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The Term Ijtihad

'Ijtihad', according to the lexicographers, is derived from *'juhd',* which means employment of effort or endeavor in performing a certain activity. Here we shall quote some of them:

Ibn al-'Athir defines *'ijtihad'* as the effort and endeavor undertaken for attaining some objective.[1]He further remarks that the word (**جهد**) occurs in many ahadith. *'Juhd'* means employing ones complete strength, and *'jahd'* means hardship and difficulty. '[2]

Ibn Manzur al-Misri says: *Jahd* and *juhd* mean power and strength. He adds that it is said that whereas *jahd* means hardship and difficulty, *juhd* gives the sense of power and strength.[3] Later on he quotes al-Farra' to the effect that in the verse of the Qur'an [4] **وَالَّذِينَ لَا يَجِدُونَ إِلَّا جُهْدَهُمْ** *jahd* is used in the sense of power and strength.[5] In the same work, he states that *ijtihad* and *tajahud* mean exertion of power and strength.[6] In the hadith narrated from Mu'adh the phrase **اجهد رأي الإجتهاد** used in the sense of effort and endeavour to achieve some purpose.

Said al-Khuri says: *Ijtihad* means undertaking effort and endeavour in performing some task. For instance it is **اجتهد في حمل الحجر**'He exerted himself to carry the stone', but nobody says: **إجتهد في حمل الخردلة**(*Khardalah=mustard seed*).[7]He further adds that *jahd* (verbal of *jahada*) is used in the sense of strength - as in **أفرغ جهده**(he did all in his power) as well as in the sense of trying hard, as in is **افرغ جهده أصاب جهدا**used in the sense of strength.[8]

Al-Munjid states: **إجتهد في الأمر جد وبذل وسعه** Ahmad al-Qayyumi writes: *Juhd* in the usage of the people of the Hijaz and *jahd* in the non-Hijazi usage means exerting one's strength and power, and it has been said that *juhd* means strength and *jahd* means toil and strain.[9]

He further adds:

> اجتهد في الأمر بذل وسعه وطاقته في ظلبه ليبلغ مجهوده ويصل إلى نهايته

(*Ijtihada* means: he spent his strength and capacity to attain his goal and his ultimate objective'). 10

Al-'Allamah al Turayhi states: It occurs in a hadith that: **أفضل الصدقة جهد المقل** ('the best of charities is that which is given by one in indigence'). 11

He also says: means: **اجتهد بيمينه أي بذل وسعة في اليمين وبالغ فيها** (*ijtihada bi yamanih* means: He tried hard and did his utmost in order to fulfill his promise'). 12He explains that *ijtihad* involves doing one's utmost while striving and making effort. 13

Ibn Abi Dhar'ah, quoting al-Mawarid, states that the literal meaning of *ijtihad* is to undertake effort and endeavour in accomplishing something that requires strain and difficulty, and to this is related *jihad al-nafs* (the struggle against the carnal self) which involves labour and toil for winning the desired objective and goal.

Isma'il al-Jawharil 14and other lexicographers have also defined the word *ijtihad* in similar terms. Thus we come to the conclusion that in the light of the definitions given by the lexicographers' *ijtihad* means employment of effort and endeavor to one's utmost capacity, and it does not make any difference whether it is derived from *juhd* or *jahd,* as effort and endeavor are not without strain and toil and accompany each other.

On the basis of this definition, the statements of the two Usuli scholars, Shaykh Hasan al-Amali al-Jiba'I15 and Akhund al-Khurasani,16and others about this term, that the literal meaning of *ijtihad* is undergoing difficulty and hardship for accomplishing something, appear to be incomplete and controvertible.

'Ijtihad' in the Utterances of the Prophet (S)

The word *ijtihad* also occurs in the statements of the Prophet (S) in the same literal sense. Some examples may be cited here:

صلوا علي واجتهدوا في الدعاء.

Pronounce benedictions over me and be diligent in prayer. 17

أما السجود فاجتهدوا في الدعاء فقمن ان يستجاب لكم.

As to the prostration, be diligent (or insistent) in prayer, for that makes it worthy of acceptance. 18

فضل العالم على المجتهد مائة درجة.

The *‘alim* (scholar) is superior to the *mujtahid* by a hundred degrees.[19]

In this tradition *mujtahid is* used in the sense of *‘abid* (devotee), one who is diligent in *‘ibadah* (worship).

‘Ijtihad' In the Utterances of Some Sahabah

‘A'ishah is reported to have said:

كان رسول الله يجتهد في العشر الأواخر ما لا يجتهد في غيره.

During the last decade of his life the Apostle of God worked harder than in any period.[20]

Talhah ibn ‘Ubayd Allah is reported to a stated:

عن رجلين على عهد رسول الله كان أحدهما أشد اجتهادا من الآخر نفر المجتهد منهما فاستشهد.

(There were) two men in the days of the Prophet (S), one of whom surpassed the other in his *ijtihad* (diligence in worship). The ‘diligent one' participated in war and was martyred.[21]

Abu Said al-Khudri is reported as having said:

كان رسول الله إذا حلف اجتهد في اليمين.

Whenever the Apostle of God took an oath (to do something), he would take pains to fulfill the oath.[22]

The following is reported about ‘Abd Allah ibn Ubayy in relation to the campaign of Banu al-Mustalaq:

فاجتهد بيمينه ما فعل.

He insisted on his oath that he had not done that.[23]

Umm Harithah is reported to have stated in a question she asked the Prophet (S):

إن كان الجنة صبرت وإن كان غير ذلك اجتهدت في البكاء.

