

## A Comparative Study of Modern and Traditional Concept of Iğtihād

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### Abstract

In present day, Muslim Umma has been polarized into two groups; traditionalist and modernists. Both, standing on their own ideology, are absolutely refuting each other. In this research, the search question is that is either Iğtihād said to the addition to Qurʾān and Sunna, modification and amendment in or pursuing Šarīʿa rulings from the depths and vastness of Qurʾān and Sunna? Traditionalist point of view is that whenever any new issue is raised about which there is no clear solution or ruling present in Šarīʿa, then to derive the solution from the depths and vastness of Qurʾān and Ḥadīth is called Iğtihād. Hence, the common idea of both classical and present day traditionalist is that Iğtihād is said to pursue of Šarīʿa rulings about a newly raised issue into the light of Qurʾān and Sunna whereas according to Modernists' theory of Iğtihād addition, amendment, modification and reformation of Islamic Šarīʿa is allowed.

**Keywords:** Iğtihād, Šarīʿa, Qiyās, Muğtahid, Modernists, Traditionalists, Divine law

### 1. Linguistic Meaning of Iğtihād

The majority of the Arabic language words are constructed from three letters that are called root word. Similarly, the word *Iğtihād* is also composed of *Ğihd* i.e. the alphabets *Ğim*, *Ḥāʿ*, and *Dāll*.

And from this root word, two important terms, *Iğtihād* and *Ğihād*, of Islam are derived which are infinitive from *Iftiʿāl<sup>2</sup>* and *Mufaʿala<sup>3</sup>* respectively.

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<sup>2</sup> Format of an Arabic word which gives a unique meaning.

<sup>3</sup> Format of an Arabic word which gives a unique meaning.

The former in its literary meaning is considered to represent every effort and struggle for an ideological supremacy of Islam and the latter refers to the political dominance.

### 1.1. Literal Meaning

Now we are going to discuss opinions of linguistic experts regarding literal meaning of the word *Ġuhd* or *Ġahd*.

#### 1.1.1. First Meaning: Power/Strength

According to Imām Ḥalīl al-Farāhīdī (d. 100-170/718-786), *Ġahd* refers to the employment of one's all physical and mental capacities in an issue (al-Farāhīdī 2003), whereas Ibn Durayd al-Azdī (d. 223-321/838-933) says *Ġahd* and *Ġuhd* both are eloquent words and reach back to power and strength (Ibn Durayd 1987). Abū Maṣṣūr al-Azharī (d. 282-370/895-981) stated similarly about *Ġuhd* (al-Azharī 2001).

Moreover, Imām Ibn Fāris (d. 329-395/941-1004) says that its root word comprises of *Ġim*, *Ḥā'*, and *Dāl* and the prime meaning of this root word, *i.e.* *Ġahd* is power (Ibn Fāris 1399 AH). Abū Naṣr Ismā'īl b. Ḥammād al-Ġawharī (d. 000-393/000-1003) and Ibn Sīda (d. 398-458/1007-1066) said that *Ġuhd* and *Ġahd* both stand for the power (al-Ġawharī 1979; Ibn Sīda 2000). Ibn al-Aṭṭar Muhammad al-Ġazarī (d. 544-606/1150-1210) explains *Ġuhd* as power (al-Ġazarī 1979) whereas Ibn Maṣṣūr Muhammad b. Mukarram is in consistence with Ibn Sīda (b. Maṣṣūr 1968). 'Allāma Maḡd al-Dīn Muhammad b. Y'aqūb al-Firuzābādī (d. 729-817/1329-1415) and 'Allāma l-Murtaḡā l-Zabīdī (d. 1145-1205/1732-1790) describes *Ġuhd* and *Ġahd* as power (al-Firuzābādī 2005; al-Zabīdī: 1305 AH). Aḡmad al-Fayyūmī (000-770/000-1368) stated that *Ġuhd* with *ḡamma* is famous in the dialect of *Ḥiġāz*,<sup>4</sup> whereas *Ġahd* with *fathā* is known for other Arab tribes. And the meaning of the word is power (al-Fayyūmī 1999).

<sup>4</sup> A region in the west of present-day Saudi Arabia.

### 1.1.2. Second Meaning: Hardship/Exertion

Imām Ḥalīl al-Farāhīdī writes: “*Ġuhd* refers to that little thing which a poor man with much hardship earns (al-Farāhīdī 2003).” Abū Manṣūr al-Azharī stated the same meaning by referring it to Layṭ b. Saʿd (al-Azharī 2001). ‘Allāma Zamaḥṣarī explains *Ġahd* as hardship (al-Zamaḥṣarī 1991). Imām Ibn Fāris reports: “*Ġuhd* means strength and *Maḡbūd* is said to milk of which butter is taken out and this is not obtained without hardship and struggle (Ibn Fāris 1399 AH).”

According to al-Ġawharī (1979), Ibn Sīda (2000), Ibn al-Aṭīr al-Ġazarī (1979), Ibn Manẓūr (1968), al-Firuzābādī (2005), al-Zabīdī (1305 AH) and Aḥmad al-Fayyūmī (1999) *Ġahd* with *fatḥa* means hardship.

### 1.1.3. Third Meaning: Highest Degree

Abū Manṣūr al-Azharī states: “Ibn al-Sikkīt said that the meaning of *Ġahd* is extreme degree (Al-Azharī 2001).” Ibn al-Aṭīr writes that one opinion is that it means exaggeration and extreme degree (al-Ġazarī 1979). Aḥmad al-Fayyūmī writes: “If *Ġahd* is with *fatḥa*, then it means utmost or extreme degree (al-Fayyūmī 1999).”

### 1.1.4. Fourth Meaning: To Strive/Struggle

Ibn al-Aṭīr al-Ġazarī writes: “One more opinion is that *Ġuhd* with *ḍamma* and *Ġahd* with *fatḥa*; both are used in the meaning of struggle (al-Ġazarī 1979).” Dr Ibrāhīm Anīs *et al.* (1400 AH) state: “*Ġahd* is used with *fatḥa* which means to strive and it is said: “*Ġabada fī l-amr*” means he strived in that thing.”

## 2. The Concept of *Iḡtibād* in the view of Traditional Scholars

In different times, numerous scholars have defined *Iḡtibād* in their own way. In the following, we will discuss by analytical study, the historical development of the literary definition of *Iḡtibād*, diversity in varied definitions, and agreed essence of it:

## 2.1. First Definition

Primary definition of *Iğtibād* which we get written is, from Imām Šāfa'ī (d. 150-204/767-820). Imām Šāfa'ī defined *Iğtibād* as *Qiyās*.<sup>5</sup> He said: "*Al-iğtibād hıma l-qiyās* (al-Šāfa'ī 1990)." It means *Iğtibād* is *Qiyās*.

This definition of Imām Šāfa'ī is also accepted by many other scholars like Ibn Abī Hurayra (d. 000-345/000-956) etcetra (al-Zarkašī 1421 AH).

However, Imām al-Ġazālī (d. 450-505/1058-1111) criticized this definition by declaring it a misconception (al-Ġazālī 1413 AH). He said that the majority of Muslim scholars and Jurists considered *Iğtibād* and *Qiyās* are two different things (al-Zarkašī 1421 AH).

The critique on Imām Šāfa'ī's definition is answered in different ways. According to Imām Muhammad b. Bahādur al-Zarkašī (d. 745-794/1344-1392), in the tradition of Muslim scholars, *Iğtibād* means to find the ruling of something about which there does not exist any *Naşş*,<sup>6</sup> whereas in the opinion of Imām Šāfa'ī, the ruling would only be known if *Fara'*<sup>7</sup> is based on *Aşl*<sup>8</sup> and this is *Qiyās* (Ibid.). Dr Sulaymān al-Aşqar writes: Imām Šāfa'ī has exaggerated by declaring *Qiyās* as *Iğtibād*, because one of the important methods of *Iğtibād* is *Qiyās*. The example of it is the *Ḥadıṭ* of the Prophet SAW in which he named the standing in 'Arafā' as *Ḥağğ*<sup>9</sup> (Aşqar 1399 AH).

Our opinion is that we do not need to justify Imām Šāfa'ī's view, because his analysis in his context is quite clear. It is not due to overstatement that he considers both alike; rather he believes both the same for real. In fact Imām Šāfa'ī's view of *Qiyās* is comprehensive. He includes many ways of *Istidlāl*<sup>10</sup> in *Qiyās*, which are not included in the traditional theory of *Qiyās* in the opinion of majority.

