

Fiqh and Ijtihad in Shia'ism

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It is wajib (obligatory) for Muslims to study everything which is necessary for the physical and spiritual well being and development of the Muslim community. The waajibah is known as wajib e kifai. This means that the obligation is on the community as a whole; but when an individual or a group of people endeavour to devote themselves to the required sciences, then the obligation is lifted from the rest of the community. This applies to all fields of knowledge. One of the most important sciences where experts are needed is the science of religion - shari'a. It is wajib for a group of people to devote themselves to the science of religion so as to provide guidance for the Muslim community.

The Qur'an exhorts us in this matter:

"..Why should not a group from every section of the believers go forth and become learned in religion; and to warn their people when they return to them, that they may become aware?"

Qur'an - Suratut Tawba - 9:122

Those who take up this noble task are known as the mujtahideen. They are also known as fuqaha (singular - faqih).

A mujtahid is one who does ijtihaad.

The literal meaning of ijtihaad is to strive with one's total ability and efforts to reach a goal which in this case is to endeavour to deduce the divine laws of shari'a from the reliable sources and proofs.

To reach the stage of Ijtihaad therefore is the capacity to give an expert opinion in the matter of religion. The ijtihaad that is forbidden (haram) is that where a mujtahid gives a rule by his own personal judgement, that is, one based neither on the Qur'an nor on the Sunnah.

The word marja' literally means one to whom we turn to (do ruju'). He is one who is a point of reference. There are many pre-requisites of ijtihaad: Learning the Arabic language to the extent that is required. Knowledge of the colloquialism of Arabic and the language of the people to whom the Qur'an and the sunna was addressed to.

Commentary (tafseer) of the Qur'an. Logic (mantiq). Every branch of learning in which reasoning is used needs logic (understanding). The study of Ahadith.

Knowledge of the transmitters of ahadith (rijal), to the extent where one is able to discern the validity of the ahadith. The study of the principles of fiqh (jurisprudence).

Thorough research and study of the views of others.

Review of the verdicts and narrations of the Ahlus Sunnah.

Striving to make use of all of one's abilities in deducing the rules.

Once these pre-requisites have been met, then to be able to derive the laws of Shari'a a mujtahid uses the following four sources:

- 1) The Qur'an
- 2) The Sunnah (meaning the words, actions and silent assertions (taqreeer) of the Prophet (S.A.W.) and the Aimma.
- 3) Consensus (ijma)
- (4) Reasoning (aql

The Qur'an (1

This is no doubt the first source for the laws and regulations of Islam. Approximately one .thirteenth of the Qur'an pertains to laws

The Sunnah (2

This means the words, actions and assertions of the Ma'sumeen. The study of the narrators is .an important part in asserting the validity of the hadith

Ijmaa (Consensus) (3

Consensus means the general agreement of the ulema of a particular period on a particular issue. Consensus in it's own right is not binding, and must be supported by the Sunnah. However, the Ahlus Sunnah believe that complete agreement of all the Muslims of one period .on an issue is a divine revelation and it cannot be wrong

Aql (Reason) (4

What is meant here is that sometimes a law of shari'a is determined by the proof of reason. One of the obvious elements of Islam is that each command (amr) of Shari'a is there to meet the best interests of human beings and each prohibition (nahyi) arises from the necessity of preventing the corruption of the human being.

Thus, because the laws of shari'a are centred on the wisdom of what is best and worst for the human being physically and spiritually, they will correspond to the laws of reasoning. Therefore, if we suppose that in some case there is no law communicated to us in the Qur'an or in the Sunnah, the wisdom of the other judgements of shari'a will automatically discover the law for the case in question.

e.g. At the time (and place) of the Prophet (S.A.W.) there was no addiction to drugs like Marijuana, and we have no narrated proofs of it by name in the Qur'an, Sunnah and consensus.

With our reason and knowledge, and on the basis of 'a form of corruption which is essentially to be avoided', and because we know that whatever is harmful to human beings and a corruption of them is haram in the view of Shari'a, we realise that Marijuana is forbidden. Here, we have a basic principle to work on.

However. Qiyaas (analogy) is forbidden. This is where one deduces a law due to its resemblance to another law based on opinion and imagination rather than reason and certitude. Among the ulema of the Ahlus Sunnah, Abu Haneefa considered qiyaas (analogy) to be the fourth source. Imam Ja'fer As-Sadiq (A.S.) tried to show Abu Haneefa the error of qiyaas - It is reported that in a conversation about the subject, Imam (A.S.) asked him: "What is more important? Salaa or Sawm?"

