limits and levels of ijtihad and concerns specifically with the question of the qualifications required for ijtihad.

FIRST DEFINITION

Ijtihad as a principle of dynamism.

Iqbal's first definition is comparatively more significant and hence requires detailed analysis.

It becomes immediately clear that this definition has been articulated to refute the fallacy in Aghnides's analysis on the basis of which he had described ijtihad as a principle of mechanism. Without knowing the background of the controversy over the use of these terms i.e. "mechanism" and "dynamism", the discussion which follow may lead to confusion. It is, therefore, essential that the context of this philosophical debate be explained.

Mechanism is in fact a concept of the universe according to which all things in the universe are static, eternal, permanent and unchanging. The qualities and characteristics of everything are determined and definite. According to this concept the various parts of matter by their very nature are immovable and unchangeable. They come into motion only when a certain factor from without causes this movement. Accordingly, the movement or change is in fact defined as a mechanical interaction between the various parts of mattter. Nevertheless, this interaction between the parts of the matter does not prove any eternal relationship between them. On the contrary, since every part of matter has its own specific characteristic which does not have any relationship with other things, the apparent relationship of interaction between these parts is, therefore, of only an external nature.

The mechanical concept of the universe regards all

manifestations in the universe as consequences of the motion in matter and interprets them accordingly. According to this concept, interpretation is based on the final cause rather than on the cause of the agency. To sum up, this concept looks upon nature as a machine which is working with defined and unchanging movements of its parts.

Since the matter has the most essential place in the concept of mechanism, this philosophy comes very close to that of materialism. Consequently, it comes to reject all super-natural concepts and forms. Inspite of this closeness, this philosophy does not have materialism as its fundamental characteristic but is rather focussed on the static and immutable nature of things. It may be noted that mechanism does not reject motion absolutely but, as we have mentioned above, motion is defined as the cause of various manifestations of the universe. In fact, according to this philosophy, motion is not the essential property of matter or any part thereof, its essential property is non-motion. To cause motion it needs an external agent. This point can better be illustrated with reference to biology. The biologists who believe in the mechanical theory maintain that any live organism can be described on the basis of mechanical principles of the physical and chemical agents working in that system. Their opponents refute this description, and instead, they refer to other vital principles and hence their philosophy is called vitalism.

The philosophy of dynamism was developed in contradistinction to the philosophy of mechanism. Dynamism places force, power or vitality as the central point, instead of matter or motion. According to this philosophy, all manifestations in the universe including matter are in fact manifestations of this power which is innate in matter and in its parts. According to this philosophy, the power of motion exists in matter and its parts potentially and causes the motion. Consequently, this concept of the universe negates the eternal and static nature of the universe and the things therein. On the contrary, it defines motion and change as the natural and essential property of things. This change or movement does not require any external agent. The relationship between the

various parts of matter are developed on the basis of this power of motion.

With this explanation, now we turn to Iqbal's definition of ijtihad. Iqbal defines ijtihad with reference to the dynamic concept of the universe. Iqbal has, however, not used the term `power' which is the essential element of the dynamic concept. He has rather stressed on the quality of motion. To interpret Iqbal's definition of ijtihad, particularly, his reference to motion within the perspective of mechanical nature would be far from the truth. As we shall explain shortly, the motion of movement in Iqbal has no reference to mechanism, he has rather consistently rejected mechanism throughout his writings.

The emphasis that we find in Iqbal's lecture on refutation of the philosophy of mechanism and its implications is very evident. One may see the theme of dynamism permeating all his lectures.

It may be said without exaggeration that it is Aghnides's criticism of Islamic law which prompted Iqbal to define Islamic thought with reference to dynamism. We have explained the basis of our observation with reference to the historical background of these lectures in the previous chapter. In this chapter we shall also study its theoretical basis. An observant reader of these lectures will find propositions that run very consistently throughout these lectures. One of them is the rebuttal of mechanism and affirmation of dynamism. It may appear a digression but since Iqbal's definition of ijtihad from the perspective of dynamism is definitely a remarkable contribution to Islamic thought it is essential that this point is elaborated further.

MECHANISM

In his second lecture Iqbal himself explains mechanism which is summarised as follows:-

> The discoveries of Newton in the sphere of matter and those of Darwin in the sphere of Natural History reveal a mechanism. All problems, it was believed, were really the

> problems of physics. Energy and atoms, with the properties self-existing in them, could explain everything including life, thought, will, and feeling. The concept of mechanism is a purely physical concept claimed to be the all-embracing explanation of Nature. And the battle for and against mechanism is still being fiercely fought in the domain of Biology.[4]

Iqbal then poses the question: Is the idea of the quiddity of existence as defined by the concept of mechanism not against the religious concept of life? Are the physical sciences concerned about matter and materialism?

We do not deny that the laws of physical sciences are verifiable facts but these sciences divide existence into various departments and then try to discover particular laws about those parts. Physical sciences cannot put forth a comprehensive point of view about existence. Rather, these various sciences are not even inter-related. It is left to religion to look at life as an integrated whole. It is possible to study the material elements of a living body on the basis of mechanical principles but this study will be only partial. Life by itself is permanent and essential, and as such cannot be subjected to mere mechanical analysis.[5]

The mechanical concept of existence defines reason as a product of mechanical evolution in the body. This is not correct. Had reason been the product of biological evolution, the mechanical theory about the nature and source of life would be quite absurd. If reason appeared as one of the stations in the evolution of life the quiddity of existence could never be described as mechanical.[6]

According to Whitehead, life is psychic activity. The universe is a structure of events possessing the character of a continous creative flow.[7]

The above explanation makes it amply clear that Iqbal was an outsopken opponent of the philosophy of mechanism. This view appears again and again in other lectures as well. He defines "thought" in the first lecture, "universe" in the second

lecture, "prayer" in the third lecture, "self" in the fourth, "Islamic culture" in the fifth, and "ijtihad" in the sixth as dynamic concepts.

FIRST LECTURE

Analysing religious experience in his first lecture, Iqbal discusses the terms "thought" and "intuition". According to Iqbal, the source of both of them is one.[8] The importance of thought cannot be undermined by saying that thought is limited and therefore it cannot perceive the infinite. According to Iqbal, this wrong concept was born out of incorrect understanding of the movement of thought in the domain of knowledge. And this misunderstanding is the direct cause of the limited capacity of logic. The fact is that thought has the ability to acquire the power to perceive the infinite.[9] Iqbal says:-

> In its essential nature, then, thought is not static; it is dynamic and unfolds its internal infinitude in time like the seed which, from the very beginning, carries within itself the organic unity of the tree as an intrinsic fact. Thought is, therefore, the whole in its dynamic self-expression, appearing to the temporal vision as a series of definite specifications which cannot be understood except by a reciprocal reference.[10]

SECOND LECTURE

Iqbal refutes the materialistic and static view of the universe. Quoting Whitehead, he says:

> According to Professor Whitehead, therefore, Nature is not a static fact situated in an a-dynamic void, but a structure of events possessing the character of a continuous creative flow which thought cuts up into isolated immobilities out of whose mutual relations arise the concepts of space and time.[11]

Iqbal sees the universe as a dynamic structure which is continuously creating itself. It is one whole. Even space and

time are not isolated from each other. It is human thought that separates them as isolated and immutable entities.

THIRD LECTURE

Discussing the concept of God and the meaning of prayer, Iqbal explains in the third lecture that the concept of prayer in Islam is dynamic. Islam stresses on congregational prayers as social manifestation. "The real object of prayer, however, is better achieved when the act of prayer becomes congregational."[12]

In the fourth lecture again, exposing the meaning of `self', Iqbal refers once again to the dynamic concept of prayer. It is a movement of self which breaks away from the inertia of its physical existence. Man extends and reaches out to free himself from the mechanism of matter. This movement of prayers provides man freedom from the mechanism of determinism. "Prayer in Islam is the ego's escape and ascendence from mechanism to freedom."[13]

FOURTH LECTURE

In the fourth lecture Iqbal offers an analysis of `self'.

> "What then is matter? A conjugation of egos of a low order out of which emerges the ego of a higher order, when their association and interaction reach a certain degree of co-ordination."[14]

Iqbal contrasts freedom with mechanism and argues that in order to understand fully the concept of "self" one must employ the principles and concepts that are not borrowed from the doctrine of mechanism.

FIFTH LECTURE

In the fifth lecture, Iqbal explains that the static view that exists in the philosophy of mechanism has its origin in Greek idealism and classicism. According to these philosophies, change is a defect and, hence, blame-worthy. Although historically Islamic culture did accept the influence of Greek idealism and tended to favour static concepts and consequently

came to blame change, Iqbal believed that this trend was contrary to the Qur'anic teachings. He, therefore, pleaded that the spirit of Islamic culture must be sought in the Qur'an.

Iqbal summarises the Qur'anic teachings on this point by asserting that, according to the Qur'an, besides religious experience, there are two additional sources of knowledge: natural phenomenon and history.[15] The Qur'an exhorts one to seek the absolute truth in the phenomenon of the nature:

> This appeal to the concrete combined with the slow realization that, according to the teachings of the Qur'an, the universe is dynamic in its origin, finite and capable of increase, eventually brought Muslim thinkers into conflict with Greek thought which, in the beginning of their intellectual career, they had studied with so much enthusiasm. Not realizing that the spirit of the Qur'an was essentially anti-classical, and putting full confidence in Greek thinkers, their first impulse was to understand the Qur'an in the light of Greek philosophy. In view of the concrete spirit of the Qur'an, and the rather speculative nature of Greek philosophy which enjoyed the status of a theory albeit neglectful of fact, this attempt was foredoomed to failure.[16].

After surveying the intellectual revolt of Muslim thinkers against Greek philosophy in the various branches of science, Iqbal comes to the conclusion: "Thus, all tangents of Muslim thought converge on a dynamic conception of the universe."[17]

SIXTH LECTURE

He continues this argument in the sixth lecture which begins with the following sentence: "As a cultural movement Islam rejects the old static view of the universe, and soars up to a dynamic view."[18]

We have explained the terms "mechanism and "dynamism" in the beginning of this discussion. Now we turn to determine their meanings according to Iqbal.

The term mechanism has been used by Iqbal in three

different meanings. These meanings have appeared in three different contexts. In the context of knowledge and sciences "mechanism" has been used in the sense of "the concern of physical sciences with materialism".[19] With reference to the manifestation and the evolution of self, mechanism has been used in the meaning of "limitations" as compared to "freedom".[20] The third general meaning which has been used comparatively more frequently is synonymous with "being static."[21]

Iqbal has used the term "mechanism" generally as the opposite of "dynamism".[22] One may observe that the meaning of "being static" is common to all the three understandings. Contrary to `being static', dynamism is the notion of movement or power of movement. The basic principle of Islamic cultural movement is dynamism which manifests itself in ijtihad. Iqbal in fact, aims at refuting ijtihad's description as mechanical.

One can, therefore, conclude that the following dynamic elements constitute Iqbal's concept of ijtihad.

1. Qur'an's anti-classical spirit
2. The dynamic concept of universe, society and culture in Islam
3. The idea of the changeability of life
4. The realism of juristic reasoning in Islam
5. The evolutionary and dynamic concept of intellect and thought in Islam

Having discussed Iqbal's explanations of the concept of mechanism, now we should begin attending to the mechanical definition of ijtihad by Aghnides.

Aghnides's argument has the following premises as its basis:

1. Islamic system of law does not possess evolutionary view of life. Life is bound by determined laws and codes.

2. The qualifications and limitations for ijtihad illustrate the mechanical nature of law. These limitations classify sciences and make it rather impossible for anyone to enter into the boundaries of ijtihad. Iqbal rejects both of these aspects. He stresses the evolutionary concept of life. Commenting on Aghnides's objections of confining life to codes and laws, Iqbal says:

> The legists of Hedjaz, however, true to the practical genius of their race, raised strong protests against the scholastic subtleties of the legists of Iraq, and their tendency to imagine unreal cases which they rightly thought would turn the law of Islam into a kind of lifeless mechanism. These bitter controversies among the early doctors of Islam led to a critical definition of the limitations, conditions and correctives of qiyas which, though it originally appeared as a mere disguise for the *Mujtahid's* personal opinion, eventually became a source of life and movement in the law of Islam.[23]

As to the second of Aghnides's objection, Iqbal becomes more emphatic in his refutations. According to Iqbal, classifications of sciences and their compartmentalisations are more obvious in physical sciences. The religion does not accept such classifications. It rather takes life as an integral whole:

> Natural Science deals with matter, with life, and with mind; but the moment you ask the question how matter, life, and mind are mutually related, you begin to see the sectional character of the various sciences that deal with them and the inability of these sciences, taken singly, to furnish a complete answer to your question. In fact, the various natural sciences are like so many vultures falling on the dead body of Nature, and each running away with a piece of its flesh.[24]

Aghnides's observation that the jurists have fortified ijtihad by an unscalable wall of qualifications to discourage others is not correct. Firstly, this wall is not unscalable. Every field requires some qualifications for a researcher. It may, however, be said that it is meant to discourage those who

have no idea of the field.

SECOND DEFINITION

Ijtihad as a method of legal justification

We have explained above that Iqbal's first definition of ijtihad was related to the philosophy of dynamism. Now, we turn to the second definition which relates the method of ijtihad. Debates about ijtihad in the context of its methodology refer to the questions of the use of reason as a source of law, changeability of Islamic law and reformation. We shall deal with these points in the following section.

RATIONALISM

In order to appreciate Iqbal's attitude toward rationalism it should be remembered that, on the whole, Iqbal belonged to the romantic school of thought and hence we find in him a degree of antipathy to rationalism. Accordingly, Iqbal values passion more than reason. He regards intuition and religious experience worthier than logic and intellect. However, when carefully analysed, reason and intuition are in fact the two states or two aspects of the same reality.

Iqbal, in fact, does not reject reason in the absolute sense. The reason whose shortcoming Iqbal criticises is the partial reason, as it is based on the logic of mechanism. It may have the capacity to perceive the reality of matter but being partial, it cannot perceive the reality of life. Whenever it attempts to perceive life it involuntarily tends to distort it. The individual reason is capable of analysing and perceiving life but only in parts. The life cannot be grasped by this narrow individual reason.

> According to Iqbal, reality in its essence, is spiritual and is beyond the grasp of partial reason. The only reason that can grasp it is the universal reason. The universal reason has not only the capacity of perception but also has the taste for theophany.[25]

With reference to ijtihad, the principle of reason is discussed in the form of qiyas or analogy. Iqbal feels ill at ease

at the tendency of rational arguments developed in the Iraqi school of law.

> The intricate behaviour of life cannot be subjected to hard and fast rules logically deductible from certain general notions. Yet looked at through the spectacles of Aristotle's logic it appears to be a mechanism pure and simple with no internal principle of movement.[26] Thus, the school of Abu Hanifa tended to ignore the creative freedom and arbitrariness of life, and hoped to build a logically perfect legal system on the lines of pure reason.[27]

In his discussion of qiyas, Iqbal has used the term "reason", in fact, as synonymous with "opinion". However, it is not correct to conclude that Aristotalian logic was the main instrument of reasoning in the early period of the Iraqi school. The credit for introducing Aristotalian logic into *Fiqh* has been attributed to Ghazali who, being a Shafi`i, belonged to the Hijazi school whom Iqbal describes as practical. In fact, in the formulative period of Islamic law, the tendency not to depend on traditional sources was termed as opinion. The opinion implied use of reason in its broader meaning as opposed to tradition. Observed carefully, one finds that the source of this reason is not Greek logic but social conscience. We may, therefore, conclude that the opposition to rationalism found in Islamic jurisprudence elaborates this point further as it has been discussed earlier in chapter two.

REFORMATION

Muslim scholars have often used the term *tajdid* for reformism which has reference to the traditional concept of *mujaddid*, meaning the one who renews. It is a common Muslim belief that a *mujaddid* appears at the turn of every century. Nevertheless, the term "reformation" came into use, under the impact of European civilization. It has an explicit reference to the reformation that took place in the history of Christianity. It should be borne in mind that it is in the context of this important movement in Europe that Iqbal understood `Reformation'.

We need not go into details of the events of Reformation and its causes. The following consequences of the Reformation movement are, however, worth noticing for an appreciation of Iqbal's views on `Reformation'.

1. As a consequence of this movement there appeared many national churches in place of the one universal Catholic Church in Western Europe. Nationalism, nation, state and national church became necessarily interrelated.

2. The Reformation theologies denied the authoritative position that the church had come to assume---the position of God's spokesman in regard to theological matters. After the Reformation, the paramountcy of the authority of the Bible paved the way for what is termed as the fundamentalist trend in Christianity.

3. Reformation also proved instrumental in the grant of religious freedom to individuals. This freedom gradually paved the way for the civil rights.

4. In religious matters, and often in political and financial matters as well, the state was bound to listen to and follow the guidance and decision of the church in the medieval period. After the Reformation this supermacy of religion over the state gradually came to an end.

Iqbal was well aware of these various aspects of Reformation. He analysed this movement and on many occasions expressed his disagreement with its several aspects. In his poem "Masjid Qurtubah" he surveyed European history during the Reformation period and compared it with the Muslim world of his times.

