



Uluslararası Sosyal Araştırmalar Dergisi

The Journal of International Social Research

Cilt: 4 Sayı: 19 Volume: 4 Issue: 19

Güz 2011 Fall 2011

www.sosyalarastirmalar.com

A CRITICAL ANALYSIS OF THE SCHACHT'S ARGUMENT AND CONTEMPORARY DEBATES ON LEGAL REASONING THROUGHOUT THE HISTORY OF ISLAMIC JURISPRUDENCE

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Abstract

Islamic jurisprudence is to be actively constructed on the basis of Quran and Hadith texts which are its acknowledged sources. Throughout the Islamic history Muslim scholars have appealed to these sources to find out answers for the changing needs of the Muslim society. However, Schacht argues that after the formative period, the door of 'ijtihâd' was closed, with the result that legal activity became characterized by imitation and lack of originality.

This study focuses on the contemporary debates, particularly Schacht's arguments, around the legal reasoning, *ijtihâd*, which is the main instrument of interpreting the Divine message and relating it to the necessities of the Muslim community in its aspirations to attain justice, salvation and truth. In addition to this, the attention in the paper is drawn to importance and continuity of legal reasoning in Islamic thought and also the analysis especially emphasizes the role of *ijtihâd* in Islamic sciences.

Key Words: *Ijtiyhâd*, *Taqlid*, Interpretation, Legal Reasoning.

1. Introduction

The reality, the essence, the conditions and the coverage of the legal reasoning (*ijtihâd*) have remained a source of debate engaging some of the world's greatest scholars, from the second Islamic century until the present day. Some of the Muslim historians of law and Western scholars has been asserted that the right to use an independent judgment on the main sources of Islamic knowledge was frozen in Sunni Islam sometime in the tenth century, or probably one or two hundred years later. (Schacht, 1979:71-72) This is described in the term, "closing of the door of *ijtihâd*". On the other hand, some other recent academicians, especially by Wael Hallaq, has stated that this is not true. (Hallaq, 1984:3-41) And some of the others, like W. Montgomery Watt and Bernard Weiss, are in the middle of these two separate thoughts. Moreover, there was also always another group that claimed that the notion of the closing of the door is not projecting the fact, it is wrong and a properly qualified scholar must have the right to perform *ijtihâd*, at all times, not only up until the four schools of law were defined. Keeping these divergent thoughts in mind, this essay will discuss the controversy concerning the closing of the gate of *ijtihâd*, evaluating whether it was a misconception or indeed a historical fact? To discuss this, in the first part, the words "*ijtihâd*" and "*taqlid*" will be examined in terms of their meaning, significance and conditions in the Islamic Jurisprudence. In the second part, different opinions on the controversy about the gate of the *ijtihâd* will be argued.

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2. Overview on “Ijtihād” and “Taqlid”

2.1. Ijtihād

Linguistically, the word “ijtihād” emanates from the root word “al-juhd”, meaning “exertion, effort, trouble or pain.” “Al-juhd” connotes exercising one’s capacity, ability, power, or strength in a correct and righteous manner. (Zebîdî, 1307:II/329) In the jurisprudential sense, it refers to the endeavor of a jurist to formulate a rule of law on the basis of evidence (*dalil*) found in the sources. (Peters, 1980:135) Besides, it has also been depicted as a “reconsidering” (Fazlurrahman 1962:12) or, most commonly, as “independent reasoning” (Schacht: 1979: 69) Speaking to either its technical or legal nature, a number of scholars have provided definitions of the term ijtihād. For example, Saif al-Din al-Âmidî defined ijtihād as the “total expenditure of effort in the search for an opinion as to any legal rule in such a manner that the individual senses (within himself) an inability to expend further effort.” (Amidi, 1984: IV/169)

The word “ijtihād” does not exist in the Qur’an, but in some versus the words “*cehd*” and “*cuhd*” are used with the same meaning of “ijtihād” (Q, 5:53/6:109). In the prophetic narrations which are named by “hadiths”, the term ijtihād was used by the meaning of “*doing the best to reach the right decision.*” (Buhari, Itisam, 13, 21; Muslim, Akdiyyah, 15)

