

Introduction

The sources of *ijtihad* according to Shi'ah and the Ahl al-Sunnah, put together, are: the Book, the Sunnah, *ijma'* (consensus), *'aql* (reason), *qiyas* (analogy), *istihsan*, *masalih mursalah*, *istislah*, *sadd al-dhara'i'*, *fath al-dhara'i'*; *madhhab al-sahabi*, *shari'at al-salaf*, *'urf*, *istidlal*, and so on.

In this series of articles we shall try to discuss and study these topics in detail from the Shi'i and the Sunni points of view.

We expect writers and scholars who have specialty in this field to contribute to the soundness and validity of these studies through constructive criticism relevant to the subject studied here. Any constructive criticism is very useful for correcting errors and removing shortcomings, and effective in eliminating ambiguities and omissions.

Besides rendering vital service to scholarship, it is beneficial to the author, who is forced to be more careful in his statements and precise in his research. The intellectual history of Islam is indicative of the debt that the development and expansion of legal and other scientific studies owe to diverse viewpoints and competent criticism.

This commendable and beneficial tradition has been in vogue in its most desirable form throughout the seven epochs of *ijtihad* among all the scholars and *mujtahidun*, and especially in the sixth and the seventh periods, whose fore-runners were Wahid Behbahani and the great al Shaykh al-'Ansari respectively, this tradition reached its zenith.

Also, the very force of *ijtihad*, from the era of *tashri'* (legislation) to the present (as discussed in detail in the article on the epochs of *ijtihad*), as a legitimate activity is derived from criticism and debate.

Because, in Islamic fiqh, *ijtihad* has had the meaning of a free and independent effort of the *mujtahidun*, undertaken for the purpose of advancement and expansion of the Islamic sciences. This development was not possible except through freedom of scholarly research, free expression of different views and clash between views of the *mujtahidun*, scholars and thinkers.

By practising *ijtihad*, a *mujtahid* deduces the *ahkam* (laws) of the Shari'ah for issues and problems regarding which there is no specific express text (*nass*), by relying on legal sources and principles and by benefiting from the ideas of other *mujtahidun*. On account of this, it may be said that *ijtihad* plays the role of an evolutionary and dynamic force in legal studies which provides solutions to contingent issues of life and fulfils the needs of changing times and the requirements of new phenomena of human civilization.

Therefore, Islamic *fiqh* does not suffer with inertia, stagnation and passivity vis-à-vis the demands of the times, of life and its manifestations; it also advances along with them. It is for this reason that it has been said that *ijtihad* has been throughout Islamic history the force which has been constantly developing and expanding the boundaries of *fiqh* with respect to its applications, while maintaining the stability of legislation. Thus, *ijtihad* is essential for Islamic *fiqh*, without which it cannot be dynamic and progressive.

On the basis of this, closing of the gates of *ijtihad* is contrary to the perennial mission of Islam in all ages, and, most certainly, alien elements have played an active role in promoting this ominous venture.

For the enemies of Islam, it has been, and still is, the best weapon to strike Islamic law with, and the most effective instrument for eliminating it from scientific, cultural, economic, social and political arenas. Because, closing of the gates of *ijtihad* renders *fiqh* ineffective and incapable of providing answers to emergent and contingent issues of life

The present deficiencies in the world of Islam, the failure to confront the contingent issues in a proper way, the issuing of baseless and irrational *fatawa*, the improper attitude towards new ideas – all these are consequences of the closing of the gates of *ijtihad* by the Ahl al-Sunnah. It has been instrumental in allowing dubious hands, with the aid of *taghuti* governments, to instill unhealthy ideas into the people's minds and to insinuate the feeling that Islamic *fiqh* cannot fulfill the demands of the present age and the modern civilization.

These insinuations have left undesirable effects on the minds of short-sighted and self-alienated persons unaware of the spirit of Islam, to the extent that they servility follow the aliens and prefer Western laws to the laws of Islam (we shall have more to say about this matter in the article "The Era of the Decline of Sunni Ijtihad").

The most outstanding achievement of Shi'i *fiqh* has been to keep open the gates of *ijtihad* throughout the course of history. Its superiority over other schools of *fiqh*, whose doors were closed after the death of their founders (namely, Abu Hanifah al-Nu'man ibn Thabit, the founder of Hanafi School; Malik ibn Anas al-'Asbahi, the founder of the Maliki School; Muhammad ibn Idris al-Shafi'i, the founder of the Shafi'i School; and Ahmad ibn Hanbal, the founder of the Hanbali School), lies here.

(An exposition of this issue from various aspects and a critique of the speech of the editor of the Kuwaiti journal *al-Mujtama'*, Isma'il al-Shatti, delivered at the U.A.E. university on Nov. 1, 1982, wherein he denounced the claim about the continuity of *ijtihad* as a 'conspiracy against the faith,' will come in our

article on the epochs of *ijtihad*.)

Main Topics of Discussions

We shall deal with the following topics in this study:

- The lexical meaning of the word '*ijtihad*'.
- The meaning of *ijtihad* in the utterances of the Prophet (S).
- The technical meaning of the term *ijtihad*.
- Two different meanings of *ijtihad* as a technical term used by Muslim *fuqaha*'.
- Acceptance of *ijtihad* as an independent source of law in Sunni fiqh.
- Causes of the emergence of *ijtihad bi al-ray* and other conjectural instruments among the Ahl al-Sunnah.
- Arguments offered in favour of *ijtihad bi al-ray* and their refutation.
- The beginnings of *ijtihad* in the sense of *ray*.
- The period during which *ijtihad bi al-ray* was known as *tawil*.
- The continued use of the term *ijtihad* in the sense of *ray*.
- Change in the meaning of *ijtihad* from its original sense of *ray*.
- The meaning of the term *ijtihad*.
- The difference between the two meanings of *ijtihad* from the point of view of the effects and consequences of each of them.
- Delimiting of the new meaning of *ijtihad* by al-Muhaqqiq al-Hilli.
- The times since when the Shi'ah and the Ahl al-Sunnah felt the need for *ijtihad*.
- *Ijtihad* in the days of the Imams (A).
- *Ijtihad*, a perennial spring of Islamic fiqh.
- The first legist who opened the doors of Shi'i *ijtihad*.
- The difference between the styles of *ijtihad* during the period of the Major Occultation and afterwards.

- The development of *ijtihad* in Sunni fiqh.
- The decline of *ijtihad* in Sunni fiqh.
- The impact of the backwardness of Sunni fiqh on the Sunni society.
- The Akhbari stand against *ijtihad*.
- The factors and causes behind the Akhbari rejection of *ijtihad*.
- Wahid al-Behbahani's crusade against Akhbarism.
- The factors and causes behind al-Behbahani's success and advancement.
- The synthesis of Akhbari and Usuli outlooks regarding *ijtihad*.
- The Prophet (S) and *ijtihad*.
- The place of *ijtihad*.

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