

The Continuation of *Ijtihād*: A Study of Shāh Walī Allāh's Views from the Perspective of the Classical Typology of *Ijtihād*

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Abstract

This article deals with legal thought of Shāh Walī Allāh, an outstanding religious thinker of eighteenth-century Muslim India, who emerged as one of the most prominent proponents of independent legal reasoning (ijtihād). According to Walī Allāh, ijtihād has always been a communal duty and thus it stipulates the existence of jurists capable of independent legal reasoning (mujtahids) in all ages. His thought-provoking response to the issues concerning ijtihād and taqlīd has led to a great deal of attention from scholars in both the East and the West. However, there remains the controversy of whether he advocated for an independent ijtihād after the eponyms of the law schools or not. This study attempts, analyzing Walī Allāh's views on the juristic typology maintained by Sunnī jurists, to show how Walī Allāh argued for the continuity of ijtihād, both partial and independent, throughout the history of Islamic law. The author concludes that Walī Allāh believed not only in the possibility of absolute ijtihād (al-ijtihād al-muṭlaq) or ijtihād through legal theory (fī 'l-uṣūl) and positive law (wa 'l-furū'), after the eponyms of the juristic schools, but also in the existence of such absolute jurists throughout Islamic centuries.

Keywords

ijtihād, legal reasoning, Sunnī legal theory, Indian subcontinent, Shāh Walī Allāh, legal reform.

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Introduction

Aḥmad b. ‘Abd al-Raḥīm (1703–1763), popularly known as Shāh Walī Allāh, was an outstanding religious thinker, who assumed the role of a renewer of religion (*mujaddid*) as well as that of a highly-qualified jurist capable of independent legal reasoning (*mujtahid*).¹ He is widely considered one of the pioneers of religious reform in Muslim South Asia, thanks to his comprehensive contribution to Islamic sciences, in general, and Islamic law in particular.² Though his religious, mystical, educational, and socio-political thought has attracted scholars from both the East and the West, his views on Islamic law have not yet received the attention they deserve. For example, his proponents among the Deobandi and the Barailvī schools, the mainstream Sunnī-Ḥanafī Muslims of the Indian subcontinent, maintain that Walī Allāh restricted himself to the legal framework of the Sunnī conventional legal theory in general and the Ḥanafī legal theory in particular, and, hence, they see his legal contribution as only a conservative restatement of the Ḥanafī school, which opened only the gate of partial *ijtihād*.³ Some scholars considered him “the founder of Muslim Modernism”⁴ because of his independent legal thought which apparently consists of several modern features concerning the further development of Islamic law in a modern age.

This article analyzes Walī Allāh’s views on the juristic typology by examining his legal writings, in order to trace the trajectories of the discourse that led scholars to reach different conclusions. It further elaborates his view on the existence of the *mujtahid muṭlaq* (i.e., the independent jurist), before as well as after the eponyms of the law schools and concludes that Walī Allāh suggested more than partial *ijtihād*.

¹ For some important works that deal with his life and activities, see Shāh Walī Allāh al-Dihlawī, *Anfās al-‘Ārifīn* (Delhi: Maṭba‘-i Muṭtabā, 1335 AH); Sheikh Mohamad Ikram, *History of Muslim Civilisation in India and Pakistan* (Lahore: Star Book Depot, 1961); and Saiyid Athar Abbas Rizvi, *Shāh Walī-Allāh and His Times: A Study of Eighteenth Century Islām, Politics and Society in India* (Canberra: Ma’rifat Publishing House, 1980).

² Aziz Ahmad, *Studies in Islamic Culture in the Indian Environment* (Oxford: Clarendon Press, 1966), 201–09.

³ Muḥammad Maẓhar Baqā, *Uṣūl-i Fiqh aur Walī Allāh* (Islamabad: Idārah-i Taḥqīqāt-i Islāmī, 1970), 5; Muḥammad Yūsuf Bannūrī, “Imām Shāh Walī Allāh aur Ḥanafīyyat,” *al-Furqān Shāh Walī Allāh Nambar* (Bareilly) 7, no. 9–12 (1360/1941): 382.

⁴ Fazlur Rahman, “The Thinker of Crisis: Shah Waliy-Ullah,” *Pakistan Quarterly* 6, no. 2 (1956): 44.

Walī Allāh's Views on *Ijtihād* and Its Continuation

In the context of eighteenth-century India, Walī Allāh was well equipped with Islamic sciences and emerged as one of the most prominent proponents of *ijtihād* in both theoretical as well as practical levels. He maintains that *ijtihād* has always been a religious communal obligation (*fard 'alā 'l-kifāyah*) for significant reasons. To substantiate his viewpoint, he argues that the establishment of a political system under the control of a ruler (*khalīfah*) is always a communal duty (*wājib bi 'l-kifāyah*) of all Muslims until the end of the world and that to be a *mujtahid* is one of the prerequisites of the ruler.⁵ Thus, Walī Allāh concluded that *ijtihād* was a communal duty that stipulated the existence of the *mujtahids* in all ages. Recognizing the significance of *ijtihād* as the fundamental instrument for the development of Islamic law, he contributed a great deal of literature in this respect, and his treatise, entitled '*Iqd al-Jīd fī Aḥkām al-Ijtihād wa 'l-Taqlīd*' (The Chaplet for the Neck Concerning the Rules of Legal Reasoning and Adherence), is considered a pioneering work on *ijtihād* in the history of Muslim South Asia.⁶ In the preface to this treatise, he describes *ijtihād* and its nature and scope as follows:

The true nature of *ijtihād*, as understood from the discussions of the '*ulamā*', is an expenditure of the utmost effort in the discernment of the applied *sharīah* rulings (*al-aḥkām al-shar'iyyah al-far'iyyah*) with their detailed evidences that, in their entirety (*kulliyyātihā*), go back to four categories: the Qur'ān, the *sunnah*, consensus (*ijmā'*) and analogical reasoning (*qiyās*). From this, it can be understood that *ijtihād* is broader than [a jurist's] exhaustive endeavour to discern legal rulings, no matter whether that has already been addressed by earlier jurists or not, and whether he agrees with them in this respect or not. It is also wider than accomplishing *ijtihād* with or without seeking aid from some [of the previous jurists] in being made aware of both the facets of the issues and the sources of the rulings with detailed evidences. This is a false belief that the jurist who agrees with his *shaykh* on most issues—but recognizes a proof for every ruling to be fully satisfied and convinced—is not a *mujtahid* (independent jurist). Similarly, the belief that no *mujtahid* exists in these times [of ours], relying upon the first conjecture, is also false on account of its being based on a false supposition."⁷

⁵ Shāh Walī Allāh, *Izālat al-Khafā 'an Khilāfat al-Khulafā'* (Karachi: Qadīmī Kutub Khānah, n.d), 1:4.

⁶ Sayyid 'Abd al-Ḥayy, *al-Thaqāfah al-Islāmiyyah fī 'l-Hind: Ma'ārif al-'Awārif fī Anwā' al-'Ulūm wa 'l-Ma'ārif* (Damascus: al-Majma' al-'Ilmī al-'Arabī, 1958), 127.

⁷ Shāh Walī Allāh al-Dihlawī, '*Iqd al-Jīd fī Aḥkām al-Ijtihād wa 'l-Taqlīd*' (Sharjah: Dār al-Fath li 'l-Nashr wa 'l-Tawzī', 1995), 20.