I shall bear with patience if my son *is* in Paradise, but if that isn't the case, *I* shall mourn for him to the limit of my strength.[24]

‘Ijtihad in the Utterances of the Imams (A)

In the utterances of the Imams (A) of the Prophet's Ahl al–Bayt, too, the word *ijtihad is* used in its literal sense. Following are three examples:

In *Nahj al–balaghah,* Imam 'Ali (A) states:

> عليكم بالجد والاجتهاد والتأهب والاستعداد والتزود. في منزل الزاد

It *is* for you to make effort and to strive, to, prepare yourselves and to supply yourselves with in this stage of provision (i.e. this world).25

Al–'Imam Al–Baqir (A) is reported to have said to a group of Shi’is:

> والله اني لاحب ريحكم وارواحكم فاعينوا على ذلك بورع واجتهاد واعلموا أنّ ولايتنا لا تنال إلاّ بالورع والاجتهاد.

By God, I love your fragrance and (the purity of) your souls. So strengthen them by means of piety and endeavor (*ijtihad*). *You* should know that you *will* not approach our *wilayah* except by deeds and through endeavor. 26

Al–'Imam Al–Sadiq (A) is reported to have said to Said ibn Hilal al–Thaqafi:

> اوصيك بتقوى الله والورع والاجتهاد

I advise y*ou* to fear God, to be pious, and to be diligent (in fulfilling your duties).27

Ijtihad as a Technical Term

There is no consensus of opinion among scholars belonging to different Islamic schools regarding the literal meaning of the term *ijtihad.* A section of Sunni ‘ulama' believes that *ijtihad* means making effort and endeavor in order to achieve presumption (*zann*) regarding a *hukm* (law) of the Shari'ah. The same definition is also found in the writings of some Shi'i ‘ulama'. But this interpretation was first proposed by a group of Sunni ‘ulama'. In any case, it would be appropriate to cite some of the views held by Shi'i and the Sunni ‘ulama' in this regard:

(a) The great ‘Allamah Sayf al–Din al–'Amidi al–Shafi’i (d.631/1234) says: *Ijtihad* means putting in of effort and endeavor in order to reach presumption (*zann*) regarding one of the *ahkam* of the Shari'ah in such a manner that one feels that he can do nothing more.28

(b) Al–'Allamah Ibn Hajib Abu 'Amr 'Uthman ibn 'Umar ibn Abi Baler al–Kurdi al–Maliki (c. 570 – 646/1174 – 1248) writes in his *Mukhtasar al–'usul*: *Ijtihad* means making effort to arrive at presumption or conjecture regarding a *hukm* of the Shari'ah.

(c) Qadi 'Abd al–Rahman ibn Ahmad ibn 'Abd al–Ghaffar al–Shafi'i al–Adudi (d. 756/1355), in his book *Sharh Mukhtasar usul Ibn Hajib,* writes: *Ijtihad* is employing one's effort and capacity in the way of arriving at a presumption regarding some *hukm* of the Shari'ah.

(d) Abu Hamid Muhammad al–Ghazali al–Shafi'i (460–505/10681111) quotes the writer of *Fawatih al–rahamut* to the effect that: *Ijtihad* is the effort made on the part of the faqih to derive a presumed *hukm* of the Shari'ah.29

(e) Muhammad Ma'ruf al–Dawalibi writes: *Ijtihad* means the exercise of *ray* which is not acceptable to all the 'ulama', for if it is accepted by all it would be called *ijma'* (consensus), not *ijtihad.* Therefore, *ijtihad* is on a lower standing than *ijma'*.30

(f) The great *mujtahid* al–'Allamah al–Hilli (648–726/1250–1325), in his work *al Nihayah* on usul al–fiqh, writes: *Ijtihad* means employment of effort for arriving at presumption with regard to a *hukm* of the Shari ah, in a way that is not blameworthy on account of negligence or omission.

(g) Al–'Allamah al Turayhi says: *Ijtihad* is to employ one's effort and endeavor in pursuit of some difficult task and for arriving at presumption with regard to a *hukm* of the Shari'ah.31

(h) The Usuli *mujtahid* al–'Amili al–Jiba'i says: *Ijtihad* is the effort and endeavor of a faqih in order to arrive at presumption in regard to a *hukm* of the Shari'ah.32

(i) Al–Shaykh al–Bahai in his *Zubdah* quotes al–Hajibi to the effect that: By *ijtihad is* meant the exhaustive efforts of a faqih for arriving at presumption in regard to a *hukm* of the Shari'ah. Al–'Allamah al–Hilli agrees with this definition in his book *Tahdhib al–'usul.*

(j) Al 'Allamah Taj al–Din al–Subuki, in his book *Jam' al jawami',* writes: *Ijtihad* as a technical term means the utmost efforts made by a faqih for arriving at presumption in regard to a *hukm* (of the Shari'ah).

Critique of the Above Definitions

The above–mentioned definitions of *ijtihad* do not appear to be correct; for if these are meant for determining the logical and technical limits of *ijtihad,* these definitions fail to do so. However, if only an explanation and clarification of the term *ijtihad is* meant, they are not objectionable. Beyond that purpose, they have no scientific value. Here we shall briefly point out the defects in the said definitions.

According to the science of logic, a definition should be inclusive of all the members of the set and

exclude all alien elements; the said definitions are not such. For, if by 'presumption' (*zann*) they mean something based on the Shari'ah or reason, they are not inclusive of all their concerned instances. Because, an argument (*dalil*) related to a *hukm* and derived from the Shari'ah or reason belongs to one of the following three kinds:

1. The argument creates presumption.

2. The argument creates certainty.

3. The argument creates neither presumption nor certainty.

The said definitions deal with the first kind alone, and leave out the two remaining kinds; whereas a definition of *ijtihad* should include these two as well.

