

# IJMA AND THE GATE OF IJTIHAD



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KEMAL A. FARUKI

# IJMA AND THE GATE OF IJTIHAD

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What is *ijma* ? What are the standard books of Islamic case-law ? Are their decisions considered revocable or irrevocable? Discussions with the orthodox *ulama* in Pakistan on these and other problems with a view to establishing whether and how the gate of *ijtihad* may be re-opened. A basic book on basic issues in Islamic law today.

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*In the name of God, the Beneficent, the Merciful...*

IJMA AND THE GATE  
OF IJTIHAD

*In the name of God, the Beneficent, the Merciful. . .*

# IJMA AND THE GATE OF IJTIHAD

by

KEMAL A. FARUKI

*“There is nothing worthy of worship save God.  
Muhammad is God’s messenger”*

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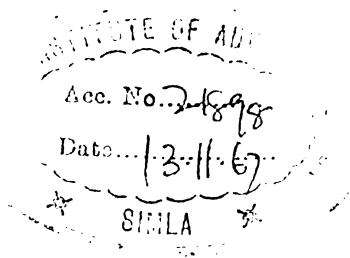
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IN LOVING MEMORY OF MY MOTHER

## PREFATORY NOTE

The author would like to express his thanks to Maulana Mufti Mohammed Shafi for the courtesy and clarity with which he answered the questions asked of him by the present author with a view to ascertaining the orthodox position on certain basic issues in Islamic law.

He would also like to take this opportunity of paying his tribute to the late Maulana Syed Suleman Nadvi who was present at most of the meetings at which the questions were put and the answers given. Although the present author only met him a few times these occasions were sufficient to leave a distinct impression of piety, humility and erudition in Islam's noblest tradition.

The author's thanks are also due to Maulana Zafar Ahmad Ansari for his assistance in interpretation and elaboration and to A. K. Naqvi, K. A. Waheed and Z.D. Kirmani.

Kemal A. Faruki,  
Karachi

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“In the name of God, the Beneficent, the Merciful.

Say: He, God, is One.

God is He on Whom all depend.

He begets not, nor is He begotten;

And none is like Him.”

(*Surah* 112)



## INTRODUCTION

**I**T is the earnest hope of the author of this work that after you have read and digested its contents, your attention will be rivetted, never to wander again, on what is, without a doubt, the basic issue confronting Islamic law today.

Far too often we observe around us Muslims anxious to end the present stagnation in Islamic thought and consequently social development indulging in the immature and futile pursuit of becoming a one-man legislative body for the Muslim world. They declare that the Islamic law of inheritance is not 'a' as has been 'wrongly' supposed in the past, but is 'b'; that the really Islamic punishment for theft should be 'y' and not 'x'.

What the correct Islamic position is on such matters is not to be decided by a whim or arbitrary assertion of an individual. It is to be ascertained and, when necessary, re-ascertained through carefully evolved disciplines, through agreed legal principles derived from the Word of God and the precepts and practices of His Prophet.

Indisputably the most important problem in Islamic law today is to examine these formal legal sources as they have developed so far. Their application to particular questions will then be seen to be a very secondary matter. To use the terminology of classical Islamic legal thought, our primary problem today is with the *usul* ('roots') or formal legal sources and only much later with the *furu* ('branches') or applied law and the *fatwas* (legal opinions in specific cases).

A careful study of *fiqh* or Islamic law will show quite clearly that there is no mystery involved in it anywhere along the line. It is a model of logical consistency and clearly-reasoned thought. One conclusion follows from another not through wild emotional tub-thumping or some hidden process of human apprehension but through the use of reason and logic.

Armed with this comforting knowledge the author addressed to four leading members of the orthodox *ulama* in Pakistan seven Questions on Islamic law on February 21, 1953 A.C. with a view to establishing clearly the foundational legal principles on which orthodox Islamic law was based with particular reference, for the sake of clarity and avoiding unnecessary confusion, to the Sunni division and Hanafi sub-division. The Answers given, courteously and clearly, by two of the *alims* addressed, required three further Questions which were answered similarly.

I think you will be left in no doubt after you have studied the Questions and the Answers of the paramount importance in Islamic legal theory of the doctrine of *ijma* ('consensus')—whether implicit or explicit—and how even the slightest refinement in the nature of that doctrine is capable of re-opening, beyond a shadow of a doubt, the great gate of *ijtihad* ('interpretation'). It is in fact on the concept of 'consensus' that the precise difference between orthodox and modernist exists even though this has not been clearly articulated hitherto.

If the Islamic system were rigid and inflexible and monolithic, such a difference might result in a split as unbridgeable in the Islamic world as the cleavage between Stalinist and Trotskyite has proved to be in the Marxist. Fortunately however the Islamic system is constructed of more lasting material.

Within the framework of that noble Islamic concept of *ikhtilaf* ('difference' of interpretation) it is possible that both view-points may thrive together in a manner on the lines indicated in Section C of the Conclusions to this work.<sup>1</sup>

A second problem arose out of these Questions—the relationship between the 'consensus' of the Muslim community as a totality and the 'consensus' of the learned within the Community and the orthodox position on this is contained in the Answer to Question 10.<sup>2</sup> Again it would appear that there exists an *ikhtilaf* as to which is a more accurately Islamic relationship between these two degrees of 'consensus'.

The Quran, the eternal Word of God, applicable for all times to all places, which men and *jinn*, whether singly or in combination, can never hope to equal, even to the extent of one verse, will always yield greater and greater treasures of knowledge and guidance. The longer mankind is fortunate to possess the guidance of this Book, the more we read and seek to understand its meaning, it is but inevitable that our knowledge of its verses, its chapters and indeed the Book as a totality will constantly heighten, widen, deepen and be purified.

It is over-exulting arrogance to imagine that we have, singly or collectively, in the past, exhausted the meaning of the eternal Quran in any particular matter with our puny, halting, fallible human intelligence.

"And thus have We sent it down an Arabic Quran, and have distinctly set forth therein of threats that they may guard against evil, or that it may be a reminder for them.

"Supremely exalted then is God, the King, the Truth. And make not haste with the Quran before its revelation is made

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<sup>1</sup> See IV, Conclusions, C. Ijma and 'Presence', pp. 35-38, below.

<sup>2</sup> See II, The Questions and the Answers, pp. 11-12, below.

complete to thee, and say: My Lord, increase me in knowledge.”  
(20:113,114)

Through the ages the Muslim community will understand more and more of the eternal Word of God through constant exertion and patient endeavour. It is incumbent upon us, if we are sincere believers, once a richer and more Islamic meaning of a passage is allowed us by God, to accept the richer, more accurate meaning . . .

“And mix not up truth with falsehood, nor hide the truth while you know.” (2:42).



THE QUESTIONS AND THE ANSWERS <sup>1</sup>

Question 1:

“Are the standard books of *fiqh* for Hanafis in this country the *Hedaya* and the *Fatawa ‘Alamgiri?’*”

Question 2:

“If these two are not the standard works of Hanafi *fiqh*, which are the correct books for understanding the legal aspects of the Quran and *Sunna* for our school?”