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<sup>5</sup> Analogical deduction.

<sup>6</sup> Explicit text from Qur'ān or Sunna.

<sup>7</sup> A new case in analogical deduction.

<sup>8</sup> The original case in analogical deduction.

<sup>9</sup> Plain of 'Arafāt east of Mecca.

<sup>10</sup> Reasoning.

Therefore, we can say that those ways of *Istidlāl* which are considered as a form of *Iğtibād* in the opinion of majority is included in *Qiyās* according to Imām Šāfa'ī's view and he calls *Iğtibād* as *Qiyās* as well. Hence the difference is not real.

Imām Šāfa'ī's definition of *Qiyās* is different in its methodology and approach than that which is known by the mainstream of the scholars. Moreover, it is ultimately broader than the others'. Therefore, when Imām Šāfa'ī used the word *Qiyās*, it means that he is referring to those methods of *Istidlāl* which are named as *Iğtibād* by the others. For example, the struggle for knowing the direction of *Qibla* is named as *Qiyās* by Imām Šāfa'ī whereas others consider it to be *Iğtibād*. Imām Šāfa'ī says that in order to find the direction, a person would take the help of stars, moon, sun, etcetera and finding the ruling with the help of signs is indeed *Qiyās* and *Qiyās* is *Iğtibād* (al-Šāfa'ī 1990).

According to Imām Šāfa'ī, *Iğtibād* is always done in order to know something and this would only be possible with signs and knowing things with the help of signs is *Iğtibād* (Ibid.). Similarly, declaring the excess of something as *Harām*<sup>11</sup> on the basis of the lesser quantity which is asserted as *Harām* by the *Šari'a*<sup>12</sup> is also *Qiyās* in his consideration, whereas other jurists call it *Dalālat al-Awḷā*, *Mafhūm al-Muwāfiq* or *Fahwā l-Hitāb*<sup>13</sup> (Ibid.).

The crux of the matter is that Imām Šāfa'ī has same comprehension in his theory of *Iğtibād* which other jurists have and to consider that Imām Šāfa'ī has restricted the concept of *Iğtibād* by declaring it as *Qiyās* is not right. Imām Šāfa'ī concept of *Qiyās* is as inclusive as Majority's opinion is regarding *Iğtibād*.

## 2.2. Second Definition

Imām Abū Bakr al-Ğaššāš (d. 305-370/917-980) says that in '*Ur*'<sup>14</sup> *Iğtibād* is said to the struggle specifically made in those issues in which there isn't any evidence, which truly manifests the desired objectives of *Šari'a*.

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<sup>11</sup> Legally forbidden.

<sup>12</sup> Qur'ān and Sunna or Divine law.

<sup>13</sup> Inferred meaning.

<sup>14</sup> Common practice.

And in issues where such evidence exists, finding evidence is named as *Iğtibād*. He wrote: "*Badl al-mağbūd bi-ahkām al-ḥawādīṭ allatī laysa lillabi ‘alayhā dalilun qāimun* (al-Ğaşşās 1994)." This means to make the effort in modern issues in which there isn't any explicit evidence, which manifests the Devine ruling, is *Iğtibād*.

According to this definition, *Iğtibād* is said about the struggle specifically made in new issues in which there isn't any evidence, which truly manifests the desired objectives of *Şari‘a*. Imām Ğaşşās, by classifying *Qiyās* a discretionary form of *Iğtibād*, has also classified *Iğtibād* into three categories. In other words, *Qiyās* is regarded as a separate and definite term. This classification constitutes evolution in the definition of *Iğtibād*.

For more clarification, he writes elsewhere: the word *Iğtibād* is used for three meanings in *Şari‘a*; first, one is *Şar‘i Qiyās*, the second one is to make rulings based on speculation like the *Iğtibād* of a person in finding the direction of *Qibla* and the third one is to do *Iğtibād* assuming the Principle of *Istihṣān*<sup>15</sup> (Ibid.).

Imām Šāfa‘ī accepts the first two forms as *Qiyās* and *Iğtibād* but strongly refutes the third one i.e. *Istihṣān* (Al-Šāfa‘ī 1990). Although along with *Istihṣān*, he also took help of the other Common Principles like *al-Maṣlaḥa l-Mursala*<sup>16</sup> and *Sadd al-Darā‘i*<sup>17</sup> but Imām Šāfa‘ī and other great jurists like Imām Aḥmad b. Ḥanbal (d. 164-241/780-855), Imām Ibn Taymiyya (d. 661-728/1263-1328) and Imām Ibn Qayyim (d. 691-751/1292-1350) mention it under the reason of *Qiyās* and do not consider it a separate distinctive source for Islamic law (al-Šūkānī 1999).

### 2.3. Third Definition

Imām Ibn Ḥazm al-Andlusī (d.384-456/995-1063) says that in *Şari‘a*, *Iğtibād* is said to put all your effort in a place, to find the ruling of *Şari‘a* regarding any issue, where it exists. And not a single trustworthy scholar disagrees with it. He said: "*Istifād al-tāqa fi ṭalab ḥukm al-nāzila ḥayṭu uğadu dālīka l-ḥukm* (Ibn Ḥazm 1404 AH)."

<sup>15</sup> Juristic preference equity.

<sup>16</sup> Unrestricted public interest.

<sup>17</sup> Blocking pretenses.

That is to employ one's power to find Divine ruling regarding a new issue where it exists is *Iğtibād*.

He further clarifies his opinion by saying that all the rulings of *Šari'a* are open for scholars to know though some of the rulings are known to fewer as it is difficult for others to have access of such rulings, but it is impossible that they are beyond the capacities of everyone as Allah does not charge a soul unbearable and we are not liable to things, which are beyond our ability (Ibid.).

#### 2.4. Fourth Definition

Imām 'Abd al-Mālik b. Yūsuf al-Ġuwaynī<sup>18</sup> (d. 419-478/1028-1085) says: "*Badl al-wus' fi bulūğ al-ğarađ ay ħukmin šariyyin* (al-Ġuwaynī 1999)." According to this definition *Iğtibād* means to put all your effort in order to reach the desired.

Šayḥ Šāliḥ al-Fawzān states in the explanation of the aforesaid definition that this is the common concept of *Iğtibād* which is closer to its linguistic definition, Therefore the addition of the condition *al-Ĥukm al-Šari'i*<sup>19</sup> is necessary, because respected Imām meant *Šari'a* ruling, hence, *ğarađ*<sup>20</sup> in the mentioned definition means the required *Šari'a* ruling (al-Fawzān 1996). Šayḥ Fayṣal b. 'Abd al-'Azīz Āl-Mubārak (2013) also adopted the definition of Imām al-Ġuwaynī.

Imām Abū Ishāq Širāzī (d. 393-476/1003-1083) clarified this even more, he writes: "*Istifrağ al-wus' wa badl al-mağbūd fi ṭalab al-ħukm al-šari'i* (1405 AH)." This is to exert all your strength and ability to get the ruling of *Šari'a* is *Iğtibād*.

It is indeed an elevated form of the previous definition. In this definition, *ğarađ* is explained as *Šari'a* ruling. Imām Ibn al-'Arabī al-Mālikī (d. 468-543/1076-1148) has replaced the word *ğarađ* with *šawāb*<sup>21</sup> (Ibn al-'Arabī 1999).

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<sup>18</sup> Known as Imām al-Ĥaramayn.

<sup>19</sup> Divine ruling.

<sup>20</sup> Desired.

<sup>21</sup> Accurate

Imām ‘Abdullā b. ‘Amr al-Bayḍāwī (d. 000-691/000-1292) also agreed the definition of Imām Abū Ishāq Šīrāzī, but he replaced the word *ṭalab*<sup>22</sup> with *dark*<sup>23</sup> (al-Bayḍāwī 2006). Ibn ‘Abd al-Ḥaqq al-Ḥanbalī (d. 658-739/1260-1338) has used the word *taʿrūf*<sup>24</sup> instead of *ṭalab* (‘Abd al-Ḥaqq 1997). ‘Alī b. ‘Abd al-Kāfi l-Subkī (d. 683-756/1284-1355) also chose the definition of Imām Bayḍāwī (al-Subkī 1404 AH) whereas Ibn al-Laḥḥām (d. 000-803/000-1400) replaced the word *ṭalab* with *taʿrūf*.