The exclusion of the second kind in the definitions cited – that is that the argument should create certainty – is due to the fact that certainty is different from presumption and the word 'presumption' does not include it. As to the exclusion of the third – in which an argument does not produce either presumption or certainty – the reason is that the argument may not create presumption.

For instance, if the validity (*hujjiyyah*) of *al-shuhrat al-fatwa'iyyah* or *khabar al-wahid* or *al-'ijma' al-manqul* is presupposed in such a way that despite not causing presumption they should still be regarded as *hujjah,* then, according to this hypothesis, the derivation of *ahkam* of the Shari'ah by means of *al-shuhrat al-fatwa'iyyah, khabar al-wahid* and *al-ijma'al-manqul* would not be *ijtihad* – *since* we have supposed that they do not create presumption – and in the light of the said definitions *ijtihad* means attainment of presumption.

If, in the above-mentioned definitions, should 'presumption' be taken to include both trustworthy and untrustworthy presumptions – as it obviously does – the definition will include untrustworthy presumption also, while the attainment of presumption regarding a *hukm* of the Shari'ah by means of untrustworthy presumptions is not considered as *ijtihad;* because, it is certain that unreliable presumption cannot be a source of legislation. Accordingly, the definitions cited fail to exclude alien elements.

In addition they suffer from another fault – especially those definitions which mention the faqih – as they fail to avoid a vicious circle.

In the definitions cited, the definition of *'ijtihad'* rests upon the definition of *'faqih'* and vice versa, for *'faqih',* in the technical sense, cannot be imagined without the technical qualification defined as *'ijtihad',* and all scholars and thinkers unanimously agree on the invalidity of the vicious circle.

Regarding this vicious circle, al-Muhaqqiq al-Qummi writes: The faqih is a scholar who knows the Divine *ahkam* through the means of reliable (*mu'tabar*) proofs (*adillah*) and sources (*manabi'*). This ability does not materialize without *ijtihad,* and without it no faqih can exist. Accordingly, the definition of 'faqih' rests upon defining *ijtihad,* and vice versa.

Regarding the solution of the problem of the vicious circle, certain Usulis have said: "According to these definitions, faqih is a person who is acquainted with and is well–versed in fiqh; as opposed to one who has no knowledge of fiqh whatsoever. It does not mean someone who has the knowledge of all the *ahkam.* It is clear that in this sense the meaning of *'faqih'* does not rest on that of *ijtihad;* this avoids the vicious circle, because whereas the definition of *ijtihad is* dependent upon that of *'faqih',* the definition of *'faqih' is* not dependent upon that of *ijtihad."*

But al–Muhaqqiq. al–Qummi objects to this statement and says: Firstly, such a sense imputed to *'faqih' is* figurative', as it literally means one who knows all the *ahkam,* not one who knows only a few of them or some of those things that are related to the *ahkam.* Secondly, the effort made by one who is a *'faqih'* in this sense does not give rise to the quality of *ijtihad;* for, one who knows the outlines of the issues of *ijtihad* and has read a few books on argumentative fiqh but lacks the faculty that enables him to revert the *furu* to the usul, would not be considered a faqih.

Then, in an effort to remove the vicious circle, al–Muhaqqiq al Qummi says: The *'faqih'* is a person possessing such capacity as would lead to the knowledge of *far'i ahkam* of the Shari'ah. Thus, the definition of *ijtihad* is made dependent on that of the faqih, whereas the vice versa is not essential. For, the knowledge of the *ahkam* of the Shari'ah exists in a faqih as a (potential) capability, and in *ijtihad* it exists as an actuality.

This view of the Muhaqqiq is objectionable, since *faqih* as a term is applied to one who actually knows the *far'i ahkam* of the Shari'ah through a command of its sources, not one who possesses merely the faculty and capacity of doing so; as mere capacity and faculty do not qualify one for this appellation, though the appellation of *'mujtahid'* may fit him. Therefore, the vicious circle still remains; as it is quite clear that the definition of *'faqih'* in the above sense is dependent upon that of *'ijtihad',* and vice versa.

Moreover, the apparent meaning of this definition is unacceptable not only in the Shi'i view of *ijtihad* but is also incomplete and objectionable according to the Sunni viewpoint; because legal grounds (*adillah Shar'iyyah*) are not confined to presumption and conjecture alone according to Sunnis and include other things besides.

In any case, the definitions cited are too restrictive in some respects, and in some others they do not exclude what is alien to *ijtihad.* Such definitions are not sound according to the science of logic, and it may be concluded that they are unacceptable to both the Muslim sects. Many a time such incorrect definitions of *ijtihad* have been responsible for giving rise to negative views about *ijtihad,* and made persons like Mirza Muhammad Amin al–'Astarabadi, the founder of the Akhbari school, to negate *ijtihad* out rightly. As a consequence of it *ijtihad* had been declared as one of the innovations (*bid'at*) and impermissible activities (this will be discussed in detail while dealing with the Akhbari revolt against *ijtihad*).