> The Germans have witnessed the commotion of the reformation of religion
>
> That has eliminated all traces of the old traditions.
>
> The infallibility of the Pope became an obsolete term
>
> The delicate ship of thought set on solitary sail sails alone

The French eyes have also seen the Revolution

That inundated the Western world

The Italian nation grown old worshipping the past

Is young again by savouring the taste of Reformation

The Muslim soul is feeling the same anxiety

What will happen is a divine secret,

The tongue is tied.[28]

Iqbal was intensely sensitive to the fact that the Muslim world was then passing through the phase which Europe had passed through a few centuries earlier. Consequently, he laid much emphasis on a comparative study of the Reformation in Europe vis a vis the contemporary conditions of the Muslim world. He said:

> We are today passing through a period similar to that of the Protestant revolution in Europe, and the lesson which the rise and outcome of Luther's movement teaches should not be lost on us. A careful reading of history shows that the Reformation was essentially a political movement, and the net result of it in Europe was a gradual displacement of the universal ethics of Christianity by systems of national ethics. The result of this tendency we have seen without bringing any workable synthesis of the two opposing systems of ethics, has made the European situation still more intolerable. It is the duty of the leaders of the world of Islam today to understand the real meaning of what has happened in Europe, and then to move forward with self-control and a clear insight into the ultimate aims of Islam as a social policy.[29]

Iqbal was deeply perturbed by the various nationalist movements arising in the Muslim world in his time. He feared the disunity of the Muslim world would result from these movements. He was so fearful of this consequence that he considered even the liberal movement among the Muslims a great danger to the unity of Islam. That is why he constantly

sought a definition of nationalism which would maintain universality of religion. Nevertheless, in principle he was not opposed to Reformation.[30] He had in fact sympathy for Luther's views as he said: "A mere theologian cannot fully reveal to his readers the rich content of Luther's reform. We are apt to isolate great ideas from the general stream of man's intellectual activity".[31]

In his presidential address delivered on December 29, 1930 at Allahabad, addressing the members of the Muslim League, Iqbal gave a detailed survey of the Reformation movement in Europe. He pointed out that in the wake of the impact of Europe, nationalistic ideologies were making inroads into the Muslim world. The Muslim youth in the Sub-Continent wished to see those ideas grow into realities in this region. Iqbal advised them not to forget that those ideas were the product of special conditions obtaining in Europe. They should specially take note of this fact that Christianity that had developed into a universal church was originally an ascetic movement. Luther's Reformations movement was a protest against the universal church. His movement replaced universal ethics by a plurality of narrower systems of ethics.

Iqbal observed:

> The protest of Luther was directed against this church-organisation, not against any system of polity of a secular nature, for the obvious reason that there was no such polity associated with Christianity. And Luther was perfectly justified in rising in revolt against this organisation; though, I think, he did not realize that in the peculiar conditions which obtained in Europe, his revolt would eventually mean the complete displacement of the universal ethics of Jesus by the growth of a plurality of national and hence narrower systems of ethics.[32]

According to Iqbal, it was under the intellectual impact of Luther's movement that narrow nationalistic points of view gained supremacy over the broader universal conceptions. The physical boundaries came to be considered more vital for political stability. As a result, religion was reduced to a private

affair. In Islam, according to Iqbal, no such duality existed. Here there was an organic relationship between God and universe, spirit and matter, and the church and the state. "A `Luther' in the world of Islam, however, is an impossible phenomenon; for, here there is no church-organisation similar to that, of Christianity in the Middle Ages, inviting a destroyer".[33]

It was in view of these developments that Iqbal never favoured the use of the terms Reformation and modernization with reference to Islam. He even did not look favourably at the various reform movements in the Sub-Continent. Pandit Jawahar Lal Nehru had described Qadyanism as a movement of reform and modernisation in Islam. Vehemently criticising Nehru, Iqbal wrote:

> This satirical advice assumes that Ahmadism is a reform-movement. He does not know that as far as Islam in India is concerned, Ahmadism involves both religious and political issues of the highest importance. As I have explained above, the function of Ahmadism in the history of Muslim religious thought is to furnish a revelational justification for India's present political subjugation.[34]

Not only that Iqbal did not regard Ahmadism as a reform movement but he did not even support the various reform movements growing among the Hindus. He rather supported conservatism among Muslims, as well as among Hindus. In Iqbal's own words:

> I very much appreciate the orthodox Hindus' demand for protection against religious reformers in the new constitution. Indeed, the demand ought to have been first made by the Muslims who, unlike the Hindus, entirely eliminated the idea of racism from their social structure.[35]

The various statements that we have seen so far lead us to conclude that Iqbal was opposed to these movements in view of the European experience. He saw in them a threat to the universality of Islam.

For Iqbal reformation and nationalism were

interdependent. He was not prepared to allow even a grain of doubt in this view. He even went so far as to criticise the concept of *Mujaddid*. During a controversy on Qadianism when the *Light*, a Qadiyani journal, referred to a *Hadith* with regard to *Mujaddid*, Iqbal said:

> The editor of the *Light* quotes a Tradition which gives a mathematically exact picture of the historical process. While I do believe in man's spiritual capacity and the possibility of the birth of spiritual men, I am not sure that the historical process is so mathematical as the *Light* thinks. We can easily confess that it is beyond our intellectual capacity to understand the nature of the historical process. All that I can negatively say is that it does not appear to me to be as fixed and mathematically exact as the *Light* thinks. I am rather inclined to Ibn Khaldun's view which regards the historical process as a free creative movement and not a process which has already been worked out with definite landmarks. This view has been put forward in modern times by Bergson with much greater wealth of illustration and scientific accuracy than by Ibn Khaldun.[36]

Iqbal was so unyielding in his view of the universality of Islam that he could accomodate no regionalism at any cost. He stressed this point to the extent that he stressed on universalising Islamic laws where the early constructions restricted them to local Arab customs and conditions. He feared that otherwise Islam would be confined to a certain Arab region and to a certain period of time. In his presidential address at Allahabad, while demanding the establishment of a Muslim state, he said:

> I, therefore, demand the formation of a consolidated Muslim state in the best interest of India and Islam. For India, it means security and peace resulting from an internal balance of power; for Islam, an opportunity to rid itself of the stamp that Arabian imperialism was forced to give it, to mobilize its law, its education, its culture, and to bring them into closer contact with its own original

spirit and with the spirit of modern times.[37]

According to Iqbal the universalism of Islam did not mean that it should not bear the stamp of any particular place or time. This universalism must, he was of the view, have the capacity to efficiently cover all departments of life at all places and times. This is why he strongly objected to the attempts made by the modernists in his time to transplant the codes and laws operating in one country to another. He said:

> The adoption of the Swiss code with its rules of inheritance is certainly a serious error which has arisen out of the youthful zeal for reform, excusable in a people furiously desiring to go ahead. The joy of emancipation from the fetters of a long-standing priest-craft sometimes drives a people to untried courses of action.[38]

Iqbal called this form of modernization taqlid and severely criticised this trend.

> Let those people be happy
> With the Call to Modernity
> Who consider it only
> A night of pleasure
> However, I fear that the
> Slogan of modernism
> Is an excuse in the East to ape the West.[39]

On the one hand, these reform movements, led to the emergence of nationalism on the political level, and on the other it was feared that by putting an end to the universality of religion they confined it to a fixed place and time. Wisdom in Iqbal's observation becomes apparent by looking at the various reformation movements of his time which eventually came either to be regionalised or faded away with the passage of time. They contributed a great deal to the decline of the universality of Islam. Like the Reformation, Muslim reformists also questioned the authority of religious tradition (*Fiqh*) and the historical past and tried to confine Islam to earlier centuries and to the Qur'an and *Hadith*.

There was an ever-growing emphasis on the Arabness of

Islam. However, the phenomenon of nationalisation of religion that Iqbal feared did not take place. Nor have such movements of reform emerged in Islam which could pave the way for modernization of the Islamic cultural, legal and other social institutions to meet the challenge of modern times.

Iqbal preferred the term reconstruction to reformation. Reconstruction conveys the sense of re-building while the reform essentially means to correct or re-shape. The process of reform demands certain basic changes to correct the defects in something. It often also means to change the character or shape of certain things. Reconstruction on the other hand stresses building something anew so that it may restore the original condition. It may imply reaction. But since, according to Iqbal, the original state in Islam is universalism and dynamism, reconstruction would mean, to build again in order to return to universal and dynamic Islam.

Iqbal believed that the Islamic religious thought was never static. However, certain circumstances prevailed which led some scholars to believe that it was static in nature and now it was high time that it should return to its original state. There is, therefore, no harm if during this process we acquire stimulation from the contemporary history. He said:

> With the reawakening of Islam, therefore, it is necessary to examine, in an independent spirit, what Europe has thought and how far the conclusions reached by her can help us in the revision and, if necessary, reconstruction, of theological thought in Islam.[40]

These were the reasons why he preferred to entitle his lectures as `reconstruction'.

To sum up the discussions in relation to the second definition of ijtihad by Iqbal, we can conclude that for Iqbal to reach an independent opinion is synonymous with either rationalism or reformation. In fact it means, to make an effort for reconstruction departing from the prevailing interpretations of Islam. This reconstruction would aim at restoring the original universalism and dynamism of Islam.

THIRD DEFINITION

Ijtihad And Authority

In his third definition Iqbal terms it a complete authority in law making. He mentions various degrees of ijtihad. The context of this division of ijtihad is the traditional classification by the jurists which we have discussed earlier.[41] Accordingly, Iqbal divides the authority of ijtihad into three categories:

1. Absolute ijtihad
2. Limited ijtihad
3. Specific ijtihad.

The first category i.e. the full or absolute authority for ijtihad is enjoyed only by an independent or founder *Mujtahid*. The limited authority is given to *Mujtahid-muntasab* or a *Mujtahid* who adheres to a school of law. The specific authority is given to *Mujtahid fi'l-masa'il*. Defining ijtihad as a complete authority, Iqbal seems to consider only the first of the above categories as ijtihad. The other categories which either limit ijtihad to a particular school or limit the jurisdiction of a *Mujtahid* are not recognised.

This definition raises a number of questions. First, one often finds verses and statements by Iqbal, sometimes supporting ijtihad and opposing taqlid and at other times, to the contrary. Does Iqbal consider the above second and third categories as taqlid? Should Iqbal's ambivalence towards ijtihad be termed a contradiction in his thought? If that is not so, which of the views is truly Iqbalian? Second; is the authority to make laws vested in an individual or does it lie with an institution, community, or a religious or a political organisation like the state? Thirdly, in his personal life, Iqbal adhered to the Hanafi school. Does this negate his concept of ijtihad?

We will review a few verses by Iqbal in which he favours taqlid and opposes ijtihad. Some of these verses apparently oppose freedom of opinion implying opposition to ijtihad.

> Freedom of thought spells doom for those
> Who have no skill to think and deliberate

When thought is immature
The freedom of thought reduces man to be an animal[42]

Who dares to demur a Muslim
Freedom of thought is a God given gift
Subjecting the Qur'an to a game of justification
He himself may invent a new Divine Law[43]

Though God given thought has enlightened the world
Yet, the freedom of thought is a satanic invention.[44]

To argue on the basis of these verses alone that Iqbal was opposed to freedom of thought and opinion, reflects total disregard of a view of Iqbal that emerges from a comprehensive study of his thought. We have discussed above in detail that Iqbal's thought is dynamic and that freedom is its essential virtue or characteristic. It would, therefore, not be true to conclude that Iqbal was opposed to the freedom of thought. Iqbal was, of course, against that freedom of thought which led to absolute rationalism or to reformation in the sense we have discussed above.

In fact, the term freedom of thought in Iqbal's poetry has been employed in a satirical sense for the activity of those intellectual novices in the Sub-Continent who had stepped into the field of research which they found vacated by the experts. They began to write on almost every aspect of Islam. When questioned about their sources of information and their capabilities for research they pleaded that in Islam knowledge and research were not a monopoly of a certain individual or class, and that the modern world stood for the freedom of thought of an individual. Iqbal subjected this ridiculous argument to his satire.

This was in view of the apprehension mentioned above that Iqbal chose to prefer taqlid against such an `ijtihad'.

Ijtihad during the times of decadence
Makes the path of a nation complicated
Adherence to the way of the ancestors is better

Than the ijtihad of the narrow-visioned scholars[45]

On another occasion he says:

When the life system gets weaker
The nation regains strength from taqlid
Take the path of your fore-fathers because that is unity
Taqlid means disciplining a nation[46]

He also says:

Take to heart the meaning of the Unity of God
Find solution to your problems in taqlid[47]

In fact, this advice to adopt taqlid reflected Iqbal's frustration and disappointment in specific circumstances. To conclude from these verses that Iqbal supported taqlid against ijtihad would certainly constitute a grave misunderstanding of Iqbal's thought. These verses only suggest that in times of decadence and disunity one must temporarily retreat to taqlid. This cautious advice is not a permanent rule in favour of taqlid. One may tend to close the door of ijtihad only when it is proven that the days of darkness are going to stay for ever. Even then to submit to darkness and inertia is definitely contrary to Iqbal's philosophy.

Iqbal laments this attitude in his poem "ijtihad", where he says:

In India where could one learn the wisdom of religion

No where one enjoys excellence of character, of depth of thoughts

How could there arise daring ideas from the confines of reverence

Alas! The subservience, the taqlid and the decline of research,

Themselves they do not change, they change the Qur'an

How far from God's will are the jurists of the Holy places

These slaves believe that the Book is incomplete because,

It does not teach a believer the ways of slavery[48]

Iqbal uses the terms taqlid and slavery as synonymus.

Here the cause of ailment is slavery and taqlid,

There its cause is the system of democracy

Neither East nor West is free from it

The whole world is suffering from the sickness of heart and vision[49]

How can one be saved from this slavery? Iqbal suggests:

I have heared that the nations can be saved from this slavery

By developing ego and by its demonstration[50]

According to Iqbal, taqlid is the arch enemy of ego.

Do not destroy your ego by taqlid

Cherish it like a unique pearl.[51]

In the light of this brief survey we may say that there is no contradiction in Iqbal's poetry. The mention of resort to taqlid is only a temporary and a precautionary measure. The permanent and fundamental principle in Islam is ijtihad.

This wrongly grasped charge of contradiction has also been subjected to criticism by Bashir Ahmad Dar. Analysing Iqbal's verses on the subject in chronological order, Dar concluded that Iqbal's verses opposing ijtihad belong to an early period as compared to those in favour of ijtihad.[52]

As to the second question about who should have the authority to ijtihad Iqbal makes an effort to answer it in his discussion of the qualifications for ijtihad and ijma`.

Iqbal clarifies that the *Ahl al-Sunnah* never denied the theoretical possibility of ijtihad. However, since the establishment of the schools of law, they never recognised its possibility in practice. He explains that so many limitations and qualifications were added to the requirements for the

exercise of ijtihad and that these qualifications were made so difficult to attain, that it became well neigh impossible for any individual to exercise ijtihad. This criticism of the qualifications of ijtihad is, however, rather exaggerated. The view that ijtihad was impossible due to impossible qualifications is in fact the idea of many modern writers. The conservatives stress this point to prove the validity of taqlid. The modernists cite it to prove the stubborn conservatism of the traditionalists.[53] For instance, Mawlana Ashraf `Ali Thanawi uses this argument to prove the necessity of taqlid, saying: "Theoretically the capability of ijtihad is not impossible in these days but the fact is that this ability has not actually existed for a long time now".[54]

If we analyse the qualifications mentioned by the jurists we can see that they are neither impossible to attain nor are they irrelevant or unnecessarily imposed in order to make ijtihad impossible. Most of the jurists regard the knowledge of the following matters necessary for *Ijtihad Mutlaq*: The Book, Sunnah, precedents of ijma`, qiyas and the Arabic language.

As to the Book i.e. the Qur'an, al-Ghazali and many other jurists clarify that it means only the knowledge of the verses pertaining to legal injunctions. These verses have been counted to be five hundred. Again, Ghazali explains that it is not necessary to learn all these verses by heart but rather one must know their occurrences and be able to refer to them when the need arises. The jurists after al-Ghazali have added a few more things to this list. Al-Bazdawi has demanded additionally the knowledge of the classification of the legal verses. Al-Taftazani has even stressed the knowledge of abrogated verses.[55]

We would not go into details of the other matters but the above illustration about the requirements of the knowledge of the Book makes it sufficiently clear that a *mujtahid* is obliged to acquire the minimum knowledge of essential verses. One may see that it is not impossible to do so.

Even for knowledge of the Arabic language it has been made clear that what is necessary is a knowledge of the language to the extent that one may be able to appreciate the

style and the various modes of expression of Arabic usage; it is not at all necessary to acquire the skill of traditionally known experts like Isma`i, Khalil and Mubarrad. Abu Ishaq Shatibi (1388) explains that inference in Islamic law is made from two sources: texts and principles. For the latter, the knowledge of Arabic language is not necessary. Regarding the texts, since The Lawgiver revealed the text in words which could be understood by the Arabs, it is not possible for non-Arabs to comprehend them in the same way as the Arabs do. However, as far as *thought and ideas of* the Qur'an are concerned, both the Arabs and non-Arabs can follow them equally.[56]

The qualifications for ijtihad have been re-stated by recent scholars like Abu Zuhrah as follows:-

i) The *Mujtahid* must be well acquainted with the styles (i.e. skill to distinguish between the literal, metaphorical and allegorical usage) of the Arabic language.

ii) The knowledge of the legal verses in the Qur'an and their context. It is not necessary, however, to memorize them.

iii) The knowledge of *Sunnah*, various channels of transmission, categories and the knowledge of the *Hadith* relating to legal injunctions.

iv) The knowledge of those rules on which the Companions of the Prophet (P.B.U.H) were agreed and the knowledge of the opinions of various jurists.

v) Acquaintence with the methods and rules of juristic analogy.

vi) Acquaintence with the purposes of the shari`ah and the principles of public policy.

vii) To be personally right-minded and to be God fearing.[57]

Now if we look at these qualifications they are in no way impossible, even though they may be difficult to attain. However, if we keep in mind that these qualifications have been proposed for a specialist of expert knowledge to exercise ijtihad, one may notice a trend of laxity rather than rigidity.

It is to be noted that these qualifications are nevertheless

insufficient for ijtihad in modern times. The progress that human knowledge has made these days, the breadth of scope and the depth that it has gained, demand revision of these qualifications. A knowledge of subjects such as economics, political science, sociology, psychology, etc., has become necessary for the exercise of ijtihad. Without that knowledge ijtihad would be reduced to a mechanical exercise. We should also admit that it is not possible for one individual to acquaint himself even with the fundamentals of all these sciences. Consequently, even if the `ulama' come to agree to the permissibility and the need of ijtihad it would not be possible for any one of them to do justice to the requirements of ijtihad. They must join in their efforts with the experts in these sciences.