Answer to 1 & 2:

“The *Hedaya* and the *Fatawa ‘Alamgiri* are standard books of Hanafi case-law arrived at from principles contained in the Quran and *Sunna*. This does not mean however that subsequent books of a similar nature could not be accepted as standard compilations of case-law. For example, a compilation made by Shami in Damascus barely a century ago was now also considered authoritative and in some places it had changed some of the rulings contained in the *Fatawa ‘Alamgiri* which are based on *ijtihad* (disciplined judgment

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<sup>1</sup>The Questions were put by the present author over a series of letters and meetings from February 21, 1953 to December 15, 1953. The Answers were given by Maulana Mufti Mohammed Shafi mainly in the presence of the late Maulana Syed Suleman Nadvi.

Maulana Mufti Mohammed Shafi, Mufti-e-Azam-e-Pakistan, is a member of the Talimat-e-Islam Board of the Constituent Assembly of Pakistan and President, Executive Committee of the Dar-ul-Ulum, Karachi. He was formerly Mufti, Dar-ul-Ulum, Deoband.

Maulana Syed Suleman Nadvi was Chairman of the Talimat-e-Islam Board of the Constituent Assembly of Pakistan, President of the Jamiat-ul-Ulama-e-Islam and member of the Punjab University Court and author of numerous Islamic historical and biographical works. His death on November 22, 1953 removed a figure of piety, humility and erudition and has been deeply mourned both in Dar-ul-Islam and abroad.

of individual jurists), *ra'y* (arbitrary opinion) or '*urf* (custom)."

\* \* \*

Question 3:

"Is it permissible for any of the legal decisions contained within these standard works of *fiqh* to be (a) disregarded? (b) legally revoked? (c) legally replaced?"

Answer to 3:

"Decisions of certain categories in these compilations may be disregarded, revoked or replaced, while decisions of certain other categories may not be disregarded, revoked or replaced."

\* \* \*

Question 4:

"If the answer to (3) is in the affirmative, what are the Islamic legal principles under which and by which these decisions can be cancelled or changed?"

Answer to 4:

"Only those decisions may be altered which are not based on 'clear' injunctions of the Quran and/or *Sunna* or on which no *ijma* deduced from the Quran and/or *Sunna* has been reached. Decisions may also be changed when the *illa* or reason deduced from the *shari'a* for the previous ruling no longer existed or had changed.

"To elaborate, an injunction of the Quran and/or *Sunna* is considered *nass* or 'clear' when there was no difference of opinion in the Community regarding its meaning when it was first raised. An illustration of a change in *illa* is the absence of *zakat* on horses in the time of the Prophet. The position at that time was that there were not enough horses for trade or for breeding purposes and *zakat* is levied on such animals only as are kept

for breeding and trade purposes. Consequently exemption was granted in regard to horses. When, however, after Syria had become Muslim and a large number of horses were available for trade and breeding purposes, the *illa* or reason for the exemption no longer existed, the Khalif 'Umar levied *zakat* upon horses as well."

\* \* \*

Question 5:

"If the answer to (3) is in the negative, is this due to the doctrine that once the *ijtihad* of individual jurists has been corrected for error by *ijma*, the resulting legal conclusion is the permanently correct understanding of the Quran and *Sunna* for that particular school and subsequent *ijtihad* can only be applied to those questions on which no *ijma* had hitherto been reached?"

Question 6:

"If the answer to (3) is in the negative, but the reason given in Question (5) is incorrect, what is the correct reason for a negative answer to (3)?"

Answer to 5 & 6:

"With regard to *ijma*, which is irrevocable, this is based on a Quranic verse (4:115),

'And whoever acts hostilely to the Messenger after guidance has become manifest to him and follows other than the way of the believers, We turn him to that to which he ( himself ) turns and make him enter hell; and it is an evil resort,'

and a *hadith*, 'My Community will never unite in error,' and in disputed problems of interpreting the Quran and *Sunna*, the *ijtihad* (verdicts) of individual jurists were to be considered as based on surmise and were liable to be wrong, but once a verdict is confirmed through *ijma* or consensus of agreement of all jurists, it would be deemed to be sure and free from error. *Ijma* decisions therefore, based as they

are on the Quran and/or *Sunna*, attain almost as much sanctity as the Revealed Commandments.”

\* \* \*

Question 7:

“As an illustration of how the principles of *fiqh* operate, could you please give me the correct Hanafi position regarding the question of apostasy, (*i.e.* is it permitted or not?) and whether this could ever be altered?”

Answer to 7:

“The correct position in Islamic law on apostasy is that it is irrevocably prohibited. The punishment in the Hanafi school for a breach of this law is, for a Muslim man, death, after the apostate has been given three days in which to have his doubts clarified and change his mind—*i.e.* not apostasize. In the case of a Muslim woman, the punishment is imprisonment for life or until she changes her mind.”

Question 8:

“In view of the fact, with reference to the Answer to (4), that an injunction of the Quran and/or *Sunna* is considered ‘clear’ when it was accepted as such by the Community originally, would it be permissible to describe this as ‘implicit’ or ‘silent’ *ijma*?”

Answer to 8:

“As *ijma* is a technical term with a definite legal meaning, such a description is not technically permissible. In regard to matters on which ‘clear’ injunctions can be found in the Quran and *Sunna*, obviously there would be unanimity of opinion in the *Ummat*, as for example in regard to *salat* being obligatory or *azan* being *masnun*. This, however, would not be *ijma* in the technical sense of the term.

*Ijma* is a decision by consensus of agreement among the jurists in regard to an issue on which no 'clear' verdict is to be found in the Quran and/or *Sunna*."

\* \* \*

Question 9:

"Does not this doctrine regarding 'clear' injunctions and *ijma* decisions imply that the *ijma* or consensus is eternally infallible, which is a unique attribute of God Alone?"

Answer to 9:

"The relevant verses of the Quran and *Hadith* are not interpreted in such a manner which would naturally be *shirk* or pluralism, but are interpreted to imply that God, the All-Powerful, has the power and gives the assurance that He will protect from error (which the Community is liable to make) the consensus of the believers."

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Question 10:

"Further to (5) and (6), in view of the fact that the Quranic verse (4:115) and the *hadith*, 'My Community will never unite in error' on which the doctrine of *ijma* or consensus is based, both refer to the community of Muslims as a totality and not to any particular group within it, how is the *ijma* or consensus of the learned related to the consensus of the Community?"

Answer to 10:

"The Quranic verse and the *hadith* no doubt refer to the Community as a totality and not to any particular group, but in all matters requiring technical erudition and a high degree of knowledge, people in general are always guided by experts, e.g. in mathematics, medicine etc. An *ijma* decision is always deduced by careful legal disciplines from the Quran and *Sunna* and this can obviously only

be accomplished by the experts in this field.

