

## An Outline of the History of Restriction on Ijtihad

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The original in Arabic appeared under the title *Ta'rikh hasr al-ijtihād* (Qumm: Matba'at al-Khayyam, 1401 A.H), a publication of Madrasat al-Imam al Mahdi ('a), Khunsar, and edited by Muhammad 'Ali al-Ansari al-Shushtari. Muhammad Muhsin Aqa Buzurg Tehrani (1293-1389/1876-1969), the author of *al-Dhari'ah ila tasanif al-Shi'ah*, the well-known bibliographical book on works written by Shi'i authors from the earliest times to the contemporary era, was an eminent contemporary scholar. His other writings include, *Tabaqat a'lam al-Shi'ah* (a biographical work on eminent Shi'i scholars from the 4th/10th to the 14th/20th century), *Musaffa al-maqal fi musannifi 'ilm al-rijal* (accounts of about 500 Shi'i scholars who have written on 'ilm al-rijal), *Hadiyyat al-razi ila almujaaddid al-Shirazi* (a biography of al-Mirza Muhammad Hasan al-Shirazi, well known for his famous *fatwa* against the granting of monopoly rights on tobacco trade to a British company by Nasir al-Din Shah, the Qajar ruler), *al-Naqd al-latif fi nasy al-tahrif 'an al-Qur'an a-sharif* (on refutation of *tahrif* in the Qur'an), and *Tafnid qawl al-awam bi qidam al-kalam* (dealing with the well-known theological controversy between the Mu'tazilites and the Ash'arites concerning the eternity of the Qur'an). The editor of the Arabic text has written footnotes, most of which that were relevant to a translation have been retained here as endnotes.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
الْحَمْدُ لِلَّهِ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى رَسُولِ اللَّهِ، وَعَلَى آلِهِ الْمَعْصُومِينَ حُجَجِ  
اللَّهِ عَلَى خَلْقِ اللَّهِ، إِلَى يَوْمِ لِقَاءِ اللَّهِ

Al-Sayyid Ja'far ibn al-Sayyid Hasan al-A'raji al-Musili, learned, felicitous, pious, and excellent, may God grant you a long life dedicated to the revival of the Law of your most immaculate ancestor-you have asked me to write something describing the causes of the differences of the Sunni legal schools (*madhahib al' ammah*) concerning religious law (*furu' ahkam al-din*), the emergence of the four schools, the reasons of their adoption to the exclusion of other schools, the history of events leading to their exclusive recognition, the reasons behind the difference of opinion amongst Shi'i 'ulama' in many legal issues, and the history of emergence of the Shi'i school of law.

In responding to your request I say: To be certain the eminent amongst the scholars of the Ummah have written books and treatises on these issues in the past. Therein they have recorded its history as it had reached them, explaining amply the causes of these differences as disclosed by authentic sources and in a manner acceptable to reason, so as to remove almost all doubts and misconceptions by making manifest the truth like a shining torch for one and all.

However, as these books contain what appear to be signs of sectarian bias, which largely inspired the polemics of those times, these explanations fail to have the desired effect in cutting the roots of controversy and ushering in the spirit of harmony and accord.

However, in this age of enlightenment and brilliance, radiant with the light of knowledge, and freedom from the bondage of imitation based upon ignorance, we and our correligionists are hopeful that God, the Exalted, would grant us success in abandoning sterile bias and blameworthy imitation, so that the truth becomes manifest for us like the light on Mount Sinai through this treatise *Tawdih al-rashad fi ta'rikh hasr al-ijtihad* that I intend to set before our brethren, may God grant them success in reflecting over these words, which contain a reminder for the servants of God to remove restrictions on the practice of *ijtihad*. I do not write except with the aim to reveal the truth, and

إِنْ أُرِيدُ إِلَّا الْإِصْلَاحَ مَا اسْتَطَعْتُ وَمَا تَوْفِيقِي إِلَّا بِاللَّهِ ...

*I desire only to set things right, so far as I am able. My success is only with God. (11:88)*

#### [The Beginning of Disagreement Amongst Muslims:]

There is no doubt that disagreement among Muslims in the sphere of religious law (*furu' al-din*) began only after the Prophet's (s) demise and not in his lifetime. The whole Ummah used to seek guidance from the light of his sciences in all the spheres and without the temerity to present any opinion in opposition to him, because that would have violated their affirmation [of the Qur'anic statement concerning him] that:

مَا يَنْطِقُ عَنِ الْهَوَىٰ

*He speaks not out of caprice. (53:3)*

Hence al-Maqrizi's statement that "the ten (Companions) who were given the good tidings of paradise (*al-asharah al-mubashsharah*) used to issue *fatwas* during the lifetime of the Prophet (s)", [1] suggesting an early emergence of *ijtihad* and the practice of issuing *fatwa*, underrates the station of the Prophet (s) and is derogatory to these Companions, for their mere faith did not permit them to do so, except when they were ordered to do so by the Prophet (s), and that too not in opposition to him.

Similarly, there is no doubt that legal issues (*furu'*) were not the subject of the first controversy that occurred in Islam. All historical accounts agree that the first difference to occur amongst Muslims following the death of the Prophet (s) and prior to his burial wits concerning the issue of *khilafah* and *wilayah*.

This disagreement also did not exist during the lifetime of the Prophet (s), since not a single history mentions it. On the contrary, while the Prophet (s) was alive all the Muslims concurred with the order of their Prophet in taking the oath of allegiance (*bay'ah*) to his cousin on the day of Ghadir, with all the details mentioned in all the books of history and *sirah*? [2] Hence, while he was alive they acknowledged the *wilayah* (guardianship), *wizarah* (vaziership), *wisayah* (trusteeship), *khilafah* (vicegerency), and *imamah* (leadership) of his cousin, in accordance with the explicit statements of the Prophet (s) regarding all these matters on various occasions from the time of his *bi'thah* (beginning of his ministry) in Makkah to the time of his demise in Madinah. During this span of time, not a single voice of dissent was ever heard from among the Companions. [3]

There is again no doubt that after the demise of the Prophet (s) the Ummah in its entirety was not unanimous about the *khilafah* of a particular person from the community. Rather, immediately after the Prophet's demise, some persons of the community took the lead in breaking the oath of allegiance taken at Ghadir and initiated the rejection of *wilayah*. This rejection and dissidence spread gradually to others. Thereafter the affair of the *khilafah* was decided as a result of the efforts of some prominent persons of the Muslim community who preoccupied themselves with directing the matter of succession and nomination of another person to the office, making arrangements that lead to the formation of a majority from numerous groups within a few days.

Following the controversy among prominent persons from among the Muhajirun and the Ansar, as well as others, the outcome was a split into two groups: the Shi'ah (*Khassah*) and the generality of people (*'Ammah*). The *Khassah* was the group which remained with the *Wasi* (i.e. 'Ali [a]) and loyal to his *wilayah*. The *'Ammah* were those who distanced themselves from him. This was beginning of the difference.

Then the minority group which remained loyal to the *bay'ah* of the *Wasi*, acknowledged his title to the *Imamah*, and believed in his infallibility (*'ismah*) and obedience to him as a duty ordained by God, the Exalted, considered it binding upon itself to follow him in religious precepts (*al-ahkam al-diniyyah*) which God had conveyed to His prophet and which the latter had entrusted to his *wasi*, confiding all of them to him while proclaiming to the people:

أَنَا مَدِينَةُ الْعِلْمِ الْإِلَهِيِّ وَعَلِيٌّ بَابُهَا

I am the city of Divine knowledge and 'Ali is its gateway. [4]

This group took recourse in him for guidance in all religious matters in all their detail, learning and committing to writing the precepts and teachings of their Imam who had been designated by God, the Exalted, and was preserved against any kind of error. Thus they recorded from each Imam, infallible and designated by the preceding imam, one after another, up to the Master of the Age in occultation, may God's blessings be upon all of them.

This group of Muslims adhered to the *thaqalayn* (lit. 'two precious things') from God, the Exalted, which their prophet (s) had left behind for his ummah. These two are, the Book of God and the Household of the Prophet (s), which 'will not separate from each other until they meet him (s) at the Pool' (إِن يَفْتَرَقَا حَتَّى يَرِدَا عَلَى الْحَوْضِ), as has been narrated in a large number of traditions recorded by both Sunni and the Shi'i traditionists. [5] The motto of this group is 'following' (*tashayyu'*), because they follow 'Ali, may peace be upon him, and the Imams of his descent, relying on none except the Ahl al-Bayt, may peace be upon them, unaffiliated with any of the schools of fiqh.

They are known as "Ja'fari" not because Ja'far ibn Muhammad, may peace be upon him, is an imam of only this school, but because during his lifetime the ruling regimes, that of the Umayyads and the `Abbassids, were weak and preoccupied with their own problems, and this gave the Shi'ah a respite which they used fully to acquire the knowledge of the *ahkam* (laws) and other teachings from their Imam. Thus the propagation of the *madhhab* (school of law) of the Ahl al-Bayt and widening of the circle of its influence during the lifetime of Imam Abu `Abd Allah Ja'far ibn Muhammad al-Sadiq, may peace be upon him, resulted in the Shi'ah being identified by his name, though the qualification "Ja'fari" is sometimes also used to distinguish them from Zaydi Shi'is.

Summarily, the Shi'ah do not submit to anything whatsoever except the Book of God, the Exalted, and the Sunnah of His prophet as received from the Imams of his Household, who are secure from error and lapse. This has been their custom since the time of the demise of the Prophet, may God bless him and his Household, to the present day. They act as per the literary meanings of the Holy Qur'an and its unambiguous verses (*muhkamah*), and refer the verses standing in need of interpretation (*mutashabihat*) to the Imams. They follow the Sunnah of the Prophet (s) as narrated through reliable chains of transmission from the Infallible Household and compiled in books and the `usul' (early collections of Shi'i hadith) which are extant to this day either in their original form or with their contents rearranged in chapters, as explained in detail in the introduction of our book *al-Dhari'ah*.

[6]

### **[The Continuity, Meaning, and Legal Significance of Ijtihad in the Imami Shi'i Tradition:]**

The Shi'i ulama', in all the eras, have applied *ijtihad* for understanding the literal meanings of the Holy Qur'an and the Sunnah, in the sense that they have been deriving religious laws from these two sources by applying specific rules of deduction. However, in the early period the prerequisites of *ijtihad* were few and its method was simple, and it was possible for even ordinary people, to say nothing of the learned and the elect, to attain the knowledge of divine laws by practising *ijtihad*.