2.1.1. Ijtihād in Islamic Legal Theory

The principle of *ijtihād* is considered by jurists to have roots in a Hadith, in a discourse between the Prophet and Muadh Ibn Jabal, a companion, on his way to al-Yaman as a judge. The Prophet asked him how he would decide matters coming up before him. “*I will judge matters according to the Qur’an*”, said Muadh. “*If the Book of God contains nothing to guide me, I will act on the precedents of the Prophet of God, and if it is not in that either, then I will make a personal effort [Ijtihād] and judge according to that*”. The Prophet is said to have been most pleased at the reply. (Tirmizi, Ahkam, 3, Ebu Davud, Akdiyyah, 11)

Some of the companions of the Prophet had appealed to the process or exercise of *ijtihād* when a need arose in his absence. (Mahdî, 1984:43-387) This practice continued in issuing *fatwas* after his death during the *Khulafa-i Rashidin* and the *Ummayyad* period (al-Musâwî, 1985: 66-347) and was known as *ijtihād al-ra’y* (Schacht, 1979:37), an expression that occurs frequently in this early period. *Ijtihād* was linked with *ra’y* and was treated as a legitimate activity. The term carried the connotation of exerting one's efforts on behalf of the Muslim community and its interests. (Kamali, 2003: 468-474)

From the second century onward (eighth century CE) *ijtihād* was gradually dissociated from *ra’y*. Muhammad Ibn Idris al-Shafi’i (d.821), the founder of the Shafi’i *fiqh* (school of jurisprudence), was the first to make a break from *ra’y* and adopted *ijtihād* as a methodology synonymous with *qiyas*, analogical deduction,¹ in his *Risala*² which was the first book to be written on the principles of Islamic jurisprudence. However, his ideas were further developed by others. To explain and define *ijtihād* further terms and categories like *istihsan* (finding the good by one's own deliberation) and *istislah* were introduced (determining what is in the interests of human welfare by one's own deliberations). (See: Kamali, 2008:168)

2.1.2. Conditions of Ijtihād

About the existence of God, the prophet hood of Muhammad and the authenticity of the Qur'an, *ijtihād* must not apply. *Ijtihād* does not carry out with respect to matters that have already been addressed in the Qur'an and the Traditions. However, sometimes, there occur situations which have been left undetermined by the first two sources, when jurists are called

¹ According to others it was Imam Abu Hanifa, when he started to work on *Usul al-fiqh*, first found that there were matters on which there were no Hadith nor any comment from the *Sahaba*. He adopted the method of *Qiyas*. See: Ahmet, Akgündüz (2010), *Introduction to Islamic Law: Islamic Law in Theory and Practice*, Rotterdam:IUR Press, p.152

² Muhammad ibn Idris al-Shafi’i, (1940), *Al-Risale*, ed. by Ahmad Shakir, Cairo; English translation by Majid Khadduri, Al-Imam Muhammad ibn Idris *al-Shafi’i’s al-Risala fi Usul al-Fiqh*. 2d ed. (Cambridge: 1987).

upon to make use of *ijtihād* and determine laws applicable to them, or formulate new ones if necessary, in the light of the fundamental principles of Islamic jurisprudence and legislation. (Doi, 2008:78)

However, to practice *ijtihād*, scholar (*Mujtahid*) has to be equipped with certain qualifications. The question of who could or could not practice *ijtihād* came under discussion, before the final formation of the positive law of the Sunni law schools. (Hallaq, 1984: 130) Abu'l-Husayn al-Basri (d.467/1083) in his "*al Mu'tamad fi Usul al-Fiqh*" was set out the qualifications for a *mujtahid* which can be summarized as (i) to be cognizant of the purpose of the *sharia* and (ii) its sources and methodology of inference. (Amidi, 1984: IV/170) They include:

- "He should be competent in the Arabic language which allows him to have a correct understanding of the Qur'an .