Walī Allāh's definition of *ijtihād*, as he admits, is based on the conventional meaning of *ijtihād*, which is adopted by mainstream classical Sunnī jurists. Yet, it is obvious from the above quotation that he significantly extends the scope of *ijtihād* to a very broad range of juristic activities, such as partial *ijtihād*, affiliated or dependent *ijtihād*, independent and absolute *ijtihād*, fresh *ijtihād* (concerning new cases), and *ijtihād* for revision and modification of previous *ijtihāds*. Thus, he argues for the continuity of *ijtihād* and the existence of both the independent and affiliated *mujtahids* throughout Islamic history. In the following, his theory of *ijtihād* will be further discussed through a study of the juristic typology which emerged after the formative period of Sunnī legal theory.

With respect to the hermeneutical function of the jurists under the hierarchical system of Islamic law, various ranks—three in the Mālikī school,⁸ five in the Shāfi'ī school,⁹ and seven in the Ḥanafī school¹⁰—are recognized in the genre of juristic typology that can be summarized as follows.

1. The very first rank is identified by the Shāfi'ī scholar, Abū 'Amr 'Uthmān b. 'Abd al-Raḥmān (known as Ibn al-Ṣalāḥ al-Shahrazawrī) (d. 643/1245), as “the independent jurist” (*al-mujtahid al-mustaḳill*)¹¹ and “the absolute independent religious scholar” (*al-muftī al-muṭlaq al-mustaḳill*)¹² on one hand, and identified by the Ḥanafī scholar, Ibn Kamāl Bāshā (d. 940/1533) as “the jurist of the *sharī'ah*” (*al-mujtahid fī 'l-shar'*), on the other.¹³ This rank is generally recognized only for highly qualified jurists who were fortunate enough¹⁴ to be acknowledged as the founders of the law schools, including the four famous *imāms* (namely, Abū Ḥanīfah, Mālik, al-Shāfi'ī, and Aḥmad), for certain reasons, such as their independent *ijtihād* in legal issues relying directly upon the fundamental sources of the *sharī'ah*. Hence,

⁸ Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 2–7.

⁹ 'Uthmān b. 'Abd al-Raḥmān b. al-Ṣalāḥ al-Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī* (Medina: Maktabat al-'Ulūm wa 'l-Ḥikam, 2002), 1:29.

¹⁰ Abū 'Abd al-Raḥmān b. 'Aqīl, ed., *Risālatān: 1-Ṭabaqāt al-Mujtahidīn li Ibn Kamāl Bāshā 2-'Ilm al-Baḥṭh wa 'l-Munāzarah li Ṭāshkubrīzādah* (Cairo: Maṭba'at al-Jabalāwī, 1977), 13.

¹¹ The word independent (*mustaḳill*) is important since it distinguishes first-rank jurists from others, in particular the second-rank jurists, who are, in contrast, considered dependent or affiliated (*muntasib*) jurists because of their dependence on or affiliation with other prominent jurists or law schools in one way or the other.

¹² Al-Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī*, 1:29.

¹³ Ibn 'Aqīl, *Risālatān*, 13.

¹⁴ *Ibid.*

they neither follow a particular jurist nor belong to a school¹⁵ and their momentous achievement lies in establishing the fundamental principles (*ta'sīs qawā'id al-uṣūl*) of their school in order to derive positive legal rulings (*furū'*) accordingly, and in so doing, they follow no one, neither in *uṣūl* nor in *furū'*.¹⁶

2. The second rank is recognized for a jurist who possesses the same lofty qualifications found in the jurists of the first rank. But, unlike the first rank, this jurist is identified by Shāfi'ī scholars as “dependent jurist” (*laysa bi mustaqill*), “the affiliated jurist” (*al-muftī al-muntasib*),¹⁷ “the absolute, affiliated jurist” (*al-mujtahid al-muṭlaq al-muntasib*), “the absolute, dependent jurist” (*al-mujtahid al-muṭlaq ghayr al-mustaqill*),¹⁸ because he believes in the soundness of the *ijtihād* principles and methods adopted by the first-rank independent jurist. However, he arrives at the same conclusions independently, not by virtue of adherence to the first-rank jurist's doctrines and *ijtihād* methods (*lā yuqallid fī madhhabihī wa lā fī dalīlih*). Nonetheless, he prefers to advocate the doctrines and the fundamental rules formulated by the previous eponym, rather than to establish his own law school.¹⁹ His legal opinion (*fatwā*), as maintained by Ibn al-Ṣalāḥ, is considered equally important to that of the first-rank jurist in every way, even in matters concerning the consensus.²⁰ Yet, the distinction, if any, between this and the previous type of jurists is drastically blurred.²¹

¹⁵ Al-Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī*, 1:26.

¹⁶ Ibn 'Aqīl, *Risālatān*, 13.

¹⁷ There is no specific title used by Ibn al-Ṣalāḥ for the jurist who belongs to this second category. He extends the word “dependent” (*laysa bi mustaqill*) and “affiliated” (*al-muftī al-muntasib*) generally to all succeeding four types of jurists, including the second-rank. However, he identified some of them with specific titles.

¹⁸ According to al-Suyūṭī, “This is an absolute, affiliated jurist, albeit neither independent nor limited.” In order to explain this statement, he divides the absolute (*muṭlaq*) jurist into two types: absolute, independent (*muṭlaq mustaqill*) and absolute, dependent (*muṭlaq ghayr mustaqill*). Al-Suyūṭī also makes a distinction between various categories of jurists and explains how it is impossible to establish a new school after the establishment of the previous law schools. See 'Abd al-Raḥmān b. Abī Bakr al-Suyūṭī, *Kitāb al-Radd 'alā Man Akhlada ilā 'l-Arḍ wa Jahila anna 'l-Ijtiḥād fī Kull 'Aṣr Farḍ* (Cairo: Maktabat al-Thaqāfah al-Dīniyyah, 1989), 38–40.

¹⁹ Al-Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī*, 1:29; Yaḥyā b. Sharaf al-Nawāwī, *Rawḍat al-Ṭālibīn wa 'Umdat al-Muftīn* (Beirut: al-Maktab al-Islāmī, 1991), 11:101. In this regard, al-Nawāwī asserts that “as we have discussed that a *mujtahid* does not follow another *mujtahid*. They [the second-rank jurists] are considered affiliated to al-Shāfi'ī only because they have observed the same pattern [of al-Shāfi'ī] both in their *ijtihād* and application as well as classification of the sources. Hence, their *ijtihād* led them to the same conclusions reached by al-Shāfi'ī and if their *ijtihād* differed from al-Shāfi'ī, though it happened rarely, they paid no heed to it.”

²⁰ Al-Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī*, 1:129–32; al-Suyūṭī, *Kitāb al-Radd*, 41.