“For the sake of argument, it is true that *ijma* would not be technically complete in any problem, if the majority of the Community explicitly opposed the *ijma* of the jurists. But such an eventuality has never occurred throughout the history of Islam and is virtually impossible because *ijma* is a technical Islamic legal process for which the Muslim community would naturally rely on those qualified and competent in this sphere”.

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## LETTER IN REPLY

Karachi, December 15, 1953

Dear Mufti Sahib:

Thank you for approving the Summary of the Answers to the ten Questions I asked of you. I would also like to thank you once more for the courtesy and clarity with which you answered these Questions asked with the intention of ascertaining the correct position in the Hanafi school of Islamic law on the problems raised. I think they show without a doubt that the entire structure of *fiqh* rests upon these vital doctrines. No one who reads your Answers could fail to be also impressed with highly logical manner in which the orthodox *ulama* in past centuries have reasoned from their immediate premisses which premisses in turn are derived by the same logical methods from the overall ultimate premisses which unite all sincere Muslims.

First and foremost amongst these ultimate premisses which unite is the paramount need for ensuring that the Community's conception of the Oneness and Uniqueness of God is never endangered. I think you will agree that this process of *ikhlas* must be a constant one and that the Community must never relax its vigilance in this matter. No doctrine, legal or otherwise, deduced by human minds from the Quran and *Sunna* should run the risk of infringing on our belief in the Unity of God and when such a danger is brought to light and an improved deduction is found which more

safely protects our conception of the Unity of God, it becomes desirable, indeed imperative, that a process of *ikhlas* is undertaken towards the doctrine concerned. Otherwise we shall pass, I think, from the forgivable error of unconscious, to the unforgivable sin of conscious, *shirk*.

In reflecting on your Answers and the orthodox legal doctrines, the problem that arises in my mind is whether the dangers of *shirk* through the ascription of a unique attribute of God to something other than God are satisfactorily avoided by the doctrine<sup>1</sup> that God, the All-Powerful, has the power and gives the assurance that He will 'protect from error' (which the Community is liable to make) the consensus of the believers?<sup>2</sup> Could one by the same token ascribe to the Community or to something or someone other than God 'protection from weakness' or 'protection from ignorance' or 'protection from being mortal'? Or is the Community 'protected from error' in attempting to know the Unseen?

I use these examples to illustrate the point that we should not ascribe to God's Omnipotence any achievement which is self-contradictory or which involves anything derogatory to His other unique attributes such as Omniscience or Infallibility or being the First and the Last. How far, therefore, does the mere placing of the two words 'protection from' before an antonym of a unique attribute of God ensure that our belief in *Tauhid* is safe?

Yet at the same time I hasten to add that I am not questioning the interpretation of the Quranic verse (4:115) and the *hadith* 'My Community will never unite in error' insofar as they give evidence that

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<sup>1</sup> *vide* Answers to 5 & 6, (pp. 9-10, above) and to 9 (page 11, above)

<sup>2</sup> And/or 'protect from the consequences of error'.



the consensus of the Community is not incorrect. I merely wish to suggest that the dangers of *shirk* in this matter can more accurately be avoided not by the unrestricted use of what is in effect a form of double negative but by the placing of definite limits on the extent of the Community's correctness. These limits are given in the Quran itself when it describes very clearly those realms of knowledge which belong to God Alone.

There are three places where the Word of God is quite emphatic in this matter. The first (6:59) states,

“And with Him are the keys of the invisible—none knows them but He. And he knows what is in the land and the sea. And there falls not a leaf but He knows it, nor is there a grain in the darkness of the earth, nor anything green or dry, but it is all in a clear record.”

The second reference (20:110) states,

“He knows what is before them and what is behind them, while they cannot comprehend it in knowledge.”

The third (31:34) is equally clear,

“Surely God is He with whom is the knowledge of the Hour, and He sends down the rain, and He knows what is in the wombs. And no one knows what he will earn on the morrow. And no one knows in what land he will die. Surely God is Knowing, Aware.”

It will be noticed that the first verse quoted deals with the limits to knowledge in space essentially, the third one is dealing largely with limitations to knowledge in terms of time, while the second lends itself equally to both time and space. There is also, particularly in the third verse quoted, a reference to the limits to knowledge both in extension and in intension.

If one asks oneself how it is that no one or nothing other than God can possess these “keys of the invisible” it is precisely because they are invisible except to God and if one asks the further question

as to why they are not invisible to God it is because, being Omnipresent, there is nothing either in terms of time or space, intensionally or extensionally, of which He is not directly aware or which is hidden from His view. Here then is the border or limits of the knowledge of anything or anyone other than God—including the consensus of the Community—on the one side and the Omniscient Infallibility of God on the other. It is the fact that God is Omnipresent and other things and persons—including the Community—are limited in their 'presence'. Thus the 'protection from error' which is deduced from the Quranic verse and the *hadith*<sup>1</sup> is limited to the limited 'presence' of the Community, whether this is evaluated in terms of time or space, extensionally or intensionally. Thus as the limits of the Community's 'presence' alter, the legal deductions made from the Quran and *Sunna* must be re-examined and if necessary altered by fresh processes of *ijtihad*, if the Community is to continue to enjoy God's assurance of 'protection from error'.

To digress for a moment, it is possible also that this relationship between the Omnipresence of God and the limited 'presence' of anyone other than God may go a long way towards harmonizing the Quran's statements on free-will and predestination when the Omnipotence of God is correlated with His Omnipresence and the limited power of anyone other than God is correlated with his or her limited 'presence' and the fact that power is to be understood on an essentially moral plane. I have in mind in this connection those statements in the Quran of which the following (81: 27-29) is representative—  
 "It is naught but a Reminder for the nations, for him among you who will go straight. And you will not, except God please, the Lord of the worlds."

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<sup>1</sup> *vide* Answer to 5 & 6, pp. 9-10, above.

However, to return, the first purpose of this letter was to examine the orthodox legal doctrine of 'protection from error' and ascertain whether in its present form it was sufficiently protected against the dangers of *shirk* and, if it was not, what further limits could be placed on this doctrine of the Community's correctness to ensure that our conception of God's Unity and Uniqueness was not endangered. The further limit I have suggested is the limited 'presence' of the Community.

The second purpose of this letter is to examine the relationship between the consensus, or what may perhaps be termed the 'non-technical *ijma*,' of the Community and the consensus or *ijma* of the jurists or those 'competent'. In your reply to my last question, *i.e.* Number 10,<sup>1</sup> you recognized that the Quranic verse and the *hadith* on which the *asl* or principle of *ijma* is based both refer to the Muslim community as a totality and not to any particular group within the Community. This implied that it is the approval, silent or otherwise, of the consensus of the Community as a totality which makes complete an *ijma* decision and you stated therefore that if ever the majority of the Community as a totality were to explicitly oppose the consensus of the *fuqaha*, then *ijma* would not have been reached in the particular legal issue under consideration.

