

ISLAMIC LAWS

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INTRODUCTION

Praise be to Allah Who deserves all praise and thanks, Peace and the blessings of Allah be upon the master of humankind, Prophet Muhammad, his infallible household, the righteous among his companions and those who follow the right path till the Day of Judgement.

Certainly, Allah the Most High, is the main source for Islamic laws which are distinguished from man-made laws, whether made by a single man or drafted by a body of men and approved through public vote.

Indeed, Public vote or referendum on man made laws does not grant them legality as long as these laws contradict the Divine Laws revealed through heavenly Scriptures.

Therefore, what the Islamic Shari'ah decrees as 'lawful' or 'unlawful' is not according to people's whims and fantasies but according to the commandments of Allah, the All Knowing and All-Wise, Who created man from sperm, and knows what is in the interests of His creatures, and what harms their body and soul.

The laws of Allah were revealed to all Divine Messengers in different eras and geographical places, in accordance with the intellectual progress of a society, and reached their perfection through the Glorious Qur'an and its universal message.

Therefore, the Shari'ah as the legal code of Islam is called, is not bound by time and place and is designed to cater to the different needs of the human race till eternity. The Holy Qur'an which contains the fixed sanctions is to be supplemented by the genuine traditions of Prophet Muhammad (s.a.w.) for the practical implementation of the Shari'ah. Thus the dynamism of the Shari'ah, on one hand, declares clear and fixed 'Particular laws' and on the other, presents 'General Laws' through which qualified juriconsult experts known as mujtahids in Islamic terminology, arrive at a decision.

In the light of this 'Legislative Reality', the Shari'ah accompanies and follows not only the development stages of 'Life Reality' for an individual or a society, but also anticipates and ably resolves all future developments through its simple, deep and fairly wide mechanism by giving judgements in all fields of life.

Another merit is that Islamic law gives the mukalaf (one who is of age responsible for Islamic obligations) a proper perspective of the right to talk, listen, or abstain. In other words, it acquaints him with the Almighty's judgements and laws, and makes him practically mould his acts and behaviour accordingly.

Al-Balagh Foundation presents 'Islamic Laws' to its dear readers, humbly imploring Allah the Most High, to make it a step towards the spreading of Islamic culture and ideology.

Al-Balagh Foundation

ISLAMIC LEGAL LAWS

What is Meant by Lawful and Unlawful?

Humankind gifted with the powers of will and intellect, is free to chart out its course in life, whether good or evil. Through these two powers, man is able to create or cause any action, as well as abstain from any particular act and avoid its occurrence.

Through these powers, actions or causes come out from the stage of possibility to actual deed or commitment. Man is free to eat, drink, till the land, make airplanes, build cities and plan and run factories...etc. as well as indulge in evil and destructive acts such as drinking a wine, oppressing and killing fellow humans, and destroying the fruits of progress.

The Reason Behind Lawfulness (Ibahah):

Allah, the Almighty created man on earth and supplied him with the means of life. He made the earth and what is in it and what is on it for the benefit of man and surrounded it with cosmic system which suits the circumstances of life on it.

He made the relation between the sun, the moon, gravitation and the gaseous atmosphere,...etc. suitable for life on earth.

He prepared for man on its surface, underneath the ground and in the seas and rivers, all the necessities of life and its progress. He created plants and animals, seas and rivers, mines, and mountains, the air and the birds which fly, all for the sake of man and his interests. He provided him with the blessings and sense of goodness and gave him all he needs without any defect or deficiency in the system of creation and its relation to man and life.

This excellent creation and perfection is a clear proof for whoever thinks carefully and sincerely concerning the wonders of life, where harmony prevails between man and nature without the least disorder or confusion. Man finds all the essential needs of life such as food, water, air, light, heat, moisture on this planet and the force of gravitation, the pressure of air, the percentage of oxygen, the elements of soil, are in exact proportion to enable him to live and practice life systematically and orderly.

Allah the Most High, says:

“Allah is He Who created the heavens and the earth and sent down water from the clouds, then brought forth from it fruits as a sustenance for you, and He has made the ships subservient to you to run their course in the sea by His command, and He has made the rivers subservient to you. And He has made subservient to you the sun and the moon, pursuing their courses; and He has made subservient to you the night and the day. And He gives you of all you ask of Him, and if you count Allah's favours, you will not be able to number them. Surely man is very unjust, very ungrateful.”

Holy Qur'an (14:32-34)

Without this perfection and exactitude in the system of existence, life will be impossible for man on this land.

How beautifully Allah the Exalted, puts it:

“...the handiwork of Allah, Who has made everything thoroughly. Surely He is aware of what you do.”

Holy Qur'an (27:88)

Should all these things be not lawful for man? It was difficult for him to behave with or make use of them but Allah through His kindness, justice and wisdom enabled man to utilize these bounties of existence and granted him the power and ability to exploit them, then He legislated laws in a way that man exceeds not the prescribed limits.

From this connection between the principle of creation and man and life. We can conclude that laws are the origin of all necessities of human life, and that every thing in this life is allowed for man. It is among his own rights to practice them and make use of them with the exception of what is forbidden.

Nothing is forbidden for man except what is harmful and dangerous for his body and soul and what contradicts and not in harmony with the system of life.

The Almighty Allah, says:

“And what reason have you that you should not eat of that on which Allah's name is mentioned, when He has already made plain to you what He has forbidden to you - except that which you are compelled to. And surely many lead (people) astray by their low desires through ignorance; surely your Lord - He best knows the transgressors.”

Holy Qur'an (6:120)

“Say: Come! I will recite what your Lord has forbidden to you:....”

Holy Qur'an (2:152)

In Islam, the forbidden things or acts are limited and whatever else beside, is to enjoy according to a system which preserves the way of life and provides balance and harmony in every human activity. Therefore, the Qur'an condemns the attitudes of those who straiten life both upon themselves and upon other by preventing and prohibiting what is made lawful by Allah on His servants. The Qur'an questions the behaviour of such people.

“Say: Who has forbidden the adornment of Allah which He has brought forth for His servants, and the good provision?..”

Holy Qur'an (7:32)

In Islam, the concept of lawful halal and forbidden haram in life is not to prevent man and paralyse his life and activities. But Islam's view is exactly the opposite as explained by the two above-mentioned verses of the Holy Book. Islam considers all useful things permissible for man and prohibits on by harmful acts which lead him towards confusion in life.

The wise declarations of the Qur'an confirm this opinion and restrict the prohibitions only to wickedness, lewdness and abominable acts and things.

“Say (O' Muhammad unto mankind): My Lord forbids only indecencies, such of them as are apparent and such as are concealed, and sin and unjust rebellion, and that you associate with Allah for which he has sent down no authority, and that you say of Allah what you know not.”

Holy Qur'an (7:33)

“Those who follow the Messenger - Prophet, the Ummi (the one who neither reads nor writes), whom the y find mentioned in the Torah and the Gospel. He enjoins them good and forbids them evil, and makes lawful to them the good things and prohibits to them impure things, and removes from them their burden and the shackles which were on them. So those who believe in him and honour him and help him, and follow the light which has been sent down with him - these are the successful.”

Holy Qur'an (7:157)

As is clear from these verses the reason behind prohibition is for the betterment of human society. The Qur'an focuses on three main prohibitions, namely. Wickedness, Lewdness?? and Abomination.