Ibn al-Mufliḥ al-Ḥanbalī (d. 000-763/000-1361) has accepted the definition of Imām Bayḍāwī but with addition to the condition of *Faqīh*<sup>25</sup> which is the evolutionary form of the previous definition. He writes: "*Istifrāḡ al-faqīh nusʿabū li-dark ḥukmin šarʿiyyin* (1997)." This definition explains that a jurist's exertion in getting the ruling of *Šariʿa* is *Iḡtibād*.

Ibn al-Naḡḡār (d. 898-972/1492-1564) has also taken the definition of Ibn al-Mufliḥ (Ibn al-Naḡḡār 1997). Šāh Walīullā Dihlawī (d. 1114-1176/1703-1762) also agreed the definition of Imām Bayḍāwī but added the condition of *al-Dalāʿil al-Šarʿiyya*<sup>26</sup> in the definition (Dihlawī 1385 AH). Šāh Ismāʿīl Šahīd (d. 1193-1246/1779-1831) also mentioned the definition of Šāh Walīullā, but added the condition of *Afāʿil*<sup>27</sup> with *Aḥkām*<sup>28</sup> which is again the evolutionary form of the latter. Muhammad Gundalwī chose the definition of Šāh Ismāʿīl Šahīd in his commentary on the book *Muḥtaṣar al-Uṣūl*. Šayḥ Muhammad b. Šāliḥ al-ʿUṭaymīn (1426 AH) and Dr Sulaymān b. ‘Abdullā b. Ḥamūd Abā l-Ḥayl (1418 AH) also quoted the definition of Imām Bayḍāwī. In the same way, Dr Wahba l-Zuḥaylī also preferred the statement of Imām Bayḍāwī.

While accepting the same definition, Professor Taqī Amīnī added the term *Taṭbīq al-Aḥkām*<sup>29</sup> which is indeed an admirable addition.

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<sup>22</sup> To try to get.

<sup>23</sup> Perception.

<sup>24</sup> Cognition.

<sup>25</sup> Muslim Jurist.

<sup>26</sup> *Šariʿa* Evidences.

<sup>27</sup> Plural of *Afʿal* i.e. acts.

<sup>28</sup> Rulings.

<sup>29</sup> Application of the rulings.



He writes: "*Istifrağ al-ğuhd wa badl ġāyat al-wus‘ immā fi dark al-aḥkām al-šar‘iyya wa immā fi tatbīqihā* (Taḳī Amīnī 1986)." This means to endeavor intensively and to put all your abilities in either to know the *Šar‘a* ruling or in its application is *Iğtibād*.

Respected Professor referred this definition to Imām Ibrāhīm b. Mūsā l-Šāṭḅī (d. 000-790/000-1388) and gave the reference of his book *al-Muwāfaqāt* but it wasn't found there after all the effort. Dr ‘Ayāḍ b. Namī al-Sulamī (1426 AH) added the conditions of *Istinbāt*<sup>30</sup> and the ability to do *Iğtibād* which is even more evolutionary form of the previous definition.

## 2.5. Fifth Definition

Abū l-Muzaffar al-Sam‘ānī (d. 426-489/1035-1096) writes: "*Baḍl al-ğuhd fi istiḥrāğ al-aḥkām min šawāhidihā l-dalāla ‘alayhā* (al-Sam‘ānī 1997). According to this definition to endeavor in deducting the rulings from the sources where they exist is known as *Iğtibād*."

Qāsīm b. Quṭlūbugā (d. 802-879/1399-1474) mentioned the same definition but added the condition of *Šar‘iyya* with *Aḥkām* (Ibn Quṭlūbugā 1994). Dr Ḥālid b. ‘Alī l-Muṣayqih (2013) replaced the word *al-Ğahd*<sup>31</sup> with *al-Wus‘*.<sup>32</sup> Ustād ‘Alī Ḥasbullā added the word *Faqih* and elaborated the word *Istifrağ*.<sup>33</sup> He says about the latter: "*Baḍl al-faqih ġuhdahū fi istinbāt ḥukmin šar‘iyyin min dalilihī ‘alā wağhin yuḥassu fi hay al-‘iğz ‘an al-mazīd* (Ḥasbullā 1976)." This means in the term of legists, a jurist's exertion of effort up to the utmost where he is unable to endeavor anymore in order to extract the ruling from its source is *Iğtibād*."

While citing the definition of Ustād ‘Alī Ḥasbullā, Šayḥ ‘Abd al-Wahhāb Ḥallāf elaborated the word *Dalil*<sup>34</sup> that they should be *Dalilīn Tafšiliyyin*.<sup>35</sup> Ustād Muṣṭafā l-Zarqā<sup>3</sup> quoted the same definition.

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<sup>30</sup> Derivation.

<sup>31</sup> Effort.

<sup>32</sup> Capacity.

<sup>33</sup> To exert oneself.

<sup>34</sup> Evidence.

<sup>35</sup> Detailed evidences.

He writes: "*‘Amaliyyat istinbāṭ al-aḥkām al-šar‘iyya min adillatibā l-tafṣīliyya fī l-šar‘a* (al-Zuhaylī)." According to this definition to extract the rulings of *Šar‘a* from the detailed Divine evidence is known as *Iğtibād*.

‘Allāma ‘Abd al-Ġanī l-Bağaqnī (2013) quoted the latter as well but with the addition to the clause *Faqīh*. Similarly, ‘Abd al-Wahhāb ‘Abd al-Salām al-Ṭawīla (2000) also added the same condition. With almost similar words Šayḥ Walīd b. Rāšid al-Sa‘īdān (2013) also stated the same definition. Šayḥ Muhammad b. Ḥusayn b. Ḥasan al-Ġīzānī (1427 AH) defined *Iğtibād* in similar way, but without the addition of the word *Faqīh*. Šayḥ Muhammad Abū Zahra (1377 AH) also defined in the same way but classified *Iğtibād* into two categories; extraction of Divine verdicts from Qur’ān and Sunna and suggestions regarding the application of those verdicts with respect to the situation faced. Dr Šubḥī Šāliḥ (1398 AH) has defined *Iğtibād* in a new style along with the clauses of *Šar‘i*<sup>36</sup> and *Zammī*<sup>37</sup> rulings; he added the conditions of *‘Aqlī*<sup>38</sup> *Naqlī*<sup>39</sup> and *Qaṭ‘ī*.<sup>40</sup> Mawlānā ‘Ubaydullā As ‘adī defined in similar words.

## 2.6. Sixth Definition

Imām Abū Ḥāmid al-Ġazālī (d. 450-505/1058-1111) writes: "*Baḍl al-muğtahid wus‘abū fī ṭalab al-‘ilm bi-aḥkām al-šar‘a* (Ġazālī 1413 AH)." According to this definition this word is explicitly related with the meaning that a Jurist’s exertion of all his capacities in pursuing knowledge pertaining to *Šar‘a* rulings."

‘Abd al-‘Azīz b. Aḥmad al-Buḥārī (d. 000-730/000-1330) also cited the same definition but did not add the word *Muğtahid*<sup>41</sup> as considering it to be implicit (‘Abd al-‘Azīz 1418 AH). Similarly, Imām Ibn Qudāma l-Maqdasī (d. 541-620/1147-1223) writes: "*Baḍl al-ğubd fī l-‘ilm bi-aḥkām al-šar‘i* (Ibn Qudāma 1399 AH)." This is to make every effort in pursuing the knowledge of *Šar‘a* rulings."

<sup>36</sup> Legal or Juristic.

<sup>37</sup> Speculative.

<sup>38</sup> Rational.

<sup>39</sup> Traditional.

<sup>40</sup> Definitive.

<sup>41</sup> The jurist who does *Iğtibād*.

Ibn Qudāma did not add the condition of *Faqīh* and *Muğtahid* as it is well-known that *Iğtibād* is always practiced by a *Faqīh* and *Muğtahid* only. It seems as if the definition of Imām al-Ġazālī is curtailed. Šayḥ Muhammad al-Ḥaḍrī Bakk (1969) also quoted the definition of Imām al-Ġazālī. Dr ‘Abd al-Karīm al-Zaydān included the word *Tariq Istinbāt*<sup>42</sup> which is even more progressive form of it. Along with the addition of later, Šayḥ Šālīh al-Fawzān (2013) also supplemented with *al-Dalāil al-Šar‘iyya* which is a further elaboration of the definition. Šayḥ ‘Abdullā b. Yūsuf al-Ġuday‘ (2013) quoted the definition of Šayḥ Šālīh al-Fawzān.