²¹ A concern that is noted by several Shāfi'ī scholars. See al-Suyūṭī, *Kitāb al-Radd*, 39; al-

Second-rank jurists are identified in Ḥanafī typology as the *mujtahid fī 'l-madhhab* (jurists within a particular school's boundaries), because, as maintained by Ibn Kamāl Bāshā, they exercise *ijtihād* by adhering to the fundamental rules established by the founder of the school to which they belong and they never depart from those rules (*uṣūl*). This is, according to Ḥanafī typology particularly, the main characteristic of this type of jurists that distinguishes them from the first-rank *mujtahids*, though they differ with the founder on many positive legal rulings (*furū'*).²²

3. Below this comes the rank of the jurist who is identified by Shāfi'ī scholars as "the limited jurist" (*al-mujtahid al-muqayyad*), *aṣḥāb al-wujūh*, *aṣḥāb al-turuq fī 'l-madhhab*,²³ and *mujtahid al-takhrīj*.²⁴ However, Ibn Kamāl Bāshā identified this type of jurist as "the jurist of the particular cases" (*al-mujtahid fī 'l-masā'il*).²⁵ With regard to juristic function and prerequisites, this rank is recognized for a jurist who possesses all the qualifications found both in the first and the second rank, but, with a weakness in one or more areas of the law.²⁶ Therefore, contrary to the second-rank jurist, he remains adherent (*muqallid*) to his *imām* (the eponym) both in *uṣūl* (methodological and fundamental principles) and *furū'*.²⁷ Though he is capable of performing *ijtihād* in all domains of law in order to address new and unprecedented cases, his *ijtihād* remains within the framework of the law school he is affiliated with, and this is the main characteristic of the jurist who belongs to this category.
4. The fourth-rank jurist—*mujtahid al-tarjīḥ* as identified by al-Suyūṭī,²⁸ and "*aṣḥāb al-takhrīj min al-muqallidīn*" as identified by Ibn Kamāl Bāshā²⁹—is one who is unable to reach the level of juristic competence found in the preceding category with regard to the various areas of law, such as the school's doctrines, the various *ijtihād* methods, and

Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī*, 1:32; and Hallaq, *Authority, Continuity and Change in Islamic Law*, 9. However, Walī Allāh's response to this question will be discussed in the following pages.

²² Therefore, Ibn Kamāl Bāshā considered Abū Yūsuf, Muḥammad b. al-Ḥasan, and the other companions of Abū Ḥanīfah to be *mujtahid fī 'l-madhhab*, the affiliated jurists. See Ibn 'Aqīl, *Risālatān*, 13.

²³ Al-Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī*, 1:32.

²⁴ This title is added by al-Suyūṭī. See, al-Suyūṭī, *Kitāb al-Radd*, 41.

²⁵ Ibn 'Aqīl, *Risālatān*, 11.

²⁶ Ibn al-Ṣalāḥ points out that most often this weakness is observed either in his knowledge of *ḥadīth* or the Arabic language. See al-Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī*, 1:32.

²⁷ Ibn 'Aqīl, *Risālatān*, 14.

²⁸ Al-Suyūṭī, *Kitāb al-Radd*, 40; Ibn Ṣalāḥ did not use a specific title for this category. See al-Shahrazawrī, *Adab al-Muftī wa 'l-Mustaftī*, 1:36.

²⁹ Ibn 'Aqīl, *Risālatān*, 14.

legal theory (*uṣūl*) etc. Although he is well versed in the legal theory (*uṣūl*) and positive legal rulings (*furūʿ*) of the school (*mutabaḥḥir fī l-madhhab*) with which he is affiliated and is considered an expert of the *tarjīḥ* method, he has less expertise particularly in the *takhrīj* method, and even in the *tarjīḥ* method³⁰ in comparison to those of the preceding category.³¹

5. Next to this, another lower rank—the “*mujtahid al-futyā*” as per Shāfiʿī typology³² and “*aṣḥāb al-tarjīḥ min al-muqallidīn*” as per Ḥanafī typology³³—is recognized for a jurist who is not as expert in *ijtihād* methods like the preceding category. Yet, he does have the capability to give a legal opinion (*fatwā*) based on the school’s doctrine since he is well acquainted with most of the doctrines of the jurists of the first three ranks of his school and, therefore, is considered the transmitter of the *madhhab*.³⁴
6. Below this, there is another rank recognized in the Ḥanafī typology for those jurists who are not as expert in *ijtihād* like the preceding categories. However, they can distinguish between authoritative (*ẓāhir al-riwāyah*) and less authoritative doctrines (*al-nawādir*) of the school. The jurists belonging to both this and the previous two categories (i.e., the fifth and the fourth ones) are, in fact, too weak to be identified as proper jurists. Therefore, the word *muqallidīn* (adherents) is added by the Ḥanafī scholars to their titles.³⁵
7. In Ḥanafī typology, the seventh rank is recognized for those who do not fall under any of the above-mentioned types of jurists. Though they are considered “scholars” and “jurists,” in contrast to the public, Ibn Kamāl Bāshā describes them as follows: “They are incapable of differentiating left from right,” because of their poor scholarship.³⁶

It is worth mentioning that Walī Allāh preferred the Shāfiʿī juristic typology to that of Ḥanafī scholars, as it is evident by his frequent references to Shāfiʿī scholars such as Abū Ḥāmid al-Ghazālī (d. 505/1111), Ḥusayn b. Masʿūd al-Baghawī (d. 516/1122), Sālim ‘Abd al-Ghanī al-Rāfiʿī (d. 623/1226), and Yaḥyā b. Sharaf al-Nawāwī (d. 676/1277). Therefore,

³⁰ For details of the *takhrīj* and *tarjīḥ* methods, see chapter two of Hallaq, *Authority, Continuity and Change in Islamic Law*.

³¹ Al-Shahrazawrī, *Adab al-Muftī wa l-Mustaftī*, 1:36; al-Suyūṭī, *Kitāb al-Radd*, 41.

³² Al-Suyūṭī, *Kitāb al-Radd*, 41. Ibn Ṣalāḥ did not use a specific title for this category. See al-Shahrazawrī, *Adab al-Muftī wa l-Mustaftī*, 1:36.

³³ Ibn ‘Aqīl, *Risālatān*, 14.

³⁴ Al-Shahrazawrī, *Adab al-Muftī wa l-Mustaftī*, 1:37.

³⁵ Ibn ‘Aqīl, *Risālatān*, 14.

³⁶ *Ibid.*, 15.

relying upon the Shāfi'ī typology, he reiterates the ranks of the *mujtahids* as per the following sequence:

1. *Al-mujtahid al-muṭlaq al-mustaṣill*, the absolute jurist who is independent in his *ijtihād* and legal theory—the very first-rank jurist as per the above classification;
2. *al-mujtahid al-muṭlaq al-muntasib*, the absolute jurist, albeit affiliated with any of the founders of the schools—the second-rank jurist as per the above classification;
3. *al-mujtahid fī 'l-takhrīj*, who is also identified by Walī Allāh as “*al-mujtahid fī 'l-madhhab*” (the jurist within the school's boundaries)—the third-rank jurist as per the above order;
4. *al-mutbahhir fī 'l-madhhab*, the profoundly learned jurist who is also identified by Walī Allāh as “*mujtahid al-futya*”³⁷—the fourth-rank jurist as per the above arrangement.