But later, with the passage of time and after the era of the Imams and the beginning of the *ghaybah* (Occultation), and the vicissitudes faced by the books and the *usul* and their compilers, with the dispersion of manuscripts in different parts of the world along with its

natural consequences in the form of differences resulting from discrepancies and lapses committed due to error or forgetfulness of copyists and editors, despite their credibility and care in recording-all this contributed to the proliferation of the prerequisites of *ijtihad*. Its acquisition came to require, the study of a number of sciences relevant to understanding the texts and literal meanings of the Qur'an and the Sunnah and to determining the authenticity of the narrators and the chains of transmission for distinguishing the authentic from the faulty and the praiseworthy from the blameworthy, among other things.

Moreover, the practice of *ijtihad* in the sense of making full effort for deriving the rules of the Shari'ah and determining the import of the texts and the credibility of chains of transmission of traditions-is the obligation of every capable individual (*wajib'ayni*) in the opinion of all Shi'i scholars and if an adequate number of persons do not meet it, all other *mukallaf* individuals are obliged to fulfil it. But if others are performing this duty to an adequate extent, the rest are relieved of the, obligation.

#### [The Akhbaris:]

That which we have mentioned regarding the consensus of Shi'i 'Ulama' concerning the obligation of *ijtihad* in deducing religious laws is true of, their actual practice, though some later scholars have verbally disavowed it on the claim of acting according to the traditions (*akhbar*). They are therefore known as Akhbaris. But we have explained elsewhere that this is only a verbal dispute, because one cannot act in accordance with traditions without acting according to their meanings as understood and interpreted. Hence acting on a tradition depends on comprehending its meaning and purport, and we do not imply by *ijtihad* anything except the derivation of the meanings of traditions and deduction therefrom,<sup>9</sup> and this is something common to all Shi'i 'ulama'.

#### [Invalid Ijtihad:]

It is a fact that all Shi'i 'ulama' reject '*ijtihad*' in the sense of acting and issuing *fatwa* (legal opinion; pl. *fatawa*) on the basis of *ra'y* (subjective judgment), *istihsan* and *qiyas* (analogical reasoning), a which are prevalent among the Ahl al-Sunnah and considered valid by them. This position is based on what has been received from their Imams, may peace be upon them, concerning the invalidity of *qiyas* and the unreliability of *ra'y* and *istihsan*. Hence, *ijtihad* in this sense is invalid in their opinion, so much so that the works of Ibn al-Junayd, one of their earliest fuqaha' and one of the two earliest among them, have been set aside because he has been accused of practising *qiyas*. [9]

#### [The Causes of Variant Fatawa:]

From what we have mentioned, the reason behind differences of opinion among Shi' 'ulama' themselves regarding issues of law becomes obvious. Its basic cause lies in either the different opinions regarding the acceptability of a particular text, or the degree to which it is found convincing by someone, or the different degrees of sharpness, intelligence and perspicacity of minds in dealing with the issues and the texts involved.

#### [Ijtihad Among the Ahl al-Sunnah:]

As to the other Muslims who retracted from the oath of allegiance to Amir al-Mu'minin `Ali, may peace be upon him, they came to hold that the Prophet, may God bless him and his Household, neither appointed any successor nor made any will for anyone to exercise *wilayah* over Muslims after his demise. Indeed [they maintain] he refrained from making any will in order to leave the community fully free to determine a successor and ruler

itself. Hence it may choose from among the community any person it desires and concurs upon.

Similarly, [they held that] he designated no specific person as an authority in matters of the law of Islam. Rather, he left [the exposition of] the Islamic Shari'ah after himself to the generality of his contemporaries (*ashab*) because all of them possessed the quality of *'adalah* [10] (credibility) and the capacity for *ijtihad*, alleging that [the Prophet had

declared]: أَصْحَابِي كَالنُّجُومِ بِأَيِّهِمْ أَتَدْتُمُ اهْتَدَيْتُمْ [11] ('My Companions are like stars, you will be guided if you follow anyone of them').

Consequently, for these Muslims the basis of practice in matters of law was the authority of the Companions and their *fatws*, irrespective of whether the *fatwa* was based on a tradition of the Prophet, may peace and God's blessings be upon him and his Household, which the Companion had heard from him or was the result of his own *ijtihad* and *ra'y*. This was so because the Companions were considered unerring (*musiban*) in their *ijtihad*, as is elucidated in their books on jurisprudence (*usul*).

It is not our present concern to debate the validity of these claims or to provide a proof that this tradition is a forgery ascribed to the Prophet, may peace and God's blessings be upon him and his Household. In this regard, the 'Allamah of India [Mir Hamid Husayn], in the second of the two volumes of his book *'Abaqat al-anwar* on *Hadith al-Thaqalayn*, in some 250 large-size pages of his book where he cites many evidences from the works of some most eminent Sunni 'ulama' who affirm its fabricated character, has cited seventy reasons invalidating the tradition. This study may be referred to on this issue whose elaboration is outside the scope of our discussion about restriction on the number of schools of law and the question pertaining to it.

### [Sources on the Beginnings of Proliferation of the Schools:]

Answers to the issues pertinent to this question become obvious on referring to many books of the Ahl al-Sunnah-some of which we shall mention by the way of a general guidance regarding sources-where these answers can be found and from which we shall be giving citations.

Among these books is *al-Mawa'iz wa al-i'tibar fi al-khutat wa al-athar*, a comprehensive popular work on Egyptian history, by al-Shaykh Taqi al-Din Abu al-'Abbas Ahmad ibn Ali ibn 'Abd al-Qadir ibn Muhammad al-Bali al-Qahiri, popularly known as al-Maqrizi, a *nisbah* relating to a quarter of Ba'labak known as al-Maqarizah, where he was born in 766/1364 and died in Cairo in 845/1441. It has been published a number of times, complete and in parts, and has been translated into French. It is relied upon and accepted by all later authors who cite what he mentions as an established fact. In this book (vol. 4, p. 141 ff.) al-Maqrizi has dealt elaborately with differences among the schools of law, devoting several pages to the topic under the heading "Dhikr madhahib ahl Misr wa nihalihim mundhu iftataha 'Umar ibn al-'As ila an saru ila i'tiqad al-madhahib al-arba'ah" ('Discussion of the legal sects and creeds of the people of Egypt from the time of 'Umar ibn al-'As' conquest up to their acceptance of the four schools of law'). [12]

Another source is the history of al-Ya'qubi, Ahmad ibn Abi Ya'qub al-Baghdadi (d. after 296/908), and printed in Najaf in 1358 H.

Another source is *al-Hawadith al-jami'ah fi al-mi'at al-sabi'ah* of Kamal al-Din 'Abd al-Razzaq ibn al-Marwazi al-Fuwati al-Baghdadi (d. 723/1323), printed in Baghdad at



Matba'at al-Furat in 1351 H. It mentions some points to which we will refer at an appropriate place.

Among the sources are *al-Insaf fi bayan sabab al-ikhtilaf* and *'Aqd al-jid fi ahkam al-ijtihad wa al-taqlid*. These two are the works of Shah Wali Allah Ahmad ibn 'Abd al-Rahim al-'Umari al-Dehlawi (b. 1114/1702; d. 1180/1766 .or 1176/1762). Both have been printed together with *al-Muqabasat* of Abu Hayyan al-Tawhidi, as well as with *Kashf al-zur wa al-buhtan*. [13]

Other sources are *al-Iqlid li adillat al-ijtihad wa al-taqlid* and *al-Tariqat al-muthla fi al-isharah ila tark al-taqlid*, both by Siddiq Hasan Khan al-Qannawji al-Bukhari (d. 1308/1890), both printed at Astanah in 1295 and 1296 H. There is another book of his called *Husul al-ma'mul min 'ilm al-usul*, which has been published in *al-Jawa'ib* in 1296 H. its "almaqсад al-thalith" (sic) [14] deals with *ijtihad* and *taqlid* and is the last of three books published together in one volume, the first two being *Luqtat al-ajlan fi ma tamussu ila ma'rifathihi hajat al-insan* and *Khabi'at al-akwan fi iftiraq al-umam 'ala al-madhahib wa al-adyan*.

There is also the article of the author of *al-Sa'adah*, Ahmad Taymur Basha ibn Isma'il ibn Muhammad (b. 1288/1871 at Cairo), entitled "Nazrah ta'rikhiyyah fi huduth al- madhahib al-arba'ah," published in the magazine *al-Zahra'* at the beginning of its second year and later printed separately in Cairo by Muhibb al-Din al-Khatib on 15th Rajab 1344 H. He has described in this article the causes of the birth of the four schools of law, the places where they initially emerged, the mode of their growth and spread to other points, and a brief historical account of the extinct schools from the time of their emergence, their gradual spread and the extent of their currency until their eventual extinction.

The most detailed study of this issue among the sources mentioned is that of the learned Muhammad Farid Wajdi Beg (b. 1293/1876) in the third volume of the *Da'irat al-ma'arif fi al-qarn al-rabi' 'ashar al-hijri*, [15] published in 1330 H. His discussion on the subject, under the root *j-h-d*, covers sixty pages. There he reproduces the two books mentioned earlier in their entirety, i.e. *al-Insaf fi bayan sabab al-ikhtilaf* and *'Iqd al-jid*. He has also discussed the issue at length under the root *dh-h-b*, referring here to what he has already mentioned under *j-h-d*.

These are the books that were accessible to me on this subject, and Siddiq Hasan Khan, in the third "maqсад" [16] of his book *Husul al-ma'mul*, mentions some other works in this regard asking the reader to refer to them. Of these are:

*Adab al-talab wa muntaha al-irab* by al-Shawkani,

*Irshad al-naqqad ila taysir al-ijtihad* by al-Sayyid Muhammad ibn Isma'il al-Amir,

*I'lam al-mawqa'in 'an rabb al-'alamin* by al-Hafiz Ibn al-Qayyim,

*Iqaz himam uli al-absar fi al-iqtida' bi sayyid al-muhaijrina wa al-ansar*] by al-Fullani, Salih ibn Muhammad (printed),

*al-Jannah fi al-uswat al-hasanah bi al-sunnah* (which he mentions among his own works),

*Dirasat al-labib fi al-uswat al-hasanah bi al-habib* by al-'Allamah Muhammad Win al-Sindi,

Muhammad *al-adhkiya'* by al-Sayyid Ahmad Hasan al-Qannawji,

*al-Qawl al-mufid fi hukm al-taqlid*, and other books written on *ijtihad* and *taqlid*.