These three are used to specify the degrees of ugliness and harm in the forbidden things or acts - whether material or spiritual.

The word 'khabith' in Arabic language means 'what is disliked because of its wickedness and vileness whether, tangible or not.'^[1] Hence, the word 'khabith' and its derivations altogether mean what is disliked, impure, every corrupt thing or every forbidden act. For example, the word 'khaba'th' means what the Arabs used to dislike and not to eat such as snakes and beetles while the word 'khobth' means 'deceit' so far as gold and silver are concerned.

But the word fuhush (lewdness or obscenity) in Arabic language refers to 'what makes wickedness great concerning of sayings and actions'.

And we can understand the meaning of the word munkir (abomination) if we know that the Arabs say 'when a man is disguised means his state is changed from happiness to dislike' .

We understand through this literary analysis the main prohibitions like khaba'ith (filth or wickedness), fawahish (lewdness or obscenity), and munkirat (abomination). Thus, it is clear Islam never forbids good and healthy things in life including food, drink and natural human behaviour...save they are contaminated by the three main prohibitions which are dangerous and harmful for the body and soul of man.

The Meaning of a Divine Law (Hukum):

A close scrutiny of human life and incidents, attitudes, activities and dealings, concerning it, could be divided as follows:

1- Man's relations with his Creator is evident in acts such as prayer, fasting, hajj (pilgrimage)...etc.

2- Man's relation with his self is evident from such actions as cleanliness, ritual purity, taking care of his adornment and bodily needs, ...etc.

3- Man's relations with fellow humans such as his family, the society he lives in, matrimonial rights, inheritance, trade, politics...etc.

4- Man's relations with animal, plants, nature and its resources and treasures or his relations with things, products, materials,...etc.

5- Man's psychological and scientific relations with the above-mentioned altogether.

All these activities and relations are inter-related and inter-act in all stages of life, and hence the need to organize them and classify them into obligations, the lawful and the prohibited, etc.

Thus, this organization and classification, of man's relations, attitudes and activities, is called a law based on Islamic Shari'ah. For instance, Islam makes knowing of Allah the Creator, prayer, social and economic justice as obligatory, and it makes the resources of the earth lawful for all, while it forbids injustice, wine, backbiting, manslaughter, etc. and it declares urine to be impure, and rules that whoever kills another intentionally and unjustly and is connected with him (the dead) through the relation of inheritance, never inherits...etc.

Islam, in order to organize life and build up a healthy and harmonious society legislates a law.

Therefore, a law based on Islam can be defined as Divine legislation or Shari'ah which organizes human life is keeping with the wonders of creation and nature.

Consequently the circle of these laws is extended according to the elasticity of the circle of life - small or big - and which implies all its developments.

So Islamic law contains a great legislative power and a unique ability to cater the healthy needs of the individual and society.

The secret behind an Islamic legislation is its being everlasting, original and dynamic. A Muslim finds Divine law for all his actions and deeds. There is no issue in life, whether big or small but has both a law based on Shari'ah (hukum) and a certain legislative situation which clarifies the responsibility of man and his practical attitude in an obvious lawful way, which says: 'There is no occurrence but Allah has made a Divine Judgement regarding it'.

On one side, man, according to Islamic legislation, enjoys an extensive and clear view of behaviour, while on the other side, he possesses practical measures through which he can specify and adjust this view continuously according to the laws of Shair'ah.

This practical measure becomes obligatory for man on reaching the period of maturity in order to follow upon its guidance which will bring him happiness and ward off misery.

Hence, we understand the saying of the Messenger of Allah, Prophet Muhammad (s.a.w.) about the dynamism of Shari'ah for mankind: *"I bring you both the welfare of this world and the next."*

Kinds of Laws:

Should we track man's daily conduct and his activities and attitudes, we will find it most difficult to count them. Every man produces hundreds of quotes and does hundreds of deeds. Within himself countless thoughts, ideas and feelings flow. For instance, he can eat, drink, sleep, marry, steal, commit adultery, kill, cheat, tell lies, pray, worship, monopolize, be kind to the destitute and orphans, laugh, become desperate, be pessimistic and optimistic, produce medicines, make tools of torture, believe in Allah, think and discover sciences and knowledges...etc.

It is a list of both evil and good deeds. They are not equal in respect to their benefit and harm to the individual who does them, and the society which absorbs their effects.

Islam regards human activities, such as actions, sayings, ideas and feelings with due attention. Islam puts these activities into a variety of categories, and so every activity is precisely weighed and described in respect to its nature and impact on man himself. Islam does so to show the path before man, and put forward a criterion by which man evaluates his activities, develops them, and steers himself clear from evil and crime.

Man is also urged to mobilize his energies in the domain of good and constructive works and preserve them from being dissipated and lost. These energies granted to man by his Creator are not to become tools of destruction and sources of calamities and torture to man. The ultimate goal, is thus, attaining Allah's pleasure.

On the basis of these considerations and goals, man's deeds fall into five categories, where every activity is valued according to its positive or negative effects on man and his varied relationships.

These categories, as stated by the scholars are:

- 1- Permitted (Mubah)**
- 2- Recommended (Mustahab)**
- 3- Disapproved but not unlawful (Makruh)**
- 4- Forbidden (Muharam)**
- 5- Obligatory (Wajib)**

1- The Permitted (Mubah):

It is an act in which a sane person mukalaf^{f21} who has reached his puberty has full freedom to do it or leave it aside. Within the circle of the permission, such a person is never asked concerning what he does or leaves of the permitted actions.

Examples of permissible acts are countless and innumerable in the life of a man. For instance, a mukalaf is free to choose the work that best suits him/her. He is free to do research and think on the sciences of nature and life.

He is free to select the suitable system to run the social and political offices and establishments; to determine the food, clothing and residence he likes...etc. He is also free to use what suits his inclinations, circumstances and abilities...on the condition that all his actions should not exceed the limits and exceptions set by Islam.

It is worth mentioning that the sphere of the permitted Mubah is the widest among the daily social human behaviours, for all acts are, as a rule, permitted according to the most well-known religious judgement. Everything is permissible except the one forbidden by a Divine law.

2- The Recommended (Mustahab):

It is any act that the Muslim is urged to do, whereby he is viewed a performer of the good and so deserves divine reward and Allah's pleasure. But no punishment is set for any one who leaves it or considers it easy, because, if done, its fruits will be to his benefit, and if left or ignored no harm will result from it.

In the life of the individual or a group, recommended acts are numerous. Greeting others, paying visits to friends and neighbours, giving alms, being tidy and elegant, and many rites like du'a (supplication), night prayers

(superogatory), fasting during the holy months of Rajab and Sha'ban, reciting the Qur'an, are but a few examples of recommended acts.

The recommended deeds in Islam uplift mark to a lofty spiritual position and make him do the maximum possible acts of good in his life on earth to obtain Allah's pleasure in the Hereafter.

The Muslim does the recommended deeds out of a sublime moral motivation, without the slightest feelings of fear or coercion. He is propelled by love and longing to walk on the path leading to perfection and continuous enrichment in this life.

3- The Disapproved But Not Unlawful (Makruh):

Makruh could be defined as an act a Muslim, is urged to avoid although it is not unlawful. It is preferable to avoid such acts in the interests of self or society. However, Islam does not set a punishment for the Muslim who does it, because it is not considered haram. Islam stops short of making it haram, and only urges the Muslim to avoid it, as it is likely to lead to harm or corruption.

