

## STATUS OF IJTIHAD IN ISLAMIC JURISPRUDENCE: OBJECTIVES OF SHARIAH IN IJTIHAD OF PROPHET MUHAMMAD (SAW)

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### Abstract

This paper is based on the discussion of Status of Ijtihad in Islamic Jurisprudence. Discussion will be supported by the Ijtihad of Prophet of Islam Muhammad (SAW) in order to highlight the role of Sunnah as explanatory and legislative source of Islamic Shariah.

First part will discuss the difference between shariah and Fiqh. Second part of the paper will discuss the objectives of shariah, followed by Ijtihad of Prophet (SAW) served by implementing Shariah. This part will highlight the decisions of Prophet (SAW) based on Ijtihad and then verifies and supported by Allah Almighty through revelation in Quran.

Ijtihad of Prophet (SAW) marked as initializing or beginning of shariah and evolution of Fiqh. During this time serving objectives of Shariah as guiding principles and exemplifies by the Ijtihad of Prophet Muhammad (SAW) founded science of deducing laws from the Qur'aan and the Sunnah were laid by the Prophet (SAW). It might be said that in this period the first Madh-hab (school of legal thought) took shape as the Prophet (SAW) guided and trained the Sahaabah in Ijtihad.

Key Words; Shariah, Jurisprudence, objectives, Ijtihad, Sources.

### Introduction:

For a proper understanding of the historical development of Islamic law, the terms Fiqh and Sharee'ah need to be defined. Fiqh has been loosely translated into English as "Islamic law" and so has Sharee'ah, but these terms are not synonymous either in the Arabic language or to the Muslim scholar.

Fiqh literally means the true understanding of what is intended. An example of this usage can be found in the Prophet Muhammad's statement:

"To whomsoever Allaah wishes good, He gives the Fiqh (true understanding) of the Religion".

Technically, however, Fiqh refers to the science of deducing Islamic laws from evidence found in the sources of Islamic law. By extension it also means the body of Islamic law so deduced.

Sharee'ah, literally means, a water hole where animals gather daily to drink, or the straight path as

in the Qur'anic verse.

**“Then we put you on a straight path (Sharee‘ah) in your affairs, so follow it and do not follow the desires of those who have no knowledge.”** (Al-Quran, 45:18)

Islamically, however it refers to the sum total of Islamic laws which were revealed to the Prophet Muhammad (SW.) and which are recorded in the Qur‘aan as well as deducible from the Prophet‘‘s divinely-guided lifestyle (called the Sunnah)<sup>2</sup>

From the previous two definitions, the following three differences may be deduced:

1. Sharee‘ah is the body of revealed laws found both in the Qur‘aan and in the Sunnah, while Fiqh is a body of laws deduced from Sharee‘ah to cover specific situations not directly treated in Sharee‘ah law.
2. Sharee‘ah is fixed and unchangeable, whereas Fiqh changes according to the circumstances under which it is applied.
3. The laws of Sharee‘ah are, for the most part, general: they lay down basic principles. In contrast, the laws of Fiqh tend to be specific: they demonstrate how the basic principles of Sharee‘ah should be applied in given circumstances.

## Objectives of Shariah:

In the enactment of laws, the Qur‘anic revelations have taken into consideration the following four basic principles:

### The Removal of Difficulty.

The system of Islaam has been revealed for man‘‘s benefit. Islamic laws are not meant to be a burden, but they are designed to facilitate mankind‘‘s individual and societal needs.

Evidence to support the fact that Islamic law aims to remove difficulty can be found throughout the Qur‘aan. ‘‘Allaah does not burden a soul with more than it can bear.’’

‘‘Allaah wishes for you ease and He does not wish difficulty for you.’’

Because of this principle, Allaah has enacted along with the divine laws a variety of legal **concessions**, like the permission to **break fast**, and **shorten and join prayers** during travel. More over, the **consumption of prohibited substances** (e.g., pork and alcohol) in cases of dire necessity was also permitted.

The **Prophet** was himself **described** as always **choosing the easier path** whenever a choice was given to him, as long as it was not sinful.<sup>13</sup> He was also reported to have said to some of his followers on the occasion of their dispatchment/ departure as governors of Yemen, ‘‘**Make things easy (for the people) and do not make them difficult.**’’<sup>14</sup> Consequently, scholars deduced many secondary laws on this basis.

### The Reduction of Religious Obligations:

The **prohibited acts** and substances in Islamic legislation are quite **few** in comparison to those which are

allowed by direct command or by the absence of any command of prohibition.

