Chapter- 5
Dr. Muhammad Hamidullah’s Perception of *Ijtehâd*
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Dr. Muhammad Hamidullah believed in the dynamic nature of Islamic law and for this purpose he highlighted the importance of *Ijtehād* and stressed that in the modern period *Ijtehād* has enough scope as this is the only mechanism for explaining Shari‘at attitude with regard to the new problems.

1. Concept of *Ijtehād*:

It is important to note that Dr. Muhammad Hamidullah has recognised *Ijtehād* as the third basic source of Islamic law, as has been discussed in previous chapter under the heading of *Ijtehād*. He defines *Ijtehād* as the opinion of individual jurist expressed about the new problem. It is also important that disagreeing with other jurists, Dr. Hamidullah does not acknowledge *Qiyās* as a tool of *Ijtehād* but he says that these (*Qiyās* and *Ijtehād*) are two different principles of jurisprudence. In this connection, he says that there are different methods to make a new law form Qur‘ān and Hadīth, e.g. *Ijtehād* is one; *Qiyās* is another; *Istidlāl* is yet another and so also *Istislah*. All these are not synonymous. There are differences among them.¹ But at another place, discussing the sources of Islamic law he says, “*Qiyās* (analogy), which we also call *Ijtehād* had already come into existence during the life time of the Prophet”.² With regard to difference between *Ijtehād* and *Imā‘*. He is of the view that *Ijtehād* is the opinion of a single jurist and *Imā‘* is
the consensus of the jurists or experts of law. According to him both kinds of *Ijtehād* (individual *Ijtehād* and collective *Ijtehād; Ijmāʿ) have importance. But he considers second one more important as it is based on the collective wisdom and the decision based on it would be more appropriate solution to the problem. Illustrating this point, he says that in case we do not find solution for a legal problem in the *Qurʾān* and the *Hadīth*. We may make effort by the application of the principles of *Ijtehād* and *Qiyās* to find one. If the jurists of any period have consensus of opinion about a particular matter that opinion necessarily becomes more acceptable.

2. **Significance of *Ijtehād* in Islamic Jurisprudence:**

Highlighting the significance of *Ijtehād*, Dr. Hamidullah stated that this mechanism used to be adopted by *ʿUlamāʾ* and jurists to solve the new problems from juridical point of view and this had contributed to make Islamic law applicable to every period. In fact, the dynamic nature of Islamic law depends upon the application of the principles of *Ijtehād*. This is well-known that Islamic law is to guide the *Ummah* till the end of this world and this purpose can be achieved only by exercising *Ijtehād*. At another place, he pointed out that if Prophet had not permitted *Ijtehād*, the Muslims would have faced much difficulty with regard to seeking guidance from Islamic law. In his own words:

“If there had been no provision of *Ijtehād*, the Muslim *Ummah* would have faced great difficulty in finding out the juridical solution for the problem about which no clear ruling was
available in the *Qurʾān* and the *Hadīth*. For the same reason Prophet Muhammad (SAW) himself permitted the use of personal reasoning (*Ijtehād*), in case, a clear rule was not available in the *Qurʾān* or the *Hadīth*.⁶

He further argued that if *Ijtehād* had not been permitted it would have been almost impossible for a jurist, even the greatest one to bring out the *Shariʿat*’s attitude towards the new problems. This principle has added to the value of Islamic law and widened its scope. Otherwise Islamic law would have become frozen and lost its applicability to every period. This is only through the use of *Qiyās* and *Ijtehād* that the jurists responded to the emerging problems relating to different aspects of human life.⁸

3. **Origin and Development of *Ijtehād***

   It is important to note that Dr. Hamidullah traced the origin of *Ijtehād* to the period of the Prophet (SAW) while the jurists generally thought that the principles of *Ijtehād* came to be applied after the Prophet (SAW). In his view, the Prophet (SAW) himself applied the principles of *Ijtehād* in cases about which no revelation was available. Sometimes it happened that he faced problem about which no guidance was available in the *Qurʾān*. He waited for a revelation about the matter. If he did not receive revelation then he decided the matter in accordance with his own reasoning or laid down rule at his own discretion. Such rule used to be endorsed or changed, as per the suitability, by a subsequent revelation.⁹ There are many relevant examples of this kind. The treatment of prisoners of war after the battle of Badr is one of them. Until then
there was no specific order on the subject in the Qur'ān. The Prophet (SAW) decided to release the prisoners on the payment of ransom. The action was followed immediately by the revelation of the famous verse of warning

(Had it not been for a previous ordainment from Allah, a severe punishment would have reached you for the (ransom) that ye took).