Now although this clearly establishes the 'law-interpreting'<sup>2</sup> supremacy of the Community as a totality over any particular group, including the 'competent,' within the Community, I believe this still leaves undecided the problem of who are to be considered 'competent' or how they

<sup>1</sup> *vide* pp.11-12, above.

<sup>2</sup> The function of an Islamic legislature is to 'interpret' the commands of God in contradistinction to a secular 'making' of laws without clear, direct reference to God's commands.

are to be chosen. Yet I believe that this very same Quranic verse and *hadith* eventually provide the clue.<sup>1</sup> I would suggest that a suitable starting point for examining this matter is another Quranic verse (4:58) which begins,

“Surely God commands you to make over trusts to those worthy of them . . .”

and in analyzing what makes someone ‘trustworthy’ or *amin*, particularly in discharging the trust of interpreting moral issues which is what the entire *shari’a* is based upon, I believe there is considerably more required than being an *alim*, when one uses the word *alim* in its literal sense of ‘one possessing knowledge’. For a person to be worthy of being handed over a trust, it is necessary that besides possessing knowledge, that he should possess integrity of character as well, and these two qualities, integrity and knowledge, as we know to our cost, are not always found together nor does one necessarily follow from the other. To knowledge then I would suggest that integrity and honesty must be prefixed as essential preliminaries and political conditions created which enable integrity and honesty to be assessed.

Yet there is even more to this problem of what makes for single or collective competence by Islamic criteria to understand and make deductions on the legal aspects of the Quran and *Sunna* and that is the Quran’s definition of what constitutes knowledge. A representative quotation, (30:22),

“And of His signs is the creation of the heavens and the earth, and the differences of your languages and colours. Lo! herein indeed are portents for men of knowledge,”

I think leaves little doubt that the Quran’s definition of knowledge requires that a competent person should possess not only a know-

<sup>1</sup> Quoted in Answer to 5 & 6, pp. 9-10, above.

ledge of his own Islamic system but should possess in addition a comparative knowledge of other systems and also of temporal, materialistic matters and that the devising of the collective assembly of those 'competent' should take these factors into account.

I venture to raise these aspects of the problem with you to illustrate the point that the question of deciding who is 'trustworthy' to understand the legal commands of the Quran and *Sunna* possesses many facets and that different Muslims may lay different emphases on them, some tangible and some intangible, some measurable and some unmeasurable by any formal yardstick or system of degrees, which go to constitute the Islamic criteria of competence. In view of these different and equally Islamic emphases and the imperative necessity for a common basis for agreement, I would suggest that the Quranic verse and the *hadith* on which the doctrine of *ijma* is based in their reference to the Community as a totality and not to any particular group within the Community, not only provide the source of worldly authority as delegated by God, (*i.e.* the Muslim community as a totality), for understanding His Commands but also provide the source from which the elective basis of deciding who is competent or 'trustworthy' to interpret the Quran and *Sunna* may be correctly deduced. This alone, the immediate, elective choice by the Community of who are 'competent,' will relate in a tangible and workable manner the 'way of the believers' to the *ijma* of the competent.

I am not suggesting or recommending however the Western system of elections which provides no conditions for assessing character and obliterates the Islamic emphasis on Islamic and comparative knowledge and empirical learning by its unhealthy

obsession with a party system and provincial considerations. I think therefore that a major difference between the Islamic and the Western electoral systems would be that the Islamic rests upon the mosque as the foundational and supreme electoral constituency for Muslims (for assessment of character in smaller and frequent groupings, and stress on Islamic knowledge) and similar houses of worship constituencies for non-Muslims (for comparative values and knowledge of other ideologies) and subsidiary functional constituencies (to stress the subsidiary materialistic and secular interests of the Islamic outlook) linking together people of different religions and ideologies.<sup>1</sup>

I believe that the Questions and the Answers and the considerations occasioned by them have raised basic issues which Islamic society must face to rediscover its own dynamic and direction. Surely therefore they deserve the widest discussion by the *Ummat*.

With respectful greetings,

Yours sincerely,

Kemal A. Faruki

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<sup>1</sup> Such a constitutional form has been elaborated by the present author in an earlier work, *Islamic Constitution*, (Karachi, 1952. Gateway Publications).

## CHAPTER FOUR

### CONCLUSIONS

#### A. Existing Orthodox Law

With the assistance of the Answers given it is possible to assess a number of the facts about existing orthodox Islamic law, some of which explain a great deal of the orthodox *ulama's* approach (in Pakistan) to the problem of creating an Islamic state structure, as evidenced by their recommendations on the Basic Principles Committee report to the Constituent Assembly of Pakistan.

The first and foremost of these facts about orthodox legal theory which should never be lost sight of is that it rests upon the doctrine of the Community's 'protection from error'. It is a penultimate premiss<sup>1</sup> on which the entire structure of Islamic law is based and from which any understanding of the Word of God and the precepts and practices of His Prophet derive their sanction. Imagine for a moment the situation that would be created if the doctrine of the Community's 'protection from error' were to disappear. Practically the entire body of Islamic law would lose its sanctioning base. All the *ijma* decisions within the books or digests of case-law would have nothing to justify them and those legal decisions which are classified as 'clear' because the Community was originally united in understanding them would no longer possess any assurance of being correct

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<sup>1</sup> The ultimate (and intuitive) premiss being the *kalima*, "There is nothing worthy of worship save God. Muhammad is God's messenger."

or being protected from the consequences of error and there would not be consequently any reason for considering them valid or requiring obedience. It is because the Community was unanimously united in understanding them and the Community, when agreed, is 'protected from error' that 'clear' injunctions of the Quran and *Sunna* are authorized.

*Ijma* of the four formal legal sources or *usul* of Hanafi law (the Quran, *Sunna*, *qiyas* and *ijma*) is the only other one besides the Quran which is nearly temporally self-existing—the *asl* or formal legal source of the Quran and the *asl* of *ijma* being mutually self-supporting (after the *kalima* has been accepted). The doctrine of *ijma* and the Community's 'protection from error' is derived from the Quran, but the authenticity of the Quran and the conviction that it is an intact revelation from God rests upon the Community's 'protection from error' inasmuch as the authentic and only Quran in existence is the recension made by the Khalif 'Uthman which was accepted by all the Companions of the Prophet, the *huffaz* and indeed the entire Muslim community of that early time.

In contrast the *asl* (formal legal source) of *Sunna* is essentially derivative from the Quran and *ijma* inasmuch as we obey the conventions of *Sunna* because the Quran urges us to do so and we feel assured that our understanding of the Quran is correct in this matter through an *ijma* decision which is 'protected from error'. This same doctrine of 'protection from error' is also our assurance that a *hadith* in question is valid. The fourth *asl* of *qiyas* ('analogy') is even more derivative, depending on the Quran and *Sunna* and authorized by *ijma*, (*i.e.* the principle of *qiyas* as a formal legal source as distinct from the validity of a *qiyas* decision in any particular matter).