## 2.7. Seventh Definition

Imām Ibn Rušd (d. 520-595/1126-1198) emphasized the methodologies and techniques of *Iğtibād* in his definition. He writes: "*Baḍl al-muğtahid wus‘abū fi l-ṭalab bi-l-ālāt allatī tuštaratu fi hay* (Ibn Rušd 1994)." A jurist's employment of his abilities in finding any ruling of *Šari‘a* with the help of those techniques which are regarded as a condition in it is called *Iğtibād*.

## 2.8. Eighth Definition

Imām Faḥr al-Dīn al-Rāzī (d. 544-606/1150-1210) writes: "*Istifrāğ al-wus‘ fi l-naẓr fi mā lā yalḥaqubū fi hay lawmun ma‘a istifrāğ al-wus‘ fi hay* (al-Rāzī 1400 AH)." This means to employ your abilities while pondering on something up to such an extent that any blame [of sloth] is eradicated is *Iğtibād*."

Sirāğ al-Dīn Maḥmūd b. Abī Bakr Armawī (d. 594-682/1198-1283) also mentioned the same definition (Armawī 1988). Similarly Šāhāb al-Dīn Aḥmad b. Idrīs al-Qarāfī (d. 000-684/000-1285) defined *Iğtibād* in almost the same words (2013).

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<sup>42</sup> Way of derivation.

## 2.9. Ninth Definition

‘Allāma Sayf al-Dīn al-Āmdī (d. 551-631/1156-1233) writes: “*Istifrāğ al-wus‘ fī ṭalab al-ḡann bi-šay‘in min al-aḥkām al-šar‘iyya ‘alā wağhin yuḥassu min al-nafs al-‘iğz ‘an al-mazīd fī hay* (al-Āmdī 1404 AH).” In pursue of speculative *Šari‘a* ruling, to engage all abilities up to one’s maximum limit is *Iğtibād*.

Muhammad Šiddīque Ḥasan Ḥān Bahādur (d. 1248-1307/1832-1890) also acknowledged the same definition. Ibn al-Ḥāğib ‘Ut̄mān b. ‘Amr al-Mālikī (d. 570-646/1174-1249) had appended condition of *Faqih* in the definition of ‘Allāma l-Āmdī and detached the clause of “*‘alā wağhin yuḥassu min al-nafs al-‘iğz ‘an al-mazīd fī hay*”<sup>43</sup> because it was already existent in the expression *Istifrāğ al-wus‘* (Ibn Abī Bakr 1985).<sup>44</sup> This constitutes even more elucidation of his definition.

Qāḍī ‘Abd al-Raḥmān b. Aḥmad ‘Aḍad al-Milla’s (d. 000-756/000-1355) inclination is towards the definition of Ibn al-Ḥāğib (‘Aḍad al-Milla 1405 AH) whereas Qāḍī Tāğ al-Dīn ‘Abd al-Waḥḥāb b. ‘Alī l-Subkī (d. 727-771/1327-1370) mentioned a curtailed definition of Ibn al-Ḥāğib by removing the condition of *Šari‘a* (al-Subkī 2003), because a Muslim jurist would definitely endeavor for pursuing *Šari‘a* ruling only. Ğamāl al-Dīn ‘Abd al-Raḥīm b. al-Ḥasan al-Isnawī (d. 704-772/1305-1370) quoted the definition of Qāḍī Tāğ al-Dīn (al-Isnawī 1982). ‘Allāma Sa‘d al-Dīn al-Taftāzānī (d. 712-793/1312-1390) followed Ibn al-Ḥāğib in the similar way (al-Taftāzānī 1996). Ibn al-Humām al-Ḥanafī (d. 790-861/1388-1457) also stated the same words, but instead of using the words *Istifrāğ al-wus‘* he employed the phrase *Badl al-ṭāqa*<sup>45</sup> (Ibn al-Humām 1999). Abū Yaḥyā Zakariyyā l-Anṣārī (d. 824-926/1420-1520) and Šayḥ ‘Abd al-Raḥmān b. ‘Abd al-Ḥāliq Yusuf removed the condition of *Šari‘a* in this definition (Zakariyyā 1941; ‘Abd al-Ḥāliq 2013). Muḥibullā b. ‘Abd al-Šakūr al-Hindī (d. 000-1119/000-1707) and Dr ‘Abdullā b. ‘Abd al-Muḥsin al-Turkī quoted the same definition of Ibn al-Hammām (Muḥibullā 1299 AH; al-Turkī 1977). In the definition of Ibn al-Humām, Šayḥ Aḥmad Šākīr not only removed the word *Faqih*, but also added the word *Dalīl* which is a further explanation of the definition.

<sup>43</sup> To do one’s maximum limit.

<sup>44</sup> To do one’s utmost.

<sup>45</sup> To do all in one’s power.

Dr ‘Abd al-Karīm b. ‘Alī b. Muhammad al-Namla (1996) also considered it to be a preferred one.

## 2.10. Tenth Definition

Imām al-Šāṭḥī writes: “*Istifrağ al-wus‘ fī taḥsīl al-‘ilm aw al-ẓann bi-l-ḥukm* (al-Šāṭḥī 1994).” The exertion of all abilities in pursues of probable or definite knowledge with respect to the ruling of *Šari‘a* is called *Iğtibād*.”

Šayḥ ‘Atya Muhammad Sālim and Šayḥ ‘Abd al-Muḥsin b. Ḥammād quoted the same definition, but they attached the clause of *Dalā’il Šar‘iyya* to it.

## 2.11. Eleventh Definition

Imām Badr al-Dīn Zarkašī (1421 AH) writes: “*Badl al-wus‘ fī nāyl ḥukmin šar‘iyyin ‘amaliyyin bi-ṭarīq al-istinbāṭ*.” This means to make every effort in getting any practical Divine ruling by derivation is called *Iğtibād*.

Imām Muhammad b. ‘Alī l-Šawkānī (d. 1173-1250/1759-1834) defined *Iğtibād* exactly in the same manner. Ḥāfiẓ Tanā’ullā Zaydī added the condition of *Muğtahid* and removed the clause of *‘Amalī*. Šayḥ Yūsuf al-Qarḍāwī (1996) also favored the definition of Imām Šawkānī.

While mentioning the definition of Imām Zarkašī, Šayḥ ‘Abd al-Mannān Nūrpuṛī also added the clause of *Ẓann* (probability) to it, whereas Šayḥ Ibrāhīm Šaqra chose the definition of Imām Šawkānī.

## 3. The Common Essence of the Diverse Definitions

In the above discussion, we have deduced that there are eleven principal definitions of *Iğtibād* which seem distinctive from each other and the rest are explanation, interpretation, addition or curtailment and brevity of the earlier ones.

When we reflect upon these eleven basic definitions of *Iğtibād*, we unveil that these definitions in themselves are either progressive forms of each other or the elaborations of the diverse facets to the concept of *Iğtibād*. Therefore the plea of those modernists who argue that there is too much discrepancy among olden scholars and on this basis, anyone can support his own meaning out of it, is totally wrong.

The controversy in the definition of *Iğtibād*, is indeed the difference of diversity which highlights distinct aspects of *Iğtibād*. Moreover, the disagreement is not in the theory of *Iğtibād*, rather it is the difference clarified in acquisition of a comprehensive and inclusive technical definition of *Iğtibād*. In spite of this disagreement, all the past and present scholars shared the same view concerning the idea of *Iğtibād*. In other words, almost all definitions of *Iğtibād* persisted were similar though each scholar chose his own words to clarify which he thought would be more expressive.

The first definition which came in notice was Imām Šāf'ī's (d. 150-204/767-820) idea, which was stated as "*Al-iğtibād humā l-qiyās.*"<sup>46</sup>

And we have already discussed that Imām Šāf'ī's definition is more comprehensive than the common theory of *Iğtibād*. Therefore his concept of *Iğtibād* is inclusive of majority's view of *Qiyās*.

The second definition we find is of Abū Bakr al-Ğaššās (d. 305-370/917-980) which is "*Badl al-mağhūd bi-ahkām al-hawādīt allatī laysa lillābi 'alayhā dalilun qāimun.*"

According to this definition, *Iğtibād* is said to the struggle specifically made in new issues in which there isn't any evidence which truly manifests the desired objectives of *Šari'a*. Imām Ğaššās, by classifying *Qiyās* a discretionary form of *Iğtibād*, has also categorized *Iğtibād* into three categories. In other words, *Qiyās* is regarded as a separate and definite term. This classification constitutes evolution in the definition of *Iğtibād*.