Dr. Hamidullah says that, in these verses, Allah did not approve of the decision based on personal discretion but confirmed it on the basis that He had already decided to change previous law and allowed the Prophet (SAW) to proceed on the basis of new law. On the other hand, if Prophet's decision has been changed immediately by the verse, then law formulated by Prophet would not be valid. Moreover, the Prophet had given permission to his companions for doing *Ijtehad* as it is established by the famous tradition of Hazrat Muaz Ibn Jabal who was appointed the *Qāzi* of Yemen in 9 A.H.. At the time of appointment he was asked how he would decide cases presented to him. He replied that he would do so in accordance with the Qur'ān. The Prophet asked how he would decide in case he could not find the relevant rule about the matter in the Qur'ān. Hazrat Muaz Ibn Jabal was quick to response that in that situation he would turn to *Sunnah* of the Prophet (SAW). Then asked what he would do, if the necessary guidance was not forthcoming even from that source. Hazrat Muaz replied “I will strive to find the solution through my
reasons and will spare no effort in this regard. In other words, I would use my
discretion through inference or analogy and will try to find out a solution. The
Prophet was pleased with this answer that he raised his hands towards the sky
and said: “O Allah! Your messenger is happy at the grace you have bestowed
on his messenger (i.e. Muaz Ibn Jabal).” This is enough to prove that the
Prophet (SAW) permitted his Qāzīs/ governors to exercise Ijtehād in deciding
the new cases. Sometimes, Qāzī or governor took the decision on their own
discrition in a particular case and then they informed the Prophet about their
decision or judgement and he instructed them to work in this way.

Dr. Muhammad Hamidullah also pointed out that the Sahābah were
permitted to exercise Ijtehād in case they faced new situation during their
journey outside Madinah. Later on, returning to Madinah they used to inform
him about their decision. The Prophet used to appreciate their use of reasoning
in new cases. If the reasoning was wrong he corrected them. Sometimes two
companions of the Prophet (SAW) adopted different legal opinions in the new
situation, both (whether right or wrong) would be rewarded as are stated in a
Hadīth. There are many example of such kind, for instance, two Sahābis took
to journey without taking the water along with them. They performed a prayer
with tayammum in the journey. After covering certain distance, they found
water. One sahābi repeated his prayer after taking new ablution with water but
other did not. When they met the Prophet and informed him about their
separate actions, the Prophet (SAW) not only appreciated them but also
commended by saying that you did according to Sunnah.
Dr. Hamidullah has further highlighted the contribution of Imam Abu Hanifah to the development of the principles of *Ijtehād*. In this connection, he has particularly mentioned the constitution of an academy of forty jurists from among his disciples in which every member was allowed to express his opinion freely regarding any matter. Sometimes, discussion lasted for a whole month. When they agreed on a point that was reached; it was noted down, if some disagreed that was also noted down.\(^{14}\) Keeping in mind the importance of *Ijtehād*, Imam Abu Hanifah is also reported to have written a book entitled *Kitāb al-Rāʾe* (Book of considered opinion) in which he had explained the principles for the use of reason and application of *Qiyās* to a new problem.\(^{15}\) Moreover, in the opinion of Dr. Hamidullah, two disciples of Imam Abu Hanifah namely Abu Yusuf and Muhammad Ibn al-Hasan al-Shaibani also played important role in the development of *Ijtehād*. In the same connection, Dr. Hamidullah also mentioned that Abu Yusuf had written a book called *Kitāb al-Usūl* (the book of principles) which deals with the principles of Islamic jurisprudence (*Usūl-e-Fiqh*). With reference to *Kitāb al- Muʿtamad* of Imam Abul Husain al-Basri, Dr. Hamidullah mentioned that Imam Muhammad had also written a book about the principles of jurisprudence and that it also contained discussion on *Ijtehād*. But he pointed out that the above mentioned three books of Abu Hanifah, Imam Abu Yusuf and Imam Muhammad on *usūl-e-fiqh* were not available.\(^{16}\) He has endorsed the opinion of other scholars that the earliest work on *usūl-e-fiqh* which has come down to us was written by al-Shafii, a disciple of al-Shaibani who thought him mainly Islamic jurisprudence.
logic and philosophy. In view of Dr. Hamidullah, his famous work on the principles of Islamic jurisprudence—Kitāb al-Risālah, which was also helpful in evolving the principle of Ijtihād. In this Risālah, al-Shafī‘ī discussed importance of analogical deduction as a source of law, methodology of bringing out legal point from the sources as well as employing the principles of Ijtihād in case of emergence of new cases.

In reference to the development of the concept of Ijtihād in modern period, Dr. Hamidullah mentioned Sir Abdur Rahim, former judge of Madras High Court who later became President of the Indian Legislative Assembly, and gave account of his contribution to this important aspect of Islamic jurisprudence. He has discussed the subject with reference to the old books of principles of Islamic jurisprudence as well as with the new books of law published from the Europe. He has also attempted to compare the Islamic and the European principles of jurisprudence.