Since the books I have mentioned here may be either inaccessible to our Sayyid or he may not have the time to refer to them and find the relevant parts, I shall give here a summary of their contents to the extent of providing a concise answer to the question at hand, leaving the matter of detail to direct reference to the books.

### [The Beginnings of Ifta:]

The point on which all the above-mentioned books and historical accounts concur is that after the demise of the Prophet, may peace and God's blessings be upon him and his Household, other Muslims referred to the learned among the Companions and reciters of the Qur'an among them for guidance on the issues of the Shari'ah and acted in accordance with their *fatwas*, whose basis was either what they had heard from the Prophet, may peace and God's blessings be upon him and his Household, or their own *ijtihad*, in cases where they had heard nothing from him on an issue. Rather, it has been mentioned in some historical accounts-and al-Maqrizi seems certain about it-that ten among the Companions known as "al-'Asharah al-Mubashsharah" used to practise *ijtihad* and give *fatwas* during the lifetime of the Prophet, may peace and God's blessings be upon him and his Household; but as we said earlier this remark is problematic.

However, there is no doubt that the Companions became authority on religious issues after the demise of the Prophet, may peace and God's blessings be upon him and his Household. They went to different Islamic lands where they settled, teaching the Qur'an and the *ahkam*.

Al-Maqrizi states:

After the death of the Prophet, may peace and God's blessings be upon him and his Household, the Companions dispersed in different lands and only some of them remained with Abu Bakr at Madinah. Abu Bakr used to adjudicate on the basis of what he knew of the Qur'an and the Sunnah, and when he had nothing to lean upon he would refer to the Companions who were present. When the Companions too knew nothing in that regard, he resorted to *ijtihad* for ascertaining the *hukm*. [17]

Similarly, every Companion who arrived in a particular town used to practise *ijtihad* in matters concerning which he did not find anything in the Qur'an and the Sunnah.

Al-Maqrizi observes that when Abu Bakr died and other territories were conquered during the period of 'Umar and after him, the dispersion of the Companions increased further and the governor of each province would practise *ijtihad* even if no Companion were present.

This remark is explicit that the governors of provinces were considered an authority even if they were not Companions (*Ashab*).

### [The Cause of Divergent Fatwas:]

The reasons behind divergent *fatwas* of the *Ashab* are given at length by al-Maqrizi. Here is a summary of what he has to say:

Certainly every Companion did not have the opportunity to be in constant company of the Prophet (s) to record his pronouncements with a bearing on the *ahkam*. Rather, during his lifetime only some of the Companions were



present at a time. Thus when some of them heard the Prophet's answer to any question, others missed the opportunity. When the *ashab* scattered far and wide after his (s) demise, so also did the *ahkam* narrated by them from him (s). Thus only a part of these *ahkam* were narrated in any town, so that the *ahkam* that were accessible to someone living in Madinah differed from those accessible to someone residing in Egypt. Likewise, that which an Egyptian knew was not known to the Syrian; what the Syrian had received was not accessible to the resident of Basrah; that which was accessible to the Basran was unknown to the Kufan, and so on. The result was that each of them resorted to *ijtihad* on issues regarding which traditions were not available to them.

Further, due to the absence of uniformity in knowledgeability, grasp, and other powers and faculties, these *mujtahids* naturally differed in their *ijtihad* and opinions. Therefore, mere individual differences among the *sahabah* resulted in differences of *fattva*, and later this difference grew after the period of the *sahabah*. [18]

Al-Maqrizi adds: "After the *Sahabah*, the *Tabi'un* followed the *fatwas* of the *sahabah* mostly without opposing them." [19]

His qualification 'mostly' clearly implies that the *Tabi'un* also sometimes practised *ijtihad* despite the presence of a *Sahabi's* opinion, and likewise the *Tab' al-Tabi'in* who followed the *Tabi'an* in this regard.

Mawlawi Shah Wali Allah, in *'Iqd al-jid fi ahkam al-ijtihad wa al-taqlid*, says:

The Ummah concurs regarding reliance upon the *salaf* (earlier generations) for the knowledge of the Shari'ah. Thus the *Tabi'un* relied upon the *sahabah*, the *Tab' al-Tabi'in* upon the *Tabi'un*, and so on and so forth. Therefore, referring to the *salaf*, apart from being a matter of consensus, is also considered praiseworthy by reason (*aql*). [20]

I say: He means the praiseworthiness of someone ignorant about something referring to another who knows it.

To sum up that which has been said hitherto, during and after the era of the [early] caliphs, the Muslims, in matters pertaining to *ahkam al-din*, referred to scholars and reciters of the Qur'an from among the Companions who had settled in various towns, and the Companions issued *fatwas* either on the basis of what they had heard from the Prophet, may peace and God's blessings be upon him and his Household, or the opinions they formed through *ijtihad*. After the Companions they followed the differing *fatwas* of the *Tabi'un* or those who were appointed as governors in the provinces. These differing *fatwas* first circulated in their respective provinces and later spread gradually to other parts of the Islamic world in accordance with the exigencies of the time and favourable chance. This was the practice of the Muslims for several years.

Mawlawi Shah Wali Allah, in his treatise *al-Insaf*, observes:

During the first and second centuries the people did not concur on the *taqlid* of one particular *madhhab* (school of law); rather, they followed the *ahkam* received from their ancestors or the local `ulama' who had acquired the ability to deduce the *ahkam*, completely or partially, from the Qur'an and the Sunnah ... [21]

From what he has observed it is obvious that for two centuries after the advent of Islam millions of Muslims lived and died professing Islam without knowing even the name of any of the legal schools that emerged in the second and third centuries, during which their founders were born, leave alone their following or identifying themselves with any of them.

Clearly it is neither a part of the Islamic creed nor among its prerequisites to follow a particular school of law founded by a specific person or to opt for one of the four schools of law.

About the *post-Sahabah* and the post-Tabi'un period, nearly two centuries later, al-Maqrizi observes:

After the period of the *sahabah* and the *Tabi'un*, the matter rested with the *fuqaha'* of various cities, i.e. Abu Hanifah, Sufyan and Ibn Abi Layla at Kufah, Ibn Jurayj in Makkah, Malik and Ibn al-Majishun at Madinah, 'Uthman al-Taymi [22] and Siwar in Basrah, al-Awza'i in Syria, and al-Layth ibn Sa'd in Egypt. These *fuqaha'* either referred to the *Tabi'un* or *Tab' al-Tabi'in* or practised ijtihad. [23]

The influence of most of these *fuqaha'* in the above-mentioned cities grew gradually until they became the imams of their legal schools by which their followers came to be identified. However, before their popularity the schools had no name and no Muslim ever identified himself with them at that time.

From what we have said it becomes clear that the schools of law emerged after the era of ,the *Tabi'un* and after their imams and gradual spread of their influence and fame. This happened at the end of the second century and the schools of law kept multiplying gradually till the beginning of the fourth century, or even during it, and were not limited to the four schools.

### [The Surviving Legal Schools:]

Ahmad Taymur Basha, in his aforementioned article, states:

The *madhahib* were many and among them are the four schools which are followed by the majority of Muslims to this day. They are:

- the Hanafi school, attributed to Imam Abu Hanifah Nu'man ibn Thabit al-Kufi (80-150/699-767).
- the Maliki school, attributed to Imam Malik ibn Anas (93 -179/711-795).
- the Shafi'i school, attributed to Imam Muhammad ibn Idris al-Shafi'i (150-204/767-819).
- the Hanbali school, attributed to Imam Ahmad ibn Hanbal (164-241/780-855).

These four schools have survived to the present day.

### [The Extinct Schools:]

The *madhahib* which have been abandoned are:

- The *madhhab* of Sufyan ibn Said al-Thawri (97-161/715-777).
- The *madhhab* of al-Hasan ibn Yasar al-Basri (21-110/641-728).

- The *madhhab* of 'Abd al-Rahman ibn 'Amr al-Awza'i (88-157/706-773).
- The *madhhab* of Ibn Thawr, Ibrahim ibn Khalid al-Kalbi (d. 246/-860).
- The *madhhab* of Dawud ibn 'Ali al-Isfahani al-Zahiri (201-270/816-883).
- The *madhhab* of Muhammad ibn Jarir al-Tabari (224-310/ 838-922). This *madhhab* was promoted by Abu Bakr ibn Abi al-Thalj (d. 325/936), and after him by his student al-Qadi al-Mu'afa ibn Zakariyya al-Nahrawani (d. 390/999).

Among imams of the *madhahib* are also to be counted "the *fuqaha'* of the towns," mentioned by al-Maqrizi, who used either to refer to the *Tabi'un* or the *Tab' al-Tabi'in* or practised *ijtihad*. Among them are:

- Abu al-Harith, Layth ibn Sa'd ibn 'Abd al-Rahman al-Fahmi al-Khurasani (b. 94/712 d. 175/791 in Cairo), he was the imam of the people of Egypt both in hadith and fiqh.
- Ibn Jurayj, 'Abd al-Malik ibn 'Abd al-'Aziz (80-150/699-767), he was the imam of the people of the Hijaz during his period.
- Al-Majishun, 'Abd al-'Aziz ibn 'Abd Allah ibn Abi Salamah al-Madani al-Isfahani, faqih, *hafiz* and *thiqah* (trustworthy). Died in Baghdad in 164/780.
- 'Uthman ibn 'Umar ibn Musa al-Taymi [\[24\]](#) (d. *circa* 145/762). He was a judge during the reign of al-Mansur.

Apart from these there were other *madhahib* popular in different regions whose imams, in their lifetime and later, had been authorities consulted and referred to for *fatwas* and *ahkam*, with groups of followers, big or small, among Muslims. Their *fatwas* were acted upon for a period of time, long or short, until they were abandoned, becoming obsolete with the passing away of their followers.

As to the *madhahib* which did not last for long, followed as they were by a group of Muslims only during the lifetime of their imams, there were countless. These became extinct with the death of their followers.

The aforementioned imams, apart from the differences of *fatwa* and opinion, also differed in respect of prestige and degrees of eminence, in their renown, and the extent of popularity or lack of it in different regions.

All this was the result of the presence of certain advantageous factors as well as those of chance in favour of some of them to the exclusion of others, or because times and circumstances were favourable to a imam and unfavourable to others.

### **[Factors Responsible for the Relative Influence of Some Madhahib:]**

Among the factors that were effectual in giving precedence to a particular school was the number of scholars associated with it, students, patrons, promoters, supporters, and zealots, and the degree of their prestige, influence and power in propagating it.