Moreover this doctrine of the Community's 'protection from error' is absolutely unqualified in orthodox legal theory by any restrictions or limits<sup>1</sup>—a remarkable thing when one considers the constant care taken to ensure that all that is good and noble is only ascribed in limitless measure to Him and Him Alone. It is precisely because of this unlimited quality about the orthodox doctrine of 'protection from error' that the second fact about existing orthodox law—its irrevocability—is as it is. There are those amongst the modernists who protest that it is otherwise but in denying this second fact of its irrevocability in most matters these protesters betray their ignorance or blindness about how existing Islamic law is constructed. If an *ijma* decision is 'protected from error' then obviously the need for re-examining it cannot arise. If on the other hand one questions the correctness of a decision on which *ijma* has previously been reached one is in effect questioning the validity of the entire doctrine of *ijma* and this doctrine of *ijma* is a sanctioning authority which can hardly be replaced *in toto* or at any rate cannot merely be removed and left without a replacement. To create such a vacuum in Islamic legal theory would destroy the entire edifice of *fiqh*, including its laws of marriage and divorce, its laws of property and inheritance. There would be no legal source from which to validate any of the essential rulings which govern Islamic society.

Not merely is the overwhelming proportion of orthodox Islamic applied or positive law as it exists irrevocable, but this proportion is inevitably increasing through a form of osmotic pressure. That which is *zann* or fallible opinion (*i.e. ijihad*)

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<sup>1</sup>The argument that *ijma* is limited because it is limited only to decisions based on the Quran and *Sunna* is untenable inasmuch as this would imply that the Quran was limited in its guidance.

and therefore revocable, can through *ijma* become irrevocable. Once the *ijtihad* (individual interpretation) of the competent is certified as irrevocable through *ijma* it can never revert naturally through the same doctrine to being revocable and to being re-opened for *ijtihad*. Hence the logically consistent doctrine that the gate of *ijtihad* has been closed and is not to be re-opened again. All that is left according to the orthodox legal theory for *ijtihad* are entirely new cases (e.g. prayers while travelling by air) or those few items in previous cases where an explicit *illa* no longer exists or has changed or which are classed as *ijtihad* (the interpretations of individuals) or *ra'y* (arbitrary opinion unconnected with the Quran or *Sunna*) or '*urf* (custom).

The third fact which emerges is that orthodox law is essentially judge-made law (granting the interaction between *kazi* and *mufti*) and not either custom-made<sup>1</sup> or legislated law.<sup>2</sup> An *ijma* decision is arrived at by a form of judicial precedent which at some point along the line ceases to be con-

<sup>1</sup> The writings of Imam Shafi'i (d. 204 A.H.) mark the completion of the transition from custom-made law to judge-made law, particularly his victorious insistence on the supremacy of the ascertainable *Sunna* of the Prophet over the 'living' *Sunna* of contemporary Medina.

<sup>2</sup> There is a fourth method—namely of professorial law. Indeed, in a sense a great deal of any organized legal system in the world is a result of this method. In Islamic law, with the un-Islamic split between *fiqh* or correct Islamic law and *qanun* or neutral secular law—a product of imposing semi-absolute and absolute monarchies on an essentially republican and democratic religion—professorial law has a greater claim to direct attention, being freer of autocratic imperial pressure.

Nevertheless professorial law is academic and mere theorizing until its validity is tested by judges in actual cases. Thus the *mufti*, representing the academies of legal professors and the *kazi* representing the secular imperial power, by interaction, have built up a body of case-law which may be reasonably considered judge-made law to the degree that it is valid. But because the secular imperial power jealously reserved to itself the right of making law in many spheres (e.g. constitutional) there are many gaps in the theoretically all-embracing system of *fiqh* which have to be filled today and in that which already exists there may well be room for considerable revision bearing in mind the frequently baneful imperial influence of the past.

sidered the *ijtihad* of individual and differing jurists, which are classified as *zann* or fallible opinion and therefore open to reversal, alteration or denial, but becomes instead by virtue of the fact that all or most judges are following a particular precedent, a consensus or *ijma* of all jurists.

Now it is extremely important to bear in mind at this point that whether applied or positive law is made through legislation or through judicial precedent (both being amenable to professorial influence) is essentially a matter of methodological convenience. Neither of these methods in themselves is Islamic or un-Islamic. It is only in the effects of the two methods that the Islamic or un-Islamic nature of a method can show itself and that is essentially to be judged by the degree to which a particular method lends itself to enabling the agreed formal legal sources to find expression. In other words if the principle of *ijma* can operate better through legislation than through judicial precedent, then legislation becomes a more Islamic method of law-interpreting than judicial precedent. Similarly for the other formal legal sources of the Quran, *Sunna* and *qiyas*.

Yet it was on this very point that the orthodox *ulama* in Pakistan differed with the recommendations of the Basic Principles Committee when they suggested that the proposed Board of Five persons 'well-versed in Islamic law' be transferred from the executive-cum-legislative and be made instead part of the judiciary. They were in other words anxious to make Islamic law, to the degree that it was to be further developed, a matter of judicial precedent rather than of legislation. But there was probably more to their desire to transfer the Board of Five to the judiciary and that was the fact that as they regard Islamic law or *fiqh* it is

essentially fixed and practically entirely irrevocably completed.<sup>1</sup> The theory being that when a legal interpretation is considered as not subject to change it then becomes a matter of judicial interpretation of the existing body of case-law on the issue in question and there is no room for fresh legislation on the subject. It is for the orthodox *ulama* a problem at the most of interpreting interpretations (of the Quran and *Sunna*) and not of interpreting (the Quran and *Sunna*) afresh. For this the irrevocable nature of 'clear' injunctions of the Quran and *Sunna* and of *ijma* verdicts is the cause. To understand the pattern of the future as envisaged by the orthodox *ulama* one has merely to collect the 'clear' injunctions of the Quran and *Sunna* and the *ijma* decisions as they are compiled in the *Hedaya* and the *Fatawa 'Alamgiri* (and possibly one or two other compilations) and imagine them applied regardless of any other considerations inasmuch as they are 'protected from error,' unless an *illa* is explicitly mentioned and that *illa* no longer exists.

Now although the *Hedaya* and the *Fatawa 'Alamgiri* are in one sense compilations of case-law it is quite obvious that the total case-law that would accumulate in a thousand years and more is quite incapable of being utilized in any type of manageable compilation and that these two works are more in the nature of digests to be compared in a way to what in United States law would be called 'Restatements of Law' with the addition of actual legal authority.