In fact, if *ijtihad* means exactly what it has been described to be in the definitions, its rejection is justified:

for, to claim something as a *hukm* of the Shari'ah on the basis of presumptive and unreliable grounds (*dala'il*) and to act according to them is not permissible in Islamic law. Verses of the Qur'an expressly forbid reliance on presumption and conjecture. God Almighty has stated in the Qur'an:

يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِنَ الظَّنِّ

***O ye who believe, shun much suspicion* (*al-zann*)*....* (49:12)**

In another place He says:

۞ وَمَا يَتَّبِعُ أَكْثَرُهُمْ إِلَّا ظَنًّا ۚ إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا

***Most of them follow naught but conjecture. Assuredly conjecture can by no means take the place of the truth....* (10:36)**

For positing a *hukm* of the Shari'ah only certainty, or such argument or methods as have been validated by the Shari'ah, may be relied upon. Such trustworthy grounds as *khabar al-wahid* and the Practical Principles (*al-'usul al-'amaliyyah*) of the Shari'ah (*Bara'ah, Ihtiyat,* etc), though they do not lead to certainty as to the real *hukm* (*al-hukm al-waqi'i*) - *for* they may be suspect regarding their chain of transmission, or meaning, or authenticity of source - but the certainty of their validity and reliability justifies reliance upon them and action in accordance with them and provides security from Divine chastisement.

Anyhow, the Usulis do not conceive *ijtihad* in the above sense. By *ijtihad'* they mean the knowledge of the *ahkam* of the Shari'ah from sources and grounds whose validity has been affirmed by the Shari'ah, and it is by using such sources, principles and dicta that the *mujtahid is* able to meet the needs of contingent issues and events of life.

Accordingly, the result of *ijtihad* in the context of deduction of *ahkam* of the Shari'ah is to refer new furu' to the fundamental usul (which are the general precepts of the Book and the Sunnah) and to apply the usul to their corresponding instances. It is by means of *ijtihad* that sufficient evidence or *hujjah* regarding a *hukm* of the Shari'ah is secured for answers to emergent and contingent issues. *Ijtihad* is not meant for providing presumption or conjecture.

It is this sound meaning of *ijtihad* that the Usulis have accepted, and whosoever has faith in Islam and believes in its eternal and immortal character is bound to accept it in accordance with the precepts of the Shari'ah and the dictates of reason. Because, it is not possible to posit the *ahkam* of the Shari'ah for issues for which there is no specific express test without sufficient evidence and valid grounds, and this is a conception which Muhammad Amin al-'Astarabadi also accepts.

It is by means of such *ijtihad* that valid grounds and basic and general *ahkam* are employed for deriving a *hukm* of the Shari'ah on a contingent issue. Such *ijtihad* is approved by the Akhbaris too, though they do not call it *ijtihad'.*

Thus, the incorrect conception of *ijtihad* – *i*.e., the attainment of presumption on a *hukm* of the Shari'ah – which incited the Akhbari opposition, is one which the Usuli also do not accept and one which they have never approved of. The 'presumption' which al-'Allamah al-Hilli, the author of *Ma'alim al-'asul,* and some other Shi'i scholars mention in their definitions of *ijtihad,* is not presumption in its general *sense,* but one which is trustworthy and supported by some specific *dalil*.

Therefore, it does not include such presumption as is not supported by a *dalil;* for such presumption has been forbidden by verses of the Qur'an and *ahadith.* Hence, it cannot be said that the 'presumption' mentioned in the definitions includes this (untrustworthy) kind of presumption. Accordingly, the *ijtihad* approved by the Usulis means procurement of sufficient evidence (*hujjah*) regarding a *hukm* of the Shari'ah – a conception which the Akhbaris also do not reject.

On this basis, it can be said that the dispute between the Usulis and the Akhbaris is merely a verbal one, not one which is essential or substantial, for both of them approve of securing sufficient evidence for a *hukm shar'i,* with the difference that the Usulis call it *ijtihad* whereas the Akhbaris do not name it so.

In reality, the only objection that the Akhbaris raise regarding *ijtihad* relates to the definition of *ijtihad* and not to the Usulis or the *mujtahidun* as such; for the Akhbaris themselves never act on presumption unless it is validated by a reliable Shar'i proof (*dalil*).

Thus, if the word 'presumption' (*zann*) is replaced with the term *hujjah* (evidence) in the said definition and it is said: *"Ijtihad* means employment of one's powers to secure sufficient evidence (*hujjah*) in regard to a *hukm* of the Shari'ah", there is no doubt that this controversy can be completely avoided and a synthesis of the views of the Akhbaris and the Usulis can be achieved.

Second Definition of Ijtihad

Another group of scholars defines *ijtihad* as effort on the part of a faqih for deriving the *ahkam* of the Shari'ah. Here we shall cite the views of some of them.

(a) The great scholar Abu Hamid Muhammad al-Ghazali al-Shafi'i says: *"Ijtihad* is the effort (on the part of the *mujtahid*) and employment of one's utmost powers to extract a command (*hukm*). This term is not used unless when it involves hardship and strain. Hence it is said:

إجتهد في حمل حجر الرحى

'He exerted himself to carry the millstone'.

But it will not be said that:

إجتهد في حمل الخردلة

He exerted himself to carry a grain of mustard seed.'

But in common usage this word is specifically used for the effort made by the *mujtahid* in the way of acquiring the knowledge of the *ahkam* of the Shari'ah."[33] Al-Ghazali further remarks: "*Ijtihad* in its complete sense is to make utmost effort in achieving a goal so that it is not possible for one to do anything more."[34]

(b) Muhammad Khidri Bek writes: *Ijtihad* is the effort made by a faqih for acquiring the knowledge of the *ahkam* of the Shari'ah.[35] He adds: *Ijtihad* in its complete sense is the utmost effort that a faqih undertakes for extracting a *hukm* (of the Shari'ah) in such a manner that he feels that he has exhausted his capacity.[36]

Critique of the Second Type of Definitions

The above-mentioned definitions also are incomplete and defective in spite of their being closer to a technical definition and freedom from the defects of the former ones. They are still imperfect because the word *'waza'if'* (*lit.* duties) needs to be added; because, besides having to deduce the *ahkam* of the Shari'ah, a *mujtahid* is supposed to procure the Practical (*al usul al-'amaliyyah*) and the Rational Rules (*al-'ahkam al-'aqliyyah*) - *such* as *Bara'ah, takhyir* and *Ihtiyat.*

Thus the field of operation of the *mujtahid* includes the *ahkam* of the Shari'ah as well as the Practical and the Rational Rules, whereas the above-mentioned definitions focus merely on the former alone. In this sense, it is not a comprehensive definition.