It is view of Dr. Hamidullah, the door of Ijtihād was never closed and in every period there had been scholars who exercised Ijtihād and contributed to the development of its principles through their writings.

4. Conditions of Ijtihād:

Mentioning the scope of Ijtihād, Dr. Hamidullah stated that it was permitted only in those cases about which no clear ruling was available either in the Qur’ān or the Hadith. In this connection, he quoted the famous Hadith of Hazrat Muaz Ibn Jabal which records the Prophet gave permission to Hazrat
Muaz Ibn Jabal for reasoning or the use of his personal opinion only in cases about the Qur’ān and the Hadith were found silent. It means that the question of Ijtehād does not arise with regard to the problems which have been solved by the Qur’ān or Hadith.\textsuperscript{21}

As regards the jurists (Mujtahid) entitled to do Ijtehād, Dr. Hamidullah was of the view that it is conditional on certain qualifications. Responding to a question he stated “Ijtehād would be only performed by the jurists who have the knowledge of jurisprudence, not by the general people”. At another place, emphasising the need of Ijtehād he says, “Such assignments can be undertaken only by the experts of principles of jurisprudence. A person who does not have the knowledge of law is not eligible to perform Ijtehād”.\textsuperscript{22} In addition to the above qualification, Dr. Hamidullah also emphasised that jurists should posses the quality of piety and fearfulness of Allah as it would make him more sincere in exercising Ijtehād.\textsuperscript{23}

5. Principles of the Application of Ijtehād:

According to the Dr. Hamidullah, there are several ways of finding out the Shari‘at’s attitude about a problem through the application of Ijtehād. Sometime, no particular injunction is available in Qur’ān about a problem. But there is ruling with regard to a similar situation. For example, the Qur’ān prescribes punishment for theft but there is no particular rule about the theft of shrouds. While giving his verdict about this problem, the jurist will exercise his reasoning and apply the ruling about similar theft to this case also. It is also possible that he would go deeper into the case and would find out some other
rule which may be more suitable to the situation and this process is called *Istihsān*. Besides, in some cases another principle (welfare of the *Ummah*) may be a guiding factor for finding out a solution to a problem. The simple way of analogical deduction would suggest a solution, but another would appear better from the point of view of the welfare of the people and this is called principle of *Istislāh*.\(^{24}\)

With regards to the mechanism for solving new problems in modern period, Dr. Hamidullah suggested both kind of *Ijtehād* i.e. individual *Ijtehād* and collective *Ijtehād* (*Ijmā‘*). But he considers second one more important, as it is based on collective wisdom and the decision based on it would be more appropriate. He illustrated it in these words:

“*Ijmā‘* means that in case we do not find a solution to a problem in the *Qur’ān* and the *Hadith*, we make effort by *Ijtehād* or *Qiyās* to find the solution. If jurists of that period reach an agreed position on a particular question, this position necessarily becomes more acceptable or more beneficial”.\(^{25}\)

Differentiating between *Ijtehād* and *Ijmā‘*, he points out “*Ijtehād* and *Ijmā‘* are same things but difference is that *Ijtehād* is the opinion of single jurist and *Ijmā‘* is consensus of jurists or experts of law”.\(^{26}\)

Dr. Hamidullah not only made earnest plea for the application of *Ijtehād* in the modern period but he also explained details of its application. He was of the view that every jurist and even expert of the law should be free to express his opinion in the exercise of *Ijtehād*. According to him even the opinion of a
common man may be also sought as was done in the period of pious Caliphate. But it does not mean that the opinion expressed by anyone should be necessarily accepted. Other may oppose it. Acceptance of the opinion will depend only on collective wisdom of the jurists. He also emphasised that everyone would be free to express his opinion but as regards acceptance of the opinion, it would be done after carefully examining that which opinion is more beneficial and more acceptable to the people. Similarly he was of the view that the jurists of every period are required to express their opinions about the new problems of socio-economic life of people so that they may find out Shari'at attitude about them after seeking guidance from the jurists. 28

6. Contribution of Dr. Muhammad Hamidullah to the Development of the Institution of Ijtehād in Modern Period:

Dr. Hamidullah, as pointed out earlier, gives more importance to collective Ijtehād (Ijmā') in comparison to individual Ijtehād. He made strong place for the establishment of an institution at world level to facilitate the collective Ijtehād or Ijmā' with which all the famous jurists would be associated. They may express their opinions about the emerging problems keeping in view the goodness of the whole Muslim community. His views on institutionalized Ijtehād may be given here in his own words:

