

## **Coherence and Relativity of the Islamic Legal Theory: A Study of Methodology in Socio- legal Context**

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### **I. PROLOGUE**

The literature compiled on Usul al-Fiqh from 2nd to 6th century A.H is indeed a significant landmark for evolution of the Islamic legal theory. The concept of Ijtihad as methodology reveals the comprehensiveness of the Islamic legal system covering the objectives (Maqasid) of the Revelation (Wahy), as well as Welfare (Falah) of the society. The evolution of the Fiqh methodologies including Ijtihad was to address, interpret and explore all such possibilities, where the text (Matan) needed further explanation (Tashrih) for the legislation process. This exertion also facilitated the idea, as how a particular legal deduction is to be applied in its appropriate socio-legal perspective. It is due to this particular intent that Islamic jurisprudence attained all the necessary features required to construct sound and evolving socio-legal mechanism. The concept of Ijtihad in socio-political matters stimulated and re-blooded Islamic institutions to attain the inclusive universal character. The Fuqaha (jurists) utilized their utmost intellectual worth to ensure the maximum socio-legal benefit while deducing law from a variety of generally accepted sources. The deduction of the legal precepts and methodology has been a monumental endeavor of the Muslim jurists. The jurists knowing context of the text, its possible interpretations and social workability made valuable contribution to the legal theory and its application which amplified and maintained connection between the Shari'ah and the society. For this objective, The Muslim jurists authored and annotated scores of the treatises and exposed their utmost concern to deal with the problems that arise from social evolution. In this context, the socio-political developments especially during the Ummayyad (661-750 A.D), the Abbasid (750-1258 A.D) and the Sammanid (874-1005 A.D) periods were having perpetual significance. The socio-economic issues during this era influenced and shaped the discourse of legal theory. It was during this period, that the interaction with different cultures, ethnic groups and regions widened the scope of Islamic legal discourse enabling it to assume a standardized universal character. The Muslim legal experts took inspirations from changing facet of the societies and interpreted legal discourse to suit the circumstances. The Muslim jurists were certain in believing that Islamic jurisprudence must reveal the fate of confronting situations (Mahazr) with an absolute potential. The ultimate aim of Ijtihad is to identify or unveil a commandment (Hukm al-Shara'i) and expose its context in relation to the social adaptability. This is how the Mujtahids approached and deduced from the concept of social change.

### **II. LEGAL FRAMEWORK**

The Muslim jurists, on the one hand, contributed to the expansion of the legal theory and on the other hand expounded the possibility of further advance by virtue of writing commentaries, selective principles and methods to study the subject with contemporary relevance.<sup>1</sup> The mode of operating upon the sources, consideration of overall socio-political and legal discourse, its evaluation by means of consensus (Ijma) and analogy (Qiyas), has been the foremost concern of the Muslim jurists.<sup>2</sup> As a result, a scholarly conviction full of socio-legal expertise gave birth to an evolving trend surpassing world's utmost judicial codes and mechanisms. The qualified Mujtahids, in every era, discussed the formulation and deduction of laws, from, and in accordance with sources to suit the exigent circumstances.<sup>3</sup> The deductions into the primary sources, books on Usul al- Fiqh, principles of analogy (Qiyas) and consensus (Ijma) gave fresh sanctions and definitions to a variety of socio-legal contents not reflected in the earlier phase of the Islamic history. The magnificent aspect of their contribution is validating the concept of change (Taghaur) and its impact over socio-legal institutions and interpretations.<sup>4</sup> The Muslim jurists believed that the nature of laws change with the change in time (Wa yeta badal al-ahkam bi-tabdil al-azminah). Indeed, this legal precept has brought relevance as well as coherence to Islamic jurisprudence.<sup>5</sup> The Muslim jurists implied that the content (Asl) and context (Tanazur) of a legal

verdict is to be properly understood. The deductions experienced through this scheme can be utilized and interpreted for the socio-legal benefits (Maqasid) in every age.<sup>6</sup> The Muslim jurists who thought and wrote in a particular social environment is a valuable but not an ultimate binding upon the people who came centuries after them (Imkan al-Ijtihad). However, their methods of legal deduction and modes of operating upon the sources have a vital role for the preparation of laws for present day society and social needs.<sup>7</sup> The structure of the Islamic legal theory has always been in consonance with the idea of social workability that treats humans as the active social forces created to ensure justice ('Adl) in almost all the aspects of life. Hence, Ijtihad emphasizes upon analyzing and evaluating socio-legal contexts. Knowing a commandment (Hukm) is not the ultimate goal, rather, it is to understand the nature which justifies its position of being lawful or unlawful. The idea of Ijtihad enables us to act on laws positively, and lays stress to know and to understand the reasons ('Ilal) lying behind them as what the general areas and interests they serve.<sup>8</sup>