Third Definition of Ijtihad

A third group of scholars of usul defines *ijtihad* as: Deduction of the *ahkam* of the Shari'ah from the usul, the *adillah,* and their sources in the sacred Shari'ah. It would be appropriate to quote some of these related views.

(a) Ahmad Mustafa al-Zarqa', the author of the valuable work *al Madkhal al-faqhi al-'amm,* says: *Ijtihad* means deduction of the *ahkam* of the Shari'ah from their elaborate *adillah* found in the Shari'ah.[37]

(b) Al-'Allamah Abu 'Abd Allah Shah Wali al-Faruqi al-Dihlawi al-Hanafi, in his book *Kitab al-'insaf fi sabab al- Ikhtilaf,* writes: *Ijtihad* means employment of effort and endeavor for the comprehension of the *far'i ahkam* of the Shari'ah from their elaborate *adillah,* which comprise the Book, the Sunnah, *ijma'* and *qiyas.*

(c) Muhammad Amin has also defined *ijtihad* in his book *Taysir al–tahrir* in similar terms.

(d) Dr. Subhi al–Mahmasani says: *Ijtihad* means exertion and effort for discovering the *ahkam* and laws of the Shari'ah from their legal sources.

Critique of the Third Type of Definitions

These definitions are also not free from the defects of the earlier ones, because, like the previous definitions, they need the word *waza'if* in order to include the Practical and the Rational Rules with the *ahkam* of the Shari'ah. Another objection against the definition given by al–Dihlawi is that he has considered *qiyas* one of the sources of the *ahkam,* a viewpoint which is rejected by the Shi'ah (this will be dealt in detail while discussing the sources of *ijtihad*).

Fourth Definition of Ijtihad

The great thinker and scholar of the Islamic world Muhammad ibn al–Hasan ibn 'Abd al–Samad, popularly known as Al–Shaykh al–Bahai, in his book *Zubdat al–'usul,* writes: *Ijtihad* is a capacity (*malakah*) by means of which one obtains the power of deducing the *ahkam* of the Shari'ah.

Some other scholars have also defined *ijtihad* in different words that are close in meaning to this definition. Here we shall quote two of them as specimen.

(a) *Ijtihad is* the manifestation of the capacity for discovering the *hujaj* (*pl.* of *hujjah*) and *adillah* for deriving the *ahkam* of the Shari'ah and the Practical Obligations (*al–waza'if al–'amaliyyah*), whether posited by the Shari'ah or affirmed by reason.

(b) *Ijtihad is* a capacity by means of which a faqih becomes able to relate the minor premises with the major premises and thereby obtains a *hukm* of the Shari'ah or an answer to a Practical Obligation.

Critique of the Fourth Type of Definitions

These definitions, also, are controvertible like the previous ones, because firstly, they do not convey the real meaning of *ijtihad,* for *ijtihad per se is* not a capacity; for had *ijtihad* been a capacity, its addition would have served an explanatory purpose, and such is not the case here.

Secondly, the titles that have been mentioned in traditions, like *'faqih, arif,* (**عرف احكامنا**) *nazir,* (**نظر في حلالنا وحرامنا**) *rawi,* (**روى حديثنا**) as in the widely accepted tradition narrated by 'Umar ibn Hanzalah, and other such titles which are mentioned in other *riwayahs* – *are* not applicable to one who merely possesses the capacity, but apply only to those in whom the capacity has reached the stage of actualization. Capacity (*malakah*) is a potential ability; it may or may not reach the point of actualization. It is for this very reason that the phrase **يقتدر بها** has to follow the words **ملكة** above definitions.

Thirdly, the jurisprudential authorities (*maraji taqlid*) have set forth three courses by way of *al–wajib al–takhyiri* in their handbooks of rulings (*rasa'il 'amaliyyah*) and works of fiqh for the *mukallaf* (adult person liable to perform religious duties); they are: *ijtihad, taqlid* (imitation) and *ihtiyat* (caution).

If *ijtihad* be a capacity, it is not correct to put it by the side of *taqlid* and *ihtiyat;* for *taqlid* and *ihtiyat* are concerned with actual practice, while capacity is an inner psychic state. Accordingly, there is no doubt that in the above statement about a *mukallaf's* duty *ijtihad* is the *de facto* knowledge of the *ahkam* of the Shari'ah and the Practical Rules derived from the sources of the Shari'ah.

Further Clarification

It is evident that the actual *ahkam* issued by the Sacred Lawgiver (like obligatory duties and impermissible acts, etc.) are known to apply to all the *mukallafun.* This essential knowledge with the possibility of chastisement is before every *mukallaf.*

And since every sane person essentially knows that God Almighty has prescribed certain duties for him, his rational faculty enjoins him to comply with the dictates of reason in comprehending his duties, and to obtain the certainty of their fulfillment; and – as is said in *'ilm al–'usul* – the certainty of execution brings the certainty of fulfillment.

Anyone who is in quest of the certainty of fulfillment (of his duties) and wants to tread the path which can assure him that he has performed all the Shari'i duties assigned by the Supreme Lawgiver, will have to perform one of these three things:

1. He should himself perform *ijtihad* and comprehend his duties, according to the criteria, from the sources of the Shari'ah.