Similarly the absence of the above factors resulted in lack of prestige, advancement, and propagation, leading to the decline of the popularity of the founder, gradual neglect, and ultimate extinction. This process continued till the *madhhab* became totally extinct and forgotten as if it were not a thing worthy of mention.

The unfavourable factors were responsible for the extinction of most of the legal schools that emerged about the end of the second century or later, while the favourable ones led to the advancement, propagation, and survival of the four schools that we find today.

The historical accounts guide us to the impact of these factors in their continued survival, that it was due to the power of their followers and students and the authority exercised by princes, caliphs and others. It would not be inappropriate to mention some of them.

In the fourth volume of his *al-Khutat*, al-Maqrizi mentions what can be summarized as follows: Al-Qadi Abu Yusuf was appointed judge by Harun al-Rashid and later, after 170/786, he came to occupy the post of chief justice (*qadi al-quddat*). He did not appoint anyone to a judicial post except someone of his own choice, and since he was one of the closest disciples of Abu Hanifah, he selected for the provincial judicial posts of Khurasan Iraq Syria, and other places only those who were followers (*muqallidun*) of Abu Hanifah. Thus it was he who was instrumental in propagating the *madhhab* of Abu Hanifah in different regions.

In the early stages of propagation of the Hanafi *madhhab* in the east, the Maliki school spread in west Africa through Ziyad ibn `Abd al Rahman, the first one to introduce the Maliki school in that region. The first to introduce the *madhhab* of Malik in Egypt in 163/779 was `Abd alRahman ibn al-Qasim.

Al-Maqrizi says that the *madhhab* of Muhammad ibn Idris al-Shafi'i spread in Egypt following his arrival in Egypt in the year 198/813. He further adds:

The *madhhab* practiced in Egypt was either that of Malik or al-Shafi'i until the invasion of Egypt by Jawhar at the command of the troops of his master, al-Mu'izz li-Din Allah Abu Tamim Ma'add, the Fatimid caliph, in 358/968. Thenceforth the Shi'i school gained currency to such an extent that apart from the Shi'i *madhhab* there remained none other in Egypt. [25]

This shows that the *madhhab* of Abu Hanifah either did not enter Egypt or was not made the official legal school in Egypt and its surrounding regions, a vast area, until about the 7th/13th century, whereas it was the first *madhhab* to be introduced in the eastern parts. This happened due to the influence of certain historical factors and exigencies which existed in some parts and not others. Similarly, the Hanbali school became popular in the areas surrounding Egypt nearly the same time as the Hanafi school.

In *Shadharat al-dhahab*, in the biographical account of Shams al-Din Muhammad ibn `Abd al-Wahhab at-Harrani at-Hanbali (d. 675/1276) it is stated that he assumed the post of *qadi* in some parts of Egypt and was the first Hanbali judge in that country. [26]

This is also clear from what al-Maqrizi says following his above mentioned remarks: "Then, during the reign of Baybars al-Bunduqdari, four judges were appointed in Egypt: a Shafi'i, a Maliki, a Hanafi and a Hanbali." [27]

#### **[Beginnings of Restriction of the Madhahib to Four:]**

From the appointment of a separate *qadi* for each *madhhab* during the reign of al-Bunduqdari, who came to power on 17th Dhu at-Qa'dah 658/1259 and died in 676/1277, it appears that official status was accorded for the first time to all the four *madhahib* in Egypt during this period. Before him, the Hanafi and Hanbali schools were not officially recognized in this manner. Al-Maqrizi observes in this context.

This, i.e. the assumption of the office of judgeship by four-continued from 665/1266 until the time when there remained no other *madhhab* except these four in all Islamic towns that was counted among the *madhahib* of Islam. Anyone who followed any other *madhhab* was regarded with hostility, disowned and barred from judicial posts. The testimony of a person was not accepted unless he was a *muqallid* of one of these four schools. Throughout this period the *fuqaha'* of these *madhahib* issued decrees in these towns ruling that it was obligatory to *follow* these *madhahib* and unlawful to adhere to any other *madhhab*. This practice continues to this day. [28]

Our citation from al-Maqrizi's observations ends here, and from it the following conclusions may be drawn:

1. As pointed out earlier, the impact of the causes and factors in the propagation of the four *madhahib* was decisive, considering that these *madhahib* had totally disappeared from Egypt after 358/968 for years on during the era of the Fatimid caliphs. But later they were revived after their disappearance in 567/1171 and were then jointly accorded official recognition in 665/1266 which state continued until 804/1401 when *alKhutat* was compiled.

The causes affecting the course and continuity of the four *madhahib* were stronger, and hence their growth and advancement. The other schools retreated till they became gradually extinct after 665/1266.

2. Around the year 665 some unsightly and scandalous things were associated with Islam and enormities were committed in the name of religion. This was despite the fact that the Lawgiver had based the laws of Islam on harmony and accord amongst Muslims. He had instituted congregations and gatherings to promote the spirit of unity calling the people to mutual love and friendship, ordering them to cooperate with one another in every positive matter and binding Muslims together with the firmest bond (*'urwat al-wuthqa*) of brotherhood so that they would not disperse and remain united against others.

It is regrettable that at this time mutual hostility amongst Muslims was made a part of religion. Consequently the patrons of the four *madhahib* started to show hostility towards the followers of other schools, who like them pronounced the *shahadatayn*, prayed facing the Holy Ka'bah, performed Hajj, sought spiritual purification, and performed all obligatory and supererogatory acts which had reached them from the Prophet of Islam through authentic chains of transmission.

Someone might remark that this is not the first crisis in Islamic history. One might recall that which the pages of history disclose-specially those like the *Kamil* of Ibn al-Athir-concerning the battles and disturbances which took place in the preceding centuries amongst the Muslims, especially the conflicts that occurred in Baghdad and other cities between the followers of the four *madhahib* themselves (some of which we shall mention shortly) and between them and other Muslims.

I would say in answering that the difference between this event and what took place earlier is as great as the distance between the heaven and earth, because the cause of the preceding conflicts was nothing except ignorant fanaticism which aroused the common people and incited ignorant elements to commit repulsive deeds. The ruling authorities, if asked,



would strongly disavow them and tried, albeit outwardly, to absolve themselves by laying its blame on the neck of the ignorant.

But this time the authorities proclaimed that following any *madhab* other than these four by a Muslim was a major sin and atrocity from which lie had to be restrained by everyone who had the power. In effect, it was an act that expelled one from the fold of Islam: his testimony was not to be accepted and if he were a judge he had to be dismissed from his post. Were it not considered an act of apostasy, mere commission of a major sin does not disqualify one, in their opinion, from holding the post of a judge or giving witness.

This announcement by the leaders of the Ahl al-Sunnah was certainly a blow to Islam, causing as it did animosity and hatred amongst Muslims, shattering their unity, dividing them against one another and causing total dispersion. **فَرَأَى اللَّهُ وَابْنًا إِلَيْهِ رَاجِعُونَ**

3. Around the year-665/1266 the *fuqaha'* decreed that it was obligatory to follow one of the four *madhahib* and unlawful to adhere to any other. This too was one of the greatest calamities which befell Islam, considering that nearly seven centuries had passed since the advent of Islam during which countless number of people had died professing the Islamic creed and during the first two centuries not a single person had ever heard the name of any of these *madhahib*. Even after the first two centuries, the Muslims enjoyed complete freedom with respect to religious law, with laymen following a *mujtahid* whom they relied upon and the *mujtahids* deducing the *ahkam* from the Qur'an and the Sunnah on the basis of jurisprudential principles upheld by them for acting on the Prophetic Sunnah. So what was it that had obliged the generality of Muslims this time, both the *muqallid* layman and the *mujtahid* legist, to limit themselves to the *taqlid* of the four imams in matters of laws of the Shari'ah?

In view of what was mentioned earlier concerning these *madhahib*, their beginnings, the mode of their propagation, their gradual development, and the role of certain factors which led to their prevalence over other schools through the domination and coercive power of governments, on what grounds of the Shari'ah was it obligatory to follow one of the four *madhahib* and intrinsically unlawful to follow any other? This has been clearly spelled out by the distinguished Iraqi historian, Ibn al-Fuwati, on page 216 of *al-Hawadith al-jami'ah*, while discussing the events of 645/1247, i.e. eleven years before the downfall of the 'Abbasids during the reign of al-Musta'sim who was executed by Hulagu in 656/1258.

### [The Beginnings of Restriction on the Madhahib in Baghdad:]

Before recounting the events of 645/1247, Ibn Al-Fuwati, in the account of 631/1233, mentions how the college of al-Mustansiriyyah was inaugurated in Baghdad during the month of Jamadi al-Thani of this year. He observes:

Its construction was started on the orders of al-Mustansir billah in the year 625/1227 under the supervision of the *Ustadh al-Dar* Mu'ayyid al-Din Abu Talib Muhammad Ibn al-Alqami. It was divided into four quarters on the day of its inauguration. The front right-hand side quarter was given to the Shafi'is, the quarter to the left to the Hanafis, the interior right-hand side quarter to the Hanbalis and the one to the left to the Malikis. Sixty-two *fuqaha'*-that is, students of fiqh and *ahkam*-were chosen for each *madhhab*. Thus the total strength of the students in the school was 248. There were two teachers, a Shafi'i and a Hanafi, and two assistant-teachers, a Hanbali and a Maliki. Each one of them was given a monthly salary,



stipend and daily food ration, cooked and uncooked. Also several *qurra'* (reciters of the Qur'an) were appointed to teach *qira'ah*, some [traditionists] to teach hadith, and some [physicians] to teach medicine. The school was under the supervision of al-Qadi Abu al-Najib 'Abd al-Rahman [who was also responsible for] the changing and replacement of persons, internal and from outside, till 645/1247. In this year, the four teachers who were charged with the teaching of fiqh of the four *madhahib* were summoned and ordered not to mention their own works to their students of fiqh and not to compel them to memorize anything from those writings; rather, they were to confine themselves to the opinions of the early masters (*masha'ikh*) with due reverence, seeking blessing (*barakah*) through them.