When after a lapse of two centuries in Southern Asia there arises in Pakistan the problem of re-installing correct Islamic law (orthodox or otherwise) and clearing it of much dross that has become

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<sup>1</sup> The distinction between *Shari'a* and *fiqh* should be particularly noted here.

mixed with it in the form of what is called Anglo-Muhammadian law, it is quite obvious, even assuming one leaves the orthodox legal theory untouched, that new compilations or digests of case-law will be necessary which 'restate' the applied law and ascertain what one might describe as the 'applied constants,' utilizing in the process the mechanism of change in *illa* to its fullest capacity. Such a process, which is affirmative and not negative, is far more feasible through legislative means than judicial precedent even for the upholders of unqualified orthodox law. Yet it is extremely doubtful whether there is sufficient 'give' in orthodox legal theory, even when assisted by a legislative mechanism, to meet Islamically the requirements that will be thrust upon it today without stretching the meaning and use of the orthodox legal doctrines and the cases arising out of them until they are quite unrecognizable and irreparably damaged.

Yet even for those who are satisfied with the existing doctrine of an unlimited 'protection from error' and with the rest of orthodox law as it exists today without change, there still remains the fifth fact emerging from these Questions and Answers, namely the importance of the Community as a totality. What is the "way of the believers"? When is it mathematically considered to have been reached? What are its time and space requirements? How is the "way of the believers" as a totality to be ascertained? How is it to be related constitutionally to the 'competent' and what is the constitutional expression of the *ijma* of the 'competent' and how is one to Islamically judge and by what criteria those claiming to be 'competent'?

Now since it is the Community as a totality which is 'protected from error' and not any particular group within the Community it is essential to

ascertain the views of the Community as a totality at intervals or to feel constitutionally assured that the 'competent' have received their sanction from the Community and are in some tangible way related to the Community as a totality. Again these questions are best answered in the legislative rather than the judicial branch.

Even for the existing orthodox legal doctrine therefore it is necessary particularly when differences exist in the Community on this very point that some method be found of clearly relating the Community as a totality to the 'competent'. The task is to ascertain the "way of the believers" and this is most nearly done when the 'competent' are tangibly, *i.e.* electively, related to the Community. This elective machinery must be of such a nature furthermore that it is possible to assess all the qualities that go to make Islamic 'competence'—honesty, knowledge both Islamic and comparative, and materialistic knowledge. These factors, particularly those relating to honesty and integrity, have not so far been taken into practical account in considering the most effective constitutional machinery for this purpose.

In summary of the existing orthodox legal doctrine then, it is based upon the concept of the Community's 'protection from error'; the overwhelming and increasing proportion of its legal decisions are irrevocable; it is judge-made law; Islamic applied law is consequent on the previous two factors regarded by the orthodox more as a problem of judicial interpretation than of legislative development; there does not exist in orthodox law any clear agreement of when *ijma* is reached either in time or space; there is not further any tangible method of ascertaining and then relating the foundational consensus of the Community as a totality

to the dependent consensus of the 'competent'; and there is no explicit machinery for meeting the requirements which make for 'competence' or 'trustworthiness'.

## CONCLUSIONS

## B. Proposed Reforms

In the course of the Letter in Reply the present author suggested certain refinements to the existing orthodox legal theory to enable the Community to understand and obey better the Commands of God and the precepts and practices of His Prophet.

These suggested refinements to the existing legal theory carry widespread implications for the task of ascertaining and devising the most suitable state structure for a Muslim community desirous of regulating their lives according to the *shari'a* as understood through *fiqh*.

The essential change that has been suggested with regard to the concept of 'protection from error' is to place limits on the extent of the Community's lack of incorrectness, the better to ensure that our conception and apprehension of the Uniqueness and Unity of God is clear of all known dross and is reserved by us for God and God Alone. These limits have been identified with the limited 'presence' of the Community at any given time and place as contrasted with the Omnipresence of God.

Thus an *ijma* decision reached a thousand years ago in Baghdad and 'protected from error' for Baghdad at that time is not necessarily 'protected from error' for Karachi today in view of the considerable alteration in space and time of the 'presence' of the Community let alone the intensional and extensional widening of knowledge in the past ten centuries.



Yet at the same time on questions of fact pertaining to a particular time and place the Community then of that time and place is more 'present' in a very vital sense than the Community of today and here. On matters such as the authenticity of the text of the Quran, the transmission of *hadith* and on historical events and so on, we today should not question in view of our more limited 'presence' the Community's opinion of that time and place.<sup>1</sup> But because a widening of knowledge and experience through a lapse of time and transit in space otherwise heightens and deepens the 'presence' of the Community, new and constant *ijtihad* in even its basic forms and consequently new *ijma* decisions are necessary if the Community is to continue to be 'protected from error'. In short, where there is an alteration for better or for worse in the 'presence' of the Community, in time or space, intensionally or extensionally, fresh *ijtihad* and when necessary changes in *ijma* decisions are not merely permissible but imperatively desirable.<sup>2</sup>

It may be noticed that the proposed refinement in legal theory does not suggest any other changes in the *usul* or formal legal sources of Islamic jurisprudence and indeed the mutual support and sanction afforded each other by the Quran and *ijma* mentioned earlier remains intact.<sup>3</sup> Thus the observations made about the pivotal importance of the Community's 'protection from error' remain applicable even when this 'protection' is limited in the manner suggested.

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<sup>1</sup> This should not be too mechanically adhered to inasmuch as it is possibly conceivable even in some of these matters that historical research and other forms of 'higher criticism' may enable the Community of a later age to be more 'present' even on matters of fact.

<sup>2</sup> *vide* IV Conclusions, C. *Ijma* and 'Presence', pp. 35-38, below.

<sup>3</sup> *vide* IV Conclusions, A. Existing Orthodox Law, pp. 21-22, above.

The task therefore of ascertaining the tangible form of *ijma* remains as an immediate imperative even if the proposed refinement is accepted, continuing to be the basic Islamic constitutional issue today.<sup>1</sup> But in seeking to create a suitable 'ijma machinery' the second of the two proposed refinements in existing legal theory assumes importance, namely the elective relating of the consensus of the Community as a totality to the consensus of the 'competent'.

In the course of the Questions and the Answers it was clearly established that the Quranic verse (4:115) and the *hadith*, "My Community will never unite in error" on which the doctrine of *ijma* is based referred to the Community as a totality.<sup>2</sup> Indeed it is not difficult to imagine the disastrous schismatic and caste-creating consequences of trying to restrict the meaning of "believers" in the Quranic verse and of 'Community' in the *hadith* to any particular group within the Community.

That being the case it is clearly for the Community (as a brotherly and equal totality) to decide whether they want to delegate the task of exegesis as a trust to any group within the Community and if so it is also for the Community as a totality to decide by what criteria (ascertained from the Quran and *Sunna*) this group within the Community should be chosen, this group of 'competent' and 'trustworthy' interpreters of *shari'a*. One might also add that the more extensively, the more clearly, the more intimately and the more tangibly, these 'trustworthy' receive their sanction from the Community as a totality, the more nearly is "the way of the believers" being ascertained and the more

<sup>1</sup> For a possible solution of this problem see Kemal A. Faruki, *Islamic Constitution*, (Karachi 1952, Gateway Publications).