### III. QURANIC PERSPECTIVE

In the entire realm of Islamic knowledge system ('*Ulum al-Islami*'), the field of Islamic jurisprudence is vibrant and evolving. '*Ilm al-Fiqh*' or the science of Islamic jurisprudence keeps law and the society intact to develop a spontaneous link between individuals and the institutions. As a special branch of the Islamic knowledge system, it has developed through various phases and history of its development simultaneously runs along with the history of Islamic civilization.<sup>9</sup> The Arabic word '*Fiqh*' is a derivation from '*Tafaquh*' which literally means the 'absolute understanding'. The term has also been used to denote the '*appropriate understanding*' of the commandments of Allah as well as to know the essence of these commandments (*Ahkam*) prescribed in *Quran and Sunnah*.<sup>10</sup> Technically, the term '*Fiqh*' refers to the knowledge of deducing laws and verdicts from the basic sources of *Shari'ah* namely the *Quran* and the *Sunnah*.<sup>11</sup> As such, the science of Islamic jurisprudence affirms *Quran* and *Sunnah* as the origin and the basic source of the *Shari'ah*. The primary sources mentioned here constitute the foundation as well as the core of the *Shari'ah*. The *Quran* was revealed in piecemeal mode in verses (*Ayat*) and sections (*Surahs*) required as per the circumstances to facilitate the understanding of the *Quranic* text, value its relevance, and implant gradually its norms for the social implementation. The revealed book has been preserved, word for word, in its complete and original form to serve as the source of guidance for all the times and situations. The *Quran* provides a general theoretical framework containing universal and practical rules, principles, exhortations and commandments which are manifest, sublime and blessed.

The *Quranic* verses have been classified into three categories as per the plan of instruction; the articles of faith, the ethical and legal instructions, and the regulations concerning state and society. The bulk of the *Quranic* content is ethical and moral. The legal prescriptions deal as per the situation enabling society to identify itself as per the *Quranic* reflection. The *Sunnah* consists of all the authentic reports of the acts, utterances and tacit approval of the Prophet Muhammad (S.A.W). Initially, there existed a distinction between the terms *Sunnah* referring to the practices of the prophet, and the *Hadith* denoting his utterances as narrated by his companions. Gradually, with the passage of time, however, the entire *Sunnah* was reflected in the *Hadith* to such an extent that by the 5<sup>th</sup> century A.H, the two terms became completely synonymous. The *Quran* is definitive as well as final and authoritative as a whole and in its detail. The *Sunnah* is neither definitive nor final or authoritative in its detail but must be taken as a whole. There are three possible relations of the *Sunnah* to the *Quran*. The first is where the *Sunnah* agrees with the *Quran* in all respects, and in such a case the two corroborate and reinforce the given point. The second is where the *Sunnah* explains and illustrates the *Quran* and the third is where the *Sunnah* legislates on a matter on which the *Quran* is silent. No other possibilities exist for the *Sunnah* can never run counter to the *Quran*. Hence, the jurists and *Mujtahids* derived the principles of legislation from the primary sources, the *Quran* and the *Sunnah* by exercising *Ijtihad*.

### IV. METHODOLOGY OF ISLAMIC JURISPRUDENCE

The concept of *Ijtihad* as a methodological tool is deeply rooted in the essence of the *Shari'ah*. It occupies a significant status in the Islamic legal theory as an imperative source. The secondary sources of the *Shari'ah* include all those methods and procedures employed by the Muslim jurists to comprehend and operationalise the divine will as contained in *Quran* and *Sunnah*. Hence the word *Fiqh* (Islamic Jurisprudence), during earlier phase of the Islamic era (1<sup>st</sup> century A.H) had a comprehensive and vast meaning; to denote besides the *Quran* and its interpretation, the accurate knowledge of the legal decisions passed on by the Prophet (S.A.W) and his companions to the forthcoming generations.<sup>12</sup> To interpret the *Qur'an* or the *Sunnah* with a view to deduce legal verdicts (*Ahkam al-Shari*) from the indications (*Isharah al-Nass*) the science of jurisprudence emerged as a substantial discipline trying to reveal the best that could suit the circumstances without any contradiction to the basic sources. So it is necessary that the language of the *Qur'an* and the *Sunnah* be clearly approached and understood. To be able to utilize these sources, the *Mujtahid* (legal expert) must obtain a firm grasp of the words of the text and their precise as well as the broad implications. For this purpose,