- He should have an adequate knowledge of the Meccan and Medinese contents of the Qur'an, the events surrounding their revelation and the incidences of abrogation (suspending or repealing a ruling) revealed therein.

- He should have an adequate knowledge of the *sunnah*, especially those related to his specialization. He needs to know the relative reliability of the narrators of the *hadith*, and be able to distinguish between the reliable from the weak.

- He should be able to verify the consensus *-ijma-* (see:Faruki, 1954:1-12,21-38) of the Companions of the Prophet, the successors and the leading *imams* and *mujtahideen* of the past, especially with regard to his specialization.

- He should have a thorough knowledge of the rules and procedures for reasoning by analogy (*qiyas*) so he can apply revealed law to an unprecedented case.

- He should understand the revealed purposes of *sharia*, which relate to "considerations of public interest", including the five pillars protection of "life, religion, intellect, lineage and property. (Basri, 1964:II/85-86)

- He must practice what he preaches, that is he must be an upright person whose judgment people can trust. (Faruki, 1954: 1-12, 21-38)"

2.1.3. Categories of Ijtihād and Mujtahids

In Sunni legal practice, jurists were categorized according to their competency to perform *ijtihād*. This categorization is meaningful on the controversy related to gate of *ijtihād*, because some scholars link the question of qualifications of *mujtahids* with the debate on the closure of the gate of *ijtihād*. For example Schacht claims that the reason for raising the question of who was qualified to practice *ijtihād* and who was not, is the reason for the closure of the gate of *ijtihād*. He thoroughly discussed this view that "*there was never any question of denying to any scholar or specialist of the sacred Law the right to find his own solutions to legal problems. The sanction, which kept ignoramuses at bay, was simply general disapproval by the recognized specialists. It was only after the formative period of Islamic Law had come to an end that the question of ijtihād and of who was qualified to exercise it was raised.*" (Schacht, 1979:70) His statements show us the importance of the categories of *ijtihād* and *mujtahid* in the debate.

In classical Islamic Law sources, general approach, both the *Mujtahid* and their *Ijtihād* has two main kinds³.

- *Mujtahid mutlaq*: This category is also known as *Ijtihād fi'sh-Shar*, absolute independence in legislation. (Kamali, 2003:490) The first four caliphs are considered to be in this category but it is principally the great masters of the four schools who are recognised as the *Mujtahidun Mutlaq*. (Glassse, 2002: 182) They are known as such because of their laying down a

³ Between the levels of *Mujtahids* and *muqallids* there are more other levels of jurists who have combined *Ijtihād* with *taqlid*. See for detailed information about categories of *ijtihād*: Muḥammad ibn ʿAlī, Baḥr al-Uluḥm (1977), *al-Ijtihād, Uṣūluhu wa-Aḥkāmuh*, Bayrūt: Dār al-Zahrā, p.132, Wafī al-Mahdī, (1984), *al-Ijtihād fi al-sharīah al-Islāmiyah*, al-Dār al-Bayḍā: Dār al-Thaqāfah, pp. 454-457

methodology of the law and deriving from it doctrines that were to dominate their respective schools.

- *Mujtahid muqallid*: A jurist who merely follows the rulings arrived at by the mujtahids previously. However in issues in which he does not find an opinion of the founder, he exercises his own *ijtihād* and issues a judgement. (Kamali, 2003:492)

2.2. Taqlid

The opposite of *ijtihād* is "taqlid" (*imitation*), from the root (*q-l-d*) literally means to 'bind', as a concept which connotes to take the saying of another, by itself as an argument. It then came to mean the unquestioning acceptance of the personal opinions of the scholars without seeking out their evidences. In another way it can be defined by "accepting an opinion concerning a legal rule without knowledge of its bases". (Zuhaylī, 1986: II/1220)