<sup>2</sup> *vide* II The Questions and the Answers, Number 10, page 11, above.

likely is it that God's assurance of 'protection from error' is being guaranteed.

The foregoing is in fact the Islamic sanction for the elective nature of any truly Islamic form of constitutional machinery. It is for the Community to choose, *i.e.* elect, those whom they consider 'competent' and 'trustworthy' and to change or reaffirm their choices (replace or re-elect through periodical elections), taking into account their changing 'presence'— in which their experience of the conduct in and out of office of their choices and rejects will go under the classification of an alteration in their 'presence'.

This points clearly towards a form of legislature as the supreme interpreting authority (in this world) as delegated by God for the Muslim community. It is moreover through legislated law and not judge-made law that the theory of 'protection from error' within the limited 'presence' of the Community can find expression. Law reached only through judicial precedent besides being slow-moving in both operation and development, is also, when unassisted, well-nigh irreversible and certainly would be incapable of that sensitivity which is required to revoke, replace or amend applied law according to the changing 'presence' of the Community. And this heaviness of purely judge-made law would prevent it from that certainty which is essential for real justice, particularly when there will be a multiplicity and variety, *ikhtilaf*, of Islamic legal schools within a truly Islamic society, let alone the non-Muslim systems which it is the duty of Muslims to protect and afford every reasonable facility to.

It is hard enough for a judge to satisfactorily apply the law of various legal systems as it is constructed by other hands without being saddled

with the impossible and unnatural burden of interpreting the varying formal legal sources himself and trying to develop the law for different schools within Islam and without, an outlook which he was forced to sometimes develop in traditional Islamic society despite the assistance afforded by *muftis*, as professorial legal advisers attached to the courts.

That all-important task of ascertaining the imperatives of *shari'a* and developing it in different *madhahib* or legal schools, within the limitations of human knowledge, singly or collectively, can only be done by the different schools for themselves, most suitably within a legislative machinery composed of the 'trustworthy' chosen tangibly, closely and formally by God's Muslim vicegerents, the Muslim community.

## CONCLUSIONS

C. *Ijma* and 'Presence'

The acceptance of the suggestions given in this work regarding the Community's 'protection from error' being limited to the Community's 'presence' will enable—if *ijma* is made a legislative matter — the Community to apply this legal theory with a fine range of meanings, accurately classed. This classification can also be profitably applied to the extent of the Community's consensus.

Thus a "(simple) *ijma*" would be one reached by a particular school of law, using its own particular *usul* or formal legal sources ( besides the *asl* of *ijma*). A "total *ijma*" would be one arrived at by all schools of law which use the *asl* or formal legal source of *ijma*, regardless of their other differences, in the use or non-use of other formal legal sources such as *qiyas* or *Sunna etc.* A "clear" injunction would be considered in future one on which Muslims of all schools of law (both those which use *ijma* and those which do not) are agreed. So that even the concept of *nass* or "clear" injunctions has relevance for today granting the acceptance of the concept of the limitation of 'presence'.

It is probably easy to appreciate why the definitions "(simple) *ijma*" and "total *ijma*" have been suggested. But why "clear" should be applied to the third category may not be so apparent. Yet even when the Community's 'protection from error' is limited doctrinally by time and space, intensionally and extensionally, there will still be understandings

of the Quran and *Sunna* which might justifiably be considered the heirs to the traditional use of the definition of "clear." If we reflect on the circumstances in which an injunction has been considered "clear" in the past, it is essentially because no disagreement was voiced at an understanding of a particular Quranic text or *hadith* regardless of which sub-conscious or 'unexpressed *usul*' were being used by the individual members of the Community at that early time, before the schools of law with their conscious, expressed and formal *usul* came into existence. So that to apply the concept of classifying as "clear" that on which all schools of law are agreed, regardless of their *usul*, *ijma* or non-*ijma*, is quite consistent and appropriate with the traditional use of the word "clear" inasmuch as a particular Quranic text or *hadith* lends itself to only one meaning (within the limitations of 'presence') regardless of the method of approach to understanding it.

We have then one system of classification of legal decisions of "(simple) *ijma*", "total *ijma*" and "clear" depending on whether one school, all '*ijma* schools' or all Islamic legal schools have accepted them.

There is possible in addition a further system of cross-classification depending on the extent of the 'presence' of the Community in time and/or space which has supported a legal ruling. If the 'presence' for a particular school is limited to one place (e.g. Pakistan) it would be considered a "local *ijma* (for Pakistan)"<sup>1</sup>; if a legal decision has been accepted by that particular school throughout the Muslim world it would be a "space *ijma*"; if it has persisted

<sup>1</sup> There is no method at present in orthodox legal theory of justifying the 'competent' in any one Islamic state making (*ijma*) rulings 'protected from error.' They can only, even when regionally unanimous, formulate the *zann* or fallible opinion of *ijtihad*.

in time in one place (a retrospective comment, also liable to revision) it would be considered a "time *ijma* (for place concerned)": if it has persisted in time and space (i.e. throughout the Muslim world, or more accurately wherever Islamic law of that school is upheld), it would be a "real (or time-space) *ijma*".

The table below gives on this basis the various types of legal decisions that result from this system:

	A. LOCAL One place.	B. SPACE All places.	C. TIME* Persisting in time at one place.	D. REAL* Persisting in time at all places.
I. (SIMPLE) IJMA One school	"LOCAL IJMA"	"SPACE IJMA"	"TIME IJMA"	"REAL IJMA"
II. TOTAL IJMA All schools using <i>asl</i> of <i>ijma</i>	"LOCAL TOTAL IJMA"	"SPACE TOTAL IJMA"	"TIME TOTAL IJMA"	"REAL TOTAL IJMA"
III. CLEAR All schools of Islamic law	"LOCAL CLEAR"	"SPACE CLEAR"	"TIME CLEAR"	"REAL CLEAR."

\* retrospective only.

It would of course be possible to classify and sub-classify still further, e.g. one place, one time; one place, different times; one place, all times. One time, different places; one time, all places. Different places, different times; different places, all times. Different times, all places; all places, all times.

But this is unnecessary for the present. Indeed a great deal of even the simpler classification given above in the table is unascertainable today (1373A.H.) inasmuch as Types C and D are only ascertainable retrospectively, after the concept of limitation to 'presence' has been in operation and even then there will be room for a wide variety of opinion on what constitutes 'persisting in time'. Type B would be

only ascertainable after Islamic law was being upheld throughout the Muslim world, which is unfortunately not the case today. <sup>1</sup> Of course for the time being one could take into account those Muslim regions where it was being upheld but that would not be quite the same thing.

Types A (I-III) are, for the immediate present, the kinds with which Pakistan or any other individual Islamic state can concern itself. For Types C and D even if some understanding of what constitutes 'persisting in time' is reached it would not alter the theoretical or actual possibility of these decisions being revoked, revised or replaced, though naturally such decisions would have a prestige-value (particularly after the concept of limited 'presence' is adopted) which would give them considerably greater respect. They may in fact be the legal decisions which help us to ascertain the absolute, or non-relative, meaning of the Quran, despite the relativity of our human understanding.