the *Ulama* of the *Usul* include the classification of words and their usages in the methodology of *Usul al-fiqh*. The rules that govern the origin of words, their usages and classification are primarily determined on linguistic grounds and, as such, they are not an integral part of the law or religion. However, they are instrumental as an aid to the correct understanding of the *Shari'ah*. Normally, the *Mujtahid* will not resort to interpretation when the text itself is self-evident and clear. However, by far the greater part of *fiqh* consists of rules, which are derived through Interpretation and *ijtihad*. As will be discussed later, *ijtihad* can take a variety of forms, and interpretation, which aims at the correct understanding of the words and sentences of a legal text, is of crucial significance to all forms of *Ijtihad*. The function of interpretation (*Tashrih*) is to discover the intention of the Lawgiver - or of any person for that matter - from his speech and actions. Interpretation is primarily concerned with the discovery of that which is not self-evident. Thus the object of interpretation in Islamic Law, as in any other law, is to ascertain the intention of the Lawgiver with regard to what has been left unexpressed as a matter of necessary inference from the surrounding circumstances. Thus, the legal verdicts of *Quran* and *Sunnah* are to be properly interpreted to make any possibility of further legal discourse. Simultaneously, along the compilation of *Hadith* and *Sirah* literature, the legal precepts (*Ahkam al-Shara'iah*) were preserved and passed on through the authority of most learned and reliable men to be consulted while resolving and providing the legal references on the specific occasions.<sup>13</sup>

In fact, the science of Islamic jurisprudence, in its developed form, came to recognize a variety of sources, methods and approaches from and through which laws and rulings may be derived.<sup>14</sup> with the result of this process, different schools of law (*Madahib*) within Islam formulated their legal interpretations to unveil the nature and derivatives of the revealed commandments. The primary sources of the Islamic law, *Quran* and *Hadith* provide the basis and subject matter of the legal theory, While as the secondary sources, through which the law may be derived, represent the methods of *Qiyas* (reasoning) or the sanctioning instrument of *Ijma* (consensus) and are still identified as the valid sources of the Islamic law.<sup>15</sup> In addition to this, *Ijtihad* (exertion), *Urf* (custom), *Istehsan* (juristic preference), *Istidlal* (referring) and *Masalah al- mursalah* ( the law of suitability) are among the approved legal tools that have been identified and applied as the alternate methods for the deduction of law in all the schools of Islamic jurisprudence.<sup>16</sup> The classical juristic schools of the Islamic jurisprudence interpreted and discussed all these alternate vehicles to support their arguments while conforming the appropriate judgment . As a result, both, precept (*Hukm*) and time (*Zaman*) acted together and formulated the deducting principles for understanding and resolving the confronting issues. This process resulted in the development of the Islamic legal theory and provided the chance (*Imkan*) for rediscovery of further debate in this discipline. In fact, the development of Islamic jurisprudence can be divided into various distinct phases that extended its scope and explored new dimensions to its vast study. This process began during the first century/622A.D with the fresh revelations of the Quran in order to promote the concept of Socio-economic justice and the unity of God. In the primary phase, the legislation took place through the Quranic revelations (*wahy*) and the prophetic instructions defined their ultimate application. The second phase extends from the Prophet's demise and ultimately covers the time of the *Suhabah* (companions) and their successors (*Taba'in*). This particular phase of the legal history is crucial, and is earmarked with the compilation of the *Nusus* (legal verdicts), *Rai* (opinions), *Fatawa* (decrees and decisions) and *Ijtihad* (exertion) of the companions and their successors to deal with the socio-economic and political issues.<sup>17</sup>