Ibn Hazm (d.456/1064) after describing "taqlid" as a *bid'ah*, states that until year 140AH there was no behavior in the form of connecting to the words of a scholar without challenging him. And he also mentioned that it has started at the fourth Islamic generation and afterwards expanded widely from the beginning of the third Islamic century. (Ibn Hazm, n.d.: 858)

Furthermore, Shawkânî (d.1250/1832) expresses that more of the predecessors were not mujtahid or muqallid; however people who are not at the level of *ijtihād* from *tabi'ûn* and *tabi al-tabi'ûn*, has not imitated a certain mujtahid, on the contrary they have asked the proofs of the answers of their questions and then after implemented it in their life. (Shawkanî, 1348AH: II/89)

Ibn Hazm's and Shawkani's statements indicate that imitation of the scholar to another previous scholar was not accepted generally at the beginning of Islamic thought. And also famous statements of Abu Hanifah, (d.150/767) "*I believe that my opinions are correct but I am cognizant of the fact that my opinions may be wrong. I also believe that the opinions of my opponents are wrong but I am cognizant of the fact that they may be correct.*" (Ibn Hazm, 1317A.H.:2/46) testifies that scholars in that period was aware of the differences and they have respect for the other opinions instead of building barriers in front of them. However, by the result of sectarian fanaticism, political pressure and the proliferation of ready provisions, culture of *ijtihād* has decreased among the scholars in front of them. (Karaman, 1985: 172)

On the other hand, depending on the enlargement of the Islamic territory and the fear of deterioration of Islamic doctrines, the tenet of "taqlid", has gained more ground throughout the Muslim land and has functioned as a notable constituent of Islamic law against religious distortion, by making it compulsory for the masses to seek lawful scholarship. In fact, the non-specialist people cannot get detailed knowledge of legal principles and sources in order to make their own decisions about sacred law; with the notion of "taqlid" which is mainly used in the context of accepting the intellectual authority of someone (Ibn Khaldun, n.d.:448), they were permitted to imitate jurists decisions, by the verse in the Quran: '...ask the people of knowledge if you do not know'. (see: Q, 16:43/21:7)

3. Nature of the Discussions on the "Closure of the Gate of Ijtihād"

Discussions of "ijtihād" in classical sources, although there is no agreement on the beginning time of this debate among scholars, throughout the history of Islamic law till modern times has been on the "continuation of *ijtihād*" and the "applicability of absolute imitation" (*taqlid*). (Umarî, 1981:220) Continuation of *ijtihād* has been addressed under the title of "matter of *huluvv*" (*khuluvvî'l-asri ani'l-mujtahid*) in classical methodological books by assessing the occasion of the absence of a scholar who reaches the level of mujtahid in any particular century. Nonetheless, toughest disputes have been on the issue of whether or not the door of *ijtihād* closed.

The debate around the gate of *ijtihād*, which has started at the fourth Islamic century, was dealt nearly all of the methodological sources of Islamic Law (*usul-al-fiqh*). Furthermore, books and pamphlets were written especially for the topic of “*ijtihād* and *taqlid*” and the controversy about whether or not it is likely to occur for an age to be devoid of *mujtahids*. Some of the leading scholars who discuss these debates in his books are Ibn Abdilbarr (d.462/1071) (Ibn Abdilbarr, 1346A.H.: II/109-119), Ibn Hazm (Ibn Hazm, n.d.:793-885), Ibn Taymiyyah (d.728/1327) (Ibn Taymiyyah, 1951: 75), Ibn al-Qayyum (d.751/1350) (Ibn Qayyum, 1955: II/168-260), Shah Waliyyullah (d.1176/1762) (Shah Waliyyullah, 1874: 18-19), Shawkani (d.1250/1832) (Shawkani, 1952: 265). In this controversy, the Hanbali scholars and a number of eminent Shafi'i is maintained, while adducing rational and scriptural evidence, that *mujtahids*, must exist at all times. On the other hand, the Hanafi and Shafi'i scholars argued that the extinction of *mujtahids* was possible, but it does not mean the closing of the gate of *ijtihād*. (Amidi, 1984: IV/239)