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<sup>1</sup> Except in some matters of ritual such as prayer, fasting and the pilgrimage which are in operation throughout the Muslim world. But Islamic personal, criminal, commercial, economic and political law is largely in abeyance.



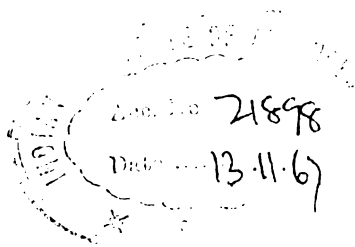
“You serve not besides Him, but names which you have named, you and your fathers—God has sent down no authority for them. Judgment is only God’s. He has commanded that you serve none but Him. That is the right religion, but most people know not”.

*Surah Yusuf* (Joseph). 12:40.

- ALIM** (pl. **ULAMA**): "One who knows", one possessing knowledge part. of Islamic ideology.
- AMIN**: "One who fulfils his trusts faithfully," a man of honesty, intelligence, knowledge, uprightness, justice, integrity.
- ASL** (pl. **USUL**): "Root," a principle or formal legal source of *fiqh* (e.g. Quran, *Sunna*, *qiyas* or *ijma*)
- AZAM**: "Greatest", chief, leading.
- AZAN**: "Call (to prayer)".
- DAR-UL-ISLAM**: "Abode of Islam," the Muslim world. Where Mus'im law is respected.
- DAR-UL-ULUM**: "Abode of learning," centre of Islamic studies.
- FAQIH** (pl. **FUQAHA**): "One who possesses knowledge about *fiqh*." q.v.
- FATAWA 'ALAMGIRI**: "The compilation of formal legal opinions under Alamgir's auspices." The compilation of Hanafi Islamic case-law made under the auspices of the Mogul Emperor Aurangzeb Alamgir of Hindustan in the late 17th. century C.E. in and around Delhi.
- FATWA**: A formal legal opinion given by a *mufti* in answer to a question submitted to him on a specific aspect or point of applied law.
- FIQH**: The application of principles to given situations, Islamic jurisprudence. Man's interpretation of *shari'a* q.v.
- FUQAHA**: pl. of **FAQIH** q.v.
- FURU**: "Branches," corollaries, derivatives from principles, Islamic applied or positive law.
- HADITH**: "Saying," traditions of the precepts and actions (*sunna*) of the Prophet Muhammad. (Strictly *hadith* is singular. The plural is *ahadith*).
- HAFIZ** (pl. **HUFFAZ**): "One who preserves," title given to those who know the Quran by heart.
- HANAFI**: Of the Sunni legal school of Imam Abu Hanifa.
- HEDAYA**: "Guidance," a book of Hanafi case-law compiled in the 12th. century C.E. in Farghana, Central Asia.
- HUFFAZ**: pl. of **HAFIZ** q.v.
- IJMA**: "Agreeing upon," the consensus of accepted and trustworthy *ijtihad* (q.v.) or interpretations of *shari'a*.

- IJTIHAD:** "Exerting oneself to the utmost degree" (to understand Islam) through disciplined judgment, the verdict or interpretation of an individual *mujtahid* on the meaning of the Quran and/or *Sunna*. cf. RA'Y.
- IKHLAS:** "To keep (or make) clear," to keep free from admixture or extraneous matter. The purification of one's concept of, and devotion to, the One God, free from all known idolatry or dross.
- IKHTILAF:** "Differences (of opinion)," mutually dissenting disciplined judgments. Those differences of views on Islamic ideology which do not affect the unity or solidarity of the *Ummat* and which therefore according to a *hadith* are a 'Divine favour'.
- ILLA:** Reason, cause, motive.
- IMAM:** Leader, guide (of prayer or community), pattern, model.
- ISLAM:** "Unconditional submission, loyalty, obedience (to the Will and Commands of God)".
- JAMIAT:** Association, group, organization.
- JINN:** "Hiddên (creatures)".
- KALIMA:** "The statement," the Islamic formula whereby an individual announces his acceptance of Islam—"There is nothing worthy of worship save God. Muhammad is God's messenger".
- KAZI:** Judge.
- KHALIF:** "Successor," vicegerent. Title given to the head of the Muslim community after the death of the Prophet. Humanity.
- MADHAB:** "Road," a school of Islamic law, a school of thought.
- MADHAHIB:** pl. of MADHAB q.v.
- MASNUN:** Founded on a tradition (action) of the Prophet.
- MAULANA:** "Our master," doctor of learning, savant.
- MUFTI:** "One competent or empowered to give *fatwas*." q.v.
- MUSLIM:** "One who unconditionally has submitted, is loyal, is obedient (to the Will and Commands of God)".
- MUJTAHID:** "One who exerts himself," one who carries out *ijtihad* q.v.
- NASS:** "Clear (injunction)," on which no disagreement is voiced. Not amenable to interpretation.
- QANUN:** Codified law developed by Muslims of any particular region without specific reference to Islamic sources.
- QIYAS** "Analogy (deduction by)," a distinguishing feature and one of the *usul* of Hanafi law. The process of reasoning from principles or examples in the Quran and *Sunna* to cover problems similar in significant respects.
- QURAN:** "That which should be read." The intact Book revealed from God, the Beneficent, the Merciful to the Prophet Muhammad. The first and foremost of the four formal legal

- sources (*usul*) of the Hanafi school of Islamic law.
- RA'Y:** "Opinion (arbitrary)." An opinion on any matter reached without specific or disciplined reference to the Quran or *Sunna*. cf. **IJTIHAD**.
- SALAT:** "Blessing, communion," prayer performed in a disciplined manner.
- SHARI'A:** "The (Divinely appointed) Highway." The way of life appointed by God for a believer to follow. The code of conduct described in the Quran. cf. **FIQH**.
- SHIRK:** "Pluralism." The association in worship, obedience or understanding of something or someone other than God with God. The ascription of a unique attribute of God to something or someone other than God.
- SUNNA:** "The way (of the Prophet)." The conventions and precedents set by the Prophet Muhammad's example. An *asl* of *fiqh*.
- SUNNI:** "Giving due prominence to the *Sunna* (q.v.) of the Prophet in their code of conduct and beliefs." A follower of the way of the Prophet. One of the major divisions of the Muslim community.
- TALIMAT:** "Teachings," injunctions.
- TAUHID:** The Oneness and Uniqueness of God.
- ULAMA:** pl. of **ALIM** q.v.
- UMMAT:** "The (Muslim) Community." The believers.
- 'URF:** Custom. That handed down traditionally which is not derived from Islamic thought and practice though not necessarily antagonistic to it.
- USUL:** pl. of **ASL** q.v.
- ZAKAT:** "To purify, to cause to go straight," the poor-rate.
- ZANN:** An opinion or disciplined judgment which is fallible, which is liable to be wrong.







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