The unlimited scope of knowledge and the absence of this awareness among the Muslim scholars, in addition to the intellectual confusion and obscurantism, were the factors that led Iqbal to argue that ijtihad must be exercised as a collective effort. Hence he employed the principle of ijma` in the service of ijtihad.

Iqbal's views on ijma` are discussed in the next chapter.

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LAW, STATE AND `ULAMA':
IQBAL'S RECONSTRUCTION OF IJMA

The teaching of the Qur'an 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

Iqbal, The Reconstruction of Religious Thought in Islam (Lahore: Institute of Islamic Culture, 1986), p. 134.

SIX

LAW, STATE AND `ULAMA': IQBAL'S RECONSTRUCTION OF IJMA`

In Islamic jurisprudence, ijma` has been concieved in two ways: firstly as a source and secondly as an conceived of ratifying authority. As a source it means that the sum total of agreed opinions among the Companions of the Prophet (P.B.U.H) or among the later jurists should constitute a source for legal reasoning. As a principle of confirmation, ijma` means that with the passage of time if the majority of Muslim community comes to adopt a certain opinion or a practice, and continues to do so, it may also be taken as law. The traditional definitions, on the other hand, give the impression that ijma` was a process or a method by which a council of jurists, as if in a formal meeting, reached a consensus on a certain problem. Three significant points emerge from these developments. Firstly, in early Islam the authority of ijma` rested with the community. Secondly, this authority belonged to the jurists, according to the later theories of jurisprudence. Thirdly, if a generation of scholars kept silent and raised no objection against a certain practice or ruling, it was also considered ijma`.

Iqbal restructured the concept of ijma`to include all these factors and to render it more dynamic. He defined it as an institution of ijtihad in which not only the jurists but also the representatives of the community participated.

According to Iqbal, *Khilafat*, ijtihad and ijma` were integral parts of an Islamic political system. In order to provide legal status and constitutional legitimacy to ijtihad, it must be supported by ijma` and *Khilafah*. Ijma` is a process which not

only regulates but also regularises ijtihad and provides legal foundation for the *Khilafah*. Like ijtihad, in modern political systems, *Khilafat* also can no longer be vested in an individual. It must operate in the same collective spirit as it originally did in early Islam.

In early Islam, *Khilafat* and ijtihad, both functioned through ijma`. The legislative assembly or parliament may be considered its modern development. It expresses the collective will of the whole community. In Islamic terminology this institution may be called a synthesis of ijtihad and Ijma on the one hand, and a modern expression of the institution of *khilafat* on the other.

The question of *khilafat* attracted the attention of a number of Muslim and non-muslim scholars in the nineteenth century in the Sub-Continent. The debate was introduced under the influence of Jamal al-Din Afghani and Wilfred Blunt. It has been mentioned earlier, that Blunt wrote a book entitled *Future of Islam* in 1882.[1]

According to A. Hourani, Blunt stated that his views were actually based on Mufti Muhammad `Abduh's ideas.[2] In view of this claim and the significant influence of Blunt's views on Muslim political thought, it is not out of order to note briefly the main themes of the book.

The Future of Islam was "addressed to the Englishmen in the hope that it may be instrumental in guiding the national choice".[3] The choice referred to the question about the replacement of the Ottoman Caliphate and its future, which was a "burning question of the day in Asia"[4].

Reading the book, it becomes quite clear that Blunt found the spiritual and temporal authorities combined in the Caliph;[5] and thus the hope for progress of the Muslims lay in the separation of these two authorities. He, therefore, stated approvingly the programme of the young Turks "to separate the spiritual functions of the Caliphate from those of the head of the state, copying, in so far, the modern practice of Europe towards papacy."[6] He added, "There would then be two

powers at Constantinople, a Maire du Palais who would reign, and a Caliph who would be head of religion"7

Blunt viewed Ottoman Caliphate as the last phase through which the institution of Caliph was passing. It differed from the previous three phases; "pure theocracy", "Arabian monarchy" and "temporal interregnum." The last phase was legitimated as Caliphate by the *Hanafi `ulama`* when Sultan Salim came to power. According to Blunt, it was an innovative ijtihad that the `ulama' exercised.[8] They had to reinterpret the classical condition that the Caliph must be from the tribe of Quraysh. That was, however, the last ijtihad after which its doors were closed.In Blunt's opinion, the support of religion was neither sought, nor was available to the Ottoman Caliphs in the later periods.

Commenting on the Ottoman Caliphate, Blunt observed that the reforms introduced during the years 1839 and 1869 were the direct cause of the reactionary change and point to the decline of the caliphate, because "they were instituted not by and through religion, as they should have been, but in defiance of it, and so failed to find acceptance anywhere with the religious people"[9]. He, therefore, predicted that "Abdel Hamid was destined to be the last caliph of the House of Othman".[10]

Blunt supported the transfer of the seat of spiritual power from Constantinople to Mecca. He considered the caliph at Mecca would be less important politically than the Ottoman, yet religiously he would be more powerful![11] He would be free "from the incubus of Turkish scholasticism--"[12] He proposed that a Council of `Ulama' should assemble at Mecca, and according to the legal precedent of ancient days, should elect a caliph." Blunt was quick to compare it with the history of the Christian church in the fifteenth century, and the synods, which preceded the Council of Basle.[13]

It is quite clear that Blunt was re-defining the role of a Caliph as well as that of the `ulama' in terms of religious authority. He did not see any political future for the Muslims, particularly for their empire. He said that the Caliph of the future... will be chiefly a spiritual and not a temporal king.."[14]

He, therefore, suggested that "it is to Arabia that *Mussulmans* must in the future look for a centre of their relgious system and a return of thier caliphate to Mecca will signify more than a mere political change."[15]

As we have already discussed, Blunt was looking at Islam from the perspective of the history of Christianity. He viewed the *Khalifah* as a counter part of the *Pope*. Consequently, he defined the function of *khilafat* to be religious guidance and of the pattern of Christian councils. He proposed Muslim committees to issue decisions on various problems.

Blunt's book was translated into Urdu in 1884 and generated a debate on the question in the Sub-Continent. A certain Maqbul Ahmad wrote a series of articles in the monthly *Ma`arif*, Azamgarh, under the heading "*Khilafat-i-Islamiya Ka Dawr-i-Jadid awr us ka `a'inda nizam-i-`amal*" (The Modern Era of Islamic Caliphate and its Future Programme). Introducing the series, Sayyid Sulayman Nadwi, the editor of the *Ma`arif*, wrote:

> It appears that our colleague (the author) is a great admirer of Mr. Blunt, who alone is the source of his ideas. The fact is that it is he who is the author of the present chaos. He is the creator of the evil of nationalism on the basis of division between Arabs and Turks. He is known for his friendship with Arabs. He wished for the present revolution and finally he was able to see this revolution with his own eyes before he died.[16]

Earlier, Sayyid Sulayman Nadwi had published his own series of articles in the *Ma`arif* under the title "*Khilafat Islamiya awr `Uthmani Khilafat*" in which he had severely criticised Blunt and his supporters.[17]

Similarly other scholars also wrote on this topic. In all of these writings the question of caliphate was analysed in the perspective of nationalism and universalism or Pan-Islamism, generally emphasizing on the universalism of Islam. Practically, however, as no ideal caliph existed, these debates helped the rise of `ulama' as a substitute Islamic authority on

political matters. Not only their *fatwas* were sought in political debates, but they also began to take part in active poltics. In the Indian Sub-Continent, their participation began in the *Khilafat* movement, soon after they formed their own political parties.

`Allamah Iqbal wrote on the subject first in 1908. It was published under the title "Islam and Caliphate" in the *Sociological Review*, London.[18] It was translated into Urdu by Ch. Muhammad Husayn and published in 1923.[19] Iqbal argued that in its essence and spirit the Caliphate was republican. It is formed by election. Islamic political system is based on Arab tribal political concepts. The primitive tribal political order was transformed into a political system gradually with the development of Islamic thought and philosophy. Islamic political thought evolved the following two principles:

1. "That the Muslim commonwealth is based on the absolute equality of all Muslims in the eyes of the law. There is no privileged class, no priesthood, no caste system".[20]

2. "That according to the law of Islam there is no distinction between the Church and the state. The state with us is not a combination of religious and secular authority, but is a unity in which no such distinction exists. The Caliph is not necessarily the high priest of Islam. He is not the representative of God on earth".[21]

According to Iqbal, the trust of political governance is vested in the Muslim ummah, and not in any one individual. By election the collective will of the ummah operates through the elected individuals.

"It is clear that the fundamental principle laid down in the Qur'an is the principle of election".[22]

Contrary to Blunt, Iqbal did not conceive political or religious authority to be vesting solely in the Caliph or the `ulama'; it vested in the Muslim community. He wrote:

If, however, an absolutely new case arises, which is not

> provided for in the law of Islam, the will of the whole Muslim community becomes a further source of law. But I do not know whether a general council of the whole Muslim community was ever held for this purpose.[23]

Analysing the political history of Islam, `Allamah Iqbal concluded that for some reasons the Muslims could not pay full attention to the development of the idea of election:

> Unfortunately, however, the idea of election did not develop on strictly democratic lines... The form of election was certainly maintained in Baghdad and Spain, but no regular political institutions could grow to vitalise the people at large.[24]

Iqbal found two factors responsible for the lack of the development of election into institutions. Firstly, the two principal `races', the Persians and the Mongols who accepted Islam were not in favour of elections as the Arabs were. Secondly, the life of early Muslims was that of war and conquest. Their whole energy was devoted to political expansion, and empire. Democracy did not suit an empire.[25]

Iqbal concluded the article saying:

> ....But it is absolutely necessary for these political reformers to make a thorough study of Islamic constitutional principles, and to shock the naturally suspicious conservatism of their people by appearing as prophets of a new culture.[26]

In this last comment Iqbal was referring to the young Turks. This article in fact belongs to a period when the question of *khilafat* was still being discussed within the framework of its classical theory. The political changes had not yet started in Turkey and thus juridicial discussion of the concept of *khilafat* had not yet taken place. Later, when the question of reforms in the institution of *khilafat* arose, it was proven that Iqbal's analysis was in the right direction.

Later, when Iqbal was writing his lecture on ijtihad, Turkey had abolished the caliphate and replaced it with a

republican form of government. Iqbal understood these developments as a demonstration of the democratic spirit of Islam. Iqbal analysed the political development in Turkey in his *Reconstruction* in the following words:

> Passing on to Turkey, we find that the idea of ijtihad, reinforced and broadened by modern philosophical ideas, has long been working in the religious and political thought of the Turkish nation.
>
> ..... I now proceed to give you some idea of religio-political thought in Turkey which will indicate to you how the power of ijtihad is manifested in recent thought and activity in that country.[27]

Then he proceeded to analyse the various trends in Turkey toward defining the relationship of religion and the state. The Nationalist Party wanted separation of the state from religion. On the other hand, the Religious Reform Party, led by Sa`id Halim Pasha, opposed this separation and insisted on a harmony of idealism and positivism. They believed that Islam was a universal religion, not a local cult. It was, therefore, essential that Islam should transcend local customs and practices. It should seek its original spirit in order that it may advance its universal principle in the modern age.

Concluding his analysis, Iqbal found both parties agreeing to "the freedom of ijtihad with a view to rebuilding the law of *Shari`at* in the light of modern thought and experience".[28]

Iqbal saw the abolition of *Khilafat* in Turkey as an exercise of ijtihad: "Let us now see how the Grand National Assembly has exercised this power of ijtihad in regard to the institution of *Khilafat*."[29]

What was the question about *Khilafat* that Iqbal considered it as a cogent subject for ijtihad and how did the Turks exercise this ijtihad, Iqbal reviewed this question as follows:-

> The first question that arises in this connection is this: Should the caliphate be vested in a single person? Turkey's

> ijtihad is that according to the spirit of Islam, the caliphate or Imamate can be vested in a body of persons or an elected Assembly. The religious doctors of Islam in Egypt and India, so far as I know, have not yet expressed themselves on this point. Personally, I believe the Turkish view is perfectly sound...The republican form of government is not only thoroughly consistent with the spirit of Islam, but has also become a necessity in view of the new forces that are set free in the world of Islam.[30]

Analysing the universality of *Khilafat* Iqbal refers to Ibn-Khaldun and Abu Bakr Baqillani. He argues that even though the *Sunnis* consider it theoretically obligatory that *Imam* or Caliph must be for the whole of Islamic world but history tells us that it had not been so in practice. The Caliphate was divided into various regions and the jurists had justified it theoretically. Today the circumstances demand that Muslim opinion should gain strength in their home region and gradually they should develop a federated union which could establish a universal caliphate. The jurists compromised with the circumstances on the question of the qualification of a Caliph. It is illustrated by their relaxation of the requirement of ijtihad for a Caliph. Later, the conditions of a Caliph being a *Qureshi* was also omitted in favour of Ottomans.

Similarly, the conditions for *Khilafat*, ijtihad and ijma` may be re-considered in view of contemporary developments.

Iqbal further pointed out that definitions and conditions for these institutions, as discussed by the classical and medieval jurists, were also products of historical circumstances. It would be ironical to insist on them as they suited the peculiar needs of those days. ijtihad was shifted from the domain of ijma` and *Khilafat* to suit the political need of the Umawi and `Abbasi empires. Iqbal wrote:

> It was, I think, favourable to the interest of the Omayyad and the Abbasid caliphs to leave the power of ijtihad to individual *Mujtahids* rather than encourage the formation of a permanent assembly which might become too powerful for them.[31]

Consequently, Iqbal defined ijma` as a principle which had all the characteristics of a legislative institution. Even though such a role was assigned to ijma` in early Islam, and it was defined as such even today, at least in theory, but in fact it remained always a near ideal. Ijma` could not evolve into a formal institution. Today the situation has changed. Expressing his satisfaction on recent developments, Iqbal worte:

> It is, however, extremely satisfactory to note that the pressure of the new world forces and the poltical experience of European nations are impressing on the mind of modern Islam the value and possibilities of the idea of Ijma'. The growth of republican spirit, and the gradual formation of legislative assemblies in Muslim lands constitutes a great step in advance. ... The transfer of power of ijtihad from individual representatives of schools to a Muslim Legislative Assembly, which, in view of the growth of opposing sects, is the only possible form Ijma can take in modern times.[32]

According to Iqbal, ijma` was a democratic principle and accordingly the right to legislate was not limited to a few individuals only but it endorsed the participation of the whole Muslim community.

As discussed in the previous chapters, the nature of problems placed before a *Mujtahid* had also changed and the frontiers of knowledge were extended in such a manner and to such an extent that the qualifications for ijtihad mentioned in the books of jurisprudence were no longer such that they could be considered a *modus vivendi*.

Today, in order to exercise ijtihad one must be familiar with several sciences such as economics, politcal science, psychology, physics etc. It is well nigh impossible for one single individual to fulfil all these conditions. Today ijtihad cannot be exercised by traditional scholars alone. Yet at the same time it is not also possible to exercise it by excluding traditional scholars. The solution lies in an institution where experts on these sciences may sit together with the traditional

scholars to deliberate on such matters. Legislative Assemblies appear to be such institutions. There are, however, certain questions that need to be considered in this context.

Is the participation of experts in various sciences essential in the Legislative Assembly to exercise the ijtihad and Ijma? If so, what will be its form? It appears that scholars have been deliberating on this problem. Majority of the scholars view presence of the `ulama in the Assembly essential. Wahid Ahmad Masud recalls:

> I remember when Mawlana Muhammad `Ali was staying at Dr. Ansari's residence after his release from Chandwara prison, Abu'l Kalam Azad told Mir Mahfuz `Ali Badayuni that in order to regain the lost glory, the `ulama' must participate in the election for the legislature because only they can lead the nation properly.[33]

It is probable that there was some political pressure on the `ulama' to participate in the Assembly, or at least their participation was suggested with some political motives. That was certainly not the objective before Iqbal.

Iqbal reviewed the two methods of `ulama's participation in politics as discussed by his contemporary writers. The first method was the one adopted in the 1906 constitution of Iran. It provided a council of religious schoalrs for guidance in religious matters. The Council was authorised to review the legislative decisions. Iqbal considered this method highly dangerous.He wrote:

> The Persian constitution of 1906 provided a separate ecclesiastical committee of `ulama--conversant with the affairs of the world'--having power to supervise the legislative activity of the *Mejlis*. This, in my opinion, though a dangerous looking arrangement is probably necessary in view of the Persian constitutional theory. According to that theory, I believe, the king is a mere custodian of the realm which really belongs to the absent *Imam*. The `ulama', as representatives of the *Imam*, consider themselves entitled to supervise the whole life of

> the community; though I fail to understand how, in the absence of apostolic succession, they can establish their claim to represent the *Imam*. But whatever may be the Persian constitutional theory, the arrangement is not free from danger.[34]

`Allamah Iqbal argued that by giving the `ulama separate authority would pave the way for Papaism in Islam. Furthermore, it would deprive the Islamic social structure of its democratic spirit. Instead, he wanted the `ulama' to become part of the democratic process and, therefore, he strongly opposed the establishment of separate committees of the `ulama. He proposed:

> The ulama should form a vital part of a Muslim legislative assembly helping and guiding free discussion on questions relating to law. The only effective remedy for the possibilities of erroneous interpretations is to reform the present system of legal education in Muhammadan countries, to extend its sphere, and to combine it with an intelligent study of modern jurisprudence.[35]

Later, however, he realised some practical difficulties. One of them was that Muslims were already in minority in the Legislative Assembly in British India. Secondly, there were very few `ulama' who could be elected to this institution. In view of these difficulties, the development of Islamic law as he envisaged could not take place in the Assemblies.