To this, the response of Jamal al-Din Abu al-Faraj 'Abd al-Rahman ibn Muhy al-Din Yusuf ibn al-Jawzi was total compliance. He was initially a *muhtasib* (inspector of weights and measures) in Baghdad and later occupied the position of his father, Muhy al-Din Yusuf ibn al-Jawzi, as the teacher of Hanbali fiqh in the said *madrasah*. He is different from Abu al-Faraj 'Abd al-Rahman ibn 'Ali ibn Muhammad ibn al-Jawzi, the *wa'iz*, who died in 597/1200 and belongs to a later period. Then the teacher of Maliki fiqh, Siraj al-Din 'Abd Allah al-Shirmahi [29] sent in his response and acceptance. But Shihab al-Din al-Zanjani, the teacher of Shafi'i fiqh and the most competent of judges, 'Abd al-Rahman al-Lamghani, the teacher of Hanafi fiqh, rejected the proposal stating that 'the *masha'ikh* were men, and so are we,' or something to that effect, implying that they were on a par with the early *masha'ikh*. The teachers were summoned to the house of the vizier Mu'ayyid al-Din Muhammad Ibn al-Alqami, who had supervised the construction of the *madrasah* as its builder, and he informed the caliph, al-Musta'sim, about the situation. The caliph then ordered that the teachers were to commit themselves to mentioning [only] the statements of the *masha'ikh* and to honour them, whence all of them submitted their compliance.

Here ends the summary of Ibn al-Fuwati's account to which I have added my own explanations.

Ibn al-Fuwati's account confirms al-Maqrizi's statements, except that the latter's discussion was limited to Egypt. Hence, he mentions the official recognition granted to the four *madhahib* in Egypt and the decree which at one stroke made it obligatory to follow these *madhahib* and no other. This occurred during the reign of al-Bunduqdari when the four *qadis* were appointed in 665/1266. Before this they had no such kind of official recognition. However, Ibn al-Fuwati mentions the official recognition of the four *madhahib* in Baghdad, the seat of the caliphate and the centre of Islamdom, which took place in 631/1233, when the al-Mustansiriyyah college was inaugurated and divided into four wings assigned to the followers of the four *madhahib*. Though earlier no such restriction existed, in 645/1247 the teachers of the *madrasah* were ordered not to transcend the opinions of the early *mashd'ikh*, whose sanctity was to remain secure and the blessing of their precedence in learning and religion to be invoked.

Ibn al-Fuwati mentions the excuse which the *fuqaha'* submitted in declining to comply with the imposition to confine to one of the four *madhahib* and the proscription on others, making it clear that it was done on the order of the caliph and that they were coerced to accept it, as is made clear by [the initial resistance of] the Shafi'i and the Hanafi teachers. Al-Maqrizi, however, was not in Baghdad and was not aware of the caliph's imposition.

Hence he does not mention it and ascribes the order to the *fuqaha'*. And if this excuse were not considered acceptable by the *fuqaha'*, they would be deemed to have committed a mistake-as will be explained later-in limiting the *madhahib* to the four.

As to the caliphs, the basis of their directives was nothing except the exigencies of mundane politics, although they apparently based their decrees on the consent of the *fuqaha'* who assisted them in their objectives. For example, Ibn al-Salah 'Uthman ibn 'Abd al-Rahman ibn 'Uthman al-Shahrizi, the commentator of *al-Wasit*, a work on Shafi'i fiqh, who was appointed a teacher at Dar al-Hadith by al-Malik al-Ashraf and died there in 643/1245, issued a *fatwa* that it was unlawful to follow any except the four Imams, citing as his basis the consensus of scholars, as mentioned by Muhammad Mustafa at-Maraghi, the shaykh of al-Azhar, on page 17 of *al-Bahth fi al-tashri' al-Islami* [30] ...*al-ziwaj wa al-talaq*. [31]

### [Factors Responsible for Restricting the Number of Madhahib:]

The reason behind the limitation on the number of *madhahib*, mentioned by Ibn al-Fuwati and as disclosed by historical accounts, is one of these two:

**First:** The first of these is the one stated in the *Riyad al-'ulama'* in the biographical account of al-Sharif al-Murtada 'Alam al-Huda. After mentioning the *Tahdhib al-ansab wa nihayat al-a'qab* by the genealogist al-Sayyid Abu al-Hasan Muhammad ibn Muhammad ibn 'Ali ibn al-Hasan al-Husayni al-Musawi, the author observes: It is widely known among the 'ulama' that the Ahl al-Sunnah, during the reign of the caliphs, when they encountered such dispersion of *madhahib* on legal issues (*furu' al-din*) and divergence of opinions and tendencies that it was impossible to keep track of them-considering that each of the Sahabah, Tabi'un, and those who came after them, up to the period of these caliphs, had his own *madhhab* and personal views in regard to the issues of the Shari'ah and its practical laws-resorted to curtailing the *madhahib* and were compelled to dissolve most of them. Therefore, they concurred upon accepting some of them. [32]

Hence they selected the four *madhahib* due to the large number of their followers and their abundant wealth.

**Second:** The extensive and endless differences in opinions and views resulting from the practice of *ijtihad* forced the caliphs to reduce their number, and as they were incapable of setting aside some of these four *madhahib* in view of the extent of conflict it entailed and given the zealotry of their followers, they resorted to limiting the *madhahib* to the four.

The evidence of their inability to set aside any of the four *madhahib* is provided by al-Maqrizi in *al-Khutat* where he reports that when Abu Hamid al-Isfara'ini wrote to Sultan Mahmud ibn Subuktigin in 393/1002 that the caliph had transferred the control of the judiciary from the Hanafis to the Shafi'is, this led to such a great confrontation between the followers of the two schools that the caliph was forced to change his mind. He was indignant at Abu Hamid, but had to reinstate the Hanafis to their earlier position. [33]

Anyone intending to learn more about the intense bigotry of the followers of these four *madhahib* may refer to the chronicles pertaining to most of the years in Ibn al-Athir's *al-Kamil*. [34]

The author of *Mu'jam al-buldan* observes in the first volume, under the entry pertaining to Isfahan, page 373:

Destruction spread in Isfahan at this time and before it as a result of the prevalence of bigotry amongst the Shafi'is and the Hanafis and the unremitting wars between these two parties. Whenever one party gained ascendancy, it plundered the quarters of the other and burnt them down and destroyed them, and no bond or treaty would restrain them. [35]

These civil disturbances, strifes, and bigotries were instrumental in shaping the policy of the caliphs in compelling the *fuqaha'* to restrict themselves to the opinions of the *masha'ikh* as a mark of respect for them and for the sake of seeking blessing through them: The *fuqaha'* on their part accepted the caliphs' orders restricting the *madhahib* to four and invented reasons to justify it.

Of these reasons, as will be discussed shortly, is the [dogma of the] closure of the door of *ijtihad* after the period of the early *masha'ikh*. This step of theirs was in accordance with the adage النَّاسُ عَلَى دِينِ مُلُوكِهِمْ (The people follow the creed of their kings'). Al-Ghazali, as quoted by Mawlawi Shah Wali Allah in his book *al-Insaf*, has expressed this very well in the following words:

After the period of Rashidun Caliphs, the caliphate was undeservedly taken over by a group of people who had no knowledge of the *ahkam*. Therefore, they needed the collaboration of the *fuqaha'*. Some of them of the top rank fled when accosted for service, while others sought the nearness of the caliphs and wrote books on theology, polemics, and differences between the *madhahib*, each according to favourable circumstances and available means. [36]

Among such *fuqaha'* we have mentioned Ibn al-Salah (d. 643/1245) earlier.

One can conclude from the statements of reliable historians mentioned here, i.e. Ibn al-Fuwati in *al-Hawadith* and al-Maqrizi in *al-Khutat*, that the restriction of the following to the four *madhahib* and the proscribing of adherence to any other *madhhab* took place during the middle of the 7th/13th century and without any religious basis to justify it. Rather, it came about as a result of the policy of some caliphs and was complied with by those who were affiliated with the rulers and caliphs or sought nearness to them, and those who strived to obtain the posts of judges, imams, scribes, secretaries, etc.

### [The Mujtahids After the Limiting of the Madhahib:]

The most eminent among major scholars, free men seeking to deliver themselves from the servility of *taqlid*, have shown their independence throughout history and founded their own *madhahib* and issued their own *fatwas*, such as Imam Jar Allah Mahmud ibn `Umar al-Zamakhshari (d. 538/1143) and Imam Muhy al-Din Muhammad ibn `Ali ibn al-`Arabi (d. 638/1240), although they have been associated with one of the *madhahib* as per the demands of their respective times. Similarly Ahmad ibn Taymiyyah al-Hanbali (d. 728/1327) professed to be a Shafi'i, and so did many of his followers; but his *fatwas*, which are followed by the Wahhabis, do not accord with the views of any of the four *madhahib* and indicate his independent approach. Al-Dhahabi says about him: "He deserves to do *ijtihad* because all its requisites are present in him."

Similarly, many eminent scholars who have lived throughout these centuries down to our own times did not submit to the restriction on the *madhahib* and did not believe that any Islamic precept made it obligatory upon all Muslims to follow one of the four Imams or

made it unlawful for them to go beyond their rulings in matters of *ahkam*, which cannot be known except through inference from the Qur'an and the Sunnah. That is because none of the sources of Islamic law, i.e. the Qur'an, the Sunnah, consensus (*ijma'*) and reason (*'aql*), proves this restriction.

Adherence to any *madhhab* was not known to the Muslims from the time of advent of Islam up to the period when the four *madhahib* gained currency, and this was nearly after two centuries. But even then, though the concept of *madhhab* had developed among them, the restriction making it obligatory to follow one of the four *madhahib* and proscribing others, as mentioned earlier, took place in the 7th/13th century at the caliph's orders for political reasons. Otherwise, the ability to deduce the *ahkam* from the Qur'an and the Sunnah is neither confined to any particular country, nor limited to particular persons to the exclusion of others.

Abu al-Tayyib Siddiq Hasan Khan, in *Husul al-ma'mul min 'ilm al-usul*, p. 186, while rejecting the limitation on *madhhab* to the four and calling for the revival of *ijtihad*, observes:

One who limits the grace of God to some of His creatures and confines the ability to understand the sacred Shari'ah to those of the past eras, is guilty of insolence towards God Almighty and His Shari'ah, which has been laid down for all His servants who adhere to the Qur'an and the Sunnah. If adherence to the Holy Quran and the Sunnah is limited to the people of the bygone ages and if there remains nothing for those who came after them to do except imitate their predecessors, and if they cannot deduce the knowledge of God's laws from the Qur'an and the Messenger's sunnah, what are the grounds of this false distinction and this spurious dogma? *Is naskh* (abrogation) anything other than this? Glory be to God, this is a great calumny! [37]

Muhammad Farid Wajdi, a contemporary writer, in the third volume of the *Da'irat al-ma'arif*, at the beginning of his discussion on *ijtihad*, under the root *j-h-d*, says:

When the Muslims were afflicted by the malaise of social stagnation and affected by the inability to understand the secrets of the Shari'ah, they took resort in the excuse of the closure of the gates of *ijtihad* and legal inference to conceal their own weakness. The truth is that this door remains open, as affirmed by express statements of the Qur'an and the Sunnah, till the Day of Resurrection. [38]

Then, in nearly sixty pages, he presents his research about *ijtihad*, the details of its various phases, its history, and its perpetual necessity.