"An association of jurist should be established in every country with its headquarters at any place. It will be exclusively a Muslim association. Its secretariat will receive references from member countries. If it considers a certain issue important
enough for Muslim jurists of the world to express their views on it, the secretariat will circulate the question to all its branches in the Muslim and non-Muslim world. The branches of the secretariats will forward a copy of the question to all Muslim jurists in their respective areas with the request for a reasoned reply. On receipt of replies they will be sent to the headquarters with an analysis indicating whether the replies are unanimous or not. In the event of the schism among some jurists, the notes should contain detailed arguments of the person or the group concerned.\(^\text{29}\)

The common language of such an international institution should be Arabic, but on a local level each country could use its own language. For example, if a question is referred to Pakistan, its jurists may give their opinion in Urdu or some other language, but the reply sent to headquarter should be in Arabic so that all the jurists of the Muslim world could easily avail of it. In my view a good jurist should have good knowledge of Arabic.\(^\text{30}\)

On receipt of replies from all the branches a suitable announcement should be made in case unanimity has been achieve on a point. In case of difference of opinion, a summary should be prepared and circulated to all jurists. This will enable them to consider the reasoned point of view of all; and those who dissent might consider it worth and may change their views.
When the replies are received for the second time in the headquarters one would be able to finally determine the issues on which a consensus has been reached as well as those on which differences continue to persist. We will be able to find out the majority view expressed on the differences involved. All these reports should be published in a volume which should comprise all the replies received together with the detailed arguments in favour of or against the proposition.\textsuperscript{31}

Obviously, it is not reasonable to make all Muslim jurists or experts of Islamic law bound to remain permanently at one place. So, Dr. Hamidullah says that jurists may assemble for a conference for a few days but they can not stay there for a long time. If an institution is established it should be easy to avail the expertise of the jurists of the Muslims of the whole world for solving the new problems.\textsuperscript{32} It is also important to mention here that Dr. Hamidullah says that collective \textit{Ijtehād} (\textit{Ijmā'}) has been founded in the period of pious Caliphs. He says, “During the days of pious Caliphs collective deliberation was occasionally resorted for solving a problem. Discussion and debate took place among the people. If a person expressed an opinion, the other criticised it and advanced his own views on the issue. Eventually after having discussed the pros and cons of a problem, people arrived at a conclusion. The process of discussion proved very useful”.\textsuperscript{33}

From above discussion, it is not clear whether Dr. Hamidullah equated \textit{Ijtehād} with \textit{Qiyās} or dealt with them separately. At one place, as stated above.
he has considered them two different principles of Islamic jurisprudence but at the other place he mentioned both of them as the same thing. So, his statement regarding the difference between *Qiyās* and *Ijtehād* is confusing. Dr. Hamidullah has not also given a detailed discussion about *Ijtehād* in any book except *Khutbāt-e-Bahāwalpur*, but the book being collection of lectures does not contain systematic study about the issues and development of *Ijtehād*. Similarly, Dr. Hamidullah has not discussed all the qualifications of a *Mujtahid*. He only expressed his views about this matter in just two or three lines, as mentioned above. Besides, in his discussion on *Ijtehād* mainly focussed on the contribution of different schools to the principle of jurisprudence.

Moreover, no doubt, the concept of the institutionalized *Ijtehād* is important and useful from the point of view that it would facilitate to seek the collective opinion of the jurists of the world about the legal problems involving the whole *Ummah*. But it can not be overlooked that the Muslims of every country have their own peculiar problems. So, there should be *fiqh* academy in every country which may deal with the social and economical problems of the country.
Notes and References

2. Ibid., p. 272
4. Ibid., p. 346
5. Ibid., p. 133
6. Ibid., p. 96
7. Ibid., p. 134
8. Ibid., p. 107
9. Ibid., p. 339
12. Ibid., pp. 344-345
13. Ibid., p. 346
14. Ibid., pp. 111-112
15. Ibid., p. 137
16. Ibid., pp. 138-139
17. Ibid., p. 140
19. Muhammad Hamidullah, *The Emergence of Islam*, op.cit., p. 120
21. Ibid., p.144
22. Ibid., p. 103 and 151
23. Ibid., pp. 152-153
24. Ibid., p. 345
25. Ibid., p. 346
26. Ibid., p. 146
27. For more details see, Muhammad Taqi Amini, *Fiqh-e-Islāmi kā Tārikhi Pas Manzar*. Twentieth Century Islamic Studies Centre, Lahore (n.d), pp. 154-155
29. Ibid., p. 147
30. Ibid.,
31. Ibid.,
32. Ibid., pp. 147-148
33. Muhammad Hamidullah, *The Emergence of Islam*, op.cit., p. 110