It was under these extenuating circumstances, that in his presidential address at the annual meeting of the Muslim League in Lahore on March 21, 1932, Iqbal proposed the formation of an assembly of ulama, independent of the legislature.

> I suggest the formation of an assembly of `ulama' which must include Muslim lawyers who have received education in modern jurisprudence. The idea is to protect, expand, and, if necessary, to reinterpret the law of Islam in the light of modern conditions, while keeping close to the spirit embodied in its fundamental principles, This

> body must receive constitutional recognition so that no bill affecting the personal law of Muslims may be put on the legislative anvil before it has passed the crucible of this Assembly".[36]

It must be remembered that this proposal was made for the political system in British India, a non-Muslim state. Even in this proposal Iqbal insisted on the inclusion of lawyers trained in modern system of education, so that the Council did not become a Muslim counterpart of the Church. It should, therefore, be considered a temporary solution in a non-Muslim state but, not a permanent principle for a Muslim state.

To summarise the discussion in this chapter, Iqbal's reconstruction of ijma` places emphasis on the participation of common man in the process of law making. It is true that traditional definition of ijma` limited it to the consensus of scholars (*mujtahidin*), but one may observe that in practice an opinion came to be considered ijma` only after it had received acceptance by the Muslim community as a whole. In juristic understanding, consensus was also applied to such opinions or practices against which no objection was expressed. In other words, a general and silent acceptance by the community also consitituted ijma`. In another study we have also observed that ijma` was not limited to the consensus of scholars. The classical definitions included the leaders of opinion(*ahl al-ra'y*), nobles (*umara*) and other persons from different walks of life, whose agreement was considered ijma`.[37] Its limitation to jurists is a later development.

Iqbal revived this earlier conception of ijma` to include in this institution other members of the society along with the `ulama`. To him national or legislative assembly provided such a forum.

However the authority of ijma` in this form raised some juristic objections.

For instance, do the laymen and non-Muslims who are also members of these Assemblies, have the authority to participate in ijtihad? A majority of the people in the

Assemblies know very little about the shari`ah or even if they know about it, their knowledge is very superficial. Can such Assemblies exercise ijtihad?

As quoted above, Iqbal stresses the significance of layman's contribution due to latter's keen insight in these affairs.

It may also be noted that bills or proposals placed before the Assembly are drafted by the experts, and when passed they are vetted again by experts. The apprehension that law making would be in the hands of persons who are not experts is, therefore, untenable, and not of vital importance.

There is, however, another aspect of the same question. The Muslim community may disregard the consensus of `ulama' on certain matters as it did on questions like learning the English language. In such cases usually the consensus of the community comes to prevail.

As to the question of the participation of non-Muslims in law making institutions, quite obviously, according to the generally accepted view, Islam is a fundamental requirement for ijtihad. On this point, however, Abu Ishaq Shatibi has developed a subtle distinction which may help in defining the role of non-Muslim participation in this process. He observed:

> The jurists have permitted the possibility of ijtihad by a non-believer and for a person who does not believe in the existence of the Maker, does not believe in prophecy, and does not believe in the shari`ah. The reason is that ijtihad has been based on such premises the soundness of which is not to be questioned. It does not matter whether one believes them to be actually true or not.[38]

To appreciate this fine distinction developed by Shatibi it needs to be added that it is not a duty of the legislator to investigate or prove the validity of the premises used in legal reasoning. His duty is rather to take them as given and to proceed further. Consequently, a non-Muslim may proceed in his legal reasoning without establishing their validity. If he does so, we need not be concerned whether he actually believes in them or not. So far as the activity of legislation is concerned,

the question is immaterial.

The significance of Iqbal's contribution in this discussion thus lies in his re-construction of ijtihad as a collective effort in the form of ijma`, rather than an individual attempt. He was not alone to propose it. Other Muslim thinkers in the Islamic world were also writing along those lines. They also stressed the participation of `ulama' in legislation. Iqbal's contribution was distinct because whereas other scholars stressed the establishment of research institutions for the `ulama, Iqbal proposed actual participation. It was very seldom that they proposed participation of the `ulama in the legislative assemblies. For instance, Abu Zuhrah in Egypt proposed:

> It is inevitable to have a group of the `ulama' who fulfil all the necessary conditions of ijtihad. They may be available for the Muslim community to refer to them for their new problems. This group should cooperate in the education and research of Islamic matters. They should distribute their studies among their members.[39]

Mustafa Ahmad al-Zarqa also thinks along the same lines. Analysing the concept of ijtihad, he observes that ijtihad has remained individualistic and personal in the past and it was certainly for the good of the commuity. Later, however, the circumstances changed and even this individual ijtihad was temporarily stopped. The result was that eventually ijtihad stopped completely and permanently. Consequently, the Muslim community became static. In fact, the real question was not of prohibiting ijtihad, it was rather how to organize it. Zarqa believed that the factors on account of which individual ijtihad was forbidden in the past existed more strongly in our times. He therefore, concluded that the ijtihad of today and of the future must necessarily be collective.[40]

Describing the ways and means of collective ijtihad, Zarqa proposes the establishment of a research institute for Islamic jurisprudence. This institute should be staffed with well known jurists who have distinguished themselves not only academically but also in their personal character and piety. They should be joined by experts in social sciences such as

economics and sociology These scholars must address themselves to the study of new problems and conduct research fulfilling the requirements of ijtihad. These researches may later be published in the form of books or in the form of articles in research journals.[41]

The basic weakness of these proposals lies in the fact that they isolate the `ulama' from the mainstream of national development and the process of law making.

Mawlana Muhammad Yusuf Bannuri[42] in Pakistan, and Mawlana Muhammad Taqi Amini[43] in India also emphasised the collective form of ijtihad.

The Constituent Assembly that came into being after the independence of Pakistan consisted of a majority of Muslims, and thus it was possible to translate Iqbal's dream into practice. But for some reasons it could not happen. First, a special *Talimat Board* of the `ulama' was constituted that was supposed to guide the Constitutent Assembly in religious matters. Research institutions like Islamic Research Institute were also established. An Islamic Advisory Council, later called Council of Islamic Ideology, was also constituted, yet since they were not a regular part of the legislature, Iqbal's idea has not yet materialised.

`Ulama's participation in councils independent of legislative assemblies continues. Iqbal considered this method dangerous for the development of Islamic law, as it gives way to a separate religious authority like the Church, and isolates or rather confronts the `ulama' with the public opinion.

In the following chapter we shall see how the public opinion developed on the need to reform those Islamic laws that caused hardship for Muslim women. The chapter studies how the `ulama' were involved in the collective solution of the problem. First, there developed a concensus of `ulama' on the reform of law which was processed through the legislative assembly. The next chapter studies these events and Iqbal's contribution to this legal reform.

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JUSTICE, LAW AND REFORM: IQBAL'S RECONSTRUCTION OF QIYAS

"In view of the intense conservatism of the Muslims of India, Indian judges cannot but stick to what are called standard works. The result is that while the peoples are moving the law remains stationary."

Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Institute of Islamic Culture, 1986), p. 134.

SEVEN

JUSTICE LAW AND REFORM: IQBAL'S RECONSTRUCTION OF QIYAS

A MUSLIM WIFE'S RIGHT TO JUDICAL SEPARATION

The issue of the rights of women has been the most critical one in the conservative feudal Muslim society in the Indian Sub-Continent. Iqbal became concerned with this problem very early in his career as a lawyer and a jurist. As time passed, the critical nature of the probelm became increasingly evident to him. In his book on economics, *`Ilm al-Iqtisad*, first published in 1930, Iqbal discussed the economics of population and criticised the Indian Muslim customs of child marriage and polygamy.[1]

In 1904 he wrote an article "Qawmi Zindagi" in which he observed:

> The most sensitive issue in the reformation of social life is the rights of women... Western scholars have wrongly criticised Islam on the rights of women. This criticism applies in fact not to Islam... but to those legal opinions of the Muslim jurists which they have derived from the more general principles of the Qur'an. It may be rightly said that these individual opinions are not the essential components of the religion.[2]

In this article Iqbal discussed the problems of women's education, *pardah* and polygamy. About polygamy he wrote:

> The practice of polygamy also needs reform. There is no doubt that there was a subtle spiritual reason for its

> permission, and besides, it was an economic and political requirement in early Islam. Yet, in so far as I understand, it is not a necessity for Muslims today. To stress on this practice in the present conditions is to ignore the national economic situation and to provide the rich of our nation a religio-legal excuse for adultery.[3]

Although Iqbal has not discussed the matter in detail in this article but the point of his argument was to stress the fact that rights of women in a society are defined by the social concepts and practices of the time. "The current practice of Muslim people is generally based on the personal views of the ancient jurists. Certainly these views need to be amended. Who can claim that amending these views under present circumstances is a sin?"[4]

It has been sometimes pointed out that Iqbal stressed upon these rights of woman only in theory. In his own practice, he abided by the traditional customs.[5] We do not wish to join this debate, but this personal aspect of Iqbal's life should help appreciate his attitude to legal reform. He favoured reform only when it was really needed and could be effectively achieved. To him any radical or partial reform could only lead to social chaos. This chapter reviews Iqbal's efforts toward positive reform of women's rights.

Iqbal began practicing in the courts of Lahore in 1908[6]. He must have frequently come across cases and stories where women were victims of the unjust social customs. Sadder than this was the fact that the prevailing laws protected that social injustice. All this was very poignant.

In theory Islamic law regards marriage a contract and an agreement between the two parties. Yet the historical and social environment which informed the Islamic law did not allow equal legal rights to a husband and wife as are usually allowed to the two partners of a contract. This point is particularly evident in the case of the dissolution of the contract of marriage. Not only that the Hanafi *fiqh* does not allow a wife the right of divorce, but also that a husband is not even obliged to notify his wife about the divorce[7] When she is permitted to

apply to a court for the dissolution of marriage, the right is heavily restricted. A husband is not required to assign any reason for divorcing the wife, but a woman's right to apply for judicial separation is conditional and limited. Even if the husband was cruel and neglected his obligations towards his wife, the woman had no legal way out. The British introduced several changes and reformed several local laws for their colonial objectives, but did not amend the personal laws. Rather they followed Hanafi laws quite literally, particularly in matters relating to marriage and divorce.

There was a provision in Islamic law that at the time of contract of marriage a wife had a right to negotiate the right of divorce and the husband might delegate this power to the wife.[8] This was however rarely practiced and generally the jurists discouraged it.[9] However if this right was not stipulated in the contract, the power of divorce belonged only to the husband.

Mufti Sadr al-Din Azurda (d. 1868) was consulted regarding the case of a Muslim wife whose husband was missing whether a Hanafi *qadi* could apply Maliki law. The Hanafi view was that she should wait for at least 50 years before she could apply to the court, whereas the Malikis stipulated a three to five years waiting period. The Mufti wrote a treatise "*Al-Durr al-Mandud fi Hukm Imra'at al-Mafqud*" in which he argued in detail that a Hanafi jurist could not apply Maliki law.[10] Those women who were victim of the cruelty of their husbands had no legal remedy and hence they adopted apostasy as a legal device to get rid of their husbands immediately. The device was derived from the stipulations of the Hanafi legal texts that declared a marriage dissolved on the renunciation of Islam by a Muslim wife. Numerous cases are reported in the nineteenth and twentieth centuries when Muslim women applied to the British courts for the dissolution of marriage by declaring apostasy. It is significant to note that the number of these cases increased suddenly around 1920-5. Furthermore, it is also worth noticing that most of these cases belonged to the Panjab.[11] As we have discussed earlier in chapter four, this was the period when Iqbal started his legal practice and began thinking of writing on the problem of

ijtihad. We shall allude only to such cases which relate to the period when Iqbal was actively contemplating on this issue.

Briefly speaking, most of the judgements in these cases stress that according to Islamic law apostasy *per se* is sufficient legal ground for the dissolution of Muslim marriage, regardless of the real motive of the apostate to renounce her faith or not. In other words, apostasy with the motive to seek judicial divorce was also considered legally valid. A judgement in a 1924 case reads:

> Held that by the apostasy of either the husband or the wife, a Muhammadan marriage is dissolved and that the real question in such cases is not whether she is baptised but whether she has renounced the Muhammadan religion.[12]

A similar case in point in 1928 *Rahmate Vs Nikka* sheds more light on this issue. The judgement concludes:

> Where a person who has formally renounced faith in Islam and has gone through the rites of baptism, marriage under the Muhammadan Law is dissolved by the formal recognition of admission into Christianity. In a suit for restitution of conjugal rights it is immaterial whether motive for conversion is genuine or a device to have the marriage dissolved.[13]

In a 1934 case a woman was allowed judicial separation on the ground that she had claimed to adopt Christianity, after renouncing Islam.[14]

A detailed study of the cases also points to the fact that the trial courts initially raised the question about the genuineness of the motive for conversion. It was argued that the applicant could not be allowed separation because she was not sincere in her conversion. For instance, the Additional District Judge, Lyallpur, dismissed the case of Musammat Rahmate on August 8, 1927 observing that "conversion was not a substantial one and was nothing but a trick".[15] The higher court, however, dismissed this argument and observed:

> So long as the defendant has formally renounced her faith in Islam and has gone through the rite of baptism, the formal recognition of her admission into Christianity, the marriage must be held to have been dissolved according to law, and it is immaterial whether her motive is a genuine conversion or a device to have the marriage dissolved.[16]

In 1937 *Mst. Saeedan vs Sharf* presented a similar situation. On 9 December 1935 Saeedan submitted to the Sub-ordinate Judge, Chakwal, that she had abandoned Islam to adopt Christianity and hence her marriage was dissolved. The attorney for the defendant contended that Saeedan had not actually renounced her religion. Her story was not true. She was actually living with another person Sadr al-Din. The Subordinate Judge however decided the case in favour of Saeedan. The other party filed an appeal with the District Judge Jehlum. The District Judge proceeded to investigate the fact of conversion. Saeedan produced a certificate of baptism by a Christian Priest J.M. Paul, dated 22 October 1935. District Judge doubted the genuineness of the certificate and allowed the appeal. Saeedan submitted an appeal to the High Court. The High Court censured the District Judge for investigating the fact of conversion. Conversion dissolved the marriage necessarily, whatever the reason for conversion.[17]

In 1938 *Reshman vs Khuda Bakhsh* was more complicated. The investigation of conversion by the Court led to very unpleasant issues. Khuda Bakhsh filed a case for the restitution of conjugal rights. Reshman declared that she had renounced Islam and hence *Khuda* Bakhsh had no claim on her. The Subordinate *Judge* allowed dissolution of marriage. On appeal with the District *Judge*, an investigation about conversion began. Reshman was offered pork to eat so that her conversion to Christianity could be confirmed. She declined to eat it. On her refusal, and on the basis that she continued to live like a Muslim , the District Judge decided that she had not abandoned Islam and that her marriage was still valid. An appeal was filed with the High Court. A Special Bench appointed for this case adopted the same view as taken in several previous cases. The Bench observed that renunciation of

religion, for whatever reasons, dissolved the marriage contract. There was no need to investigate the genunineness of conversion. Admission was sufficient proof.[18]

In a case, *Sardar Mohammad vs Mst Maryam Bibi* (1935) Syed Amir Ali cited the views of the Hanafi jurists from Balkh and Samarqand that like a Muslim male a Muslim female could also marry a person belonging to the people of the Book. This view may be disputed but there was no disagreement among the jurists and several cases were decided on the principle that if a woman abandoned her faith in Islam and converted to Christianity, her marriage was dissolved. It was immaterial to investigate her real motive. It might be that she wanted to get rid of her husband.[19]

It is interesting to note that in almost all of the cited cases the suits were not filed by the wives, they were mostly filed in the first instance by husbands for the restitution of conjugal rights.[20] It appears that Muslim wives took full advantage of the Hanafi legal position and knew that their marriages were dissolved upon conversion. They did not consider it necessary to go to courts for this purpose.

The well known Hanafi legal text *al-Hidaya* which was considered a reliable text of Hanafi laws in the British courts ruled on this point:

> When one of the spouses abandons Islam, separation occurs without divorce. That is the view of Abu Hanifa and Abu Yusuf.[21]

This legal position is further elaborated in the *Fatawa `Alamgiri* in the following words:

> If husband or wife, any of the two, apostatises from Islam, separation between them takes place immediately without divorce.[22]

The *Fatawa `Alamgiri* clarifies further that even if the wife apostatised in order to get rid of her husband, the marriage still stood dissolved.

> If a wife professed words of disbelief, in order to tease her

> husband, or in order to dissolve the marriage contract, or intending to receive the dower twice which would become due on the renewal of contract of marriage, she will become prohibited for the husband. She shall be forced to return to Islam. A judge has the authority to renew her contract of marriage on a lower amount of dower even as little as one dinar, regardless whether woman agrees to it or not. The woman shall have no right to marry anybody else than her husband.[23]

`Abd al-Rahman al-Jaziri summarises the Hanafi view as follows:-

> If a husband commits apostasy his wife shall be separated immediately because an infidel cannot possess a Muslim woman in any condition. They will be separated at once without judicial action.[24]

On the contrary, if a wife commits apostasy the Hanafi jurists differ on details.

> In case the wife alone commits apostasy there are three views in this situation. First, wife's apostasy dissolves the marriage. She shall be punished physically, depending on her condition....She shall be detained and compelled to return to Islam. She shall be imprisoned until she returns to Islam or dies in prison. If she returns to Islam she shall not be permitted to marry anybody else than her husband. She shall be compelled to renew the marriage contract on a smaller amount of dower.
>
> The second view is that mere apostasy by the wife does not dissolve marriage, particularly if she deliberately does so to get rid of her husband. In that case there shall be no dissolution and no renewal of marriage contract. That is the view held by the jurists in Balkh and that is what is practiced by us these days. A judge cannot deviate from this position.
>
> The third view is that when a wife commits apostasy she becomes a slave girl and a property of the Muslim community. The husband purchases her from the ruler. If

> she was in his possession he has the right to use her without paying any price. She shall not be freed unless she is set free by the owner. Even if she returns to Islam she shall not be free.[25]

In short, a Muslim wife had no legal right to dissolve marriage. Even in case she renounced Islam, she would lose, according to some jurists, all her rights, including such fundamental rights as freedom. Even if marriage was dissolved, she would still belong to the husband.