This law is very effective in blocking the ways ending in the commission of haram acts.

The exhortation to avoid the makruh is the second factor, following the urging to accomplish the mustahab, that supports the key laws of wujub and hurma in uplifting man spiritually to attain higher, sublime, spiritual stages so that he can ward off harm and danger in human life. Examples of makruh are: urinating in stagnant water, sleeping till after sunrise, eating in a state after intercourse or sexual discharge without performing the obligatory bath, ablutions, and making large scale advertisement to sell unworthy things...etc.

4-The Forbidden (Muharam):

It is any act that Islam prohibits the religiously responsible Muslim, from committing, and sets a punishment for the transgressors, while praising and rewarding the one who totally abstains from such acts. It is a procedure Islam takes to check the deviation that man may be led to perversion and the wrong and unnatural expression of motives and desires which are harmful to his body and soul.

It is a law which checks chaos and corruption and nips dangers and crimes in the bud. Doing the haram distances the human soul from nearness to Allah and blocks the process of sublimity. As haram action contains deep psychological» bodily, spiritual, and social risks, Islam sets both legal and social punishment for the transgressor, in addition to the severe punishment in store for him in the Hereafter.

Islam does not leave the matter unexplained. The Holy Qur'an makes it clear that the goal of forbidding certain acts is not disturbing man, depriving him, or making him deal dispiritedly with life. To the contrary, Islam aims at something else, as mentioned in the following verse:

“Say: My Lord has only prohibited indecencies, those of them that are apparent as well as those that are concealed, and sin and rebellion without justice, and that you associate with Allah for which He has sent down no authority, and that you say against Allah what you know not”.

Holy Qur'an (7:33)

“Those who follow the Apostle whom they find written down with them in the Torah and the Ummi, Evangel, (who) enjoins them good and forbids them evil, and makes lawful to them the good things and makes unlawful to them the impure things, and removes from them their burden and the shackles which were upon them; so (as for) those who believe in him and honour him and help him, and follow the light which has been sent down with him, those are the successful”.

Holy Qur'an (7:157)

Examples of haram acts are premeditated killing, usury, drinking wine, taking other people's property by force, disseminating harmful ideas and distributing morally reprehensible books and publications, and so on.

5. The Obligatory (The Wajib):

It is any act that Islam makes obligatory on a mukalaf Muslim in a decisive and final way and which, under no circumstances, can he/she ignore. Islam sets punishment for whoever leaves it intentionally, and rewards for whoever performs it perfectly. Prayer, fasting, zakat, khums, jihad, ruling justly, being kind to parents, enjoining good and forbidding evil, fighting oppression and tyranny, having love and affection for the Prophet (s.a.w.) and his Household, being truthful, obeying the orders of the Islamic state that rules by the Qur'an, are among the unavoidably obligatory duties in Islam.

Such duties and obligations were not ordained except for the welfare of mankind, preserving life and order, and safeguarding humankind's security in this world and the Hereafter.

Should we try to examine the laws of the obligations in Islam» study them analytically, trace their results and practical consequences in life, we would see that they effectively conduce to balance life, preserve the order of human nature, and nurture a systematic relationship between man and his Creator on one hand and man and society on the other.

The philosophy of the obligations in Islam is based on making the wajib a quantity in an equation whose other quantity is right and reward or punishment. What is obligatory is ordained to deepen the feeling of responsibility on the part of the Muslim, emphasize the relation between right and duty, narrow the circle of egoism and to foster human conscience which opens one's eyes to the concepts of justice and equity. Man realizes, through these duties and obligations, that every human being has the right to live, and duties to perform without which social life and the ties with Allah the Glorified, cannot be balanced.

The secret behind the wajib and divine obligations in Islam, should we try to know, lies in the fact that man, when performing such duties, adds to the chain of good, a new link which makes it more effective as it expands man's best tendencies in his inner, and bears good fruit through interaction between the human self and the surrounding environment. Such results can be regarded as a criterion by which man's intentions are measured, and be the basis for his reward or punishment.

If the original law is amended by any accidental cause then the new law possesses the same legitimacy the original one had. It is an indivisible

religious obligation that the responsible Muslim has to perform, or be given the choice of performing or leaving it according to the nature of the law.

If fasting, for instance, is obligatory under normal circumstances, it is haram for the sick to fast. Then fasting is, in this case, legitimately haram in a decisive way. If the sick person fasts, his action is not legitimate but is haram and ensues some consequences set and explained by Islam.

Every Occurrence has a Divine Judgement:

The Islamic texts of Shari'ah and its general concepts state for the jurists fuqaha and the experts of Islamic legislation, to formulate the widest applicable rule of jurisprudence which says: "*Never is there any occurrence without a divine judgement concerning it,*" as an expression of the spirit of the Shari'ah and an explanation of its reality.

To look for a source for such rule and its source of lightening, we will find many contexts in the Holy Qur'an and the Prophetic tradition hadith which we referred to in our previous books of this series, therefore, there is no need for repeating them.

It is better to mention here a quotation from Imam Ja'far al-Sadiq (a.s.) which refers to the same subject:

"Never is there anything without a law concerning it or a known sunnah (Prophetic tradition)."^[3]

This rule has a wide ideological and a legislative impact which not only participates in developing the life of Muslims and expanding the sphere of their activities but also in its adaptability to Islamic Shari'ah in order to strengthen the bonds between a Muslim and his Creator.

This rule confirms that no deed or intention done by man - whether good or evil; useful or harmful; concerning individuals or groups unless Islam views its opinion regarding it should fall under one of the following categories: prohibited; obligatory; permitted; disliked; recommended.

Man's acts altogether, being small or big, are described under one of the five above-mentioned categories. In Islam there is a divine judgement for each of them. This generality in Islam gives a Muslim a general rule under which he measures all his actions and evaluates them before performing or committing them.

This universality in Islamic Shari'ah helps man to correct his behaviour; protect the society against disorder and chaos; shows him the right path towards safeguarding the rights, responsibilities and interests against loss and waste; develops in him the spirit of moral and legal consciousness; and instills in him the spirit of responsibility. Therefore, he never takes any decision nor practises any action before he thinks and specifies his legal (Islamic) duty and responsibility towards it.

Thus, a man comprehends in all actions and subjects by taking legal opinion into consideration. For instance, if he finds it (an action) obligatory, will surely try to do his duty and perform his responsibility in the best and absolute way.

But if he sees it prohibited, he will not only refrain from doing it but will also try to avoid what leads towards vain and disaster.

If he sees it an act permissible, he will freely do it or leave it aside.

And if he sees it undesirable or recommended, he is free to do or abandon it. But due to his sincerity for achieving perfectness in his belief and also as a result of his religious spirit, it is better for him to educate himself of the merits of recommended deeds and leave the undesirable ones.

Necessity and Change of a Divine Law:

As we mentioned in the previous chapter that the divine judgement hukum is connected with the nature of an action and its impact. And it is the identical description of the subject which decides (specifies) the nature of a divine judgement hukum, such as prohibition, obligation; permission...etc; it is a divine judgement itself which discloses the nature of the topic (subject).