In short, to consider *ijtihad* as permissible for the early generations and unlawful for the later generations is a form of baseless discrimination, acceptable to none except those whom Abu al-Tayyib al Siddiq Hasan Khan calls 'captives of *taqlid*'. He says: "The captives of *taqlid* are not like those to whom God has opened the doors of the higher teachings (*ma'arif*) and given them a knowledge with which they free themselves from the imitation of men." [39]

There are other scholars of repute among later as well as the contemporary generations, among them Shaykh Muhammad 'Abduh and his pupil, the author of *al-Manar*, as well as

other outstanding and independent contemporary thinkers who have freed themselves from the yoke of *taqlid* and declared their opposition to those who consider the door of *ijtihad* as closed.

### [Partisans of Restriction on Ijtihad:]

Among the partisans of the restriction who advanced arguments in its favour is Mawlawi Shah Wali Allah Ahmad ibn `Abd al-Rahim al Dehlawi in his two aforementioned books. Unfortunately his arguments beg the question. His research in both the books contains nothing except claims unbacked by evidence from revelation or reason. The essence of his research is a chronological classification of the generations of Muslims from the time of demise of the Prophet, may peace and God's benedictions be upon him and his Household, to his own time into three categories and an assignment of certain duties to each.

**The First Category:** This consisted of Muslims who lived during the first and the second centuries. To the laity ignorant of the rules of the Shari'ah among them he assigns the duty of referring, in every issue, to some scholar of the religion, whosoever that may be, who had acquired the ability to deduce these rules, and it was not obligatory upon them to imitate any one particular individual. He observes: "During the first and the second centuries the people were not united in following a specific *madhhab*. The common people learnt the *ahkam* from their parents or

the `ulama' of their city who possessed the ability, complete or partial, to infer the *ahkam* from the sources of the Shari'ah." [40]

**The Second Category:** To it belong the generations which lived from after the second up to the beginning of the fourth century. He classifies the people of this category into three classes. The first of these were the full-fledged independent *mujtahids*, who had authority over three things: first, the freedom to apply the principles of jurisprudence and legal rules; second, to reconcile [conflicting] traditions; and third, to infer detailed rules. [41]

One who did not have command over all these three was obliged to imitate an independent, *mujtahid*, irrespective of whether he was an ignorant layman doing *taqlid* or one belonging to the third class, that of `affiliated *mujtahids*' (*al-mujtahid al-muntasib*), that is, one who bases his *fatwa* on the opinions of one of the independent *mujtahids* constituting the first class and does not go beyond their opinions. He remarks:

After the first two centuries it was obligatory upon every *muqallid* and affiliated *mujtahid* to follow the *madhhab* of some specific independent *mujtahid*. [42]

**The Third Category:** To it belong the Muslims who lived during the period extending from the beginning of the 4th/10th century to the author's own time. He divides them into two kinds, ignorant laymen and affiliated *mujtahids*, and says:

It is obligatory upon a layman to imitate an affiliated *mujtahid* and no other because of the impossibility of there being an independent *mujtahid* from that time to this day.

He says this after dividing the *mujtahids* into two classes, the independent and the affiliated, and his claim is that the independent *mujtahids* became extinct from the beginning of the 4th/10th century and it is not possible for one to exist in view of the non-realization of the above-mentioned qualifications. Hence that which can possibly remain is



the second class, that of affiliated *mujtahids*, and it is obligatory for the laity to do their *taqlid*.

Summarily, it was obligatory for those in the first category to refer to any scholar; for those who belong to the second category to refer only to an independent *mu4tahid*; and for those belonging to the third category to refer to the affiliated *mujtahid*, because there exists no other. Then he anticipates a possible objection against this view and goes on to refute it in this manner:

If you say: *How is it* that after two hundred years it became obligatory to follow a particular *madhhab* while it was not *so* earlier?

*I will* reply: That which *is* actually obligatory *is* that there be in the Ummah someone who knows all the *ahkam* for the sake of their observance, and the prerequisite of an obligation *is* also obligatory. Therefore, if there exist numerous ways of meeting an obligation, anyone of them may be chosen, but if all ways except one are closed that one becomes specifically binding.

[43]

#### [The Gist of Shah Wall Allah's Observations:]

In my view the gist of his elaborate discussion consists of two claims:

**The First Claim:** During the first two centuries it sufficed to refer to any *mujtahid*, but after this period when there existed the imams of the *madhdahib* who were independent *mujtahids*, it became obligatory to refer to anyone among them specifically. When one asks the reason for this distinction and the cause for something becoming obligatory which was not so earlier, he gives a reply, as already quoted under the title . . . [44], which is not satisfactory, unless he implies by it what we shall mention shortly along with its reply.

**The Second Claim:** This concerns the closure of the door of *ijtihad* from the beginning of the 4th/10th century, making it obligatory upon all Muslims up to the present to refer to affiliated *mujtahids*. Here he is content to claim that the conditions for independent *ijihad* ceased to exist from that time onwards. But this amounts to begging the question, especially as this claim disregards figures of major eminence who lived during this period and whose scholarly books and writings testify to their having attained the highest levels of *ijtihad*.

In any case, he does not mention in his book *al-Insaf* the official decree restricting the *madhahib* to four and making it binding to refer specifically to them to the exclusion of others. Although he raises the issue of the restriction in his book *Iqd al-jid fi ahkam al-ijtihad wa al-taqlid*, but there also he does not explicitly mention that it is obligatory to follow the four *madhahib*. In fact, he appears to imply the preferability of referring to them, for under the chapter entitled "Bab ta'kid al-akhdh bi al-madhahib al-arba'ah wa tark al-khuruaj `anha" [45] (Chapter Concerning

Emphasis on Referring to the Four *madhahib* and not Going Beyond Them') he observes:

*You* should know that there lies a great benefit in adhering to these four *madhahib* and a great harm in disregarding all of them. We *will* explain this by giving a number of reasons.

Then he goes on to give reasons which do not substantiate his claim. I shall mention some of them here along with their inadequacies. These are as follows:



1. With the passage of time and betrayal of trusts, it was no longer permissible to rely upon the views of the evil `ulama, unjust judges, and the *muftis* who issued *fatwas* for profane ends (*ahwa'*).

I say: But there is no obstacle to relying upon those `ulama', besides the four imams, who do not possess the above-mentioned characteristics, because the allegation that all others were evil except the four imams is something which no Muslim would have the temerity to claim.

2. When the other *madhahib* gradually became extinct, the majority of Muslims inclined towards these four *madhahib*, and the Prophet, may peace and God's benedictions be upon him and his Household, has said **اتَّبِعُوا السَّوَادَ الْأَعْظَمَ** (Follow the majority').

I say: How could the Prophet, may peace and God's benedictions be upon him and his Household, have said such a thing, and how is it conceivable that he would make it obligatory to follow those who are considered sinful by the Book of Allah, which declares:

وَإِنَّ كَثِيرًا مِّنَ النَّاسِ لَفَاسِقُونَ.

*Surely most men are transgressors. (5:49)*

وَلَا تَجِدُ أَكْثَرَهُمْ شَاكِرِينَ.

*And you will not find most of them thankful. (7:17)*

There are a large number of such statements in the Qur'an and hadith.

Moreover, the better recognized version of this tradition is **مَعِيَكُمْ بِالسَّوَادِ الْأَعْظَمِ**, [46] wherein there is a command to go to big cities because they are centers of various kinds of learning and have other benefits lacked by villages.

3. Another reason-and this is the major one given by him-is that there is a consensus of the Ummah on relying upon earlier generations for the knowledge of the Shari`ah. Therefore, it is inevitable for us to rely on their authority and not to accept anything except that which has been narrated from them through authentic chains and compiled in famous books together with clarifications of their most probable meanings, particularization or limitation of statements of a general import, and reconciliation of conflicting texts. These characteristics are not found in any except the four *madhahib*, and there is no other *madhhab* possessing these qualities except the Imamiyyah and the Zaydiyyah. But since they are heretical, it is not permissible to rely upon their opinions. Therefore, the choice is restricted to following one of the four *madhahib*.

#### [A Defence of the Imami School:]

I say: Probably what he means is that if there exist several ways of fulfilling an obligation, any one of them can be chosen, but if all the ways except one are closed, that one will be specifically binding. The conclusion which can be drawn from his observations is that he admits that the four Sunni *madhahib* along with the Imami and Zaydi *madhhabs* fulfil the above-mentioned criteria of acceptance and reliance, but since the last two are deviant on account of containing heretical views, the choice is restricted to the four *madhahib* only.

In view of this assertion it should be said that the allegation that the Imamiyyah *madhhab* contains heresies is a monstrous calumny and slander-may God protect us from it.

To be sure, Shah 'Abd al-'Aziz, son of Shah Wali Allah, had the audacity to propagate these calumnies in the ninth chapter of his book *al Tuhfat al-Ithna 'Ashariyyah* which deals with the issues of fiqh and Shari'ah. 'Allamah Dehlawi, in the ninth volume, of his book *al-Nuzhat al Ithna'Ashariyyah*, a refutation of the ninth chapter of the *Tuhfah*, refutes each one of his statements and proves the purity of the Imami school from any *bid'ah* and such laws as are not based on God's revelations to the Prophet, may peace and God's benedictions be upon him and his Household.

When it is established that the Imami *madhhab* contains no *bid'ah*, and as it stands on an equal footing with the four Sunni schools as per the admission of Shah Wali Allah, there remains no reason for preferring the four to the Imami *madhhab*; rather, the Imami *madhhab* enjoys priority over them because it has been transmitted through *sahih* and reliable chains of narrators from the Infallible Imams, who were divine 'ulama' who had inherited the knowledge from their ancestor, the Prophet, may peace and God's benedictions be upon him and his Household, and whom God, the Exalted, had imparted all the divine sciences which He had entrusted to His prophet (s). Hence they do not say anything except that which was revealed to their ancestor, who did not speak out of caprice (وَمَا يَنْطَلِقُ مِنَ الْهَوَىٰ [53:3]) and as we mentioned earlier, their chain of transmission goes back to the gateway of the Prophet's knowledge. [47]

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*All praise is for God who guided us to this, and we would not have been guided had not God guided us (7:43).* What I have said is not out of any bias. By God, who has blessed me with being, I have not found in their statements and their writings and books (i.e. of the Ahl alSunnah), some of which I have mentioned here, and have not come across up to this day even a single piece of evidence supporting the claim that it is obligatory to follow one of the four *madhahib* and unlawful to adhere to any except these, nor any evidence for preferring these four *madhahib* to others. And God is witness over what I say, and all praise belongs to Him, at beginning and end.