In the Sub-Continent the two legal texts of *Al-Hidaya* and *Fatawa `Alamgiri* were considered authorities. The British courts adopted the first of the above three views. During the British period an apostate wife was awarded rights as a non-Muslim. This juristic view indiscretely encouraged spread of Christianity in India.

Looking at the legal reasoning employed by the jurists in the analysis of the issue one may notice that strict adherence to the Hanafi school and reasoning by precedent and analogy dominate. The issue has, however, been complicated because the precedent or analogy has not been sought in the original sources of the *Qur'an* and Sunnah, but in the opinion of the jurists of the Hanafi school, the most critical aspect of the reasoning employed in the issue is that the original probelm, i.e. the wife's intention and effort to dissolve the marriage contract seems to become secondary in importance. What dominates is the problem of apostasy. It became all the more painful, since apostasy had always been the most sensitive issue, particularly in areas where Muslims had been living as minorities, or under non-Muslim rule.

With reference to apostasy there were two issues——punishment for apostasy, and the status of marriage. Normally a marriage contract between a Muslim male and female professing the religion of the People of the Book was allowed. Hence if a Muslim woman was Christian, the marriage should have subsisted. But due to apostasy, wife's belonging to the People of the Book was not honoured. All further rulings were deduced from this juristic view. Again,

since Hanafi laws did not provide death sentence for a female apostate, the jurists applied qiyas to deduce other punishments for the apostate wife.

As we have said earlier, strict adherence to the Hanafi school was maintained to the extent that even the views of other schools were not allowed to be applied. As we shall note shortly, Mawlana Thanawi's effort to apply Maliki law was a very bold initiative.

Iqbal was aware of the limitations of the reasoning by analogy (qiyas). It is true that he had uncritically accepted the prevalent view that qiyas was the principle employed mostly by Abu Hanifa, while Malikis and Shafi`is relied more on *Hadith*. He explained the difference between the Hanafi and Shafi`i schools as a difference between the Aryan and Semetic attitudes respectively. The Hanafis as Aryans tended to seize the abstract in preference to the concrete. The Hijazi jurists, the Shafi`is and Malikis, as semites, relied more on the temporal aspect, and on the concrete.

Historically, this description of Hanafi school is not correct. Hanafis were also criticised by their opponents for not accepting *ahadith*. In fact Hanafis accepted not only *ahadith* that were *marfu`* (whose chain of narrators was traced back to the Prophet P.B.U.H), but also the *mursal* (whose chain of authorities went back only to the Companions of the Prophet P.B.U.H). Shafi`is and others treated the *mursal* as opinions of the Companions, but not as authentic *ahadith*. Secondly, the Hanafis tended to reject a deduction based on pure qiyas in favour of a *mursal*, and it was often called *istihsan*. The Hanafi position on *hadith* has still to be studied properly. Thus Iqbal's characterisation of Hanafis in contrast to Shafi`is in not entirely correct. Yet his observation about his contemporary Hanafis was accurate, when he said:

> But contrary to the spirit of his own school the modern Hanafi legist has eternalised the interpretations of the founders and his immediate followers ....[26]

As can be seen in the detailed reasoning on the issue,

the opinions of the jurists of the schools were treated as sources of law, and further deductions were made from them.

To Iqbal, if properly understood and applied, qiyas was only another name for ijtihad. He viewed the controversy over qiyas in the history of Islamic law as "a controversy between the advocates of deductive and inductive methods, in legal research".[27]

Iqbal's observation is quite significant. The Maliki school was more inclined to inductive reasoning. That is why the Maliki jurists stressed the practice of Madina as the source of Sunnah. Applying inductive method to the rules in the Qur'an and Sunnah they developed the principle of *maslahah*. Expounding this principle further the Maliki jurist Abu Ishaq al-Shatibi developed the doctrine of the purpose of law, *Maqasid al-Shari`ah*.[28] He argued that legal reasoning must aim to achieve the purpose of the Islamic law. He defined the purpose of Islamic law as protection of the five human interests, i.e. life, faith, family, intellect and property.

Iqbal referred to Shatibi and his doctrine to question the analogical legal reasoning which failed to protect these interests.

Allama Iqbal who had been concerned with the plight of women and had been writing about their rights, was probably the first to notice this weakness in the Anglo-Mohamınadan law and the Hanafi jurisprudence. He invited Muslims to deliberate on this issue in his lecture on ijtihad. He said:

> In the Punjab, as everybody knows, there have been cases in which Muslim women wishing to get rid of undesirable husbands have been driven to apostasy. Nothing could be more distant from the aims of a missionary religion. The Law of Islam, says the great Spanish jurist Imam Shatibi in his Al-Muwfiqat, aims at protecting five things - *Din*, *Nafs*, *`Aql*, *Mal* and *Nasl*. Applying this test I venture to ask: "does the working of the rule relating to apostasy, as laid down in the *Hedaya* tend to protect the interests of the

> Faith in this country? In view of the intense conservatism of the Muslims of India, Indian judges cannot but stick to what are called standard works. The result is that while the peoples are moving the law remains stationary.[29]

In view of the significance of this statement let us analyse it in some detail. Firstly, Iqbal referred to the problem that was real and was commonly known. It was not an imagined problem by a reformer. This may be contrasted with Iqbal's comments on Zia Gokalp's proposed reforms in Islamic law.[30] Iqbal doubted whether they were real problems for which these reforms were proposed. This reflects Iqbal's view of legal reform that it must address real, not imaginary problems.

Secondly, judical methodology and legal reasoning must not violate the purpose of the law. The rulings in the legal texts and in the court judgements must be examined in the light of the objectives of the law which aims at protecting the basic human needs and rights. The methods of legal reasoning, applying analogy, qiyas or syllogistic reasoning, were to be abandoned, if they led to violation of the purpose of law. Thirdly, Iqbal rubbed the point in that legal system must move with the people, it should neither leave them behind, nor should it stay behind.

Iqbal, therefore, appealed to the Muslim scholars to exercise ijtihad on the real and living issue of women's rights. He offered not only his own opinion to solve the problem but also suggested a lucid methodology.

Instead of quoting a precedent, citing an authority, offering a new interpretation of a text, or concluding on the basis of analogy, Iqbal raised the question in the context of the purpose of law, the letter of the law vis a vis the spirit of the law. The purpose of Islamic law, as agreed upon by Muslim jurists, was to protect five basic needs. Religion was one of them. The Hanafi view, in this particular case was not protecting the religion but was rather forcing women to abandon religion. Iqbal thus indicated that when Islamic law, especially as developed in the *fiqh* books, suffers from an

impasse, the jurists must resort to the methodology of purpose of the law, instead of mere analogical reasoning.

Another significant aspect from the point of view of the legal reform was that unlike Zia Gokalp who spoke about ideal rights and made emotional appeals, Iqbal referred to the actual miseries of the women which were well known to Muslims in India. That was the reason that instead of dismissing Iqbal's plea to reform Hanafi law as an attack on shari`ah, the `ulama' began to deliberate on the problem seriously. They studied the problem and were prepared to abandon the Hanafi view to seek a solution.

Among the `ulama' in India, Mawlana Ashraf `Ali Thanawi was the first to pay attention to this issue. Iqbal's lectures were published in 1930. Although Thanawi did not refer to these lectures except the title, he published a treatise within a year of Iqbal's lectures, and indicated a connection. Its title was *Al-Hilat al-Najizah l'il Halilat al-`Ajizah* (A successful device for the frustrated wife).[31] A summary of the contents of this treatise is given below.

The introductory part of the book deals with the questions that prompted the writing of the treatise. Firstly, questions dealing with the problems and difficulties faced by women, for instance husband's long absence or his impotence or his refusal to provide maintenance to his wife inspite of financial capacity. Secondly, questions dealing with the judicial process. For instance "Islam has not provided any way out for these women to get rid of these difficult situations without the help of a shari`ah judge who was not, or was rarely, available in India. Consequently, a number of women were resorting to apostasy from Islam".[32]

According to Mawlana Thanawi, Islamic law could never encourage apostasy. It was in fact ignorance of law that women saw in apostasy a way out of their miseries. He said:

> Looking at these texts, some people have understood them to mean that when a woman apostatises, even then her marriage is dissolved. Due to this simple ignorance they

> have misconstrued the correct status against all legal traditions that this unworthy woman had permission to marry another husband after her return to Islam. So much so that some wretched women considered it an easy solution to get rid of their husbands. Thus by subjecting themselves to the worst affliction of apostasy they destroyed all the virtues earned in their life time, whereas the fact is that even legally they could not achieve their objective.[33]

In fact, according to Islamic law, apostasy did not solve their problem. Mawlana Thanawi summarised the three Hanafi views on apostasy. The first which was more reliable contended that it was true that the marriage of an apostate wife was dissolved but in such a case she was to be imprisoned and forced to return to Islam and to renew her marriage. The second view held by the jurists of Balkh, Samarqand and Bukhara, maintained that marriage in this case was not dissolved. The third, attributed to Abu Hanifah, held that in such an eventuality an apostate wife was reduced thus to the status of a slave or a hand maiden in dar *al-Islam* in the possession of the husband. After giving details of these three views Mawlana Thanawi concluded:

> Though varying in details all the three views commonly hold to disallow the woman the right to separate from the first husband to marry someone else. This is therefore a unanimous view that this woman had no right to marry any one other than her previous husband.[34]

However, Mawlana Thanawi realised that the adoption of this legal view would be more harmful in India. He, therefore, preferred the second view with the following justification:

> In India under the present circumstances it is not possible to abide by the first view because there does not exist any legal authority to dissolve and renew marriages among Muslims...It is therefore not possible to abide by the established Hanafi view. Exceptional views are far more difficult to be implemented in the present condition.

> Therefore the only solution is to adopt the view of the jurists of Balkh and Samarqand.[35]

In other words, according to the Mawlana, a wife could not get rid of her husband even after apostasy. Mawlana was not in favour of allowing women the right to divorce because:

> A woman is deficient in reason, hence to delegate the right of divorce to her without any pre-condition is very dangerous.[36]

As to the question of a wife finding it impossible to live with her husband, it was suggested that she should ask her husband to give her divorce on this consideration. This form of divorce was called *Khul'*. If she did not succeed then she might go to the court of a Muslim judge. In those days the Muslim judges were not easily available. Islamic law does not authorise a non-Muslim judge to dissolve a Muslim marriage. The problem became therefore increasingly complicated.

To solve this difficulty, Mawlana suggested:

> In those states of India where Muslim judges functioned, the matter could be solved easily. In the British Government areas where judges are not strictly *Shar`i qadis*, the judges, officers and magistrates who are authorised by the Government to adjudicate in such cases, if they are Muslims and adjudicate according to Islamic law, their judgement is considered equal to that of a *Qadi*....
>
> If the judge or officer is non-Muslim, his decision is ultra vires and has no validity in dissolving a marriage. If there is no Muslim ruler, or if there is legal option to refer the case to a Muslim judge or the Muslim judge does not adjudicate according to Islamic law, Hanafi *fiqh* admits no solution other than divorce by the husband. A wife should try to seek *khul`* as far as possible. But if her husband does not agree to any of these...and the woman cannot bear him, then by way of necessity a team of arbiters may be constituted consisting of pious Muslims as suggested by Maliki *fiqh*...If this team of pious Muslims in the

> neighbourhood, consisting of at least three persons, decides after investigating into the matter according to Islamic law, their decision has the same force as that of a *Qadi*.[37]

Mawlana Thanawi agreed that the true solution in such cases was judicial separation. Hanafi legal texts however did not specify the grounds on which a wife could apply for such judicial divorce. *Ila*,[38] *Zihar*[39] and *Li`an*[40] etc. were cases of judicial separation, but even in those cases the final authority remained with the husband. The only case where a wife had real option to dissolve her marriage was either in case of the option of puberty[41] or in cases when her husband suffered such mental and physical defects that affected marital relations. Another form was *khul`* [42] but that actually meant buying divorce from the husband against the payment of an agreed sum. Hanafi *fiqh* was also difficult in case of wives whose husbands disappeared without any trace. In such cases Maliki *fiqh* was more lenient. That was why Mawlana Thanawi recommended to adopt Maliki *fiqh*.

Regarding judicial divorce, *qadi's* jurisdiction was highly restricted in Hanafi *fiqh*. Even if grounds were valid, the *qadi* could not separate husband and wife without the permission and consent of the husband. Maliki *fiqh* did not put such restrictions.

In case of a dispute between husband and wife, arbiters must be appointed from both sides. Ibn Rushd, a Maliki jurist explains the difference of opinion among the various schools of *fiqh* regarding the judgement of the arbiters:

> The jurists unanimously hold that if the arbiters disagree with each other, the judgement of neither of them was enforceable. They also agree that if two arbiters decide against separation, their judgement would be enforceable, even if they are not legally authorised agents of the parties. However if the arbiters decide in favour of separation, and the jurists are divided on the question whether husband's consent was required. Maliki and his followers allowed arbiters' judgement for separation or

> continuing the marriage without their being authorised agents of the spouses and without their consent. Shafi`i, Abu Hanifah and their followers do not allow separation until the husband appeals for it. The principle on which Shafi`i and Abu Hanifah base their views is as follows: In principle the right of divorce belongs only to the husband or to someone whom he authorises as his agent.[43]

In brief, Mawlana Thanawi's advice to the wife, if she found it unbearable to continue living with her husband, was first to seek *khul`* from her husband. In case he did not agree, the Mawlana allowed her to apply to the court of law for dissolution of marriage. The restriction imposed by Hanafi *fiqh* was removed by permission to opt for Maliki *fiqh* on this point.

Mawlana Thanawi's treatise generated a serious discussion among lawyers. In 1935 the Hanafi view to which Mawlana Thanawi referred was cited in a case but since the laws had not been amended, the court refused to deviate from the Hanafi *fiqh*.[44]

Realising this difficulty the Jam`iyyat al`-Ulama' Hind decided to launch a legal reform campaign. Qadi Muhammad Ahmad Kazimi, a member of the Working Committee of the Jam`iyyat and a practicing lawyer at Allahabad High Court, presented a Bill on the subject in the Central Legislative Assembly on 7 April 1936.[45] The Bill remained under consideration for about three years. The Assembly constituted a high powered committee which submitted its report on 3rd February 1939 before the Assembly and the formal debate began.

Qadi Muhammad Ahmad Kazimi opened the debate by first demanding appointment of *Shar`i Qadis* and pointed out that the proposed draft lacked this provision and because of the lack of this provision Islamic law could not be fully implemented. Supporting the Bill he said:

> The reason for proceeding with this Bill is the pitiable condition and great trouble in which I find the women in

> India today. Their condition is really heart-rending, and to stay any longer without the provisions of the Bill and allow the males to continue to exercise their rights and to deprive the women of their rights given to them by their religion any longer, would not be justifiable.[46]

Mr. `Abd al-Qayyum (Frontier) supported Kazimi saying:

> There is no denying the fact that at present owing to the attitude of the males of the Muhammadan community and the high handed manner in which Muslim women are treated, Muslim women have been forced in innumerable instances to resort to conversions which were not genuine conversions, in order to escape from the marital tie....[47]

The Bill was opposed by the non-Muslims, particularly by the Hindus, in the Assembly as well as outside. On the floor of the Legislative Assembly a Hindu member pleaded that apostasy had always been a ground for dissolution of marriage among Muslims and the Hanafi *fiqh* had always recognised it. Lal Chand Naol Roy, an MLA from Sindh, and Bhai Prem Nand from Panjab, were in the foreground in these debates. Outside the Assembly, Hindu Mahasabha, Arya Samaj and Sanatan Sabha brought the issue on to the streets and opposed the Bill in public meetings. They passed resolutions against the Bill.[48]

Despite this opposition the Bill was finally passed by the Assembly. Although all of the demands by the Muslims were not accepted, yet the Bill, as an Act of Law, provided Muslim women the rights which Iqbal had proposed a decade earlier. This Act is known as *Dissolution of Muslim Marriages Act 8, 1939*. According to this Act mere apostasy was not a valid ground for the dissolution of marriage. Secondly, a Muslim wife was authorised to apply to the court for the restitution of her rights where she was deprived of those by her husband. Thirdly, a wife was allowed to seek judicial separation on a number of grounds. The section 2 of the Act provided as follows:[49]

2. A woman married under Muslim law shall be entitled

to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely--

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i) that the whereabouts of the husband have not been known for a period of four years;

ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

v) that the husband was impotent at the time of the marriage and continues to be so;

vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent or veneral disease;

vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years;

Provided that the marriage has not been consummated;

viii) that the husband treats her with cruelty, that is to say,---

a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

b) associates with women of evil repute or leads

an infamous life, or

c) attempts to force her to lead an immoral life, or

d) disposes of her property or prevents her exercising her legal rights over it, or

e) obstructs her in the observance of her religious profession or practice, or

f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qur'an

ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law.

Provided that:-

a) no decree shall be passed on the ground (iii) until the sentence has become final;

b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

To reform Hanafi *fiqh*, Iqbal did not treat the problem only in theory like other Muslim modernists. He analysed the

problem objectively and suggested a methodology to solve it. Consequently when the Ulama were apprised of the difficulties of women caused by the restrictions in Hanafi *fiqh*, they took a sympathetic view. They felt compelled to initiate reforms and then organized a political and legal campaign for the rights of women, which ultimately resulted in a major legal reform.

Iqbal's reconstruction of ijtihad was comprehensive. He not only proposed reconstruction of its definition, but also proposed the reconstruction of its process and methodology.