#### **4.1 Phases of the Legislation and legal discourse**

The notion of *Ijtihad* has been linked with the primary phase of the legislation. The legislation, especially under the first four caliphs (632-660 A.D) and interpretation (*Tashrih*) of the learned companions of the Prophet (*Athar al-Sahabah*) is considered to be the much authentic and reliable phase of the *Ijtihad*. This phase is considerably significant for the exploration of adopted methods in an absolute legislative form. The third phase of the social interaction saw many appropriate and revolutionary trends that also widened the scope of legal discourse in Islam. The Successors (*Taba'in*), and their Followers (*Taba taba'in*), introduced innovative legal approaches to expand the spectrum of Islamic jurisprudence as a special study. With the extension of the Muslim caliphate (Umayyad era 661-750 A.D), new ideas and socio-economic challenges confronted the state and the exigent circumstances demanded speedy disposal of issues. Muslim intellectuals, at this moment, thought for the alternate methods of deduction to settle the issues in light of the primary sources.<sup>18</sup> Islamic jurisprudence, as it occurs, has never been a rigid, stagnant or inexplicable concept. It is firmly rooted and established upon the concrete foundations of revelation, reason and public good. The legal expertise saw an upsurge and exemplary concern with the beginning of Second century A.H. In this learned venture, both Arabs and non-Arabs (*Ajam*) contributed for developing methodological tools through and by which the science of Islamic jurisprudence came to be recognized within the Islamic sciences.<sup>19</sup> With the process of the expansion of the caliphate and administration of the newly conquered territories, the legal expertise had to face a variety of challenges. The matters of fiscal, socio-economic nature widened the scope of legal discourse, and a dynamic study was carried out to transmit this discipline to the far off regions of the Muslim caliphate. Around 160 A.H,

the science of Islamic jurisprudence entered to a systematic phase as the doctrinal treatises (*Kutub al-Usul*) added splendor to the study of Islamic legal philosophy.<sup>20</sup>

Consequently, it was during this period that three renowned geographical divisions Hijaz, Iraq and Syria established centers par excellence pertaining various branches of knowledge. Iraq, a predominant centre of learning, had three recognized scholastic seats at Basrah, Baghdad and Kufa.<sup>21</sup> Hijaz (Arabia), on the other hand, had two great seats of learning at Makah and Medina. This particular region had tilt towards the literal narratives (*Zahir*) of the prophetic traditions and had gained conformity and say over the jurists. They, sometimes, as has been reported by the contemporary sources, resisted against the interpretations of the Iraqi jurists who conformed the approved social experiences as valid sources of the law. The *Muhadithin* (traditionists) hardly borrowed any ruling from elsewhere and remained strict adherents of *Quran* and *Ahadith*.<sup>22</sup> Syria, as the caliphal seat of the Umayyads (661-750A.D) had a centre of jurisprudence at Damascus where the process of legislation produced towering figures of the high intellect.<sup>23</sup> The Iraqi School of Islamic jurisprudence is ascribed to Hazrat 'Ali (d.661 A.D), 'Abdullah bin Mas'ud (d.671 A.D) and their disciples. The further extension of this school was lead by 'Alqamah (d.62 A.H), Shuraih bin Harith (d.78 A.H), Aswad bin Yazid (d.75 A.H), Masruq (d.63 A.H), Ibrahim Nakha'i (d.96 A.H), Sh'abi (d.103 A.H), Hamad bin Salma (d.120 A.H), Abu Hanifa (d.150 A.H) and his reputed disciples Abu Yusuf (d.182 A.H), Muhammad bin Hassan Shaybani (d.189 A.H ) and Zufr (d.192 A.H ).<sup>24</sup> As a result, the Iraqi School transmitted authentic and reliable interpretations of the law to triumph over the exigent socio-political circumstances in and outside Arabia.

## V. EXPANSION AND THE ISLAMIC LEGAL THEORY

The Islamic legal theory got an imperative distinction with the expansion of the Caliphate. As the boundaries of the Muslim caliphate extended towards *Mawara al-Nahr* (Transoxiana/Central Asia), *Sindh* (Indus) and *Andalus* (Spain), a variety of socio-economic and political issues widened the scope of legal discourse.<sup>25</sup> However it was not the wealth of the region that attracted the first Muslims to Central Asia but the drive to seek the pleasure of Allah by conveying the message of the ultimate truth; *Al-Islam*. The conquest of Central Asia and the implementation of Islam were completed in the 8<sup>th</sup> century A.D. This process brought this region a '*Belief*' and culture that until now continues to be dominant and overriding. The Muslims first entered *Mawara al-Nahr* in the middle of the seventh century through raids during their conquest of Persia. The Soghdians and other Iranian people of Central Asia were unable to defend their land against the *Khilafah* because of internal social divisions and lack of a strong indigenous leadership. The Muslims, on the other hand, were led by a brilliant general, Qutaybah bin Muslim, and were highly motivated by the desire to spread the faith of Islam. The new socio-religious and economic institutions brought by the Muslims revolutionized the local customary units and extended the chances for the cultural interaction throughout the region. The native cultures got replaced in the ensuing centuries as Islam molded the people into a single force; the Islamic *Ummah*. However, the destiny of Central Asia as an Islamic region was firmly established by the *Khilafah* (Caliph Abu al-'Abbas) victory over the Chinese armies in 750 A.D in a fateful battle at the Talas River.