Third definition is of Imām Ibn Ğazm (d. 384-456/995-1063) with words "*Istifād al-tāqa fī talab hukm al-nāzila haytu uğadu dālika l-hukm.*"

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<sup>46</sup> *Iğtibād* is an analogical deduction.

Imām Ibn Ḥazm and Ḡaṣṣāṣ are similar in a sense that both of them considered *Iḡtibād* to be a struggle to find ruling about *Hādīta* and *Nāzila*.<sup>47</sup> Imām Ḡaṣṣāṣ said it is in fact to find ruling for a situation which never occurred before, whereas Imām Ibn Ḥazm added that "to find where it exist" means in the sources of *Šarī'a*. That is why he named deduction from the sources of *Šarī'a* as *Iḡtibād*. The clause of sources of verdicts constitutes evolutionary form of *Iḡtibād*.

The fourth definition was of Imām al-Ḥaramayn Imām al-Ḡuwaynī (d. 419-478/1028-1085) in words "*Baḍl al-wuṣ' fī bulūḡ al-ḡaraḍ ay ḥukmin šar'iyin*" whereas; Imām Bayḍāwī (d. 000-691/000-1292) defined it as "*Istifrāḡ al-wuṣ' fī darḡ al-aḥkām al-šar'iyya*."

In this definition *Iḡtibād* is said to find the ruling of *Šarī'a*. Ibn Ḥazm and al-Ḡaṣṣāṣ said to find the rulings of *Šarī'a* regarding newly raised issues whereas in this definition it is left absolute *i.e.* of any past, present or future issue, raised before or after its occurrence. This is defined in even more refined words.

The fifth definition of *Iḡtibād* was "*Baḍl al-ḡuhd fī istiḥrāḡ al-aḥkām min šawāhidihā l-dalāla 'alayhā*."

In this definition, Imām al-Sam'ānī (d. 426-489/1035-1096) explained *Iḡtibād* to be a struggle for finding the rulings of *Šarī'a* in the sources of Islamic jurisprudence. This constitutes progress in above definition.

The sixth definition of *Iḡtibād* was of Imām al-Ḡazālī (d. 450-505/1058-1111) who defined it as "*Baḍl al-muḡtahid wuṣ'abū fī ṭalab al-'ilm bi-aḥkām al-šar'iyya*."

Thus, the effort of a *Muḡtahid* in pursue of knowledge concerning *Šarī'* verdicts is called *Iḡtibād*. Pursue of a *Muḡtahid* is defined as *Iḡtibād* by Imām al-Ḡazālī, whereas *Uṣūliyyīn*<sup>48</sup> before him did not add such clause. Hence it is even more evolutionary form than the former definition of *Iḡtibād*.

<sup>47</sup> Issue pertaining to the new situation.

<sup>48</sup> Experts in the principles of Islamic jurisprudence.

By the addition of the word ‘*Ilm*,<sup>49</sup> Imām al-Ġazālī signified the certainty of the substance of knowledge derived from *Waḥy*.<sup>50</sup> Moreover, by removing the condition of *Šari‘a* Sources, he also curtailed the definition, because a *Muğtahid* explicitly deduces only from *Šari‘a* sources and none else.

The seventh definition was of Imām Ibn Rušd (d. 520-595/1126-1198) who when defining “*Badl al-muğtahid wus‘abū fi l-ṭalab bi-l-ālāt allatī tuštaraṭu fi hay*” gave principal importance to the methodologies and techniques of *Iğtibād* used in pursue of *Šari‘a* judgments. And finding of such rulings by the accustomed methodologies and ways is in fact classified as *Iğtibād*. This is even more progressive form of same definition. The conditions like *Muğtahid* and the sources of Divine rulings are implied here.

The eighth definition was “*Istifrāğ al-wus‘ fi l-naẓr fi mā lā yalḥaqubū fi hay lawmun ma‘a istifrāğ al-wus‘ fi hay.*”

Imām Rāzī (d. 544-606/1150-1210) emphasized on the struggle to the utmost level in pursue of Devine rulings primarily. In other words lesser struggle would not be regarded as *Iğtibād*. In this definition Imām Rāzī adhered to the linguistic definition mainly. Moreover, he did not enlighten the clauses of methodologies or techniques.

The ninth definition was of ‘Allāma Āmdī (d. 551-631/1156-1234) who in his expression “*Istifrāğ al-wus‘ fi ṭalab al-ẓann bi-šay‘in min al-aḥkām al-šar‘iyya ‘alā wağhin yuḥassu min al-nafs al-‘iğz ‘an al-mazīd fi hay*” adhered to the addition of Imām Rāzī and included an additional clause of *Ẓann*<sup>51</sup> which demonstrates that inferred Devine rulings constitute *Ẓann* rather than certainty. ‘Allāma Āmdī did not mention the clause of methodologies which would be better if it were. The definitions of ‘Allāma Āmdī and Imām al-Ġazālī do not contradict with each other, because each of them defined *Iğtibād* by keeping in mind the common findings on the basis of either ‘*Ilm* or *Ẓann* and neither of it is wrong. Sometimes in result of *Iğtibād*, such ruling is deduced which constitutes certainty, like in later years and *Iğma‘*<sup>52</sup> is established on some such ruling. Hence, it would result in certainty.

<sup>49</sup> Definite knowledge.

<sup>50</sup> Revelation.

<sup>51</sup> Speculative knowledge.

<sup>52</sup> Consensus of opinion.



Contrary to this, sometimes an *Iğtibād* results in a ruling which constitutes probable chances of its accuracy especially when jurists differ in opinion with it.

In the tenth definition "*Istifrāğ al-wuṣ' fī taḥsīl al-'ilm aw al-zann bi-l-ḥukm*", Imām Šāṭbī (d. 000-790/000-1388) tried to merge both of the previous definitions of 'Allāma Āmdī and Imām al-Ġazālī which is even more progressive form of above definitions. According to this definition, *Iğtibād* constitutes either 'Ilm or Zann.

The eleventh definition was presented by Imām Zarkašī (d. 745-794/1344-1392). He removed the clauses of 'Ilm or Zann in "*Baḍl al-wuṣ' fī nāyl ḥukmin šar'iyin 'amaliyyin bi-ṭariq al-istinbāt.*"

The definition impliedly includes the two in itself, whereas Imām Zarkašī emphasized on the customary methodologies of inference in the definition of *Iğtibād*.

Hence, the common idea of both classical and modern traditionalist is that *Iğtibād* is said to pursue of *Šar'ia* rulings about a newly raised issue in the light of Qur'ān and Sunna. Mawlānā Waḥīd al-Dīn Ḥān writes: "*Iğtibād* does not mean to form an opinion on the basis of freedom of thought; rather it means to find Divine rulings by pondering deeply over Qur'ān and Sunna - which are in fact the true sources of Islam - through *Qiyās* and *Istinbāt*."

Similarly, Dr Maḥmūd Aḥmad Ġāzī (2005) writes that in order to define *Iğtibād* in English would be: "To exhaust your capacity to discover *Šar'ia* ruling about a new situation in the light of the Qur'ān and Sunna."

Hence, it could also be said in the opinion of traditional scholars *Iğtibād* is said to the application of *Nuṣūṣ*<sup>53</sup> of Qur'ān and Sunna on understanding of situation. In other words *Iğtibād* does not mean to form a logical opinion outside of Qur'ān and Sunna; rather it is to find the issues in depths and expansions of Qur'ān and Sunna itself.

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<sup>53</sup> Plural of *Nasṣ* i.e. explicit text.

Some contemporary scholars have even named the verification of the authenticity of *Ḥadīṭ* as *Iğtibād*, but in our view it is not an *Iğtibād*, because according to the uncontroversial concept of *Salaf*<sup>54</sup> R.A, *Iğtibād* is said to find the rulings of *Şari‘a* not to find the text of *Şari‘a*. An exertion in the formation of the opinion concerning classification of *Ḥadīṭ* as *Maqbūl*<sup>55</sup> and *Mardūd*<sup>56</sup> is not attained by means of inference, deduction, etcetera rather it is a pursue of *Şar‘ia* text and finding the *Şar‘ia* ari evidence is not considered as *Iğtibād* in the opinion of *Salaf* R.A. when it is not an *Iğtibād*, then the quest of the chain of narration would not be included in the premises of *Iğtibād*. And if we do consider it to be an *Iğtibād*, then all of the *Muḥaddiṭīn*<sup>57</sup> would be classified as *Muğtabidīn*.<sup>58</sup>

In addition to that, it is important to understand that the domain of a *Muğtabid* is to deduce the Devine rulings from *Şari‘a* sources and not to classify the *Aḥādīṭ* as *Şahīḥ*<sup>59</sup> or *Da‘if*.<sup>60</sup> Therefore, in the classification of a *Ḥadīṭ*, only the opinion of experts of *Ḥadīṭ* and the scholars of *A‘immat Ğarḥ wa-l-Ta‘dīl*<sup>61</sup> would be considerable not a *Muğtabid*s.