In the case of prohibitions, the sub-categories are named and listed. For example, with regard to women with whom marriage is forbidden, Allaah states,

**“Prohibited to you are your mothers, your daughters, your sisters and your aunts...”**

After completing the prohibited categories, Allaah says,

**“ Except for these, all others are lawful, provided you seek them in marriage with a dowry and not for fornication.”**

It is also worth noting that the laws, on the whole, do not contain so many details as to

create difficulty for those who wish to strictly follow the teachings of the Qur’aan. Among the verses of the Qur’aan which indicate the existence of this principle is the following:

**“Oh you who believe, do not ask about things which, if made plain for you, will cause you trouble. But if you ask about them plain to you. Allaah has exempted them. And Allaah is soft-Forgiving, Most Gentle.”**

The prohibited questions concern issues about which Allaah has chosen to enact prohibitions due to their questions. Included in this category is the Prophet’s (s.w.) response to repeated question concerning whether Hajj was compulsory every year.<sup>16</sup> He said, “If I say yes, it would have become compulsory. Leave me alone concerning things which I have left up to you, for certainly those before you were destroyed because of their many unnecessary questions and their arguments and disagreements with their prophets.”<sup>17</sup>

A good example of limitation of details can be found in the

**Qur’aanic treatment of business transactions.** For example, Allaah states:

**“Oh you who believe, fulfil your contracts.”**

**“Allah has made trade lawful and prohibited interest.”**

**“Oh you who believe, do not eat up your properties among yourselves unfairly. But there should be trade by mutual good-will.”**

**Realization of Public Welfare:**

Laws of Islaam were primarily enacted for the general good of all mankind. Naskh (Abrogation) The existence of abrogation within Islamic legislation is among the manifestations of human welfare considerations in Islamic legislation. God may prescribe a law suitable to people at the time of its enactment, or it may serve a particular limited purpose. However, its suitability may later disappear or its unique purpose may have been achieved. For example, Bequest (Waseeyah): In pre-Islamic Arab culture, the deceased’s children inherited his property, and parents would only inherit if a bequest were made. Thus, in the early stages of Islaam, Allaah made the writing of a bequest for parents and relatives compulsory, in order to teach the new community of Muslims the importance of family rights with regard to their wealth.

**“It is prescribed that when death approaches any of you, if he leaves behind any goods. That he make a bequest to parents and next of kin, according**

**to what is reasonable. This is due from the pious.”**

However, after the community willingly accepted this law and they began to strictly put it into practice, Allaah replaced it by revealing in the Qur’aan a clearly defined system of inheritance laws. **Legislative consideration of human needs can also be found in the methodology of legislation. In the case of laws wherein human benefit will not change** with time or conditions, Allaah has **spelled out the details** very clearly. **As for things whose benefit or harm may vary** from place to place, Allaah has legislated **general laws** of universal benefit.

**Legislative consideration of human needs** can also be found in the giving of **precedence to the general welfare** over individual benefit, and to the **prevention of a greater harm** over a similar one.<sup>68</sup> A good example of such a principle can be found in Islaam’s confirmation of the almost universal practice of plural marriage (**polygyny**).

### **Sources of Shariah:**

Islamic law during the stage of foundation was derived from revelation, either in the form of the Qur’aan or the Sunnah. The Sunnah is considered the second source of revelation based on Allaah’s statement in the Qur’aan,

**“He does not speak from his desires. Verily it is inspiration which has been revealed.”** And he was also given the responsibility of clarifying for mankind God’s intent in the message.

**“We have revealed the Reminder (Qur’aan) to you, in order that you explain to mankind what was revealed to them, that perhaps they may reflect.”**

The Sunnah was an exposition of the Qur’aan by which its generalities were clarified and its intended meanings specified. Consequently, everything in the Sunnah is addressed in the Qur’aan, either by inference or by direct reference. The address may be so general as to include the whole Sunnah as in the case of the verse:

**“Whatever the messenger gives you, take it; and whatever he forbids you, leave it.”**

Or the address may indicate generally defined laws, the details of which are left to the Sunnah. Hence, the Sunnah may explain the methodology, reasons, requirements and location, or it may explain the inclusions, which could not be logically deduced. An example of such inclusions may be found in the case of forbidden foods beyond those mentioned in the Qur’aan. Allaah does state in reference to the Prophet (s.w.):

**“He made lawful for them the good (and pure) things and forbade them the bad (and impure).”**

Anas ibn Maalik said,

**“On the day of the Battle of khaybar, a visitor came and said, „Oh messenger of Allaah, the donkeys have been eaten“ Then another came and said, „Oh**

**messenger of Allaah, the donkeys are being destroyed. "Allaah's messenger (s.w.) then sent Abu Talhah to make an announcement: Allaah and His Messenger have prohibited you from eating the flesh of domesticated donkeys, for it is bad (and impure)."**<sup>20</sup>

Or the address may indicate **general principles** from which the **Prophet (s.w.)** may **deduce** rulings. Such rulings may be **confirmed** by Allaah if correct, or **corrected** by Allaah if incorrect.