Iqbal did not live to see the resuls of his reconstruction, yet the credit for the reform of Hanafi *fiqh* on women's rights goes to him.

NOTES AND REFERENCES

1. Iqbal, *`Ilm al-Iqtisad* (Karachi: Iqbal Academy, n.d.), p. 207.

2. Iqbal, "Qawmi Zindagi", in S.A. Wahid, *Maqalat-i-Iqbal*, (Lahore: Sh. M. Ashraf, 1963), pp. 55-56

3. *Ibid*. p. 57.

4. *Ibid*. p. 56.

5. See for instance, Wahid al-Din, *Ruzgar-i-Faqir* (Lahore: Line Art Press, 1964), vol.2, pp. 59f.

Also the following cases:

(a) 132 PR, 1884 (b) 106 PR, 1891 (c) 61 PR, 1899 (d) 85 PR, 1906 (e) 29 1C, 857 (f) AIC 830 (g) 114 PLR 1916.

6. *Ibid*. vol.1, p. 245.

7. See for instance, Marghinani, *Al-Hidayah*, vol.2. (Karachi: Qur`an Mahal, n.d.) p. 425.

8. Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Sh. M. Ashraf, 1982), p. 169.

9. Ashraf `Ali Thanawi, *Al-Hilat al-Najizah l'il-Halilat al-`Ajizah* (Deoband, 1931), p. 13.

10. See M. Faruq Bukhari, "Mufti Sadr al-Din Khan Azurdah Dihlawi awr un ka risala *Al-Durr al-Mandud fi hukm Imra'at al-Mafqud'*, *Ma'arif*", 145 (1990), 1, p. 49.

11. See the following cases:

(1) *Amin Beg vs Saman* (1920) 33 Ilahabad 90

(2) *Musammat Reshman vs Khuda Bakhsh* (1937) 19, Lahore 271.

(3) *Ghaus Vs Musammat Fiji* (1915) Lahore.

(4) The following reports in All India Law Reports:

(a) 1913 Calcutta, 430 (b) 1914 Sindh 145 (C) 1924 Lahore, 397 (d) 1928 Lahore, 954 (e) 1934 Lahore 976 (f) 1936 Lahore 666 (g) 1937 Lahore 759 (h) 1938 Lahore 277.

12. *All-India Law Report* (*Bakho Lal*) 1924, Lahore 397.

13. *All India Law Report* (*Mst Rahmate Vs Nikka and others*) 1928, Lahore 954 (1).

14. *All India Law Report* (*Mst Sardaran vs Allah Bakhsh*) 1934 Lahore, 976.

15. *All India Law Report* 1928, Lahore, 954.

16. *Ibid.*

17. *All India Law Report* 1937, Lahore 277.

18. *All India Law Report* 1938, Lahore 482-85.

19. *All India Law Report* 1936, Lahore 661.

20. Another point of interest in these cases is that in almost all of them it was J.M. Paul a Christian priest of Lyallpur who issued certificates of baptism. It appears that Christian missionaries were taking full advantage of the Hanafi legal position to inflate their reports about the progress of their missions.

21. Al-Marghinani, *Al-Hidayah*, vol. I (Delhi: Mujtaba'i, 1380 H), p. 328.

22. *Fatawa `Alamgiri* (Urdu translation by Amir `Ali), vol. 2 (Lucknow, Navilkashor, 1932), p. 259.

23. *Ibid.*

24. Al-Jaziri, *Kitab al-Fiqh `ala al-Madhahib al-Arba`ah*, vol.4 (Cairo, 1355), p. 223.

25. *Ibid.* pp. 223-224.

26. Iqbal, *The Reconstruction of Religious Thought in Islam*, p. 178.

27. *Ibid.* p. 177.

28. See. M.K. Masud, *Islamic Legal Philosophy: A Study of Abu Ishaq al-Shatibi's Life and Works* (Islamabad; Islamic Research Institute, 1977).

29. Iqbal, *Reconstruction* p. 169.

30. *Ibid*. p. 169.

31. Thanawi, *Al-Hilat al-Najizah* ... (Deoband, 1931), A revised edition by Muhmmad Taqi Uthmani, *Hila-i-Najizah, Ya`ni `Awraton Ka Ha'qq-i-Tansikh-i-Nikah* (Karachi: Dar al-Isha`at, 1987). References are to this new edition.

32. *Ibid*. p. 13.

33. *Ibid*. p. 107.

34. *Ibid*. p. 113.

35. *Ibid*.

36. *Ibid*. p. 22.

37. *Ibid*. p. 33.

38. When a husband swears to God before his wife that he shall not go near her, or specifies time of four months he is pronouncing *ila*. On the completion of four months, if the husband has not expiated, wife is divorced once.

39. If a husband tells his wife that she is like the back of his mother, she becomes prohibited, unless husband expiates. But she is not divorced.

40. When a husband accuses his wife of adultry, both husband and wife swear five times before a judge to support their respective statements. On completion of this process they are separated.

41. A wife married as a minor has a right to repudiate the marriage as soon as she reaches the age of puberty.

42. Ibn Rushd, *Bidayat al-Mujtahid*, vol.2, (Cairo, 1329 H.) p. 81.

43. *Ibid*.

44. *Sardar Vs Msmt Maryam Bibi*, Jullandhar 1935, vide AIR 1936, 666.

45. A.A.A. Fyzee, *Outlines of Mohammadan Law*, Oxford, 1960, p. 144. Dr. Abdullah Qureshi told the present writer in an interview that it was Ghulam Bhik Nairang, Member Central Assembly, who presented the Shari'at Bill on the suggestion of Iqbal. (Communicated during an interview with him on 19.7.1977).

46. Legislative Assembly Debates, vol.I, 1939 (Delhi, Govt. Press, 1939) p. 616.

47. *Ibid.*, p. 622.

48. For details see Legislative Assembly Debates (LAD) 1938, pp. 318-323, 509-513, 1090-1124, 1951-1988 and LAD 1939 vol.I, pp. 615-654, 863-894.

49. Vide K.N. Ahmad, *A Commentary on the Dissolution of Muslim Marriages Act (Act no: viii of 1939)*, (Karachi: Legal Publications, 1955), p. xix.

AN ANALYTICAL REVIEW OF THE CRITICISM OF IQBAL'S LECTURE

"I have tried to meet, even though partially, this urgent demand by attempting to reconstruct Muslim religious philosophy with due regard to the philosophical traditions of Islam and the more recent developments in the various domains of human knowledge....

It must, however, be remembered that there is no such thing as finality in philosophical thinking."

Iqbal, Preface to the *Reconstruction of Religious Thought in Islam* (Lahore: Institute of Islamic Culture, 1986), p.xxii.

EIGHT

AN ANALYTICAL REVIEW OF THE CRITICISM OF IQBAL'S LECTURE

In this concluding chapter, we shall overview the critique of this lecture. In general the critique is polarised on the question of Iqbal's adherence to tradition during his reconstruction of ijtihad. While the conservative Muslim critics find Iqbal departing radically from the tradition, the Western scholars criticise him for his conservatism.

The Muslim critique relates essentially to Iqbal's definition, conception and use of the traditional sources of ijtihad i.e. the Qur'an, Sunnah and ijma`. Their main objection is that under the influence of Western philosophy, Iqbal departed from the traditional understanding of terms, concepts and principles enunciated in the Qur`an and Hadith.

In the following pages we study the growth of this critique from vague and ambiguous remarks in 1925 to more elaborate recent criticism by Muhammad al-Bahi and Sayyid Qutb.

As mentioned earlier, while writing on ijtihad, Iqbal was extremely conscious that he was dealing with a very sensitive subject. He apprehended opposition from the conservatives especially from the `ulama'. He, therefore, studied the subject very thoroughly, consulted several `ulama' and corresponded with a number of leading scholars. Notwithstanding these efforts, when the lecture was delivered in Lahore, it was not received as warmly as Iqbal had wished. Rather, it appears from Iqbal's letters that he came under heavy attack.

In a letter to Akbar Shah Khan Najibabadi, Iqbal wrote:

> You have rightly pointed out that Sir Sayyid Ahmad Khan's movement had reduced the influence of professional religious scholars (*Peshah war mawlawis*) but, in order to gain political fatawa, the Khilafat Committee re-established their authority among Indian Muslims. This was a grave error which has yet not been fully recognised. I have recently experienced it. Some time ago I wrote an article on ijtihad in English. It was read at a public meeting and God willing, it will be published. Some people declared me an infidel. Any way we shall talk about it in detail when you come to Lahore.[1]

Iqbal's letter to Sufi Ghulam Mustafa Tabassum in 1925, also reflects Iqbal's disappointment on the reception of the essay.

> Some time ago I wrote an essay on ijtihad, but when I was writing it I felt that the subject was not so easy as I had thought in the beginning. It needs a detailed discussion. The essay in its present version is not useful to public as such because several matters which require detailed explanation, have been touched upon very briefly in the essay. That is why I have not published it yet. Now, I shall try to present it in the form of a book entitled: "Islam as I understand it". The title is intended to indicate that the book contains my personal opinion which may be incorrect.[2]

We know nothing what objections were raised and by whom? We have not been able to find any adverse report or review about it in the newspapers. Neither is there any written criticism by the `ulama' available to us.

A similar mystery surrounds Iqbal's correspondence with `Abd al-Majid Daryabadi with reference to this lecture. Again, it is only Iqbal's reply that reveals that the paper was not received well.

After completing the article on ijtihad Iqbal sent it to

`Abd al-Majid Daryabadi. We do not know the actual comments by Mawlana Daryabadi yet from the letter written to Daryabadi on 22nd March, 1925, Iqbal's disappointment and frustration is nevertheless readily evident. Iqbal wrote:

> I was amazed to read your note. It appears that due to your other occupations you could not but glance through the article very superficially. Nevertheless I will keep your letter in view. Kindly send me back the manuscript of the article.[3]

The compiler of these letters notes in the margin as follows: "Iqbal had asked for comments on his article on ijtihad in English. The comments were rather adverse." [4] We have no clue about these "adverse comments".

One wonders why Iqbal should have sent this article to Daryabadi for comments. Daryabadi was not a specialist in *Fiqh* or *Usul al-Fiqh*. One explanation that comes to mind is that `Allama Iqbal, feeling that his views would not be appreciated by the `ulama', might have decided to send it to a scholar who was well versed in philosophy and Western thought. This observation is supported by the fact that Iqbal was very conscious about his indulgence in philosophy. In a letter he wrote:

> I have spent most of my life studying Western philosophy. This point of view has become now almost a habit with me. Consciously as well as unconsciously I study the facts of Islam from this viewpoint. Consequently I have experienced it several times that I cannot express myself in Urdu adequately.[5]

Whatever the explanation, we may draw at least two conclusions at this point: first, there was certainly some adverse criticism on Iqbal's lecture, second, Mawlana Daryabadi was one of those critics. There is however no evidence to conclude that `ulama' were opposed to Iqbal's views. As a matter of fact, as we have seen in the preceding chapter, Iqbal's lecture generated a movement for legal reform and it was led by the `ulama'.

Why was then Iqbal apprehensive of the `ulama's opposition? The reasons are not clear in the contemporary literature. In fact there is no substantive criticism available in this period. It is only later that we come to know from scholars like Mawlana Abu'l Hasan `Ali Nadwi some details of this contemporary criticism.

Nadhir Niyazi reports that an Indian scholar whose name is not mentioned, urged Muslims in Cairo to condemn Iqbal's views as they had done earlier in case of Sir Sayyid's "naturism".[6] Abu'l Hasan `Ali Nadwi reports that Mawlana Sulayman Nadwi had wished that Iqbal's book (*Reconstruction*) was not published.[7] As in case of Daryabadi we have not found any adverse remarks by Nadwi which would justify such a wish. A brief analysis of Iqbal's correspondence with Mawlana Nadwi does however reveal their difference of opinion on some matters.

In a letter to Nadwi on 7 April 1926 Iqbal vehemently denies:

> I do not intend to amend or abrogate *`ibadat*, but rather I have tried to prove their eternity in my article on ijtihad. However, some questions came to my mind about *mu`amalat* (legal subject matters other than *`ibadat*). In this regard since the legality of *ahadith* (dealing with *mu`amalat*) comes into question, and since I am not still satisfied with my research, I have not yet published that article.[8]

We do not have Nadwi's letter to confirm, but it appears from Iqbal's reply that Nadwi may have criticised that once the principle of change is admittted it may lead to amendment in *`ibadat* . Iqbal clarified that he believed that *`ibadaat* were immutable, but *mu`ibadat* were subject to change.

Iqbal believed that the principles enunciated in the Qur`an were eternal. What seemed to disturb Iqbal was the question about the legality of *hadith*.

It must be understood that by this he did not mean validity of a *hadith*. The question before him seemed to be

whether the contents of a *hadith* necessarily constituted shari`ah or law. Muhammad Farman has recently studied this question. He observes that some scholars have been critical of the fact that Iqbal had referred to Goldziher's statements about the untrustworthiness of *ahadith* but did not refute him? In fact that was not Iqbal's subject of discussion. What worried Iqbal was the question of the legal value of *ahadith* in principle, whether all *ahadith* were equally binding as a source of law or there was a distinction.

He asked Mawlana Nadwi.

> In one of your previous letters you wrote that whenever Prophet Muhammad (P.B.U.H) was asked a question, he would some times wait for revelation. If revelation came he would answer accordingly. If there was no revelation he would infer from a verse of the Qur`an, and would recite the verse alongwith the inference. Could youcits the source to which you referred? Was it Qadi Shawkani's *Irshad al-Fuhul*?[10]

In a subsequent letter he informed the Mawlana that he had found the required quotation.

Second matter of enquiry was that whether the answer given on the basis of revelation was binding on the whole ummah (and that revelation became part of the Qur'an) but whether the reply based on inference and which was not based on revelation, was also binding for the whole of ummah? If the answer is in the affirmative, it would necessitate that all inferences by the Prophet Muhammad (P.B.U.H) were also a part of revelation. Thus, in other words, there would be no distinction between the laws based on revelation and the Prophet's (P.B.U.H) judgements based on his ijtihad.[11] Were the ahadith based on such ijtihad distinct from other ahadith in general? Were the rules derived from any ijtihad binding, or were they binding only if inferred by Prophet's (P.B.U.H) ijtihad?

It appears that Nadwi's answers were very brief. This is also confirmed by the brief notes that Nadwi wrote on Iqbal's

letters. Regarding the first question, Nadwi replied that all types of *ahadith* were binding, and that this principle was mentioned in all books of *hadith*. To the second, he answered that the Prophet's (P.B.U.H) inferences were also equally binding.[12] Iqbal again wrote to Nadwi:

> You refer to two positions of the Prophet Muhammad (P.B.U.H): Prophecy and leadership. The Prophecy includes injunctions of the Qur'an and inferences from the Qur`anic verses. Ijtihad is based on human reason and experience and observation. Is it also included in the revelation? If so, what is your evidence?[13]

Nadwi comments in his notes on the letter:

> Prophet's (P.B.U.H) ijtihad is not based on human reason or experience and observation. It is the result of Prophetic intellect which is far higher than human reason, and has nothing to do with human reason, experience or observation. Since God is responsible for the correction of all errors by a Prophet, God would have corrected if the Prophet's (P.B.U.H) ijtihad was in error. Since God has not corrected except at a few places, it means God has approved rest of Prophet's (P.B.U.H) ijtihads and thus they are binding.[14]

Iqbal could not be criticised for raising this question. Nor can it be termed as criticism of the validity of hadith. This issue was already frequently discussed in the books on *usul al-fiqh*, under the question: Was Prophet Muhammad (P.B.U.H) allowed to exercise ijtihad?.[15] This discussion may be summarised as follows.

Jurists agree that the Prophet (P.B.U.H) was allowed to exercise ijtihad, independent of revelation in problems relating to worldly matters, e.g., war strategies and the like, but as to the matters of religion and shari`ah the jurists are divided. Ibn Hazm and a group of jurists who do not accept the role of qiyas, argue that the Prophet (P.B.U.H) could not exercise ijtihad. Majority of the jurists, however, hold that not only the Prophet (P.B.U.H) was allowed to exercise ijtihad, but he was

obliged, like other Muslims to do so. Although the Prophet's (P.B.U.H) ijtihad was not the same as revelation, yet it was binding and was in its turn a further source of law.

From Shawkanis' summary given above, it may be concluded that jurists agreed unanimously that Prophet Muhammad (P.B.U.H) was authorised to exercise ijtihad in worldly matters and he did so. They, however, differed whether he was allowed to do so in matters of religion. In other words we may say that whatever the Prophet (P.B.U.H) said or did in matters of religion could not be termed as ijtihad, while his sayings and actions in worldly matters, not based on revelation, could be termed ijtihad. Although both were equally valid and binding, yet the jurists made a distinction between them. Iqbal was referring to this distinction.

Amidi has explained that there are Prophet Muhamamd's (P.B.U.H) practices like marrying more than four wives, his habits of food, sleep, dress etc. that would be binding only when there is an explicit textual legal evidence demanding so. If there is no such evidence they are not binding. Ibn Surayj, Istakhari, Ibn Abi Hurayrah, Ibn Khayran, most of the Hanbali and some Mu`tazili jurists regard them binding even without a legal evidence. Juwayni and Shafi`i regard them commendable, not obligatory. Ghazali and some Mu`tazili jurists had not reached at any decision.[16]

It may be seen that Nadwi's categorical answers did not reflect the debates on the question by Muslim jurists. On the other hand we know from Iqbal's correspondence with Nadwi and others that Iqbal had studied these debates. It is difficult to say that Mawlana Nadwi was not aware of these discussions. Most probably he was inclined to dismiss them. Could Iqbal be criticised for taking interest in these questions? They might have been irrelevant to the Salafi and Ahl-Hadith movement to which Mawlana Nadwi might have belonged, but for a thorough study of the problem of ijtihad these have been relevant questions for the jurists.