Abu Haneefa replied: "Salaa!"

Imam said: "Then why do women have to repay their qadha sawm during their monthly periods and not the qadha salaa?"

"What is more najis? Urine or stool?" Imam asked Abu Haneefa replied: "Stool!"

Imam said: "Then why do you need water to make the area tahir after urine, but in the case of stool paper will suffice?"

Other necessary conditions for being a mujtahid Imam Ja'fer As-Sadiq (A.S.) is reported to have said:

"....If there is anyone among the fuqaha who is in control over his own self, protects his religion, suppresses his evil desires, and is obedient to the commands of his Master (Allah), then the people should follow him." A Mujtahid therefore, must also be a free man of legitimate birth who is past the age of puberty, sane, a Shia Ithna asheri and adil (not only just but also one who obeys all the waajibaats and keeps away from the muharramaat

TAQLEED

"...But as to those amongst the fuqaha, who safeguards his soul, takes care of his deen, opposes his desires, and obeys the commands of his Lord, then it is for the people to do his taqleed.."

Aimma (A.S.)

According to common sense, anyone who has not attained the level of knowledge that will enable him/her to deduce religious laws for him/herself, must turn to a person who has specialised in this field. Just as we voluntarily follow the advice of a doctor when we need medical attention, and firmly believe that the advice will cure our illness and protect us from infection; the same way we follow the guidance of a Mujtahid who knows the laws of shari'a so that he may lead us correctly and save us from an erroneous way. It is this following which is

termed taqleed. The follower of a Mujtahid is known as a Muqallid. Taqleed therefore is not imitation as an animal would do but a conscious decision by an individual to accept the opinions of a learned scholar. It is the mujtahid who takes the responsibility of expressing his opinion and not the followers.

How does an ordinary believer know which mujtahid he/she should follow?

There are three recognised ways:

By his/her own personal knowledge and experience (assuming that one is oneself an aalim and able to identify a mujtahid). By the testimony of 2 aadil, knowledgeable persons who are religiously aware (people who are able to know another's knowledge). By a degree of popularity which leaves no doubt as to a person being a mujtahid.

Most ulema maintain that we must follow a mujtahid who is 'A'lam' - the most learned in deriving the laws of shari'a from the sources discussed. Marhum Ayatullah Syed Abul Qasim Al-Khui (A.R.) and Ayatullah Syed Ali Al-Husayni Seestani both confirm in their risalah that the qualification of being 'A'lam' is essential for a mujtahid whose taqleed is to be done.

The 'A'lam' may be recognised in any of the 3 ways in which a mujtahid is recognised. It follows, therefore that to recognise an A'lam mujtahid, one has to be fairly aware of the principles of Fiqh and its applications. This is why we are told to depend on Ahlul Khibra - those who are well versed and experienced. Ahlul Khibra is a term used for groups of mujtahideen. Sometimes, it is difficult for the Ulema to distinguish whom among all the mujtahideen is the most learned, and as a result a muqallid may have to choose a Mujtahid from several ones.

Why is there a difference of opinion amongst different mujtahideen on a particular subject? Firstly, it is important to know that the differences in opinion are never contradictory. i.e. it is impossible to find a mujtahid who will say that one action is wajib and another saying it is haram.

The existence of differences of opinions (not difference in principles) is not a sign of a defect in the quest of knowledge; it is rather a sign of progression in knowledge towards perfection.

Differences of opinion are found in all sciences, not just in fiqh. Who is a Waliyul Faqih? A waliyul faqih is one who is a guardian of the fuqaha. He* is not only learned in the science of religion as the other fuqaha; but also one who establishes social justice amongst people. He is accepted by Ahlul Khibra as the waliyul faqih.

*As suggested by some Ulema, this authority may be a composition of mujtahideen (a central authoritative body) if needed. What is the difference between marja' taqleed and waliyul faqih?

By Ayatullah Ruhullah Al-Musawi Khumayni (A.R.)

i) Besides having the knowledge of shari'a, justice and ijtiḥad, he must have a full grasp of politics of religion, sufficient courage and qualities of management for leadership and must be aware of the social and political issues of the day.

ii) When the waliyul faqih issues an order (amr) according to the best interests of the Umma, that order becomes wajib on everyone - even those who follow another marja' e taqleed. e.g. When Mirza Muhammad Hasan Shirazi was the waliyul faqih, he issued an order likening the use of tobacco to fighting against Imam e Zamana (A.S.). This was in the best interests of the Muslim Umma for in 1891 the British wished to manipulate the economy of Iran through the tobacco industry to colonise Iran as they did to India. Everyone, including the other mujtahideen followed this order and defeated the British plan. iii) The position of marja' taqleed can be occupied by several mujtahideen at the same time but there can only be one central authority for wilayatul faqih, otherwise the result would be disunity and discord in the Umma

An important suggestion

By Shaheed Murtadha Mutahhari (A.R.)