#### 4. Modernists' Concept and Definition of *Iğtibād*

Modernists' concept of *Iğtibād* is mainly based upon the definition of Sir Muhammad Iqbal (d. 18877-1938).<sup>62</sup> Dr Iqbal (1989) says that linguistically, it means to struggle, but as an Islamic term, it refers to a struggle which is done in order to make a free opinion in a legal issue.

Well known Pakistani Muslim scholar and modernist Ğāwayd Aḥmad Ğāmdī *et al.* write: "Linguistically, *Iğtibād* means to exert all your strengths in doing something.

<sup>54</sup> Ancestors.

<sup>55</sup> Acceptable.

<sup>56</sup> Rejected.

<sup>57</sup> Experts in *Ḥadīṭ* sciences.

<sup>58</sup> Plural of *Muğtabid*.

<sup>59</sup> Correct or sound.

<sup>60</sup> Weak report.

<sup>61</sup> Experts in contesting or confirming the honesty of the narrators of *Ḥadīṭ*.

<sup>62</sup> Dr Muhammad Iqbal, also known as ‘Allāma Iqbal, was a philosopher, poet and politician in British India who is widely regarded as having inspired the Pakistan Movement.

Its term meaning is to endeavor in an issue by reflecting deeply in which Qur'ān and Sunna is silent in order to attain the main objectives of Islam (Ġāmdī; Manzūr 2001)."

The definitions, which Dr Iqbāl and Ġāwayd Aḥmad Ġāmdī presented, do not base for the concept which our *Salaf* R.A. thought of. On one side, there are many who after leaning on this concept declare even the agreed issues of Qur'ān as a room of *Iğtibād* and on the other side, those who are inspired by Ġāwayd Aḥmad Ġāmdī start giving rational opinions of their own after stating about every second issue that Qur'ān and Sunna is silent.

Respected Dr Iqbāl was a sincere Muslim and loved Allah and his Prophet SAW, but *Šari'a* sciences were not his area of research. He thought of *Taqīd*<sup>63</sup> to be a biggest hurdle for the development and advancement of Muslim *Umma*. That is why he emphasized on the importance of *Iğtibād*. Therefore, one can find in his series of sermons a whole sermon dedicated to *Iğtibād*. Dr Iqbāl was neither a *Muğtahid* nor was he a *Faqīh*; rather he was a Muslim philosopher and intellectual.

In the same way, to find the solution of a new issue based on *Šari'a* sources can surely be labeled *Iğtibād*, but to name each personal opinion based on one's own rationale as *Iğtibād*, is totally wide from the mark. We also suggest that if one brings about a new definition of *Iğtibād* provided if it is forged in the light of *Salaf's* conception, then words and styles do not matter, but this is not only Islamically illegal but also ethically immoral if one gives his own meaning to the term of *Salaf* R.A. which they did not mean. Therefore, that who is longing for the reconstruction of Islamic thought are requested with due respect that they should use a different term like reconstruction, reform, etcetera for the propagation of their ideas. When a common idea is being shared throughout the centuries, it would be like misguiding people by using the same term on which the consensus of *Umma* is established for a new meaning. Moreover, it would also constitute deterioration of Arabic Language.

A co-relation exists between a word and its meaning. And in every language each word is forged to represent a specific meaning which is also termed as linguistic meaning. For example in Arabic the word *Abb* was set up to represent father.

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<sup>63</sup> Imitation, antonym of *Iğtibād*.

Now today if an Arab Poet says that in my poem, I'll be using the word *Abb* to stand for son instead of father, everyone would criticize him, because this leads to deterioration of language. In the same way, scholars and experts attach a specific meaning to a word which is known as *Muṣṭalaḥ*.<sup>64</sup> It is derived from the word *Ṣulḥ* which means conciliation. In other words, when a group of experts and scholars are agreed that whenever they use this word, they would mean a specific meaning of it, is called *Muṣṭalaḥ*. This necessitates that the term is not said to an individual's meaning; rather it is said in a meaning on which a group of experts are agreed. So an individual's sense could be given the name of *Ṣād*,<sup>65</sup> but a title of *Muṣṭalaḥ* cannot be given. For example, the Muslim scholars have agreed that if the term *Kitābulla*<sup>66</sup> is used, it would refer to Qur'ān, but if a person proclaims that by *Kitābulla* he would mean Bible, then it would surely be misappropriate as it would confuse the readers and would cause misconceptions.

Some modernists have argued that the conditions of *Iğtibād* are set by scholars themselves and no evidence from Qur'ān or *Ḥadīth* is found to base such conditions on. The fact is we can find perversion being normed by the name of *Iğtibād* and every layman is being given the rank of a *Muğtahid*. Ğāwayd Aḥmad Ğāmdī *et al.* write while criticizing on the clauses of *Iğtibād* discussed by traditionalists: "On such basis, we can say that there is no hurdle in doing *Iğtibād*. This door is open for every Muslim on an individual and social basis (Ğāmdī; Manzūr 2001)."

The fact is, if we do not mention the conditions necessary before a person to be ranked as *Muğtahid*, which scholars and jurists have mentioned, then every individual ignorant of Islamic Sciences would also be classed as *Muğtahid*, hence no difference would remain between a scholar and a businessman. When there is no difference, then both are *Muğtahid*, and because both are *Muğtahid* then even a layman is qualified to present guidelines in people's issues pertaining to their religion. Would there be any need of gaining knowledge of Islamic Sciences after this? The second thing is Ğāmdī Sahib considers the primary condition for an *Iğtibād* to be the strength of evidence so when a person is ignorant of Qur'ān and Sunna how would he based his argument on the evidence of Qur'ān and *Ḥadīth*. Does evidence only mean logic?

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<sup>64</sup> Term.

<sup>65</sup> Irregular.

<sup>66</sup> Book of Allah.

The third point is, a medical physician that is ignorant of Qur'ān and *Ḥadīth* – and according to Ġāmdī Sahib he would do *Iğtibād* – isn't it correct that most of his opinions which he would form merely based on his logic and reason, would usually negate the Text of Qur'ān and Sunna as such solutions would already be existing apparently, by indications or by 'Illā?<sup>67</sup> Isn't it wrong to do *Iğtibād* against the text of Qur'ān and *Ḥadīth*?

*Iğtibād* does not mean only to give opinion based on one's own reason; rather it means to get guidance from the depths and vastness of *Šari'a*. *Iğtibād* is made to know the direction of Allah, not the human and the source to understand Allah's orders is Qur'ān and *Ḥadīth*, not the human reason. The main problem with Modernists is that they too just like *Mu'tazila*<sup>68</sup> believe that one more source of knowing Devine rulings is human intellect and there exist a great number of issues about which there is no guidance from Qur'ān and *Ḥadīth*. Even if we accept this assumption, how can we accept that a physician or an engineer can know about the issue in which he is doing *Iğtibād* that Qur'ān and *Ḥadīth* are silent about this and *Iğtibād* is justifiable? If the same physician or an engineer before doing *Iğtibād*, asks a scholar about any relevant text then he would be considered a *Muqallid*<sup>69</sup> not a *Muğtahid*. Anyhow, apart from such intellect, we intend to mention the implied conditions which *Salaf R.A* discussed for the qualification of a *Muğtahid*.

The son of Sir Muhammad Iqbāl, Dr Ġāwayd Iqbāl allows one's to do *Iğtibād* even in the presence of *Naşş*. For example, he believes that amendments can be made to the fixed shares in the Inheritance of the daughter. He proposes the idea of a juristic parliament in which each school of thought would be given equal opportunity to find the solutions according to their own ways (Ġāwayd 2007).

Qur'ān (25: 43) strictly criticizes such ideas and thoughts: “Seest thou such a one as taketh for his god his own passion (or impulse)? Couldst thou be a disposer of affairs for him?”

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<sup>67</sup> Effective cause.

<sup>68</sup> An Islamic school of theology based on reason and rational thought in the Umayyad and Abbasid period.

<sup>69</sup> Imitator or one who does *Taqlid*.