(Written by this sinner, Muhammad Muhsin, known as Agha Buzurg al-Tehrani, in Rabi' al-Awwal 1359 H. [1940])

#### NOTES:

[1]. Al-Maqrizi, *al-Khutat (al-Mawa'iz wa al-i'tibar bi dhikr al-khulal wa al athar)*, ii, 332

[2]. Refer to *al-Ghadir* the encyclopaedic work of 'Allamah Amini (*quddisa sirruh*), wherein one can find numerous sources which prove this point.

[3]. Al-Ya'qubi, *Ta'rikh* (Najaf), ii, 102.

[4]. This is a *mutawatir* tradition of the Prophet (s) narrated both by Sunnis and Shi'is. See, for instance: *Ta'rikh Baghdad*, ii, 337; *Kifayat al-talib*, bab 58, p. 220, *Tadhkirat al-khawass*, "hadith madinat al-ilm," p. 47; *Dhakha'ir al-'uqba*, p. 77; *Usud al-ghabah*, the biographical account of 'Ali ('a), iv, p. 22; *Tahdhib al tahdhib*, the biographical account of 'Abd al-Salam (Abu al-Salt al-Harawi), vi, 320.

[5]. This is a *mutawatir* tradition accepted by both the Sunnis and the Shi'ah, and has been transmitted by more than 200 scholars from more than thirty Companions, men and women. See, for instance: *Sahih Muslim*, iv, "fada'il 'Ali ('a)," traditions 36 and 37; *Sunan al-Tirmidhi*, v, bab 32; al-Darimi, *Sunan*, ii, "fada'il al Qur'an"; al-Nisa'i, *al-Khasa'is* (Najaf), p. 93; *Kifayat al-talib* (Najaf), p. 50; *Dhakha'ir al-'uqba*, "bab al-fadl Ahl al-Bayt," p. 16; *Tadhkirat al-khawass* (Najaf), bab 12, p. 322; *Yanabi' al-mawaddah*, p. 30; *Usud al-ghabah*, ii, the biographical account of al-Hasan ibn 'Ali ('a), p. 12; al-Ya'qubi, *Ta'rikh* (Najaf), ii, 102; al-Hakim al Nayshaburi, *al-Mustadrak 'ala al-Sahihayn*, "kitab ma'rifat al-Sahabah," "fada'il 'Ali ('a)," iii, 109; *Musnad Ahmad*, iii, 17, the traditions of Abu Sa'id al-Khudri; v, 371, the traditions of Zayd ibn Arqam; and v, 181, the traditions of Zayd ibn Thabit.

Also refer to *Risalat Hadith al-Thaqalayn* by al-Shaykh Qiwwam al-Din al-Qummi al-Wishnawi (Dfir al-Taqrif li al-Madhabib, Egypt). For further details on this issue, see the first two volumes of *'Abaqdt al-anwar*.

(The reader may also profitably refer to the long article "Hadith al-Thaqalayn: a Study of its Tawatur", published in five parts in *al-Tawhid*, vol. viii, nos. 1-4, vol. x, no. 4. - Translator)

[6]. Al-Tehrani, *al-Dharrah*, i, 13. Refer to the details mentioned in ii, 134 on the discussion about the *usul* works under the root *a-s-l*. There one finds the definition of 'asl,' the difference between an *asl* and a *kitab*, and the number of the *usul*, the names of their writers and the ones that are extant.

For a better appreciation of this issue refer to *Diya' al-dirayah* of al-Sayyid Qiya' al-Din al-Allamah, p. 70, and the first issue of the series *Ihya' Turath Ahl al-Bayt* under the title *Dirasah hawl al-usul al-arba'ah mi'ah*, by al-Sayyid Muhammad Husayn al-Husayni al-Jalali, also printed in *Da'irat al-maarif al-Shi'iyah* (Beirut), vol. 5.

[7]. Obviously *ijtihad* is not limited to this; rather it is only a part of *ijtihad*.

[8]. That is '*ijtihad*' in a different sense which is rejected by the Shi'ah.

[9]. He is Muhammad ibn Ahmad ibn al-Junayd al-Katib al-Iskafi, an early Imami legist. Al-Najashi, in his *Rijal*, says about him: "Muhammad ibn Ahmad ibn al-Junayd, Abu 'Ali al-Katib al-Iskafi, notable amongst our companions, trustworthy and highly respected, a prolific writer."

He goes on to mention a large number of his works, and among them is a book containing a collection of '*masa'il*' nearing two thousand in number, covering 2500 pages. Later he observes: "I have heard my trustworthy teachers say about him that he used to practice *qiyas*" (*Rijal al-Najashi*, [Qumm, 1407b p. 385-388].

Al-Shaykh al-Tusi in *al-Fihrist* says about him: "Muhammad ibn Ahmad ibn al-Junayd, *kuniyah* Abu 'Ali, was an excellent writer, but he used to practice *qiyas*. Therefore his books have been abandoned and are not referred to. He has written a large number of books" (p. 267). Then he goes on to mention his books.

'Allamah Sayyid Mahdi Bahr al-Ulum (*quddisa sirruh*) observes: "Muhammad ibn Ahmad ibn al-Junayd, Abu 'Ali al-Iskafi, [was] one of the eminent and great figures of our sect and one of the earliest Imami scholars .... This shaykh, despite his eminence within the sect, his leadership, and great station, has been said to have employed *qiyas*, and this has been

narrated about him by a group of major Shi'i scholars" (Sayyid Bahr al Ulum, *Rijal*, iii, 205-207).

Regardless of this, the scholars have not altogether disregarded his opinions because of his acting on *qiyas*, and this is clear from the following observation of 'Allamah Sayyid Bahr al 'Ulum: "It is known from what we have said that the correct view is to give credence to Ibn al-Junayd's opinions for determining issues of concurrence and disagreement, and this is the wont of major Imami scholars. Concerning his having acted on *qiyas* and the like, that does not call for disregarding his books and not relying upon them, as observed by al-Shaykh al-Tusi-may God have mercy upon him-because the presence of difference among the fuqaha' regarding the basic principles of *ahkam* (i.e. jurisprudential principles on the basis of which the *ahkam* of the Shari'ah are deduced) does not necessitate non-reliance on their opinions on this basis, considering that from the earliest times to the present age, they have differed concerning the jurisprudential principles on which the detailed laws are based, such as their difference of opinion regarding *khavar al-wahid* and *al-istishab* (Sayyid Bahr al-Ulum, *Rijal*, iii, 221).

[10]. The issue of the '*adalah* (veritable authority) of the Sahabah, is one of the critical issues that have occupied an important place in discussions on the sciences of hadith and rijal (the study of the narrators from the viewpoint of their veracity). The majority of the Ahl al-Sunnah have inclined towards the view that all the Sahabah are '*adil* (veracious authorities) and that it is not appropriate to apply to them the critical criteria of the science of-*rijal* (*jarh and ta'dil*) as applied to other Muslims.

Al-Ghazali, in *al-Mustasfa*, says: "The *salaf* (the early generations of Muslims) and the majority of the *khalaf* (those who came after the *salaf*) have accepted the '*adalah* of the Sahabah on the basis that their '*adalah* has been confirmed by God, the Almighty and the Glorious, and He has praised them in His scripture. We too hold the same belief about them, except where it is conclusively proved that one of them has committed a sinful act knowingly. And since this has not been proved, there is no need for ascertaining their '*adalah*" (*al-Mustasfa*, p. 204).

There are among the Ahl al-Sunnah those who consider it valid to critically appraise their '*adalah*, just as in the case of other Muslims, and that their Companionship of the Prophet (s) is of no consequence in this regard. But these scholars do not represent anyone except themselves in this belief. Apart from this, some Mu'tazilah have observed that the Companionship was effectual till the occurrence of strife, discord, and eventual bloodshed among them.

Whatever the case may be, most of the Ahl al-Sunnah unconditionally accept the '*adalah* of the Sahabah and do not require a critical appraisal of their '*addlah*.

Nevertheless, for anyone possessing a minimal knowledge of the history of the Prophet (s) and the Sahabah and the verses revealed about some of them, ascribing to them hypocrisy, opposition to the Prophet's (s) commands, and causing him (s) grievance, there remains no doubt that there were among the Sahabah those whose sinfulness is doubtless, especially when the Holy Qur'an itself dubbs one sahabi as *fasiq* where it declares:

يٰۤاَيُّهَا الَّذِيْنَ اٰمَنُوْا اِنْ جَاءَكُمْ فَاسِقٌ بِّنِيٍّ فَتَّبِعُوْهُ اَنْ تَصِيْبُوْا قَوْمًا بَٰجِهَلَةً فَتَصْبِحُوْا عَلٰى مَا فَعَلْتُمْ تٰلِيْمِيْنَ

*O believers, if an ungodly man comes to you with a tiding, ascertain carefully, lest you harm a people in ignorance, and then repent for what you have done. (49:6)*

It also explicitly states that there were liars among them:

لَوْ كُنَّا عَرَفْنَا قَرِيبًا وَسَفَرًا قَاصِدًا لَاتَّبَعُوكَ وَلَكِنْ بَعَدَتْ عَلَيْهِمُ السَّعَةُ وَخَلَّفُوا بِاللَّهِ لَوِ اسْتَطَعْنَا  
لَخَرَجْنَا مَعَكُمْ يُهْلِكُونَ أَنْفُسَهُمْ وَاللَّهُ يَعْلَمُ إِنَّهُمْ لَكَاذِبُونَ ۝١٢١ عَفَا اللَّهُ عَنْكَ لِمَ أَذِنْتَ لَهُمْ حَتَّى يَتَّبِعَنَ  
لَكَ الَّذِينَ صَدَقُوا وَتَعْلَمَ الْكَاذِبِينَ

*Were it been an immediate gain and the journey easy, certainly they would have followed thee; but the distance was too long for them. Still they will swear by God, 'Had we been able, we would have gone out with you.' They cause their own selves to perish and God knows that they are truly liars. God forgive thee, why didst thou give them leave until it was manifest unto thee those who spake the truth and thou hadst known the liars. (9:42-43)*