Among the examples of deduced rulings which were **not confirmed** is that of the **Dhihaar divorce**. Khawlah bint Tha'labah said, "My husband, Aws ibn as-Saami, pronounced the words: You are to me like my mother's back. So I came to Allaah's messenger to complain against my husband. However, the messenger of Allaah disagreed with me and said, "Fear Allaah. He is your cousin." I continued complaining until the verse was revealed: "Allaah has indeed heard the statement of the woman who disputed with you concerning her husband and carried her complaint to Allaah, and Allaah hears your discussion. Surely Allaah hears and sees all things. If any men among you declare their wives like their mothers (Dhihaar), they cannot be their mothers. None can be their mother except those who gave birth to them. They use bad words and falsehood..."

The Prophet (s.a.w.) had accepted Dhihaar as being a valid form of divorce and had told Khawlah to accept it, however Allaah declared it invalid.

There also exists another category of **unconfirmed deduced rulings** which **demonstrate that the Sunnah is limited to confirmed religious rulings** and **exclude personal habits and customs of the Prophet (s.w.)** which he did not instruct his followers to follow. **Raafi' ibn Khadeej** reported that Allaah's Messenger (s.w.) came to Madeenah and found the people **grafting their date-palm trees**. He asked them what they were doing and they informed him that they were artificially pollinating the trees. He then said, "Perhaps it would be better if you did not do that." When they abandoned the practice, the yield of the date palms becomes less. So they informed him and he said,

**"I am a human being. So when I tell you to do something pertaining to the religion accept it, but when I tell you something from my personal opinion, keep in mind that I am a human being."**

Anas reported Prophet (SAW) said:

"you have better knowledge (of technical skills) in the affairs of this world."

Prophet (s.w.) further informed his followers that even in the case of legal judgements with regard to disputes brought before him, he could unintentionally rule incorrectly, as some of such decisions were based on his own opinion.

Umm Salamah reported that Allaah's Messenger (s.w.) said,

**"I am only a human being, and you bring your disputes to me. Perhaps some of you are more eloquent in their plea than others, and I judge in their favor"**

**according to what I hear from them. So, whatever I rule in anyone's favor which belongs to his brother, he should not take any of it, because I have only granted him a piece of Hell."**<sup>22</sup>

The Prophet (s.w.) also encouraged his companions to make legal rulings in order to prepare them to carry on the application of the Sharee'ah after he left them. „Alee ibn Abee Taalib said,

**“Allaah's messenger (s.w.) sent me to Yemen as a judge, so I asked, „Oh messenger of Allaah! You are sending me and I am young, and I have no knowledge of giving judgement?“ He replied, „Allaah will guide your heart and keep your tongue firmly (attached to the truth). When two litigants sit before you, do not decide until you have heard what the other has to say the way you heard the first, for it is more suitable for the correct judgement to become clear to you.”**

The Prophet (s.w.) and his companions practiced Ijtihad during this stage in the development of Islamic law. However, it should be noted that the Ijtihaads of the Prophet (s.w.) which occurred during this period are not considered an independent source of law, because their validity depended on divine revelation for confirmation.

### **Conclusion:**

Islamic law in this early period consisted of the laws of Sharee'ah which were revealed and recorded in the Qur'aan and the Sunnah. They relate mainly to the ideological foundation of Islaam, Eemaan, and the socio-economic laws necessary for the organization of the fledgling Muslim state. The basis of legislation in the Qur'aan was that of human reformation, as such, beneficial human customs and practices were recognized and incorporated into the body of divine legislation. In order to achieve the goal of reformation, Qur'anic legislation incorporated the principles of removal of difficulty, reduction of religious obligations, realization of public welfare, realization of universal justice.

Ijtihad as source of Shariah especially if it is done by Prophet Muhammad (SAW) marked as initializing or beginning of shariah and evolution of Fiqh. During this time serving objectives of Shariah as guiding principles and exemplified by the Ijtihad of Prophet Muhammad (SAW) founded science of deducing laws from the Qur'aan and the Sunnah were laid by the Prophet (SAW). It might be said that in this period the first Madh-hab (school of legal thought) took shape as the Prophet (s.w.) guided and trained the Sahaabah in Ijtihad.

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