In the same way, Indian Muslim scholar Altāf Aḥmad A'zamī believes that scholars with short sightedness think that Prophet's explanations and interpretations of the Qur'ānic rulings are persistent and one is obliged to follow them, whereas the reality is, His many explanations are based on His independent *Iḡtibād* and are not necessary to be followed (A'zamī 2007).

Professor Altāf Aḥmad A'zamī consider that issues in which Qur'ānic verdicts are abridged, the authority of *Hadīṭ* is not consistent, rather they are Prophet's *Iḡtibādāt*<sup>70</sup> and they were only applicable in his time as they were compatible with those Arab customs and traditions only. Whereas the truth is, the Sunna of Prophet SAW, whether they elaborate the concise rulings of Qur'ān or are springs of new ones, in either case their authority is consistent and unchangeable. He the almighty says: "O, ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination (4: 59)."

In this verse, the word *Šay'in*<sup>71</sup> is used as indefinite noun, and it is the linguistic principle of Arabic Language that whenever an uncertain known is used within the context of a negative sentence or a verdict containing condition then it becomes explicit in its generality, means that then the generality is meant to be in speaker's intention (Zaydān). Therefore, it would mean that any issue which concerns with *Šari'a* is to be referred to Qur'ān and *Hadīṭ*.

In one of the narrations, when Prophet SAW sent Ma'ād b. Ğabal R.A. to Yemen as a governor, He said: "The Prophet SAW asked him, how would you judge? He replied, by the Book of Allah. He SAW said, if that is not found there? He said, by the Sunna of Allah's Prophet. He SAW said: if it is not found there too? He said: *aḡtahidu ra'yī* i.e. I would do *Iḡtibād* based on my opinion (deduced from Qur'ān and Sunna, Tirmidhi)."

Some of the scholars have argued about latter's chain of narration, however, the meaning of the *Hadīṭ* is correct.

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<sup>70</sup> Plural of *Iḡtibād*.

<sup>71</sup> Anything.

When Prophet of Allah SAW asked about finding the solutions for the issues, Ma'ād R.A. talked generally and included every single issue and did not specify it only with creed or etiquettes and moreover, people usually refer to rulers and governors in case of matters other than religious.

Some intellectuals have inferred from the words "*ağtahidu ra'yyi*" that *Iğtibād* means to give an opinion based on one's reason only. We have already stated that the overall meaning of the *Hadīṭ Ma'ād* is supported by other evidences, whereas the authenticity of the chain is debatable (Zubayr 2013).<sup>72</sup> Therefore, to infer generally from the meaning of the narration would be correct. However, to deduce from the words of the narration wouldn't be appropriate. Principles of deduction of a legal verdict from *Hadīṭ Ḥasan li-ğayrihi*<sup>73</sup> is in detailed beautifully discussed by Imām Ibn Taymiyya (1980) in his famous book *Muqaddimat Uṣūl al-Tafsīr*.<sup>74</sup>

Therefore, to infer from the words of the *Hadīṭ* of *Ma'ād* that *Iğtibād* means only to forge a personal opinion, and it is a guidance by reason, which is other than Qur'ān and Sunna, is explicitly wrong. All those definitions which we quoted earlier attributing to the *Salaf* had one common point that *Iğtibād* means to find a solution to an issue in the light of Qur'ān and Sunna or the sources originated from them. A mere logical opinion is not a *Ṣari'a* verdict. Similarly, to deduce from the words that first Qur'ān is to be looked at the solution and *Hadīṭ* is only to be referred if it is found to be non-existing in it, is also wrong because, to find a solution it is necessary that both are to be referred at the same time as both are the commentary of each other. Moreover, it is also wrong to deduce from the mentioned narration that there are many issues in which Qur'ān and Sunna are silent and in them one has to use his reason and view which the basic source is for them.

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<sup>72</sup> Imām Buḥārī, Imām Tirmadī, Imām Ibn Ḥazm, Imām Ibn al-Mulqin, 'Allāma Ğawrqānī, and 'Allāma Albānī have criticized and rejected this *Hadīṭ* whereas Imām Taḥāwī, Imām Ibn Abd al-Barr, Ibn al-'Arabī, Imām Ibn Taymiyya, Imām Ibn al-Qayyim, Imām Ibn Kaṭīr, Imām Ḍahabī and Imām Ṣawkānī have accepted this *Hadīṭ* because of its reputation.

<sup>73</sup> A narration *Ḥasan* for a reason other than itself.

<sup>74</sup> Preface of the Principles of *Tafsīr*.

Precisely, the synoptic meaning of the *Ḥadīth* is correct, but because of the weakness in the chain it isn't appropriate to conclude from the words of the *Ḥadīth* that human reason is also a source of *Ṣarī'a*.

In the same way, Prophet of Allah SAW said that soon a time would come when a man would be sitting by a pillow and one of my *Aḥādīth* would be quoted in front of him, and he would say, among you and among us, the Book of Allah exists so whatever this Book says *Ḥalāl*,<sup>75</sup> we also call it *Ḥalāl* and whatever *Ḥarām* we find it being in the Book of Allah, we also call it *Ḥarām* (and it is indeed enough for us). (Beware!) Whatever the Prophet of Allah declared *Ḥarām*, it is exactly as *Ḥarām* as something which the Book of Allah declared as *Ḥarām* (Ibn Māğā).

As far as the parameter of *Iğtibād* is concerned about the view of Modernists, Ğāwayd Aḥmad Ğāmdī *et al.* write: The only job of Scholars and Researchers in *Ṣarī'a* is that they are to specify the meaning and the subject of the *Ṣarī'a* ruling by their knowledge and inference. There is no room for any type of alteration. However, wherever *Ṣarī'a* is silent, they can legislate according to *Dīn* and *Maḏhab*, culture & civilization and custom & tradition (Ğāmdī; Manzūr 2001).

Why they want forcefully to keep Qur'ān and Sunna silent? Because once it is approved that they are silent, then pursuing *Ṣarī'a* ruling through common sense, philosophy or under the ideology of human nature would all be started. Some intellectuals are found to be intelligent among their fellow beings that until this thought 'Qur'ān and Sunna have a solution of every issue' is prevalent; their views would not be given importance. So the easiest way is to publicize Qur'ān and Sunna is not comprehensive enough to have each solution, *i.e.* Islam is not a complete code of life.

Islam is a complete code of life that provides guidance in each aspect of life. In some issues, Qur'ān and Sunna guide us clearly and in others, the methodology of Qur'ān and *Ḥadīth* is that they both state such as principles, causes and codes with which *Ṣarī'a* rulings revolve; therefore, any issue which comes under a general rule has the same ruling which the common base has.

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<sup>75</sup> Allowed.



Similarly, if *Šari‘a* has made something *Ḥarām* because of its reason, then wherever such and such cause is found to be prevalent that too would be applied the same ruling. Hence, sometimes Qur’ān declares something *Ḥarām* openly and sometimes mentions the ‘*Illā* which caused it to be *Ḥarām*, that is why whenever, whenever we’ll classify anything as *Ḥarām* on the basis of these ‘*Ilal*, a part of our acceptance that such and such was classified *Ḥarām* by *Naṣ* and such and such was by *Qiyās*, but we shall not deny the fact the ruling of both exists in *Šari‘a* in spite that one is apparent and other on the basis of *Qiyās*. Same is the case with issues, which are inferred in the principles like *Maṣlahā*, *Sadd al-Darā‘i‘* and ‘*Urf*, etc.

Just like it is disallowed to do *Iğtibād* in the presence of *Šari‘a Nuṣūṣ*, it is also non-permissible to do *Iğtibād* in issues on which *Iğmā‘* is established unless the agreed-upon issue was related to a custom. An intellectual from India by name Rāšid Šād (2008) has stated that all past jurisprudential thoughts and opinions should be disregarded at once and a new commentary of Qur’ān with modern explanations should be written that should be compatible with current issues, cultures and civilization and should be interpreted in a way that there shouldn’t be even a single past scholar reference mentioned in the commentary.

However, the question is, the time these reformers would take for the modern interpretation, they would be long gone from this world and would be mentioned as old ones, hence for the future generation, their new interpretation would be considered nothing but an old commentary practicable for their time but not for modern. And then once again some would say to go for the modern interpretation. This would go on and on until the Last Day, ultimately if there had been six or seven school of Islamic jurisprudence in fourteen centuries, then in the next century, there would be a dozen more, and it would be impossible for a layman and a convert Muslim to find Islam in all of these commentaries.