2. He should follow the rulings of an all–round (*jami' al–shara'it*) *mujtahid.*

3. He should choose the path of *ihtiyat* (i.e., among other things, refrain from every act that is not known for certain to be permissible).

In any case, it is essential to take one of the paths; for if one does not act or abstain from performing a certain act in accordance with one of these courses; he faces the possibility of Divine chastisement. The rational faculty of every *mukallaf* individual considers it essential to avoid every possible harm and punishment; and to avoid such a danger is not possible except by following either the path of *ijtihad,* or *taqlid or ihtiyat.*

Thus, we see that *ijtihad,* as one of the choices, is *de* facto comprehension of one's duties from the sources of the Shari'ah that results in avoiding possible chastisement; mere possession of the capacity to comprehend one's duties cannot be regarded as *ijtihad;* rather, it means: the identification of the *ahkam,* their deduction, and acting according to them.

Accordingly, a *mujtahid'* who possesses the capacity of *ijtihad* alone, but does not employ the usul and principles for deriving the *ahkam* is not different from a non–mujtahid; for, in the same way as a non–*mujtahid* faces the possibility of chastisement in performing of acts and abstaining from them, a *mujtahid who* does not use his capacity of *'ijtihad* is equally exposed to such a danger.

Thus, anyone possessing the capacity of *ijtihad* should be either a *mujtahid,* who has derived the *ahkam* of the Shari'ah from its sources, or he should be a *muqallid* or *muhtat;* otherwise, he shall not be secure from chastisement. Anyone who is endowed with the capacity of *'ijtihad* but has not reached the practical stage of deriving the *ahkam* of the Shari'ah may be called a *'mujtahid'; but* as far as practice is concerned he is not different from a *non–mujtahid. In* any case, *ijtihad* should be defined in a manner that is free from such flaws.

A Misconception

Some people believe that the capacity of *ijtihad* is similar to some other traits (like generosity, justice, valour, etc.), which is acquired after practice and exercise in deriving the *ahkam* of the Shari'ah, in the same way as other qualities reach the stage of actualization after repetition and practice.

They reason that, as in the case of some qualities and traits which are not separable from action (generosity is not separable from acts of generosity, justice is not separable from acts of justice, valour is not separable from deeds of valour) *ijtihad* also is not separable from deduction of the *ahkam* of the Shari'ah. Accordingly, whosoever possesses the capacity of *ijtihad* has inevitably derived the *ahkam* of the Shari'ah from its sources, and this necessarily makes him secure from chastisement. Hence the above definition is correct.

This argument is not valid, for the capacity of *ijtihad* is not similar to other qualities. Other qualities cannot be actualized without many attempts and persistent repetition, but the capacity of *ijtihad* can be acquired without deducing any *hukm.*

For instance, the quality of valour is acquired by repeatedly exposing oneself to danger and through performance of acts involving danger, because their continuation gradually drives out fear from the heart, to the extent that one can take part in big battles without any fear and nervousness in his heart. Similar is the case with generosity and self–denial: repeated performance of the act of generosity leads man to such a point when he can bear to be thirsty and hungry in order to feed others.

Therefore, the realization of these qualities needs repeated performance, whereas the capacity of *ijtihad* does not need any such practice. On the contrary, unless one possesses the capacity of *ijtihad* and the ability to derive the *ahkam,* he cannot perform *ijtihad* and derive *ahkam of* the Shari'ah. Hence it is the exercise of deriving which is dependent upon the capacity, not the capacity on repeated derivation.

It is possible for a person to possess the capacity of deriving the *ahkam* without having derived even a single *hukm;* as the capacity of *ijtihad* depends upon learning certain sciences like Arabic grammar and

syntax, vocabulary, tafsir, rijal and 'ilm: al–'usul, etc., whose knowledge enables one to derive the *ahkam* of the Shari'ah. Therefore, the act of derivation from the viewpoint of realization is posterior to the capacity – contrary to other qualities whose realization follows performance.

It is true that extensive derivation and repeated employment of the capacity of *ijtihad.* can enhance this faculty, but this has nothing to do with its actual realization and existence.

In short, *ijtihad* in the sense of faculty does not guarantee security from Divine chastisement, or repel its potential danger from the *mukallaf.* It cannot be placed in the category of *taqlid* and *ihtiyat* either, for that which is equivalent to *taqlid* and *ihtiyat* is the knowledge of the *ahkam* from the Shar'i sources. Hence *ijtihad* should be defined in a way which is not open to such objections.

Fifth Definition of Ijtihad

Some other scholars have defined *ijtihad* in yet another way. 'Abd al–Wahid al–Khallaf says: *Ijtihad* means employment of effort and endeavor for understanding the *ahkam* of the Shari'ah for issues for which there is no specific express text (in the Book and the Sunnah), by exercising ray and subjective judgement, as well as by using other methods for deriving the laws of the Shari'ah.[38]

Critique of the Fifth Definition

This definition is also objectionable like other definitions, but, as we shall see in the discussion about *ijtihad bi al–ray* and subjective judgement, in Islamic fiqh valid *ijtihad* means employment of effort for deriving the *ahkam* of the Shari'ah for emergent and contingent issues from the Shar'i sources (the Book, the Sunnah, *ijma'* and *'aql*), not the exercise of one's subjective opinion and judgement. We shall elaborate on this matter later on and there we shall see that no individual – even the Prophet (S) – may legislate laws by exercising personal judgement; for legislation is exclusively a Divine prerogative.