April 21st 1961 - 3 weeks after the death of Ayatullah Burujurdi (A.R.)

"I have a suggestion which might be very fruitful for the advancement of our Fiqh. It was formerly proposed by the late Ayatullah AL-Hajj Shaykh Abd Al-Karim Al-Yazdi (d. 1355/1936) may God exalt his station, and I repeat it here.

He had said that there is no need for the people to follow an individual in all matters. It will be better if different specialised branches of fiqh be established, with every group, after completing a general course in fiqh, take up it's own field of specialisation. The people should also follow the specialists in matters related with that branch. For instance, some should specialise in matters of ibadat, and some others in mua'malat, others in politics and still some others in judicial matters and so on. This is done, for instance, in medicine where many fields of specialisation have come into being... If this is done in fiqh also, everyone can do betterwork in his field

Council of Fuqaha

I would like to make yet another suggestion and I believe that the more is said about these matters the better it is. While everywhere in the world specialised fields are formed in all disciplines bringing about tremendous advancements, there is another factor which has contributed to this progress, that is, the co-ordination and co-operation of top class scholars and authorities in all spheres of learning. Nowadays, individual thinking and individual labour has no value. Scholars and intellectuals of every field are always busy in exchanging views with

one another, and communicating their findings to others. Even the scientists of one continent work and confer with those of other continents. As a result of this co-operation amongst the scholars of the first rank, if any useful theory is submitted, it spreads soon everywhere; on the other hand if it emerges as a false theory, the invalidity is also readily proved and discarded, as a result saving the scholar from continuing in error for years.....

Although the value of scientific progress and exchange is very much obvious and there is no need for any proof or argument, but in order to show that this foresighted and progressive tradition is not a new thing in Islam, I will quote an aya from the Qur'an and a passage from

Nahjul Balagha: In Suratul Shura, it is stated:

"...And those who answer the call of their Lord, establish salaah, and conduct their affairs by mutual consultation, and who bestow in alms a part of that which We have given them..."

Qur'an - Suratul Shura - 42:38 ...Therefore from the viewpoint of Islam, collective thinking and exchange of views is one of the principles operating actively in the lives of its followers and men of faith.

In Nahjul Balagha (Khutba No 214), Imam Ali (A.S.) says:

"Know that those servants of God, who have been entrusted with the knowledge of God, they guard His secret, and make His springs flow (i.e. they open the stream of knowledge for people). They keep friendly and cordial relations with one another, meet each other with heartiness and warmth, and serve one another cups of knowledge and learning, one person passing it to the other who in turn offers his own. As a result everyone is satiated and satisfied."

If scientific councils are formed in Fiqh, the principles in exchange of views will be realised in its complete form; Islamic fiqh will tread the path of progress and advancement, and many ...disagreements in fatawas will also disappear

THE EDUCATION SYSTEM

A theology student has three levels to go through to become an mujtahid or a faqih. These are :as follows

I. Introductory Level (muqaddamat)

This level of theological education concentrates on Arabic grammar, syntax, rhetorics etc., as well as some literature and logic. Theological seminaries mostly teach general books in this level. The reason for the emphasis on Arabic is that the Quran and all the important Islamic books and the ahadith are in Arabic. It would normally take seven years to complete this stage.

The following books are taught in this level in the order of priority:

Jami'ul-Muqaddamat is in 14 small volumes, in Farsi and Arabic. Arabic grammar, syntax, logic, method of reading and exercises in conjugation are taught. The objective of the course is to teach introductory Arabic syntax to the student and to prepare him for learning the subsequent courses. Books recently used for this course are The New Arabic, and simple Grammar.

Siuti explains Arabic syntax. The new book used for this course is Al-Qava'id ul-Assassi (Basic Principles). Mughani completes the grammar and syntax courses and teaches the student Arabic grammar in relation to literature. Tahzib is the new book used for the course. Hashieh teaches the student basic logic. The new book used in the field is Al-Mantiq (The Logic). Mutaval, or a summary of it, teaches rhetorics and speech. The objective of the course is to familiarise the student with the art of speech and rhetoric and to enable him to understand the Quran and more difficult texts. The new books used for the course are Balaghat .((Eloquence) or Javahir ul-Balagha (Essence of Eloquence

II. Inetermediate Level (sat'h)

Sat'h means superficialities, and is referred to reading directly from the books and learning from them. When a theology student completes the requirements of the introductory stage, he is promoted to the intermediate level. Here, he is taught Islamic theology and principles which he learns to reason out. It normally takes eight years to complete the intermediate level. Only the larger and more important theological seminaries run the intermediate course.