In the twentieth century, especially by the affect of the oriental studies, discussions on the continuation of *ijtihād* have been raised. Opinions on the issue in this period broadly, can be divided into three categories:

1- *Scholars who believe that the gate of ijtiḥād is closed.*

- *Orientalists:* In this group, as a leading scholar, Joseph Schacht, proves his idea by claiming that by the beginning of the 10th century, Islamic law had been expatiated thoroughly and thus Muslim scholars drew conclusion that all the prospective questions had been handled in detail and in the end stabilized. (Schacht, 1979: 71-72) Schacht adds that “... around 900 C.E., a consensus gradually established itself to the effect that from that time onwards no one might be deemed to have the necessary qualifications for independent reasoning in law, and that all future activity would have to be confined to the explanation, application, and, at the most, interpretation of the doctrine as it had been laid down and for all.” (Schacht, 1979:71-72) Coulson, also shows similar stance with Schacht and argues that the closer of the gate of *ijtihād* “was probably the result of not external pressure but of internal causes, The point had been reached when the Muslim jurisprudence of the early tenth century formally recognized that its creative force was fully spent.” (Coulson, 1964:81) But on the other hand Gibb approaches the controversy in another way and asserts that orthodox scholars limited *ijtihād* because they “feared individual reinterpretation” (Gibb, 1972: 13) not because of the idea of fully exploitation of materials of Islamic law. Further to that, apart from just discussing the closing of the “door of *ijtihād*”, Ostrorog allocates a figurative paragraph to each of the closing of the “doors” of allegorical exegesis, human reason, and religious criticism.’ And he also advances the date of closure to the seventh century. (Karamali and Dunne, 1994: 242)

- *Muslim scholars who seems to agree with Orientalists:* Fazlurrahman is the most remarkable scholar in this group, he takes similar stance with Schacht by saying “... at the end of the third/ninth and beginning of the fourth/tenth centuries, both the dogma and the law had taken a definite shape, the *Ijma* arrived at by that time was declared final and the door of “*ijtihād*” was closed.” (Fazlurrahman, 1966:87) Ahmad Hasan and Albert Hourani, also consistently refer to the “closure of the gate of *ijtihād*” after the Islamic third century. (Karamali & Dunne, 1994: 246)

- *Opponents of ijtiḥād in the Muslim world:* In the modern times advocates of *taqlid* in the Muslim world can be classified under two subgroups. First group is consists of who believes that instead of applying *ijtihād* to solve problems, all activity should involve simply commenting upon the works of previous jurists, because every essential matters of law had been accomplished and *ijtihād* is not a requisite anymore.

The second group is not against *ijtihād*, as the first group, in theory but due to the extreme conditions of Muslims around the world they are accepting to postpone the necessity of *ijtihād* to later times, when the Muslims gain enough power to protect themselves. For example; Said Nursi (d.1960) from Turkey, who is the eminent scholar, has rejecting the *ijtihād* by using the metaphor of “hut under the storm”. (Said Nursi, 1987:7) By this metaphor he refers

that just as in the winter, all the holes, even small ones, of the house is closed during the severe storm, Muslims should keep closed every possible areas to protect themselves against the corruptive ideas. Because, if the door of *ijtihād* opens at a time which there is no unity socially and politically in the Muslim world, it means that foes of Islamic thought can get into the castle of Islam without encountering any hardship. (See: Aktay, 2008:52)

2- *Scholars who believe that the gate of ijtihād is never closed:*

Prominent scholars of this idea are W. Hallaq, Cemaleddin Afgani, Muhammed Abduh, Muhammed Iqbal, and the members of the Salafi Movement⁴.