Under the Islamic rule, Central Asia was an important centre of culture and trade for centuries. The language of government, literature, and commerce, originally Persian became Arabic (however as the Abbasid Caliphate began to weaken and Arabic became neglected, the Persian language began to regain its pre-eminent role in the region as the language of literature and government). *Mawara al-Nahr* continued to be an important political player in regional affairs. During the height of the Abbasid Caliphate in the 9<sup>th</sup> and the 10<sup>th</sup> centuries, *Mawara al-Nahr* experienced a truly golden age. The city of Bukhara became one of the leading centers of learning, culture, and art in the Muslim world, its magnificence rivaling contemporaneous cultural centers such as Baghdad, Cairo, and Cordova. Some of the greatest historians, scientists, and geographers in the history of Islamic culture were natives of the region, and one of the copies of the Noble Quran originally prepared in the time of Caliph 'Uthman has been kept in Tashqand. The new Islamic spiritual and political situation in Central Asia determined a new technological and cultural progress. It marked the production of the Samarkand paper (since the 8<sup>th</sup> century A.D under the Chinese influence the people of Samarkand learned to manufacture paper from the rags), which supplanted papyrus and parchment in the Islamic countries at the end of the 10<sup>th</sup> century A.D. Furthermore, the scientists who were citizens of the *Khilafah* such as al-Khawarizmi, al-Biruni, al-Farabi, Abu 'Ali bin Sina (Avicenna) brought fame to the area all over the world, generating respect across the world and many scientific achievements of the epoch made a great impact on the European science. It is pertinent to mention that the astronomical tables of Samarkand astronomers from Ulughbek's observatory had been under the consideration of European astronomers till 18<sup>th</sup> century A.D. During the comparatively peaceful era of Islamic rule, culture and the arts flourished in Central Asia. The societal experiences at this stage were altogether different in comparison to the early Muslim society that experienced less interaction with the foreign cultures. The legal experts, at this moment, had to identify and respond to the facade of socio-cultural occurrences as well as to defend their argument with approved legal directives. The challenge of addressing this

issue has been competently resolved, and the Muslim Scholars rediscovered alternate legal methods, which did not confront the basic sources of the law. The jurists hold the view that *Quran* and *Hadith* were not the ‘only’ rather the basic and primary sources of the legislation in Islam.<sup>26</sup> The sociality, itself came to be identified as a valid source of law and the *fuqaha* (Jurists), at this moment, surpassed the *muhadithin* (traditionists) regarding the acceptance of the alternate theories of the legislation.

## 5.2 Competence and Methodology of the Juristic literature

The deductive techniques and legal expertise of the Iraqi school of thought (*Hanafi*) flourished in *Mawara al Nahr (Transoxiana)* during second/eighth century A.D. The eminent disciples of Imam Abu Hanifa (d.150 A.H), the founder of the Hanafi School of Islamic law carried out this tremendous task. The vast region across the rivers Oxus and Jaxarates, what now is Central Asia, had been a predominant region of the Muslim caliphate of the Umayyad dynasty (651-750 A.D) annexed to it by Qutaybah bin Muslim around 712-715 A.D. With the establishment and expansion of the Muslim rule, the scholars belonging to this region, showed utmost concern regarding the dissemination of the Islamic sciences. They had been firmly rooted and associated with the reputed scholars of Baghdad, Basra and Kufa. As a result they explored the legal expertise much efficiently than the traditionists of Makkah, Medina, and Damascus. The legal treatises transmitted to this region opened a dynamic episode in the groundwork and formulation of the legal theory in Islam. The scholars and jurists of Central Asia consolidated diverse academic disciplines and added new dimensions to the Islamic jurisprudence.

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A general survey of the Islamic legal and methodological literature will narrate the splendid scholarship of the Central Asian Muslim scholars and jurists in almost all the aspects of knowledge. In the field of *Tafsir* (Quranic exegesis), the renowned scholars including Jarullah Zamakhsheri (d.467 A.H), Abu Bakr Razi (513 A.H), Muhammad bin Abu al- Fazl Bukhari (d.418 A.H), Abu Bakr Qafal (d.483 A.H), Abu Ishaq Maruzi (d.318 A.H) and Ahmad bin Muhammad Farghani (d.531 A.H) excelled and surpassed their contemporaries. The style of the Quranic exegesis presented by these scholars has been recognized all over the Muslim world and is identified highly competent, scholastic and rational in approach. A noteworthy feature of their deductions is the proper understanding of the language system and rational interpretation of revealed discourse. This verily has maintained the intellectual standards besides remaining loyal to the original sources.<sup>28</sup>