However, in contrast to the Shāfi'ī typology, Walī Allāh merges the fifth-rank jurist with the fourth level, below which there is, as he observes, “the absolute adherent (*al-muqallid al-ṣirf*) who asks the scholars for legal opinions and acts accordingly.”³⁸ Walī Allāh has also divided the jurists into another tripartite classification that will be discussed in the following section. Like the Shāfi'ī scholars, Walī Allāh asserts that the absolute jurist is of two types: independent (*al-mustaṣill*) and affiliated (*al-muntasib*) (i.e., the first- and second-rank jurists as per the above classification). Then he describes the following qualifications as prerequisites for both of them: “He must possess expert knowledge of (1-2) the Qur'ān and the *sunnah* with respect to what relates to legal rulings, (3) consensus of opinion, (4) analogical reasoning (*qiyās*), (5) other methods of deriving rulings from the sources, (6) Arabic language, (7) the theory of abrogation, and (8) *ḥadīth* transmitters.”³⁹

On other occasions, Walī Allāh reduced the above-mentioned eight types of knowledge, following Shāfi'ī scholars like al-Baghawī,⁴⁰ Nawāwī,⁴¹ and Yūsuf b. Ibrāhīm al-Ardabīlī (d. 779 AH), to five disciplines,

³⁷ Al-Dihlawī, *ʿIqd al-Jīd*, 24; al-Dihlawī, *al-Inṣāf fī Bayān Asbāb al-Ikhtilāf* (Beirut: Dār al-Nafā'is, 1986), 79–81.

³⁸ Al-Dihlawī, *ʿIqd al-Jīd*, 24.

³⁹ These prerequisites belong to the jurists of the first and second ranks, as evident by both the context and Walī Allāh's other works. However, for the rest of the jurists including the judges and the rulers, he loosens the criteria on the one hand, and adds the knowledge of positive legal rulings to the list of their prerequisites, on the other—as we shall later see.

⁴⁰ Al-Dihlawī, *ʿIqd al-Jīd*, 24.

⁴¹ Al-Dihlawī, *al-Inṣāf*, 79.

combining the fourth and the fifth into one category and then putting the seventh and the eighth under the first and the second categories, respectively. Thus, he says, “The absolute (*muṭlaq*) *mujtahid* is a person who combines five types of knowledge in himself.”⁴² However, for the absolute, independent jurist, whether he belongs to the first rank or the second, Walī Allāh considers neither knowledge of scholastic theology nor knowledge of the previous *fiqh*-works necessary prerequisites, so in this regard he disagrees with al-Ghazālī, particularly on the latter qualification as a prerequisite for a jurist, although he does not deny its importance completely.⁴³ Responding to al-Ghazālī, he asserts that the latter qualification should be considered an additional thing for the second-rank jurist.⁴⁴ He assumes that the latter jurist would most likely enter into the realm of *ijtihād* once the first-rank jurist had accomplished the task. Thus, he should be well aware of the first-rank jurist’s discourse without which he would not embark on *ijtihād* to the best of his ability. This is akin to the situation in which it is insisted for the absolute, independent (first-rank) *mujtahid* that “he must be well acquainted with the discourse of those who passed before him, such as, the Companions, the Successors, and the Successors of the Successors, in the realms of positive law,”⁴⁵ as Walī Allāh explains.

Before dealing with the next categories of the lower-ranked *mujtahids*, Walī Allāh says, “The prerequisites, mentioned above belong to the absolute *mujtahid*.”⁴⁶ As we observed earlier, the absolute *mujtahid* includes both the first and the second types of *mujtahids* in the writings of Walī Allāh. Thus, it seems that there is no important distinction between the first and second types of jurists concerning their prerequisites, except that the second-rank *mujtahid* should possess one more qualification, that is, the knowledge of positive rulings of the early (the first-rank) jurists. This leads to a significant question: What makes the jurist of the first rank superior to that of the second rank, given that both are equally qualified? If the answer is, as maintained by the Shāfi‘ī scholars,⁴⁷ that the first-rank jurists articulated particular rules for the development of a legal theory that eventually resulted in the

⁴² Ibid.; Walī Allāh, *Izālat al-Khaḍā‘an Khilāfat al-Khulafā’*, 1:20.

⁴³ Al-Dihlawī, *‘Iqd al-Jīd*, 21–22. He remarked, “There is no need to scholastic theology and Islamic positive law.” However, he did not provide further detail in this regard, particularly discounting the prerequisite of theology (*kalām*).

⁴⁴ Ibid., 21.

⁴⁵ Ibid.

⁴⁶ Ibid., 22.

⁴⁷ As it is indicated by al-Suyūṭī. See al-Suyūṭī, *Kitāb al-Radd*, 39.

establishment of their legal schools, though long after their demise,⁴⁸ this leads to another question: Why did the second-rank jurists not establish their own schools?⁴⁹

Responding to the said question, or in other words, to make a distinction between the first- and second-rank jurists, Walī Allāh asserts that three traits distinguish the first-rank jurist from the rest: “(1) his effective command of the legal theory (*al-taṣarruf fī ’l-uṣūl*) on which his *ijtihād*-based judgments depend; (2) his pursuit of Qur’ānic verses, *ḥadīths*, and *āthār* (sayings of the Companions), in order to learn about the rulings which had already been concluded as well as his ability to prefer some of the conflicting evidence over others, make it clear what is preferred over other possibilities, and identify the (suitable) sources of the rulings among them; and (3) his ability to address, relying upon the said sources, new cases that have not been answered.”⁵⁰

His response is based on the writings of the above-mentioned Shāfi’ī scholars as Walī Allāh states, “As evident from their [the Shāfi’ī scholars’] discussion, the independent (*mustaqill*) jurist is distinguished from the rest by three qualities.”⁵¹ However, in his *al-Inṣāf*, he reiterates the same without referring to the Shāfi’ī scholars and concludes, “In summary, he (the first-rank *mujtahid*) should be very active in these traits, superior to his contemporaries, preeminent among his rivals, and outstanding in his field.”⁵² Distinguishing between the first- and the second-rank jurists, Walī Allāh has also based his argument on al-Shāfi’ī’s role which made the latter the eponym of a new law school in an age that had already witnessed many first-rank jurists. Walī Allāh asserts, “The independent *mujtahid* is distinguished from the rest by three traits, as we clearly see in the case of al-Shāfi’ī . . . who, enumerating the *ijtihāds* exercised by his predecessors, offered his own analysis.”⁵³

However, on the other hand, Walī Allāh surprisingly admits that the second-rank jurist also possesses the second and the third traits mentioned above. He remarks in *al-Inṣāf*,

The absolute, affiliated jurist [i.e., the second-rank] is one who follows and accepts what he [i.e., the first-rank jurist] did under the first trait

⁴⁸ Several legal historians held that the schools were established by the followers rather than by the so-called founders themselves.

⁴⁹ A question that had already been answered by al-Suyūṭī in several ways. See al-Suyūṭī, *Kitāb al-Radd*, 39.

⁵⁰ Al-Dihlawī, *Iqd al-Jīd*, 23.

⁵¹ Ibid.

⁵² Al-Dihlawī, *al-Inṣāf*, 81.

⁵³ Ibid., 82.