Hence, a single action does not have more than one hukum (a divine judgement) in an occurrence. For instance, drinking wine cannot be described in its reality save with prohibition: jihad (holy struggle) cannot be described other than an obligation...etc. Sometimes, it may happen that man may face some external and unexpected circumstances which may lead to the change of the divine judgment hukum or require the change of peculiarity of an action itself.

Indeed, Islamic legislation deals with such facts with more reality and accuracy. Islam permits the shelving of the original given judgement- the first real judgement - temporarily, if some unavoidable and extraordinary , circumstances happen. In such cases, man is obliged either to refuse or change such judgement in order to ward off danger, hardship and harm against him or his interests.

With this observance, the aim of the exceptional legislation - the secondary real judgement - is safeguarding the essential purpose of Islamic legislation itself which is primarily in the interest of man and society and is to avoid loss and corruption.

According to this Islamic principle, topics of many subjects could be changed. It may happen that an obligatory or permissible act becomes prohibited or a prohibited and permissible act becomes obligatory:

For example, Islam makes it permissible for a Muslim to do a forbidden act if circumstances compel him to do so or by doing so he will be able to ward off, through an impending danger himself or his property or honour. But once such an emergency or compulsion ends, the permission to commit the forbidden will end too.

Allah, the Exalted says:

“...then whoever is driven by necessity, not desiring, nor exceeding the limit, no sin is upon him. Surely Allah is Forgiving, Merciful.”

Holy Qur'an (2:173)

To go along with this wise declaration of the Holy Qur'an, the following jurisprudential rule is formed ***“At the time of necessity, the forbidden becomes permissible”***.

On the basis of this rule, Islam permits a hungry man at the point of death to eat carrion or the flesh of a dead animal. He may even take by force his legitimate needs from other's properties - if others do not supply his need - in order to ward off destructive hunger of himself and his family.

For this reason, Islam gives the oppressed the right to backbite the oppressor.

The Almighty, Allah says;

“Allah loves not the public utterance of hurtful speech, except by one who has been wronged. And Allah is ever Hearing, Knowing.”

Holy Qur'an (4:148)

Another example for the change of a divine judgement hukum is: the change of a permissible act mubah through transforming it from the state of permission ibahah into the state of an obligation wujub or a prohibition hurmah, according to an urgent necessity which requires such change in order to deal with objectivity and reality with this urgent and exceptional circumstance, until affairs return to their natural course. Thus the natural legislation plays its role as stated in the origin of legislation. Examples of permissible acts mubah which become forbidden, are many, among them is *“Every permissible act mubah in which no interest can be achieved except by leaving it aside or harm and loss is resulted for doing it- because of an urgent cause.”*

For example: Some permitted foods whose eating becomes dangerous for man's life and his health. Like a patient who insists on using certain kind of food prevented by a doctor and which may cause him damage and harm. If he eats such food, which may harm his health or causes him death, he will do a forbidden act and thus commits sin for refusing his doctor's advice.

As this change of permission happens in the individual field, it may also happen in other fields including social, economic, political...etc.

Regarding the change of the laws of permission in the social field is what happened in Iran when the great jurist mujtahid^[4] Mirza Hassan Shirazi who proclaimed his famous verdict fatwa from Najaf in 1891, December about the prohibition of smoking under temporary circumstances.

Because tobacco was monopolized by a British colonialist company at that time, so his verdict was a declaration for an economic war against the usurper colonialists. Consequently smoking became forbidden after its being permissible and lawful because Muslim interests were in danger and required the taking of a decision for the sake of safeguarding the rights of the Muslim community and protecting it from the exploiting enemy. Thus this prohibition took its effect and became obligatory for all Muslims to refrain from tobacco until its main causes were removed. Iranian Muslims including the mother of the then Qajarid king Naseruddin Shah adhered to the prohibition until the agreement with the British company Laws cancelled in early 1892. Thus giving back Muslims the rights to control their own wealth and property.

In similar situations wajib kifa'i^[5] becomes wajib 'aini^[6] as the necessity is concerned. For example: If an Islamic state, based on Islamic rules, requests that the Muslim country is in need of scientific specialization in special branches of science because of the general interest and it demands that some qualified individuals should do their duty concerning this specialization. This specialization becomes wajib 'aini which was hither-to wajib kifa'i. Thus it becomes obligatory for concerned individuals to specialize in such fields.

Another example is, if a truly Islamic state gives the responsibility or a post in the governmental system to qualified individuals, it becomes

obligatory for such individuals to respond to the state's decision without having the right to refuse except in case of a reasonable legal excuse. There are many different examples concerning this subject which are outside the purview of this book.

Before proceeding further, we state once again that such changes in the original hukum are only of a temporary nature caused by expediency in the interests of an Islamic state and the society, and certainly not against public interests. It should, however, be kept in mind that there is no other viable solution except this temporary change under pressing circumstances, and solely in the interest of Islam and Muslims, by a competent Islamic authority and in conformity with the Divine laws of the Supreme Law-Maker and His Wisdom.

The change of divine judgements - caused by urgent circumstances- does not mean to play with the spirit of Shari'ah or scheme against its aims at the whims and narrow interests of unqualified leaders or so-called experts. It is not correct to take this capability in the Islamic Shari'ah as a mean (a cover) to change the judgements and laws or play with them according to one's own will.

This change in judgements has special principles and rules which should be followed in a way which leads to the guarding of principles and rules related to formulating and discovering laws in general.

Regarding the change of judgement- which comes out of a case of expediency - the new judgement has not only its legitimacy as the first one but is also considered as commandment binding upon the concerned group or society.

Likewise, if fasting is compulsory for every mukalf person, provided that some conditions are met, it becomes prohibited for the sick. The prohibition of such fasting becomes like any other legal prohibitions and the sick person's fasting becomes a forbidden act which deserves other laws.

Major Prohibitions In Islam:

If we study the forbidden things in Islam deeply and in detail, we will find that proscribing them is a step taken by Islam to protect humanity from perverse conduct and keep it away from dangers and evils.

Through these injunctions Islam protects man's psyche, body and soul within the individual sphere, and it safeguards other human relations and community life, within society from the risks of subversion, perversion and decadence.

Ideologically, Islam makes unbelief and distrust in Allah haram. Also, attributing injustice, incarnation and the like, to Allah the Glorious is haram.

Islam also makes haram superstition, charlatanism, blind imitation and anything that enslaves the mind's inquisitive and creative activity, and prevents a good understanding of life and existence. The relationship between man and Allah remains firm and binding, as it is the source of all human conduct and orientation, and it is the stimulus that moves it on the right path.

With regard to man's self, Islam makes haram anything that may lead to pollute man's inner life, kill his conscience and moral intuition, and that which may change his life to total misery and helplessness, and his conduct

to an animalistic one devoid of any human feelings. Thus Islam makes malevolence, hatred, despondency, mistrust, etc. haram, in order to uplift the human soul to the highest level of perfection and cleanliness, and to protect and purify it from unhealthy traits and crookedness of conscience.

With respect to man's body, Islam makes haram all the activities, practices, and actions that are detrimental to health. Therefore, wine-drinking, adultery, eating the flesh of swine, dogs and many other unhealthy animals or for that matter animals killed by strangulation, carrion, and blood are all haram.

When Islam protects man's psyche and his body on the one hand, it pays due attention to protect the community from crime and harmful practices in the domains of sociology, politics, economy, the judiciary, education and so on.