Similarly, in the field of *Hadith*, the scholars of this region contributed a commendable composition that has everlasting relevance. The grand traditionist, Muhammad bin Isma‘il Bukhari (d.256 A.H), compiled *Jami al-Sahih*, still believed next to the authority of Quran. Muslim bin Hajaj al-Qushayri al-Neshapuri (d.264 A.H), authored *Sahih*. Abu ‘Isa Tirmizi (d.279 A.H) presented *Jami*. Al-Nasai (d.303 A.H), produced *Sunan*. Ibn Maja (d.273 A.H) and Abu Dawoud (d.275 A.H) also produced *Sunan* treatises in their own style. The Scholars, from far off places associated themselves with Central Asian scholars to meet out the exemplary standards of the literary criticism. In addition to this material, separate books concerning *Hadith* methodology appeared on the scene to glorify this respective field.<sup>29</sup>

The science of Islamic jurisprudence too has a deep- rooted, dynamic and vast history in Central Asia. From second/8<sup>th</sup>-seventh/13<sup>th</sup> century, the jurists of this region, debated over the alternate tools of law besides *Quran* and *Sunnah*. The Central Asian Scholars, equipped with the deductive techniques of the Iraqi legal thought, thought much ahead of traditionist approach and made valuable contribution to the legal theory. During the Abbasside regime (750-1258 A.D), the principal cities of Central Asia, Andijon, Bukhara, Fergana, Khiva, Samarqand, Shash, Merghinan, Merv, Neshapur, Osh, Tashqand and Tirmiz were seats par excellence. The Abbasside rulers patronized the study of revealed and human sciences and showed utmost concern regarding the discipline of Islamic jurisprudence. Thus, narrates Ibn Khalikan, “from Baghdad to Bukhara, the most learned figures emerged and the science of Islamic jurisprudence remained widely acclaimed and preferred discipline in Islamic sciences.”<sup>30</sup> The development of a rich literary tradition in the field of Islamic jurisprudence dates back to the formative period of the legal thought that identified absolute methodologies to resolve things in conformity with the primary sources. As a much reliable system of socio-juristic thought, as affirms Alfred Von Kremer, “The highest and loftiest achievement of which Islam was capable.”<sup>31</sup>

With ascension of the Abbasids to the caliphal throne in 750 A.D, scholarly and intellectual activities began to flourish throughout the Muslim lands. After consolidating the political and strategic fronts, the Abbasside rulers turned towards the intellectual, artistic and literary activities. The reign of the first two caliphs, Abu al-‘Abas (750-54 A.D) and Abu Ja‘far Mansur (754-75 A.D) consolidated the administrative fronts while as their successors, drew considerations from scholastic and intellectual tradition. From the reign of fifth caliph Harun al-Rashid (786 A.D) to the ninth, al-Wathiq (842 A.D), the intellectual legacy attained the zenith of progress and Central Asian cities disseminated high academic pursuits in almost all the disciplines of Islamic learning.<sup>32</sup> The caliph Harun al-Rashid (786 A.D) had tilt towards the study of legal discourse, logic and philosophy. These disciplines, as depicts their nature have much to share upon the basis of argument and analyses. This inclination was mainly due to the interaction with a variety of ethnicities and cultures that entered

Muslim domains due to expansion and tolerant attitude. The situation demanded a logical and speedy disposal of various issues confronting the rulers and the legalists that time. Being masters of a vast and gigantic empire, the circumstances were altogether a big challenge for the Abbasids. They realized the fact that while ruling such a vast landmass, policies must be in accord with much realistic approach and eminent scholars are to be deployed to understand socio-legal relationships. Islam now had become a world phenomenon and its legal system a genuine social accord where every verdict must have conformity from both revealed as well as rational standards. Abu Yusuf (182 A.H) could realize all this and his engagement as *Qazi al-Quzah* (The Chief Justice) sustained the practical possibilities of Islamic legal order much efficiently. Thus, jurisprudence went all along the administration to attain social-economic egalitarianism.<sup>33</sup>