Some of the scholars have said that undoubtedly there is no scope for *Iğtibād* in the interpretation of *Qat‘ī l-Dalāla*<sup>76</sup> and *Qat‘ī l-Tubū‘*<sup>77</sup> text but in the application of this, one does find room for *Iğtibād* (al-Rāšdī 2007).

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<sup>76</sup> Definitive in meaning.

<sup>77</sup> Definitive in authenticity.

There is no doubt that in the application of such text *Iğtibād* is made and the basic motif of *Tahqīq al-Manāt*<sup>78</sup> is this. We do find material disagreement with these scholars in their conception of *Iğtibād*, however, the words used by these scholars to purpose are to be revised. We state the same idea in some better words that it is not correct to say that sometimes such Divine verdicts are changed in their application because of the public interest and change in situations and customs. We say that *Šari‘a* rulings do not change because of such factors; rather Scholars' *Iğtibādat* and *Fatāwa*<sup>79</sup> do change. In the same way, those rulings which are related with customs and situations in the first place, they do not change either as they are flexible by nature. For example, Allah SWT says: "And they (women) have rights (over their husbands as regards living expenses, etc.) similar (to those of their husbands) over them (as regards obedience and respect, etc.) to what is reasonable (2: 228)."

Allah SWT specified some rights of women clearly, whereas the rests are left depending on society's norms, Therefore, with change in norms would constitute a change in rights, meaning that *Šari‘a* from the start had maintained such flexibility, which could engulf all times and situations to come until the Last Day. Similarly, *Mašlahā* are sure to be considered, but on such a basis, *Šari‘a* rulings shall not be altered. For example, second Caliph ‘Umar R.A. discontinued the punishment of cutting hands of thieves for a time being when the drought hit in his time. It is wrong to say that ‘Umar R.A. completely abolished this practice, rather in the application under this rule; there were several restrictions which he had to consider. And *Māni*<sup>80</sup> itself is a part of *Šari‘a* rulings and is not an alteration. In the same way, Prophet SAW did not punish an old man by hundred lashes that committed adultery and ordered that he should be hit once by a branch of a tree, having hundred nodes. In this case, the ruling did not alter, rather only because of his weakness and illness was given a *Ruḥṣā*<sup>81</sup> and *Ruḥṣā* itself is a *Šari‘a* ruling just like *Azīma*<sup>82</sup> is and is also separate from it.

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<sup>78</sup> Ascertaining the effective cause.

<sup>79</sup> Legal verdicts.

<sup>80</sup> Hindrance nullifying the legal ruling.

<sup>81</sup> Religious concessionary law.

<sup>82</sup> Original Law.

From the mentioned *Aḥādīṭ* it is wrong to deduce such principles, which allow alteration and amendments in *Šari‘a* rulings and because in such cases where Prophet of Allah instead of punishing by lashing, he punished by a branch of a tree does not justify in any case that one can change *Šari‘a* rulings as well. We say that *Šari‘a*<sup>83</sup> has authority; his every verdict is legislation. Therefore, if Prophet SAW mentioned *Šari‘a* ruling of an old man, then this verdict would apply to all others of same category. Whereas a *Muğtahid* is a *Mukallaḥ*<sup>84</sup>, who does not have any right of altering *Šari‘a* in the name of *Maqāṣid al-Šari‘a*<sup>85</sup> or ‘*Urf*.

We also say that in case of such old people, scholars have to find the ruling from the depths of *Šari‘a*. Some of the scholars have completely denounced consideration of objectives of *Šari‘a* which is also an extreme and on the other hand, some have given it so much importance that by the name of the latter, they have started ignoring text of *Šari‘a*.

## 5. Conclusion

In present time the major misperception in the conception of *Iğtibād* arises because of its definition and outlines. What is *Iğtibād*? In the people of the knowledge, three thoughts are prevalent concerning its theory:

- a) Is *Iğtibād* said to the addition to Qur’ān and Sunna?
- b) Or *Iğtibād* said to the amendment and modification in Qur’ān and *Ḥadīṭ*?
- c) Or *Iğtibād* said to pursuing *Šari‘a* Rulings from the depths and vastness of Qur’ān and Sunna?

There is no doubt about the fact that *Šari‘a* is complete and there is nothing left of it. The Prophet is the last messenger of Allah and there is none who would come after him. Sir Iqbāl and Dr Ğāwayd Iqbāl are of the view that some detailed rulings of Qur’ān were meant to be for the old times of Prophet SAW which were compatible with the culture and customs of his time and were no longer practicable for the present day Therefore, such *Šari‘a* rulings are to be reformed accordingly.

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<sup>83</sup> Legislator.

<sup>84</sup> Legally commissioned person.

<sup>85</sup> Objectives of *Šari‘a*.

In other words, we can restate that *Šari‘a* is imperfect as per their opinion and along with it, it necessitates its modification impliedly. Therefore, for both, *Iğtibād* is to vary the verdicts of *Šari‘a* in correspondence to the changing norms and customs at the time. Altāf Aḥmad is of the view that the verdicts of the Prophet SAW as in the interpretation and explanation of the concise rulings of the Qur’ān were applicable for his times only. Therefore, today by disregarding all such judgments one has to interpret according to the norms and traditions of the modern times. For example, the Qur’ān ordered Muslims to pay *Zakā* but did not specify any amount and Prophet SAW specified the quorum according to his time. Today, we have to do it accordance with our time and must alter what was useful and applicable for that era, and this is called *Iğtibād*.

To distinguish between the elaborated rulings of Qur’ān and *Ḥadīṭ* and to say that the former is infallible and the latter is contrary has no evidence in its base. Rather evidence is established against it as we have mentioned earlier. Qur’ān and *Ḥadīṭ* are both alike when it comes to consideration of consistency. Hence to declare the rulings of Sunna as interim is as if one proclaims it to be deficient.

By Ġāmdī’s definition, it seems that it does not consider *Šari‘a* to be comprehensive. Because what caused him to say that if Qur’ān and *Ḥadīṭ* are silent on an issue then one would do *Iğtibād*? If Qur’ān and *Ḥadīṭ* are silent on an issue; it would mean that Qur’ān and *Ḥadīṭ* are not comprehensive enough to give the solution of every issue and is engulfed in a boundary. Which would also mean that the completion of *Šari‘a* would never end and the modification and amendments would be made in every time and situation until the Last Day? These two extreme conceptions are against the fundamental ideology of Islam. The creed of seal of prophet-hood also demands that *Šari‘a* is complete and there is no need of any new reformation or addition in *Šari‘a*. Unfortunately, some of the scholars, in spite of keeping creed of seal of prophet-hood, they suggest in giving rights of Prophet to the *Muğtabidīn*.

In both extreme cases, the methodology of *Salaf* R.A lies in between *i.e.* whenever any new issue is raised about which there is no clear solution or ruling is given in *Šari‘a*, then to derive from the depths and vastness of Qur’ān and *Ḥadīṭ* is called *Iğtibād*.

Derivation is a conclusion derived from something like if water lies in the well, then the derivation of water would mean to take out water from the depths of the well, not from external source other than the well. In the same way, to educe *Šari‘a* ruling from Qur’ān and *Hadīth* is *Iğtibād*, not from any other external source like logic or personal reason. In some issues, Qur’ān and Sunna guide us clearly and in some the methodology of Qur’ān and *Hadīth* is that they both state such principles, effective causes, basis and maxims which with which solution of the present and future problems revolve. Similarly, if *Šari‘a* has made something *Harām* because of an effective cause, then wherever such and such effective cause is found to be prevalent that too would be applied the same ruling. Hence, sometimes Qur’ān declares something *Harām* openly and sometimes mentions the effective cause which caused it to be *Harām*, that is why whenever, whenever we’ll classify anything as *Harām* on the basis of these effective causes, a part of our acceptance that such and such was classified *Harām* by explicit text and such and such was by analogical deduction, but we shall not deny the fact the ruling of both exists in *Šari‘a* in spite that one is apparent and other on the basis of *Qiyās*. Same is the case of those issues which are deduced in the light of other secondary *Šari‘a* sources. The authority of general principles like *Qiyās*, *Iğmā‘*, *Mašlahā*, ‘*Urf*, *Šarā‘i man Qablunā*<sup>86</sup> and *Istiḥsān*, etc. are also approved by the *Nuṣūṣ* of Qur’ān and Sunna. And scholars have gathered origins and evidence of their authority in the books of Principles of Islamic Jurisprudence efficiently.

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<sup>86</sup> Revealed laws preceding the *Šari‘a* of Islam.

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