Accordingly, Islam makes haram, oppression, usury, monopoly, cheating, theft, telling lies, backbiting, false witness, cursing, bribery, homicide, gambling, teaching and spreading harmful ideologies and ideas like those made popular through pornographic literature, films and pictures.

By so doing, Islam secures the health of both the individual and the society.

Islam rules that carnal sins which constitute the most grave danger to man and environment are haram.

A good look at these sins, and a deep pondering over them in the light of social experience, scientific research and sound thinking, illustrates to what degree they are dangerous to both the life of the individual and the stability of the society, and so helps one to understand the wisdom behind making these deeds haram in Islam.

It is of a great benefit to cite these prohibited things, which Islam warns Muslims not to commit, as painfully severe punishment is in store for them should they commit such acts, which if committed, may endanger life and social order.

The following are the main haram things:

1. Polytheism.
2. Desperation and despondency about one's fate and the idea that Allah will never have mercy on him.
3. The belief that Allah will never punish oneself.
4. Undutifulness towards one's parents.
5. Homicide.
6. Falsely accusing a married woman of committing adultery.
7. Taking away the orphan's possessions and money unjustly.
8. Fleeing the battlefield of jihad.
9. Usury.
10. Adultery.
11. Sodomy.
12. Witchcraft.
13. Perjury.
14. Bearing false witness.
15. Concealing testimony (about something one knows and can help establishing justice by giving it).
16. Drinking wine.
17. Breaking pledges.
18. Cutting off relations with one's near of kin.
19. Emigration from the Muslim homeland to a place where one's faith becomes a risk.
20. Theft.
21. Telling lies about Allah, His Apostle, Imams and common people or attributing to them something which they did not say.
22. Cannibalism.
23. Drinking blood.
24. Eating swine or flesh of animals that are slaughtered without mentioning Allah's name on them.
25. Ill-gotten money earned by selling wine, or gained through prostitution, dancing, as well as money gained through bribery, and the salaries given by the oppressive regimes when one cooperates with them to prop up injustice and

implement their corrupt schemes. 26. Giving short measure and weight. 27. Supporting the oppressors. 28. Pride. 29. Extravagance. 30. Squandering money. 31. Fighting the faithful and callers to Islam. 32. Working as dancers and musicians. 33. Backbiting. 34. False accusation. 35. Cursing the faithful, insulting and humiliating them. 36. Talebearing. 37. Pandering or acting as pimps. 38. Cheating. 39. Sanctimoniousness. 40. Hypocrisy. 41. Ignoring or belittling one's sins and transgressions...

Apart from these forbidden actions there are a lot more which result in corruption, haram and the ruination of life.

Haram acts are the plague and the greatest danger threatening the life of both the individual and society. Only by steering clear of them, can humankind protect and preserve their body and soul from decay and perfidy.

Medical, social and psychological studies have recently uncovered the grave dangers caused by the haram.

Astonishing figures are emerging from research institutes, about the crimes, ailments and anomalous phenomena and cases in the communities that have dropped the concepts of halal and haram from their behaviour. Such statistics show how urgent it is and necessary to set to work in saving the human race and finding a way out of the predicament in which they wallow, after discarding the divine values and yielding to the bestial way of life. They should return to the straight path of Allah, which is the proof of the Almighty's kindness, mercy and generosity.

IJTIHAD (JURISTIC REASONING)

Ijtihad and a Divine Law:

A law (hukum) based on Islam can be defined as divine legislation or Shari'ah which organizes human life and his diverse relations. (Ijtihad is the process practised by a jurist to discover secondary divine legislation (laws) regarding the organizing of human life and his diverse relations or endeavouring to discover and deduce the Islamic laws and regulations from their sources like the laws concerning worship, possession, business, property, judiciary, politics and family affairs...etc.)

Ijtihad is a learning (knowing) process and has an important, progressive and civil role in the life of an individual and the society altogether with the state. It also participates in developing the civil life and opening the legislative prospects before it. Without the process of Ijtihad, many human activities are difficult to develop in the sphere of an Islamic life.

Human society is a developing entity. Human actions, relationships and activities are ever-increasing and ever-expanding. Many things are invented that were non-existent before. Banks, insurance companies, radio and television and the other discoveries are new phenomena which are to be used correctly and in harmony with Islamic teachings. If there are no fuqaha' (jurisprudents), how could codes and regulations concerning such institutions be derived at?

This process of Ijtihad is responsible for catering to all the needs of the human society and providing answers to all questions which may arise in this field. Without the process of Ijtihad, a faithful Muslim will find himself in a dilemma.

The First Attitude: To petrify, solidify and isolate every new development in life because he has no knowledge concerning his legal responsibility or duty and the ambiguity of such special legislative laws concerning new affairs in human life...

The Second Attitude: To dissolve from any legal responsibility or obligation and dissolve absolutely in a non-Islamic civilization and principles; to take laws and concepts and specify situations and behaviour by depending on non-Islamic civilizations, principles and ideologies.

In both cases, the attitude will be a tragedy against the dynamic goals of Islam and to stop the spread of the ever-lasting Divine Legislation.

Besides these two attitudes, another attitude which is more dangerous than the two, the idea that Islam is incapable of establishing a developed society and international entity for the Muslim nation and which puts obstacles in its path of progress, which in other words would mean the absence of Divine Mercy and Kindness from the world of mankind and to leave it in disorder and chaos. All these are against the aims of Islam and which contradict the spirit of Shari'ah and the principles of the ever-lasting Islamic Message as the Holy Qur'an and the Prophetic sunnah.

The Most High says:

"...and We have revealed the Book to you explaining all things, and a guidance and mercy and good news for those who submit."

Holy Qur'an (16:89)

A holy tradition (hadith) says:

“Almighty Allah has revealed in the Qur'an the declaration of all things. He has not left anything needed by His servants unexplained so that no one would say: if (only) this has been revealed in the Qur'an. Yes indeed He has revealed it.”^[7]

Imam al-Sadiq (a.s.) describes the nature of the Islamic message in the following words:

“The Qur'an is certainly alive and does not die. It moves as the night and the day, and as the sun and the moon. Its teachings should be obeyed by the last man on earth as it had been obeyed by the first one.”^[8]

By contemplating on these Islamic texts, one realizes that the Qur'an is the origin of Islam; the source of its message; a vehicle for its laws, principles and concepts and a torch which sends the rays of guidance on the planet more brighter or serene than the sun and the moon.

But it is not in our capability nor any one else to understand (realize) life perfectly through the Qur'an nor to discover the laws of life and the Islamic laws from the treasures of this Book (the Qur'anic verses are treasuries, whenever a treasury is opened, you should look at it).^[9]

This richness of laws and the large ideological wealth which the Qur'anic verses contain need scientific efforts and an ideological declaration capable of drawing from this inexhaustible spring and meet the future needs from these unfathomable treasuries.

It is natural, that to comprehend the deepness of the Qur'an with its legal proof is not clear nor specified in every situation and affair and it is not in the capacity of a jurisprudent (Faqih or Mujtahid) to take this responsibility in the first grade. But it was the task of the Minister of Revelation (Prophet Muhammad (s.a.w.) to comprehend and expound the spirit of the Book; to interpret its meanings and to formulate its laws and practical legislation in life under Divine Guidance.