W. Hallaq contrasts, both theoretically and practically, with the idea of the 'closure of the gate of *ijtihād*'. He asserts that there was no consensus on the closure of the gate of *ijtihād* as reported by Schacht, and that the *ijtihād* was to be a continual effort in theory and no such invalidation of *ijtihād* happen historically. (Hallaq, 1984:3-41)

Salafi scholars bring a different approach to the debate by rejecting the usage of the term of the "gates" of *ijtihād* metaphorically. They defend that, at first, utilization of that term "gate of *ijtihād*" does not exist, furthermore, theoretically, it was not closed. They argued that whenever one accomplishes the prerequisites of *ijtihād*, it is practicable. In other words as a notion "*ijtihād*", does not have a gate, however conditions. (Salmaan, 2008:2)

3 -*Scholars who take positions between above mentioned ideas.*

Bernard Weiss, Edward Sell, Muhammed Ali, Muhammed Shafi'ii and Ziya Gökalp were the scholars who did not introduce exact affirmatory or antagonistic opinions on debate. However, some of them refer the need of *ijtihād* and re-opening of the gate. (Karamali & Dunne, 1994: 251-254)

4. An Appraisal on the Ijtihād Controversy

To understand the divergent ideas around the gate of *ijtihād*, the meaning of the *ijtihād* should be clarified. Because, scholars who use the term "*ijtihād*", refer to different kinds of *ijtihād*. The meaning of the *ijtihād* has changed over time and it has perceived in different contexts by various scholars throughout the Islamic legal history. Some definitions of the *ijtihād* by different scholars in chronological order can easily show us this variation:

1. Shafi'i (d.204/819) : "*Ijtihād consists of analogy (qiyas)*". (Shafi'i, 1940:477)
2. Ibn Hazm (d.456/1064) : "*Ijtihād means to investigate the provisions of God just considering the Quran and the Sunna*". (Ibn Hazm, n.d.:41)
3. Abû Ishâk Shirâzî (d.476/1083): "*Ijtihād is more general than analogy because it means to endeavor with intense effort to achieve the judgment.*" (Shirazi, 1988:123)
4. Gazzali (d.505/1111) : "*It means, spending utmost power by mujtahids in the way of learning the provisions of religion.*" (Gazzali, 1937:II/101)
5. Mustafa al-Shalabî : "*Ijtihād means, to endeavour for extracting the religious rulings from the signs, meanings and expressions of sacred texts.*" (al-Shalabî, 1947:11)

As seen above Shafi'ii's and Ibn Hazm's understanding of *ijtihād* is narrower than the others in terms of its scope. At first glance these differences in the definition of the *ijtihād* do appear negligible, but one step later these various approaches defines the debate around the question of the gate of *ijtihād*. If *ijtihād* is accepted by the meaning of "*qiyas*" it is really hard to talk about the closure of the gate, but on the other hand if it is admitted by the definition of developing new approaches based on sacred texts there will be debate around the idea of the closure of the gate of *ijtihād*. Montgomery Watt points out this distinction with two different levels: (Watt, 1974:678)

⁴ See a Palestinian-Jordanian salafi scholar Mashoor Salman Hasan's ideas:
http://www.salafimanhaj.com/pdf/SalafiManhaj_DoorOfIjtihad.pdf

- a) Basic Level: At this stage ijtihâd functions as a determiner of different legal schools of thought.
- b) Particular Level: At this stage ijtihâd bounds up with the particular matters within each school of law.

With this level based definition Watt emphasizes that the "idea of closing the door" prevails just for basic ijtihâd, but on the other hand some other debates, like al-Taftazani's commentary on the creed of al-Nasafi, are about particular ijtihâd. Watt concludes from these discussions that confusions existed as to definitions and that, therefore, some of the arguments in the Muslim community regarding whether ijtihâd was supposed to be closed were at "cross-purposes" or based on misunderstandings. (Watt, 1974:678)

The term "ijtihâd", which has been questioned nearly all major "usûl" books, in terms of continuation and implementation, was addressed by referring to the "absolute ijtihâd" and the "absolute mujtahid". (Ibn Abdishshakûr, 1324A.H.: II/399) In other words, by the classification of Watt, "basic ijtihâd" is the debate arena for the closure of the gate of ijtihâd. For this reason it is not appropriate to relate and bunch together all the approaches on the closure of the gate of every kind of ijtihâd.