It also observes about some of them:

وَمِنْهُمْ مَنْ يَقُولُ ائْذَنْ لِي وَلَا تَفْتِنِي ۚ أَلَا فِي الْفِتْنَةِ سَقَطُوا وَإِنَّ جَهَنَّمَ لَمُحِيطَةٌ بِالْكَافِرِينَ ۝١١٩  
نُعِيبُكَ حَسَنَةً تَسْؤُهُمْ وَإِنْ تُصِيبُكَ مُصِيبَةٌ يَقُولُوا قَدْ أَخَذْنَا أُمْرَانًا مِنْ قَبْلُ وَنَتَوَلَّوْا وَهُمْ قَرِحُونَ

*Some of them there are that say, 'Exempt me and try me not;' surely into trial they have already fallen, and verily hell encompasses the unbelievers. If good fortune befalls thee, it vexes them; but if thou art visited by any hardship, they say, 'Indeed we had taken care of our affair before,' and turn away rejoicing. (9:49-50)*

It addresses some of them and says:

قُلْ أَنْفِقُوا طَوْعًا أَوْ كَرْهًا لَنْ يُتَقَبَلَ مِنْكُمْ إِن كُنْتُمْ كُونُوا قَسِيبِينَ ۝٥٣ وَمَا مَنَعَهُمْ أَنْ تُقَبَلَ  
مِنْهُمْ تَقَعَتُهُمْ إِلَّا أَنْهُمْ كَفَرُوا بِاللَّهِ وَرَسُولِهِ وَلَا يَأْتُونَ الصَّلَاةَ إِلَّا وَهُمْ كُسَالَى وَلَا يُنْفِقُونَ إِلَّا  
وَهُمْ كَارِهُونَ.

*Say: 'Spend willingly, or unwillingly, it shall not be accepted from you; you are surely a transgressing people.' And naught prevents that their expendings should be accepted from them, but that they believe not in God and His Messenger, and perform not the prayer save lazily, and that they spend not but reluctantly. (9: 53-54)*

These are some of the many verses revealed concerning some Sahabah and one rarely finds a *surah* in which God has not referred to them in some verse or verses. Therefore, is it justified to disregard these explicit Qur'anic verses and hold on to the concept of the '*adalah* of all the Sahabah?

It is often said that such verses have been revealed concerning the hypocrites. But have the hypocrites been distinguished from the other Sahabah, isolated, and identified for all so that one is not misled concerning any of them? If not, then why should it be inappropriate to apply to them the criteria of ascertaining '*adalah* (*jarh* and *ta'dil*)'?

Fittingly does Mahmud Abu Riyyah observe in his book *Adwa' 'ala al-sunnat al-Muhammadiyah* (5th edition), p. 350, wherein he says: "If the Companionship of those like Bishr ibn Marwan-on the assumption of its being factual-or that of al-Walid, were of any avail, it would imply that no act except apostasy is detrimental by the side of Companionship, as if Companionship were something greater than faith (*iman*). Such an opinion would be more extreme than the creed of Maqatil and his followers from among



the Murji'ah. Moreover, what is to be done with such traditions as لَا تَدْرِي مَاذَا أَحَدُكُمْ بَعْدَكَ ('You do not know what mischief they caused after you'), which are *mutawatir* as to their meaning, and it may even be validly claimed that some of them are *mutawatir* in their wording. Those who claim to follow the Sunnah ascribe Companionship to someone or affirm it of him without any evidence, and then draw from it such conclusions as can be

seen and base their religion on it. Has not God said, إِنَّ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا ('if a transgressor comes to you with a riding, ascertain') about someone whose Companionship is certain and whose state has always been obvious despite his being a Companion?

Further, among them were those who drank wine and committed other countless acts, which are not mentioned for the respect of the Prophet, may peace and God's benedictions be upon him, unless necessitated by some religious expediency. And the greatest of expediencies is involved when something pertaining to religion is derived from a tradition narrated by Marwan, al-Walid, and others, which is the greatest betrayal of the religion of God and opposition to the explicit import of the noble verse. Any resentment of such an action does not imply the rejection of all the Companions, but rather an affirmation of their purity. So beware, do not be deceived!"

For further details, see *Adwa 'ala al-sunnat al-Muhammadiyah*, p. 339 ff., and *Dirasat fi al-hadith wa al-muhaddithin* by Hashim Ma`ruf al-Husayni, p. 71.

[11]. The tradition اصحابي كالنجوم ('My Companions are like the stars'), as expressly stated by several eminent scholars, is a forgery. Ibn al-Qayyim considers it *da'if* and a forgery (*A'lam al-muqi'in*, ii, 223).

Al-Ghazali, in *al-Mustasfa*, observes: "Some people claim that their position (i.e. of the Companions) is similar to that of others regarding the necessity of a scrutiny. Others say that their initial condition was *'adalah* until the occurrence of civil war and hostilities, whence their state changed and there was bloodshed, and hence there is a need for scrutiny. Those who believe in the *'adalah* of all the Sahabah base their claim on the saying of the Prophet 'My Companions are like the stars, whoever you follow you will be guided' and according to another version . . . قَاتِلُهُمْ أَخَذْتُمْ بِقَوْلِهِ as ('whoever's statements you take...'). But this tradition is not *sahih* and is said to be fabricated"

`Allamah Sayyid Hamid Husayn al-Lakhnawi (1246-1306/1830-1888), an Indian scholar, as pointed out by the author himself in the text, has conducted extensive research on this tradition in his encyclopaedic work *`Abaqat al-anwar fi imamat al A'immal al-Athar*, which he wrote as a refutation of the chapter on Imamate of Shah `Abd al- Aziz al-Dehlawi's book *al-Tuhfat al-Ithna 'Ashariyyah*, in which he had disputed some traditions that prove the Imamate of Amir al-Muminin 'Ali, may peace be upon him. There he has established the *tawatur* of each one of the traditions in several large volumes.

[12]. The book has a number of prints and the one cited in references is the Bulaq edition in two volumes, also printed by offset in Baghdad.

[13]. They have been also printed in Muhammad Farid Wajdi's *Da'irat al-ma'arif li al-qarn al-'ishrin*, iii, under the root *j-h-d*. However, the second one does not appear in its entirety.

[14]. Sixth *maqsad* is correct and not third.



- [15]. *Da'irat al-ma'arif li al-qarn al-'ishrin* is the correct title.
- [16]. *Husul al-ma'mul fi 'ilm al-usul*, maqsad 6, p. 198.
- [17]. Al-Maqrizi, *al-Khutat*, ii, 332 (with slight interpolation).
- [18]. *Ibid.*
- [19]. *Ibid.*
- [20]. Farid Wajdi, *Da'iral al-ma'arif*, iii, 245.
- [21]. *Ibid.*, ii, 221 (with slight interpolation).
- [22]. In *al-Khutat*: al-Batti, and this is apparently correct. The author of *Khulasat al-Tahdhib* gives his name in his biographical account as `Uthman ibn Muslim al-Batti. . . Abu `Amr al-Basri al-Faqih, and he is different from `Uthman ibn `Umar ibn Musa alTaymi al-Qadi, mentioned later on.
- [23]. Al-Maqrizi, *al-Khutat*, iii, 332, and there it is: "Then came after the Tabi'un (r), the *fuyaha*' of the towns . . . ."
- [24]. As already pointed out (in note 22), he is other than `Uthman ibn Muslim al-Batti. The author of *Khulasat al-Tahdhib* describes him as: `Uthman ibn `Umar ibn Musa ibn `Abd Allah ibn Ma'mar al-Taymi al-Ma'mari, the *qadi* of Madinah ....
- [25]. Al-Maqrizi, *al-Khutat*, ii, 334.
- [26]. *Shadharat al-dhahab*, v, 348.
- [27]. Al-Maqrizi, *al-Khutat*, ii, 344.
- [28]. Al-Maqrizi, *al-Khutat*, ii, 344, with slight interpolation.
- [29]. Al-Shirmah, a city in the region of Dimyat near the Mediterranean [-by the author (*quddisa sirruh*)]
- [30]. A word here is not legible, and the complete name of this treatise could not be traced.
- [31]. There is a note on the margin here missing from the photocopy. It will hopefully be included in the next edition.
- [32]. *Riyad al-'ulama*, ms., folio 530. We have referred to some parts of this manuscript in Ayatullah Mar'ashi Library at Qumm.
- [33]. Al-Maqrizi, *al-Khutat*, ii, 333.
- [34]. It contains numerous instances of this kind. Refer, for instance, to Ibn Athir, *al-Kamil*, x,124.
- [35]. *Mu'jam al-buldan*, i, 209.
- [36]. *Al-Insaf fi sabab al-ikhtilaf* as quoted in Farid Wajdi, *Da'irat al-ma'arif*, iii, 229. Quoted here with slight interpolation.
- [37]. *Husul al-ma'mul min 'ilm al-usul*, p.187.
- [38]. Farid Wajdi, *Da'irat al-ma'arif*, iii, 197, with slight interpolation.
- [39]. *Husul al-ma'mul*, p. 186, with slight interpolation.

[40]. *AI-Insaf fi bayan sabab al-ikhtilaf* as quoted in Farid Wajdi, *Da'irat al ma'arif*, iii, 221, with slight interpolation.

[41]. *Ibid.*, p. 227.

[42]. *Ibid.*, p. 227.

[43]. *Ibid*, p. 226.

[44]. A word here is not legible.

[45]. *Ibid*, p. 245. The correct title is: "bab ta'kid al-akhdh bi hadhihi at-arba'ah wa al-tashdid fi tarkiha wa al-khur'uj `anha."

[46]. Ibn Majah, *Sunan*, "al-fitan," bab 8; the exact words of the tradition are

إِنَّمَا أَتَى: لَا تَجْتَمِعُ عَلَى الضَّلَالَةِ فَرْدًا رَأَيْتُمْ إِخْتِلَافًا فَعَلَيْكُمْ بِالسَّوَادِ الْأَعْظَمِ

A-Haythami observes in *al-'Zawa'id*: "Its chain of transmission-includes Abu Khalaf al-A'ma, whose name is Hazim ibn `Ata', and he is, *da'if*."

[47]. Refer to note 5 above concerning the Prophet's tradition . أَنَا مَدِينَةُ الْعِلْمِ وَ عَلِيٌّ بَابُهَا ('I am the city of knowledge and 'Ali is its gateway').