Thus the relation between the two - the Book and the sunnah - looks like to a great extent the relation between a constitution and a law.

The constitution makes clear the essential origin of legislation and prescription of law. For instance, the clause speaks of the right to own property, but it is the law-maker which clarifies its details, and drafts the laws necessary for practical execution of this constitutional article and declaration of its details.

In like manner, the task of the Prophetic traditions sunnah is to translate the contents of the Qur'an and formulate them as practical laws for life.

For more details, it is worth mentioning that the sunnah is not a Prophetic judgement for formulating the Qur'anic spirit and explaining its contents through laws as the case in the relation between the constitution and law.

The sunnah is a Divine revelation and instruction both in its meaning and contents save that its literary pronunciation and form is said by the Messenger of Allah (s.a.w.) himself.

For example, the Holy Qur'an ascribes (determines) that the paying of the poor- dues zakat is obligatory but without clarifying its amounts or quantities nor the things on which it should be paid. But it is the Prophetic Tradition sunnah which looks after it by explaining it in detail. This

explanation and detail has come through the utterance and practise of the Noble Messenger and his human normal speech. In order to continue the advantageous role of the sunnah, Allah willed that it should have leaders (Imams) after the Prophet who represent the conscious side and comprehend the spirit of the Qur'an and its contents in accordance with the Prophet's practice.

Therefore, the Imams of the Prophet's infallible Household, the Ahlul-Bait (peace be upon them all) represent the blessed path of guidance for the ummah. After them comes the role of the Jurisprudents (mujtahids or fuqaha') who undertake the task of judgement by reasoning in the light of the Qur'an and the sunnah to meet the changing needs of the human society. Thus, the dynamism of Ijtihad which is wide open till our present day, was necessary to expand the horizons of the Shari'ah and to enrich the human society with concepts and laws which are necessary for organizing the progress of mankind.

Therefore, Ijtihad is necessary wajib kifa'i and there should at least be a Mujtahid, in every age and era, to whom Muslims refer and upon whom they depend for understanding the Shari'ah and discovering its laws.

Islam has two main sources:

A- The Book (The Qur'an).

B- The Sunnah (The Prophetic Tradition).

It is only in the light of these two sources that laws should be made. The tragedy of Muslims, is, certain persons took fallible sources besides these two, and on the basis of their whims and personal opinions qiyas imposed themselves on unsuspecting and simple-minded Muslims as Imams or leaders of schools of Jurisprudence.

Later on, the ruling Abbasid Caliphs, who were total strangers to Islam and its teachings arbitrarily sanctioned the legitimacy of four self-contradictory schools of jurisprudence on the Muslims, ruling that the door of Ijtihad was closed.

But in Islamic Shari'ah, it is not necessary to accept these sources (the sources of qiyas and the like to which certain Mujtahids depend other than the Book and the Sunnah) except what tallies with the spirit of the Book and the sunnah. However, the followers of the schools of the Prophet's Ahlul-Bait, have always stayed clear of these innovations and kept the dynamism of Ijtihad open on the basis of the Book and the sunnah. Therefore, it is the duty of a rightly guided mujtahid or faqih cancel in all periods any of these sources which contradict the Book and the sunnah or bold no water before a scientific justification.

How does a Jurisprudent (faqih) practise the Process of Extrapolation:

Most Muslims are ignorant with the meaning of Ijtihad and some even believe that the process of Ijtihad is related to a certain class of religious men (scholars) because of their religious position as is the case with the post of a pope in a church. Some also think that all laws of jurisprudence and legal opinions are only personal views of a faqih (Jurisprudent) who decides and appreciates laws according to his own judgements or justifies the events and accidents and an answer for certain considerations at random.

Certainly this kind of understanding represents the ignorance with Islamic law (Shari'ah), Jurisprudence and Ijtihad.

In Islam, both Jurisprudence Fiqh and Ijtihad have no relation with any personal opinion or qiyas.

Ijtihad is a complete scientific practice as defined before and has its own sources, proofs, principles, methods and precisions like all other fields of science and human knowledge such as logics, physics, mathematics...etc.

As the logician, physicist and mathematician, in their respective fields, cannot coin laws or devise formulas from themselves at random, so does the true jurisprudent faqih who is also not able to draft or frame any law from himself because the nature of Shari'ah and its lawful and ideological structure (constitution) not only does not allow him to do that but also stands against those who forge or play with its laws.

Thus, any law which lacks proofs and principles from the Book and the sunnah and contradicts these scientific regulations is not an Islamic law, but is simply the low desire of that law maker against the spirit of the Shari'ah in order to deceive simple people.

Why do the Jurisprudents (Fuqaha') differ:

Many people wonder why it is that the mujtahids differ at times in their fatwas, when the basis of their Ijtihad are the same. It should be observed that difference in scientific opinions is not to be taken as a sign of a substantial defect in the quest for knowledge. It is rather, a sign that knowledge moves in progressive steps towards perfection. Differences of opinions are to be found in all sciences, not just in fiqh.

There may, for example, be more that one opinion about the therapy for a particular patient's ailment, and all of these opinions may be superseded later on by the development of new methods of dealing with that malady. Thus, this difference can be seen in the light of difference between scientists and should be regarded as stages to be passed in its route to perfection.

It should be remembered that the mujtahid formulates his opinions after pushing his research and study as far as he can; that is all that is expected of him, for he is neither infallible nor the knower of the unseen.

The most important and dangerous question which remains unanswered is that why do the mujtahids differ among themselves in their religious opinions concerning an issue while there is one Shari'ah and its laws are one? Or why do the mujtahids' religious opinions differ concerning one subject?

To answer the question, we should differentiate between the two cases: the case in which the differences are founded on sound bases and lawful practice.

The second case is that the differences are made out of extemporaneous Ijtihad which is not founded on a sound base nor is scientific according to the spirit of Shari'ah and its sources.

The first difference is a natural result of a sound scientific reasoning and the mujtahids are excused for any short comings nor could they be punished on the day of Resurrection because their intention was sincere. It is the second case or difference which is neither Ijtihad nor Fiqh but it is a haphazard act against the spirit of Shari'ah and its principles, and the person

responsible and his blind followers will be held responsible on the day of Resurrection.

The science of jurisprudence - as we explained - is similar to other sciences and human knowledges. As each of these sciences has its own rules, principles, the Islamic Shari'ah has its own principles and laws too.

As the physicist, in the previous example, tries to spend all his scientific efforts to discover laws related to physics within the framework of its nature, existence; or the logician who devotes all his efforts to discover the laws of thinking according to its intellectual basis, and it is not for them to coin laws of their own on mere fancy; so does a mujtahid (faqih), who has no ability or right to make laws and principles in a haphazard manner, and then try to legitimize them. If anyone has dared to do this, then his laws should scientifically analyzed on the basis of the Qur'an and the sunnah.

The same idea is applied to a physicist and logician who sometimes makes a mistake in discovering scientific laws and rules and that this wrong discovery does not represent the true law of physics and logics but it represents the understanding of a scientist who made a mistake in identifying the law. The case is the same concerning the faqih who may sometimes make a mistake while practising the act of deriving Islamic laws from their original sources - the Book and the sunnah - but his mistake is not done blindly and at random but due to his insufficiency or inadequacy in his scientific tools or his self capacity which causes him to be unable in deriving legal law as it is formulated in the world of law and a divine Shari'ah.