[mentioned above], but he [i.e., the second-rank] does the same concerning the second [as well as the third]⁵⁴ trait [independently], while the jurist within the school's boundaries [i.e., the third-rank] is one who follows him [i.e., the first-rank jurist] concerning the first and second traits, but does the same for the third trait [independently].⁵⁵

Thus, the only distinguishing trait, if any, among the above-mentioned three traits of the first-rank jurist is the first one, that is, "his thorough command of the principles of jurisprudence." Nevertheless, we already have observed that the second-rank jurist indeed believes in the soundness of the *ijtihād*-based principles and methods adopted by the first-rank jurist, but only because he arrives at the same conclusions independently, not by virtue of blind "imitation" to the eponyms, as maintained by the Shāfi'ī scholars upon whom Walī Allāh relied in this discussion. This is almost the same situation in which we find the eponyms "adhering" to as well as relying upon their teachers and predecessors, as we shall see. Hence, it seems that the subsequent jurists were not less competent than the first-rank jurists in performing *ijtihād* and developing their legal theories, although they did not develop their own legal theories because of the reasons we have indicated before. So, in order to determine the status of the first-rank jurists, which is still "drastically blurred," Walī Allāh addresses it from a different but interesting perspective. He points out two factors working behind this phenomenon (i.e., the superiority of the eponyms to the rest of the jurists): (1) the purely natural way of introducing and developing new sciences on the part of the pioneers and (2) the divine decree (i.e., God's decision to bless some jurists with His grace in a way that was quite astonishing).

His elaboration of the former factor, which is based on two similar examples, is not only quite remarkable, but also presents his standpoint in a way that hitherto has probably not been observed by any other scholar. The first example concerns the ancient pioneers (i.e., the very first experts) of medical science and the second one is about those who pioneered the poetry. Walī Allāh considers these fathers of any scientific

⁵⁴ This is not mentioned in the text, but I have incorporated it on account of the context and the following quotation, both of which justify this addition.

⁵⁵ Al-Dihlawī, *al-Inṣāf*, 81. Here Professor Marcia Hermansen misunderstood Walī Allāh's term of "*jārī majrā*," which is important and even used twice by Walī Allāh in the given context. Hermansen's translation does not align with the original text. See Marcia K. Hermansen, trans., *Shāh Walī Allāh's Treatises on Juristic Disagreement and Taqlīd: al-Inṣāf fī Bayān Asbāb al-Ikhtilāf and 'Iqd al-Jīd fī Ahkām al-Ijtihād wa-al-Taqlīd* (Louisville, KY: Fons Vitae, 2010), 57.

field—in order to gauge their status with those who were junior to them only in age, yet equally genius enough to contribute to the same degree—to be at the highest level akin to that of the first-rank jurists (i.e., eponyms) in Islamic law, since they are credited with inventing a new science. However, the experts of subsequent generations in each science can be measured either to the second-rank jurists if they are not less qualified in any respect than their predecessors nor is their competence based on mere imitation of the pioneers or to the third-rank jurists if they are highly competent in the field, yet, their competence is based on mere imitation of the pioneers in dealing with all areas of the subject. The following is the relevant text:

Let us give an example of this. Anyone who wants to practice medicine in these recent times either follows the Greek doctors or the doctors of India who are (assumed to be) at the level of the independent (*mustaqill*) *mujtahids*.⁵⁶ If this aspirant to medical practice came to know the properties of medicines, the types of illnesses, and how to formulate the potions and treatments within his own mind, he would become aware of this through their instructions until he became confident on his own without imitation (*taqlid*). Then, he would be able to do what they had done, so that he would know the properties of remedies that had not been discussed previously, and be able to explain the causes of ailments, their symptoms, and cures that had not been observed by the previous doctors. He would then rival the first ones in some of the things they had spoken of, whether in a few or many cases. Thus, he would be in the position of the independent, affiliated *mujtahid*.⁵⁷

If he rather learned this from them without attaining complete certainty and usually was concerned with producing potions and remedies based on these principles that had already been set out, similar to the state of most of the medical practitioners of these recent times, then he would

⁵⁶ The original text reads “*fa huwa bi manzilat al-mujtahid al-mustaqill*,” which clearly seems to be erroneous because the context does not align with it. If we translate the given text as did Professor Hermansen (i.e., “Anyone who. . .” and “he is at the level of the independent (*mustaqill*) *mujtahid*. . .” and “If this aspirant. . .”), we are led to believe that the same person is being discussed under two opposing titles, while Walī Allāh is discussing here two different types of jurists! Thus, the correct word must be “*fa hum*” instead of “*fa huwa*,” because the former rightly refers to the pioneers of any science who are being compared here to the first-rank independent jurists.

⁵⁷ Unfortunately, this part of Walī Allāh’s response to the given questions is misunderstood by some of the English and Urdu translators of Walī Allāh’s book, *al-Inṣāf*, including Professor Hermansen. Though the translation of the following citation is based on her work, I will point out in the footnotes where I disagree with her translation.

be in the position of a dependent, affiliated *mujtahid* within the boundaries of a legal school.⁵⁸

The second example is described by Walī Allāh as follows:

Likewise is the case of whoever composes poetry in these times. Either he takes as a model for this the poetry of the Arabs and chooses their prosody, rhyme schemes, and the styles of their *qāṣīdas* [sic]; or he imitates the poetry of the Persians and both types of poets should be considered⁵⁹ at the positions of the independent (*mustaqill*) *mujtahids*. Then if this poet makes up types of *ghazals*, *tashbīb*, panegyric, satire, and verses of admonishment and brings forth the most wondrous metaphors, poetic devices, and so on, the like of which are unprecedented, still he must have become aware of how to do this on the basis of certain of their works. He therefore drew a parallel and made an analogy of one thing to another, and was able to invent a new meter that no one had ever spoken of before, as well as new poetic forms such as the composition of the *mathnawī*, the *rubāʿī*, and hypermeter—that is a separate word which is repeated in every verse after the rhyme scheme. Thus he is at the level of the (*mutlaq*) independent, affiliated *mujtahid*. If he is not original but merely follows their ways he will be at the level of the dependent, affiliated *mujtahid* within a legal school. The situation is similar in Qurʾān interpretation, Sufism, and fields of knowledge other than these two.⁶⁰

However, the pioneering role of the eponyms in the development of Islamic law does not necessarily mean that they were blessed with a so-called high caliber or some special kind of “God-gifted knowledge” that is no longer available to others. In fact, they learnt Islamic sciences by seeking help from their teachers and predecessors. Walī Allāh, discussing the “exceptional achievement” of the first-rank jurists, affirms, “Even the eponyms imitated their predecessors and were reliant on them.”⁶¹ However, they are widely credited, perhaps, because of the articulation of the prevailing knowledge in a way that persuaded subsequent jurists to agree with them, although they neither claim finality for their own doctrines and theories nor do they discount the possibility of further development of Islamic law by succeeding jurists. Likewise, in the examples mentioned above, Walī Allāh indicates that a similar development takes place in all sciences at the hands of subsequent

⁵⁸ Al-Dihlawī, *al-Inṣāf*, 82–83. The translation is of Hermansen, *Shāh Walī Allāh's Treatises*, 56, with variations.

⁵⁹ A correction like the previous one is also made here.

⁶⁰ Al-Dihlawī, *al-Inṣāf*, 82–83. The translation is of Hermansen, *Shāh Walī Allāh's Treatises*, 56–57, with variations.

⁶¹ Al-Dihlawī, *al-Inṣāf*, 72.

experts when they make significant contributions to (*lam yusbaq al-takallum fih*) and suggest modifications and innovations (*mukhtari'an li anwā'*) in the existing knowledge. Even they challenge some of the previous theories (*zāham al-awā'il fī ba'd mā takallam*). Hence, the Islamic law would be of no exception.