Iqbal was also interested in this problem to distinguish between universal and specific aspect of Islamic law. He

expounded his analysis with reference to Shah Waliullah's discussion of Divine legislation. Summarising Shah's views, Iqbal writes:

> The Prophet (P.B.U.H) who aims at all embracing principles, however, can neither reveal different principles for different peoples, nor leaves them to work out their own rules of conduct. His method is to train one particular people, and to use them as a nucleus for the building up of a universal Shari`at. In doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of the specific habits of the people immediately before him.[17]

Iqbal illustrates this method by referring to penal laws:

> The Shariat values (*Ahkam*) resulting from this application (e.g. rules relating to penalties for crimes) are in a sense specific to the people; and since their observance is not an end in itself they cannot be strictly enforced in the case of future generations.[18]

The question about the eternity of the Islamic laws arose also in the context of the doctrine of abrogation. Aghnides had written that in Islam ijma` could abrogate an explicit injunction of the Qur'an.[19] He had claimed that this was the view held by Hanafi and Mu`tazili jurists. Iqbal wrote to Mawlana Sulayman Nadwi asking if that was correct.[20] Mawlana Nadwi commented:

> No one is of the view that ijma` can repeal an explicit Qur`anic verse. The American author is wrong. Amidi writes in Al-Ahkam: "The majority view is that ijma` cannot abrogate, contrary to some Mu`tazilis". Some Mu`tazilis view so but their opinion cannot be accepted.[21]

Once again we see Mawlana Nadwi not being interested in juristic details of the issue. Firstly, Mawlana Nadwi does not quote Amidi completely. The full sentence by Amidi reads: "The majority view is that ijma`cannot repeal, contrary to the views of some Mutazila and `Isa b. Abban".[22]

Mawlana Nadwi omitted the name of `Isa b. Abban (Abu Musa `Isa b. Abban b. Sadaqa d. 221 H, the famous Hanafi qadi and author of significant works on jurisprudence), and claimed the unanimity of the view of jurists with the exception of Mu`tazilis.

Secondly, Amidi's statement must be seen in its entire context. Amidi discusses the doctrine of abrogation and analyses jurists' views on its various aspects i.e.: abrogation of the Qur`an by the Qur'an,[23] abrogation of Sunnah by the Qur'an,[24] abrogation of the Qur`an by the Sunnah[25], abrogation of established injunctions by ijma`.[26] Then he deals with the problem to which Nadwi refers, i.e. whether ijma` can be an abrogator. Amidi discusses in the said section whether ijma` with powers to countermand can repeal the explicit injunctions of the Qur`an and Sunnah, or those based on ijma` and qiyas. He concludes that while majority view is that ijma` cannot abrogate an injunction based on these sources, Mu`tazila and a famous Hanafi jurist allow it. In short Amidi was not claiming a consensus.

Amidi's analysis is also confirmed by *Kashf al-Asrar*, a text of Hanafi *usul* by `Abd al-`Aziz Bukhari who says: "According to some of our leading scholars, like Isa b. Abban, ijma` can abrogate the Qur'an, Sunnah and ijma.` Some Mutazili jurists also hold this view."[27]

Bukhari mentions that this view was supported by two preceding consensuses. A consensus in the days of Abu Bakr abolished the share of *mu`allifat qulub* (incentive money for new Muslims) allowed by the Qur'an. Another concensus in the days of `Uthman reduced a mother's share of inheritance from 1/3, as allowed in the Qur'an, to 1/6 when she survived along with two brothers of the deceased.[28]

However Bukhari clarifies further that majority of the scholars do not allow abrogation by ijma`.[29]

It is unfortunate that Mawlana Nadwi, either because he was not aware of these discussions in the *Usul al-fiqh* texts, or because he considered them immaterial, did not provide Iqbal

the correct information. However Iqbal relying on that information repeated Nadwi's statement to refute Aghnides. He said:

> The author (Aghnides) of this book says, without citing any authority, that according to some Hanafi and Mu`tazila writers the ijma` can repeal the Qur`an. There is not the slightest justification for such a statement in the legal literature of Islam.[30]

In the light of the above analysis it is rather difficult to see why Mawlana Nadwi should have any cause to wish that the *Reconstruction* was not published.

We may have some clues in Abu'l Hasan `Ali Nadwi's own comments on the *Reconstruction*, since he is the only narrator of Mawlana Sulayman Nadwi's above quoted wish.

Mawlana Abu'l Hasan `Ali Nadwi's work on Iqbal *Rawa'i` `Iqbal* in Arabic was published from Damascus in 1960. This book contains no adverse remarks about Iqbal. However, when its Urdu translation was published, the Mawlana wrote the following in its Urdu introduction:

> One finds such interpretations of Islamic faith and philosophy in Iqbal which are difficult to agree to ... There are some weaknesses in this genius personality which do not conform to his knowledge and learning and with the greatness of his message. He however did not find an opportunity to correct these weaknesses. His lectures in Madras which have been published in English contain several views and ideas which are difficult to interpret or to justify to be in agreement with the agreed creeds of the *Ahl al-Sunnah*. The same was felt by our respected teacher Mawlana Sayyid Sulayman Nadwi. He wished that it were better if these lectures were not published.[31]

Such general and vague remarks especially implying deviation in matters of creed are very unfortunate. A few pages later he again remarks about Iqbal:

> It is however difficult to say that he was not at all influenced by Western education and philosophy and that his understanding of religion was exactly according to the Qur`an, Sunnah and the ancestors of the ummah...[32]

He comments in a footnote:

> It is reflected in his lectures that he delivered in Madras, where a radical tinge in the interpretation of unseen facts is quite evident at places.[33]

Similar vague remarks have been made by `Abd al-Majid Daryabadi who says:

> However, in Iqbal's prose especially in his English prose where he comments on and explains modern philosophy, he frequently deviates from the Islamic tinge.[34]

Dr. Ghulam Dastagir Rashid has noted the ambiguity in Daryabadi's remarks and wished that he had given a few examples to illustrate "what is meant by deviation from Islamic tinge".[35]

This line of criticism becomes a little more clear and substantive in Salman Rashid's criticism. He finds Iqbal's interpretation of the Qur'an very unscrupulous. Particularly with reference to the verses of the Quran which refer to change, Iqbal infers concept of time from these verses and concludes that the Quran confirms Bergson's concept of time.[36]

Saeed Ahmad Akbar Abadi's review of Iqbal's lectures also provides some clues about the points on whcih Iqbal was criticised. He points out that one of the embarrassing subjects of debate in Iqbal's lectures was about resurrection after death. According to Iqbal it is not an event external to human body, it is rather a stage of the evolution of human soul. The same points have been raised by Muhammad al-Bahi to which we shall turn shortly.[37]

Daryabadi and Sulayman Nadwi were Iqbal's contemporaries whose vague criticism is repeated by Abul Hasan `Ali Nadwi and other writers. From a survey of Iqbal's correspondence with other scholars and from the comments of

Iqbal's contemporaries one may conclude that the criticism of Iqbal was largely directed toward his non-conformity with the orthodox conservative views, especially on matters of eschatology. The subject is not directly related to the question of ijtihad, but it does reflect an opposition to an interpretation of the sources of ijtihad that departed from the orthodoxy. We see this attitude echoing more loudly in recent Arab criticism of Iqbal.

Muhammad al-Bahi wrote a very comprehensive criticism of Iqbal in his *Al-Fikr al-Islami*.[38] He sums up Iqbal's views in lectures by saying that Iqbal regards Islam as an ideal spiritual whole whose material or actual manifestation in the interrelationship of individual and society in this changing world reflects two basic principles: end of divine revelation and ijtihad. Bahi observes that Iqbal studied and digested Western philosophy very well but he did not refute it.[39]

Bahi's criticism has three angles: Firstly, Iqbal was deeply influenced by Western philosophy and interprets Islam within that framework. Secondly, he finds Iqbal's weakest point in his reliance on the orientalists for his understanding of Islam. Thirdly, he criticises Iqbal for translating and interpreting Qur`anic verses contrary to the normal understanding and accepted meanings of those words.

It is not possible to review this criticism here in detail, not only in view of space limitations, but also because it is not directly related to the problem of ijtihad. Scholars like B.A. Dar[40] and A. Schimmel[41] have already analysed such criticisms. We shall only briefly comment on some aspects of Bahi's criticism which relate directly to our subject.

Bahi finds Iqbal undoubtedly influenced by the positivism of August Comte.[42] Iqbal disagreed with Comte's secularism, but he saw the development of Muslim religious thought in positivistic categories. In our view Bahi's conclusion is only partially correct. Iqbal refers to Comte, though approvingly, while analysing Zia Gokalp, a Turkish sociologist. Iqbal finds Zia's sociology influenced by Comptian categories. This, however, is not sufficient to say that Iqbal was influenced by

Comte, especially when Comptian categories of development of social thought were destined to move toward secularism.

Developing this theme further, Bahi comments that Iqbal's struggle for religious reformation was only academic. His intellectual activities were addressed to the elite only.[43] Bahi suggests that the reason for this trend was Iqbal's acceptance of positivism, i.e. the idea of three stages of man's intellectual development. The positivists and Marxists saw the movements of religious reformation in Egypt and elsewhere as manifestations of an inevitable historical process.

Bahi does not agree with positivist analysis. He finds Islamic movements in Egypt more popular whereas Iqbal's views are merely academic and elitist.[44] To him Iqbal and `Abduh stand in contrast to each other. He suggested that Iqbal's thought needed `Abduh's action so that this movement of religious reform becomes popular among all sections of the Muslim ummah.[45]

Nothing could be further away from a true appreciation of Iqbal's contribution. Bahi's understanding of positivist and Marxist view of development implies mechanism, while Iqbal was strongly opposed to mechanism. If we look at the popular appeal that Iqbal made to masses through his poetry, his political activities, particularly for the Pakistan movement, and his participation in local elections, we cannot agree with Bahi considering Iqbal's concern with Muslim society only as academic. In fact Iqbal believed in the inner dynamism of Muslim society, which was so vividly portrayed in the principle of ijtihad. Iqbal saw the movements of religious reform in the Muslim world as manifestation of ijtihad. There is no denying the fact that Iqbal had studied Western philosophy in depth and he had tried to present Islamic thought within the position points of value of that perspective too. He has however at a stage not deviated from the Islamic tradition. He was, in fact, opposed to the trend of Islamic thought that had suppressed the dynamism of Qur`anic Islam under the impact of Greek philosophy. This brings us to the second point of Bahi's criticism.

Bahi observes that reliance on the orientalists is the weakest point in Iqbal.[46] Iqbal accepts their views without examining them. For instance he accepts whatever Horten said about Islam on the subject of *fiqh*, philosophy and theology.[47] These remarks are again not justified. The fact is that Iqbal refers to Horten and Hurgronje not on the subjects mentioned by Bahi but to their discussion of the question whether the law of Islam was capable of evolution. He quotes Horten saying that Islam "has assimilated all the attainable ideas of surrounding peoples, and has given them its own peculiar direction of development".[48] Iqbal has referred to Horten's description of Islamic law as "testimony to the elasticity of Islamic thought".[49]

It is ironical that Bahi finds no fault with Horten's racism. Horten saw in Islam the meeting of two forces: Semetic and Aryan.[50] Iqbal analyses Abu Hanifah's use of qiyas as Aryan and Malik and Shafi`i's criticism of Hanafism as "Semetic restraint on the Aryan tendency to seize the abstract in preference to the concrete".[51] Bahi does not find it objectionable simply because it seems to be fashionable even in his days to classify different trends of thought in racial terms. Reviewing the movements of religious reform in Islam in his days, Bahi remarks:

> In this period, there appeared two Islamic personalities on the stage of religious reform in the above mentioned sense: One a semetic Arab, that is Shaykh Muhammad `Abduh, the other an Aryan Indian, that is Muhammad Iqbal.[52]

Illustrating Iqbal's reliance on orientalists, Bahi refers to Iqbal's classification of Baha'i and Babi movements as modern Islamic movements. He contends that Iqbal had not studied these movements directly and following the orientalists he had characterised them as those influenced by the Whahabi movment.[53]

Again here Bahi has missed the point altogether. One who has studied Iqbal's appreciation of Tahira Qurrat al-`Ayn, the young poetess of the Babi movement in his *Javid Nameh* where she is found inspired with other eternal restless souls like

Hallaj, one would not agree with Bahi that Iqbal had not studied the movement in its original sources. In fact in his lecture Iqbal had not discussed Babi or Baha'i movement in detail as one might get the impression from Bahi's remarks. He had only made passing remarks, calling Wahabi movement "the first throb of life in modern Islam", Iqbal had characterised Babi movement as "only a Persian reflex of Arabian Protestantism".[54] It was neither the question of Islamicity nor that of influence of these movements. It was only a point of comparison that both were protest movements against the tradition.

Bahi has himself followed the same methodology. He mentions Mirza Ghulam Ahmad (founder of Qadianism or Ahmadism), and Sayyid Ahmad Khan as examples of "Muslim" thinkers who were in favour of colonialism.[55] Obviously, he is not passing judgement on their Islamicity as he does not call them non-Muslims.Comparing Qadiani faith with orthodox Islam, he qualifies orthodox Islam as "original Islam" or "authentic Islam", and thus implicitly admits Qadianism as a version of Islam. Should one say that Bahi evaluates Qadianis as Muslims?

Let us now move to Bahi's third line of criticism. Bahi argues that Iqbal departs very often from Islamic understanding of the Qur`an.

> In his attempt to explain the continuity of the world or to explain its eternity and immortality Iqbal departs from the commonplace religious level in which he imagines Islam and thus in his interpretation of Islamic texts which he cites to support his views, goes beyond their normal meaning appropriate to that level.[56]

Bahi gives following examples of such objectionable interpretations of the Quranic terms by Iqbal:

> *Ba`th* (resurrection), "stocktaking"; *Khulud* (eternity), " "a duration of time"; *Ruh* (spirit)" human soul"; *Umma al-Kitab* (the mother book), "Divine time" etc. etc.[57]

According to the Qur'an, the Day of the Resurrection is a

day of reckoning and judgement:

> On the day of judgement we shall bring forth for him a scroll which he will see spread open. Read your record. Sufficient is your soul this day to make an account against you.
>
> (Qur'an,17: 13-14)

In the light of the verse, Iqbal's description of resurrection as "nothing more than a kind of stocktaking of the ego's past achievements and his future possibilities"[58] seems very close to its meaning. What is perhaps objectionable to Bahi is Iqbal's treatment of resurrection as an internal event, "The consummation of a life process within the ego"?[59] But Iqbal is not alone in such interpretations. Most of the Muslim philosophers and sufis have viewed resurrection in this perspective.

An overview of Bahi's cited evidence to illustrate Iqbal's so-called inappropriate inerpretations of the Qur'an reveals that "inappropriate" means departure from what he considered the orthodox view. It becomes clear from the following:

> During his interpretation of some Qur`anic verses Iqbal does not go beyond the common definition of a word. For instance with reference to the Qur`anic verse: "Say the spirit is by the Command of my God", he interprets "*ruh*", as human soul- whereas the *ruh*, here means the Book of Guidance which is the Qur'an.[60]

One wonders that if this allegorical interpretation by Bahi is acceptible then how can Iqbal's interpretation of *Umm al-Kitab* as "Divine time" be inappropriate?

In fact Bahi is not really suggesting that the Qur`an should be interpreted in its literal sense i.e in its commonly understood meaning, but that the interpretation must be acceptable to the conservative `ulama'. As we have discussed, Iqbal wanted to challenge this very authority of the `ulama'. To Iqbal, "the various schools of scholastic theology that arose under the inspiration of Greek thought....on the whole, obscured some people's vision of the Qur'an"?[61]

Introducing the discussion on immorality and human ego, Iqbal argues that due to the influence of European philosophical thought which opposed dynamism, a morally degrading fatalism arose in Islam. In medieval period it were Greek ideas and in modern time they are Hegel's view of reality and August Comte's view of society. He observes:

> The same thing appears to have happened in Islam. But since Muslims have always sought the justification of their varying attitudes in the Qur`an, even though at the expense of its plain meaning, the fatalistic interpretation has had very far reaching effects on Muslim people.[62]

The criticism of Iqbal by Mawlana Abu'l Hasan `Ali Nadwi and Muhammad al-Bahi must be studied in this context. Bahi's line of criticism was carried on further by Sayyid Qutb, who wrote:

> We oppose Iqbal's attempt to colour Islamic concepts in philosophical concepts borrowed from Hegel, the rationalist idealist, and August Comte, the positivist. In fact, belief in general, and Islamic belief in particular, addresses human existence in its particular style. This style is distinguished by its vigour, dynamism, rhythm, direct contact and suggestion.[63]

Qutb concludes this remark saying "We do not wish that there should be an "Islamic philosophy".

While Bahi appreciated Muhammad `Abduh's contributions as compared to Iqbal, Qutb is criticial of both of them. He explains that "Discussions written in refutation of a specific deviation create in its turn another deviation."[64] He refers to `Abduh and Iqbal's contributions as evidence in point. His argument deserves to be quoted in full:

> Iqbal encountered the errant intellectual environment in the daze of the illumination of the Persian mysticism, as he calls it. He was startled by the *fana`* (obliteration of the self) where human ego had no existence. Similarly he was startled by the negation which had no action for man and no effect on the earth. This is not Islam as a matter of fact.

> Similarly he encountered on the other hand the sensualism of the Western schools of positivism and pragmatism...He decided to remove from Islamic thought and Islamic life this wastefulness, the obliteration of self and negation as he decided to confirm for Islamic thought the reality of experience on which the schools of pragmatism and positivism relied.
>
> But the result was a headstrong defiance in the presentation of human ego. He was compelled further to interpret some Qur`anic verses in a way opposed to its nature as well as to that of Islamic concepts by proving that death is not an end of experience, not even until the day of resurrection. The experience and growth of human ego continue even after paradise and hell. Even though the Islamic concept is definite on the point that this world is the place of trial and action and that the hereafter is of the reckoning, reward and retribution...[65]

We have quoted Qutb in full to show how he develops his argument on the theme that the frames of reference influence the ideas. But his argument is based on the assumption that Iqbal's frame of reference was constituted by the ideas of Hegel and Comte. We have already stated that Iqbal rejected both the philosophies as mechanistic.