This is the reason why the faqih is excused when he makes a mistake in arriving at the right law.

The main differences, whether being among the mujtahids of various Islamic schools of jurisprudence such as Hanafi, Shafi'i, Shi'ah, Maliki...etc. or among the mujtahids of one school, belong to the following reasons:

1- Linguistic difference concerning some texts of the Holy Qur'an and Prophetic traditions due to the difference in grammar, meaning or in reading which leads to the difference in understanding and formulating laws. For example, their difference in the following verse of ablution when the Almighty Allah says:

“O you who believe, when you rise up for prayer, wash your faces, and your hands up to the elbows, and wipe your heads, and your feet up to the ankles. And if you are under an obligation, then wash (yourselves)...”

Holy Qur'an (5:6)

Whoever among the scholars considers the word 'feet' grammatically is joined to 'faces', makes its washing obligatory and whoever considers the word 'feet' as joined to 'heads' makes its wiping obligatory.

Or their difference in the meaning of 'quru' in the Almighty's saying:

“And the divorced women should keep themselves in waiting for three monthly courses (quru');...”

Holy Qur'an (2:228)

Scholars (faqihs) differ among themselves concerning the linguistic meaning of the word 'quru'; some consider it as the period of cleanness (tuhur) while others explain it as period of menstruation (haydh). Each of

these two opinions depend on their own linguistic interpretation or understanding because the word 'quru' in Arabic language is called for both the period of cleanness (tuhur) and the period of menstruation (haydh).

In accordance with this linguistic difference, scholars differ among themselves in waiting period of a divorced woman; is it three periods of cleanness - after divorce - or is it three complete months because what is meant by 'quru' is the period of menstruation (haydh) because the word haydh is a symbolic name for woman's monthly period by considering it as a monthly period which occurs once every month.

Another example, is (their difference in reading the Almighty's saying 'hata yatharna' (until they have become clean) in the following verse:

“And they ask you about menstruation. Say it is a discomfort; therefore, keep aloof from the women during the menstruation and do not go near them until they have become clean; then when they have cleansed themselves, go in them as Allah has commanded you; Surely Allah loves those who turn much (to Him), and He loves those who purify themselves.”

Holy Qur'an (2:222)

Whoever reads the word 'they have become clean' as stressed, does not allow to make sexual intercourse with women during the period of menstruation until they have become clean (i.e. to take the ritual bath) but whoever reads it without stress allows to make sexual intercourse with her whenever cleanness is achieved (i.e. the stopping of blood).

Or their difference concerning whether the command denotes (signifies) obligation or permission; whether a prohibition indicates prohibition or reprehensibility; whether the word denotes reality or figurative or their difference among the texts like generalization, restriction, universality or specification...etc.

2. The difference concerning the meaning of a text (of the Book (Qur'an) and the Prophet's sunnah). Indeed scholars may differ in their understanding the signification of a text and its meaning like their difference in the following saying of Allah, the Most High:

“Divorce may be (pronounced) twice; then keep (them) in good fellowship or let (them) go with kindness...”

Holy Qur'an (2:229)

“So if he divorces her (the third time), she shall not be lawful to him afterwards until she marries another husband. If he divorces her, there is no blame on them both if they return to each other (by marriage),...”

Holy Qur'an (2:230)

Surely the reason of difference in understanding Allah's saying (divorce is twice) is the appearance of jurisprudential laws based on personal opinions, with some ruling prohibition of a wife to her husband if he divorces her three times by simply saying that 'you are divorced'; depending on his understanding of the above mentioned verse (divorce is twice). At the third time, after passing a greater separation, he has no right to marry her until she marries another husband and if the new husband divorces her, then only the first husband has the right to marry her after completion of her monthly waiting period.

But another group explains the Almighty's saying (divorce is twice) that divorce should be achieved practically but not simply orally in order that a wife becomes forbidden to her husband. The Holy Qur'an does not mean merely the repetition of word (verbal) but it means the real occurrence of the permitted divorce in which the wife returns to her husband's house twice. As a result, if a third divorce occurs, she becomes haram (forbidden) for him to remarry. For more explanation, if the husband divorces his wife, he has the right to marry her again; if she returns and he divorces her the second time, he also has the right to take her back but if she returns and he divorces her for the third time, she becomes haram for him to remarry unless all the following conditions are fulfilled:

- a. She permanently remarries another man.**
- b. The wife and her second husband have sexual intercourse.**
- c. The second husband either divorces her or dies.**
- d. She completes her waiting period (iddah) for the second husband.**

3. The difference whether some laws are repealed or not, for example their difference regarding the law of temporary marriage (mut'ah).

4. The difference caused by accepting or rejecting certain narrations or traditions. Scholars after a thorough scientific analysis of chain of transmitters, accept or reject a tradition.

Traditions which contradict the Qur'anic concept or a proved Prophetic tradition, are normally discarded as spurious. If the sources or the chain of transmitters are sound and the wordings in conformity with the Qur'an and the sunnah, then the tradition is as accepted as satisfactory.

5. The difference in considering the validity and invalidity of some of these sources and how to make use of them, such as: analogy, approbation, intellectual proofs, and consensus of opinions.

Some scholars depend on some of these sources in formulating laws while others refuse to do so pointing out the drawbacks of these sources.

Thus, this is the main reason behind the difference among the scholars of Islamic schools and the followers of opinion. Therefore, it is necessary to submit all disputed independent reasoning opinions among the Muslims to a thorough scientific criticism in order to remove the clouds of personal fanaticism and bigotry, and arrive at the ultimate truth keeping in the mind the aims of Islamic Shari'ah in reforming and uniting the Muslim communities.

Objective Statutes (Regulations):

At the end of this research, it is useful to point out the main principles which serve as necessary conditions in the process of juristic reasoning (Ijtihad). Among them are the following:

1- Certainly, the Book (Qur'an) and the Prophet's tradition (sunnah) are two main sources in formulating Islamic laws.

2- No one has the right to give his own Ijtihad in any case whenever there is a legal law in the Book of Allah and the Prophet's sunnah.

"...And whatever 'he Messenger gives you accept it, and whatever he forbids you, abstain (there from);..."

Holy Qur'an (59:7)

3- Only one judgement for one subject falling under the same circumstances and conditions, and which represents the pure legal opinion.

Therefore, in the process of juristic reasoning (Ijtihad), one should distinguish between aim and its result. The aim is to arrive at the truth and discover a true law. i.e. one law for the same subject but sometimes one finds the jurists having various laws for the same subject.

This does not mean the correctness of all ideas. Thus the truth of formulating of law depends on the soundness of the juristic reasoning or the system of Ijtihad and its sources. Therefore, not every source or method of reasoning is sound or has the capacity to formulate the right law.

4- The laws discovered by the faqih are only estimated but not final and should therefore be subjected to scientific discussion and strict legal scrutiny.

5- As a result of the previous point, we should understand that the process of juristic reasoning is a critical one in which discovered opinion undergoes a thorough accurate criticism, and evaluation in order to arrive at the correct law. No juristic reasoning could be considered sound if it is not subjected to criticism and scientific discussion.

6- Juristic reasoning should be pure and free from any fanaticism or internal and external factors such as political and sectarian tendencies and should be capable of withstanding scientific analysis and criticism. Therefore, Ijtihad is a scientific process based on research and inquiry.