It is interesting to note that Walī Allāh considers himself at the level of the independent or at least the second-rank jurist and intends to re-examine the whole body of the previous Sunnī legal works, both the *uṣūl* and *furū'*.⁶²

While discussing the academic attitude of the jurists of the third and subsequent centuries, however, Walī Allāh mentions several impediments to further independent (the first-rank) *ijtihād*.⁶³ These impediments resulted in the beginning of the widespread imitation (*taqlīd*) of the prevailing schools among Muslim communities and thus affected independent *ijtihād*, although it was not discontinued at once as generally assumed. In this regard, Walī Allāh explains two attitudes of the scholars, each of which led them to follow their predecessors for one reason or the other.⁶⁴ These attitudes, according to the details further provided by Walī Allāh, were held by both the second- and third-rank jurists, but with some exceptions, as will be discussed here. Then he explains that a third attitude could have led them to the first-rank *ijtihād*, but they preferred the prevailing attitudes because they felt it easier to simply follow both the existing legal theories and doctrines. However, Walī Allāh seems not to hold the succeeding jurists responsible for not paying heed to the third attitude (i.e., the independent *ijtihād*). Rather, he attributes it to divine will. From this perspective, he maintains that the third Islamic century witnessed a wide and complex growth of various branches of Islamic knowledge, in particular the disciplines of *ḥadīth* and Islamic law. Therefore, it became nearly impossible for the scholars of subsequent centuries, particularly because of the attitudes they happened to hold and due to the natural impediment caused by a limited life span, to thoroughly grasp all the relevant knowledge of the past without which they could not embark on independent *ijtihād*. Walī Allāh remarks,

If he has spent his life in attaining this degree of knowledge how will he ever be able to do justice to dealing with all of the ramifications for

⁶² Al-Dihlawī, *Muṣaffā Musawwā* (Delhi: Maṭba'-'i Fārūqī, 1293 AH), 1:12.

⁶³ In this discussion, Walī Allāh has also relied upon the arguments that had already been made by some classical Sunnī scholars. For instance, see al-Suyūṭī, *Kitāb al-Radd*, 38–39.

⁶⁴ Al-Dihlawī, *al-Inṣāf*, 71.

positive law on top of this? The human soul—even when it is pure—has a recognized limitation beyond which it cannot reach. Even if this (exceptional achievement) was facilitated for the first group of *mujtahids* when the era (of the Prophet) was near and the disciplines of religious knowledge were not so complex, still it was not easy except for rare individuals. In spite of that even they imitated their teachers and were reliant on them. However, due to their great expenditure of effort for the sake of knowledge, these scholars attained the status of independent (*mustaqill*) [*ijtihād*].”⁶⁵

Thus, in pointing out the second factor (i.e., the divine decree), Walī Allāh concludes that the succeeding scholars gradually changed their attitude towards first-rank *ijtihād*, though partial or affiliated *ijtihād* continued. Hence, adhering to the schools of the previous jurists came about as “an inner inclination with which God inspired religious scholars whether they were aware of it or not.”⁶⁶ This factor is also explained by Walī Allāh as a fourth trait⁶⁷ of first-rank jurists. He asserts, “An acceptance from the heavens should descend upon him so that groups of scholars—whether Qur’ānic interpreters, *ḥadīth* experts, theorists of jurisprudence, or memorizers of the books of law—will devote themselves to his knowledge, and many centuries will pass in this acceptance and devotion until this take in people’s hearts.”⁶⁸

Despite the above-mentioned emerging attitude of succeeding jurists, the following Islamic centuries witnessed many second-rank jurists, though they are usually considered to be affiliated with various schools for one reason or the other. But, they were capable, as we have seen before, to embark on an independent *ijtihād* and indeed they played their role in this regard, particularly those jurists who belonged, in any sense of affiliation, to the school of al-Shāfi‘ī. Analyzing the emergence and continuity of such jurists, particularly in the four Sunnī law schools, Walī Allāh comments as follows:

The absolute affiliated *mujtahid*⁶⁹ within the school of Abū Ḥanīfa died out after the third century. This is because such a *mujtahid* must be a brilliant hadith scholar and their (the Ḥanafīs’) devotion to the discipline of hadith studies has been minimal, formerly and currently. In this school, there were only found *mujtahids* within the school. . . . The affiliated *mujtahids* in the school of Mālik are few. Whoever was one of them did not have his

⁶⁵ Ibid., 72. The translation is of Hermansen, *Shāh Walī Allāh’s Treatises*, 47.

⁶⁶ Al-Dihlawī, *al-Inṣāf*, 72.

⁶⁷ The three traits have already been discussed.

⁶⁸ Al-Dihlawī, *al-Inṣāf*, 81.

⁶⁹ Second-rank jurists as per our classification.

individual rulings counted as an authoritative point of view within the school such as Abu 'Umar who is known as Ibn 'Abd al-Barr (1070) and the Qāḍī Abū Bakr ibn al-'Arabī (1148).

As for the legal school of Aḥmad [Ibn Ḥanbal], its members were few, formerly and currently, and *mujtahids* have been found in it, generation after generation, until it became moribund in the ninth century and the school vanished in most regions except for a few persons in Egypt and Baghdad. . . . As for the *madhhab* of al-Shāfi'ī, it is the legal school possessing the most absolute *mujtahids* and *mujtahids* within the school. It is also the school with the most developed legal theory and theology and the one which has provided the most Qur'ān interpretation and commentary on the hadith. It is the strongest in (establishing) chains of hadith reporters and transmission, the most accomplished in verifying the statements of the founder, the strongest in distinguishing between the opinions of the founder and the points of view of his associates, and the most scrupulous when giving certain opinions and points of view of prominent scholars' preference over others. All of this will not be concealed from scholars who are involved in the legal schools and study them.

The first group of al-Shāfi'ī's students were *mujtahids* in the absolute sense and none among them followed him in all of his derivations based on *ijtihād* until Ibn Surayj came along and established the principles of *taqlīd* and derivation. Then his students began to follow his way and imitate his procedure and for this reason he (al-Shāfi'ī) is numbered as one of the Renewers (*mujaddidūn*) coming at the beginning of the centuries, and God knows best.⁷⁰

In this citation, it is obvious that Walī Allāh believes not only in the possibility of the independent *ijtihād* (*al-ijtihād al-muṭlaq*) or absolute jurists (*al-mujtahid al-muṭlaq*)—both belong to the first and second level of *ijtihād*—even after the eponyms of the juristic schools, but also in the existence of such absolute jurists throughout the later Islamic centuries. He has discussed the contributions and methodological approach of such absolute jurists, in general, and those who inspired by al-Shāfi'ī, in particular, and has also explained how they examined Islamic law exercising *ijtihād* independently in their times, as did al-Shāfi'ī himself. Among the list of such jurists, he lists the following famous scholars: al-Bukhārī, Abū Dāwūd, al-Tirmidhī, Ibn Mājah, al-Dārimī, Muslim, al-'Abbās al-Aṣamm, etc. He also discusses the nature and extent of their affiliation with various eponyms.⁷¹ Although, he discussed the role of Ibn

⁷⁰ Al-Dihlawī, *al-Inṣāf*, 83–86. The translation is of Hermansen, *Shāh Walī Allāh's Treatises*, 57–59.

⁷¹ Al-Dihlawī, *al-Inṣāf*, 71–77, 86.