## VI. GENESIS AND NATURE OF THE JURISTIC COMPILATIONS

The nature of the juristic literature in the various schools of thought reflects the position and stand of Mujtahids for the implementation of *Ijtihad*. Iraq, being the caliphal seat of the Abbasids, and a prominent centre of the Hanafi School of law experienced the most comprehensive debates upon this issue. Abu Yusuf (182 A.H), the distinguished disciple of Imam Abu Hanifa (d.150 A.H), was recognized as the *Qazi al-Quzah* (The Chief Justice). He appointed the Hanafi jurists as *Qazi's* (judges) to various regional headquarters to bring uniformity throughout the Abbasside Empire. It is in this context, that a group of eminent jurists and legal experts was deputed to *Mawara al-Nahr* (Central Asia) to disseminate the precepts of the Hanafi school of law to the native population.<sup>34</sup> Among the galaxy of Muslim jurists and legal theorists in Central Asia, we may mention Abu Bakr Maruzi (d.211 A.H), the compiler of *al-Kafi*, Muhammad bin Maqatil al-Razi (d.213A.H), the compiler of *Fatawa*, Muhammad bin Shuj'a Balkhi (d.266A.H), who authored *Nawadir*, the grand jurist, Abu laith Samarqandi (d.321A.H), the compiler of *Kitab al-Nawazil* and several other treatises on the study of *Hadith* and *Fiqh*, Imam Zufr Balkhi (d.362A.H), the author of *Masmu'at*, Muhammad bin 'Ali (d.436 A.D), the compiler of *Al-Mu'tamad fi Usul al-Fiqh*, 'Ali bin Abu Bakr Marghinani (d.593 A.H), the compiler of *Al-Hidayah*, 'Abd al-'Aziz bin Mazah (d.536 A.H), the compiler of *Fatawa al-Kubra*, Al-Nasafi (d.537 A.H), the author of *Al-Usul*, Abu Laith Ahmad (d.597 A.H), the compiler of *Al-Majmu*, Muhammad bin 'Abd al-Rehman Maruzi (d.533 A.H), the author of *Al-Usul*, 'Uthman bin 'Ali Baqandi (d.552 A.H), the author of *Al-Usul al-Fiqh*, Baha u din 'Ali bin Muhammad Samarqandi (d.535 A.H), the compiler of *Al-Mutamad*, Muhammad bin 'Abd al-Rehman Bukhari (d.546 A.H), the compiler of *Tafsir al-Quran* are of the highest stature.<sup>35</sup>

Due to the intellectual capacities of these Mujtahids, the science of Islamic jurisprudence attained the elevated standards and could combat the Greeco- Roman tradition judiciously. The jurists not only narrated the legal procedures and methodological doctrines but also tried to support their interpretations by sound argumentation. They also responded to this flow of information efficiently, and evaluated the legal discourses to explore it for further advance.<sup>36</sup> The endeavor of compiling *Shuruh* (annotation), *Usul* (fundamentals), *Rad* (refutation), *Taqabul* (comparison), *Tarjih* (preference), *Talkhis* (synopsis), *Tashrih* (explanation) and similar other legal treatises depicts the ardent passion of the scholars to layout the sketch for altering circumstances. The principle of *Taghaur* (change) has been explored and applied competently to figure out much appropriate deductions demonstrating the social context.<sup>37</sup> Abu Yusuf's (d.182 A.H) *al-Rad 'ala Malik bin Anas*, *Ikhtilaf Abu Hanifa wa abu laila* and *Al-Rad ala siyr al-Auza'i*, were not only the refutations but comprehensive juristic compilations of *Ijtihad*. Muhammad bin Hasan al-Shaybani's (d.187 A.H) *Al-Rad 'ala ahl al-Medina* is also a masterpiece affirming the application of valid arguments while approaching the various sources of law.<sup>38</sup> Bazudi's (d.482 A.H) *Al-Usul*, Marghinani's (d.593 A.H) *Mukhtarat al-Fatawa*, Samarqandi's (d.318A.H) *Tuhfahal-Fuqaha*, Farghani's (419 A.H) *Nashr al-Madhahib* and Muhammad bin 'Ali's (412 A.H) *al-Mu'tamad fi al-Usul al-Fiqh* is also the concrete material that carry the methodological principles of alternate reasoning and *Ijtihad*.<sup>39</sup>

The study of Islamic jurisprudence got much impetus and incredible concern during the emergence of the sundry dynasties as well. When the Abbasside authority in Central Asia weakened, the Samanids took over as their successive authority. From 261/873 A.D, the utmost portion of the Central Asian territory fell to the Samanids. The Samanids ascended the throne until 395/1005 A.D and were considered as the undisputed masters for a couple of centuries in the Central Asian region. The city of Bukhara remained the capital of the Samanid empire and a reputed centre for the dissemination of Islamic sciences.<sup>40</sup> Despite being the *Amirs* of Khurasan, the Samanids tried to unify all the Central Asian regions through a uniform identity.<sup>41</sup> The inner core of the state was governed by various lieutenants appointed from among the dynasty.<sup>42</sup> The judicial procedures were made in accordance with the *Shari'ah* law and the judicial administration had been organized systematically. To them is attributed the magnificent tradition of the '*Perso-Islamic*' legacy, a hallmark in the literal and artistic legacy of Islam.<sup>43</sup>