In Islamic law there is a *hukm* for every issue, either as a particular or a general law. As for the issues for which no express text exists, a *mujtahid* can derive laws by applying to them the general laws of the Book or the Sunnah. Therefore, in emergent issues a *mujtahid is* required to discover an express Shar'i text, and whenever he is unable to discover such a proof or express text, he has to secure an 'apparent' hukm (*al–hukm al–zahiri*) for the mukallaf from such Practical Rules as *Bara'ah*, *Takhyir, Istishab,* etc.

According to Abu Bakr al–Razi, the term *ijtihad* has been applied to the following three meanings:

(1) *Qiyas,* when the cause (*'illah*) does not lead to the *hukm,* for it may not possibly contain the *hukm* (on account of its being an incomplete and not a complete cause). As a result, the cause does not lead to certainty about the desired *hukm,* which has to be based on *ijtihad* and derivation through ray.

(2) Anything that gives rise to presumption without the existence of a cause, like *ijtihad* regarding time, direction of *Qiblah,* price of a commodity, etc.

(3) Argument based on usul for positing a *hukm* of the Shari'ah.[39]

This statement is also objectionable; for, of the three points that which can relate to the technical sense of *ijtihad,* the first one – i.e., derivation of *ahkam* by means of *qiyas* – *is* invalid from the Shi'i point of view. The second meaning also is not right, as giving judgments about ordinary external details is not the duty of the *mujtahid.* In the third point, *ijtihad* is used in a general, non-specific sense, as it includes *qiyas* and other things also.

The great jurist Akhund al-Kurasani has defined *ijtihad* as employment of one's powers for acquisition of *hujjah* regarding the *ahkam* of the Shari'ah.[40]

Another scholar has defined *ijtihad* as effort and endeavour made in deriving the *far'i ahkam* of the Shari'ah, or securing legal validity through (the study of) its elaborate *adillah.* If the criterion of the validity of an act is considered acquisition of *hujjah,* the above given definition is safe from the objections raised against the earlier definitions, as *hujjah* is inclusive of: certainty; the *adillah* that lead to certainty (such as reliable usul and dicta); and presumption, in accordance with the Sunni outlook. Similarly the term *hujjah* covers presumption during the period of closure of doors of certainty, in accordance with the belief of those who believe in such a closure.

Accordingly, employment of effort for securing legal validity in regard to the *ahkam* of the Shari'ah is no doubt regarded as *ijtihad,* whether the *hujjah* leads to certainty or is based on a *dalil;* and it does not make any difference whether it gives rise to presumption or not. Accordingly, the earlier objections cannot be raised against this definition.

Objections Against the Definition

It may be objected that the above definition is not logical or technical, for a technically and logically correct definition should closely correspond to the thing defined, whereas the said definition is rather loose. It states that *ijtihad* is to derive and determine *ahkam* from the sources; it does not specify that the person performing derivation should also possess the capacity, whereas the *mujtahid* is one who possesses the capacity of *ijtihad.*

This objection is valid, unless it is said that *ijtihad* depends on the capacity and it is not possible to derive *ahkam* from reliable sources except through that capacity, and here possession of the capacity is taken for granted.

Note

It is appropriate here to clarify one thing about the capacity of *ijtihad:* it is a capacity acquired through the knowledge of ten types of disciplines on which derivation and understanding of the *ahkam* of the Shari'ah depends. In this regard, the requirement of another faculty – the so-called *quwwah qudsiyyah* – *is* not essential, for the-ijtihad which is acceptable to all means derivation of the Shar'i *ahkam* from the

sources, and in the same way as a just' (*'adil*) *mujtahid* can perform this task, it can also be performed by a *mujtahid* who is not 'just'.

Two Different Conceptions of Ijtihad

The term *ijtihad* as used in the writings of scholars of different Islamic sects conveys two different meanings, each of which gives rise to different viewpoints regarding the sources of Shar'i *ahkam.* In the first conception *ijtihad* means derivation of Shar'i *hukm* through personal judgement and ray for an issue for which the *mujtahid* does not find any express text in the Qur'an or the Sunnah. Such a meaning of *ijtihad* is found in the writings of 'Abd al–Wahhab al–Khallaf and most of Sunni fuqaha' also subscribe to this view.

Ijtihad in this sense is. considered by most of Sunni scholars as an independent source parallel to the Qur'an, the Sunnah, *ijma'* and *'aql*, and is acknowledged as one of the bases for determining the *ahkam.*

It means that in the same manner as a *mujtahid* relies on sources like the Qur'an, the Sunnah, *'aql* and *ijma'* for deriving *ahkam,* he can also rely on *ray* and subjective opinion by taking recourse to instruments of presumption (like *qiyas, istihsan, masalih mursalah, istislah, madhhab al–Sahabi, fath al–dhara'i', sadd al–dhara'i',* etc.) for issues on which there is no express text in the Qur'an and the Sunnah.

In the second conception *ijtihad* means deduction of the *fari ahkam* from the reliable sources (the Qur'an, the Sunnah, *ijma'* and *'aql*). *Ijtihad* in this sense occurs in the writings of Ahmad Mustafa al–Zarqa', the author of *al–Madkhal al–fiqhi al–'amm,* and Shi'i fuqaha' have subscribed to this view long since.

According to this conception, the activity of the *mujtahid* involves deduction of the laws of the Shari'ah for emergent issues and new phenomena of life by employing general principles and rules. Thereby the *mujtahid* refers new secondary issues to the general principles and applies the general laws to their particular instances in external reality, thus obtaining the *ahkam* governing them. According to this conception, *ijtihad* is not counted as an independent source of law parallel to the Qur'an and the Sunnah, but merely as a means for deriving and determining the *ahkam* from the sources.