Surayj (d. 306/918) in articulating the legal theory of al-Shāfiʿī that eventually led to the rise of *taqlīd* attitude in the Shāfiʿī *madhhab*,⁷² a school of law which he considers the most capable of absolute *ijtihād*. Yet, he believes that the second-rank, absolute jurists, who are also identified by him as *al-faqīh al-muḥaddith* (i.e., one who combines the disciplines of both the *ḥadīth* and law), performed independent *ijtihād* throughout the Islamic history, and affirms that “even if such scholars exist in large numbers, still they are relatively few in comparison to those of the lower levels.”⁷³

Lesser-ranked Jurists and Opening the Gate of *Ijtihād* to the Maximum Extent

As for the lesser-ranked jurists (i.e., other than the jurists of the first and second ranks), Walī Allāh relaxes the criteria for their qualification in comparison to the first- and the second-rank jurists. In this context, he describes that “*ijtihād* is a communal duty for all ages and what I am speaking of here does not mean an independent *ijtihād* equal to that of al-Shāfiʿī. . . . But, I mean here one who must possess knowledge of the legal rulings along with detailed evidence for them and have the competence of the *tafrīʿ* method⁷⁴ of *ijtihād*, irrespective of his competence whether it is based on the lines indicated by the eponyms or not.”⁷⁵ This kind of his view may also be linked to his argument for the natural impediment caused by a limited life span that made it nearly impossible for the later scholars not only to grasp all the legal works of the previous jurists, but also to master the Qurʾān and *ḥadīth* sciences.⁷⁶ This is much clearer in Walī Allāh’s other typology that is worthy of mention here.

In the previous discussion of the ranks, juristic functions, and the necessary qualifications of the jurists, Walī Allāh has relied on Shāfiʿī classical literature. However, he has also introduced another juristic division⁷⁷ that is, to some extent, based on his findings from the history of Islamic law.⁷⁸ Analyzing the situation of the Muslims before the fourth

⁷² Ibid., 85.

⁷³ Al-Dihlawī, *ʿIqd al-Jīd*, 51–52.

⁷⁴ The *tafrīʿ* method of *ijtihād* like *takhrīj* refers to an ability of a jurist to deduce legal rulings for new issues relying upon the ramifications of previous cases.

⁷⁵ Al-Dihlawī, *Muṣaffā Musawwā*, 1:12.

⁷⁶ Al-Dihlawī, *al-Inṣāf*, 72.

⁷⁷ Al-Dihlawī, *Hujjat Allāh al-Bālighah* (Beirut: Dār al-Jīl, 2005), 1:267–68; al-Dihlawī, *al-Inṣāf*, 69–70.

⁷⁸ This is rather a general division of the Muslim community that is observed by Walī

Islamic century, he asserts that all the Muslims were of two types: the religious scholars and the public. The latter did not concur with the need to perform *taqlīd* within a particular school. Rather, they used to learn the legal rulings from their forefathers or the teachers of their cities and, in case some uncommon situation arose, they asked for a legal opinion about it from whichever scholar they found without specifying a legal school. Then, expounding the juristic activities of the former category (i.e., the religious scholars) concerning their investigative study of the divine sources for the purpose of recognizing the legal rulings, Walī Allāh divided them into the highest and middle level *mujtahids*. He further divides the former (i.e., the highest level of *mujtahids*) into the following two sub-categories: “(1) *Mujtahids*⁷⁹ among the traditionists (i.e., the *ḥadīth* scholars), such as Aḥmad b. Ḥanbal and Ishāq b. Rahawayh,⁸⁰ who became *mujtahids* and *muftīs* through exerting their utmost efforts in collecting reports of the Prophet, Companions, and Successors concerning the legal rulings; and (2) *Mujtahids*⁸¹ among the jurists (i.e., the *fiqh* scholars), such as Abū Yūsuf and Muḥammad b. al-Ḥasan al-Shaybānī,⁸² who attained the level of *ijtihād* through mastering

Allāh in both his books *al-Inṣāf* (69 onwards) and *Ḥujjat Allāh* (1:267 onwards) for similar categories, though a difference is found between the sources. I have mainly relied upon the first source because of the clarity it bears, while the second source is also incorporated, where necessary, to elaborate the author’s viewpoint. In the latter source, he identifies the following levels of the Muslim community: (1) the highest level of *ijtihād* (with reference to the jurists’ understanding of divine law) that is further divided into two types discussed in the text; (2) the middle level of *ijtihād*; and (3) the lowest level, which refers to the public. It is important to note that professor Hermansen did not realize the subdivision of the first category and hence, mistakenly, made five separate categories of jurists. Marcia K. Hermansen, trans., *The Conclusive Argument from God: Shāh Walī Allāh of Delhi’s Ḥujjat Allāh al-Bāligha* (Leiden: Brill, 1996), 462–63. Moreover, in *al-Inṣāf*, Walī Allāh describes the jurists’ activities and levels from a historical perspective. However, in *Ḥujjat Allāh*, it seems that Walī Allāh is discussing how difficult it is to understand the divine law, not only for the classical jurists but also for the contemporary scholars. Therefore, this leads to the emergence of different levels of scholars.

⁷⁹ He used the word highest level of *ijtihād* (*a’lāhā*), to refer here to the first-rank *mujtahids*, as evident by both the context and names he cited as examples. See al-Dihlawī, *Ḥujjat Allāh al-Bālighah*, 1:267.

⁸⁰ In *al-Inṣāf*, Walī Allāh has mentioned only the former scholar; however, in *Ḥujjat Allāh*, he mentions both the scholars (*muḥaddiths*) as examples.

⁸¹ Though it is also a subdivision of the highest-level *mujtahids*, the context suggests that Walī Allāh means here the second-rank jurists, as evident by the examples he referred to. See al-Dihlawī, *Ḥujjat Allāh al-Bālighah*, 1:267.

⁸² These exemplary names are provided by the scholar in his *al-Inṣāf*. However, at this point in *Ḥujjat Allāh*, he used the term “*aṣḥāb al-takhrīj*” for this level of *mujtahids*. See *ibid.*

the legal theory developed by their law teachers as well as having a good command of a sound body of both the Prophetic *ḥadīths* and the reports of Companions.”

Then he discusses the middle-level *mujtahids* (i.e., the latter category of the religious scholars) who possessed a combination of both the above-mentioned methods.⁸³ Their role and qualifications are described by Walī Allāh as follows:

Among the *mujtahids* are those who have acquired enough knowledge of the Qur’ān and the *sunnah* to enable them to know the main points of jurisprudence and the basic issues through their detailed proofs (*adillah*). They can arrive at the probable opinion in some of the other issues through their proofs. In some of them, they hesitate and need to consult other religious scholars, since they have not perfected the tools and skills as they are perfected by the absolute *mujtahid*. Thus, such jurists can function as *mujtahids* in some cases and not in others.⁸⁴

In *Ḥujjat Allāh al-Bālighah*, Walī Allāh explains the same middle-level *mujtahids* as follows:

He acquires a knowledge of the Qur’ān and sunna which will enable him to recognize the preeminent issues of jurisprudence that have been agreed on together with their detailed proof texts (*adilla tafṣīliyya*). He should have achieved as well the highest degree of knowledge of certain issues of *ijtihād* through knowing about their proof texts (*adilla*), the preference of certain opinions over others, the criticism of derivations, and recognizing the correct from the false. Even if he has not perfected the critical apparatus to the same extent as the absolute *mujtahid* (*al-mujtahid al-muṭlaq*) still someone like him can select the better among two schools of opinion if he knows their proofs (*dalīl*), while realizing that his opinion is not operative in the same sphere as the *ijtihād* of the *mujtahid* and is not admissible in the adjudication process of the judge, nor is it valid for the *muftī* in giving legal opinions. He is permitted to abandon certain derivations which people previously used if he learns that they lack validity and therefore the scholars who do not claim to be doing absolute *ijtihād* continue to make compilations, classify, make derivations, and give preference (in legal studies). Since *ijtihād* has become subdivided in the view of the majority and derivation has as well, and since the goal is only

⁸³ This sentence is added from *Ḥujjat Allāh* and the context of both the sources reveals that Walī Allāh refers here to all those jurists who are between the second-rank jurists and the public imitators (i.e., *muqallids*).