The idea of the closure of the gate of ijtihâd found voice in the classical books generally after the fourth century.⁵ (Ibn Hazm, n.d.:1026) First, who mentioned this idea are a Hanafi scholar, Ubaidullah b. Hussain al-Karhi, (d.340/951) and a Maliki scholar, Bakr b. al-Alâ (d.344/955). (Karaman, 1985:183) Therefore, it can be claimed that, nobody has argued before the fourth century that after a certain period the gate of ijtihâd will be closed. Nevertheless, sectarian bigotry, the idea of protecting religion from corruption (Abu Zahra, 1387:65) and other external reasons has gradually caused the change of the perception of the ijtihâd. We can see this process in a chart by considering some definitions and approaches on ijtihâd:

From Ijtihâd to Taqlid : Different Approaches	
al-Karhî (d.340/951)	If "nass" and the judgement of the mujtahid imam's of our madhab contradict, we prefer the judgments of mujtahid. (al-Karhi, n.d.:84)
Bakr b. al-Alâ (d.344/955)	It is not permissible to prefer a new opinion or religious doctrine after the second century. (Ibn Qayyum, 1955:256-257)
Muhammed b. Ali al-Qaffâl (d.365/975)	There are two types of mujtahids: "Mutlaq" and "Muntasib". And there is no mujtahid al-mutlaq in the world. (al-Karhi, n.d.:86)
Hasan b. Mansur Qadihan (d.592/1196)	If someone asks a question to our mufti, he has to answer it by the fatwa of the mujtahid imams, even if he is a capable mujtahid, he can't contradict them by his own decisions. (Qadihan, 1310(A.H.):I/2-3)
Ibrahim b. Abdullah ibn Ebî'd- Dem (d.642/1244)	Nowadays, there is no mujtahid in the world neither mutlaq nor muntasib. Despite all the amenities, being in such a situation is closely related to nearing end of the world. (Münâvî, 1937:I/11)
Qasim Qutluboga (d.879/1474)	We cannot perform the provisions of the scholars which opposes to our madhab. (Ibn Abidin, 1325(A.H.):24)
Ahmed b. Hamza (d.957/1550)	After Suyuti (d.911/1550) has announced that he is a mujtahid al-mutlaq, Ahmed b. Hamza answered by stating that "who ascribes the level of "mutlaq mujtahid" to anyone in those times, must be ashamed of Allah. (Ibn Abidin, 1325(A.H.):24)
Yusuf b. Ismail en-Nebhânî, (d.1350-1931)	Nowadays who claims that he is a mujtahid has a problem either with his mind or faith. (as-Salami, 1327(A.H.):I/44)

⁵ See: Ibn Hazm, *Ihkâm*, p.1026; Ibn Haldun, *al-Muqaddime*, Beirut, al-Edebiyya, 1879, p.92; Ibnu'l-Qayyum, *Ilamu'l-Muwakkin*, v 2, p.244-258; Shah Waliyyullah, *al-Insâf*, p.25; Abu Zehra, *Târihu'l Mezahib*, v.2, p.79; Mustafa Ahmedu'z-Zerqa, *el-Fiqhu'l Islamiyyu fi Sevbihi'l-Cedid*, v.1, s.152

Different approaches towards the notion of ijtihād or mujtahid, in that chart illustrates us the debate around the gate of ijtihād in the modern times is meaningful. Of course, above mentioned definitions are not the only perceptions in the history, against these stances there are more other scholars who write answers for them and they have proved their demeanor by listing the names of the mujtahid's in every century. Most important thing is, remarks against the gate of ijtihād does not come from any mujtahid or Islamic Law scholar who has reached the authority of ijtihād (Karaman,1985:183), due to this we can say that these opinions just limits the thoughts of their owners and followers. They haven't blocked and could not block the door of mutlaq ijtihād completely in the history, but these opinions made difficult for the masses to accept new ideas.