Ijtihad as an Independent Source in Sunni Fiqh

Leading Sunni jurists have chosen the first conception of *ijtihad,* as an independent source parallel to the Book of God and the Sunnah of the Prophet (S). They have included *ijtihad* itself, besides the four sources of fiqh, as the fifth one. Accordingly, they have specified for it a separate section in their books of usul such as *Usul al–fiqh, al Mustaqfa, al–Ahkam* and other works – and have undertaken diverse discussions about it.

In accordance with this conception, al-Shafi'i considers *qiyas* to be same as *ijtihad* in his *Risalah.* He writes:

What is *qiyas? Is qiyas* the same as *ijtihad,* or are they different'? I say, *qiyas* and *'ijtihad* are two terms which convey the same meaning like 'man' and 'human being'.41

In *Risalah* he rejects the opinions of most of Sunni fuqaha' who believe *istihsan* to be one of the sources of *ijtihad,*42 for the majority of them believe *'ijtihad* to be synonymous with *ray, qiyas, istihsan* and *istinbat.*

Mustafa 'Abd al-Razzaq is one of them; he writes: The *ray* of which we speak is the *mujtahid's* reliance on his subjective opinion and judgement for obtaining a law of the Shari'ah. This is what we mean by *ijtihad* and *qiyas,* which are synonymous with *istinbat* and *istihsan.*43

This statement appears to be strange, for *ijtihad, istinbat, ray, qiyas* and *istihsan* are terms which are different from one another regarding their meaning. How can they be considered synonymous and equivalent terms, and how can it be said that these words convey the same meaning when there is nothing common either between the words or their meanings?

It may be said in justification of the above-mentioned statement that the equating of ray with *ijtihad* is for the reason that the personal judgement of a *mujtahid* in the event of absence of any express text of the Qur'an and the Sunnah is synonymous with *ijtihhd bi al-ray* and hence this sort of *istinbat* has been named ray as well.

But other practices like *qiyas, istihsan, masalih mursalah, istislah, sadd al-dhara'i', fath al-dhara'i', madhhab al-Sahabi, Shari'at al-salaf, 'urf,* etc. (which shall be discussed in detail) each one of them is considered an instance of *ijtihad,* but is not equivalent to or synonymous with *ijtihad bi al-ra'y*. The reason for the error in equating *ijtihad* with *ijtihad bi al-ray* is that the meaning of *ijtihad* has been confused with that of one of its elements.

1. Al-Nihayah vol. 1, p. 219.
2. Al-Nihayah vol. 1, p. 219.
3. Lisan al-Arab, vol. 3, p. 133.
4. 9:79
5. Lisan al-Arab, vol. 3, p. 133.
6. Ibid.,p.135
7. Aqrab al-mawarid, vol. 1, p. 144.
8. Aqrab al-mawarid, vol. 1, p. 144.
9. Al Misbah al-munir, vol. 1, p. 144.
10. Al Misbah al-munir, vol. 1, p. 144.
11. Majma' al-bahrayn, vol. 3, p. 32.
12. Majma' al-bahrayn, vol. 3, p. 32.
13. Majma' al-bahrayn, vol. 3, p. 32.
14. Sihah al-lughah, vol.1, p. 457.

15. Ma'alim al_ usul, p. 232.
16. Kifayat al_'usul, vol. 2, p. 42.
17. Sunan al-Nasa'i, the chapter on the command to pronounce benedictions on the Prophet (S), vo1.1, p.90; see also the Musnad Ahmad ibn Hanbal, vol. 1, p.199.
18. Sahih Muslim, kitab al_salat, hadith 207; Musnad Ahmad ibn Hanbal, vol. 1, p.219.
19. Muqaddimah of Sunan al_Darimi, vol. 1, p.100.
20. Sahih Muslim, kitab al-itikaf, hadith 8; see also Sunan Ibn Majah„ kitab al_sawm, hadith 1767.
21. Sunan Ibn Majah, kitab al-ru'ya; hadith 3925; Musnad Ahmad ibn Hanbal, vol. 3, p.163.
22. Musnad Ahmad ibn Hanbal, vol. 3, pp. 33,138.
23. Sahih al_Bukhari, vo1.3, p.136.
24. Sahih al_Bukhari, kitab al jihad, vo1.2, p. 93; Musnad Ahmad ibn Hanbal, vol. 3, pp. 260, 283.
25. Wasa'il al_Shi ah, vol. I, twentieth of abwab muqaddamat al-ibadat, ahadith 1, 11, 20.
26. Wasa'il al_Shi ah, vol. I, twentieth of abwab muqaddamat al-ibadat, ahadith 1, 11, 20.
27. Wasa'il al_Shi ah, vol. I, twentieth of abwab muqaddamat al-ibadat, ahadith 1, 11, 20.
28. Al_'Ihkam fi usul al_'ahkam, vol. 4, p. 218.18.
29. Al_Mustusfa fi usul al_fiqh, p. 55
30. Al_Madkhal ila `ilm usul al_fiqh, p. 55.
31. Majma' al_bahrayn, vol. 3, p. 32.
32. Ma'alim al_'usul p. 232.
33. Al_Mustasfa fi usul al_fiqh, vol. 2, p. 350
34. Al_Mustasfa fi usul al_fiqh, vol. 2, p. 350
35. Usul al-fiqh, p. 357.
36. Usul al-fiqh, p. 357.
37. The journal Hadarat al_Islam, No. 2, p. 2.
38. Masadir al_tashri`, p. 7.
39. Irshad al_fuhul, p. 250
40. Kifayat al_'usul, vol. 2, p. 422.
41. Al_Risalah, p. 477.
42. Ibid. p. 504.
43. Tamhid al-ta'rikh al-falsafeh_ye Islami, p. 138.

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