In a recent study, Leonard Binder comments that despite his criticism of Iqbal, Qutb held similar views about the dynamism of Islam. In fact he finds Qutb's concept of movement of dynamism parallel to Iqbal's principle of movement of Islam.[66] Looking from the perspective of Islam it should not be surprising. But Binder's surprise would be justified in view of Qutb's criticism of Iqbal. However, on further analysis Binder finds that Qutb's idea of dynamism was restricted to his concept of the fixed laws of creation of which man was a part. Iqbal's idea of human ego did not accept this limitation.

The basic point of difference between Iqbal and Muslim conservative thought was that while classical ideal and end of creation, was `rest' Iqbal viewed creation as a process of

`change'.`Death' and `resurrection' were various stages in this process. The logical end for the `rest' philosophy would be eventual annihilation of human ego which would lead to pantheism. Iqbal's concept of God did not allow pantheism.

One may also notice the *ad hominem* nature of the conservative criticism of Iqbal.

For instance, they criticise Iqbal's unorthodox interpretation of the Qur`an, especially with reference to life in the hereafter. Ironically, on their part they have themselves interpreted quite liberally the basic Qur`anic concepts like *hukm*, *jahiliyyah*, *kufr*, *hijrah* etc., departing from the common understanding of these terms. When they criticise Iqbal for having studied the Western philosophy, especially Comtian positivism, one is reminded of Mawlana Mawdudi's criticism of Shah Waliullah, and his disciples, for his lack of awareness and paucity of effort to study Western thought and technology. Among the European philosophers whose thought should have been studied, Mawdudi particularly mentioned August Comte.[67] One wonders if it is not the critic's own perception of Islam from which he adjudges conformity or deviation of others.

While the South Asian and Arab critics' main objection was that Iqbal indulged in philosophy and interpreted Islam in that framework, the Western scholars criticised him for not being a systematic philosopher.

A.S. Tritton, in his review of the *Reconstruction* dismissed the book as unsystematic, idealistic, superficial and unfair criticism of Western philosophy. He accused Iqbal of misinterpreting Goldziher and of unsound attacks on Christianity.[68]

Wilfred Cantwell Smith's criticism was more substantive.[69] He found Iqbal so `self contradictory' that he could not treat him in one chapter. He analysed his views in two separate chapters describing two aspects of Iqbal: progressive and reactionary. His main criticism was that Iqbal was not a systematic thinker, and that since he was not familiar

with modern science and sociology, his views became ambiguous and contradictory. Let us review these two tenets of Smith's criticism: philosophy and society.

Smith found that Iqbal "was a poet, not a systematic thinker, and he did not hesitate to contradict himself."[70] He was "an unoriginal thinker... much of his philosophy is but an Islamization of Neitzsche and Bergson".[71]

Apparently Smith does not mean "Islamization" in its fuller meaning, because that would imply a systematic effort on the part of Iqbal. On the other hand perhaps Neitzche and Bergson have been mentioned only as examples, because different critics of Iqbal have named different Western philosophers from whom Iqbal had drawn inspiration. Probably Smith's criticism is better expressed in his remark that "What is however significant about Iqbal's borrowing of thoughts from the West is that it buttressed his idealism".[72]

Bashir Ahmad Dar has analysed the philosophical aspect of Smith's criticism. We need not therefore go into details.[73] We may however briefly comment that in his *Reconstruction* Iqbal was not offering an alternative system of philosophy. He was rather aiming at highlighting the dynamism of Islamic thought which he presented in the Western philosophical and Islamic theological and sufi framework simultaneously. Quite predictably, Western scholars and traditional Muslims both found their frameworks violated. This is quite obvious in Smith's following remarks: "In Iqbal's un-coordinated effusions, one could find whatever one wills, except static contentment".[74] This remark, however, confirms our point about Iqbal's concern for dynamism. Smith also found that "Iqbal's thinking was dynamic because he knew modern philosophy, not because he knew modern science or modern society."[75]

The second aspect of Smith's criticism therefore concerns Iqbal's social thought. He observed that Iqbal "was excellent in thinking about the individual, but he floundered badly when he approached questions of society"?[76] This is because "Iqbal was not an economist, a sociologist, a politician, nor an

ethicist.....[77]

To answer Smith's criticism it must be pointed out that the first-ever written book on economics in Urdu was by Iqbal. The book has been highly appreciated by the economists in the Sub-Continent. He may not be an economist or sociologist by training, but there is no doubt that he had studied economics and sociology. We have already mentioned that he was criticised by Qutb and others as a Comtian. Smith's above remarks, therefore, cannot be understood to mean that Iqbal was not familiar with Western economic and sociological thought or that he was not aware of economic and social problems of his society.

Smith's criticism, most probably, referred to Iqbal's methodology. Smith admitted that "A pioneer like Iqbal, great enough to see the need of the hour and to meet it..."[78] He also recognised that "Iqbal stirred the Muslims and pointed out to them the goal".[79] But Smith observeed that "not being aware of the path to it he left himself and his followers open to being misled..."[80] He even found Iqbal attracting (and perhaps eventually misleading) both the progressivee and the conservatives. Smith attributed this to the ambiguity in Iqbal's thought. He preferred to treat Iqbal like this "because to integrate his divergences would be misleading. His influence was not single".[81]

Smith's methodology to study a thinker who is addressing the old and young, the conservative and the progressive, the intellectual and the layman at the same time in different media, is not adequate. Only an integrative approach can yield a wholesome understanding of such a person. A piecemeal or deductive evidence, rather than an inductive study of the thought of such a person can only lead to apparent contradictions in his thought. It becomes clear from Smith's criticism of Iqbal's view of ijtihad.

Smith finds the chapter on ijtihad "the least good lecture"[82] in the collection. It is "excellent on principles but falters on particular cases." Iqbal "favours ijtihad theoretically but on specific questions of women, eating and drinking, he hesitates

to innovate."[83]

"The lecture contains the book's only pleas for conservatism. It condemns religious radicalism."[84] Smith also finds that despite evolutionary philosophy Iqbal attached great importance to a static insistence on the finality of Islam, in opposition to Ahmadiyya"?[85]

We find it difficult to agree with Smith's evaluation of the lecture. Obviously Smith is not looking at Iqbal's contribution within the framework of Islamic history and tradition. His criticism relates to Iqbal's refusal to accept radical liberal view of reformers like Zia Gokalp about the rights of women. As we have seen in a previous chapter in detail that it was Iqbal who initiated a process of legal reform in divorce laws. We have argued that Iqbal suggested a radical change in the principles of legal reform by referring to the end of law, rather than to the analogical method of reasoning.

From his criticism of Gokalp it becomes clear that Iqbal was not in favour of speculative reformism. He insisted that reform in society was a process of reconstruction and it could be effective only if it was undertaken in view of actual problems. He feared that otherwise it might lead to social chaos. It is a different approach to reform, but not an hesitation to reform.

Recently some critics have alluded to Iqbal's personal life to argue that Iqbal did not observe in practice what he preached in theory. The conservatives have quoted the same instances to argue that in his personal life Iqbal adhered to Islamic teachings about women. In our view these instances should not be seen as contradictions or proof of his conservatism, they should be studied as the view of a person who favoured an evolutionary process of change in society. In his view a legal reform must evolve out of a social need.

As Abu'l Hasan `Ali Nadwi's remarks provided foundations for Arab scholars' criticism, Smith's critique became the basis of other Western critique like H.A.R. Gibb and Guillaume.

Criticism of Iqbal's Lecture

Gibb wrote, "In his sixth lecture, which deals with the problem of law and society, the unresolved conflict between the two currents of his thought is most clearly displayed". The two different currents to which Gibb refers are: reformist and apologetic. Gibb illustrates his remark by referring to Iqbal's dynamic outlook of the Qur`an, which to him represents Iqbal's reformist current. On the other hand Iqbal's justification of Islamic law especially with reference to women's right of inheritance represents the apologetic current. Curiously, Gibb remarks that Iqbal bypassed the problem of divorce to concentrate on the easier problem of inheritance.[87] It is curious because as we have discussed earlier these were Iqbal's remarks and strong pleas that generated the process of legal reform providing Muslim women the right of dissolution of marriage.

Gibb's criticism has reference to Iqbal's critique of Gokalp's demand for equality of men and women. Gokalp calls for equality with reference to issues of inheritance and divorce, among others. Gibb terms Iqbal's justification for inheritance as apologetic. Gibb disregarded the questions that Iqbal raised and which reflected his true attitude to legal reform. Iqbal questioned whether there was a demand for those rights in Turkey.

This question cannot be termed apologetic. On the contrary, as we have said above, it reflects Iqbal's view that legal reform should be in response to a social need. That is why when he saw women actually suffering at the hands of cruel husbands and resorting to apostasy to solve this problem, Iqbal called for legal reform.

Gibb has himself admitted at the end of this criticism, that the problem of the equality of man and women, which appeared as a dilemma for modernists and reformists, and for which Gibb criticises Iqbal being apologetic, was in fact unreal. It appeared to be real to the Western educated Muslims, but was unreal for the great body of the Muslim society. The problem had arisen because a different social order professing a social ethics which has never been accepted by an Eastern

society as a universal rule was superimposed on Muslim society. The problem had not arisen out of an organic evolution within the Muslim society.[88]

To conclude this chapter, we may reiterate that Iqbal's contribution to the reconstruction of ijtihad has not been fully appreciated. His reviewers have not tried to understand Iqbal's views. Iqbal presented ijtihad as a dynamic principle that keeps law responsive to the changing needs of the society. The conservative Muslims equate law (*fiqh*) with Shari'ah (revealed law), and under the influence of Greek classical philosophy regard `change' to be a defect. The conservatives would find it difficult to agree with Iqbal's conception of ijtihad.

We have seen that Iqbal was not in favour of change and reform for its own sake. He was apprehensive of law reforms which were not socially justified. But, he was equally critical of a legal system that did not respond to social needs.

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3. *Iqbal Nama*, vol. 1,p. 238.

4. *Ibid.*

5. *Ibid.* p. 47.

6. Nadhir Niyazi, *Maktubat-i-Iqbal* (Karachi: Iqbal Academy, 1957), p. 43.

7. Sayyid Abu'l Hasan `Ali Nadwi, *Nuqush-i-Iqbal*, Urdu translation of *Rawai` Iqbal* by Shams Tabriz (Karachi: Majlis Nashriyat-i-Islam, 1973), p. 40, note 1. No such remarks are made in the original Arabic work *Rawa`i` `Iqbal* (Karachi; Majlis Nashriyat-i-Islam, 1983, first published from Damascus in 1960).

8. *Iqbal Nama*, vol.1, pp. 146-47.

9. Muhammad Farman, *Iqbal awr Munkirin-i-Hadith* (Gujrat: Maktaba Mujaddidiya, 1963), p. 19.

10. *Iqbal Nama*, vol. 1, pp. 141-142.

11. *Ibid.*

12. *Ibid.* see Nadwi's notes on the letter.

13. *Ibid.* p. 152.

14. *Ibid.* p. 153.

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21. *Ibid.* footnote.

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25. *Ibid.* p. 217.

26. *Ibid.* p. 226.

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28. *Ibid.*

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31. Abu'l Hasan `Ali *Nadwi, Nuqush-i-Iqbal*, p. 40.

32. *Ibid.* p. 83.

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40. B.A. Dar, "Reply to Mr. W.C. Smith's criticism of Iqbal" in A study in *Iqbal's Philosophy* (Lahore: Sh. Ghulam Ali, 1971), pp. 305-327.

41. A. Schimmel. *Gabriel's Wing* (Lahore: Iqbal Academy), pp. 273-287.

42. *Ibid*. p. 470.

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46. *Ibid*. p. 475.

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48. Horten's words quoted by Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Sh. M. Ashraf, 1982), p. 164.

49. *Ibid*. p. 164.

50. *Ibid*.

51. *Ibid*. p. 177.

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53. *Ibid*. p. 465.

54. *Ibid*. Iqbal, *Reconstruction*, p. 152.

55. See Bahi, *Al-Fikr al-Islami*, pp. 25-36.

56. *Ibid*. p. 461.

57. *Ibid*.

58. Iqbal, *Reconstruction*, p. 120.

59. *Ibid*.

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61. Iqbal, *Reconstruction*, pp. 3-4, *et passim*.

62. *Ibid*. p. 111.

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67. Abu'l A`la Mawdudi, *Tajdid-o-Ihya-i-Din* (Lahore: Jama`at

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73. See above note 40 for reference.

74. *Ibid*. p. 107.

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77. *Ibid*. p. 117.

78. *Ibid*. p. 106.

79. *Ibid*. p. 144.

80. *Ibid*.

81. *Ibid*. p. 107.

82. *Ibid*. p. 148.

83. *Ibid*.

84. *Ibid*.

85. *Ibid*. p. 149.

86. H.A.R. Gibb, *Modern Trends in Islam* (Chicago: University of Chicago, 1947), p. 100.

87. *Ibid*. p. 101.

88. *Ibid*. p. 103. Dr Fazlur Rahman, in his *Islam and Modernity*, has offered some very pertinent remarks about Gibb's criticism of Iqbal (pp. 154-55) which reveal the nature of misunderstanding Gibb's ideas might have contained. Dr. Fazlur Rahman has also expressed his own views, about the *Reconstruction* in the same book which, though very perceptive, address an aspect different from our current subject of discussion. See F. Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*, Chicago, 1983.

CONCLUSION

In the preceding chapter we have studied Iqbal's reconstruction of ijtihad in its doctrinal, historical and semantic context. We have argued that such an approach was necessary for a proper study of Iqbal's contribution. This approach has helped us to note that Iqbal's study is a part of the continuing tradition of Muslim intellectuals' concern over the actual problems of the Muslim society. We have found that Iqbal studied the problem of ijtihad not only as expounded in the works of *usul al-fiqh*, but also its history and contemporary debates. We have demonstrated that he consulted even such books of *usul* which were not yet available to most of the `ulama' in India.

The preceding chapters have noted that Iqbal spoke on the problem of ijtihad when the conservative Muslim scholars considered ijtihad prohibited as well as impossible. Even the reformist scholars conceived ijtihad as a revolt against *taqlid*. Iqbal transcended this level of study and presented ijtihad as a dynamic principle of Islam and its civilization. His study is not simply theoretical, he analysed the various practical difficulties in its exercise, and suggested that it should be institutionalized.

Among the difficulties that rendered the exercise of ijtihad difficult, the most prominent one was that in view of the required qualifications of a *Mujtahid*, the expanse of available sources on Islamic law, and `ulama's lack of knowledge about modern sciences, it was not possible for an individual to exercise ijtihad even at the lowest level.

Iqbal found the solution in combining ijtihad and ijma` as one institution. To him, in the modern political structure, the legislative assembly of elected representatives as an organ of Islamic state was the institution which should undertake this obligation.

The significance of Iqbal's reconstruction of ijtihad was revealed by the constitutional developments in Pakistan, particularly in relation to the role of `ulama.' The debate whether this role should be participatory or recommendatory still continues, but Pakistan is gradually moving towards Iqbal's idea that it should be participatory.

Time and again the issue is debated. In the modern context the role of `ulama' is further confused. They are claimed to be representatives of God and the Prophet (P.B.U.H), and the government and parliament are regarded as representatives of the people. This understanding obscures the Islamic view of political order, because it suggests separation between religion and people, and between `ulama' and ummah. It is a dangerous trend.

For the future of Muslim ummah, particularly for Pakistan's society, it is imperative that such dangerous trends which lead toward establishing a church in Islam, must be discouraged. The Qur`an condemnend` the practice in previous religious traditions which placed *Ahbar* (religious authority) and *Rabbaniyyun* (Divines) next to God. (9:32) It is necessary that such practices be examined and discussed with serenity and in an academic manner and not with emotional rhetorics.

Iqbal offered his opinion on ijtihad after a thorougn study and consultation with the experts. He never claimed finality of his opinion. The least that Iqbal could expect from a country that claims to be the realisation of his dream, is that his views are considered seriously and refined further. These views deserve to be discussed academically, and to be revised and improved where needed.

His reconstruction of ijtihad must not, as such, be dismissed only because it does not conform to the views of a certain group of people.

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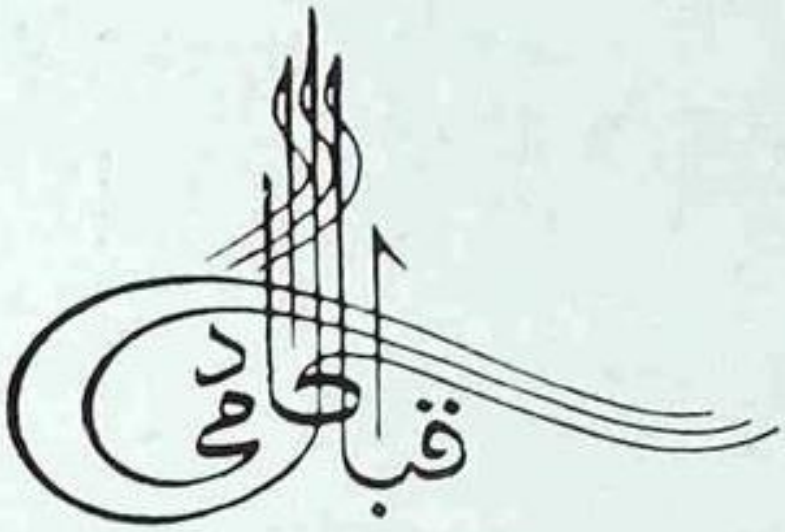
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