Who is a Jurisprudent (Faqih):

As it is not in one's capacity to discover laws concerning physics and logics unless one is well acquainted with; the same idea can also be said concerning Ijtihad and formulating Islamic laws.

In order to be Faqih, one should be able to discover secondary legal laws from their original sources including the Holy Qur'an and the pure Prophetic tradition and other sources. In other words the Faqih is a person who has the greatest expert in deriving the rules of the Shari'ah from their sources. He should be familiar with Arabic language to an extent that he understands the Qur'an and the sunnah both linguistically and legally and which fits the spirit of revelation and the Message.

He should be absolutely well-acquainted with the Holy Qur'an and its sciences to an extent which enables him to understand and discover legal laws and judgements.

He should be well-versed with the Prophetic tradition to the extent he should distinguish true and satisfactory hadiths through studying them and their chain of transmitters in addition to his understanding of the sunnah and its circumstances and having the ability to discover laws which go with the Qur'anic concepts.

Among the qualities necessary for a Faqih is his being acquainted with what other scholars discover in their studies and sciences which help him in organizing and comprehending the jurisprudential thought and deepening the procedure of Ijtihad (exercising of independent judgements) like the science of principles of jurisprudence» dogmatic theology, logics, philosophy, jurisprudence...etc.

Thus, the experts (fuqaha') of Shari'ah today upon whom Muslims depend for laws as did those before them, are the most excellent example in science, comprehension, and legislation.

Another important qualification which should be found in the Faqih (mujtahid) is faithfulness, loyalty, honesty, integrity, objectivity because he is the seeker of the truth and the one responsible before the Almighty Allah concerning his judgements, and legal rulings.

He should also be well known for intelligence, literary taste, an accurate comprehension manners and ability of discovering and extraction in order to practise his responsibility successfully and precisely.

Consequently, Ijtihad and its distinguished experts and scholars are those who spend all their efforts and abilities sincerely in order to supply instinctive knowledge of Ijtihad and the skill of discovering the laws.

In addition to this, Islamic law lays down that a mujtahid should be a free man and of legitimate birth who is past the age of puberty, and is sane, and just besides possessing other moral and legal qualities, such as piety and abstention from all that the Shari'ah forbids and fulfillment of all its obligation.

However, it is sometimes difficult to distinguish the most learned among the mujtahids and as a result more than one mujtahid may be followed in taqlid at one time (though not, of course, by the same person), as is the case at present, but any such multiplicity does not result in any practical disagreement on legal matters among the followers of the school of Ahlul-Bait.

What is Taqlid:

Taqlid literally means 'to follow or imitate'. In Islamic legal terminology it means to follow a mujtahid or faqih in religious laws and commandments.

In our everyday life we follow and imitate others in many things. We like to feel that we are taking the advice of experts in matters outside our own knowledge. Whoever wants to build a house explains the basic idea of his wishes to his builder and then submits to his advice as to how he should go about the actual construction; the invalid follows the treatment advised by his doctor; a litigant consults a lawyer, when drawing up his case for presentation in court. The examples are abundant; in most cases the advice is taken voluntarily, but sometimes the citizen in a country may be required by law to seek his expert's advice and act upon it.

For example, he is allowed to take some particularly dangerous drug. The clearest example is obviously in case of a legal dispute between two parties, where they are required to take their grievance to a judge and abide by his decision if they cannot settle their dispute amicably. The practice of taqlid is an example of the same kind: the person who is not an expert in jurisprudence is legally required to follow the instructions of the expert, i.e. the mujtahid.

The Holy Qur'an instructs Muslims to seek guidance from the people of learning in matters about which they lack knowledge: ***“Question the people of remembrance if you do not know.”(21:7)***

It is an obligation in Islamic law to study everything which is necessary for the spiritual and material development and well-being of an Islamic

community, but it is an obligation which is known as a *Wajib Kifa'i*. In the present instances, for example, the Islamic society has need of experts in the medical science, in physics, chemistry, engineering, education, and so forth, and as long as there is a lack of knowledge in these areas. It is an obligation for the community as a whole to acquire it, i.e. a group of Muslims should devote themselves to research so as to benefit the Islamic people as a whole. Similarly, an Islamic society without experts in the field of Shari'ah cannot properly consider itself Islamic, and so it is an obligation for a group of persons from the same society to devote themselves to the study of the religious sciences, so as to provide divine guidance for all Muslims.

This is the meaning contained in the Qur'anic verse which says:

“...why should not then a company from every party of them go forth that they may acquire (proper) understanding in the religion, and that they may warn their people when they return to them, that they may beware?”

Holy Qur'an (9:122)

Through the research, it became obvious for us that every act (deed) a man does or a situation in which he stands or anything with which he deals with should be according to a legal law of Islam.

It is also obligatory for every Muslim to be familiar with Islamic laws and decrees which organize man's activity and movements including performance of rituals and business dealings...etc.

It is obligatory for every Muslim either to be a mujtahid or to follow a particular mujtahid who is well-qualified in giving verdicts and acts according to his rulings and thus performs his duty, organizes his activity and affairs related to him. The process of depending upon the mujtahid's religious rulings in performing one's religious duties is called *Taqlid*.

So *taqlid* is the relation of Islamic sciences between a mujtahid and the followers of his legal rulings. And it is a necessity which must be practised by the one who is not qualified as *faqih* or who has not reached the degree of *Ijtihad*. As long as this practice needs an expert (a mujtahid) in jurisprudence and Shari'ah, it becomes necessary to rely on him (the mujtahid) and ask of him whatever difficulty we face in Islamic jurisprudence in the same manner as we depend on a doctor, pharmacist, an expert in other sciences in which there is such need to consult them because of their knowledge in this domain concerning what should be done and what should be abstained from.

Therefore, it is obligatory for every *mukalaf*, to follow a mujtahid who is well-qualified in delivering verdicts in order to be able to act and practise according to the Creator's Will and Guidance.

Praise be to Allah, Lord of the worlds.

ENDNOTES

- [1]- Raghīb al-Isfahānī - Mu'jam Mufradat al-fadh al-Qur'an.
- [2]- Mukalaf: In Islam, a boy or girl is considered adult on reaching puberty, and thus has to perform all obligatories.
- [3]- Kulaini, Usul min al-Kafi, p. 59, vol. 1, printed in 1388 A.H.
- [4]- Mujtahid: A person who is an expert in Islamic jurisprudence (fiqh); he is also called faqih. He has a particular power and religious authority and significance.
- [5]- Wajib Kifa'i: An action which remains obligatory upon the Muslims as long as it remains unfulfilled, but if some individuals carried it out, other Muslims are absolved from the responsibility, like the profession of medicine, judiciary, agriculture, bidding for what is right and bathing the corpse and praying for him...etc.
- [6]- Wajib 'aini: A deed which is obligatory upon an individual and the obligation still exists even if others perform it like the daily ritual prayer, and fasting...etc.
- [7]- Kulaini, Usul min al-Kafi, p. 59, vol. 1, printed in 1388 A.H.
- [8]- The late Abul-Qasim al-Khu'i, Tafsir al-Bayan, p. 23, printed in 1394 A.H. -1974 A. D.
- [9]- Ibid, p. 30.

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