On the other hand, if ijma is defined as the agreement of all the mujtahids of any age⁶ (See: Schacht, 1979:71), there was never any ijma that ijtihād was to be suspended and only older legal opinion was to be relied upon to the exclusion of the legal sources (Qur'an & Sunnah). Izz bin Abdis-Salam (d.660AH) in fact commented directly about the disagreement and, what he thought was, -the fallacy about the closure of the gates of ijtihād- since if a new case were to arise with no direct evidence from the scriptures or previous legal opinion, ijtihād would be necessary. And since any expressed objection of major scholars on any particular point render it from the realm of ijma to that of ikhtilāf, it cannot be claimed, as was done by Schacht, that there was consensus on the gates being closed. (See: Schacht, 1979:79), On the other hand, when Schacht states later *"whatever the theory might say on ijtihād and taqlid, the activity of later scholars, after the closing of the door of ijtihād, was no less creative of later scholars than that of their predecessors"* (Schacht, 1979:73) diverges for a moment, almost acknowledging a paradox. If the later scholars are as creative as their forerunners the direction of the debate around closure of the gate of ijtihād will be differentiate. When we put his two statements together, it is getting nearly impossible to claim a consensus on the closure of the gate of ijtihād.

Ijthād is not just a religious matter for Muslims, it means more than the rule of "fiqh" in social life, as Amidi have already said that *'blocking the gate of ijthād would have meant for Muslims a partial and imperfect mastery of 'ilm and thus a deficient and incomplete.'* (Amidi, 1984: IV/172) Throughout the history Muslim societies have been accommodated "new sets of rules", which is, in essence, a full process of ijthād, for the changing needs of life. Judging the whole history under the conditions of twentieth and twenty first century can not be reflect the reality on that debate. As Hallaq mentioned, "in theory, at least there is certainly nothing to indicate that ijthād was put out of practice or abrogated, in due course clear that, legal theory played a rather significant role in favor of ijthād." (See: Hallaq, 1984:5) And also, Hallaq make it clear in his thesis, analyzing the relevant literature on the subject from the fourth/tenth century onwards, 'that;

- 1) Jurists who were capable of ijthād existed at nearly all times;
- 2) Ijthād was used in developing positive law after the formation of schools;
- 3) The controversy about the closure of the gate and the extinction of mujtahids prevented jurists from reaching a consensus to that effect. (Hallaq, 1984:10)

Conclusion

All in all, to understand the debate around the notion of ijthād, the meaning of the term should be clarified and also scholars have to make clear in which meaning they are referring to by using the notion of "ijthād". If it has used by the meaning of "particular level" of ijthād, as Watt classified (Watt, 1974:678), it is really hard to mention the closure of the gate because of the wide implementation of it within each school of law. On the other hand, if it has used by referring to "basic level" of ijthād, it just indicates the views of a scholar who convinced

⁶ Hallaq in fact defines Ijma, competently as the retrospective assay of the overall acceptance of a particular tenet or opinion. Was the Gate of Ijthād Closed?, Wael B. Hallaq, International Journal of Middle East Studies, Vol. 16, No. 1 (1984), p. 25-26

himself that the door was closed. It does not mean anything more than being an idea of a person because there was no religious rule or statement that indicates after a period of time it will be closed. Reaching a clear point on that debate is not possible because every person can find proofs from history to support his idea depending on his own pre-understandings.

However, as we have seen in this study, that throughout the Islamic History there were some scholars who rejects to perform ijtihād and just follow the predecessor's provisions on the grounds of the need of protecting the religion from corruption or their perception of religion etc.. But, generalizing their statements and reaching big results like "there was a consensus on the gates of ijtihād being closed" is not reflecting the reality in terms of ijtihād's importance in Muslim's daily life. Nobody can close or open the door of ijtihād, scholars who reach the authority of Mujtahid perform ijtihād and people may carry out them or not. Reasoning-Ijtihād is an integral part of Islamic legal theory, because it "constitutes the only means by which jurists were able to reach the judicial judgments decreed by God" (Amidi, 1984: IV/169-227).

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