The following books are taught in this level in order of priority: Ma'alem ul-Usool teaches the student basic theology in a reasoned manner. The new book used for the purpose is a summary of Ma'alem. Qavanin, authored by Mirza-e Qummi, teaches theology in more depth.

The new book used is Usul ul-Fiqh.

Lum'ah, by Shahid Thani, teaches the foundations of canonical theology (ijtihad). Makasib, authored by Sheikh Murtadha Ansari, teaches canonical problems and profound answers to them and aims at getting the student to master the rules of Islamic theology and its application.

Rasa'il teaches rational reasons of theology and aims at getting the student to master the rational reasons of theology. Kefayat ul-Usool, authored by Mulla Mohammad Kazem Khurassani, teaches theology and its principles as well as its problems, and establishes full mastery of theology and its problems. Theology students may also take selective courses at this level, in the following order of priority: Manzuma teaches a series of basic philosophy lessons and is a prerequisite for theology students who plan to read philosophy. The length of this course together with isharat is three years.

Isharat teaches philosophy and gnosticism.

Bidayat ul-Hakama teaches a summary of philosophical titles and topics in one year. Nahayat ul-Hakama teaches philosophical topics in the intermediate level in two years. Assfar is a descriptive course of philosophical topics at the advanced level, taught in three years. Sharh-e Tajrid teaches natural sciences and divinities as viewed by orators and aims to teach the theology student the arguments in two years. Maqamat-e Hariri and Maqamat-e Hamedani familiarise theology students with Arabic literature. Each would take two and a half years but .Mu'alaqat-e Sab'a may also be read together with one of them

III. Advanced Level (kharij)

Having mastered the lower courses and understood the narrations and hadiths, the theology student enters the advanced level with the permission of his teachers and upon sitting some kind of examination. This level, in fact, is the stage of research for a theology student, leading him ultimately to become an Islamic jurisprudent or theologian. (marja' taqlid) themselves. On this level, the teacher discusses the opinions of the important Islamic canonists and those of his own and allows his students to enter debates with him. This stage of theological education may go on for as long as needed for the theology student to acquire the power of interpreting theological issues , and form his own opinion and judgement about them. Nevertheless the students may leave from theological seminaries at any stage they wish. Only a smaller number continue their theological education to become scholars and a larger number drop out after completing one or two stages. No certificates of graduation are issued by the seminaries. However, when a theology student becomes a scholar, his teacher or teachers issue a certificate at his request which authorises him to use his own judgement concerning theological issues. Ijtihad) means the power to refer to the four sources of reason, the Quran, .Tradition, Concensus and Wisdom, and interpret the theological issues on their basis

Topics

As explained before, topics of study in theological seminaries consist of Arabic literature, principles of theology, theology and rational sciences which include logic, arguments and philosophy. The first three are more in demand than the last in which works by Islamic philosophers such as Mulla Sadra and Mulla Haadi Sabzevari are taught. In the advanced level, other courses are also taught. These include: Rijal, which is a research into biographies of hadith tellers. Diraya, which discusses the documents on the basis of which hadiths are told, and the course through which a document is traced back to the original text.

History of Islam, Ethics, Interpretations, astronomy are other courses taught. Moreover, studies of sociology, psychology, English or other foreign languages have become more common in .the past few years

Characteristics of Theological Education

Education in theological seminaries has certain characteristics which distinguish it from modern education. The most important of those is that neither the period of education, nor the manner of graduation is pre-planned and compulsory. The theology student chooses his own teacher ever since he begins his theological education and continues to study with the same teacher as long as he himself deems fit.

Moreover, in the absence of a system of issuing graduation certificates, theology students are free to take their courses at their own pace. The same freedom is apparent in teaching. A theology student who has been studying for a few years, has the right to enter debates with his teacher and take fault with his statements. To prepare for lessons, theology students usually consult various theology books and go through the opinions of theological authorities. Upon receiving a lesson, they debate the lessons among themselves in order to master essence of the lessons. This method of studying helps theology students to develop in debating and .discussions. They gain more skills by preaching to the public, usually to earn an income