⁸⁴ Al-Dihlawī, *al-Inṣāf*, 70.

to obtain conjectural opinion (*ẓann*) and to base legal obligation on it, then nothing is disqualified by this.⁸⁵

Thus, contrary to the Shāfi'ī scholars, he opens the gate of *ijtihād* to the maximum extent even to those of the lesser-ranked scholars who can only perform partial *ijtihād*. Therefore, perhaps he does not consider the knowledge of scholastic theology (*kalām*) and a thorough command of all the previous legal works a prerequisite for a jurist, and disagrees on this point with al-Ghazālī, as pointed out earlier. He encourages the religious scholars to perform *ijtihād*, even though in a single case (i.e., partial *ijtihād*) if they can do it. Otherwise, their way is “imitation,” perhaps because then they are not scholars. Thus, responding to Ibn Ḥazm's statement, “*Taqlīd* is forbidden, it is not permitted for anyone to follow the opinion of someone other than the Prophet of God,” Walī Allāh remarks, “This statement [of Ibn Ḥazm] applies to any person who has some inkling of *ijtihād* even if only in one issue.”⁸⁶

On the other hand, as the previous study of Walī Allāh's legal thought affirms, the gate of the independent *ijtihād*—both in the *uṣūl* and *furū'*—remains always open even after the eponyms, but only for the highly qualified jurists, such as those of the second rank.

Conclusion

After a thorough investigation of Walī Allāh's views on the various ranks of *ijtihād* and *mujtahids*, and the prerequisites of the jurists, I reach the conclusion that Walī Allāh firmly believes that *ijtihād* has always been a religious communal duty and thus it stipulates the existence of the *mujtahids*/jurists in all ages, though with a difference of levels/ranks. The eponyms of the law schools are recognized as the eponyms or *Imāms*, only because of their pioneering role in articulating and developing the methodological sciences of Islamic law (*uṣūl al-fiqh wa qawā'idih*). Otherwise, the second-rank jurists, contrary to those of the third and the subsequent ranks, indeed have almost the same competence of Islamic sciences to exercise an independent *ijtihād*. Furthermore, these lower-ranked jurists in general, and the second-rank jurists in particular not only can embark on *ijtihād* in some or all domains of law independently, but also add significant ideas to the previous doctrines and legal theories, suggest modifications and

⁸⁵ Al-Dihlawī, *Ḥujjat Allāh al-Bālighah*, 1:267. The translation is of Hermansen, *Conclusive Argument from God*, 462–63.

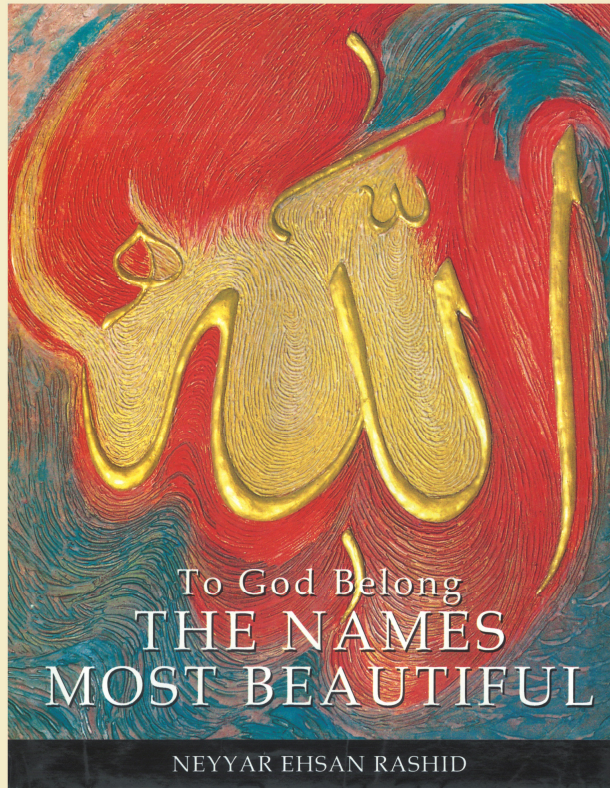
⁸⁶ Al-Dihlawī, *Ḥujjat Allāh al-Bālighah*, 1:264. The translation is of Hermansen, *Conclusive Argument from God*, 455–56; and al-Dihlawī, *ʿIqd al-Jīd*, 185.

innovations in the existing methods of *ijtihād*, and even challenge the previous legal doctrines and theories of the schools. In other words, Walī Allāh's legal thought affirms that the gate of *ijtihād*—both in the '*uṣūl* and *furū*'—has always remained open even after the eponyms of the law schools. But only the highly qualified jurists, such as those of the second rank, as per our arrangement, should be considered capable of independent *ijtihād* (i.e., *ijtihād* in the *uṣūl*). However, the other forms of *ijtihād*, particularly related to the *furū*, can be performed by any Muslim jurist, even by those who are *mujtahids* in some cases but *muqallids* in others. Walī Allāh believes that no age can be devoid of *ijtihād* as it is a communal obligation of Muslims and, therefore, both types of the jurists have frequently contributed to the development of Islamic law. Though several factors affected the independent *ijtihād* particularly after the formative period of Islamic law, it was not discontinued as generally assumed.

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To God Belong The Names Most Beautiful

Neyyar Ehsan Rashid



Allah

Within the deepest folds of my heart
Something stirs
Soft ripples of life gathering force
A torrential river, pure and warm
Gushing through my still body
The blood of life
Into my spirit
A Divine impetus
From the core of existence
An all-new rhythm emerging
Through Your name Allah
Your presence illuminates
The innermost recesses of my soul
The Being that created all beings and
Moral codes with which to mould our lives
'Allah' differs from other Divine names
It has no definition
It is simply Allah
It cannot be used for anyone
Nor ascribed to anything else
A concept so vast
It can only be deciphered, felt and depicted
Through one's own experience
Limited as it may be
This is my personal insight of You
I surge the radiance toward the pain in my spine
Flushing out the agony
A blessed beginning
Cleansing my entire being
A gentle caress carrying me back
Into my mother's soothing embrace
I paint the warm waves of light
Flowing above me, around me, within me
A rich, thick movement
A simultaneous sense of elation and immersion
A miracle is happening to me
A spiritual healing, a renewal
I have found my prescription
My cure
The sheer love of Allah
Traversing a realm unknown
I follow my heart within which blazes
My soul
Engraved eternally across it, in golden glory
My Lord
Allah I inhale deeply
Hu I exhale light

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