The reign of Samanid ruler Nasr-II (913-42 A.D) had been no less significant, as it re-oriented the '*Ulama*' to the study Islamic jurisprudence with privileged academic tastes.<sup>36</sup> He is also being credited with the zeal of compiling the scattered material on varied disciplines and establishing a grand library at Bukhara. This

library contained the treatises on history, philosophy, Quranic exegeses, Hadith, medicine, logic and Islamic jurisprudence.<sup>44</sup> Ibn Sina (980-1037 A.D), a renowned philosopher and scientist, while visiting this library admitted:

“*Nasr’s library at Bukhara contains valuable collections on almost all the branches of knowledge and has no parallel in Mawara al Nahr.*”<sup>45</sup>

The famous biographer and historian, Ibn Khalikan records:

“*Some treatises (at Nasr’s) Khazinah al-Kutb (library) are so rare that they were hardly to be traced anywhere else.*”<sup>46</sup>

The Samanids are very much remembered for the astonishing zeal of expanding Islam towards the eastward directions. The high administrative, judicial and literary standards proved their governance over the steppe. It is during this tenure that a huge number of the Central Asian tribes went over to Islam. The Turks, who are an identity of Islam in Central Asia, were converted during the reign of Samanids. We are told in the sources that it was the first interaction of the Turks to monitor Islam so intimately.<sup>47</sup> The renowned historians, Ibn Miskawiah and Ibn Athir narrated that in the year 960 A.D, 200,000 tenets of Turks went over to Islam.<sup>41</sup> Subsequently, from 1043 A.D, 10,000 tenets of the Turks living between the provinces of Balasaghun and Bhagar accepted Islam.<sup>48</sup> The newly converts to Islam in the steppe were identified as the tribes of Karakhanids and Illkhanids, who afterwards ascended the throne of Central Asian steppe. The *Sufi* missionaries also made a valuable contribution regarding the service to Islam. They strengthened the social fabric by propagating the universal teachings of Islam in a simple way.<sup>49</sup> The concept of *Ijtihad* facilitated the progress towards the socio-literary pursuits as well. Besides the socio-political endeavor, one of the noteworthy developments during the Samanid period (873-1005 A.H) is the diffusion and transmission of the Islamic sciences in Persian language. The literature compiled in various disciplines up to this period had for the first time an opportunity to transmit the intellectual legacy beyond Arab lands. The process of transmission made an easy access to Islamic literature and encouraged scholars to produce their writings into the local languages. The reign of Nasr-II (913-43 A.D) is considered dynamic as it empowered intellectual activities to attain the zenith of progress. The Samanids excelled in almost all the directions of artistic, intellectual and cultural aspects and extended their domain to its greatest limits including Sijistan, Kirman, Jurjan, Rai and Tabaristan in addition to *Mawara al Nahr* and Khurasan. They professed loyalty to Abbasids of Baghdad but were independent, and their authority was undisputed.<sup>50</sup> The Samanids had a quest to transmit Islam in to Central Asian and Persian tradition. The Arabic language, however, did not suffer. It remained the source of instruction and an imperative medium of knowledge tradition. It was due to this impulse that, the renowned *magnum opus* of Ibn Jarir al-Tabari (d.310/983 A.D), *Tarikh al-Rusul wa al-Muluk* and *Tafsir al-Tabari* was translated into Persian.<sup>51</sup> The works of al-Farabi (d.918 A.D) on philosophy, Ibn Sina’s (d.1037 A.D) on science and medicine, Matrudi’s (d.942 A.D) on scholastic discourses and Abu Nasr Saraj’s (d.988 A.D) on mystic thought were also translated in to Persian language.<sup>52</sup>

Although, this was a phase of political decadence, but still, the Muslims concentrated upon the academic and artistic pursuits and tried to find out the causes for this decadence and its remedy. The emergence of the leading intellectuals and movements from 13<sup>th</sup>-19<sup>th</sup> Centuries and independent political regions was another significant phase of the Muslim rise that re-allocated the possibilities of *Ijtihad* and socio-political destination for the Muslim *Ummah*.

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